

Feedback Form

Planning Regulations Amendment Regulations 2020 - Proposed Amendments to the Planning and Development (Local Planning Schemes) Regulations 2015 ('the regulations') and other associated Regulations

Introduction

This feedback form is divided into the following sections:

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| Section 1 | Submitter's details |
| Section 2 – Section 8 | Questions seeking specific views and comments on the proposed amendments to the regulations |
| Section 9 | Consequential Amendments to DAP regulations |
| Section 10 | General comments |

The description of the proposed amendments to the regulations, contained within Sections 2 to 8, are a summary and general in nature, and are not a legal description of the proposal. References are provided to specific regulations to assist in explaining the proposed amendments. The 'track changes' version of the regulations document should also be referred to, which indicates all of the proposed amendments to the regulations (see Attachment 1).

The feedback form is to be emailed to planningreform@dplh.wa.gov.au by **5:00pm Friday 18 September 2020**, along with any associated documents, such as resolutions made regarding feedback on the proposed amendments.

All feedback, comments and suggestions will be considered prior to the finalisation of the proposed amendments to the regulations.

For any enquiries regarding the completion of this form, please contact the Planning Reform Team on 6551 9915.

Abbreviations and acronyms

For the purposes of this feedback form, the following abbreviations and acronyms are used:

Action Plan – Action Plan for Planning Reform (2019)

DPLH – Department of Planning Lands and Heritage

PD Act – Planning and Development Act 2005

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

WAPC – Western Australian Planning Commission

SECTION 1 | SUBMITTER DETAILS

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|---------------------------------------|
| Question 1 Submitter Name |
| Neil Maull |
| Question 2 Email Address |
| neil.maull@stirling.wa.gov.au |
| Question 3 Organisation Name |
| City of Stirling |
| Question 4 Organisation Type |
| Local Government Council |

SECTION 2 | LOCAL PLANNING STRATEGIES

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| Question 5 Manner and Form for Local Planning Strategies | |
| Proposal: AMEND: r.11(2) – insert r.11(2)(aa) to require a local planning strategy to be prepared in a manner and form approved by the WAPC. | |
| <p>Explanation:</p> <p>This change will provide a statutory head of power for the WAPC to determine a set manner and form for local planning strategies and will contribute to the achievement of the objectives outlined in the Action Plan for greater consistency across the planning system.</p> <p>The manner and form for local planning strategies, and associated guidance, are currently being prepared by DPLH. It will be finalised next year following consultation with local governments and other key stakeholders.</p> | |
| Response to proposal | Support |
| Comments | |
| Nil. | |
| Administration - DPLH Proposal Ref: A | |

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| Question 6 Inclusion of Local Planning Strategy as a Planning Consideration | |
| Proposal: AMEND: cl.67 (deemed provisions) – insert sub-clause 67(3)(fa) 'any local planning strategy for this Scheme endorsed by the Commission'. | |
| <p>Explanation:</p> <p>This amendment will list the local planning strategy for a local planning scheme as being a matter that the local government is to have regard to when considering an application for development approval.</p> <p>The purpose of this amendment is to elevate the importance of strategic planning and provides a clear line of sight to strategy, consistent with initiatives of the Action Plan relating to planning being strategically-led and local planning frameworks being more legible.</p> | |
| Response to proposal | Support |
| Comments | |
| Nil. | |
| Administration - DPLH Proposal Ref: 94 | |

SECTION 3 | STRUCTURE AND PRECINCT PLANS

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| Question 7 One Process for Structure and Precinct Structure Plans | |
| Proposal: AMEND: Part 4 - Structure plans and DELETE: Part 5 - Activity centre plans (deemed provisions). | |
| <p>Explanation:</p> <p>The existing provisions in Part 4 (structure plans) and Part 5 (activity centre plans) of the regulations are practically identical, with the primary difference being that activity centre plans can set out built form and development standards. These amendments will include definitions for a precinct structure plan and standard structure plan. Standard structure plans will not be able to include development requirements and are suited to greenfield areas. Precinct structure plans are an expanded version of an activity centre plan and will replace activity centre plans. These plans will be able to include development requirements and are suited to infill areas and areas requiring more detailed planning for built form.</p> <p>There is a need to amend the statutory procedures in the regulations to facilitate the processing of precinct structure plans, prepared in accordance with the proposed State Planning Policy 7.2 – Precinct Design (SPP 7.2) and the Precinct Design Guidelines.</p> <p>The opportunity exists to streamline and consolidate the existing requirements of Parts 4 and 5 into a single set of procedures and utilise these consolidated provisions for the processing of precinct plans.</p> | |
| Response to proposal | Conditionally Support |
| Comments | |
| <p>The Regulations introduce 'precinct structure plans', as a planning instrument and include transitional provisions which mean an 'activity centre plan' in effect before the Planning Regulations Amendment Regulations 2020 come into effect is taken to be a precinct structure plan.</p> <p>Structure Plans are complicated documents that take several years to develop. The Regulations amendments do not include any transitional arrangements to allow structure plans (or other forms of precinct planning) that have been under development for several years to progress. This is considered a deficiency in the transitional provisions.</p> <p>During the last 10 years, there have been many changes to the State planning system that have impacted on the City's project areas such as Stirling City Centre. Each time changes are required, they cost a substantial amount of money and staff time to prepare.</p> <p>It is the City's recommendation that the Regulations should be amended to allow structure or precinct plans that have undergone public advertising to be able to be progressed. This will save the potential to remake a plan for what is effectively an administrative reason.</p> <p>The Regulation amendments also identify that transitional provisions are being drafted in relation to advertising processes that have already commenced.</p> <p>It is unclear what this means but the wording suggests that plans that have been advertised may be allowed to progress under the transitional provisions. Addressing this matter prior to advertising the amendment Regulations may have addressed the City's concerns about plans that have been advertised being able to progress.</p> <p>The omission of these provisions is a significant deficiency and ought to have been addressed before the Regulations amendments were advertised. To prevent further delays to the implementation of structure or precinct plans under development, the proposed transitional provisions must be amended.</p> <p>It is imperative that the introduction of any new state wide planning instruments allow for the continuation for creating planning frameworks, where consistent with state planning policy, the strategic direction set by Perth and Peel @ 3.5 million, and an adopted Local Planning Strategy.</p> <p>Recommendation</p> <p>Schedule 2 Part 13 to include transitional provisions for activity centre plans that have not yet been approved but are being created by local governments, to continue the process as activity centre structure plans.</p> <p>Where an activity centre plan has been advertised it should be allowed to continue as is. If the plan is advanced in preparation, but not yet advertised, the WAPC should be able to use discretion to allow the plan</p> | |

to continue to be created as an activity centre plan.

Administration - DPLH Proposal Ref: H

Question 8 | **Revocation of Structure Plans**

Proposal: **AMEND: cl.28** (deemed provisions) - to allow the WAPC to revoke a structure plan under additional specified circumstances (e.g. when a new structure plan is approved in relation to the area to which the structure plan to be revoked relates).

Explanation:

Currently the effect of cl.28(4) is that a structure plan can only be revoked if it cannot be effectively implemented because of a legislative change or a change in a State planning policy. Greater flexibility is sought to be able to revoke a structure plan that no longer has utility.

Response to proposal

Support

Comments

Nil.

Administration - DPLH Proposal Ref: I

SECTION 4 | BROADER RANGE OF PLANNING APPROVAL EXEMPTIONS

Question 9 | **Broader Range of Exemptions for Small Projects**

AMEND: cl.61(1) (deemed provisions) – to provide additional exemptions for certain works or small projects.

Explanation:

- Removing unnecessary red tape to make it easier for people to do small improvements to their homes and/or businesses.
- Clause 61(1) of the regulations already provide exemptions from planning approval requirements for small residential and non-residential projects. The list is proposed to be expanded to include the following:
 - Site works for non-residential development where the excavation or fill is 0.5m or less.
 - Demolition of non-residential buildings that are not attached to another building.
 - Installation of water tanks that are less than a certain height (2.4m or 1.8m depending on location), not in front of a building.
 - Change to the wording of signage.
 - Cubby houses with a wall height of less than 2.4m and overall height of 3.0m, provided the floor level is no more than 1.0m above ground and the cubby house abuts no more than one boundary and is no less than 1m from other boundaries.
 - The installation of solar panels on non-residential buildings (must be flush with the roof).
 - The installation of a flagpole (1 per property and no more than 6.0m in height)
 - Maintenance and repair works.
 - Works that are urgently necessary for public safety, the safety or security of plant or equipment, the maintenance of essential services or the protection of the environment.

The above exemptions generally do not apply where the works are in a heritage protected place.

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| A table is to be inserted into cl 61(1) to make it clear what works are exempted under what conditions. | |
| Response to proposal | Conditionally Support |
| Comments | |
| <p><u>Site Works</u></p> <p>The exemption would permit site works on properties with Heritage implications, on residential and non-residential properties, where the R-Codes do not apply. This might include properties on a local government Heritage List, where the works should not be exempted.</p> <p>Recommendation Schedule 2 Clause 61 (1) item 1 be amended to exclude works located in a heritage-protected place from the exemption of Item 1 of Clause 61(1).</p> <p><u>Meaning of 'materially affecting the external appearance of a building'</u></p> <p>The Regulations amendments include a provision that clarifies that internal building work which does not materially affect the external appearance of the building are exempt from requiring development approval where certain requirements are met.</p> <p>The only times that the City is concerned about changes to the external appearance of a building is where a building is subject to some form of heritage protection. The proposed wording in the Regulations amendments does not make it clear that this applies also to a heritage area.</p> <p>The proposed Regulations amendments wording is silent on heritage areas. To ensure development is consistent with the City's character retention requirements, the City needs to review proposed works that may alter the external appearance of a building to be satisfied if a change is immaterial.</p> <p>It is important that this reference is made, as there can be disagreements between the City and applicants or property owners about changes that materially affect the exterior of a building.</p> <p>Recommendation Schedule 2 Clause 61 (1) item 6 be amended to clarify that local governments are to decide what 'materially affects the external appearance of the building'.</p> <p><u>Advertising signs</u></p> <p>The Regulations amendments propose changes to the wording for the exemption of advertising signs intended to clarify existing uncertainty about whether signage requires development approval.</p> <p>The proposed wording "the erection or installation of a sign of a class specified in a local planning policy or local development plan that applies in respect of the sign [that] are not located in a heritage-protected place" does not provide clarity and is ambiguous.</p> <p>The City's officers have discussed this ambiguity with the Department of Planning, Lands and Heritage who have advised the intent of the wording is to exempt signage that complies with a local planning policy.</p> <p>Recommendation Schedule 2 Clause 61 (10) be amended to state that the sign must comply with the requirements of the local planning framework to be exempt from requiring development approval.</p> <p><i>"The erection or installation of a sign that meets the standards specified in a planning instrument"</i></p> <p><u>Third party signs replacing existing signs</u></p> <p>Clarity required in the condition to prevent third-party advertising.</p> <p>Recommendation Schedule 2 Clause 61 (11) be amended to state that the sign relates only to the business being conducted on the premises.</p> <p><u>The erection or installation of a flagpole</u></p> <p>Simplification of the wording that no signage for advertising is permitted.</p> <p>Recommendation Schedule 2 Clause 61 (14)(c) be amended to state 'the flagpole is not used for advertisements'.</p> | |

Works that are urgently necessary

Clarification as to who determines which works are urgently necessary to ensure that the exemption is a valid request.

Recommendation

Schedule 2 Clause 61 (18) be amended to state 'works that are urgently necessary as determined by the relevant authority for any of the following'

Sustainability initiatives exemptions

The Regulations amendments provide exemptions for solar panels and water tanks under certain circumstances. Solar panels are only exempt on buildings that are not dwellings, despite being acceptable on an outbuilding associated with a dwelling.

Water tanks can only be exempt if they do not require a building permit under the Building Act 2011. The rationale for this, which is not a requirement for other planning exemptions, is unclear and not supported.

Water tanks are a benign form of development that should be supported. Requiring reference to other legislation is not an efficient way of dealing with an exemption.

Recommendation

Schedule 2 Clause 61 (12) for water tanks to be exempt from requiring development approval, have the reference to the *Building Act 2011* removed.

Schedule 2 Clause 61 (15) allow solar panels to be exempt from requiring development approval where proposed on dwellings.

Administration - DPLH Proposal Ref: K. Also, proposal 82 – exemption for internal building work where interior of the building is not specified as not being of heritage value. Proposal 86 - clarify works associated with single residential development. Proposal 84 - clarify that the single house exemption applies where it is a 'P' use in the relevant zone.

Question 10 | Exemptions for Change of Use Applications

Proposal: **AMEND: cl.61(2) and new cl.61(2A)** (deemed provisions) - additional exemptions for certain uses in specified zones of a local planning scheme.

Explanation:

- Removing unnecessary red tape (approvals) to make it easier for appropriate businesses to establish and start operating.
- Introducing a new clause 61(2A) in the deemed provisions to exempt appropriate uses from development approval in commercial, centre and mixed use zones, and light industrial zones.
- The uses in commercial, centre and mixed use zones include – shops of less than 400m², restaurant/cafés, convenience stores, consulting rooms, office (not on ground floor), recreation private (only in Perth and Peel, not on ground floor and less than 400m²) liquor store small, small bar, hotel and tavern (all licensed premises are only in Perth and Peel, last three cannot be next to a residential zone, and the last two can be no more than 400m². This is shown in the regulations as a table. The exemptions are subject to conditions for the different uses to minimise any adverse amenity impacts.
- The uses in the light – industrial zones include – recreation private (less than 400m²) and bulky goods showroom.
- These exemptions apply where the use is:
 - the use is 'D' or discretionary and where there are no changes to the building such as an increase in size or noticeable changes to the front of the building, or where such changes are exempt from approval.
- Permitted or 'P' uses are already exempt.
- Where a use is either permitted or covered by the new exemption in clause 61(2A) there will be no parking requirements.

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| <ul style="list-style-type: none"> New definitions for zones and uses are also included so new exemptions can apply broadly in all applicable areas. | |
| Response to proposal | Object |
| Comments | |
| <p>Local governments craft local planning schemes to achieve a number of purposes, one of which is the preservation of the amenity of an area.</p> <p>The Regulations amendments propose that where a local planning scheme classifies certain land uses as 'D' uses in certain zones, they are exempt from requiring development approval, subject to certain conditions being satisfied.</p> <p>This change to exempt these 'D' uses from requiring development approval is not supported and it undermines local governments who have, through their local planning schemes, determined the best way to manage development in their area following community consultation.</p> <p>Recommendation</p> <p>Schedule 2 subclauses 61 (2)(ba), 61 (2A), 61 (2B) and 61 (2C) with the associated table be removed that proposes to exempt from requiring development approval 'D' land uses.</p> | |
| Administration - DPLH Proposal Ref: L | |

SECTION 5 | DEVELOPMENT APPLICATION PROCESSES

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| Question 11 Deemed to Comply Checks for Development Applications | |
| Proposal: New cl.61A (deemed provisions) to introduce deemed to comply checks for single houses. | |
| <p>Explanation:</p> <ul style="list-style-type: none"> New clause 61A being introduced for deemed to comply checks for single houses. Will allow people to find out from local government if their proposed new house, extension or other minor works need planning approval or whether they can proceed straight to a building permit. Will only apply to single dwellings and proposals relating to single dwellings in the Perth and Peel regions, and other local governments which give notice of the intention to provide this service. The process will check whether the proposal meets the deemed to comply requirements of the R-Codes for a fee of \$295 The local government will provide advice as to whether or not a planning approval is required within 14 days. | |
| Response to proposal | Support |
| Comments | |
| Nil. | |
| Administration - DPLH Proposal Ref: S | |

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| Question 12 Acceptance of Development Applications | |
| Proposal: New cl.63A (deemed provisions) - Action by local government on receipt of application | |
| <p>Explanation:</p> <p>New clause 63A specifies the procedures and timeframes for a local government to accept a development application for assessment.</p> | |
| Response to proposal | Conditionally Support |

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| Comments |
| <p>In relation to receiving and accepting a development application, and when the assessment period begins, Schedule 2 Clause 63A is open to interpretation and missing parts of the process:</p> <p>a) What happens if the local government receives the application and is satisfied with all of the information, but does not receive payment of the application fee? Is a request for the payment of the application fee included as further accompanying material to be provided before being accepted for assessment?</p> <p>b) In regards to the 7 days to receive an application and assess whether it has sufficient information, how does this work with local governments that close down over the end of calendar year holiday period?</p> <p>c) Will there be a timeframe for the applicant to provide the additional information, so that if the information is not received, the application can be returned until the applicant is prepared to provide the information?</p> <p>Recommendation Schedule 2 Clause 63A be amended to:</p> <p>a) outline when the payment of the application fee is to be received and accepted, and what impact it will have on the start of the assessment period.</p> <p>b) outline that the 7 days to request additional information, before accepting an application, is to exclude the holiday periods in the same manner as advertising periods.</p> <p>c) outline that the applicant has 14 days to provide the requested information, or the application will be returned, unless a further period of time is agreed by the local government.</p> <p>d) simplify the wording in Schedule 2 Clause 63A (3) to allow it to be understood.</p> |
| Administration - DPLH Proposal Ref: M |

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| Question 13 Additional Information Requested by Local Government | |
| <p>Proposal: New cl.65A and cl.65B (deemed provisions) - to specify the circumstances where the local government may request additional information after an application for development has been accepted for assessment and provide the applicant the opportunity to either agree or refuse a request for additional information.</p> | |
| <p>Explanation:</p> <p>Outlines the proposed procedures for additional information requests. The local government may request any further information reasonably required to determine the application. Such a request must state the time period for submission of the information and this time is not counted as part of the statutory timeframe. An applicant has 14 days to agree or refuse a request and if no response is received within 14 days the request is taken to be refused.</p> <p>Only 1 request can be made for applications that are not defined as complex, that do not require advertising under clause 64(2)(b) or a referral under clause 66.</p> <p>The changes will also provide greater clarity for applicants and local governments regarding when, and the terms on which, additional information can be requested.</p> | |
| Response to proposal | Conditionally Support |
| Comments | |
| <p>A key proposal by the WAPC is to limit the opportunity a local government has to request further information to be provided by an applicant for development approval.</p> <p>The proposed changes do not provide flexibility in communicating information requirements with applicants. It is a common occurrence that amended plans may result in issues elsewhere in a development.</p> <p>This proposal would prevent good customer service and prevent local governments from working with applicants to achieve good development outcomes. It does not reflect the negotiating that takes place between local governments and applicants to reach positive planning outcomes.</p> <p>The appropriate number of requests for further information should be determined on a case by case basis, in discussions between the applicant and local government. This approach aligns with the recently introduced design review process.</p> <p>It is possible that should this amendment go through as proposed, the inevitable outcome would be that local</p> | |

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| governments would have no option but to refuse to issue development approval for the application. This is likely to be an unforeseen issue that was not contemplated when the amendments were drafted. |
| Recommendation Proposed Schedule 2 Clause 65A (3) which restricts a local government to only requesting further information on one occasion during the planning assessment to be deleted. |
| Administration - DPLH Proposal Ref: W |

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| Question 14 Advertising Arrangements for Development Applications | |
| Proposal: Amend cl.64 - to change the requirements relating to the advertising of development proposals, which include inserting a definition for a 'complex application' and the associated advertising requirements for complex and non-complex applications. | |
| Explanation: Changes are proposed to the required advertising arrangements to ensure effective and appropriate consultation for different types of applications with varying complexities of planning issues. | |
| Note: Amendments to the regulations are also proposed to address the use of electronic notification (see question 22). | |
| Response to proposal | Conditionally Support |
| Comments | |
| The proposed Regulations amendments define 'complex applications' and require all complex applications to be advertised. The proposed amendments delete the existing provisions that allow a local government to 'waive' the advertising of a development application, such as for amendments to approvals. Allowing local governments to waive the need for advertising of development applications is important for the streamlining of the development process. This becomes more relevant where simple amendments to a Development Assessment Panel approval are still classified as complex applications and must be advertised. | |
| Recommendation Schedule 2 Clause 64 retains the provision for a local government to waive a requirement for an application to be advertised in appropriate instances. | |
| Administration - DPLH Proposal Ref: M | |

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| Question 15 Streamlined Referral Processes for Development Applications | |
| Proposal: Amend cl.66 – to specify that the local government may grant an extension of 14 days to the 42 day referral period for a public authority to provide comment on an application and that if the public authority does not provide comment within the time allowed, then the local government must determine that the authority is taken to have no objections or recommendations to make. | |
| Explanation: The purpose of this amendment to the regulations is to limit potential delays in the processing of development applications due to local government waiting for referral comments from a government agency or public authority. The local government may only grant one 14 day extension under the proposed new clause. Also, sub-clause (4) of clause 66 is to be amended to substitute the word 'may' with 'must' in situations where the public authority does not provide comment within the time allowed. In such circumstances the local government will be required to determine that the authority is taken to have no objections or recommendations to make in this situation. | |
| Response to proposal | Conditionally Support |
| Comments | |

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| <p>The proposed Regulations amendments streamline the development assessment process, and only provide an extra 30 days for a local government to determine a development application where it is referred to an external agency. However the external agencies are provided with 42 days to provide comment. This should be reduced to 30 days for alignment.</p> <p>Similarly the 14 day extension that a local government can grant to a referral agency should be reduced to 5 days to reduce the overall development application timeframe.</p> <p>Recommendation Schedule 2 Clause 66 (3) be amended to provide referral agencies with only 30 days to provide a comment. Schedule 2 Clause 66 (3A) be amended to provide referral agencies with only an additional 5 days to provide a comment.</p> |
| Administration - DPLH Proposal Ref: O |

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| Question 16 Determination Timeframes for Development Applications | |
| <p>Proposal: AMEND: cl.75 – to specify that the timeframes for determination of applications for development commences from the day on which the application is accepted for assessment as opposed to when the local government receives the application. Also amended to clarify that the 90 day timeframe only applies to applications where advertising is required by the scheme.</p> | |
| <p>Explanation: With the proposed introduction of a specific procedure for accepting applications under proposed clause 63A (Question 12 refers), there is a need to amend clause 75 to reflect this proposed change.</p> <p>Clause 75(1)(a) has also been amended to specifically reference an advertising requirement under the scheme.</p> | |
| Response to proposal | Conditionally Support |
| Comments | |
| <p>The proposed Regulations amendments outline that only development applications that are advertised under certain circumstances have 90 days to be determined, instead of the normal 60 days.</p> <p>These circumstances include where the application ‘relates to development that does not comply with a requirement of this Scheme’. It is unclear whether this would include development applications which are subject to the R-Codes Volume 1.</p> <p>Where an application is made for development approval which requires a performance assessment or presents possible impacts on the amenity of adjoining property owners and occupiers, there may be grounds for the decision maker to advertise the proposal.</p> <p>Recommendation Schedule 2 Clause 64 (2)(b)(ii) be amended to better clarify it includes applications that are advertised through the assessment against the R-Codes.</p> | |
| Administration - DPLH Proposal Ref: Q | |

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| Question 17 Timeframes for Substantial Commencement | |
| <p>Proposal: AMEND: cl.71(a) – to provide the “default” approval period to be 4 years for an application determined by a DAP and 2 years for other approvals – insertion of new r.16A of the <i>Planning and Development (Development Assessment Panel) Regulations 2011 (DAP Regulations)</i></p> | |
| <p>Explanation: There is a need to ensure that the default approval time is commensurate with the complexity of the application.</p> <p>A note has been included under clause 71 referencing the DAP Regulations and the 4</p> | |

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| year default time period. | |
| Response to proposal | Support |
| Comments | |
| Nil. | |
| Administration - DPLH Proposal Ref: Q | |

SECTION 6 | CAR PARKING

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| Question 18 Exemptions for Car Parking Requirements in Certain Circumstances | |
| Proposal: New Part 9A (in particular new clause 77C) - will exempt car parking requirements for all 'P' Uses and those uses that are exempt from development approval under new clause 61(2A). | |
| Explanation: <ul style="list-style-type: none"> For non-residential development there is a new clause 77C exempting car parking requirements for all 'P' Uses and those uses that are exempt from planning approval under new clause 61(2A). In all other cases there is a standard and consistent variation clause. This clause allows variations to minimum car parking standards where: <ul style="list-style-type: none"> Reasonable efforts have been made to provide required parking on site The car parking to be provided will meet the demands of the development having regard to the likely use of parking, the availability of off-site parking, and the likely use of alternative means of transport. | |
| Response to proposal | Conditionally Support |
| Comments | |
| <p>The proposed Regulations amendments exempt a development from meeting the minimum on-site parking requirements where a local government is satisfied that reasonable efforts have been made to provide as many as possible. Stating that the development is exempt, when a local government is exercise discretion through a development assessment is misleading. It is considered the term 'exemption from minimum on-site parking requirements' be modified.</p> <p>In addition, the WAPC should clarify that if parking standards are different between 'P' (permitted) uses, this Regulations still applies. This has been debated amongst local government officers that the different parking ratios for 'P uses may trigger a works component, i.e. for construction of car parking bays.</p> <p>Regardless whether the identified 'D uses' are removed from the list of exempt land uses, as previously raised in response to Question 10, land uses that are a 'D use' should not be exempt from meeting car parking requirements of the Scheme.</p> <p>Recommendation</p> <p>Schedule 2 Clause 77C have the titled modified to remove the word 'exemption'.</p> <p>Schedule 2 Clause 77C (1)(a) be modified so the 'D uses' listed in Clause 61 (2)(ba) are not exempt from meeting the car parking requirements of the Scheme.</p> <p>Schedule 2 Clause 77C clarify that if parking standards are different between 'P' (permitted) uses, this Regulation still applies.</p> | |
| Administration - DPLH Proposal Ref: T | |

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| Question 19 Consistent Cash in Lieu Requirements for Car Parking | |
| Proposal: New Part 9A (in particular new clause 77D) – introduce consistent cash in lieu provisions for car parking. | |
| Explanation: <ul style="list-style-type: none"> A new clause 77D will introduce consistent cash in lieu provisions. This clause will allow the local government to accept 'cash in lieu' of providing car | |

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| <p>parking on site.</p> <ul style="list-style-type: none"> • In such circumstances a condition will be included on a development approval. • This can only be applied where the local government has prepared a payment in lieu of parking plan (Parking Plan) in accordance with new clause 77D • A consistent formula for calculating cash in lieu is also being introduced shortfall x [(27m² x value of land per m² in the area) + construction cost of a car bay]. This will also include a reduction of 10 bays or 50% whichever in the lesser. • The Parking Plan must be in a manner and form approved by the WAPC and set out the following matters: <ul style="list-style-type: none"> ○ What the money will be used for. It can only be used for the provision and maintenance of public parking and other transport infrastructure in the locality of the development. ○ For the purposes of the cash in lieu formula the value of land in the area/s that are subject to the parking plan and the construction cost of a car bay. This will allow the cash in lieu formula to be responsive to and reflective of the actual type of car parking the money is intended to contribute towards (i.e. at grade or multi deck). • Any money taken as a cash in lieu payment will be paid into a separate reserve account and must be spent within 10 years. • The above applies where there is no exemption for car parking (automatic or approved). | |
| Response to proposal | Support |
| Comments | |
| Nil. | |
| Administration - DPLH Proposal Ref: U | |

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| Question 20 Cash in Lieu for Car Parking Plan | |
| Proposal: New Part 9A (in particular new clause 77E) – introduces provisions regarding the preparation and approval of cash in lieu car parking plan. | |
| Explanation: The proposed amendment specifies what a cash in lieu car parking plan should address and that it should be prepared in the manner and form approved by the WAPC. | |
| Response to proposal | Conditionally Support |
| Comments | |
| <p>The proposed Regulations amendments allow local governments to accept a cash payment when a development cannot provide sufficient car parking on the site. This reflects the City's Local Planning Scheme No.3 provisions for cash-in-lieu payments for car parking.</p> <p>The main change is that proposed Regulations amendments require local governments to, before they accept cash-in-lieu of car parking, to prepare a 'Parking Plan' to demonstrate what cash-in-lieu of car parking money will be spent on.</p> <p>The Regulations amendments also propose that the payments received are to be expended within 10 years or be returned to those who made the payment. This is consistent with State Planning Policy 3.6 – Developer Contributions, which requires money to be spent within 10 years.</p> <p>The principle of requiring a parking plan to be prepared is supported as it provides certainty to developers that any cash-in-lieu of parking will be spent. However, some forms of parking infrastructure, such as a multi-storey car park, will require more than 10 years to fund and there needs to be flexibility to allow adequate funds to be collected.</p> <p>There is also insufficient information to clarify the process for receiving cash-in-lieu and the approval of a parking plan. As an instrument of a local planning scheme, required to be created by the Regulations, the Regulations must outline the process for creating a parking plan.</p> <p>Failure to provide a clear process will result in uncertainty for local governments' in preparing parking plans and may result in inconsistent parking plans being prepared. As parking plans are an effective a form of developer contribution, there must be clarity that money will be appropriately spent.</p> | |

Recommendation

Schedule 2 Clause 77F (4) be amended so the WAPC can approve timeframes of more than 10 years for the expenditure of cash-in-lieu payments.

Schedule 2 Clause 77E be amended to outline the process a local government must follow (such as public consultation and Council approval) when creating a plan for the expenditure of cash-in-lieu payments for car parking.

Administration - DPLH Proposal Ref:

Question 21 | Shared Car Parking Arrangements

Proposal: **New Part 9A** (in particular new clause 77G) – introduce consistent cash in lieu provisions for car parking.

Explanation:

- New clause 77G will introduce consistent shared parking arrangement provisions.
- Such arrangements allow a parking shortfall to be accommodated on another site where there is agreement between the two landowners, and may be required as a condition of approval.
- If such a condition is included these arrangements, it must be applied for and approved by the local government. New clause 77G outlines what such applications need to address and what the local government will consider when determining these applications.

Response to proposal

Support

Comments

Nil.

Administration - DPLH Proposal Ref: V

SECTION 7 | AMENDMENTS TO CONSULTATION AND ADVERTISING

Question 22 | Exclusion of Holiday Periods for Consultation Timeframes and changes to wording for advertising timeframes

Proposal: **Amend all regulations and clauses relating to advertising**– to provide a mechanism to factor in the Easter and Christmas holiday periods for when public submission periods for any applications or proposals include these holiday periods. This is done by way of introducing a definition for ‘excluded holiday period day’. Regulations and clauses relating to advertising timeframes have also been reworded

Explanation:

The proposed ‘excluded holiday period day’ relates to the Christmas and Easter holiday periods. Where public submissions periods for applications or planning proposals include these specified holiday periods, these periods will be factored into when calculating the actual advertising dates for a particular proposal based upon any required advertising period specified in the regulations (e.g. regulation 13 (2) for advertising a local planning strategy and regulation 22 (4) advertising of a local planning scheme).

All regulations and clauses relating to advertising timeframes have also been modified to provide a set advertising timeframe and the ability to extend this by agreement between either the WAPC or the local government and applicant. This will provide greater consistency with advertising timeframes.

Response to proposal

Conditionally Support

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| Comments |
| The new definition of Excluded Holiday Period is supported, however it is only proposed to relate to advertising periods. The exclusion of the holiday period (being Easter and End of Year times) should also apply to the overall processing timeframes. |
| Recommendation Schedule 2 Clause 75 be amended to insert a new sub clause (1)(d) as follows: (d) An excluded holiday period is not to be counted in calculating a period referred to in subclause (a) or (b). |
| Administration - DPLH Proposal Ref: X |

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| Question 23 Requirements for Hard Copy Electronic Notification |
| Proposal: AMEND: r.13(1)(a) and (b); r.13(2)(a) and (b); r.16(2)(a); r.18(b)(ii); r.20(1)(a); r.22(2)(a) and (b); r.22(3)(a) and (b); r.33(2)(a); r.38(2)(a) and (b); r.38(3)(a) and (b); r.38(4); r.47(2)(a) and (b); r.47(3); r.47(4); r.64(2)(a); r.67(2)(b) – insertion of a new Regulation 76A AMEND: cl.4(1)(a); cl.4(4); cl.6(b)(ii); cl.8(b); cl.9(b)(i); cl.18(3)(a); cl.34(3)(a); cl.50(4)(a); cl.64(5)(a); cl.86(3) - display of hard copy notice (deemed provisions) AMEND: cl.24(3)(b); cl.25(2)(a); cl.27(2)(a); cl.29(2)(a); cl.31(3)(a) – insertion of clause 87 under Part 12 Miscellaneous display of hard copy notice (model provisions) |
| Explanation: Current requirements rely on the inspection of hard copy documents at a physical location as the primary source of information for the public. This is important but must be balanced with a more pragmatic approach that recognises the availability of electronic notification. This change will also provide greater flexibility regarding these notification requirements in areas that may not have a local newspaper (or which may have limited circulation). |
| Response to proposal Support |
| Comments |
| Nil. |
| Administration - DPLH Proposal Ref: B (regulations for scheme, local planning strategy and amendments), Proposal Ref: G, D |

SECTION 8 | TERMINOLOGY AND SPECIFIC CLARIFICATIONS

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| Question 24 Requirements for Deemed-to-Comply |
| Proposal: AMEND: cl.1 (deemed provisions): to clarify where a development is considered to meet the deemed-to-comply requirements of the R-Codes, and clarify that it includes requirements in an approved local development plan, precinct structure plan or local planning policy development. A definition for deemed to comply has also been included. |
| Explanation: The proposed amendment will remove uncertainty about when a residential development can be determined to be deemed-to-comply under the R-Codes. |
| Response to proposal Conditionally Support |

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| Comments |
| <p>The Regulations amendments clarify, through the deemed provisions that where a planning instrument (planning policy, local development plan, precinct structure plan) amends or replaces a deemed-to-comply requirement of the R-Codes, it is to have the same statutory 'weight' as the R-Codes provisions.</p> <p>The proposed changes do not acknowledge that local planning instruments (such as the Roselea Design Guidelines) have provisions for residential properties which do not amend or replace the deemed-to-comply requirements of the R-Codes.</p> <p>Compliance with provisions other than the R-Codes is important when establishing a desired character for a specific area.</p> <p>The wording of the Regulations amendment may cause confusion, and allow buildings to be built that do not comply with an adopted local planning policy.</p> <p>Recommendation Schedule 2 Clause 1A(a)(i) be amended so the term 'comply with deemed-to-comply requirements of the R-Codes', incorporates design requirements in a local planning instruments for residential development that do not amend or replace a deemed-to-comply requirements of the R-Codes.</p> |
| Administration - DPLH Proposal Ref: 84 |

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| Question 25 Application of clause 67 | | |
| <p>Proposal: AMEND: cl 67 - to 67 clarify that the clause only applies where there is discretion for the local government to approve the development.</p> | | |
| <p>Explanation: This amendment clarifies that clause 67, relating to consideration of an application for development approval, does not apply where a local government does not have the power to approve a development application, but rather sets out the planning considerations that are relevant to the exercising of discretion, where that discretion exists.</p> | | |
| <table border="1"> <tr> <td>Response to proposal</td> <td>Support</td> </tr> </table> | Response to proposal | Support |
| Response to proposal | Support | |
| Comments | | |
| Nil. | | |
| Administration - DPLH Proposal Ref: 93 | | |

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| Question 26 Reference to Desired Future Character in Clause 67(m) | | |
| <p>Proposal: AMEND: cl.67(m) - include reference to the desired future character of the development's setting.</p> | | |
| <p>Explanation: Elevates the importance of strategic planning and the need to consider the 'future state'.</p> | | |
| <table border="1"> <tr> <td>Response to proposal</td> <td>Support</td> </tr> </table> | Response to proposal | Support |
| Response to proposal | Support | |
| Comments | | |
| Nil. | | |
| Administration - DPLH Proposal Ref: 95 | | |

SECTION 9 | CONSEQUENTIAL AMENDMENTS TO DAP REGULATIONS

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| Question 27 DAP Regulations changes to facilitate new requirements under clauses 63A, 65A and 65B |
| <p>Proposal: AMEND: r.9; r.11(1); r.11(1)(d); r.11(2); r.12(3)(a)-(c); r.12(4A); r.16(2B); r.16(2C) DELETE: r.11A</p> |

Explanation:

The consequential amendments to the DAP Regulations reflects the revised procedures and timeframes for a local government to accept a development application for assessment under **cl.63A**. The calculation of the statutory timeframe for DAP applications commences on the date the application is accepted for assessment.

Outlines where additional information for a DAP application has been requested by the local government, under **new cl.65A and cl.65B** (deemed provisions), the calculation of that period provided in the notice is excluded from the calculation period. The DAP presiding member is to determine any dispute that arises in the calculation of a period as to whether, or when, an applicant complied with a notice.

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| Response to proposal | Conditionally Support |
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Comments

Consequential changes would be needed due to previous recommended changes.

Administration - DPLH Proposal Ref: Q

SECTION 10 | GENERAL COMMENTS

Question 28 | **Any Miscellaneous Matters Relating to the Proposed Amendments?**

WAPC approval timeframes for R-Code amended provisions

A local development plan may replace R-Codes standards that require WAPC approval. However, the R-Codes are silent on the process to be followed when these types of changes are proposed by a local government

The proposed Regulations amendments clarify that local governments are to request the WAPC approve R-Code changes after the changes have been advertised for public comment, and before Council adopts these changes.

This change is supported.

To provide certainty around timeframes for processing a proposed local development plan, the Regulations (existing and proposed) state that should a local government not determine a local development plan within 60 days of the end of the advertising period, the local development plan is deemed to be refused. If this happens, an applicant for a local development plan may seek a review for non-determination from the State Administrative Tribunal.

The need to obtain approval of the WAPC when a local development plan proposes changes to the R-Codes is not accounted for in the timeframes in the proposed Regulations amendments.

This timeframe cannot be met where the approval of the WAPC for R-Codes changes is required due to the WAPC timeframes. The WAPC has no timeframes to provide a response to local government which exacerbates this issue.

Recommendation

A new subclause Schedule 2 Clause 52 (3A) be introduced to exclude the period between the local government sending the local development plan to the WAPC for consideration, and receiving WAPC approval for the relevant provisions of the local development plan from the determination timeframe.

New subclauses Schedule 2 Clause 4 (3B) and Schedule Clause 52 (1B) be introduced in relation to a local planning policy and a local development plan respectively. These new subclauses would require the WAPC to determine within 60 days of receiving these draft planning instruments, where they propose amendments to the specific R-Codes deemed-to-comply provisions that require WAPC approval.

The highlighted comment was added by Council Resolution 22 September 2020.

Outdoor living area definition

The Regulations amendments introduce a definition for 'outdoor living area' into the deemed provisions. This term is never used. It is considered including this definition is unnecessary.

Recommendation

Schedule 2 Clause 1 have the defined term of 'outdoor living area' removed.

Peel region definition and Metropolitan region

The Regulations amendments introduce a definition for 'Peel region' into the deemed provisions. This term is introduced in the change of use exemption table. However 'Metropolitan region' is also introduced in the change of use exemption table, but has not had a definition introduced. It is considered 'Metropolitan region' should also have a definition in the deemed provisions.

Recommendation

Schedule 2 Clause 1 introduce a new defined term for 'metropolitan region'.

Incorrect terms used

The proposed Regulations amendments require two minor corrections. There is an incorrect reference to 'structure plan' which should actually be to 'local development plan'. There is also the use of the word 'in' when it should be 'is'.

Recommendation

Schedule 2 Clause 50 (4) requires the term 'structure plan' to be replaced with 'local development plan'.

Schedule 2 Clause 61 (2A) requires the word 'in' replaced with 'is'.

Question 29 | **General Comments Relating to the Proposed Amendments?**

Reviews of the local planning framework

The Regulations require local governments to review the local planning scheme after a five year period. The review must make recommendations as to whether the local planning framework is:

- Satisfactory;
- Requires amendments; or
- Should be replaced.

However the Regulations do not outline:

- That the review must report on whether the local planning scheme is achieving the strategic vision of the local planning strategy;
- ~~What happens if the WAPC does not agree with the review report, so that the local government must update the review report and resubmit it to the WAPC again; or~~
- ~~That the recommendations of the review must be actioned by the local government.~~

Recommendation

Regulation 65 (3) be amended to require the review of the local planning scheme to determine whether the local planning scheme is achieving the strategic objectives and vision of the local planning strategy and undertake an assessment against these objectives.

~~Regulation 67 be amended to include a requirement that should the WAPC not agree with the review report, that the local government must update the review report and resubmit it to the WAPC within 12 months.~~

~~Regulation 67 be amended to include a requirement that should the WAPC agree with the review report, that the local government must commence implementing each action within 12 months.~~

~~The highlighted and strike-through comments were removed by Council Resolution 22 September 2020.~~

Revocation of a local development plan

The Action Plan for Planning Reform aims to simplify and consolidate local planning frameworks. One way of doing this is to allow structure plans to be revoked. This is supported as it allows the planning framework to be simplified.

There is no ability to revoke local development plans where the plan is no longer necessary. The City has several local development plans that are now redundant (such as those for the Carine TAFE site), but which cannot be revoked.

Retaining redundant local development plans can cause unnecessary confusion, as the provisions are no longer necessary but the plan has effect until 2025. A local government cannot revoke a local development plan unless it prepares a scheme amendment that allows this to happen. This will assist in simplifying the planning system.

Recommendation

Schedule 2 Clause 58 is amended to allow local governments to revoke a local development plan where the local government resolves that it no longer necessary.

Exemption for up to two grouped dwellings and additions

The Regulations provide exemption from requiring development approval for erecting a compliant single house. This exemption also extends to additions or alterations to a single house. However, the erection of grouped dwellings, and additions or alterations to grouped dwellings is not exempt.

To further streamline the development process, the erection of up to two grouped dwellings and additions or alterations to grouped dwellings should be exempt from needing development approval where they meet the deemed-to-comply standards of the R-Codes. There is no specific reason the assessment of grouped dwellings should be different to a single house.

Recommendation

Introduce into Schedule 2 Clause 61 two new exemptions:-

'the erection of up to two grouped dwellings on a lot'; and

'alterations or additions to, a grouped dwelling on a lot'

that meet the deemed-to-comply standards of the R-Codes and not on a heritage-protected place.

Transition period for the new Regulations

A number of operational related amendments are proposed that aim to apply consistency to how local government's process and determine development applications. A number of requests for clarity and modifications are proposed in the recommended submission to ensure that, prior to any changes coming into effect, the WAPC considers how local governments are to apply the changes.

It is likely the proposed amendments may change between what is advertised, to what is finally legislated. The City cannot start preparing for changes now until the final form of the amendments are known.

For this reason, there must be a transitional period to allow local governments to modify their systems and processes to reflect the changes.

When the Planning and Development (Local Planning Schemes) Regulations were introduced, a two month transition period was provided. This transition period should be replicated.

Recommendation

The WAPC provides local governments with a two month transition period to allow the Planning and Development (Local Planning Schemes) Regulations 2020 to be properly implemented.