



Frequently Asked Questions

Planning and Development (Local Planning Schemes) Regulations 2015



The Department of Planning, Lands and Heritage acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

Disclaimer

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Purpose

This publication of Frequently Asked Questions (FAQ) has been prepared by the Department of Planning, Lands and Heritage (the Department). It has been created to explain and respond to the major changes and issues arising from the release of the *Planning and Development (Local Planning Schemes) Regulations 2015*, as amended (the Regulations); and provide general information to users of the Regulations. This document does not form part of the Regulations and may be updated from time-to-time. For instance, in response to the gazettal of amendments to the Regulations in December 2020, amendments and additions have been made to the document to explain and respond to these changes and issues arising as a result. New and amended FAQs are highlighted in light orange.

The document can be used as a resource for the operation and interpretation of the Regulations and is supplementary to the Western Australian Planning Commission's (WAPC) Structure Plan Framework and Review of Local Planning Schemes documents.

The Regulations FAQs are provided to assist users and decision-makers to understand and implement the Regulations and should be read in instances where a Regulation requirement is not clearly understood, particularly in respect to context and intent. Accordingly, the Regulations are to be referred to for specific legislative requirements and, if further clarification is required, appropriate independent advice should be sought.

This document is divided into a number of parts to align with the format of the Regulations for ease of reference and use.

The Regulations FAQ document is available online at www.dplh.wa.gov.au/lpsregs.

Introduction



Planning and Development (Local Planning Schemes) Regulations 2015

The Regulations were gazetted on 25 August 2015 and became operational on 19 October 2015. The Regulations replaced the *Town Planning Regulations 1967* (as amended) and associated Model Scheme Text.

The Regulations, made under the *Planning and Development Act 2005* (the Act), govern the way in which local planning strategies and local planning schemes are prepared, consolidated and amended. The Regulations provide for:

- the requirement, preparation and adoption of local planning strategies
- the preparation, adoption, amendment, review and consolidation of local planning schemes, supplementing Part 5 of the Act
- development contribution areas and plan provisions
- model provisions for local planning schemes provided as Schedule 1 Model provisions, and mandatory provisions which apply to all planning schemes as Schedule 2 Deemed provisions
- a common set of general and land use definitions
- a set of standard forms relating to development approval.

Planning Regulations Amendment Regulations 2020

Amendments to the Regulations were gazetted on 18 December 2020 and for the most part became operational on 15 February 2021. The amendments represent a key component in delivering both the *Action Plan for Planning Reform*, released in August 2019, and the tailored planning reform package to support the State's economic recovery from the COVID-19 pandemic.

During August and September 2020, comments were sought on the *Planning Regulations Amendment Regulations 2020*, which proposed various amendments to the Regulations to cut red tape, streamline planning processes, and support development activity and job creation, including:

- Broader exemptions for small scaled projects and certain land use changes.
- Streamlining development application procedures.
- Advertising and referral arrangements for planning proposals and applications.
- Consistent requirements relating to car parking variations and cash-in-lieu provisions.

As noted above, the majority of the amendments to the Regulations became operational on 15 February 2021. To enable a suitable transition for car parking-based provisions and further consultation with stakeholders on manner and form, this part of the amendments is to be operational by 1 July 2021.



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1. Regulations

1.1 Preliminary

1. **Q.** Where can I find guidance on the WAPC's accepted manner and form for documents produced under the Regulations? (Regulation 5)

A. There are multiple sources that provide guidance on what the WAPC will accept for documents produced under the Regulations. They include:

Regulations FAQs

- Regulations flowcharts and timeframe matrix
- WAPC endorsed templates and forms
- *Review of Local Planning Schemes* document (to be reviewed)
- *Structure Plan Framework 2015* (to be reviewed)
- Local Planning Strategy Guidelines (in preparation)

These documents are available online at www.dplh.wa.gov.au/lpsregs. Alternatively you can contact the relevant local government or the Department of Planning, Lands and Heritage on (08) 6551 9000, for clarification.

1.2 Elements of local planning schemes

2. **Q.** What are model and deemed provisions? (Schedule 1 and 2)

A. The Regulations consist of model (Schedule 1) and deemed (Schedule 2) provisions.

Model provisions – provide the form and content for all new local planning schemes, similar to the previous Model Scheme Text within the *Town Planning Regulations 1967* (as amended). The model provisions apply when a scheme is next revised, prepared or amended by a local government and could be altered, varied or excluded, subject to the approval of the Minister. It should be noted that modifications to the model provisions are to be by exception and require justification to proceed. Changes to the model provisions will not occur as of right.

Deemed provisions – introduce uniform processes and procedures to schemes, such as structure plan preparation and development assessment. The deemed provisions apply automatically to all schemes when the Regulations come into operation and cannot be altered, varied or excluded. Section 73(2A) of the Act allows for a scheme to include supplemental provisions, provided those supplemental provisions are consistent with or not already covered by the Regulations.

3. **Q.** How are supplemental provisions to the deemed provisions to be included within schemes?

A. Supplemental provisions are to be included within schemes as a schedule at the end of the scheme text (the scheme text will consist of the model provisions). The Schedule is to be immediately after 'Part 6 – Terms referred to in Scheme' as a 'Schedule A Supplemental provisions to the deemed provisions'.

Supplemental provisions are to be introduced into the scheme by way of a scheme amendment or scheme review process and are to be determined by the Minister. If approved, the provisions are published in the Government Gazette.



4. **Q. What will new and existing local planning schemes consist of under the Regulations? (Regulations 8 to 10)**
- A.** Local planning schemes will comprise the following documents:
- the scheme map
 - the local planning scheme text (model provisions)
 - the deemed provisions as outlined in Schedule 2 of the Regulations (these do not need to be reproduced in individual schemes as they apply automatically) Schedule A supplemental provisions to the deemed provisions
 - any supporting materials, plans, maps, diagrams, illustrations and other material required by the WAPC.

1.3. Local planning strategies

5. **Q. Does a local planning strategy have to be prepared to accompany a new local planning scheme? (Regulation 11(1))**
- A.** Yes. The Regulations require that a local government is to prepare a local planning strategy in accordance with Part 3 of the Regulations for each new local planning scheme that is approved for land within the district of the local government.
6. **Q. What is the manner and form for a local planning strategy? (Regulation 11 (2) (aa))**
- A.** The manner and form prescribed for a local planning strategy will be provided in the Local Planning Strategy Guidelines, which are in preparation. It is anticipated that the Local Planning Strategy Guidelines will be published mid-2021.
7. **Q. When do local planning strategies need to be reviewed? (Regulation 66 (3))**
- A.** A local planning strategy must be reviewed at the same time as the five-yearly local planning scheme review to determine if the local planning strategy is satisfactory in its current form and should be reviewed or repealed and replaced (Regulation 66(3)).
- The WAPC's 'Review of Local Planning Schemes' document provides an overview of the review process and the information sought in the local government's report of the review. This document is available online at www.dplh.wa.gov.au/lpsregs.
- In light of amendments to the Regulations gazetted on 18 December 2020, the document 'Review of Local Planning Scheme' is to be reviewed and local governments are encouraged to contact the Department prior to commencing preparation of a report of review.



8. **Q. What is the preparation and approval process for local planning strategies under the Regulations?**

A. The process for the preparation and approval of local planning strategies is outlined in Part 3 of the Regulations.

9. **Q. Should local governments modify the local planning strategy documents prior to submission to the WAPC for final endorsement? (Regulation 14)**

A. No. Regulation 14(3) requires that the local government provide a copy of any proposed modifications to the advertised local planning strategy as a separate document, along with the copy of the advertised local planning strategy and a schedule of submissions received.

10. **Q. Can local planning strategies be amended? (Regulation 17)**

A. Local planning strategies can be amended, utilising the same process as preparation and advertising of an entirely new local planning strategy. The Regulations provide for alterations to the amendment process where necessary (Regulation 17(2)).

Once the amended local planning strategy is approved, the local government is to provide the WAPC with an updated copy of an amendment table, similar to current practice with local planning schemes.

11. **Q. Can local planning strategies be revoked? (Regulation 18)**

A. Local planning strategies can be revoked by the endorsement of a new local planning strategy or with the written approval of the WAPC. The Regulations require that for the endorsement of a new strategy to revoke a previous one, the strategy needs to expressly revoke the previous local planning strategy.

1.4. Preparation or adoption of local planning schemes

12. **Q. Can the local planning strategy and local planning scheme be prepared and advertised at the same time?**

A. Yes. While not specifically stated within the Regulations, a local planning strategy and scheme reviewed at the same time and once approved for advertising could be released together to ensure submissions can be received on both inter-related documents. However, final approval of a strategy will always be required prior to the final approval of a scheme.

13. **Q. Do the deemed provisions need to be included within the scheme text for advertising and/or final gazetta?**

A. No. The scheme text does not need to include or publish the deemed provisions for the deemed provisions to apply (as per Section 257B(4) of the Act). When a scheme is being advertised, it is recommended that instructions to access the deemed provisions be provided. If the local government chooses to provide a hard copy of the deemed provisions for ease of access by residents, it should be clearly stated that they are only being provided for this purpose and that submissions cannot be made in regard to the content of the deemed provisions.

The local government should keep an up-to-date copy of the deemed provisions with the scheme text, publicly available on its website and in-house, if considered appropriate, to ensure that the public is aware of the two documents, and of the standard procedures outlined in the deemed provisions.

14. **Q. What is the form required by the WAPC for resolution to prepare a scheme? (Regulation 19)**

A. The notice of resolution form has been prepared by the WAPC and is available online at www.dplh.wa.gov.au/lpsregs.



15. Q. What is the approval process for new or revised schemes under the Regulations? (Part 4)

A. The preparation and adoption process for local planning schemes is defined in Part 4 of the Regulations, and a flowchart demonstrating the process is available online at www.dplh.wa.gov.au/lpsregs.

16. Q. When is the scheme or amendment referred to the Environmental Protection Authority and who refers it?

A. The local government is to refer the scheme or amendment to the Environmental Protection Authority (EPA) prior to advertising the documents. The local government cannot advertise the scheme or amendment documents until after the EPA has provided their final advice on the assessment. This is in accordance with Section 84 of the Act.

17. Q. What if the EPA advises that a formal assessment of the scheme or amendment is required?

A. If the EPA determines that an environmental review is required, the local government must complete the environmental review process prior to the scheme or amendment being advertised under Section 82(2) of the Act.

The Minister cannot make a decision on the final approval of a scheme or amendment until the Minister receives a statement under Section 48F(2) of the *Environmental Protection Act 1986*, which sets out any conditions to which both the Minister for the Environment and the Minister for Planning agree that the scheme or amendment should be subject. The process for schemes and amendments is outlined in the flowcharts available online at www.dplh.wa.gov.au/lpsregs.

18. Q. Should the scheme be modified after advertising and then submitted to the WAPC for consideration and final approval of the Minister? (Regulation 28)

A. No. Regulation 28 requires that local governments submit the advertised scheme and a separate document outlining the modifications proposed by the local government in response to the submissions.

19. Q. When does the WAPC's timeframe for assessment of schemes and amendments commence?

A. Similar to the existing subdivision process, the WAPC's timeframe for the assessment of schemes and amendments commences when all the scheme documents are received, and the necessary information supplied to enable the assessment to proceed. Regulations 28, 44, 53 and 58 outline the information requirements for schemes and the different amendment types.

20. Q. How many copies of the local planning strategy, scheme or amendment should be provided to the WAPC for assessment?

A. In practice, the WAPC requires:

- three hard copies of the local planning strategy, scheme or amendment documents
- one electronic copy of the local planning strategy, scheme or amendment documents (pdf)
- one hard copy and one electronic copy of the Council report, Council resolution, schedule of submissions, schedule of modifications (as appropriate)
- one electronic copy of the mapping data (where appropriate).



21. **Q.** When does the WAPC's timeframe for assessment of schemes and amendments commence?

A. Similar to the existing subdivision process, the WAPC's timeframe for the assessment of schemes and amendments commences when all the scheme documents are received, and the necessary information supplied to enable the assessment to proceed. Regulations 28, 44, 53 and 58 outline the information requirements for schemes and the different amendment types.

1.5. Amending local planning schemes

22. **Q.** What are the key differences between basic, standard and complex amendments?

A. Basic – a basic amendment is a largely administrative process and will not require advertising prior to a final decision by the Minister. The WAPC has 42 days to consider a basic amendment and provide a recommendation to the Minister.

Standard – a standard amendment is the default amendment process for scheme amendments. WAPC consideration of the amendment prior to the local government advertising the proposal is not required. The WAPC has 60 days to consider a standard amendment and provide a recommendation to the Minister.

Complex – the complex amendment process is similar to the previous amendment process under the Town Planning Regulations 1967 and the scheme preparation process. The WAPC must be satisfied that a complex amendment is suitable for advertising prior to the amendment being advertised. The WAPC has 90 days to consider a complex amendment and provide a recommendation to the Minister.

23. **Q.** How are the different levels of amendments defined? (Regulation 34)

A. Regulation 34 provides definitions and criteria for basic, standard and complex amendments.

24. **Q.** Is EPA referral required for all types of amendments?

A. Yes. The Act requires referral to the EPA prior to advertising and / or final decision of the Minister for all amendments.



25. Q. Can the local government refuse to prepare or adopt an amendment prepared by a landowner?

A. The local government can refuse to adopt a complex amendment prepared by a landowner at the initial resolution to adopt the amendment stage (Regulation 35(4)) or when the local government is considering to proceed to advertise the complex amendment (Regulation 37(1)(c)).

In the case of a standard or a basic amendment, the local government has the opportunity to refuse an amendment when it is being considered for adoption.

The local government may refuse to adopt an amendment requested by a landowner if the local government is not satisfied with the copyright arrangements for provision of amendment documents (Regulation 35(4)).

26. Q. How is a statement about the effect of a local planning scheme amendment on a structure plan prepared? (Regulation 35a)

A. Where a proposed amendment to a local planning scheme affects the area to which a structure plan approved under the scheme relates, then the following should be provided within the scheme amendment documentation under the heading 'structure plans':

- name and number of the structure plan
- approval and expiry date of the structure plan
- map showing the extent to which the structure plan is affected by the proposed amendment
- an explanation of the effect the local planning scheme amendment will have on the structure plan
- inclusion of a statement that states when the amendment takes effect, being either of the following:
 - the approval of the structure plan is to be revoked
 - the structure plan is to be amended in accordance with the statement (including details of how the structure plan is to be amended)
 - The approval of the structure plan is not affected.

27. Q. The WAPC must be satisfied with local planning schemes and complex amendments prior to the local government advertising the documents.

A. Regulations 22 and 38 outline the requirements for advertising local planning schemes and complex amendments. At this point in the process, the WAPC is not assessing the planning merits of an application. Instead, it is assessing whether the information provided meets the procedural requirements of the Regulations and is in the manner and form required by the WAPC.

It is important to note that advertising of a local planning scheme or complex amendment does not represent the WAPC's in-principle support of the proposal.

28. Q. Can the level of amendment be changed?

A. Yes. The WAPC can direct a local government to pursue a different type of scheme amendment at the request of a landowner, or when the local government provides the basic or standard amendment for WAPC assessment. The WAPC may direct the local government to undertake the necessary steps for those amendment processes under regulations 36, 54 and 59.

It is recommended that local governments discuss amendment proposals with the Department prior to proceeding to advertise to avoid the need for further advertising at a later stage.



1.6. Review and consolidation of local planning schemes

29. Q. How often do you have to review a scheme? (Regulation 65(1))

A. A scheme must be reviewed every five years from the day the scheme was published in the Government Gazette, and then reviewed every five years subsequent to that date (Regulation 65(1)).

30. Q. When must the report following the review be conducted? (Regulation 66)

A. The local government will need to prepare, approve and provide the Council approved scheme review report to the WAPC within six months of the date that the review was initially required (Regulation 66).

31. Q. What is the report for a review of a scheme and what does it need to address? (Regulation 66)

A. Regulation 66 provides the content required in the report of review and the WAPC has released additional guidance in the 'Review of Local Planning Schemes'. This document provides an overview of the information sought in the local government's report of review and is available online at www.dplh.wa.gov.au/lpsregs.

In light of amendments to the Regulations gazetted on 18 December 2020, the document 'Review of Local Planning Scheme' is currently under review and local governments are encouraged to contact the Department prior to commencing preparation of a report of review.

32. Q. What will the WAPC do with the scheme review report? (Regulation 67)

A. The local government is to provide the scheme review report to the WAPC and within 90 days the WAPC must consider the report and decide whether it agrees or disagrees with the report recommendations and notify the local government accordingly (Regulation 67).

The local government must then publish the report and notice of the WAPC's decision.

33. Q. If the review report has been approved by the WAPC and it recommends scheme amendment(s) now agreed to by the WAPC, would the resulting amendment(s) be a basic amendment process?

A. It depends. The level of amendment assigned to the proposal will be commensurate with the amendment type proposed. If the amendments are a series of omnibus administrative amendments this would likely proceed as a basic amendment, however if the amendment requires public consultation or referral to agencies and stakeholders, it would likely proceed as a standard or complex amendment.

It is recommended that the local government review the amendments proposed and group any amendments according to their likely amendment type. This way an omnibus basic amendment could proceed and not be delayed by other amendments likely requiring advertising, additional consent of the WAPC or Minister, and / or assessment of the EPA.

34. Q. Where are the official scheme and amendment documents available?

A. The final approved local planning scheme and / or amendment documents are deposited with the WAPC and local government. The WAPC then publishes the official and up-to-date copy of the local planning scheme online at www.dplh.wa.gov.au/lpsregs.



1.7. Development contribution plans

35. Q. How should development contribution areas be shown in schemes?

- A.** A development contribution area is an area shown on a scheme map as a special control area with a number reference and signifies that a development contribution plan applies to this area of land (Regulation 70(2)).

The inclusion of a development contribution area and the preparation or amendment of a development contribution plan will be processed as a complex amendment (Regulation 72) and be included within scheme maps as a special control area. The Regulations provide the process and content requirements for Development Contribution Plans.

Guidance for the preparation and application of development contribution plans is provided in State Planning Policy 3.6 which is available online at www.dplh.wa.gov.au/draftspp3-6. It is noted that this policy is subject to review, with a new State Planning Policy anticipated to be gazetted in the near future.

36. Q. Can development contribution plans be imposed as a condition of approval? (Regulation 73)

- A.** No. Regulation 73 does not allow the local government to request conditions regarding the preparation of a development contribution plan to occur as a condition of subdivision or development approval.

1.8. Miscellaneous

37. Q. Where is the form for compensation lodged?

- A.** The WAPC defines the manner and form for compensation under Regulation 75, which can be viewed online at www.dplh.wa.gov.au/lpsregs. The form is lodged with the local government for consideration.

38. Q. The previous Model Scheme Text included compensation provisions. Where are these now? (Regulation 75)

- A.** The form for claiming compensation is provided by the WAPC, however, an application for compensation arising from the making or amendment to a local planning scheme must be made to the local government, not the WAPC.



1.9. Repeal and transitional provisions

39. Q. Do planning documents currently being advertised need to start again?

A. In accordance with r. 82, if the advertisement of a planning instrument has commenced but was not completed before the commencement day, it may be completed in accordance with the former regulations.

Please see Q. 77 regarding transitional provisions for activity centre plans.

40. Q. What happens to an existing development application lodged with the local government but is now considered exempt from development approval under the deemed provisions?

A. You will need to check if your development application is no longer required under the deemed provisions of the Regulations and contact the local government for details on any relevant amendments or requirements beyond the deemed provisions. The application can then be withdrawn or lapse.

It must be noted that the local government cannot add supplemental provisions to the deemed provisions that have the effect of requiring development approval for a type of work or use that are exempt under the deemed provisions.

Local governments can include supplemental provisions or provisions in a local planning policy or local development plan that alters some aspect of the deemed-to-comply requirements of the Residential Design Codes (R-Codes). In this case, to be exempt from requiring development approval, the work / use will need to comply with the deemed-to-comply requirements of the R-Codes and any amendments to the deemed-to-comply requirements of the R-Codes.

41. Q. Can the costs of a development application that is no longer required under the Regulations be recovered?

A. Depending on the stage of a development application, costs could be refunded by local governments. The proportion of money refunded will be calculated on a cost recovery basis, depending on the local government administration of the application at that point in time.



2. Schedule 1 – Model Provisions

2.1. General

42. Q. Do the model provisions apply to all schemes when the Regulations are operational?

A. The model provisions do not automatically apply when the Regulations become operational.

Local governments will need to apply the model provisions to their scheme at the next scheme review or preparation of a new scheme. Alternatively, local governments are encouraged to amend their local planning scheme to reflect the model provisions via a basic amendment process.

If a scheme amendment is proposed to align the existing scheme to the model provisions with no new content (i.e. amendment would be form changes only) a basic amendment process could proceed).

43. Q. Does ‘Schedule 3 – Legends used in Scheme’ need to be incorporated into the local planning scheme?

A. No. Schedule 3 operates in the same way as the model provisions. Zones and reserves to be used in Schemes are to be selected from those listed in Schedule 1, clauses 14(3) and 16(2), and the corresponding map colours are to be used from Schedule 3.

44. Q. Can the model zones or reserves be changed or added to?

A. Model provisions can be added to or varied to meet local context. However, proposals for additional or different reserve classifications and / or zones will be by exception only and require justification for WAPC consideration. The Minister will be the ultimate decision maker on any proposed changes or additions (Section 257A(2) of the Act).

It should also be noted that proposals to vary the model provisions as an amendment will generally be considered a standard amendment and require justification by the proponent to allow assessment and ultimate decision of the Minister.

45. Q. Can a local government be made to amend its scheme to reflect the model provisions?

A. Yes. The Minister may order a local government to prepare or adopt a scheme amendment under Section 76 of the Act should the Minister determine this as necessary under the Section 76 requirements. The Department’s fact sheet on the Section 76 process provides more information on the purpose and operation of an order by the Minister and can be viewed online at www.dplh.wa.gov.au/policy-and-legislation/state-planning-framework/fact-sheets,-manuals-and-guidelines.

46. Q. How will model and supplemental provisions proposed by local government be assessed by the WAPC and determined by the Minister?

A. Any proposals to vary, alter, or exclude model provisions will be by exception and not as of right. Additionally, in regard to proposals for supplemental provisions to the deemed provisions, the proposal cannot be contrary to or alter the intent of the deemed provision.

Any local government proposals (for example zone objectives, special control area or general development requirements) will be assessed by the WAPC and determined by the Minister. Proposals for new or varied model provisions or supplemental deemed provisions would occur via a scheme review, or scheme preparation, or scheme amendment process. If completed via the scheme amendment process, the standard amendment process would likely be required.

The local government or proponent will need to provide justification to the Minister for any such proposals. Assessments are undertaken on a case-by-case basis. As a guide, examples of elements considered include:

- compliance with the Act and any Regulations
- compliance with the State or local planning framework
- any relevant precedent and established practice
- compliance with planning principles, such as ‘proper and orderly planning’
- is the proposal reasonable, relevant and serving a particular planning purpose?



- is the proposal practical?
- is the proposal impinging on any other state or local authorities or other legislation/regulations?

Further planning criteria is outlined within Schedule 2, Part 9, clause 67(2) of the Regulations. It is recommended that local government consider the above points when proposing any additional or varied provisions to the model provisions and provide a justification accordingly. The level of detail provided in the justifications will also need to be commensurate with the gravity of the proposal.

47. Q. Can the model provisions be included within schemes by reference?

A. No. The model provisions Schedule 1, Parts 1 – 6 are to be replicated within the scheme.

The deemed provisions apply automatically and do not need to be reproduced or re-gazetted within schemes.

2.2. Reserves

48. Q. What is the purpose of the additional uses for reserves? (Schedule 1, Part3, clause 15)

A. Additional uses for reserves will operate in the same way that additional uses for zones are applied. The purpose of additional uses for reserves is for local governments to define any existing or proposed additional uses (and only uses) for reserves which would not typically occur within the reserve objectives and do not adversely impact on the main purpose of the reserve, including any conditions that will apply to the additional use. The process for defining and including such provisions will be the same as what is currently completed when a local government is defining additional uses for zones within a scheme.

As with all model provisions, the Minister remains the ultimate decision-maker on any additional use for reserve proposals.

49. Q. What happens if the reserves have no additional uses?

A. The table of additional uses does not have to be filled out by local governments should they not wish to do so. Local government has the option of replacing this portion of the text with “There are no additional uses for land in local reserves that apply to this scheme”.

50. Q. If the local planning scheme states “There are no additional uses for land in local reserves that apply to this scheme” does that mean that additional uses cannot proceed in local reserves?

A. Yes. Should an additional use be proposed in a scheme where “there are no additional uses for land in local reserves that apply to this scheme” a scheme amendment will be required to recognise the land use within the reserve prior to proceeding.



2.3. Zones and use of land

51. Q. Structure plans have the status of due regard. Will development in a 'development' zone still require approval if zoning and land use permissibilities from a structure plan or the zone itself are not directly read into the scheme?

A. Yes. Section 162 of the Act and Schedule 2, Part 7, clause 60 of the Regulations impose a presumption that all development requires approval unless it is exempted under Schedule 2, clause 61 of the Regulations.

If the land use permissibilities within a development zone or structure plan are not normalised in the scheme by way of a scheme amendment, the permissibilities remain indicative and have the status of 'due regard', and are not exempt from the need to obtain development approval.

52. Q. How does a local government process an application for development approval within a development zone? (Schedule 1, Part 3, clause 18(7))

A. The Regulations provides clear direction as to how development approval within a development zone is processed. If a zone does not identify land use permissibilities, such as a development zone, and land use permissibilities are outlined in a structure plan or local development plan that applies to that land, 'due regard' is given to the permissibilities provided for in that structure plan or local development plan.

In practice, this means that all land uses within a development zone are in effect 'D' discretionary uses until indicative zoning in the structure plan is normalised in the scheme through a scheme amendment. However, the proposed zoning and land use permissibilities in the structure plan must still be given considered weight as 'due regard'.

For example, if the structure plan provides a proposed prohibited 'X' use, a decision-maker must give that 'due regard', so it would be in rare and exceptional circumstances that development would be approved on the basis of use. Conversely, if the structure plan provides a proposed permitted 'P' use, a decision-maker must give that 'due regard', so it would be in rare and exceptional circumstances that development would be refused on the basis of use.

53. Q. How are incidental (I) land uses to be assessed and interpreted? (Schedule 1, Part 3, clause 18(2))

A. An incidental land use is a use of premises which is consequent on, or naturally attaching, appertaining or relating to, the predominant land use. Proposals for incidental land uses will be assessed by the local government against whether the proposal is in fact subordinate, appropriate in the setting/zone, and whether it complies with any relevant development standards and requirements of the scheme.

54. Q. What is the effect of having a non-conforming use register? (Schedule 1, Part 3, clause 24(4))

A. Entry of a non-conforming use acts as a notice that the non-conforming use exists. The entry on the register can also specify the date when a non-conforming use has been discontinued. This is useful in prosecutions if development, for example, has been carried out with respect to a non-conforming use, and the non-conforming use has not been carried out for six months. If the register shows that the non-conforming use has been discontinued for over six months, then the onus switches to the owner to prove that the non-conforming use has been carried out during this period.

55. Q. What date would apply to the discontinuance of a non-conforming use; the date the discontinuance of the non-conforming use is noticed or the date it goes in the register? (Schedule 1, Part 3, clause 24(2))

A. The date the discontinuance of the non-conforming use is entered in the register is the date that can be used as evidence of the commencement of the discontinuance.



2.4. General development requirements

56. Q. What information should be included within the additional standards that apply to land covered by a structure plan? (Schedule 1, Part 4, clause 33)

A. Should the local government seek to normalise the provisions within a WAPC approved structure plan, they can nominate to do so by entering the zones from the structure plan into the scheme maps, and providing any textual provisions, such as site and development requirements, within an additional standards table in Part 4 of the Scheme.

A scheme amendment to normalise a scheme map with the zones included in a structure plan is a basic amendment so long as the scheme already includes the types of zones that are outlined in the structure plan. To normalise any site and development requirements contained in a structure plan would be a standard amendment.

57. Q. What is the purpose of including State planning policies within the scheme? In what situation would this occur? (Schedule 1, Part 4, clause 29)

A. State planning policies can be included within the scheme to provide it with the statutory effect of the scheme (as per section 77(1)(b) of the Act).

Inclusion of a State planning policy in a scheme can occur at the initiative of the local government through the preparation, review or amendment of the scheme, or alternatively the Minister may order a local government to amend their scheme to be consistent with a State planning policy under Section 77A of the Act.

58. Q. Can portions of a State planning policy be excluded from or modified via the scheme?

A. Yes, although limitations apply. Should local governments be seeking to exclude portions of the State planning policy included under Schedule 1, Part 4, clause 29 they can do so under Schedule 1, Part 4, clause 30. Excluding portions of the State planning policy from the scheme will have the effect of placing those excluded portions of the State planning policy outside of the scheme and therefore retaining the 'due regard' status of those portions in decision-making.

Additionally, should local governments be seeking to modify portions of a State planning policy included under Schedule 1, Part 4, clause 29 they can propose to do so via Schedule 1, Part 4, clause 30. Any proposed modifications will be at the discretion of the Minister and cannot be contrary to or alter the intent of the State planning policy itself.

State Planning Policy 2.5 Rural Planning and State Planning Policy 2.6 State Coastal Planning Policy would be the only likely inclusions in schemes at this time. Local governments will need to provide strategic justification for the inclusion and / or modification of a state planning policy within their scheme. Any proposed modifications to a State planning policy within a scheme will apply to that local government's scheme area only.



3. Deemed Provisions

3.1. General

59. Q. How are deemed provisions included in the scheme? Does it require an amendment?

A. The scheme does not need to be amended to incorporate the deemed provisions, as the deemed provisions are 'read into' the scheme automatically under Section 257B of the Act. The deemed provisions do not need to be assessed or gazetted as part of a scheme.

60. Q. Can I change or remove or add any of the deemed provisions?

A. Variation or exclusion of the deemed provisions is not provided for under the Act. Section 73(2A) of the Act allows a local planning scheme to include supplemental provisions (including both model and deemed), provided those supplemental provisions are consistent with or not already covered by the Regulations.

61. Q. What is a supplemental provision?

A. A supplemental provision deals with any special circumstances or contingencies for which adequate provisions are not provided for (Section 73(2A) of the Act). A supplemental provision cannot be contrary to or inconsistent with the original deemed provision.

62. Q. How will supplemental deemed provisions be included within the scheme?

A. To ensure a uniform approach to the incorporation of supplemental provisions, for each scheme that proposes supplemental provisions, the local government is to insert a 'Schedule A Supplemental provisions to the deemed provisions', at the end of the scheme (i.e. after the model provisions) that details the supplemental provisions to the deemed provisions. The recommended format for 'Schedule A' is outlined in the example local planning scheme available online at www.dplh.wa.gov.au/lpsregs.

63. Q. Within the Regulations, there are references to manner and form documents. How can I find these?

A. Manner and form documentation is available on the website (www.dplh.wa.gov.au/lpsregs) in support of the 15 February 2021 operational date.

64. Q. The new Part 9A provisions about car parking include reference to a manner and form for payment-in-lieu of car parking plans and the method of calculation that are associated with these plans, along with a number of other notices and forms. Where are these found?

A. Although Part 9A, as part of the Amendment Regulations, has been published in the Government Gazette, the provisions within Part 9A will not become operational until 1 July 2021. The following documents are currently being prepared, in consultation with stakeholders, and will be available to support the operational date:

- Payment-in-Lieu of Parking Plan manner and form and associated templates
- Method(s) of calculation for payment in lieu
- explanatory guidelines.

65. Q. Can a submission be made after the submission period has ended for a planning instrument?

A. Yes. The local government can consider submissions for any planning instrument after the submission period has ended. This consideration is at the discretion of the local government.



66. Q. Do local governments have to advertise amendments to local planning policies to bring them into alignment with the Regulations and also to *State Planning Policy 7.3 – Volume 1 Residential Design Codes*?

A. The WAPC resolved at its meeting on 20 January 2021 to advise all local governments that any amendments proposed to local planning policies to bring them into alignment with the Regulations and also to *State Planning Policy 3.1 – Volume 1 Residential Design Codes*, are to be considered minor amendments, pursuant to Schedule 2, clause 5 of the Regulations, and as such do not require advertising.

67. Q. Is WAPC approval required to vary or replace the acceptable outcomes of *State Planning Policy 7.3 Volume 2 Apartments within local planning policies and local development plans*?

A. Schedule 2, clauses 4(3A) and 52(1A) are intended to clarify and confirm that WAPC approval is required to vary or replace deemed-to-comply or acceptable outcome requirements with a local planning policy (where required) or local development plans, consistent with what is already stipulated within *State Planning Policy 7.3 Volume 1* and 2.

3.2. Structure plans and local development plans

NOTE: The Amendment Regulations deleted Part 5 of the Regulations, removing Activity Centre Plans as a planning instrument. The term 'Structure Plan' now encompasses both standard structure plans and precinct structure plans.

68. Q. What triggers the requirement for a structure plan and local development plan to be prepared?

A. A structure plan (standard structure plan or precinct structure plan) may be required to be prepared for land that is identified in a local planning scheme as being suitable for urban or industrial development (through zones such as Urban or Industrial Development), for other areas as identified in a scheme prior to subdivision or development of land, or where the WAPC considers a structure plan is required for the purpose of orderly and proper planning.

A local development plan may be required to be prepared for an area of land in a local planning scheme to coordinate development in accordance with cl. 47. There may also be instances where the local government considers that a local development plan is required for the purposes of orderly and proper planning, with the agreement of the WAPC.



69. Q. What matters should be addressed in a structure plan and local development plan?

A. A **standard structure plan** is prepared by local government, a landowner or landowner representative and provides information relevant to the site and commensurate with the scale of planning being undertaken. A standard structure plan is to identify the layout that will be used to guide subdivision, including with residential density, subdivision, neighbourhood connector roads and the open space network. A standard structure plan should comprise a report and a main structure plan map along with additional plans, maps, technical investigations and studies as required.

A **Precinct structure plan** is a document that guides the types of land uses and the overall development that is intended to occur within an area of land. It can detail land use and infrastructure requirements as well as environmental assets, residential density, built form, infrastructure and access arrangements.

A **local development plan** should generally comprise the local development plan provisions and a spatial plan depicting the key elements of the plan over the lots to which it applies (at an appropriate scale). Additional pages may be included to supplement annotations on the plan only where the plan may be cluttered and difficult to interpret. Local development plan annotations are to relate to elements depicted on the plan and avoid lengthy policy provisions. Diagrams and/or elevations may be included to address multi-level development.

70. Q. Who is an agent under clauses 16(3)(b) and 48(3)(b) of the Regulations?

A. An agent is a person who is authorised by a landowner or group of landowners to act on their behalf in planning matters in regard to their land. This may be a body corporate, planning consultant, surveyor or similar person or company.

71. Q. Is there a fee charge for lodging a structure plan or local development plan for determination?

A. Yes. A local government may impose a fee for the consideration and adoption of a plan. On receipt of an application to be assessed and advertised, an estimate of the fee is to be provided by the local government. The fee is calculated in accordance with the *Planning and Development Regulations 2009* (PD Regulations) and based upon the staff time and resources necessary to process and consider the plan. The fee is to be paid to the local government prior to the plan being advertised and formally considered by the local government.

72. Q. Can the local government refuse to progress a structure plan or local development plan if the fee is not paid?

A. Yes. A local government may refuse to deal with a request to proceed with progressing a plan until the fee is paid. The 28-day timeframe in which a local government has to advertise the plan does not start until the fee is paid and the application becomes a valid application.

73. Q. Once I have lodged a structure plan or local development plan, what happens?

A. On receipt of an application, the local government is to assess whether the plan complies with the requirements of the Regulations (as outlined in clause 16(1A) for structure plans and clause 48(1) for local development plans). The local government does not assess the application at this stage, however, can request further information to support an application or require modifications to the plan prior to proceeding with advertising.

The Regulations set out specific time periods for each stage of assessing a structure or local development plan. If further information is required, this needs to be requested within 28 days of lodgement of the structure plan (14 days for local development plans). If you have not heard from the local government within 28 days (14 days for local development plans) the plan is considered to be adequate for assessment and will be advertised. The acceptance of a plan for advertising does not indicate that it is supported by the local government.



74. Q. Under what circumstances can the local government request further information?

- A.** In determining if additional information to that submitted with the structure plan is needed, the local government is to consider whether:
- the additional information is required for a planning purpose relevant to the structure plan
 - is required by a State planning policy
 - the additional information is able to be provided in a timely manner
 - it is fair and reasonable to request the additional information in the particular circumstances.

75. Q. If further information is required by the local government, prior to advertising, does this affect the consideration period?

- A.** Yes. The consideration period will be delayed if the local government requires further information to ensure a structure plan is adequate for assessment. The time required in these circumstances is in addition to the 28 or 14-day time period.

76. Q. How long does the local government have to consider further information?

- A.** The local government has 14 days (seven days for local development plans) after receipt of the further information to consider if it is adequate to enable an assessment of the plan. If you have not heard from the local government within 14 days (seven days for local development plans), the further information supplied is considered to be adequate for assessment and the plan is to be advertised.

77. Q. Given the Amendment Regulations deleted Part 5 of the Regulations, removing Activity Centre Plans as a planning instrument, what happens to existing and draft activity centre plans?

- A.** Regulation 92 and 93 deal with transitional arrangements for activity centre plans in effect before or in the course of preparation at the time of commencement of the Regulations Amendment. In accordance with these Regulations, any current activity centre plan is taken to be a precinct structure plan and may be amended or revoked accordingly. Any activity centre plan currently being prepared will be considered a precinct structure plan with the steps taken before the commencement of the Regulations Amendment to be acceptable, with future steps to be in accordance with the current Regulations. For further information in regard to the format and/or exemptions for draft activity centre plans, please see section 7.3 of *State Planning Policy 7.2 Precinct Design*.

78. Q. Does a local development plan have to be advertised?

- A.** In some instances, the local government may determine 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. The local government is required to exercise its judgement on a case by case basis.

79. Q. Can the local government require re-advertising of a structure plan?

- A.** Following assessment of any submissions, the local government may require that the plan be modified and re-advertised, in accordance with Schedule 2 Part 4 clause 19(1)(d). The plan can only be re-advertised once, without the approval of the WAPC (Schedule 2, Part 4 clause 19(3)).



80. Q. Does the local government modify the structure plan documents prior to sending them in to the WAPC for approval?

A. The advertised version of the structure plan and supporting documents is to be submitted to the WAPC for determination, together with a separate document identifying any modifications recommended by the local government. There is no requirement for the modifications to be made prior to submitting the plan to the WAPC.

81. Q. Is there a prescribed format for the local government report to the WAPC?

A. The local government report to the WAPC on the proposed structure plan is to address the information contained in Schedule 2, Part 4, clause 20(2) of the Regulations. There is no specific format for the report.

82. Q. What happens if the local government does not provide a report on the structure plan to the WAPC within the allocated time period?

A. At the end of the 60-day consideration period by the local government, the WAPC can make a decision on the proposed structure plan in the absence of a report from the local government. The WAPC can request further information from the local government and/or the person who prepared the plan to assist in its assessment.

83. Q. How long will it take for structure plans and local development plans to be determined?

A. A structure plan is to be determined by the WAPC within 120 days from the day the plan is received by the WAPC from the local government. The determination time period can be extended if this is agreed in writing between the WAPC and the person who prepared the proposed plan. The determination time period may be delayed if the WAPC requires modifications to or re-advertising of the plan. The time required in these circumstances is in addition to the 120-day time period.

A local development plan is to be determined by the local government within 60 days of the day in which the submission period closed. The determination time period can be extended if this is agreed in writing by the local government and the person who prepared the plan. The determination time period may be delayed if the local government requires modifications to the local development plan and the time required in this circumstance is in addition to the 60-day time period.

84. Q. What happens if the determination time period is not met?

A. If the WAPC has not made a decision within the permitted 120 days, or an alternative agreed time period, then the structure is deemed to be refused and the applicant can make an application for review to the State Administrative Tribunal (SAT).

If the local government has not made a decision within the permitted 60 days or in an alternative agreed time period, then the local development plan is deemed to be refused and the applicant can make an application for review to the SAT.



85. Q. How is an applicant to be informed of the decision?

A. The WAPC is to give any person who prepared the structure plan and the local government written notice of its decision to either approve or refuse the plan.

The local government is to give any person who prepared the local development plan written notice of its decision to either approve or refuse the plan.

86. Q. If a structure plan or local development plan is refused, can the decision be reviewed?

A. Yes. An application can be made to the SAT to review the decision of the WAPC. The landowner or agent who prepared a plan may apply to the SAT for a review of the WAPC's decision in accordance with Part 14 of the Act. An application to review the WAPC's decision must be made to SAT within 28 days of the decision, in accordance with the State Administrative Tribunal Rules 2004 (Regulation 9).

For local development plans, an application can be made to the SAT to review the decision of the local government to not approve the local development plan.

87. Q. Can a structure plan or local development plan be approved subject to later approval of details?

A. Structure plans and local development plans may include a requirement for further information or studies to be undertaken at a later stage of the planning process, usually prior to subdivision or development, to inform design (Schedule 2, Part 4 clause 24 or Part 6 clause 53). This further information would be limited to information that is not critical to the assessment of the plan, but is required to refine the design and details during the subdivision or development of the land. This may include environmental or other studies, or density plans. Such information is to be commensurate with the level of detail normally addressed at each planning stage.

88. Q. Can the Residential Design Codes (R-Codes) be varied under a structure plan?

A. The Regulations do not provide for structure plans to vary the deemed-to-comply requirements of the R-Codes. The Regulations do however, provide for any existing approved R-Code variations in structure plans to remain in place, and to continue to operate until they are implemented, revoked or the approval time for the variations has expired. While varying R-Codes in structure plans is currently provided, the WAPC intends to amend this when the R-Codes are reviewed.

R-Code variations can be undertaken in three ways.

1. For smaller areas, such as a street block, R-Code variations may be able to be undertaken through a Local Development Plan, as detailed in the manner and form for Local Development Plans.
2. A local planning policy, as provided for in the R-Codes, can be adopted by the local government to detail variations to the deemed-to-comply provisions. Some of these local planning policies will require the approval of the WAPC, as detailed in the R-Codes. This approach can be used for larger areas, such as housing estates.
3. A scheme amendment can be undertaken to insert variations into Schedule 1, Part 4, clause 26 of a local planning scheme. This would be the appropriate mechanism to use where the R-Code variation applies to an entire local government area.



89. Q. Can the R-Codes be varied under a local development plan?

A. Local development plans are intended as a planning instrument to address site specific opportunities or constraints. In addressing these issues, local development plans may require variations to the deemed-to-comply provisions of the R-Codes to achieve desired outcomes. In these circumstances, R-Code variations may be acceptable provided that they are incidental to the primary purpose of the local development plan and are consistent with the design principles of the R-Codes.

90. Q. If a structure plan or local development plan is approved, how will it be published?

A. The WAPC will publish all structure plans approved under the Regulations on its website.

The local government will publish all local development plans approved under the Regulations on its website.

91. Q. If a structure plan or local development plan is approved, how is the plan to be used in decision-making?

A. An approved structure plan or local development plan is a document to which planning decision-makers (e.g. the local government, a Development Assessment Panel or the WAPC) are to give 'due regard' to when making decisions on the subdivision and/or development of land within the plan area. The decision-maker is not bound by the plan when determining an application.

92. Q. What is the meaning of 'due regard'?

A. The term 'due regard' is commonly used throughout the planning framework, from Sections 77(1) and 241(1) of the Act to a range of scheme and policy provisions. 'Due regard' has been cited in a number of cases, including *Tah Land Pty Ltd v Western Australian Planning Commission* [2009] WASC 196, where the Supreme Court held that:

- 'due regard' implies something greater than mere 'regard'
- the decision-maker has a mandatory obligation to consider that document or planning instrument when making a decision on an application to which the particular document or instrument relates.

In giving 'due regard' to an approved structure plan, a decision-maker has an obligation to give consideration to the objectives, intent, and information contained within the structure plan when determining an application within a structure plan area.

93. Q. What happens if an existing local planning scheme provides for matters that need to be addressed in a structure plan or local development plan?

A. Some local planning schemes have structure plan and local development plan requirements included within the current Part 5. These requirements will be replaced by the deemed provisions for structure plans (Schedule 2, Part 4 of the Regulations and local development plans (Schedule 2, Part 6 of the Regulations).

94. Q. Does a structure plan have to be approved before development or subdivision is permitted within a structure plan area?

A. Within a structure plan area, subdivision and development is required to be generally in accordance with an approved plan. However, the local government can recommend subdivision approval to the WAPC or approve development within a structure plan area prior to a plan coming into effect if the local government is satisfied that the approval will not prejudice the orderly and proper planning of the plan area and the proposed development or subdivision would not prejudice the overall development potential of the area.



95. Q. If structure plans only have the status of ‘due regard’ (unless incorporated through a scheme amendment), how are development applications in development zones determined?

A. A local government may determine a development application, in a development zone, prior to the structure plan being incorporated into the Scheme. In this circumstance, the use not listed provisions of the Scheme (Schedule 1, Part 3 clause 18(4) of the Regulations) would be used. In assessing if a proposed use is consistent with the purpose of the zone, the local government is to give ‘due regard’ to an approved structure plan and use this as guidance to determine if the proposal is consistent with the purpose of the zone.

If the proposal is permitted within the land use designated in the structure plan, then it can be determined as being consistent with the purpose of the zone and the development application approved.

If the proposal is not permitted within the land use designated in the structure plan, then the development application should be refused. Advertising is not required under either of these circumstances.

If the structure plan is silent on the land use designation, then the local government should determine if the proposed use may be consistent with the objectives of the land designation for the area, and if it so, advertise the development application prior to determining it.

96. Q. Can a structure plan introduce new, or amend existing, scheme provisions and zones?

A. A structure plan can propose to amend or introduce new scheme provisions or zones. In order for them to have statutory effect, a scheme amendment is required to be undertaken to incorporate them into a planning scheme.

97. Q. How can I give a structure plan statutory effect?

A. In order to have the force and effect of a scheme, an approved structure plan is to be incorporated or ‘normalised’ into a scheme, via a scheme amendment or as part of a scheme review. Structure plans are to be prepared with the view to future incorporation into the local planning scheme and are to be generally consistent with the established local planning scheme or local planning strategy. Incorporation of structure plans into planning schemes can be undertaken when the structure plan implementation has progressed to such a stage that the boundaries of the proposed zoning are set and are not going to be changed.

A proposal to introduce new zones, rezone land and / or introduce additional provisions into a scheme, to reflect structure plan requirements, are to be undertaken as a standard amendment.

98. Q. Can a structure plan be approved if any element of the plan is inconsistent with a local planning scheme?

A. A structure plan prepared under a local planning scheme should generally be consistent with a local planning scheme. If new scheme provisions are proposed through a structure plan (such as a new zone) then an amendment is required to be undertaken to the planning scheme before the structure plan can be implemented. Such an amendment can be undertaken concurrently with the structure plan process.

99. Q. If development is compliant with a local development plan, is development approval required?

A. At the local government’s discretion, local development plans can streamline the development approval process, with compliant development exempt from the requirement to obtain development approval. This is on a case-by-case basis and should be indicated on the local development plan.

The local government can also add this as an exemption in the Scheme or through a local planning policy.



100. Q. How long is a structure plan and local development plan valid for?

- A.** An approved plan is valid for 10 years from the date of approval, unless otherwise specified in the approval or another period determined by the WAPC. The plan will expire if the WAPC/local government earlier revokes its approval or an amendment to the Scheme that covers the area to which the structure plan relates takes effect.

101. Q. Can a structure plan and local development plan be extended beyond the 10-year time period?

- A.** An applicant or the local government (on behalf of land owners) may apply to the WAPC to extend the approval period, in accordance with Schedule 2, Part 4 clause 28(2) or Part 6 clause 57(3) of the Regulations. An application for an extension to the approval period is to be made prior to the expiration of the plan.

102. Q. How can an applicant apply to extend the period of approval?

- A.** An application for an extension to the approval period can be made to the WAPC, via the completion of the WAPC's application Form 5D with any supporting information required to explain / justify the requested extension.

103. Q. What happens to plans approved prior to the Regulations coming into effect in 2015?

- A.** Structure plans and local development plans approved prior to the Regulations coming into effect continue to apply and will be taken to have been approved on the day the Regulations commence operation. Therefore, all existing approved plans will expire 10 years from the commencement date of the Regulations (i.e. 19 October 2025), in accordance with Schedule 2, Part 4 clause 28(4) or Part 6 clause 57(2) of the Regulations.

104. Q. There has been a change in Government policy since a structure plan has been approved. Will an extension to the approval period be granted?

- A.** Each application to extend an approval will be assessed on its merits. The WAPC will assess the request in accordance with the planning and policy context at the time the application for extension to the approval period is received. If there have been changes in government policy between when the structure plan was first approved and the application for an extension, that impact upon the structure plan area, it may be that an extension cannot be issued, as the structure plan is not under the same terms as when it was previously considered. It may be that a new structure plan will be required to address the new policy requirements and therefore the extension to the approval period cannot be granted.

105. Q. Under what circumstances can a structure plan and local development plan be revoked?

- A.** The WAPC may revoke its approval of a structure plan subject to the agreement of the owner(s) of the land and the local government. As set out in Schedule 2, Part 5, clause 28(3) and cl. 29A, the WAPC may revoke its approval in the following circumstances:
- a new structure plan is approved in relation to the area to which the structure plan to be revoked relates
 - the WAPC considers that the plan has been implemented or is no longer required
 - the WAPC considers that the structure plan cannot be effectively implemented because of a legislative change or a change in State planning policy or
 - an amendment to the scheme that affects the area to which the structure plan relates takes effect and includes a statement under r. 35A(a).

The local government may not revoke its approval of a local development plan unless the Scheme is amended so that the development to which the plan relates is a non-conforming use.



106. Q. Can an approved structure plan or local development plan be amended?

- A.** Yes. A plan can be amended by the WAPC at the request of the local government or any person who owns land in the area covered by the structure plan. Any amendment to a precinct structure plan will need to be consistent with *State Planning Policy 7.2 Precinct Design*.

107. Q. What is a minor amendment?

- A.** A minor amendment to an approved plan is a change or departure that does not materially alter the purpose and intent of the plan, does not change the intended lot / dwelling yield by more than 10 per cent or adversely impact upon the amenity of adjoining landowners and occupiers, restrict the use and development of adjoining land, or significantly impact on infrastructure provision or impact upon the environment.

As structure plans are instruments of due regard, any inconsequential variations to the structure plan, which are reflected on a proposed plan of subdivision, may be assessed and ultimately approved at subdivision stage. This may negate the need for a 'minor' amendment to the structure plan being undertaken.

108. Q. Who determines whether an amendment is minor?

- A.** The local government is required to exercise its judgement on a case by case basis, to determine whether or not an amendment to a plan constitutes a minor amendment.

109. Q. Does a minor amendment need to be advertised?

- A.** Under the provisions of Schedule 2, Part 4, clause 29(3) or Part 6, clause 59(4) of the Regulations a minor amendment may not be required to be advertised.

110. Q. What information is required to support an amendment?

- A.** The information to support an amendment to a structure plan or local development plan will be commensurate with the scale of the amendment proposed and is to be sufficient to allow for the assessment of the proposed changes to the plan.

111. Q. Is there a fee charged for amending a plan?

- A.** Yes. A local government may impose a fee for the consideration and adoption of an amendment to a plan. An estimate of the fee is to be provided by the local government upon receipt of an application to be assessed and advertised. The fee is calculated in accordance with the PD Regulations and based upon the staff time and resources necessary to process and consider the amendment. The fee is to be paid to the local government prior to the amendment being advertised and formally considered by the local government.

112. Q. If an existing structure plan or scheme that was approved prior to the Regulations coming into effect in 2015 contains a provision that structure plans have 'force and effect' of the scheme, does this provision still apply?

- A.** Structure plans approved prior to the Regulations coming into effect will still be valid and continue to be used to guide decision making. The deemed provisions of the Regulations will override any operational scheme provisions that seek to give a structure plan the force and effect of a scheme. Therefore, a structure plan will not have the force and effect of the scheme, but will be given 'due regard' in decision-making.



113. Q. If a structure plan that was approved prior to the Regulations becoming operational in 2015 identifies a different land use permissibility for a particular use within a particular zone than what is contained within the scheme, does the permissibility within the structure plan or the scheme prevail?

A. The scheme prevails. For example, if the approved structure plan identifies a particular use within a particular zone as 'D' and the scheme identifies it as 'X', then the use is not permitted, regardless of what is specified within the structure plan.

114. Q. What happens to an existing structure plan and local development plan when a new scheme is approved, the zoning is amended or a scheme review is undertaken?

A. When a new scheme is approved, the status of structure plans and local development plans under the new scheme would have been informed by the recommendations of the report of review as outlined by Regulation 66(3)(c).

In regard to an amendment to the local planning scheme, the implications of the amendment to a structure plan or local development plan are outlined in response to Q.26. (statement).

115. Q. Does the 10-year approval period for structure plans and local development plans restart when they are formally amended under the Regulations?

A. No. A formal request to restart the 10-year approval period needs to be made at the same time the amendment is lodged with the WAPC, or the local government in respect to local development plans, for consideration.

116. Q. Is the term of approval for a structure plan taken to be from commencement day of the original Regulations on 19 October 2015 or the commencement of the Amendment Regulations?

A. New clause 28(4) of the Regulations, clarifies that a structure plan approved before 19 October 2015 is taken to have been approved on that day, meaning that the 10-year approval will expire on 19 October 2025.

117. Q. Can you extend the approval period for a plan and apply to amend a plan concurrently?

A. Yes. The application needs to clearly state that it is for both an extension of approval period and to amend the plan. Supporting documentation needs to justify the extension, as well as detail the proposed amendments and outline why the amendments are required.

118. Q. What is the difference between extending an approval and amending an approval?

A. An extension to an approval only extends the date on which a plan expires. All other aspects of the plan remain unchanged i.e. the conditions of approval and the structure plan document itself do not change.

An amendment to a plan changes some aspect of the structure plan, either just a text amendment in Part One of the Structure Plan report or both a change to Part One of the Structure Plan report and the Structure plan map.

119. Q. Can I lodge my structure plan / extension of time / amendment electronically?

A. Yes. All applications in relation to structure plan applications can be lodged electronically through the e-lodgement portal online at www.dplh.wa.gov.au.

All local development plans are to be lodged with the local government for determination.



3.3. Development approval

120. Q. How do the development approval exemptions provided for under clause 61 relate to a Clause 78H Notice of Exemption issued by the Minister for Planning to support the Government's response to, and recovery from, a State Emergency?

A. The Clause 78H Notice provides additional exemptions that suppress requirements and conditions set out in local planning schemes, including the Deemed Provisions. The exemptions provided through a Clause 78H Notice are temporary for a period of time as specified in the Notice, and do not provide permanent exemptions from a planning requirement under a scheme. Further information on the Clause 78H Notice of Exemption is available via the following link:

[State of Emergency planning changes - Department of Planning, Lands and Heritage \(dplh.wa.gov.au\)](http://dplh.wa.gov.au)

121. Q. Can additional forms of development that is exempt from the need to obtain development approval be included in the scheme?

A. Yes, via Schedule A Supplemental provisions to the deemed provisions in the scheme.

Schedule 2, Part 7 clause 61(1)(items 20 and 21) and 61(2)(e) and (f) of the Regulations provide for local governments to specify any other 'work' or 'use' for which development approval is exempt. This is to occur via a local planning policy or local development plan that applies to the development or by defining the exemption elsewhere in the scheme.

If a local planning policy or local development plan is the chosen method of providing exemptions the local government is to complete the appropriate processes outlined in Schedule 2, Part 6 Local development plans or Schedule 2, Part 2, Division 2 Local planning policies.

Should the local government want to specify any additional development that does not require development approval within the Scheme, the local government can do so via a supplemental provision within 'Schedule A Supplemental provisions to the deemed provisions'.

The local government could also specify other works and uses that are exempt and / or development approval is required. This can also be achieved via special control area provisions or assigning discretionary provisions to specific land uses within the land use zoning table.

It must be noted that a local government is not able to include supplemental provisions that have the effect of requiring development approval for a type of work or use that are exempt under the deemed provisions.

The local government can only include supplemental provisions or provisions in a local planning policy, local development plan or precinct structure plan that alter certain aspects of the deemed-to-comply requirements of the Residential Design Codes. In this case, to be exempt from requiring development approval, the work / use needs to comply with the deemed-to-comply requirements of the R-Codes and any amendments to the deemed-to-comply requirements of the R-Codes.



122. Q. Do the single house exemptions where the development complies with the deemed-to-comply requirements of the R-Codes extend to areas where the R-Codes don't apply?

A. No. If the R-Codes do not apply then it is not possible to obtain the exemption. For example, in an industrial zone where the R-Codes do not apply, a developer cannot invoke compliance with the deemed-to-comply requirements of the R-Codes for the basis of a purported exemption from development approval. Similarly, if the land is zoned Rural, the R-Codes do not apply and therefore the exemption cannot apply.

Moreover, in areas where the R-Codes do not currently apply but the local government wishes them to, there is scope under Section 77(1)(b) of the Act and the model provisions to extend their application. The areas to which this may be applicable are required to be indicated in the scheme.

123. Q. How are signs and advertisements that do not require development approval now provided for within the scheme?

A. Schedule 2, clause 61(1)(item 10) of the Regulations provides for local governments to define classes of signage for which development approval is not required via a local planning policy or a local development plan. Alternatively, local governments can continue the practice of including a schedule in the scheme outlining the advertisements exempted from development approval.

124. Q. Is a development application required for works and use proposals under the deemed provisions?

A. The deemed provisions separate 'works' and 'use' development approval requirements. Applicants are to check whether both approvals are or are not required prior to proceeding. The application for development approval form also specifies which approvals are being sought. Refer to Schedule 2, Cl. 61(1) and (2) for further information.

125. Q. Does a change of use require development approval under the deemed provisions?

A. Schedule 2, Part 7 clause 61 of the Regulations provides for multiple scenarios and development approval exemptions.

Under the Regulations, a change of use will still require a development approval under the deemed provisions if that use requires the discretionary approval of Council (i.e. it is a 'A' use under the zoning table), noting that those uses identified as 'D' use under the zoning table that are specifically identified under clause 61, will also be exempt, subject to compliance with the relevant conditions.

If the use is permitted within the zone ('P' within the zoning table), the change of use does not require a development approval, conditional on the change of use not requiring any 'works' (i.e. demolition, construction, alterations etc.).

126. Q. A Heritage Protected Place is listed as a condition for many of the works classified as exempt from the need to obtain development approval; what does this mean?

A. A Heritage Protected Place is any place that is subject to the *Heritage Act 2018*, such as a place entered in the State Register of Heritage Places, or is included on a Heritage List or within a Heritage Area under a local planning scheme. For further information refer to the definition within Schedule 2, clause 1A of the Regulations.

127. Q. If works or use within a regional reserve under a region planning scheme are identified as exempt from the need to obtain development approval, is this also the case under the region planning schemes?

A. No. Works or use within a regional reserve may still require approval from the WAPC under the applicable region planning schemes. A legislative note is included within Schedule 2, clause 61 of the Regulations to confirm this aspect.



128. Q. One of the conditions for residential based works to be classified as exempt from the need to obtain development approval requires satisfaction of the deemed-to-comply provisions of the R-Codes. Are the works exempt if the proposal does not satisfy any other planning instrument that replaces or amends the deemed-to-comply provisions?

A. No. As specified under Schedule 2, clause 1B of the Regulations, development is only taken to comply if the development satisfies a provision contained within a local planning scheme, precinct structure plan, local development plan, local planning policy or a structure plan that was approved before 19 October 2015. Structure plans approved after this date are not able to vary or replace the deemed-to-comply provisions and therefore are not applicable to this matter.

129. Q. What form of development does maintenance and repair works relate to?

A. Maintenance and repair work is defined under Schedule 2, clause 1 of the Regulations and means like for like repair work of any building, structure or land to prevent deterioration of buildings, structures or land and that does not result in a material change, including materials used on a building, for example.

130. Q. What constitutes urgent necessary works and is evidence required to be submitted to a local government to demonstrate the works were or are urgent?

A. Schedule 2, Clause 61(1), Item 18 of the Regulations identifies works that are urgent as those works that are required to protect public safety or the environment or for the maintenance of essential services. For example, works to a building that was confirmed by an appropriately qualified professional to be structurally unsound and therefore a safety hazard, does not require development approval.

Evidence of the urgency of the works that is to be or has been carried out is not required to be provided to a local government, however evidence should be documented by land owners, with suitable advice recommended to be sought from appropriately-qualified professionals.

131. Q. Many existing businesses are subject to conditional development approvals (e.g. operating hours). Given the land use exemptions, are these development approvals still valid?

A. Yes. The amendments to Schedule 2, clause 61(2) of the Regulations do not affect existing development approvals and associated development conditions. These will remain applicable for the life of the approval.

132. Q. Is development approval required for amendments to an approved development that is now exempt?

A. In accordance with Schedule 2, clause 90 of the Regulations, the exemptions listed under Schedule 2, clause 61 do not apply to development that commenced or a development application that was approved prior to commencement day, being 15 February 2021. In this way, amendments to approved development are also not exempt as it relates to a development approval granted prior to the commencement day identified.

133. Q. If a 'P' use is proposed but requires additional car parking to meet minimum car parking requirements, is the use still classified as a 'P' use?

A. Yes. In accordance with Schedule 2, clause 77E of the Regulations, a 'P' use that is classified as exempt does not need to meet minimum car parking requirements. However, in accordance with Schedule 2, clause 61(8), should the use be accompanied by works that are not exempt, these works will require development approval and may be subject to minimum car parking requirements.



134. Q. The zones that certain works and land use exemptions are applicable to are not found within the applicable local planning scheme; how do they apply?

A. Schedule 2, clause 1 of the Regulations accounts for a situation where the commercial, centre or mixed use zones, as identified in Schedule 1, clause 16 of the Regulations, are not utilised in a local planning scheme. This is undertaken by enabling any zone identified in a local planning scheme to be applicable where the objectives indicate the area is suitable for a range of commercial outlets or a wide variety of active uses on street level that are compatible with residential and other non-active uses on upper levels.

135. Q. Will a land use be classified as exempt from the need to obtain development approval if it does not comply with another planning instrument within the local planning framework (e.g. a local planning policy for applications involving liquor licenses)?

A. Yes. Schedule 2, clause 61(7) of the Regulations ensures that local planning policies and local development plans have no effect over the exemptions identified.

136. Q. Why were certain land use exemptions identified in the Amendment Regulations subject to consultation not in the final Regulations published in the Government Gazette?

A. Land uses including Hotels, Taverns and Bulky Goods Showroom were initially proposed to be classified as exempt from the need to obtain development approval, subject to certain conditions. Following feedback and further consideration of the proposal, it was determined that these uses should be subject to future deliberation as part of a separate tranche of amendments.

137. Q. Given the land use exemptions included within the Regulations, how will this effect Certificates granted by local government to applicants under Section 40 of the *Liquor Control Act 1988*?

A. Certificates of planning authority under section 40 of the *Liquor Control Act 1988* will continue to be applicable as the Regulations do not affect this Act. In this way, when requested, a local government can issue a certificate by confirming a use has either been granted development approval, has not been granted development approval, or was classified as a use for which development approval was not required.

138. Q. Do the exemptions listed in Schedule 2, clause 61 of the Regulations apply in special control areas or in bush fire prone areas?

A. In accordance with Schedule 2, clause 61(6), the exemptions do not apply if the proposed development is located in a special control area and the applicable provisions state development approval is required or development is proposed on land designated by an order made under section 18P of the *Fire and Emergency Services Act 1998* as a bush fire prone area and development approval is required under clause 78D(3).

139. Q. What is the fee for a deemed-to-comply check under Schedule 2, clause 61A of the Regulations?

A. The maximum fee is \$295.00, however it is up to local government how it wishes to implement this fee, in accordance with Regulation 47 of the PD Regulations. This means that the local government has the ability to decide how much of the maximum fee it imposes or, in accordance with Regulation 52 of the PD Regulations, whether it may waive the applicable fee.



140. Q. Following a deemed-to-comply check, what happens if the application does not comply with the R-Codes?

A. The applicant can either modify the development proposal so that it complies with deemed-to-comply requirements of the R-Codes or they can submit a development application.

141. Q. Following the deemed-to-comply check, if a development application is required, what fees will apply to the application?

A. In accordance with Regulation 47 of the PD Regulations, it is up to each local government to implement the fees and charges listed, which provides flexibility for local government to consider whether any discount may apply to those development applications that have undergone a deemed-to-comply check.

142. Q. Where is the form for development approval located?

A. The application for development approval form is located in the Schedule 2, clause 86 of the Regulations. The form defines whether the application is for 'works' or 'use' and also includes information on the use of copyrighted materials.

143. Q. Can the local government vary the accompanying material requirements for development approvals? How?

A. Schedule 2, Part 8 clause 63(1)(d) and (2) of the Regulations provides for local governments to vary or waive information requirements to allow flexibility on a case by case basis.

144. Q. How many requests for further information can be made under Schedule 2, clause 65A of the Regulations?

A. Only one formal request can be made as it relates to applications that are not complex, require advertising or referral to a public authority. However, this is not intended to remove communication between the applicant and local government, with informal requests able to be made to clarify matters or ask questions. It is however noted that these requests can be refused by the applicant, with the process entailed under clauses 65A and B designed to streamline the assessment process for minor applications.

145. Q. Can the local government approve a development application in the absence of a structure plan proceeding?

A. Yes. Schedule 2, Part 4 clause 27(2) of the Regulations provides for a decision maker to approve a subdivision or development in absence of a structure plan if the proposal does not conflict with the principles of proper and orderly planning and would not prejudice the overall development potential of the area.

146. Q. Can determinations on development applications be reviewed?

A. Yes. An applicant or the owner of land can appeal the determination of the local government for development applications (Schedule 2, Part 9 clause 76(2) of the Regulations). Part 14 of the Act details the process for appeals to the State Administrative Tribunal.



147. Q. Given there are now complex development applications and applications that are not complex, in what circumstances are development applications now required to be advertised?

A. Schedule 2, clause 64 of the Regulations specifies that complex applications must be advertised and the manner in which advertising is to be undertaken.

It is noted that this clause enables local government to use its discretion to not require advertising should it be satisfied that any non-compliance is of a minor nature. Further, the R-Codes prescribe further consultation requirements where it applies.

148. Q. Why is there a difference between the manner and form provided on the website for the “notice of public advertisement of planning proposal” required under clause 64(3)(c) and (4)(c) of the Regulations and the notice provided under clause 86(3) of the Regulations, and which one should be used?

A. The notice template provided on the Regulations webpage, is a revised version of the manner and form included under clause 86(3). The revised version reflects the intent of clause 86(3), however consistent with the Action Plan for Planning Reform, it better responds to the demands and expectations of modern public consultation methods in a user friendly format. The Department recommends using the updated version of the manner and form document found here as it has been approved by the Western Australian Planning Commission as the manner and form for on-site signage, in accordance with clause 64(3)(c) and (4)(c).

3.4. Enforcement and administration

149. Q. Can local government reproduce and publish materials provided for applications under the scheme, i.e. structure plans, technical studies, development applications etc.?

A. Yes. Schedule 2, Part 10, Division 2 clause 85 of the Regulations specifically provides for the local government to be able to refuse an application made under the scheme if the local government is not satisfied that there is a satisfactory agreement in place to use copyrighted materials. The ‘application for development approval’ form specifically requires the applicant to agree to the local government reproducing materials when lodging the application (Schedule 2, Part 10, Division 2 clause 86 of the Regulations).

150. Q. What can local governments do if they do not have the ability to publish documents in accordance with the new requirements of the Regulations? (clause 87)

A. In accordance with Part 8, Regulation 76B and Schedule 2, clause 88 of the Regulations, upon request, the WAPC is able to determine that it is not practicable for a local government to comply with any of the publication requirements and can issue a written notice approving varied requirements that apply in their place.



4. Schedule 3 – Legends used in scheme

151. Q. Is Schedule 3 a model or a deemed provision?

A. Schedule 3 is neither a model provision nor a deemed provision. However, it operates in the same way as a model provision.

152. Q. Does Schedule 3 need to be included within the gazetted scheme?

A. Schedule 3 does not need to be included or gazetted within the final scheme document. This schedule is to be used to inform the development and presentation of the scheme maps.

153. Q. How is Schedule 3 to be implemented?

A. Schedule 3 provides the mapping colours and legends for zones and reserves to be used in all schemes. The zones and reserves match the model provision zones and reserves outlined within Schedule 1, Parts 2 and 3.



5. New schemes – Publishing and content

154. Q. Will local governments need to keep a hard copy of the model provisions (Gazetted Scheme) and the deemed provisions available to the public at all times?

A. In accordance with regulation 76A, the local government is required to publish either the documents or a hyperlink (to a webpage which the document is published) on their website. However, it is recommended, if practicable to also provide the public with a hard copy of the model and deemed provisions.

155. Q. How will new schemes be advertised? Should the local government provide access to the deemed provisions also?

A. When a scheme is being advertised, instructions as to how to access and the role of the deemed provisions should be provided. If the local government chooses to provide a hard copy of the deemed provisions for ease of access by residents, it should be clearly stated that they are only being provided for this purpose and that submissions cannot be made in regard to the content of the deemed provisions.

156. Q. Will the WAPC be providing standard templates for scheme amendments, advertising of documents, submissions etc.?

A. The WAPC has approved templates for all relevant clauses that state “the manner and form of the WAPC” and these are available online at www.dplh.wa.gov.au/lpsregs.