

Planning and Development (Local Planning Schemes) Amendment Regulations 2019

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Planning and Development (Local Planning Schemes) Amendment Regulations 2019

Made by the Minister under Part 15 Division 1 of the Act.

1. Citation

These regulations are the *Planning and Development (Local Planning Schemes) Amendment Regulations 2019*.

2. Commencement

These regulations come into operation as follows —

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

3. Regulations amended

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

[The following text is the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 1 Part 7 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]

Schedule 2 — Deemed provisions for local planning schemes

[r. 10(4)]

Part 7 — Requirement for development approval

59A. Terms used

In this Part —

CDS display material means promotional material, brand images, signs, or similar material associated with the container deposit scheme;

CDS infrastructure means —

(a) a container collection cage; or

(b) a reverse vending machine;

civic use has the meaning given in Schedule 1 clause 38;

commercial vehicle has the meaning given in Schedule 1 clause 37(1);

community purpose has the meaning given in Schedule 1 clause 38;

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

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

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

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

drop-off refund point means a refund point that —

(a) is located in a building; and

(b) is not a container deposit recycling centre;

educational establishment has the meaning given in Schedule 1 clause 38;

floor area has the meaning given in Schedule 1 clause 37(1);

heritage-protected place means a place that is —

- (a) entered in the State Register of Heritage Places under the *Heritage Act 2018* section 42; or
- (b) the subject of an order under the *Heritage Act 2018* Part 4; or
- (c) the subject of a heritage agreement that has been certified under the *Heritage Act 2018* section 90; or
- (d) included on a heritage list prepared in accordance with this Scheme; or
- (e) within an area designated under this Scheme as a heritage area;

incidental use has the meaning given in Schedule 1 clause 37(1);

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

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

residential area means an area to which the R-Codes apply;

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

shop has the meaning given in Schedule 1 clause 38;

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

60. Requirement for development approval

A person must not commence or carry out any works on, or use, land in the Scheme area unless —

- (a) the person has obtained the development approval of the local government under Part 8; or
- (b) under clause 61, 61A, 61C, 61E or 61G the development is exempt from the requirement for development approval. ~~of a type referred to in clause 61.~~

Note:

1. Development includes the erection, placement and display of advertisements.

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2. Approval to commence development may also be required from the Commission if the land is subject to a region planning scheme.

61. Development for which development approval not required

- (1) Development approval of the local government is not required for the following works —

- (a) the carrying out of works that are wholly located on an area identified as a regional reserve under a region planning scheme;

Note:

Approval may be required from the Commission for development on a regional reserve under a region planning scheme.

- (b) the carrying out of internal building work which does not materially affect the external appearance of the building unless the development is located in a [heritage-protected place](#); ~~place that is —~~

~~(i) entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*; or~~

~~(ii) the subject of an order under the *Heritage of Western Australia Act 1990* Part 6; or~~

~~(iii) included on a heritage list prepared in accordance with this Scheme and identified on that list as having an interior with cultural heritage significance; or~~

~~(iv) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* section 29;~~

- (c) the erection or extension of a single house on a lot if the R-Codes apply to the development and the development satisfies the deemed-to-comply requirements of the R-Codes unless the development is located in a [heritage-protected place](#); ~~place that is —~~

~~(i) entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*; or~~

~~(ii) the subject of an order under the *Heritage of Western Australia Act 1990* Part 6; or~~

~~(iii) included on a heritage list prepared in accordance with this Scheme; or~~

- ~~(iv) within an area designated under the Scheme as a heritage area; or~~
- ~~(v) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* section 29;~~
- (d) the erection or extension of an ancillary dwelling, outbuilding, external fixture, boundary wall or fence, patio, pergola, veranda, garage, carport or swimming pool on the same lot as a single house or a grouped dwelling if the R-Codes apply to the development and the development satisfies the deemed-to-comply requirements of the R-Codes unless the development is located in a [heritage-protected place](#); ~~place that is~~ —
- ~~(i) entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*; or~~
- ~~(ii) the subject of an order under the *Heritage of Western Australia Act 1990* Part 6; or~~
- ~~(iii) included on a heritage list prepared in accordance with this Scheme; or~~
- ~~(iv) within an area designated under the Scheme as a heritage area; or~~
- ~~(v) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* section 29;~~
- (e) the demolition of a single house, ancillary dwelling, outbuilding, external fixture, boundary wall or fence, patio, pergola, veranda, garage, carport or swimming pool except where the single house or other structure is, [or is located in, a heritage-protected place](#); —
- ~~(i) located in a place that is entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*; or~~
- ~~(ii) the subject of an order under the *Heritage of Western Australia Act 1990* Part 6; or~~
- ~~(iii) included on a heritage list prepared in accordance with this Scheme; or~~
- ~~(iv) located within an area designated under this Scheme as a heritage area; or~~

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- ~~(v) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* section 29;~~
- (f) temporary works which are in existence for less than 48 hours, or a longer period agreed by the local government, in any 12 month period;
 - (g) the temporary erection or installation of an advertisement if —
 - (i) the advertisement is erected or installed in connection with an election, referendum or other poll conducted under the *Commonwealth Electoral Act 1918* (Commonwealth), the *Electoral Act 1907* or the *Local Government Act 1995*; and
 - (ii) the primary purpose of the advertisement is for political communication in relation to the election, referendum or poll; and
 - (iii) the advertisement is not erected or installed until the election, referendum or other poll is called and is removed no later than 48 hours after the election, referendum or other poll is conducted;
 - (h) the erection or installation of a sign of a class specified in a local planning policy or local development plan that applies in respect of the sign unless the sign is to be erected or installed —
 - (i) on a place included on a heritage list prepared in accordance with this Scheme; or
 - (ii) on land located within an area designated under this Scheme as a heritage area;
 - (i) the carrying out of any other works specified in a local planning policy or local development plan that applies to the development as works that do not require development approval;
 - (j) the carrying out of works of a type identified elsewhere in this Scheme as works that do not require development approval.

Note:

1. The *Planning and Development Act 2005* section 157 applies in respect of the carrying out of works necessary to enable the subdivision of land if the Commission has approved a plan of the subdivision.
 2. The *Planning and Development Act 2005* section 6 applies in respect of the carrying out of public works by the Crown, the Governor, the Government of the State or a local government
- (2) Development approval of the local government is not required for the following uses —
- (a) a use that is wholly located on an area identified as a regional reserve under a region planning scheme;

Note:

Approval may be required from the Commission for development on a regional reserve under a region planning scheme.

- (b) development that is a use identified in this Scheme as a use that is permitted in the zone in which the development is located and —
 - (i) the development has no works component; or
 - (ii) development approval is not required for the works component of the development;
 - (c) the use of premises as a home office;
 - (d) temporary use which is in existence for less than 48 hours, or a longer period agreed by the local government, in any 12 month period;
 - (e) any other use specified in a local planning policy or local development plan that applies to the development as a use that does not require development approval;
 - (f) use of a type identified elsewhere in this Scheme as use that does not require development approval.
- (3) Despite subclause (1) development approval may be required for certain works carried out —
- (a) in a special control area; or
 - (b) on land designated by an order made under the *Fire and Emergency Services Act 1998* section 18P as a bush fire prone area.

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- (4) For the purposes of subclause (1)(c) or (d), development is to be taken to satisfy a deemed-to-comply requirement of the R-Codes if it complies with —
- (a) a requirement in a local development plan or activity centre plan made under the R-Codes that amends or replaces the deemed-to-comply requirement; or
 - (b) a requirement —
 - (i) in a structure plan that was approved before the day referred to in the *Planning and Development (Local Planning Schemes) Regulations 2015* regulation 2(b); and
 - (ii) that amends or replaces the deemed-to-comply requirement;
- or
- (c) a requirement in a local planning policy that amends or replaces the deemed-to-comply requirement.
- (5) If under subclause (1)(c) or (d) development approval is not required for the carrying out of works on land, the owner of the land may provide to the local government confirmation of the matters set out in subclause (1)(c) or (d), as relevant, in a manner and form approved by the Commission.

[Clause 61 amended: Gazette 7 Dec 2015 p. 4883-4.]

61A. Development approval not required to erect or install CDS infrastructure

- (1) Subject to subclauses (2), (3) and (4), development approval of the local government is not required for the erection or installation of CDS infrastructure.
- (2) The erection or installation of CDS infrastructure is not exempt from the requirement for development approval unless each of the following conditions is satisfied —
- (a) no part of the development is in a heritage-protected place;
 - (b) no part of the development is in a residential area;
 - (c) the infrastructure is not within 10 m of the boundary of a lot used for residential purposes;

- (d) the infrastructure does not restrict any vehicular or pedestrian access or entry to a building;
 - (e) the infrastructure does not obstruct the operation of, or access to, any utility services;
 - (f) the infrastructure is not within 2 m of any road, right of way or vehicle access point to a road or right of way;
 - (g) the infrastructure does not reduce existing car park sightlines, aisle widths or manoeuvring spaces;
 - (h) if the development is outdoors —
 - (i) the erection or installation of the infrastructure does not result in the removal of any significant vegetation or landscaping; and
 - (ii) the infrastructure does not carry or display promotional material, brand images, signs or similar material, other than CDS display material; and
 - (iii) the infrastructure is constructed of or clad with low-reflective, graffiti-resistant materials that provide protection from the elements.
- (3) The erection or installation of CDS infrastructure that is or includes a reverse vending machine is not exempt from the requirement for development approval unless each of the following conditions is satisfied —
- (a) the erection or installation is completed and the reverse vending machine is in use by 2 June 2021;
 - (b) if the development is outdoors on land that is not a car park —
 - (i) there is not more than 1 machine for each 15 000 m² of the area of the land on which the development is located; and
 - (ii) no machine occupies an area larger than 45 m²; and
 - (iii) no machine is more than 3 m in height, 8 m in length or 6 m in width;
 - (c) if the development is outdoors on land that is a car park —
 - (i) the car park has at least 40 spaces; and

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- (ii) there is not more than 1 machine for each 1 000 car parking spaces; and
- (iii) no machine occupies an area larger than the greater of —
 - (I) an area comprising 4 car parking spaces;
 - (II) 45 m², if the car park has 200 car parking spaces or less, and 75 m² in any other case.
- (4) The erection or installation of CDS infrastructure that is or includes a container collection cage is not exempt from the requirement for development approval unless each of the following conditions is satisfied —
 - (a) the development is in premises that are lawfully civic use, community purpose or educational establishment;
 - (b) the cage is located so as to be visually unobtrusive;
 - (c) the cage is not readily movable without the use of lifting equipment;
 - (d) there is not more than 1 cage on a lot;
 - (e) no cage occupies an area of more than 8 m²;
 - (f) no cage is more than 2 m in height.

61B. Development approval not required to operate CDS infrastructure

- (1) Subject to subclauses (2), (3) and (4), development approval of the local government is not required to use land to operate CDS infrastructure.
- (2) The use of land to operate CDS infrastructure is not exempt from the requirement for development approval unless each of the following conditions is satisfied —
 - (a) the erection or installation of the infrastructure was exempt under clause 61A from the requirement for development approval;

- (b) the infrastructure is provided with lighting that complies with AS/NZS 1158.3.1: 2005 Lighting for roads and public spaces, Part 3.1: Pedestrian area (Category P) lighting – Performance and design requirements published by Standards Australia as amended from time to time, or any Australian or Australia/New Zealand Standard that replaces that standard;
- (c) the infrastructure complies with relevant requirements of AS 1428.1-2009 Design for access and mobility – General requirements for access – New building work and AS 1428.2-1992 Design for access and mobility - Enhanced and additional requirements - Buildings and facilities published by Standards Australia as amended from time to time, or of any Australian or Australia/New Zealand Standard that replaces either or both of those standards;
- (d) if the area occupied by the infrastructure equals or exceeds 10 m², bins for the removal of waste and recyclable materials are provided at the infrastructure and regularly serviced at the rate of at least —

 - (i) 1 waste bin of 240 litres capacity per 10 m² of area occupied; and
 - (ii) 1 recycling bin of 240 litres capacity for the first 10 m² of area occupied and 1 recycling bin of 240 litres capacity for each further 20 m² of area occupied.
- (3) The use of land to operate CDS infrastructure that is or includes a reverse vending machine is not exempt from the requirement for development approval unless each of the following conditions is satisfied —

 - (a) the operation of the infrastructure does not result in the emission of noise at a level which exceeds any applicable requirement of the *Environmental Protection (Noise) Regulations 1997*;
 - (b) commercial vehicles enter the land for the purposes of the container deposit scheme only —

 - (i) before 9.00 am or after 7.00 pm on Sundays and public holidays; and
 - (ii) before 7.00 am or after 7.00 pm on other days;

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(c) if the land is adjacent to a lot used for residential purposes, the infrastructure operates only —

(i) between 9.00 am and 7.00 pm on Sundays and public holidays; and

(ii) between 7.00 am and 7.00 pm on other days.

(4) The use of land to operate CDS infrastructure that is or includes a container collection cage is not exempt from the requirement for development approval unless the cage is locked or secured in such a way that material cannot be removed from it, other than for the purposes of the container deposit scheme.

61C. Development approval not required to operate container deposit recycling centre

(1) Subject to subclause (2), development approval of the local government is not required to use land to operate a container deposit recycling centre.

(2) The use of land to operate a container deposit recycling centre is not exempt from the requirement for development approval unless each of the following conditions is satisfied —

(a) no part of the land is in a heritage-protected place;

(b) no part of the land is in a residential area;

(c) the operation of the centre begins by 2 June 2021;

(d) the centre operates in a building which is not within 200 m of the boundary of a lot used for residential purposes;

(e) the floor area of the part of the building that is primarily used for the purposes of the centre does not exceed 2 000 m²;

(f) for each 100 m² of the floor area of the part of the building that is primarily used for the purposes of the centre, there is on the land at least —

(i) 1 car parking space; or

(ii) a 6 m length of car queuing lane.

61D. Development approval not required to operate drop-off refund point

Development approval of the local government is not required to use land to operate a drop-off refund point —

(a) in a premises otherwise used as a shop; or

(b) in any other premises, if —

(i) the premises are not in a residential area; and

(ii) use to operate a drop-off refund point is an incidental use of the premises.

Minister for Planning