

Planning and Development (Significant Development) Regulations 2023

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Planning and Development (Significant Development) Regulations 2023

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Planning and Development (Significant Development) Regulations 2023*.

2. Commencement

These regulations come into operation on the day on which the *Planning and Development Amendment Act 2023* section 11 comes into operation.

3. Terms used

(1) In these regulations —

appropriate design reviewer means a committee, person or body of a kind referred to in paragraph (a) or (b) of the definition of *design review* in section 171H(1) of the Act;

excluded holiday period day means a day that is in —

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

(2) If a term used in these regulations is given a meaning in section 171H(1) of the Act, it has the same meaning in these regulations.

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4. Excluded holiday period days not counted in time periods

For the purposes of these regulations, an excluded holiday period day is not counted in calculating a period of time that is expressed as a number of days.

5. Prescribed significant development (s. 171I(1))

For the purposes of section 171I(1) of the Act, development is *prescribed significant development* if the estimated cost of the development is —

- (a) for development in an area to which the Metropolitan Region Scheme or the Peel Region Scheme applies — \$20 million or more; or
- (b) otherwise — \$5 million or more.

Part 2 — Making significant development applications

6. Requirements before making application

- (1) Before making a significant development application, the prospective applicant must —
 - (a) consult with the Commission about the application; and
 - (b) if required to do so by the Commission — request an appropriate design reviewer nominated by the Commission to conduct a design review of the development to which the application relates.
- (2) The Commission may specify requirements as to the following —
 - (a) the matters to be considered as part of a design review referred to in subregulation (1)(b);
 - (b) the form of a report on a design review referred to in subregulation (1)(b).

7. Application must be signed by owner of land (s. 171N(1)(a)(i))

- (1) For the purposes of section 171N(1)(a)(i) of the Act, a significant development application must be signed by the owner of the land on which the proposed development is located.
- (2) For the purposes of subregulation (1), a person or body may sign a significant development application as the owner of freehold land only if the person or body is 1 of the following —
 - (a) a person who is the owner (as defined in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1) of the land;
 - (b) a strata company that —
 - (i) is authorised to make an application for development approval in respect of the land

under scheme by-laws registered under the *Strata Titles Act 1985*; and

- (ii) if the land is held under a leasehold scheme — has the written consent of the owner of the leasehold scheme to make the application;
- (c) a community corporation for a community titles scheme that is authorised to make an application for development approval in respect of the land under scheme by-laws registered for the community titles scheme under the *Community Titles Act 2018*;
- (d) a person who is authorised under another written law to make an application for development approval in respect of the land;
- (e) an agent of a person referred to in paragraph (a).

Note for this subregulation:

Section 267A of the Act makes provision for the signing of documents by the owner of Crown land or freehold land in the name of the State.

- (3) If a term used in subregulation (2)(b) is given a meaning in the *Strata Titles Act 1985* section 3(1), it has the same meaning in that subregulation.
- (4) If a term used in subregulation (2)(c) is given a meaning in the *Community Titles Act 2018* section 3(1), it has the same meaning in that subregulation.

Part 3 — Procedures for dealing with significant development applications

8. Purpose of Part

This Part makes provision under section 171ZD(2)(c) of the Act for procedures for dealing with significant development applications.

Note for this regulation:

Section 171Q of the Act applies in relation to the regulations in this Part.

9. Action by Commission on receipt of application

- (1) On receipt of a significant development application, the Commission must —
 - (a) consider whether the application (including any documents or information required by the Commission to be included in the application) complies with these regulations and the requirements imposed by the Commission under section 171N(1) of the Act; and
 - (b) within 7 days after the day on which the application is received, advise the applicant by written notice —
 - (i) if the Commission is satisfied that the application (including any documents or information required by the Commission to be included in the application) complies with these regulations and the requirements imposed by the Commission under section 171N(1) of the Act — that the application has been accepted for assessment; or
 - (ii) otherwise — that the applicant must amend the application (including by providing further documents or information for inclusion in the application) before the application can be accepted for assessment.

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- (2) If the Commission does not give advice under subregulation (1)(b) within the 7-day period referred to in that subregulation, the significant development application is taken to be accepted for assessment on the day after the end of that period.
- (3) If the Commission gives advice under subregulation (1)(b)(ii) and the applicant amends the significant development application as required, this regulation applies again in respect of the application as amended as if references to the receipt of the application were to the receipt of the amended application.

10. Commission may request additional documents or information

- (1) If a significant development application has been accepted for assessment, the Commission may, by written notice given to the applicant, request the applicant to provide any further documents or information that the Commission reasonably requires to determine the application.
- (2) A request under subregulation (1) may be made whether or not the Commission gave the applicant advice under regulation 9(1)(b)(ii) in relation to the application before it was accepted for assessment.
- (3) A request under subregulation (1) must state the period within which the further documents or information must be provided, which must be a period of at least 21 days after the day on which the request is made.
- (4) The Commission and the applicant may agree on a longer period within which the further documents or information must be provided.
- (5) The Commission may make more than 1 request under subregulation (1).

11. Applicant may agree to or refuse request for additional documents or information

- (1) If a request under regulation 10(1) is made to the applicant in relation to a significant development application, the applicant may agree to or refuse the request by written notice given to the Commission within 7 days after the day on which the request is made.
- (2) If the applicant does not agree to or refuse the request within the 7-day period referred to in subregulation (1), the applicant is taken to have refused the request.
- (3) If an applicant agrees to a request under regulation 10(1), the period set out in subregulation (4) is not to be counted for the purposes of calculating the period of time within which the significant development application must be determined under section 171T(1) of the Act and regulation 16.
- (4) For the purposes of subregulation (3), the period —
 - (a) begins on the day on which the applicant agrees to the request; and
 - (b) ends on the earlier of the following —
 - (i) the day on which the applicant gives the documents or information specified in the request to the Commission;
 - (ii) the last day of the period stated in the notice of request under regulation 10(3) (or, if the Commission and the applicant have agreed a longer period under regulation 10(4), the last day of that longer period).
- (5) If an applicant refuses a request under regulation 10(1) —
 - (a) the Commission must not refuse to determine the significant development application merely because the applicant has refused the request; and
 - (b) the making of the request does not affect the calculation of the period of time within which the significant

development application must be determined under section 171T(1) of the Act and regulation 16.

12. Commission may request design review of development

- (1) For the purposes of the Commission's consideration of a significant development application under section 171P(1) of the Act, the Commission may, at any time after the application is made, request an appropriate design reviewer to conduct a design review of the development to which the application relates.
- (2) The Commission may specify requirements as to the following —
 - (a) the matters to be considered as part of a design review referred to in subregulation (1);
 - (b) the form of a report on a design review referred to in subregulation (1).

13. Required consultation and advertising

- (1) This regulation applies for the purposes of the Commission's consideration of a significant development application under section 171P(1) of the Act.
- (2) The Commission must —
 - (a) consult the Minister; and
 - (b) if required by the Minister — give the Minister a reasonable opportunity to make submissions to the Commission; and
 - (c) have due regard to any submissions made by the Minister.
- (3) The Commission must —
 - (a) consult the Heritage Council if the development would, or would be likely to, affect any of the following —
 - (i) a place that is a registered place under the *Heritage Act 2018*;

- (ii) a place that is the subject of a protection order under the *Heritage Act 2018* Part 4 Division 1;
 - (iii) a place that is the subject of a heritage agreement made by the Heritage Council under the *Heritage Act 2018* Part 7;
- and
- (b) consult the Swan River Trust if the development —
 - (i) is of land that is partly in the development control area as defined in the *Swan and Canning Rivers Management Act 2006* section 3(1); or
 - (ii) is of land that abuts that development control area; or
 - (iii) would, or would be likely to, affect any waters in that development control area;
- and
- (c) have due regard to any submission made, or advice given, to the Commission in the course of a consultation under paragraph (a) or (b).
- (4) The Commission must —
- (a) give any local government to the district of which the significant development application relates an opportunity to make submissions to the Commission within a period specified by the Commission; and
 - (b) have due regard to any submissions made by the local government within that period.
- (5) The Commission must —
- (a) in the manner the Commission considers appropriate, advertise the significant development application, inviting submissions from members of the public generally or from a class or group of members of the public that the Commission considers appropriate; and

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- (b) specify a period within which members of the public may make submissions in response to the invitation under paragraph (a); and
 - (c) have due regard to any submissions made by members of the public in response to the invitation under paragraph (a) within the specified period.
- (6) If a local government or member of the public does not make any submission within the period specified under subregulation (4)(a) or (5)(b) (as the case requires), the Commission may proceed on the basis that the local government or member of the public does not have any submission to make.

14. Other consultation and input

- (1) For the purposes of the Commission's consideration of a significant development application under section 171P(1) of the Act, the Commission may —
 - (a) consult any person or body not referred to in regulation 13(2) to (4) whom the Commission considers it appropriate to consult; and
 - (b) do anything else that is not covered by regulation 13(2) to (5) that the Commission considers it appropriate to do in order to obtain a document, information, an opinion or any other contribution from any person or body.
 - (2) If the Commission does anything under subregulation (1) —
 - (a) the Commission must, as it considers appropriate, specify a period within which, as the case requires —
 - (i) a person or body who is being consulted by the Commission may respond to the Commission on any matter; or
 - (ii) a person or body may provide any document, information, opinion or other contribution;
- and

- (b) if the person or body does not respond, or provide the document, information, opinion or other contribution, within the specified period, the Commission may proceed on the basis that the person or body does not have any response, document, information, opinion or other contribution (as the case requires) to give.

15. Applicant may be required to pay costs of advertising or erect signs

- (1) The Commission may require the costs of the Commission advertising a significant development application under regulation 13(5)(a) to be paid by the applicant.
- (2) If the Commission decides to advertise a significant development application under regulation 13(5)(a) in a manner that involves the erection of signs giving notice of the development, the Commission may, instead of erecting those signs, require the applicant to erect those signs.

Part 4 — Other matters

**16. Period within which application must be determined
(s. 171T(1))**

For the purposes of section 171T(1) of the Act, the Commission must determine a significant development application within —

- (a) 120 days after the day on which the application is accepted for assessment; or
- (b) a longer time agreed in writing between the applicant and the Commission.

17. Application under s. 171X(2) for amendment or cancellation of development approval

- (1) Parts 2 and 3 and regulation 16 apply, with any necessary modifications, to an application under section 171X(2) of the Act as they apply to a significant development application.
- (2) Despite subregulation (1), if the Commission is of the opinion that the amendment to which an application under section 171X(2)(a), (b), (c) or (d) of the Act relates is a minor amendment —
 - (a) the Commission is not required to comply with any of the requirements of regulation 13 in relation to the application; but
 - (b) the Commission may, if the Commission considers it appropriate, do anything referred to in regulations 13 to 15 in relation to the application.

18. Matters in relation to which meetings not required to be open to public (s. 171ZB(3))

- (1) For the purposes of section 171ZB(3) of the Act, the matters are as follows —
 - (a) legal advice obtained, or which may be obtained, by the Commission and which relates to a matter to be discussed at the meeting;

- (b) a matter that, if disclosed, would reveal any of the following —
 - (i) a trade secret;
 - (ii) information that has a commercial value to a person;
 - (iii) information about the business, professional, commercial or financial affairs of a person;
 - (c) a matter that, if disclosed, could be reasonably expected to —
 - (i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; or
 - (ii) endanger the security of the Commission's property; or
 - (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety.
- (2) Subregulation (1)(b) does not apply to a trade secret that is held by, or information that is about, the Commission.

Clerk of the Executive Council