PL301

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Amendment Regulations 2020

SL 2020/30

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 2020*.

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*.

4. Regulation 10A inserted

At the end of Part 2 insert:

10A. Review of Schedule 2 Part 10B

(1) The Minister must review the operation and effectiveness of Schedule 2 Part 10B, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which the *Planning and Development (Local Planning Schemes) Amendment Regulations 2020* regulation 5 comes into operation.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

5. Schedule 2 Part 10B inserted

After Schedule 2 clause 78G insert:

Part 10B — Exemptions from planning requirements for state of emergency

78H. Minister may issue notice of exemption from planning requirements in state of emergency

(1) If a state of emergency declaration is in force under the *Emergency Management Act 2005* Part 5 in relation to the whole or any area or areas of the State, the Minister may, by notice in writing, issue 1 or more exemptions from planning requirements under this Scheme.

(2) A notice under subclause (1) can be issued only if the Minister considers that it is necessary to do so for the purpose of facilitating response to, or recovery from, the emergency to which the state of emergency declaration relates.

(3) A reference in subclause (1) to a planning requirement —

(a) includes, without limiting that subclause —

(i) a requirement to obtain development approval; and

(ii) a requirement under a condition of development approval; and

(iii) a requirement relating to the permissibility of uses of land; and

(iv) a requirement relating to works; and

(v) a provision having the effect that a non-conforming use of land is no longer permitted because of a discontinuance of that non-conforming use; and

(vi) a requirement in relation to consultation, advertisement, applications, time limits or forms;

but

(b) does not include an environmental condition that applies to this Scheme as a result of an assessment carried out under the *Environmental Protection Act 1986*.

(4) A notice under subclause (1) may be issued whether or not the state of emergency declaration applies in relation to any part of the Scheme area, but only if it is necessary for the purpose referred to in subclause (2).

(5) An exemption in a notice under subclause (1) may —

(a) apply generally or to land, or classes of land, specified in the notice; and

(b) be unconditional or subject to any conditions specified in the notice.

(6) The Minister —

(a) may, by notice in writing, amend a notice under subclause (1) for the purpose referred to in subclause (2); and

(b) may, by notice in writing, revoke a notice under subclause (1); and

(c) must under paragraph (b) revoke a notice under subclause (1) if the Minister considers that the notice is no longer necessary for the purpose referred to in subclause (2).

78I. Process for issuing notice under cl. 78H

(1) A notice under clause 78H(1) or (6) must be signed by the Minister and published in the *Gazette*.

(2) A notice under clause 78H(1) or (6) of this Scheme may be combined in a single instrument with 1 or more other notices of that kind issued under 1 or more other local planning schemes or all other local planning schemes.

(3) Before issuing a notice under clause 78H(1) or (6), the Minister must, unless the Minister considers that it is impracticable to do so because of the urgency of the circumstances, make reasonable endeavours to consult in relation to the notice —

(a) the Commission; and

(b) WALGA.

(4) The Minister must ensure that a copy of the notice is sent to the local government or WALGA.

(5) A failure to comply with subclause (3) or (4) in relation to a notice does not invalidate the notice.

78J. Coming into effect and cessation of notices and exemptions under cl. 78H

(1) A notice under clause 78H(1) or (6) must state the date and time at which it is signed.

(2) A notice under clause 78H(1) must also state, for each exemption under the notice, that the exemption is to expire —

(a) when the state of emergency declaration ceases to be in force; or

(b) at a date and time stated in the notice, which must not be later than the end of the period of 5 years beginning on the day on which the notice is signed.

(3) A notice under clause 78H(1) or (6) takes effect when it is signed.

(4) An exemption under a notice under clause 78H(1) remains in effect, subject to any amendment or revocation of the notice under clause 78H(6), until the time of expiry stated under subclause (2) for that exemption.

(5) When an exemption under a notice under clause 78H(1) is amended or ceases to be in effect, the provisions of this Scheme in relation to non-conforming uses of land do not apply in relation to any use or development of land that was permitted only because of the effect of the exemption prior to the amendment or cessation.

R. SAFFIOTI, Minister for Planning.