

Practice Note 15

Subject: Draft amendments to planning schemes not determined before a Local Provisions Schedule (LPS) has effect

Purpose: To provide information on the continuing consideration of draft amendments to planning schemes that are not determined before an LPS has effect.

1.0 Introduction

This practice note concerns the application of the savings provisions for draft amendments (including combined permit and draft amendment) to existing planning schemes that are not determined before a draft LPS is approved and comes into effect, and continuation as a draft amendment to an LPS. It also outlines likely requirements for the further assessment of those amendments.

2.0 Continuing draft amendments

The savings and transitional provisions under Schedule 6 of the *Land Use Planning and Approvals Act 1993* (the Act) allow for some draft amendments, that have been initiated by the planning authority but not approved before a LPS has come into effect, to be considered as draft amendments to the LPS. However, this is limited to the following:

- (a) altering the designation of a zone to an area of land, including amendment for a new particular purpose zone (PPZ) [Schedule 6, clause 4(1)(a)];
- (b) altering the requirements of a PPZ or specific area plan (SAP) in the existing planning scheme [Schedule 6, clause 5(1)(a)(i)]; and
- (c) establishing a new SAP [Schedule 6, clause 5(1)(a)(ii)].

Draft amendments that do not meet these requirements will lapse on the day the LPS comes into effect [Schedule 6, clause 7].

If the request for a draft amendment includes an application for a permit (under section 43A of the former provisions of the Act), the request and the application for a permit are to be determined under section 40T [Schedule 6, clause 6(2)].

3.0 What happens to continuing draft amendments?

3.1 Corresponding stage in the LPS process under Part 3B of the Act

A continuing draft amendment is transferred to the stage that most closely corresponds to the stage reached under Part 3B of the Act. For example:

- (a) if the planning authority has certified a draft amendment and reported to the Commission (under section 35 of the former provisions of the Act) and then the LPS comes into effect, the next step would be for the planning authority to publicly exhibit under section 40H; or
- (b) if public exhibition and receipt of representations are completed, the next step would be for the planning authority to report to the Commission under section 40K instead of section 39 of the former provisions of the Act.

3.2 Meeting the LPS criteria

No matter what stage in the process a continuing draft amendment has reached, the Commission must be satisfied that the draft amendment meets the LPS criteria [sections 40M(1)(c) and 40Q(1)]. If the Commission is not satisfied the draft amendment meets the LPS criteria, it cannot approve it [section 40Q(1)].

Demonstration that the LPS criteria are met may require the provision of additional information at the relevant stage of either the planning authority's or the Commission's assessment process.

Where a draft amendment has progressed to the Commission and the Commission considers further information is required to determine whether the LPS criteria have been met, it may direct that the planning authority or applicant make a submission addressing the LPS criteria. Depending on the extent of any changes that are required to a draft amendment as a result of meeting the LPS criteria, and the information provided to support those changes, the Commission may direct that additional exhibition of the changes, further submissions and a further report from the planning authority is required. Whatever the additional process might be, the Commission will provide an opportunity for other parties to make submissions in response to any further information to ensure procedural fairness.

4.0 Withdrawing a continuing draft amendment

A planning authority may, with the approval of the Commission, withdraw a continuing amendment at any time before it is approved under section 40Q of the Act. [Schedule 6 clauses 4(2)(d) and 5(2) (d)].

Further information

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