

*Planning and Development Act 2005*  
*Planning and Development (Local Planning Schemes) Regulations 2015*

**CLAUSE 78H NOTICE OF EXEMPTION  
FROM PLANNING REQUIREMENTS  
DURING STATE OF EMERGENCY**

Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations) contains deemed provisions which have effect and may be enforced as part of each local planning scheme to which they apply, whether they are prescribed before or after the scheme comes into force. If a Deemed Provision that has effect as part of a local planning scheme is inconsistent with another provision in the scheme, the Deemed Provision prevails and the other is, to the extent of the inconsistency, of no effect.

Part 10B of Schedule 2, made by the *Planning and Amendment (Local Planning Schemes) Amendment Regulations 2020*, enables the Minister for Planning to issue notices exempting the need for compliance with one or more requirements of a local planning scheme.

On 16 March 2020, a State of Emergency Declaration was made in relation to the State of Western Australia. The issue of a notice under clause 78H (1), Schedule 2 of the LPS Regulations (this Notice), is now required for the purpose of facilitating a response to, or recovery from, the emergency occasioned by the COVID-19 pandemic.

Accordingly, I, **Rita Saffioti MLA**, Minister for Planning, pursuant to the powers vested in me under Part 10B, Schedule 2 of the LPS Regulations, HEREBY:

- A. ISSUE an exemption from the planning requirements identified in column 1 of the attached Schedules, for the local planning schemes specified in column 2 of the attached Schedules (to which the Deemed Provisions apply), subject to the conditions specified in column 3 of the attached schedules.
- B. DECLARE that this Notice made will remain in effect until midnight, 1 May 2023. The exemptions detailed in this Notice will expire at midnight 1 May 2023, unless otherwise stated in this Notice.
- C. RECORD that this Notice is signed by me at 5.00 am/pm upon this 8th day of April 2020



The Hon Rita Saffioti MLA  
MINISTER FOR PLANNING

## SCHEDULES

Column 1 - Requirements	Column 2 - Schemes	Column 3 - Conditions
<b>Schedule 1 – Exemption from requirement to obtain approval</b>		
1.1 Proponents are exempted from the requirement to obtain development approval for the use of, or undertaking of works on, land, where such use or works relate to medical or health related activities associated with a response to the COVID-19 Pandemic.	All local planning schemes.	<p>1. Provided that a Public Authority or local government advises or identifies the medical or health related activities as necessary in response to the COVID-19 Pandemic.</p> <p>2. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect, or is revoked.</p>
<p>1.2 Proponents are exempted from the requirement to obtain development approval for the following uses, and temporary works associated with these:</p> <ul style="list-style-type: none"> <li>i. shop;</li> <li>ii. restaurant/café;</li> <li>iii. convenience store (excluding those selling petroleum products);</li> <li>iv. consulting rooms;</li> <li>v. office.</li> </ul>	All local planning schemes.	<p>1. Provided that:</p> <ul style="list-style-type: none"> <li>a) the land to be used is located in a commercial, centre and/or mixed use zone;</li> <li>b) the use is not prohibited by the scheme;</li> <li>c) no new permanent structures are required (with the exception that car parking bays are permitted);</li> <li>d) for shop uses, once the proposed use is in place, the net lettable area for the land use does not exceed 400m<sup>2</sup>; and</li> <li>e) the land is connected to all reticulated utility services, and does not depend on any onsite effluent disposal.</li> </ul> <p>2. Provided that the proponent notifies the local government within 7 days of commencing the use, that the use is being undertaken.</p> <p>3. Despite any other condition, this exemption does not apply to a Heritage-Protected Place.</p> <p>4. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect, or is revoked.</p>
1.3 Proponents are exempted from the requirement to obtain	All local planning schemes.	1. Provided that:

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<p>development approval for the following uses, and temporary works associated with these:</p> <ul style="list-style-type: none"> <li>i. industry;</li> <li>ii. industry-light;</li> <li>iii. trade supplies;</li> <li>iv. warehouse/storage;</li> <li>v. transport depot.</li> </ul>		<ul style="list-style-type: none"> <li>a) the land to be used is located in an industrial zone;</li> <li>b) the use is not prohibited by the scheme;</li> <li>c) the land is connected to all reticulated utility services, and does not depend on any onsite effluent disposal; and</li> <li>d) either: <ul style="list-style-type: none"> <li>i. no new permanent structures are required; or</li> <li>ii. any structures required to facilitate the use are deemed temporarily approved for a period of no more than 2 years, from the date the use commences, after which the structures must be removed.</li> </ul> </li> </ul> <p>2. Provided that the proponent notifies the local government within 7 days of commencing the use, that the use is being undertaken.</p> <p>3. Despite any other condition, this exemption does not apply to a Heritage-Protected Place.</p> <p>4. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect, or is revoked.</p>
<p>1.4 Proponents are exempted from the requirement to obtain development approval for the following uses, and temporary works associated with these:</p> <ul style="list-style-type: none"> <li>i. home business;</li> <li>ii. home occupation.</li> </ul>	<p>All local planning schemes.</p>	<p>1. Provided that the land to be used is located in:</p> <ul style="list-style-type: none"> <li>a) a residential zone; or</li> <li>b) where a dwelling, grouped dwelling or multiple dwelling is a permitted use.</li> </ul> <p>2. Provided that the proponent notifies the local government within 7 days of commencing the use, that the use is being undertaken.</p> <p>3. An exemption under this clause will expire 90 days after the date upon which the State</p>



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		of Emergency Declaration ceases to have effect, or is revoked.
1.5 Proponents are exempted from the requirement to obtain development approval for the following uses, and temporary works associated with these: i. commercial vehicle parking.	All local planning schemes.	1. Provided that the proponent notifies the local government within 7 days of commencing the use, that the use is being undertaken.  2. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect, or is revoked.
1.6 Proponents are exempted from the requirement to obtain development approval to the use of, or undertaking of works on, land, where such use or works concern temporary workers' accommodation.	All local planning schemes.	1. Provided that the temporary workers' accommodation applies to a workforce necessary for the installation of, or construction of, and maintenance of, essential services such as (but not limited to) power stations, water, desalination plants or sewer treatment facilities.  2. Provided that the proponent notifies the local government within 7 days of commencing the use, that the use is being undertaken.  3. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect, or is revoked.
<b>Schedule 2 – Exemptions from requirements under a condition of development approval</b>		
2.1 Proponents are exempted from any restriction upon loading or unloading times, related to the delivery of goods and/or petroleum products.	All local planning schemes.	1. Confined to premises with an existing approval, or the benefit of an exemption under this Notice, to sell goods and/or petroleum products.  2. Provided that the proponent notifies the local government within 7 days of commencing use of this exemption.  3. An exemption under this clause will expire 90 days after the date upon which the State

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		of Emergency Declaration ceases to have effect or is revoked.
<b>Schedule 3 – Exemptions relating to non-conforming uses</b>		
3.1 Any approval for a non-conforming use, is exempt from a provision that annuls the approval because of a discontinuance of that non-conforming use.	All local planning schemes.	<p>1. The period during which the State of Emergency is declared shall be excluded from any calculation of the period for which a non-conforming use ceases to exist.</p> <p>2. An exemption under this clause will expire on the day after that upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>
<b>Schedule 4 – Exemption from requirements re: consultation, advertisement, applications, time limits or forms</b>		
4.1 In relation to making a local planning policy, local governments are exempted from the requirements under cl.4.	All local planning schemes.	<p>1. Provided that:</p> <ul style="list-style-type: none"> <li>a) the policy relates to exemptions from the requirement to obtain approval to a change of use;</li> <li>b) the local government advertises the proposed policy on its website for a minimum of 3 days; and</li> <li>c) publishes the adopted version of the policy on its website.</li> </ul> <p>2. An exemption under this clause will expire on the day after that upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>
4.2 In relation to an approved development application, proponents are exempted from the requirement to substantially commence development.	All local planning schemes.	<p>1. Provided that:</p> <ul style="list-style-type: none"> <li>a) the original deadline for substantial commencement is exempted; and</li> <li>b) a new deadline for substantial commencement is substituted, being the original deadline plus a further period of 2 years.</li> </ul> <p>2. The exemption under this clause will only be available for development applications decided on, or before, the date upon which the State of Emergency Declaration ceases to have effect, or is revoked.</p>

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4.3 In relation to a structure plan under cl.18-cl.20 or activity centre plan under cl.34-cl.36, local governments are exempted from any requirements relating to the manner and timeframe of advertising, consideration or submission.	All local planning schemes.	<p>1. Provided that, in relation to structure plans, the local government:</p> <ul style="list-style-type: none"> <li>a) advertises the structure plan and accompanying materials on its website for no more than 42 days and installs a sign somewhere prominent on the land to which the said plan applies notifying the public of where the documents are online;</li> <li>b) complies with the requirements of cl.20(1) within 90 days of the latest to occur of cl.20(1)(a) - (c).</li> </ul> <p>2. Provided that, in relation to activity centre plans, the local government:</p> <ul style="list-style-type: none"> <li>a) advertises the activity centre plan and accompanying materials on its website for no more than 42 days and installs a sign somewhere prominent on the land to which the said plan applies notifying the public of where the documents are online;</li> <li>b) complies with the requirements of cl.36(1) within 90 days of the latest of cl.36(1)(a) - (c).</li> </ul> <p>3. An exemption under this clause will expire on the day after that upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>
4.4 Local governments exempted from the requirements under the Deemed Provisions to make any documents, whatsoever, available for public inspection at a local government's offices.	All local planning schemes.	<p>1. Provided that the documents are published for public inspection on the local government website.</p> <p>2. An exemption under this clause will expire on the day after that upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>
<b>Schedule 5 – Exemptions from other requirements</b>		
5.1 Where premises are approved for use, or in relation to any application for development approval,	All local planning schemes.	<p>1. Provided that this exemption only applies to:</p> <ul style="list-style-type: none"> <li>a) non-residential development; and</li> </ul>



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proponents are exempted from a requirement to provide car parking facilities.		<p>b) where the proponent provides less than the number of parking bays required for the use in question, and the shortfall is 10 parking bays or less.</p> <p>2. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>
5.2 In relation to an approved development application, proponents are exempted from the requirement to provide cash-in lieu payments, as an alternative to providing car parking facilities.	All local planning schemes.	<p>1. Provided that this exemption only applies to non-residential development.</p> <p>2. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>
<b>Schedule 6 – Exemptions of a type that may fall within multiple categories</b>		
<p>6.1 Where premises are approved for use as an hotel, tavern, restaurant/café or other similar venue, proponents are exempted from:</p> <ul style="list-style-type: none"> <li>i. any condition of approval, or designation in the approved use, requiring the food prepared at the premises to be consumed on the premises;</li> <li>ii. any requirement to obtain approval for food to be prepared for consumption off premises;</li> <li>iii. any requirement to obtain approval to minor, temporary, works that are necessary to adapt existing premises to use the exemption contemplated under (i) or (ii) above;</li> </ul>	All local planning schemes.	<p>1. Provided that no new permanent structures are required (with the exception that car parking bays are permitted).</p> <p>2. Provided that the proponent notifies the local government within 7 days of commencing the use, that the use is being undertaken.</p> <p>3. In relation to signage, provided the signage</p> <ul style="list-style-type: none"> <li>a) is not installed in a residential zone;</li> <li>b) relates only to the business conducted on the premises; and</li> <li>c) does not contain any illumination, animation, movement, reflective, retro-reflective or fluorescent materials in its design structure.</li> </ul> <p>4. Despite any other condition, this exemption does not apply to a Heritage-Protected Place where works are required.</p> <p>5. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>

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iv. any requirement to obtain approval to signage of uses now permitted by virtue of this exemption.		
6.2 Proponents are exempted from the requirement to obtain approval to changes to existing approved signage.	All local planning schemes.	<p>1. Provided that:</p> <ul style="list-style-type: none"> <li>a) such signage is not installed in a residential zone;</li> <li>b) relates only to the business conducted on the premises; and</li> <li>c) the changes do not: <ul style="list-style-type: none"> <li>i. alter the size of the approved sign; or</li> <li>ii. contain any illumination, animation, movement, reflective, retro-reflective or fluorescent materials in its design structure.</li> </ul> </li> </ul> <p>2. Despite any other condition, this exemption does not apply to a Heritage-Protected Place where works are required.</p> <p>3. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>
6.3 Exemption from any requirement under a scheme that would ordinarily apply to development required to implement a direction or authorisation issued under the <i>Emergency Management Act 2005</i> or the <i>Public Health Act 2016</i>	All local planning schemes.	<p>1. An exemption under this clause will expire 90 days after the date upon which the State of Emergency Declaration ceases to have effect or is revoked.</p>

#### Interpretation and Guidance notes

1. In this Notice a generous, broad interpretation is to be given to terms.
2. "Deemed Provisions" means Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.



3. The term “all local planning schemes” relates to those schemes to which the Deemed Provisions apply.
4. The term “proponent” should be interpreted broadly and includes any owner or occupier of land, and also includes any applicant or agent acting on their behalf.
5. Unless otherwise stated, a reference to a clause in this Notice is to a clause in the Deemed Provisions.
6. “Approved development application” is a term intended to cover applications for which approval is granted, whether that is granted before or after the commencement of this Notice.
7. “DAP” means Development Assessment Panel.
8. 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 a Scheme; or
  - e) within an area designated under a Scheme as a heritage area.
9. “State of Emergency Declaration” means the State of Emergency declared by the Minister for Emergency Services, as effective from 12am, 16 March 2020. This was made under s56 of the *Emergency Management Act 2005*.
  - a) When the State of Emergency Declaration is no longer required, the declaration will expire on either:
    - i. a date specified in a notice issued under s58 of the *Emergency Management Act 2005*, by the Minister for Emergency Services; or
    - ii. a date specified in a revocation notice issued by the said Minister.
  - b) Information relating to this will be available on websites such as:  
<https://www.wa.gov.au/government/document-collections/covid-19-coronavirus-state-of-emergency-declarations>
10. “Public Authority” has the same definition as “public authority” in section 4, *Planning and Development Act 2005*.
11. For the avoidance of doubt, this Notice provides **temporary** exemptions from planning requirements. Consistent with clause 78J (2) of the Deemed Provisions, this Notice cannot provide a permanent exemption from a planning requirement under a scheme.
  - a) For example, the exemption in clause 5.2 of this Notice, from paying a cash in lieu requirement, is not a permanent waiver of the requirement. This exemption, like all others, expires at the conclusion of the timeframe specified for the exemption. Upon

that expiry, payment must be made. Nothing in this clause prevents a proponent from exercising its rights of review in relation to cash in lieu conditions.

12. An exemption provided for under this Notice only relates to planning requirements applicable pursuant to a local planning scheme (including under the Deemed Provisions), and does not exempt any other requirement that might apply under any other law. For example, a proponent seeking to rely upon an exemption set out in this Notice may still require approvals under health, building, environment, liquor licencing and other statutory requirements.
13. In interpreting both this Notice and different local planning schemes to which this Notice applies, including but not limited to land use terms and zoning classification descriptions, words can express the same idea in a different form of words and ideas are not to be taken as different just because different forms of words were used. For example, a reference to a “residential” zone and uses includes all such zones and uses substantively of this type or genus, whatever nomenclature is used by a local government in their particular local planning scheme.
14. In clause 1.3 provision is made for temporary approval of 2 years to any structures required to facilitate the uses listed in 1.3. There is no need to remove such structures if, before the 2 year period expires, development approval is granted to those structures.
15. To avoid any doubt, the exemption in clause 3.1 operates to “stop the clock” on the period of discontinuance for a non-conforming use, which is usually 6 months or other longer period approved by the local government, and will be paused for such time as the State of Emergency Declaration is in force.
16. An exemption relied upon by a local government or proponent under this Notice does not preclude a local government or proponent from relying upon any other exemption, if applicable, including but not limited to cl.61 of the Deemed Provisions.
17. An exemption under this Notice is a discretionary right afforded to the person designated in the Notice – it is not an obligation imposed on that person. A local government afforded an exemption under this Notice may exercise their discretion not to rely upon that exemption. A proponent afforded an exemption under this Notice may likewise exercise their discretion not to rely upon that exemption.