

General Provisions

This section sets out provisions about the administration of this scheme, existing uses, decision guidelines, referral of applications and other matters.

61 ADMINISTRATION OF THIS SCHEME

61.01 Administration and enforcement of this scheme

The responsible authority for the administration and enforcement of this scheme is specified in the schedule to this clause.

The person or authority nominated under Section 198 (1) of the Act for issuing planning certificates is specified in the schedule to this clause.

61.02 What area is covered by this scheme?

This planning scheme applies to the municipal district or other area specified in the schedule to this clause.

61.03 What does this scheme consist of?

This scheme consists of this document, any maps specified in the schedule to this clause, and any document incorporated in the scheme in accordance with the Act. A document is not incorporated in this scheme by reason only that it is referred to in the scheme.

This document consists of State standard provisions and local provisions. Local provisions (except the title page and contents pages) are designated by the page header 'Local Provisions'. All other provisions are State standard provisions.

61.04 When did this scheme begin?

This scheme began on the date specified in the schedule to this clause.

61.05 Effect of this scheme

Land may be used or developed only in accordance with this scheme.

Land must not be developed unless the land as developed can be used in accordance with this scheme.

If this scheme allows a particular use of land, it may be developed for that use provided all requirements of the scheme are met.

61.06 Determination of boundaries

If a boundary in this scheme is not precisely shown on a planning scheme map or is not otherwise defined, the certificate issuing authority must determine the boundary if asked to do so and must notify the applicant within 60 days.

62.01 Exempt buildings and works

Any control in this scheme over the construction of a building or the construction or carrying out of works does not apply to:

- A fence.
- A sign.
- Roadworks.
- Street furniture including post boxes, telephone booths, fire hydrants, traffic control devices, and landscaping.
- Oil pipelines.
- Buildings and works associated with a minor utility installation.
- Buildings and works associated with mineral exploration.
- Buildings and works associated with mining if the conditions of Clause 52.08-2 are met.
- Buildings and works associated with search for stone. This does not apply to costeaning and bulk sampling.
- A temporary shed or temporary structure for construction purposes.
- The internal rearrangement of a building or works provided the gross floor area of the building, or the size of the works, is not increased.
- Repairs and routine maintenance to an existing building or works.
- The removal, destruction or lopping of trees and the removal of vegetation.
- Any buildings or works which provide for fire protection under relevant legislation.
- Any emergency works undertaken by, or on behalf of, a municipality or public authority in the exercise of any power conferred on them under any Act.
- Any works necessary to prevent soil erosion, or to ensure soil conservation or reclamation.
- Any maintenance works carried out by a municipality or public authority to prevent or alleviate flood damage.

This exemption does not apply if a permit is specifically required for any of these matters.

62.02 Exempt subdivisions

Any control in this scheme over the subdivision of land does not apply to:

- A subdivision by an acquiring authority which does not create an additional lot.
- A subdivision which realigns the common boundary between two lots if all the land is in one urban zone and any of the following apply:
 - Any lot that is reduced in area meets the minimum lot area and minimum dimensions (if any) specified for the zone. This does not apply if the area of the smaller lot is limited by a provision of this scheme, or by a condition of a planning permit.
 - There is no minimum lot area specified for the zone, the area of the smaller lot is more than 230 square metres, and the area of either lot is reduced by less than 30 square metres.
 - There is no minimum lot area specified for the zone, the area of the smaller lot is 230 square metres or less, and the area of either lot is reduced by less than 5 percent or by less than 30 square metres, whichever is lesser.
 - The new boundary coincides with a boundary fence that is more than five years old. This does not apply if all the land is in one ownership.
- A subdivision which realigns the common boundary between two lots if all the land is in one non-urban zone, the re-subdivision does not allow the number of dwellings the whole of the land could be used for under this scheme to increase, and any of the following apply:
 - Any lot that is reduced in area meets the minimum lot area and minimum dimensions (if any) specified for the zone. This does not apply if the area of the smaller lot is limited by a provision of this scheme, or by a condition of a planning permit.
 - There is no minimum lot area specified for the zone, and no part of the boundary is moved more than 1 metre. This does not apply if the area of the smaller lot would be less than the area specified by a condition of a planning permit.

- There is no minimum lot area specified for the zone, the new boundary coincides with the location of a fence that is more than 5 years old, and no part of the boundary is moved more than 3 metres.

63 EXISTING USES

63.01 Extent of existing use rights

An existing use right is established in relation to use of land under this scheme if any of the following apply:

- The use was lawfully carried out immediately before the approval date.
- A permit for the use had been issued immediately before the approval date and the use commences before the permit expires.
- Proof of continuous use for 15 years is established under Clause 63.11.

63.02 Characterisation of use

If a use of land is being characterised to assess the extent of any existing use right, the use is to be characterised by the purpose of the actual use at the relevant date, subject to any conditions or restrictions applying to the use at that date, and not by the classification in the table to Clause 74 or in Section 1, 2 or 3 of any zone.

63.03 Effect of definitions on existing use rights

The definition of a term in this scheme, or the amendment of any definition, does not increase or restrict the extent of any existing use right established prior to the inclusion of the definition or amendment.

63.04 Section 1 uses

A use in Section 1 of a zone for which an existing use right is established may continue provided any condition or restriction to which the use was subject and which applies to the use in Section 1 of the zone continues to be met.

63.05 Sections 2 and 3 uses

A use in Section 2 or 3 of a zone for which an existing use right is established may continue provided:

- No building or works are constructed or carried out without a permit.
- Any condition or restriction to which the use was subject and which applies to the use in Section 2 of the zone continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use.
- The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right.

63.06 Expiration of existing use rights

An existing use right expires if either:

- The use has stopped for a continuous period of 2 years, or has stopped for two or more periods which together total 2 years in any period of 3 years.
- In the case of a use which is seasonal in nature, the use does not take place for 2 years in succession.

63.07 Compliance with codes of practice

A use for which an existing use right is established must comply with any relevant code of practice incorporated in this scheme if either:

- The instrument of approval of the code of practice has been ratified by Parliament in accordance with Section 55 of the Conservation Forests and Lands Act 1987.
- The code of practice is approved or ratified by Parliament under an Act.

63.08 Alternative use

A permit may be granted in relation to land for which an existing use right is established, to use the land for an alternative use which does not comply with this scheme. The responsible authority must be satisfied that the use of the land for the alternative use will be less detrimental to the amenity of the locality.

63.09 Shop conditions

A permit must not be granted to:

- Construct or carry out a building or works under Clause 63.05 for a shop with a leasable floor area exceeding 500 square metres.
- Use land under Clause 63.08 for a shop with a leasable floor area exceeding 500 square metres.

63.10 Damaged or destroyed buildings or works

If at least 50 percent of the gross floor area of a building or at least 50 percent of the area of any works is damaged or destroyed so that the use cannot continue without the building or works being reconstructed, the land must be used in conformity with this scheme, unless a permit is granted to continue the use, and to construct or carry out buildings or works.

63.11 Proof of continuous use

If, in relation to an application or proceeding under the Act or this scheme, including an application for a certificate of compliance under Section 97N of the Act, the extent of any existing use right for a period in excess of 15 years is in question, it is sufficient proof of the establishment of the existing use right if the use has been carried out continuously for 15 years prior to the date of the application or proceeding.

An existing use right may be established under this clause even if the use did not comply with the scheme immediately prior to or during the 15 year period, unless either:

- At any time before or after commencement of the 15 year period the use has been held to be unlawful by a decision of a court or tribunal.
- During the 15 year period, the responsible authority has clearly and unambiguously given a written direction for the use to cease by reason of its non-compliance with the scheme.

63.12 Decision guidelines

Before deciding on an application under Clause 63.05, 63.08 or 63.10, in addition to any other requirements of the Act or this scheme, the responsible authority must consider the extent to which compliance can be achieved with all scheme requirements that can reasonably be met.

64 LAND USED FOR MORE THAN ONE USE

If land is used for more than one use and one is not ancillary to the other, each use must comply with this scheme.

65 DECISION GUIDELINES

65.01 Approval of an application or plan

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

65.02 Approval of an application to subdivide land

Before deciding on an application to subdivide land, the responsible authority must also consider, as appropriate:

- The suitability of the land for subdivision.
- The existing use and possible future development of the land and nearby land.
- The availability of subdivided land in the locality, and the need for the creation of further lots.
- The effect of development on the use or development of other land which has a common means of drainage.
- The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.
- The density of the proposed development.
- The area and dimensions of each lot in the subdivision.
- The layout of roads having regard to their function and relationship to existing roads.
- The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.
- The provision and location of reserves for public open space and other community facilities.
- The staging of the subdivision.
- The design and siting of buildings having regard to safety and the risk of spread of fire.
- The provision of off-street parking.
- The provision and location of common property.
- The functions of any body corporate.
- The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.
- If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.
- Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas.

Referrals

Applications of the kind listed below must be referred to the person or body specified as a referral authority in accordance with Section 55 of the Act. This requirement is in addition to any other referral required in this scheme.

66.01**Subdivision**

KIND OF APPLICATION	REFERRAL AUTHORITY
To subdivide land other than: • Boundary realignments. • Subdivisions of existing buildings already connected to services. • 2-lot subdivisions.	The relevant water, drainage or sewerage authority The relevant telecommunication authority The relevant electricity supply or distribution authority The relevant gas supply authority
To subdivide land which abuts a Road Zone other than: • Boundary realignments. • Subdivisions of existing buildings already connected to services and requiring no new access. • 2-lot subdivisions requiring no new access.	Roads Corporation
To subdivide land, outside the metropolitan fire district, which creates a road.	Country Fire Authority
To subdivide land if the only access to a lot is over Crown land which has not been reserved or proclaimed as a road.	Minister administering the Land Act 1958
To subdivide or develop land in a Category A Coal area.	The Secretary to the Department of Natural Resources and Environment
To subdivide land crossed by a gas transmission pipeline or a gas transmission pipeline easement.	The relevant gas supply authority
To subdivide or develop land within 60 metres of a major electricity transmission line (220 Kilovolts or more) or an electricity transmission easement.	The relevant electricity transmission authority

Note:

Subdivisions which do not require referral under this clause must be referred if it is a requirement under any other clause in this scheme.

66.02**Conditions on subdivisions not requiring referral**

Permits for subdivisions listed in Clause 66.01 as not requiring referral must contain the following conditions:

- The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity, gas and telecommunication services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
- All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
- The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.

66.03 Referrals under the Subdivision Act

For the purpose of Section 8 of the Subdivision Act 1988 referral of a plan is only required if:

- A referral is required by a permit issued under this scheme. The plan must be referred to the relevant authority listed in Clause 66.01.
- A plan creates, varies or removes an easement or restriction likely to be of interest to a referral authority. The plan must be referred to the relevant referral authority listed in Clause 66.01.
- The only access to a lot on a plan is over Crown land and the Minister administering the Land Act 1958 has not consented or provision has not been made for a road to be reserved or proclaimed. The plan must be referred to that minister.
- In the opinion of the Council the plan may affect existing sewerage, water, drainage or other works. The plan must be referred to the referral authority responsible for those works.

66.04 Use and development

KIND OF APPLICATION	REFERRAL AUTHORITY
For a use or development requiring any of the following: • Works approval in accordance with Section 19A of the Environment Protection Act 1970. • A licence to discharge or emit waste in accordance with Section 20 of the Environment Protection Act 1970. • Amendment of a licence under Section 20A of the Environment Protection Act 1970.	Environment Protection Authority
To use or develop land for mining.	Secretary to the Department administering the Mineral Resources Development Act 1990
To remove or destroy native vegetation if the area to be cleared is 10 hectares or greater.	Secretary to the Department administering the Flora and Fauna Act 1988

Use and development (continued)

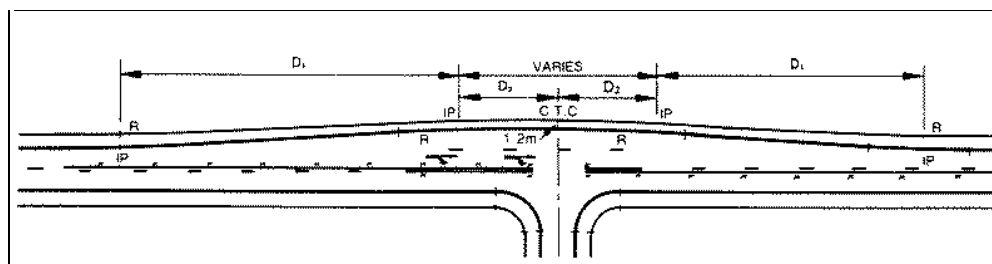
KIND OF APPLICATION	REFERRAL AUTHORITY
To remove or destroy native vegetation if the area to be cleared combined with any area to be cleared under a concurrent or previous application on the same or contiguous land, which was in the same ownership on the 30 June 1989, and the combined area is 10 hectares or greater.	Secretary to the Department administering the Flora and Fauna Act 1988
To remove, destroy or lop native vegetation if a land management plan or works program is submitted.	Secretary to the Department administering the Flora and Fauna Act 1988
To use or develop land for a cattle feedlot.	Minister for Agriculture and Resources Where the site is located within a special water supply catchment area under the Catchment and Land Protection Act 1994, the relevant water authority under the Water Act 1989 and the Secretary to the Department administering the Catchment and Land Protection Act 1994 Where the number of cattle is 5000 or more, the Environment Protection Authority
To remove, destroy or lop native vegetation on Crown land which is occupied or managed by the responsible authority.	Secretary to the Department administering the Flora and Fauna Act 1988
To remove, destroy or lop native vegetation on a road.	Secretary to the Department administering the Flora and Fauna Act 1988
To use or develop land that is within an area proclaimed as a water supply catchment area under the Catchment and Land Protection Act 1994 and which provides water to a domestic supply. This does not apply to an application for a sign, fence, roadworks or unenclosed building or works ancillary to a dwelling.	The relevant water board or water supply authority
To use or develop land for timber production by establishing a plantation.	The Secretary to the Department of Natural Resources and Environment
To use or develop land for timber production by harvesting timber from native forest, including thinning, if the area of native forest to be subjected to timber production operations is 10 hectares or greater.	The Secretary to the Department of Natural Resources and Environment

Use and development (continued)

KIND OF APPLICATION	REFERRAL AUTHORITY
To use or develop land for extractive industry.	Secretary to the Department administering the Extractive Industries Development Act 1995 Secretary to the Department administering the Archaeological and Aboriginal Relics Preservation Act 1972 and Part IIA of the Aboriginal and Torres Strait Islander Heritage Protection Act (Commonwealth) 1984 Secretary to the Department administering the Heritage Act 1995
To use or develop land for extractive industry on:	Secretary to the Department administering the:
• Crown land or land abutting Crown land, other than a government road.	Land Act 1958, Crown Land (Reserves) Act 1978, National Parks Act 1975 and Forests Act 1958
• Special Areas declared under Section 27 of the Catchment and Land Protection Act 1994.	Catchment and Land Protection Act 1994
• Land where the use or development involves the removal or destruction of native vegetation if the total area to be cleared is 10 hectares or greater.	Catchment and Land Protection Act 1994
• Areas with communities or taxa listed or critical habitat determined under the Flora and Fauna Guarantee Act 1988.	Flora and Fauna Guarantee Act 1988
• Land which has been identified in this scheme as flood prone.	Section 201 of the Water Act 1989
• Land which has been identified in this scheme as being subject to high erosion risk or areas identified as being subject to salinity management.	Catchment and Land Protection Act 1994
• Land which has been identified in this scheme as containing sites of flora or fauna significance.	Flora and Fauna Guarantee Act 1988
To use or develop land for extractive industry on: • Land which abuts a road declared under the Transport Act 1983. This does not apply to a development which generates less than one hundred commercial trips per day, with roadworks at the entrance to the site built in accordance with the layout shown below and the declared road is not a freeway.	Roads Corporation

Use and development (continued)

DESIGN SPEED KM/H	D1	R METRES	D2
120	120	3000	46
100	100	2400	42
80	80	1800	39
60	60	1000	28
50	50	600	20



KIND OF APPLICATION	REFERRAL AUTHORITY
Land which abuts a local road which intersects with a road declared under the Transport Act 1983 and if the development is expected to increase traffic movement at the intersection of the local road and the declared road by ten per cent or more.	
To use or develop land for extractive industry which is intended to be used for land fill at a future date.	Environment Protection Authority

66.05 Use of land in an industrial or business zone

IF IN THIS ZONE	KIND OF APPLICATION	REFERRAL AUTHORITY
Industrial 1 Industrial 2 Industrial 3 Business 3 Business 4	To use land for an industry or warehouse for a purpose listed in the table to Clause 52.10 shown with a Note 1 or if the air emission buffer distance is not to be met.	Environment Protection Authority
Industrial 1 Industrial 2 Industrial 3 Business 3 Business 4	To use land for an industry or warehouse for a purpose listed in the table to Clause 52.10 shown with a Note 2 and if a licence is required under the Dangerous Goods (Storage and Handling) Regulations or the Dangerous Goods (Explosives) Regulations.	The Minister administering the Dangerous Goods Act 1985

Table to clause 66.05 (continued)

IF IN THIS ZONE	KIND OF APPLICATION	REFERRAL AUTHORITY
Industrial 1	To construct a building or construct or carry out works on land used for an industry or warehouse for a purpose listed in the table to Clause 52.10 and shown with a Note 2 if both:	The Minister administering the Dangerous Goods Act 1985
Industrial 2		
Industrial 3		
Business 3		
Business 4	The premises are licensed under the Dangerous Goods (Storage and Handling) Regulations or the Dangerous Goods (Explosives) Regulations. The area of the buildings and works will increase by more than 25 percent.	

67 Applications under Section 96 of the Act

This clause applies to an application for a permit which, except for the provisions of this clause, would be made to the Minister in accordance with Section 96 of the Act.

67.01 Exemptions from Section 96(1) and 96(2) of the Act

In accordance with Section 6(2)(ka) of the Act, the following classes of use and development are exempted from Section 96(1) and 96(2) of the Act:

CLASS 1

Use of land for -

Car park, camping and caravan park, community facility (including child care centre, maternal and infant welfare centre, neighbourhood house, place of assembly and toilet block), dwelling, extractive industry, hospital, industry, leisure and recreation, office, residential village, retail premises or service station.

CLASS 2

Development of land for -

A Class 1 use, demolition of a building or works, lighting and floodlighting of a recreation facility or building, sign or advertisement or subdivision.

CLASS 3

Any other use or development.

67.02 Notice requirements

In accordance with Section 52(1)(c) of the Act, notice must be given to:

- The owners and occupiers of adjoining land.
- The National Trust of Australia (Victoria), if the application relates to land on which there is a building classified by the Trust.

This does not apply to an application:

- For a sign or advertisement.
- To remove, destroy or lop native vegetation under Clause 52.17 of this scheme.

67.03 Notice requirements - native vegetation

In accordance with Section 52(1)(c) of the Act, notice of an application to remove, destroy or lop native vegetation under Clause 52.17 of this scheme must be given to the Secretary to the Department administering the Flora and Fauna Guarantee Act 1988.

This does not apply if the application is of a kind which must be referred to the Secretary under Section 55 of the Act.

67.04 Notice exemptions

In accordance with Section 52(1)(a) of the Act, an application for a sign or advertisement, on land managed, occupied or owned by the responsible authority, is exempt.