



Development assessment

Request to apply a superseded planning scheme

Under the *Planning Act 2016*, a person can ask a local government to apply a superseded planning scheme to the carrying out of a development or to the assessment of a development application. This fact sheet provides more information about making and processing these requests.

What is a superseded planning scheme?

Section 29 of the Planning Act states that a superseded planning scheme is a planning scheme (and any related planning scheme policies) in effect immediately before:

- the planning scheme or any of the policies were amended or replaced; or
- any policy was repealed or a new policy was made for the planning scheme.

When can a request to apply a superseded planning scheme be made?

A person may make a superseded planning scheme request within one year of the planning scheme being superseded. This is the same timeframe that was previously provided under the repealed *Sustainable Planning Act 2009* (SPA).

A superseded planning scheme request enables a person to find out the local government's position before taking further action, such as lodging a development application or carrying out development.

What needs to be included in a request?

A superseded planning scheme request needs to be a written request made to a local government requesting that the local government either:

- accept, assess and decide a development application (known as a 'superseded planning scheme application') under a superseded planning scheme; or
- apply a superseded planning scheme to the carrying out of development that was accepted development under the superseded planning scheme.

Section 11 of the Planning Regulation 2017 provides that if the local government has a form for making this request, the request must be made using that form. The Planning Regulation also requires that the request must include the following:

- the name, residential or business address, electronic address and phone number of the person making the request;
- the address or property description of the premises that the request relates to;
- a statement about whether the person making the request is asking the local government:
 - i) to accept, assess and decide a superseded planning scheme application; or
 - ii) to apply a superseded planning scheme to the carrying out of development that was accepted development under the superseded planning scheme;
- if a request under i), a copy of the proposed superseded planning scheme application;
- if a request under ii), a description and plan of the proposed development;
- details of the superseded planning scheme that the request relates to; and
- if the local government has set a fee, the applicable fee.



Deciding a request

Once a request has been made, the local government must decide whether or not to agree to the request within 30 business days of receiving it. This period may be extended by agreement between the local government and the person making the request.

The local government must give a decision notice to the person making the request within five business days after making the decision. If no decision notice is given, the local government is taken to have agreed to the request.

When a local government agrees, or is taken to have agreed, to a request

Request to assess and decide a development application

For the development application to be assessed and decided under the superseded planning scheme, it must be made within six months of the local government either agreeing to the request or being taken to have agreed to the request. Evidence of this must be supplied when making the development application, as set out in the DA forms (available on the department's website).

The assessment manager must then assess the development application against the superseded planning scheme application as if the superseded planning scheme was still in effect.

Despite provisions that would otherwise prevent a development application being made for prohibited development, if a local government has agreed to a superseded planning scheme request for prohibited development, a superseded planning scheme application may be made for prohibited development only if it were assessable development or accepted development under the superseded planning scheme.

Request to carry out development

Where the local government either decides to agree to the request or is taken to have agreed to the request, the development may be carried out under the superseded planning scheme. In this case, it is taken that provisions relating to currency periods and appeal rights apply to the decision, as if the decision were a development approval.

Transitional arrangements

Section 286 of the Planning Act provides that a decision notice about a request to apply a superseded planning scheme under the SPA is taken to be a decision notice under the Planning Act. It also provides that a planning scheme that was a superseded planning scheme under the SPA immediately before the commencement of the Planning Act is taken to be a superseded planning scheme for the purposes of the Planning Act.

Section 295 of the Planning Act provides that, even where a request had not been decided when the Planning Act commenced, after commencement the same criteria apply as listed under 'When a local government agrees to a request' in this fact sheet.

However, for any request related to a request for compliance assessment under the SPA, those criteria apply as if there were an agreement to accept a code-assessable development application for the proposed development. This is because compliance assessment is now code-assessable development under the Planning Act.

Further information

Additional fact sheets, information about the DA forms and other related matters are available on the department's planning [website](#).