

# Development assessment—request to apply a superseded planning scheme

This fact sheet describes the circumstances under which an applicant may request a local government to apply a superseded planning scheme to a development application or request compliance assessment under such a scheme.

## Summary

Under the *Sustainable Planning Act 2009* (SPA) a person can make a request to a local government asking it to apply a superseded planning scheme to the carrying out of development or to assess a development application or request for compliance under a superseded planning scheme.

These provisions relate to the right to compensation in chapter 9, part 3 of SPA, because an entitlement to compensation does not arise unless the person makes a request to apply a superseded planning scheme.

## What is a superseded planning scheme?

A superseded planning scheme for a planning scheme area is the planning scheme, or any related planning scheme policies, in force immediately before:

- the planning scheme or policies, under which a development application is made, took effect, or
- the amendment, creating the superseded planning scheme, took effect.

Note: a planning scheme that was a superseded planning scheme under the repealed *Integrated Planning Act 1997* immediately before the commencement of SPA is taken to be a superseded planning scheme for the purposes of SPA.

## When can a request to apply a superseded planning scheme be made?

A request to apply a superseded planning scheme can be made in the circumstances set out in the table on the next page.

## Requirements for a request to apply a superseded planning scheme

A request to apply a superseded scheme must be made within one year of the new planning scheme or planning scheme policy, or amendment to the planning scheme or planning scheme policy, taking effect.

Note: for new planning schemes or amendments to planning schemes that took effect before SPA commenced, this one-year time frame does not apply (see the notes about transitional arrangements below).

The request must be made using *Request to apply a superseded planning scheme—Sustainable Planning Act form 2*. This form is available on the department's website [www.dsdiqld.gov.au](http://www.dsdiqld.gov.au)

The request must also:

- be accompanied by the applicable fee, and
- contain a description of the proposed development or be accompanied by a copy of the proposed development application or request for compliance assessment.

## Deciding a request

The local government must decide the request within 30 business days after receiving the request. This period is called the **request period**. The local government may extend this period by a further 10 business days. Any further extensions must be agreed to by the person making the request.

If the local government does not decide the request within the request period or any extension of that period, the local government is taken to have decided to agree to the request. In the case of a request to assess and decide a development application or a request for compliance assessment under a superseded planning scheme, the local government is not agreeing to approve the development. It is only agreeing to assess the application or request using the superseded planning scheme. The local government must give the person making the request written notice of the decision within five business days after making the decision.

Requirements of superseded planning scheme	Requirements of current planning scheme	Nature of request
Development is exempt development or self-assessable development	Development is assessable development, prohibited development or development requiring compliance assessment	To apply the superseded planning scheme to the carrying out of the development
Development is assessable development	Development is assessable development, but the following has changed (for example): <ul style="list-style-type: none"> <li>• the application now requires impact assessment, rather than code assessment</li> <li>• the requirements of an applicable code</li> </ul>	To assess and decide the application under the superseded planning scheme
Development is assessable development	Development is prohibited development, and so a development application cannot be made	To accept a development application and assess and decide the application under the superseded planning scheme
Development, documents or works require compliance assessment	Development, documents or works require compliance assessment, however the matters or things against which the request is assessed have changed	To assess and decide a request for compliance assessment under the superseded planning scheme
Development requires compliance assessment	Development is assessable development or prohibited development	To accept a request for compliance assessment and assess and decide the request under the superseded planning scheme.

## When the local government agrees to a request

### Request to carry out development under a superseded planning scheme

If the local government agrees, or is taken to have agreed, to a request to apply a superseded planning scheme to the carrying out of development, no development permit or compliance permit is required for the development. However, the development must be carried out within the following periods:

- for a material change of use—the first change of use must start within four years after notice of the decision is given, or was entitled to be given
- for a reconfiguring a lot—a plan for the reconfiguration is to be given to the local government within two years after notice of the decision is given, or was entitled to be given
- for other development—the development must be substantially started within two years after notice of the decision is given, or was entitled to be given.

These periods may be extended if the person gives written notice to the local government before the end of the relevant period stated above.

If the local government refuses the request to extend the period, the person may appeal against the refusal.

### Request to assess and decide a development application under a superseded planning scheme

If the local government agrees, or is taken to have agreed, to a request to assess and decide (or accept, assess and decide) a development application under a superseded planning scheme, a development permit is required for the development. Therefore, a development application must be made to the assessment manager. A development application to which a superseded planning scheme applies is known as a development application (superseded planning scheme).

The development application (superseded planning scheme) must be made within six months after the day the person is given, or was entitled to be given, notice that the local government agreed to the request to apply the superseded planning scheme.

Note: if the new planning scheme or planning scheme amendment creating the superseded planning scheme took effect before the SPA commenced, a shorter period for making the development application applies. See the notes about transitional arrangements below.

### Request to assess and decide a request for compliance assessment under a superseded planning scheme

If the local government agrees, or is taken to have agreed, to a request to assess and decide (or accept, assess and decide) a request for compliance assessment under a superseded planning scheme, a compliance permit or compliance certificate is required. Therefore, a request for compliance assessment must be made to the compliance assessor.

The request for compliance assessment must be made within six months after the day the person is given, or was entitled to be given, notice that the local government agreed to the request to apply the superseded planning scheme.

## Transitional arrangements

Where a new planning scheme or amendment to a planning scheme came into effect before the commencement of SPA:

- the period within which a request to apply a superseded scheme must be made is **two years** from the day the change took effect, rather than one year
- if the request to assess a development application under a superseded planning scheme is approved, the time limit for making the development application (superseded planning scheme) is **20 business days**, rather than six months.

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## Further information

Further fact sheets on related matters are available on the department's website.

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