

**Is there still such a thing as a
prohibited use?**

LGPA Networking Breakfast

2 August 2018

DEEMED PROVISIONS clause 27(1)

‘A decision-maker for an application for development approval or subdivision approval in an area that is covered by a structure plan that has been approved by the Commission is to have due regard to, but is not bound by, the structure plan when deciding the application.’

TYPICAL STRUCTURE PLAN PROVISIONS

- 5.1 Subject to clause 5.3, if a Structure Plan imposes a classification on the land included in it by reference to reserves, zones, or the Residential Design Codes then:
- the provisions of the Structure Plan apply to the land as if its provisions were incorporated into the Scheme and it is binding and enforceable in the same way as corresponding provisions incorporated in the scheme; and
 - the provisions in the Scheme applicable to land in those classifications under the Scheme apply to the Structure Planning Area.

TYPICAL STRUCTURE PLAN PROVISIONS

- 5.2 Without limiting the generality of clause 5.1, under a Structure Plan:
- (a) in the areas designated as zones, the permissibility of uses is to be the same as set out in the Zoning Table as if those areas were zones under the Scheme having the same designation;
 - (b) the standards and requirements applicable to the zones and residential density code under the Scheme apply to the areas having corresponding designations under the Structure Plan, unless otherwise provided in a detailed area plan;
 - (c) the planning approval procedures including the procedures for the approval of uses and developments under the Scheme are to apply as if the land were correspondingly zoned or reserved under the Scheme; and
 - (d) any provision, standard or requirement in the Structure Plan is to be given the same force and effect as if it were a provision, standard or requirement of the Scheme.

Amherst Developments

- Zoned Residential Development.
- Scheme required ODP (Structure Plan).
- ODP showed land as Local Centre.
- Local Centre zone allowed 27 multiple dwellings.
- Residential Development zone restricted the development potential.

Amherst Developments

SAT Comment

“Given that the Structure Plan cannot have the effect of altering the site’s zoning, all it can do is indicate, as a matter of strategic planning, the planned future zoning of the site.”

Definition of a Structure Plan

Structure plan means a plan for the co-ordination of future subdivision and zoning of an area of land.

ALH & JDAP

- 17 April 2015 – DA approved.
- 17 April 2017 – DA lapsed (no substantial commencement).
- 26 October 2017 – to amend DA to extend substantial commencement period.
- 19 June 2018 – Scheme amendment.
- 16 July 2018 – SAT decision.

DEEMED PROVISIONS clause 77

77. Amending or cancelling development approval

- (1) An owner of land in respect of which development approval has been granted by the local government may make an application to the local government requesting the local government to do any or all of the following —
 - (a) to amend the approval so as to extend the period within which any development approved must be substantially commenced;
 - (b) ...

- (2) An application under subclause (1) —
 - (a) ...
 - (b) may be made during or after the period within which the development approved must be substantially commenced.

TYPICAL USE PERMISSIBILITY

(2) The symbols used in the zoning table have the following meanings —

- P means that the use is permitted if it complies with any relevant development standards and requirements of this Scheme;
- I means that the use is permitted if it is consequent on, or naturally attaching, appertaining or relating to the predominant use of the land and it complies with any relevant development standards and requirements of this Scheme;
- D means that the use is not permitted unless the local government has exercised its discretion by granting development approval;
- A means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions;
- X means that the use is not permitted by this Scheme.

Deemed provisions clause 68(2)

- (2) The local government may determine an application for development approval by —
- (a) granting development approval without conditions; or
 - (b) granting development approval with conditions; or
 - (c) refusing to grant development approval.

Deemed provisions clause 67

In considering an application for development approval the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application —

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area.

Common zoning table provision

The Zoning Table indicates, subject to the provisions of the Scheme, the permissibility of uses in the Scheme area in the various zones.