

SUBDIVISION ACT USER GUIDE

This guide replaces *The New Subdivision Act – A User’s Guide*, Ministry for Planning and Environment, October 1989.

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1.1 Purpose of the guide

The current system for the approval of subdivisions has been in place in Victoria since the introduction of the *Subdivision Act 1988*.

The Subdivision Act sets out the main elements and procedures for the approval of plans of subdivision, including procedures for the certification and registration of plans.

The purpose of this guide is to provide advice and guidance to councils, servicing agencies and referral authorities on the subdivision approvals system and their responsibilities under the Subdivision Act and the *Planning and Environment Act 1987*.

Although, the guide is principally focused on the approval process administered by councils, it also seeks to assist people who are not familiar with the subdivision approvals system or the steps involved in seeking approval of a plan.

1.2 The guide

The guide is divided into chapters that relate to the major steps and issues in the approval of plans. These are:

- subdivision and the planning system
- referral of applications and plans
- certification of plans
- owners corporations and common property
- requirements for works and open space
- statements of compliance
- specific subdivision matters
- fees and other contributions.

Each chapter lists key legislative references and any relevant documents about the topics discussed.

1.3 The subdivision approval process

The Subdivision Act, the Subdivision (Procedures) Regulations 2011 and Subdivision (Registrar's Requirements) Regulations 2011 set out the procedures and requirements for the approval of the following dealings in land:

- subdivision of land (including buildings and airspace)
- consolidation of land
- the creation, variation or removal of an easement or restriction
- the creation of common property and some dealings with common property.

Under section 3 of the Subdivision Act 'land' includes buildings and airspace.

If a person wishes to carry out any of the above dealings in Victoria they must do so using a plan approved and registered in accordance with the Subdivision Act and the Regulations.

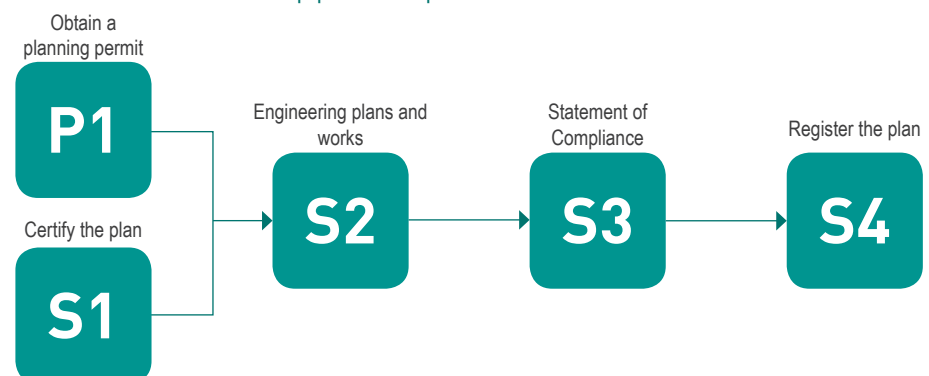
'Plan' is defined under section 3 of the Subdivision Act and includes a plan of:

- subdivision
- consolidation
- creation, variation or removal of an easement or restriction.

Generally, any person who wishes to have a plan registered must:

- obtain a planning permit under the *Planning and Environment Act 1987* (unless the subdivision is exempt from requiring a planning permit)
- prepare a plan in accordance with the Subdivision Act and the Regulations
- submit the plan to the council for certification
- obtain approvals for any engineering plans (if required) and complete any works
- obtain a statement of compliance from the council
- lodge the certified plan at Land Victoria for registration together with the statement of compliance and any prescribed information.

The subdivision approval process



The diagrams contained in the appendices to this guide summarise the steps in the approval process and the statutory framework provided by the *Planning and Environment Act* and the *Subdivision Act*.

2.1 Overview

The Victorian planning system is established and administered under the *Planning and Environment Act 1987* and plays an important role in the approval of plans of subdivision under the Subdivision Act.

This chapter explains the role of the planning system in approving plans of subdivision and its relationship with the Subdivision Act.

The role of the planning system

Under the Subdivision Act, subdivisions are controlled through the planning system. Either a planning permit will be required or the planning scheme provisions must specifically allow for subdivision without a permit.

While the Subdivision Act principally focuses on the technical aspects of subdivision approvals, the planning system ensures that land is used and developed in a sustainable manner, having regard to a range of environmental, social and economic considerations.

Planning schemes regulate the use and development of land. Under the Planning and Environment Act, development includes the subdivision or consolidation of land.

Before a subdivision proposal can proceed to be certified or registered under the Subdivision Act it will normally require a planning permit. However some subdivisions are exempt from the requirement to obtain a planning permit.

Clause 62.04 identifies classes of subdivisions that are exempt from the requirement to obtain a planning permit under the planning scheme.

2.2 The role of council

The role and functions of a council as a responsible authority in administering the planning scheme under the Planning and Environment Act are different to its role and functions under the Subdivision Act.

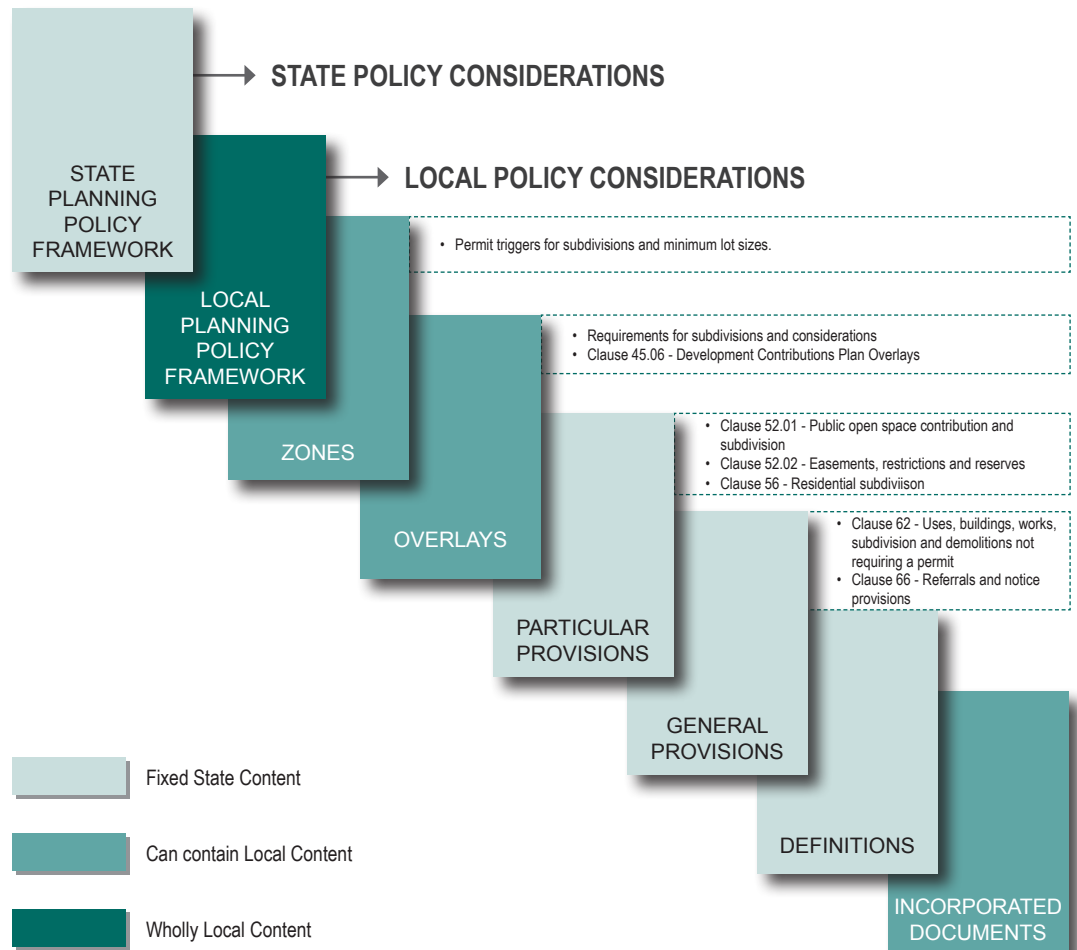
The range of issues and scope of discretion in determining planning permit applications can be quite broad under the Planning and Environment Act. The matters to be considered by council in deciding whether to certify a plan under the Subdivision Act is much narrower and often limited to matters of technical compliance rather than matters of policy under the Planning and Environment Act.

A council must be aware of this distinction in carrying out its functions under the planning and subdivision legislation.

2.3 Operation of planning schemes

There are several sections in the planning scheme that will inform the policy, requirements and decisions about the subdivision of land.

Victoria Planning Provisions and subdivision



2.4 Planning permits for subdivisions

Planning schemes apply zones to land which will determine whether the land can be subdivided. Overlays can also include controls relevant to subdivision, including minimum lot sizes and other design requirements.

It is important to note that, because a zone provides that an application may be made to subdivide land, this does not mean that a permit will be granted. Applications for a planning permit must be consistent with state, regional and local objectives and policies identified in the planning scheme.

When considering a permit to subdivide land, the responsible authority, which in most cases is the council, will consider:

- any state and local planning policy implications of the subdivision proposal
- whether any proposed new lots can be appropriately serviced by utilities and other infrastructure

- whether access to any new lots can be secured
- whether open space and other facilities have been provided for
- whether the land is capable of sustaining an increased intensity of use or development which would follow the subdivision
- whether the subdivision accords with any earlier approved permit
- how the subdivision relates to and affects existing buildings.

Generally, if any lots shown on a proposed plan of subdivision are less than the lot area that is specified in the planning scheme, the responsible authority cannot approve the permit application.

2.5 Do all subdivisions require a planning permit?

While most subdivisions require a planning permit, there is a number of exemptions to the permit requirements of planning schemes. These are set out in Clause 62.04 of planning schemes and include:

- A subdivision by an authority acquiring the land which does not create an additional lot, generally facilitated by section 35 of the Subdivision Act.
- A subdivision by a public authority or utility service provider which does not create an additional lot other than for the sole purpose of a minor utility installation. This does not apply if a permit is required to subdivide land under an overlay.
- A subdivision by an authority acquiring the land which creates additional lots if the additional lots are severed parcels of land without legal access to an existing road and the additional lots are retained by the acquiring authority or sold to an abutting land owner on the condition that the lot be consolidated with abutting land.
- 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 five percent or by less than 30 square metres, which ever is the 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.

A permit is also generally not required to consolidate land unless a zone or overlay includes a specific permit trigger.

2.6 The permit application process

To lodge a permit application for subdivision an applicant must complete a permit application form and prepare plans that accurately show the proposed subdivision and any other information required by the planning scheme.

The standard of plans and information required to determine a permit application for subdivision will vary according to the nature of the application and the particular zone and overlay which affect the land in question.

If a responsible authority considers that it does not have sufficient information to make a decision on the permit application, it has the ability to request additional information under section 54 of the Planning and Environment Act.

If a request for further information is made within 28 days from the date the application was lodged the clock is stopped for the purposes of determining whether a council has failed to decide an application within the prescribed time and whether an application for review can be lodged at VCAT for failure to decide.

At a minimum the following information should be provided for any application for subdivision submitted for planning approval:

- how the proposal is consistent with State and local planning policy
- the location, size of the site and nature of the proposal
- the number of proposed lots and means of access
- where appropriate, adjoining uses, lots and buildings
- any existing and proposed easements
- larger subdivisions will generally need to show the proposed basic road layout and how it relates to any existing approved development plans or structure plans for the area

- the main natural or man-made features of the site and any previous uses of the land that might affect its suitability for the proposed use
- levels and contour information may be required depending on the nature of the subdivision proposal
- adjacent and intended reserves or open space should be shown where appropriate.

For residential subdivisions Clause 56.01 of planning schemes sets out detailed information requirements which must accompany applications to subdivide land.

While some councils require additional information in specific circumstances for certain permit applications, many detailed matters requiring attention during the development of a subdivision can be adequately covered by including conditions on the permit. Any information requested should be proportionate to the scale and complexity of the application.

Once the responsible authority has sufficient information, it may direct that public notification of the permit application be given to affected owners and occupiers of surrounding land under section 52 of the Planning and Environment Act.

Many zones and overlays exempt applications for subdivision from the notice requirements of section 52 of the Planning and Environment Act. Please refer to the relevant zone and overlay for notice requirements.

Permit applications for subdivisions must also be referred to referral authorities identified in the relevant planning scheme under section 55 of the Planning and Environment Act. Referrals of planning applications can often occur concurrently with applications for certification. This is discussed in more detail in the following chapter.

A permit applicant may apply to VCAT for a review:

- if a responsible authority fails to make a decision within the prescribed time
- of a decision by a responsible authority to refuse a permit application
- of any conditions imposed on the permit.

An objector may also apply for review of a notice of decision to approve a permit application.

The prescribed time for determining an application is set out in regulation 31 of the Planning and Environment Regulations. The Regulations also set out when the prescribed time starts and when it stops.

A summary of the planning permit application process is shown in Diagram P1 included in Appendix 1.

2.7 Permit conditions

A responsible authority can include conditions on a permit for subdivision. Conditions must be reasonably related to the proposal and be necessary to deliver particular planning outcomes. In some circumstances a council is required to impose conditions requested by referral authorities.

Referral authorities will often direct responsible authorities to include conditions on permits that may require the land owner to enter into agreements with utility providers for the provision of services or for the further referral of plans prior to certification.

Responsible authorities may also include requirements for the land owner or permit applicant to undertake specific actions or to submit further documents such as amended plans for approval or endorsement.

All relevant issues must be covered by an appropriate condition in the planning permit because there is no second chance to make further requirements at the certification stage.

The timing specified for these requirements may be before the certification of the plan is issued or prior to the issue of the statement of compliance for the subdivision. While the failure to comply with such requirements may give rise to non-compliance with the particular planning permit, councils can only withhold certification or statements of compliance in the circumstances prescribed under the Subdivision Act. This is addressed in the Chapter 4.

2.8 Section 173 agreements

A responsible authority may enter into an agreement with a landowner pursuant to section 173 of the Planning and Environment Act to bind the owner in respect of the future use and development of the land. Such agreements are typically used where planning issues need to be addressed beyond the expiry of a subdivision permit. Once executed, a section 173 agreement is normally registered on title to the land. If registered, the agreement will also bind future land owners, including the owners of any new lots created by a subdivision.

Such agreements are often required by a permit condition however they can also be voluntarily entered into by permit applicants prior to any permits being issued and outside the permit application process.

Section 173 agreements can also be used to defer obligations for works or contributions. This is addressed in the following chapters of this guide.

2.9 Can the planning permit and certification processes run together?

Yes. Where a planning permit application for subdivision includes a plan of a suitable standard for certification then the planning permit and certification processes may run in parallel. This is explained in more detail in Chapter 4.

Key documents:

Planning and Environment Act 1987

Planning scheme:

- Clause 56 – Residential subdivision
- Clause 62 – Use, buildings, works, subdivisions and demolition not requiring a permit
- Clause 66 – Referrals and notice provisions

Forms:

For planning permit application forms go to the relevant council website or www.dpcd.vic.gov.au/planningapplicationform

Further information:

Using Victoria's Planning System - Chapter 3 Planning Permits

Planning practice note

- PN40: Using the residential subdivision provisions Clause 56 – Residential subdivision

3

Referral of applications & plans

3.1 Overview

Almost all plans of subdivision must be referred to a list of agencies (referral authorities) nominated in the planning scheme. The purpose of the referral process is to provide authorities whose interests may be affected by a subdivision with a copy of the proposal and the opportunity to ensure that its responsibilities or assets are not adversely affected.

Referral takes place at the planning permit application stage and also, if necessary, at the certification stage.

This chapter explains the procedure and requirements for referrals.

3.2 When should an application and plans be referred?

Referrals take place either at the planning permit stage (under section 55 of the Planning and Environment Act) or at the certification stage (under section 8 of the Subdivision Act).

Under section 8(1) of the Subdivision Act, a council must refer a plan to a referral authority if:

- it is required by the planning scheme or the permit; or
- the authority is likely to have an interest in any easement or restriction which is to be created, varied or removed, unless the authority has agreed to the easement or restriction in connection with the planning scheme or permit.

3.3 Referral of a planning permit

Clause 66.01 of planning schemes lists the types of subdivision applications that are required to be referred and the referral authorities to which a planning permit application and plans must be sent.

Clause 66.01-1 lists conditions that must be included on a permit for any subdivision listed in Clause 66.01 that is not required to be referred.

Zones and overlays may also contain additional requirements for the referral of permit applications for subdivision.

An application for a planning permit for a subdivision must be referred to the relevant referral authority without delay under the provisions of section 55 of the Planning and Environment Act. This is generally taken to mean within seven days (or five working days) of the receipt of the application.

An application or plan need not be referred to an authority under the provisions of either section 55 of the Planning and Environment Act or section 8 of the Subdivision Act if, within three months of the application for planning permit or certification, that authority has already considered the proposal and stated in writing that it does not object to the granting of a permit or to the certification of the plan.

When referring an application, a council should distinguish between a referral under section 55 of the Planning and Environment Act or a notice under section 52 of the Planning and Environment Act. Councils also need to be clear whether the referral is made under the Planning and Environment Act or under the Subdivision Act.

3.4 Referral of application for certification

Clause 66.01-2 of planning schemes sets out circumstances in which an application for certification under the Subdivision Act must be referred. These include when:

- a referral is required by a permit issued under the planning scheme. The plan must be referred to the relevant referral authority
- 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
- 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
- council considers the plan may affect existing sewerage, water, drainage or other works.

Applications for planning permits can occur concurrently with applications for certification. However a plan cannot be certified before a planning permit is issued if a permit is required. If planning and certification applications are processed concurrently then the prescribed times for decisions, referrals and so on under the Planning and Environment Act apply, rather than those under the Subdivision Act.

A plan submitted for certification under section 8 of the Subdivision Act (for which a planning permit will often have been issued) must be referred to relevant referral authorities within seven days of receipt of the plan as set out in Subdivision (Procedures) Regulations, regulation 13. Councils are obliged to record the date of receipt of the application on the prescribed application form for certification as set out in Subdivision (Procedures) Regulations, regulation 6 Form 1.

3.5 When must a referral authority respond under the Planning and Environment Act?

Where a planning application for a subdivision is referred under section 55 of the Planning and Environment Act, the referral authority has 28 days from the receipt of the referral to respond. However, there is no requirement for a referral authority to respond. If no response is received, the responsible authority can go on to determine the application without the need to consider any of the referral authority's issues. The referral

authority can, within 21 days of receiving the referral, tell the council it requires further information. In which case it has a further 28 days from when the further information is received to respond.

In addition, section 56(4) of the Planning and Environment Act provides for a referral authority to request the Minister to allow it more time to consider a proposal. This is not a provision that should be used except in the most exceptional circumstances, involving very complex applications.

3.6 When must a referral authority respond under the Subdivision Act?

The Subdivision Act is more specific about the requirement to respond to a referral of an application for certification. Under section 9(3) of the Subdivision Act, if the referral authority does not reply within the prescribed time or fails to give written reasons, it is taken to have consented.

A referral authority (or a council) may request an applicant to provide more information about a plan within a time specified by the council or authority. Under section 11A of the Subdivision Act, a request for further information can only be made once.

Where a plan for certification is referred under section 8 of the Subdivision Act it should be accompanied by the prescribed form (Subdivision (Procedures) Regulations, Form 1) that is, the application form on which the date of receipt of the application is shown. The referral authority then has to respond to the council within 35 days of the date shown on the form, which should generally give the authority about 28 days to check the submitted plan.

3.7 What must a referral authority do?

Under section 56 of the Planning and Environment Act, a referral authority must consider every application for a planning permit referred to it and may tell the responsible authority that it either:

- does not object to the granting of the permit; or
- does not object if the permit is subject to conditions specified by the referral authority; or
- objects to the granting of the permit on any specified grounds.

Where a referral authority objects to the granting of a permit, the responsible authority must refuse the permit. Where the referral authority requests conditions to be included in a permit, the responsible authority must include the conditions in the permit.

When it considers an application to certify a plan a referral authority under section 9 of the Subdivision Act must tell the council that it either:

- consents to the plan; or
- requires specified alterations; or
- refuses consent.

If a referral authority requires specific alterations, it should respond in writing with reasons to both the council and the applicant. (*Subdivision (Procedures) Regulations, Form 5*).

If a referral authority requires a plan to be significantly altered, then it can either:

- negotiate directly with the applicant, or
- refuse consent and give reasons to both the council and the applicant (*Subdivision (Procedures) Regulations, Form 6*).

3.8 Why must a plan be referred again at the certification stage?

Generally, the purpose of a referral at the certification stage will be to enable relevant referral authorities to check that arrangements have been made to ensure any requirements on the planning permit will be properly complied with. Plans will need to meet required standards and show required works, and appropriate bonds, commitments or other agreements have been made to secure compliance with the requirements as the development proceeds.

Key documents:

Planning and Environment Act 1987

Planning scheme provisions:

- Clause 66 – Referrals and notice provisions

Subdivision Act 1988

Subdivision (Procedures) Regulations 2011

Forms:

Subdivision (Procedures) Regulations, Schedule 1:

- Form 1 – Application for certification of plan
- Form 5 - Requirement for Alterations to Plan
- Form 6 - Refusal of Consent by Referral Authority

Further information:

Using Victoria's Planning System - Chapter 3 Planning Permits

4

Certification of plans

4.1 What is certification?

Certification is the key administrative step in enabling a subdivision proposal to proceed. Certification is undertaken by councils and ensures that any proposed plan of subdivision complies with the Subdivision Act, the regulations and any requirements of the planning scheme or planning permit and any matter required under section 6(1) of the Subdivision Act.

A summary of the certification process is provided in diagram S1 in Appendix 2.

4.2 Can a plan be certified before or at the same time the planning permit is considered?

If an applicant wishes to proceed with fully surveyed and detailed plans at the outset, both the planning permit and certification procedures can be handled concurrently. This will generally occur with developments which have already been permitted or constructed or where existing policies and guidelines are well established.

Under section 5(4) of the Subdivision Act, a council can accept and consider a plan for certification even if a planning permit is required but has not been issued.

However a plan cannot be certified before a planning permit is issued or if a planning scheme does not provide for a subdivision of the type proposed. If planning and certification applications are processed concurrently then the prescribed times (for decisions, referrals and so on) under the Planning and Environment Act apply, rather than those under the Subdivision Act.

4.3 Applying for certification

The formal certification process begins when an application is made to the council on the prescribed form (Subdivision (Procedures) Regulations, Form 1), accompanied by the proposed plan of subdivision and the prescribed fee.

Plans accompanying an application for certification must comply with the Subdivision Act, the Regulations and the provisions in a planning scheme or indicate how it is proposed to meet conditions on a planning permit. A full list of matters that need to be complied with is set out in section 6(1) of the Subdivision Act. Under section 6(2) of the Subdivision Act a council must refuse to certify a plan of subdivision if the conditions in section 6(1) are not met and give its reasons to the applicant in writing.

4.4 What are the plan numbers and how do they work?

Under regulation 6 of the Subdivision (Registrar's Requirements) Regulations, all plans of subdivision and plans of consolidation must have a plan number, usually beginning with "PS".

Plan numbers are obtained from Land Victoria by surveyors when they prepare plans of subdivision and they will be allocated before lodging any plans for certification.

All plans and related forms must have the plan number when submitted to the council for certification.

Once registered, the plan number will become the registered plan of subdivision number.

Some types of plans, such as a plan under sections 32, 32AI and 32AL of the Subdivision Act or for creation, variation or removal of an easement or restriction, will not have a plan number and will refer to the plan number of the plan proposed to be altered.

4.5 How long does council have to certify a plan?

Under regulation 7 of the Subdivision (Procedures) Regulations, councils have a total of 49 days (seven weeks) in which to certify most plans of subdivision. The exceptions are:

- plans where no referrals are required which must be completed within 21 days
- procedural plans which require neither a planning permit nor a referral and must be dealt with within 14 days.

Within these time limits a council must:

- under regulation 15 of the Subdivision (Procedures) Regulations, send the plan to any relevant referral authority within seven days of receiving the plan
- if the plan is referred, send a copy of Form 1 to the applicant, endorsed with the date of receipt of the application and the names of the authorities to which the application has been referred.

4.6 How long does a referral authority have to respond to a plan?

A referral authority must respond to a council within 35 days from the date council received the application (that is, the date shown on Form 1). The 35 days includes the 7 day period council has to refer the application to the referral authority.

The referral authority will usually have 28 days in which to review the proposal in respect to any requirements placed on the planning permit or incorporated into the planning scheme.

4.7 What if a referral authority requires changes to a plan?

If a referral authority requires a specific change to the plan before it will consent to certification it must tell the council within 35 days of the date on Form 1. The clock will then stop until the altered plan is received by the council. A referral authority may only require a plan to be changed once.

4.8 Can a plan be altered after it is submitted for certification?

Yes. Sections 71, 72 and 73 of the Planning and Environment Act enable a planning permit that has been issued to be amended. Section 11 and regulation 8 of the Subdivision Act enable plans that have been submitted for certification to be amended.

A council may request alterations to applications for planning permits under section 50 of the Planning and Environment Act and plans submitted for certification under section 10 of the Subdivision Act.

4.9 What if the requirements of a council and a referral authority conflict?

Under section 10(6) of the Subdivision Act, a council may not make or agree to any requirement or alteration that is inconsistent with a requirement of a referral authority or conflicts with any notice of acquisition published in the Government Gazette.

4.10 Can alterations or more information be requested at the certification stage?

A council or a referral authority may request further information about a plan only once, if it decides it needs that information before it can certify a plan. Councils should take care not to confuse their powers to request further information under section 11A with their powers under section 10 of the Subdivision Act to request specific alterations to a plan to make it suitable for certification.

A council should decide as soon as practicable whether it will require changes to a plan for certification. Where there is a possibility of a conflict occurring between the requirements of the council and a referral authority, the council may need to wait for the referral authority's advice.

A council has up to 42 days (seven days after the referral authority must respond) in which to require an alteration to a plan. Once an alteration has been requested, the clock stops until the altered plan is received.

4.11 What happens if a referral authority does not respond in the prescribed time?

In the case of both plans and amendments to plans submitted for certification, under section 11(4) of the Subdivision Act, if a referral authority does not respond within the times set out in the regulations, it consents.

4.12 What options exist for a referral authority when considering plans submitted for certification?

Apart from requesting specific alterations or requesting further information, a referral authority only has two options when finally considering the submitted plan. It may either consent to the plan or refuse consent. If it refuses consent or asks for specific alterations, it must give written reasons in writing to both the council and the applicant.

4.13 Must a council certify a plan?

If a plan meets the conditions on the planning permit or the provisions of a planning scheme and the matters set out under section 6(1) of the Subdivision Act, then subject to any other necessary checks and qualifications a council is required to certify the plan.

If a council considers that the plan does not meet the planning conditions stipulated in the planning permit or scheme, or in some other way does not meet the requirements of section 6(1) of the Subdivision Act then it must refuse to certify the plan and give written reasons.

Planning permits often require permit applicants to do a range of things before a plan is certified. Unless the permit conditions require something to be shown on the plan of subdivision or the plan itself is inconsistent with the plans endorsed under the permit, council cannot withhold certification on this basis.

Certification is an administrative process. The only discretion allowed to a council or referral authority is whether or not a plan conforms to the conditions of a permit or the provisions of a planning scheme or any other matter set out in section 6(1) of the Subdivision Act.

4.14 Can decisions under the Subdivision Act be appealed?

Yes. Section 39 of the Subdivision Act provides for appeals to VCAT if a council fails or refuses to certify a plan, approve an engineering plan or issue a statement of compliance. An applicant may also appeal against the refusal of a referral authority to consent to the certification or amendment of a plan or approve an engineering plan. In addition, an applicant can appeal when either a council or a referral authority requires an alteration to a plan that the applicant feels is unreasonable.

4.15 What is the life of a certified plan?

A plan certified under section 7 of the Subdivision Act will have a life of five years from its initial date of certification. If it is not registered within that time the plan lapses.

It is important to note that the expiry of a planning permit for subdivision, while normally linked to the certification of a plan for a subdivision, is a separate matter.

Sections 68(1) and (3A) of the Planning and Environment Act set out the circumstances in which planning permits for subdivision expire.

4.16 Council must keep a register

Each council must keep a register of applications made to it under the Subdivision Act. Details of the matters to be recorded are set out in regulation 33 of the Subdivision (Procedures) Regulations 2011.

The register may be kept in conjunction with the register of permit applications required to be kept under section 48(1) of the Planning and Environment Act.

4.17 Certification of plans before commencement of works

The Subdivision Act allows for lots to be pre-sold from a certified, and in some cases uncertified, plan before any work has necessarily commenced on the ground.

A council should be satisfied that all council and referral authority requirements for certification have been released by those bodies before certification occurs. These may include a plan showing a reserve to vest in council on registration of a plan.

Before the issue of a statement of compliance, a licensed land surveyor will be required to complete a form setting out that all structures exist as shown on the plan.

The statement of compliance, rather than the certification of the plan, is the time for council to ensure compliance with public work related conditions and requirements. (See Chapter 6 Requirements for works and open space.)

4.18 Consent of owner required for certification application

Under section 5 of the Subdivision Act, any person may apply for certification with the written consent of the owner. This must include all owners of all of the land being subdivided, including all tenants in common and joint proprietors.

Any applicant signing in the capacity of an agent (as allowed under the section 5(6) of the Subdivision Act) must state that he/she is signing as agent for the owner. If more than one owner is involved that signatory must note that he/she is acting as agent for all of the owners.

Key documents:

Subdivision Act 1988

Subdivision (Procedures) Regulations 2011

Forms:

Form 1 - Application for Certification of plan

Form 2 - Certification of plan by Council

Form 3 – Concurrent Certification and Statement of Compliance

Form 5 - Requirement for Alterations to Plan

Form 6 - Refusal of Consent by Referral Authority

Form 7 – Notice of Recommencement of Referral Time

Form 8 - Application to Amend Certified Plan

Form 9 - Requirement of Alterations to Plan

Form 16 - Refusal

5.1 Overview

With higher density living comes an increasing need for shared facilities, including on-site access-ways and gardens, which are usually located within areas identified and managed as 'common property'.

Section 3 of the Subdivision Act defines owners corporations as a body corporate that is incorporated by registration of:

- a. A plan of subdivision; or
- b. A plan of strata subdivision; or
- c. A plan of cluster subdivision.

Where a plan of subdivision proposes to create common property, section 27A of the Subdivision Act requires one or more owners corporations to be created.

An owners corporation is incorporated and created by the registration of a plan of subdivision as set out in section 28 of the Subdivision Act.

Owners corporations provide for the ownership and management of common property and are regulated by the *Owners Corporations Act 2006* and *Owners Corporations Regulations 2007*.

The Subdivision Act sets out specific requirements for plans of subdivision which affect common property, including requirements for owners corporations to provide appropriate consent.

5.2 What is common property?

Section 3 of the Owners Corporation Act defines common property as land shown as common property on a plan of subdivision or a plan of strata or cluster subdivision.

Common property is not specifically defined under the Subdivision Act, however, it is included in the definition of 'land affected by an owners corporation' under section 3.

Land affected by an owners corporation means the lots the owners for the time being of which are the members of the owners corporation together with the common property for which the owners corporation is responsible.

Common property is held in the common ownership of lot owners in accordance with the lot entitlement and lot liability schedule included in the plan of subdivision.

Common property is owned by the relevant owners corporation on behalf of the lot owners.

5.3 What is an owners corporation?

Section 3 of the Owners Corporation Act defines an owners corporation as a body corporate which is incorporated by registration of a plan of subdivision or a plan of strata or cluster subdivision.

Its functions are primarily to administer and manage the common property, including to repair and maintain the common property and any related fixtures, equipment or services.

5.4 How is an owners corporation created?

Under section 27 of the Subdivision Act, an owners corporation is created upon registration of a plan of subdivision which provides for the creation of the owners corporation.

5.5 What must a plan specify to create an owners corporation?

If a plan of subdivision proposes to create common property it must also provide for the creation of an owners corporation. To create an owners corporation section 27F of the Subdivision Act requires a plan to specify the details of lot entitlement and lot liability.

A plan must also specify:

- the basis for the allocation of lot entitlement and lot liability
- the postal address for the service of notices on each owners corporation to be created as set out in regulation 15(1)(a) of the Subdivision (Registrar's Requirements) Regulations
- in the case of a limited owners corporation that is not limited to common property, the details of the limitation as required in regulation 15(1)(b) of the Subdivision (Registrar's Requirements) Regulations.

The 'lot entitlement' expresses the extent of the lot owner's interest in the common property. The lot entitlement also equates to the voting entitlement. The 'lot liability' expresses the proportion of the administrative and general expenses of the owners corporation that the lot owner is obliged to pay.

Lot entitlement and lot liability are defined under section 3 of the Subdivision Act.

Section 27E of the Subdivision Act provides that a plan may be accompanied by a document specifying proposed rules for the owners corporation. Section 193 of the Owners Corporations Act sets out that if no rules are attached to the plan then the model rules set out in the Owners Corporations Regulations, will apply to the owners corporation.

5.6 What are limited and unlimited owners corporations?

It is quite common for subdivisions of large multi-storey buildings to contain more than one owners corporation. Often the owners of lots in such developments will have different entitlements in respect of the use of particular facilities such as lifts, car parks and pools.

To provide for the different entitlements and responsibilities of lot owners, properties with multiple owners corporations, will normally have:

- an unlimited owners corporation, which will have responsibility for the whole subdivision common property; and
- one or more limited owners corporations which apply to particular parts of the building and have special ancillary functions, which will apply to only some lots.

Multiple owners corporations might be used where a person purchases an apartment in a section of a development which does not have access to a particular facility such as a pool or car park. In this case it is likely that the owner would be a member of the unlimited owners corporation which affects the whole property, but not a member of the limited owners corporation which manages the facilities in the other areas of the complex. Another frequent application of multiple owners corporations is in mixed use developments where different areas of common property are used by residential and retail uses.

At the time of creation of an owners corporation under a plan of subdivision the plan will need to specify whether an owners corporation is to be limited as set out in section 27C of the Subdivision Act. A plan may also be accompanied by a document which sets out the functions or obligations of the limited owners corporation as required under section 27C(4).

5.7 Altering a subdivision affected by an owners corporation

Section 32 of the Subdivision Act set outs the powers to alter a subdivision affected by an owners corporation.

Changes to a subdivision affected by an owners corporation will require the unanimous resolution of the owners corporation. These changes include to:

- dispose of or purchase any land (vested in the owners corporation)
- alter the boundaries of any land affected by the owners corporation
- increase or reduce the number of lots affected by the owners corporation
- create new lots or new common property
- create and name an owners corporation and specify the land to be land affected by that new owners corporation and specify lot entitlement and lot liability in relation to that owners corporation

- dissolve itself or merge with another owners corporation
- create, vary or remove any easement or restriction (including an implied easement)
- create roads or reserves.

Section 32AI of the Subdivision Act sets out very limited circumstances where a lot owner or owners may proceed to alter a subdivision affected by an owners corporation. This includes circumstances where it does not:

- alter the boundaries or area of existing common property
- alter the boundaries or lot entitlement or liability of lots not being consolidated, subdivided or altered
- add an area of land that is more than 10 per cent.

Section 32A of the Subdivision Act allows for the total consolidation or re-subdivision of all land in a plan that is affected by an owners corporation. As in section 32, a unanimous resolution of all members of the owners corporation is required before proceeding. If the land is mortgaged, the mortgagee's consent will be needed. Registration of a plan to consolidate or re-subdivide under section 32A dissolves the previous body corporate, therefore action under section 32 is not required.

The intention of section 32A is to enable total re-subdivision or consolidation of land affected by an owners corporation to occur without the need to first dissolve the owners corporation under section 32. All the land affected by relevant owners corporations must be included in the plan as the relevant owners corporations will be dissolved upon registration. Land affected by owners corporations from multiple plans maybe included in a section 32A Plan. It should be noted that land in the parent plan that is not affected by an owners corporation does not need to be included in the 32A plan and can retain its original lot description and plan number.

The plan may also include additional land, which is not affected by relevant owners corporations, that is, lots from within a parent owners corporation plan, which are not affected by the owners corporation or any other land (lots or Crown allotments) external to the parent owners corporation plan.

New titles issued under section 32A are free from the following encumbrances indicated on the parent plan and relevant parent titles any:

- caveat, mortgage, charge, lease or sub-lease
- easement under section 12, unless the easement affected the land before the registration of the previous registered plan.

Consent from all mortgagees of lots within the owners corporation to be dissolved must be supplied when the plan is lodged at Land Victoria.

5.8 What are 'unanimous' and 'special' resolutions?

A unanimous resolution of an owners corporation is a resolution passed by the total lot entitlements of all the lots affected by the owners corporation as set out under section 95 of the Owners Corporations Act.

A special resolution of an owners corporation is a resolution passed by 75 per cent of the total lot entitlements of all the lots affected by the owners corporation as set out in section 96 of the Owners Corporations Act.

5.9 When is a special resolution and a unanimous resolution required?

Section 32 of the Subdivision Act specifies when a unanimous resolution is required.

Generally plans proposing a change to a subdivision affected by an owners corporation will require the unanimous resolution of the relevant owners corporation before it can be certified. There are limited exceptions to this requirement provided under section 32A1 of the Subdivision Act, addressed above.

If in doubt, the licensed surveyor preparing the plan can provide a statement that a unanimous resolution of the owners corporation is not required or preferably add a notation to the plan before certification to achieve a similar effect.

Where it is proposed to alter the purposes of an owners corporation or the purposes or functions of a limited owners corporation, a special resolution of the unlimited owners corporation and the limited owners corporation will be required. These changes are made by applying directly to the Registrar (Land Victoria) under section 27H of the Subdivision Act.

5.10 Applications dealing with common property

Any application for certification which requires the unanimous resolution of the members of an owners corporation must be accompanied by a verified copy of the unanimous resolution of the owners corporation as set out under sections 6(1)(i) and 6(3) of the Subdivision Act.

All resolutions of an owners corporation must be recorded in writing in the minutes of the meeting of the owners corporation.

Ultimately a council must be confident that the plan under consideration is the actual plan or effectively the same as the plan which has been consented to by the owners corporation. It is up to the council to determine what it is prepared to accept.

Key documents:

Subdivision Act 1988

Subdivision (Procedures) Regulations 2011

Subdivision (Registrar Requirements) Regulations 2011

Owners Corporations Act 2006

Owners Corporations Regulations 2007

Forms:

Subdivision (Registrar's Requirements) Regulations 2011:

- Form 1 - Application for Alteration of Lot Entitlement and Liability
- Form 2 - Application for Removal of Restriction
- Form 3 - Application by owners corporation for Alteration or Cancellation of Scheme of Development
- Form 4 - Application by Registered Proprietor for Alteration or Cancellation of Scheme of Development

Owners Corporation Information form (Unlimited Owners Corporation)

Owners Corporation Information form (Limited Owners Corporation)

Notification of making of owners corporations rules

Further information

Your Guide to Limited Owners Corporations (Land Victoria)

Your Guide to Unlimited Owners Corporations (Land Victoria)

Guide to Owners Corporations (Consumer Affairs)

6

Requirements for works & open space

6.1 Overview

Before completing a subdivision and receiving a statement of compliance a number of requirements will normally need to be met. These may include requirements to provide public works, open space and to mark out lots on the land. These requirements are usually identified at the planning permit stage in conditions on the permit and will often include requirements for plans to be approved and checked prior to the commencement of certain works.

6.2 How are works requirements placed on subdivision proposals?

If a responsible or referral authority wishes to place a condition or requirement on a permit in respect to either works or open space, then the matters must be 'flagged' at the planning stage either through provisions in the planning scheme or as conditions on a permit.

If appropriate conditions have not been put on a permit, then unless the matters are specifically provided for in the planning scheme, it is not possible for either the council or referral authority to place requirements on the proposal.

6.3 Conditions or agreements

Where a requirement is to be placed on a permit it can be done either by placing a condition on a planning permit requiring that certain things be done to the satisfaction of the council or a referral authority, or by entering into an agreement between the applicant and the council or referral authority. The requirement to enter into an agreement (often a section 173 agreement) may be made through a condition of a permit.

6.4 Are agreements made under planning or subdivision legislation?

Usually, an agreement relating to a subdivision will, where a planning permit is required, be entered into under the provisions of section 173 of the Planning and Environment Act. An agreement can also be made through section 17(2)(c) of the Subdivision Act. An agreement under section 17 is usually made if no planning permit is required or when works required by the planning scheme or permit may be completed after registration. All the provisions of Division 2 of Part 9 of the Planning and Environment Act, relating to agreements, also apply to agreements under section 17 of the Subdivision Act, so there is little effective difference between the provisions controlling section 173 and section

17 agreements. However, where a section 17 agreement is not under seal then sections 174(1), 179 and 181 to 183 of the Planning and Environment Act do not apply to the agreement.

6.5 Time to consider engineering plans for works requirements

Where a works requirement has been made under the planning scheme or permit an applicant may be required to prepare an engineering plan to comply with the requirement. Once the engineering plan has been submitted, the council or referral authority has 30 days in which to consider the plan as specified under regulation 30 of the Subdivision Regulations. It must then either:

- approve the plan;
- specify any changes required; or
- refuse to approve the plan.

6.6 Can alterations be requested to an engineering plan?

Yes. Under section 15(4) of the Subdivision Act, if a council or a referral authority requires specific alterations to an engineering plan, the 30 day time limit is suspended until the altered engineering plan is received.

If a plan is rejected or specific changes are required, the council or referral authority is required under section 15(3) to give reasons in writing.

Decisions made by council in respect of engineering plans may be appealed to VCAT under section 40 of the Subdivision Act.

A summary of the process for the approval of engineering plans is provided in Diagram S2 in Appendix 3.

6.7 Approval of works plans

Under section 15(5) of the Subdivision Act, if an engineering plan complies with the requirements of the council and referral authority then the council must approve the plan.

6.8 Construction and maintenance of works

Conditions on planning permits and related agreements can cover not only the provision, but also the construction and future maintenance of works including bonds and payments.

Under section 17(4) of the Subdivision Act, the applicant is responsible for the maintenance of any completed works for a period of three months, or as otherwise agreed between the applicant and council or referral authority. After the expiry of this

period council or the referral authority is responsible for maintenance.

6.9 What are works?

Section 17 of the Subdivision Act, defines 'works' to mean works that:

- are required by or for the council or a referral authority to provide roads or public utility services to the land
- are or are to be the responsibility of the council or a referral authority after the maintenance period.

6.10 When can construction of works for the subdivision take place?

Under section 17 (1) of the Subdivision Act, works should not commence until the plan of subdivision has been certified, any required engineering plans have been approved and agreements entered into.

6.11 When do engineering works become the responsibility of the council or another agency?

Roads, footpaths and similar required works will become the responsibility of the council after the period provided for in section 17(4) of the Subdivision Act.

Where an authority other than the council is to take over responsibility for some works such as water or drainage, then subject to an order of the Governor-in-Council, or an agreement between the council and the authority, the authority may arrange for the works and any associated rights, powers and liabilities to be transferred to it any time after they are completed.

6.12 What open space requirements can be made under the Subdivision Act?

If there is a requirement for open space specified in the planning scheme, then the contribution rate in the planning scheme will override section 18 of the Subdivision Act. If a rate is included in a local planning scheme it will be specified in a schedule to Clause 52.01 of the planning scheme.

If there is no requirement for open space specified in the planning scheme and council considers that there will be a need for more open space as a result of a subdivision, it may require an open space contribution of up to five per cent on land subdivisions under section 18 of the Subdivision Act.

Any requirement for open space must be made by council as a responsible authority as a condition included in a planning permit for subdivision.

A council may require the applicant to set aside five per cent of all land intended to be used for residential, industrial or commercial purposes as open space. Alternatively council may require the applicant to pay or agree to pay a percentage of the land value not exceeding five per cent. It may also require the applicant to do a combination of in-kind contributions and payment, provided the total contribution does not exceed five per cent of the land value.

The amount of contribution required for a particular subdivision must be determined on a case by case basis and as a question of fact.

Regardless of whether or not an amount has been set in the planning scheme, a council can only make a requirement for an open space contribution if it considers that more open space is needed having regard to the issues set out at section 18(1A) of the Subdivision Act. These will include a consideration of the intensity of development proposed compared to the existing use, the availability of open space in the area and any policies of the council for the provision of places of public resort and recreation.

6.13 Are some subdivisions exempt from open space requirements?

Yes. Section 18(8) of the Subdivision Act identifies subdivisions which are exempt from open space requirements. These include:

- a class of subdivision that is exempted from the public open space requirement by the planning scheme under Clause 52.01
- a subdivision for the purpose of excising land to be transferred to a public authority, council or a Minister in respect of a utility installation
- a subdivision into two lots where the council considers it unlikely that each lot will be further subdivided.

A public open space contribution may be made only once for any of the land to be subdivided. An exception to this rule is when a building is subdivided and a public open space requirement was not made under section 569H of the *Local Government Act 1958* or section 21A of the *Building Control Act 1981* when the building was constructed.

6.14 Can a council require more than five per cent as an open space requirement?

Under the Subdivision Act a council cannot seek an open space contribution which exceeds the five per cent limit.

The amount of contribution required must be determined on a case-by-case basis having regard to the issues set out at section 18(1A) of the Subdivision Act. In some circumstances this may mean that only an amount of less than five per cent can be justified.

An open space requirement may exceed five per cent where a council has undertaken strategic work to justify the inclusion of a higher rate in a schedule to Clause 52.01 of its planning scheme. Any rate for open space contributions specified in a local planning scheme will override section 18 of the Subdivision Act.

In some areas a council may have incorporated a Development Contributions Plan into its planning scheme which can require contributions towards regional open space facilities.

6.15 Can the open space contribution be used for purposes other than open space provision?

No. Council must use land and funds received as part of any open space requirement to purchase or improve land for open space purposes. Public open space may, however, be used for public purposes in accordance with the planning scheme and so some scope for varying public uses is possible. Under section 20 of the Subdivision Act, such open space may only be sold if a council makes provision to replace it.

Details of how land should be valued for open space contributions are set out in section 19 of the Subdivision Act. Council is required to obtain a valuation of the land from a qualified valuer. The valuation of the land is to occur within 12 months of the date of payment of the public open space contribution. If the public open space contribution is not paid within 12 months, the council can have the land revalued.

6.16 Registrar of open space contributions

As part of the register of subdivision applications regulations 33 (c) and (f) of the Subdivision (Procedures) Regulations 2011, council is required to include whether a public open space requirement has been made or the subdivision application is exempt from public open space requirements and the reason for the exemption.

Key documents:

Subdivision Act 1988

Subdivision (Procedures) Regulations 2011

Victoria Planning Provisions

- Clause 52.01 - Public open space contribution and subdivision

7.1 Overview

Under section 21(1) of the Subdivision Act, an applicant receives a statement of compliance from a council once all public works and open space requirements placed on a proposal under the planning system or under the Subdivision Act have been satisfied or adequate arrangements have been made to secure compliance with those requirements.

A statement of compliance cannot be issued before a plan is certified and it must be obtained before a plan can be registered with Land Victoria.

A statement of compliance enables a council to ensure compliance with any agreements and conditions placed on any planning permit relating to public works and open space provision.

The process for obtaining a statement of compliance is summarised in Diagram S3 in Appendix 4.

Plans specified under section 14 of the Subdivision Act would not require a statement of compliance.

7.2 When should a subdivision be 'marked out' or 'pegged'?

Under section 20A(1) of the Subdivision Act, before a statement of compliance can be issued for a subdivision where works are not required, written advice from a licensed surveyor must be provided to the council in a prescribed form (Subdivision (Procedures) Regulations, r. 31 Form 13) to the effect that the roads, reserves and, where appropriate, the lots, common property, and boundaries of the land in the subdivision have been marked out or defined.

The advice should include a notification of whether any 'substantial discrepancy' exists between the actual boundaries and the boundaries shown on the certified plan.

Under section 20A(2) of the Subdivision Act, where a subdivision proposal involves works requirements, the notice from the licensed surveyor must be provided within one month of the completion of the required works.

For the purposes of marking out a subdivision section 20A(3) of the Subdivision Act defines 'works' in the same way as it is defined under section 17(6) of the Subdivision Act and not as defined in section 3 of the Subdivision Act.

7.3 When must a statement of compliance be issued?

A statement of compliance for a plan of subdivision must be issued by council as soon as possible after:

- the applicant has given it the prescribed information; and
- it is satisfied that
 - a. all requirements of and under Part 3 of the Subdivision Act and the Planning and Environment Act that relate to public works have been met; or
 - b. there is an agreement to secure compliance with those requirements.

The Subdivision Regulations do not currently prescribe any information that must accompany an application for a statement of compliance.

Section 21 sets out what is to be done in respect to the issue of a statement of compliance. This includes the matters raised above but also includes additional considerations that should be taken into account before the issue of the statement of compliance including the payment of any required levies.

Agreements made under section 173 of the Planning and Environment Act or section 17(2)(c) of the Subdivision Act are often used to secure compliance with requirements for public works.

Public works is defined in section 3 of the Subdivision Act as:

- the provision of roads, reserves, open spaces or services within a subdivision; or
- fencing, landscaping, and road works outside the subdivision for roads, reserves or public open space related to the subdivision; or
- works for sewerage, drainage, water supply, power, gas or telephone to connect the subdivision to the system serving properties outside it, excluding works to connect any particular property to the system for the subdivision; or
- prescribed works.

The definition of public works does not include common property areas which are to remain in private ownership and are not intended to be dedicated to general public use.

7.4 When can a statement of compliance be issued if no works are required?

Where works have not been required in respect to a plan of subdivision, a notice is still required from a licensed surveyor notifying council that the subdivision has been marked out as required by section 20A of the Subdivision Act. Once the notice is received from a surveyor a statement of compliance may be issued at the same time as the plan is certified.

7.5 How is a statement of compliance issued for stages of a staged subdivision?

Under section 21(2) of the Subdivision Act a statement of compliance for a staged subdivision must include the prescribed information for the whole subdivision. This includes a plan of all the land, the location of the various stages and full details of the lots in the first stage of the subdivision. A statement of compliance for a staged subdivision cannot be given on the plan, but must be provided on a separate form (Subdivision (Procedures) Regulations, Form 14).

Subsequent stages will then require their own statements of compliance that 'place' them within the context of the overall subdivision, and deal in detail with the lots and required works for that stage (Subdivision (Procedures) Regulations, regulation 32(5) Form 14).

7.6 Can requirements be tied to a certain stage of a subdivision?

Yes. In some circumstances it may be appropriate to tie a particular requirement to a particular stage of the subdivision. Under sections 18(1B) and (2) and 21(1)(b)(ii) of the Subdivision Act, as long as satisfactory arrangements are made to ensure compliance with the requirements, matters such as open space or appropriate cash contributions can be agreed to be deferred to any stage in the development.

Key documents:

Subdivision Act 1988

Forms

Form 13 – Advice by licensed surveyor

Form 14 - Statement of Compliance for Stage No. # of a Staged Plan

Form 15 – Statement of compliance

Further information

Your guide to lodging a plan of subdivision (Land Victoria)

8.1 Procedural plans

Regulation 5 of the Subdivision (Procedures) Regulations 2011 defines a procedural plan as:

- any plan which does not require a planning permit; or
- any plan which requires a planning permit but is exempt from the referral requirements of the planning scheme.

Whether a plan requires a planning permit or is exempted from referral requirements can be determined from the planning scheme, in particular Clauses 62.04 and 66.01.

Once it has been determined that a particular plan is a procedural plan, different requirements apply under the Subdivision (Procedures) Regulations 2011 in relation to time in which councils may require alterations and when they must be certified.

8.2 Easements, restrictions and reserves

If a person wishes to create, vary or remove easements, covenants and other restrictions under sections 23, 24A or 36 of the Subdivision Act, a planning permit will normally be required under Clause 52.02 of the planning scheme.

Clause 52.02 Easements, restrictions and reserves, of all planning schemes, requires a planning permit to create, vary or remove an easement, reserve or a restriction under the following sections of the Subdivision Act:

- section 23, to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant
- section 24A reserves and other similar land
- section 36 to acquire or remove an easement or remove a right-of-way.

Clause 52.02 also lists circumstances where a planning permit is not required to create, vary or remove an easement or restriction. This includes:

- the creation, variation or removal of easements or restrictions by agreement, prescription, abandonment, or otherwise by operation of law; or
- the creation, variation or removal of easements or restrictions by or under an Act other than the Subdivision Act; and
- where a person proceeds under section 6A(3) Subdivision Act in relation to the above.

In addition, a planning permit is not required to create an easement if it is proposed as part of a plan of subdivision or consolidation.

It is important to note that a planning scheme cannot restrict or prevent someone from proceeding under the Subdivision Act to vary or remove an easement or restriction by agreement, prescription, abandonment or otherwise by operation of law.

An easement or restriction can be removed or varied by agreement if all of the persons with interests in the land, including the owners of land benefited by the easement or restriction, consent to the variation or removal without the need of a planning permit.

A restriction (including covenants) can also be removed or varied through:

- section 84 of the *Property Law Act 1958*
- a planning scheme amendment
- a planning permit.

Where a development requires the creation, removal or variation of an easement, this should be indicated at the planning permit stage and, if appropriate, a condition should be placed on a permit to secure the change at the certification stage. When the plan of subdivision is registered, any new or revised easements take effect immediately and any removed easements cease to exist.

Where a planning scheme is amended to direct the creation, variation or removal of any easements or rights, the council or any person benefiting from the changes must apply to the council for certification of a plan and lodge a certified plan at Land Victoria for registration.

8.3 How do staged subdivisions work?

Often the subdivision of a large parcel of land is dealt with over a number of stages until the final subdivision layout is achieved. This is particularly the case in circumstances where the land is required to be initially subdivided into larger super lots for further subdivision at a later date.

In these circumstances staged subdivisions can provide a more flexible and efficient process for achieving the final subdivision of land, particularly where owners corporations are required. Section 37 of the Subdivision Act provides for 'staged subdivisions' and sets out the requirements for plans.

Staged subdivisions must be authorised by a planning permit. If an applicant wishes to undertake a staged subdivision it is important that the permit application clearly seeks permission for a staged subdivision.

Where a planning scheme or permit allows a subdivision in stages the subdivision may occur as a series of separate subdivisions in accordance with the Subdivision Act or using the procedure set out in section 37 of the Act.

If a staged subdivision is to occur using section 37 of the Subdivision Act, a plan known as the 'master plan' must be submitted for certification under section 37(3)(a) with the

prescribed information under Subdivision (Registrar's Requirements) Regulations, regulation 16. This includes details of:

- lots, roads, reserves, common property, easements and restrictions in the first stage
- all the remaining land with the lot number or stage number as appropriate
- any permit or planning scheme provisions that regulate the development.

Under section 37(3)(b), plans for subsequent stages should be submitted with and contain the prescribed information under Subdivision (Registrar's Requirements) Regulations, regulation 17. They should:

- be numbered with the master plan number made available by the Registrar
- show the lots and any roads, reserves common property, easements and restrictions in that stage and which land (if any) is residual
- show any residual land with the lot number or stage number as appropriate
- show the lots for the second or subsequent stages using different lot numbers from those contained in previous stages.

Plans within a staged development can, subject to certain provisions, amend the master plan or a plan for an earlier stage in the overall subdivision.

More information about staged subdivisions is provided in chapter 7.

8.4 The Subdivision Act and the land acquisition process

Where land is being publicly acquired whether by agreement or by compulsory process and subdivision is required, section 35 of the Subdivision Act allows the process of subdivision and reconsolidation of residual pieces of land to be managed by a single plan. The applicant must be the acquiring authority as defined under section 3(1) of the Subdivision Act and the plan must be lodged for certification with council and then with Land Victoria for registration.

Under section 3(1) of the Subdivision Act an acquiring authority "means any person or body of persons authorised to acquire land compulsorily".

Where a new road widening or a pipeline requires a number of parcels of land to be purchased with some residual parcels being consolidated with other adjacent owners, the whole process can be handled with a single plan.

A plan submitted by an acquiring authority can do anything that is allowed to be done by a plan under the Subdivision Act, provided relevant consents are provided. For example, a single plan submitted under this section can consolidate the land being acquired, merge existing easements which are in favour of the acquiring authority, include land which is registered or vested in the acquiring authority and include land that is owned by other parties from whom the land is being acquired to create a consolidated lot and road parcels.

Part 3 – Statutory requirements for plans of the Subdivision Act (addressed in chapter 3 of this guide), does not apply to plans submitted by an acquiring authority under section 35 of the Subdivision Act if the plan does not create lots additional to those required for the purposes of public acquisition. This includes the need for a Statement of Compliance.

An acquiring authority may also submit a plan for certification and registration under section 35(8) of the Subdivision Act for any land vested in it or registered in its name.

8.5 Building envelopes

Building envelopes are sometimes used to constrain the construction of buildings on lots in order to achieve particular planning outcomes. The need for building envelopes usually arises through the subdivision of land and in the creation of new lots allowing land to be more intensively developed. Building envelopes may be created in a number of ways. They may be:

- included in a relevant planning permit; or
- placed in a section 173 agreement and recorded against the folio; or
- placed in a Memorandum of Common Provisions and referred to within a restriction.

Building envelopes may also be recorded as a restriction on a plan of subdivision. If recording by restriction the building envelopes must be incorporated by reference to the document they are stored with, being either:

- an off-register document for example, a planning permit; or
- the application instrument associated with the plan.

In the case of the latter the applicant must:

- attach the building envelope sheets to the instrument (application) of the plan of subdivision
- number the building envelope sheets separately to the plan numbering commencing at one (1)
- include a location notation within the building envelope restriction on the plan, for example, “for building envelopes see instrument PS77777W.”

8.6 Online processing of subdivision applications - SPEAR

Land Victoria is responsible for SPEAR (Streamlined Planning through Electronic Applications and Referrals).

SPEAR is a statewide, online interface between the parties in the subdivision approvals process and has been designed to work alongside the traditional paper-based system. It is a service offered free of charge by Land Victoria.

SPEAR began in 2004 and allows subdivision and planning applications to be lodged, managed, referred, approved and tracked online. It offers the benefits of more streamlined processing by reducing requirements for paperwork and faster electronic referrals and communication between parties.

SPEAR can be used by all parties involved in the subdivision and planning processes, including applicants, councils and referral authorities:

- Applicants can use SPEAR to lodge and manage their application and track its progress.
- Councils can use SPEAR to receive, manage, refer and approve applications.
- Referral authorities can use SPEAR to receive and respond to referrals.

Participation in SPEAR has been growing steadily since 2004 and many councils now use SPEAR to process applications for certification under the Subdivision Act and planning permit applications for subdivision and other land use and development.

If you wish to use SPEAR to lodge a planning permit for subdivision or for certification you will need to confirm that your council participates in SPEAR. You can do this by visiting the SPEAR website that also contains detailed user guides about registering and using the SPEAR interface.

Key documents:

Subdivision Act 1988

Subdivision (Registrar Requirements) Regulations 2011

Victoria Planning Provisions

- Clause 52.02 – Easements, restrictions and reserves

Forms

Form 12 - Application to Register a Plan of Creation Removal or Variation of an Easement or a Plan of Variation or Removal of a Condition in the Nature of an Easement in a Crown Grant not done as part of a Plan of Subdivision or Plan of Consolidation

Form 9 - Application to Register a Plan related to Acquisition by an Acquiring Authority

Further information

Growth Area Infrastructure Contribution (GAIC) Practitioner's Guide

SPEAR website - <http://www.spear.land.vic.gov.au/spear/about/index.html>

More information about restrictions is available on:

www.dpccd.vic.gov.au/planning/theplanningsystem/legislation-and-regulations/restrictive-covenants

9

Fees and other contributions

9.1 What fees may a council charge for subdivision proposals?

The Subdivision (Fees) Interim Regulations 2012 set fees that are payable to council for processing applications for certification, supervision of works and checking engineering plans.

At the time of publishing, the Regulations provide for the following:

Certification	Fee
Application for Certification of a Plan of Subdivision	\$100 per application plus \$20 per lot
Any other application for certification	\$100
Engineering plans	
For engineering plans prepared by council	3.5 per cent of the value of the estimated cost of constructing the works
For checking engineering plans	0.75 per cent of the value of the estimated cost of constructing the works
Works	
The prescribed fee for the supervision of works for the purposes of section 17(2) (b) of the Subdivision Act	2.5 per cent of the value of the estimated cost of constructing the works being supervised

9.2 Can a council or referral authority charge for the preparation or checking of plans?

Yes. Under regulations 7 and 9 of the Subdivision (Fees) Interim Regulations 2012 a council may charge a fee of not more than 3.5 per cent of the estimated cost of works if it prepares an engineering plan for an applicant, and up to 0.75 per cent of the estimated cost of works for checking plans prepared by or on behalf of the applicant. The council's capacity to charge a fee is under section 15 of the Subdivision Act.

A referral authority, through council, may charge for the checking of plans.

9.3 Can a council or referral authority charge for the supervision of works?

Yes. A council or a referral authority may appoint a person to supervise any required works and charge an applicant for the supervision of works an amount not exceeding 2.5 per cent of the estimated value of the works as provided for under regulation 8 of the Subdivision (Fees) Interim Regulations.

Section 17 of the Subdivision Act enables a council or referral authority to charge a fee for the supervision of works.

9.4 Can a council waive or reduce a fee?

Yes. Under regulation 10 of the Subdivision (Fee) Interim Regulations, a council may waive or reduce any of the fees payable. Regulation 10 sets out the circumstances where a council can waive or rebate payment of fees.

9.5 Other subdivision fees

The Subdivision (Fee) Interim Regulations 2012 set fees for council functions under the Subdivision Act. The Subdivision (Registrar's Fees) Regulations 2004 set fees associated with the registration of the plans including lodging documents and other fees payable to the Registrar of Titles.

9.6 Growth Areas Infrastructure Contributions

Recent amendments have been made to the Planning and Environment Act under Part 9B and the Subdivision Act to implement the Growth Areas Infrastructure Contribution (GAIC). The GAIC applies a per hectare infrastructure contribution rate to land which was brought into Melbourne's Urban Growth Boundary in and after 2005. Different rates apply depending on when the land was brought into the Urban Growth Boundary.

Liability to pay the GAIC is triggered by the first property transaction on affected land, this being either the subdivision of the land, application for a building permit or a dutiable transaction (transfer of land). Where the subdivision of land in a contribution area is the first GAIC event, the GAIC is payable before the issue of a statement of compliance. Subsequent subdivisions of the land will not incur a further requirement to pay a contribution.

Land affected by the GAIC will have a recording made on its title by the Registrar which indicates that a GAIC may be payable.

Under section 22(1)(g) of the Subdivision Act, an application to register a plan of subdivision for land affected by the GAIC must be accompanied by:

- a notice issued under section 201SZG of the Planning and Environment Act by the Commissioner of State Revenue; or
- an application relating to the land made under section 201UC by the Growth Areas Authority or the Commissioner of State Revenue.

9.7 Development Contributions Plan Overlay

Some planning schemes, usually those which cover growth areas, may include a Development Contributions Plan Overlay. The Overlay will set out contributions which must be paid in respect of any subdivision affected by the Development Contributions Plan, usually on a per lot or hectare basis.

Development Contributions Plans are strategic documents that identify shared infrastructure which is needed by new development in an area and set out requirements for contributions towards this infrastructure and the mechanisms for collecting and managing the funds.

The Development Contributions Plan Overlay will require responsible authorities to include conditions on permits for payment of a contribution. The timing for payment is normally prior to the issue of a statement of compliance for the subdivision.

9.8 Open space contributions

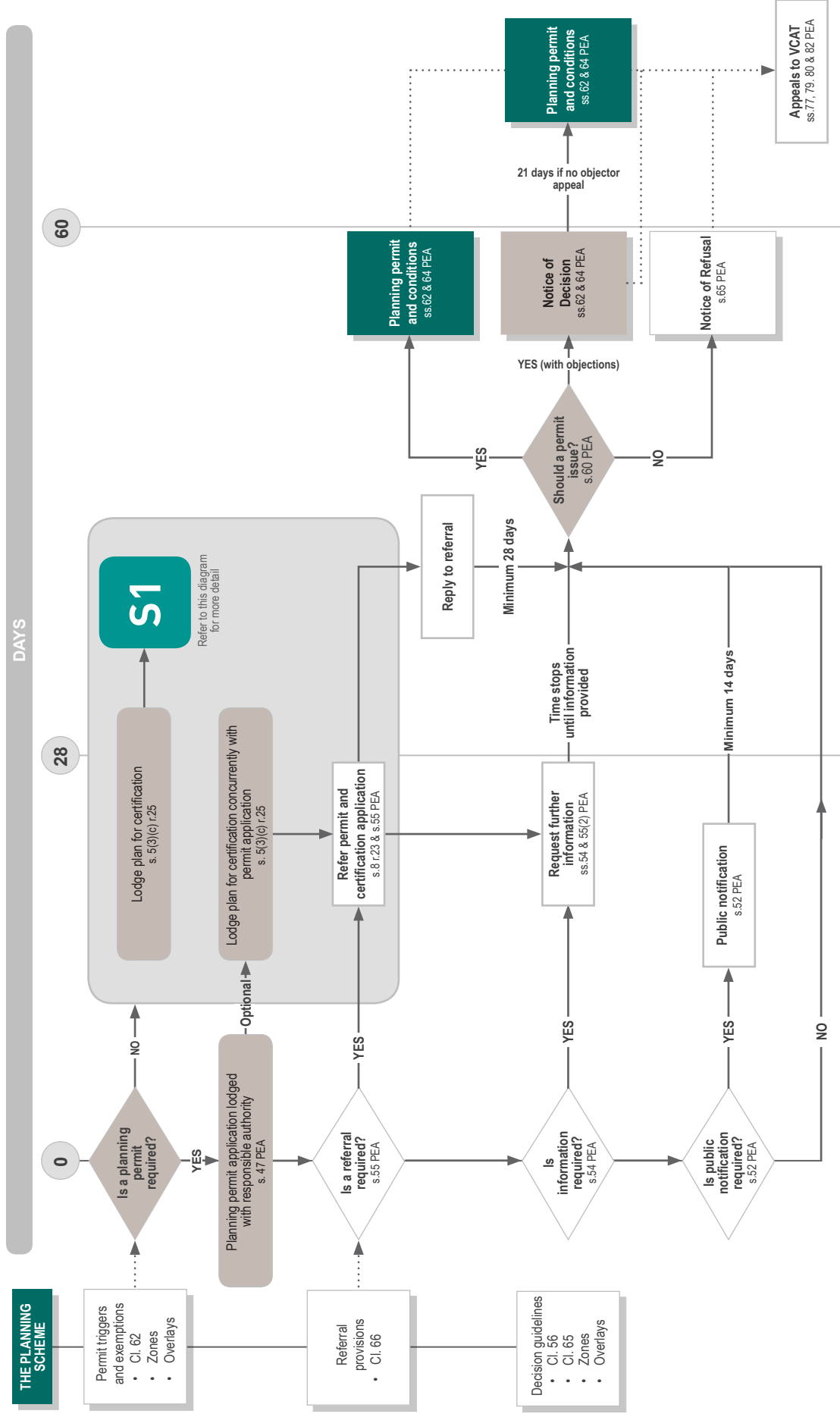
Planning schemes can also specify requirements for the payment of contributions towards public open space at Clause 52.01.

If no amount or rate is specified in a schedule to Clause 52.01 then councils may still require a contribution under section 18 of the Subdivision Act (addressed in Chapter 6). These requirements are also implemented by permit conditions.

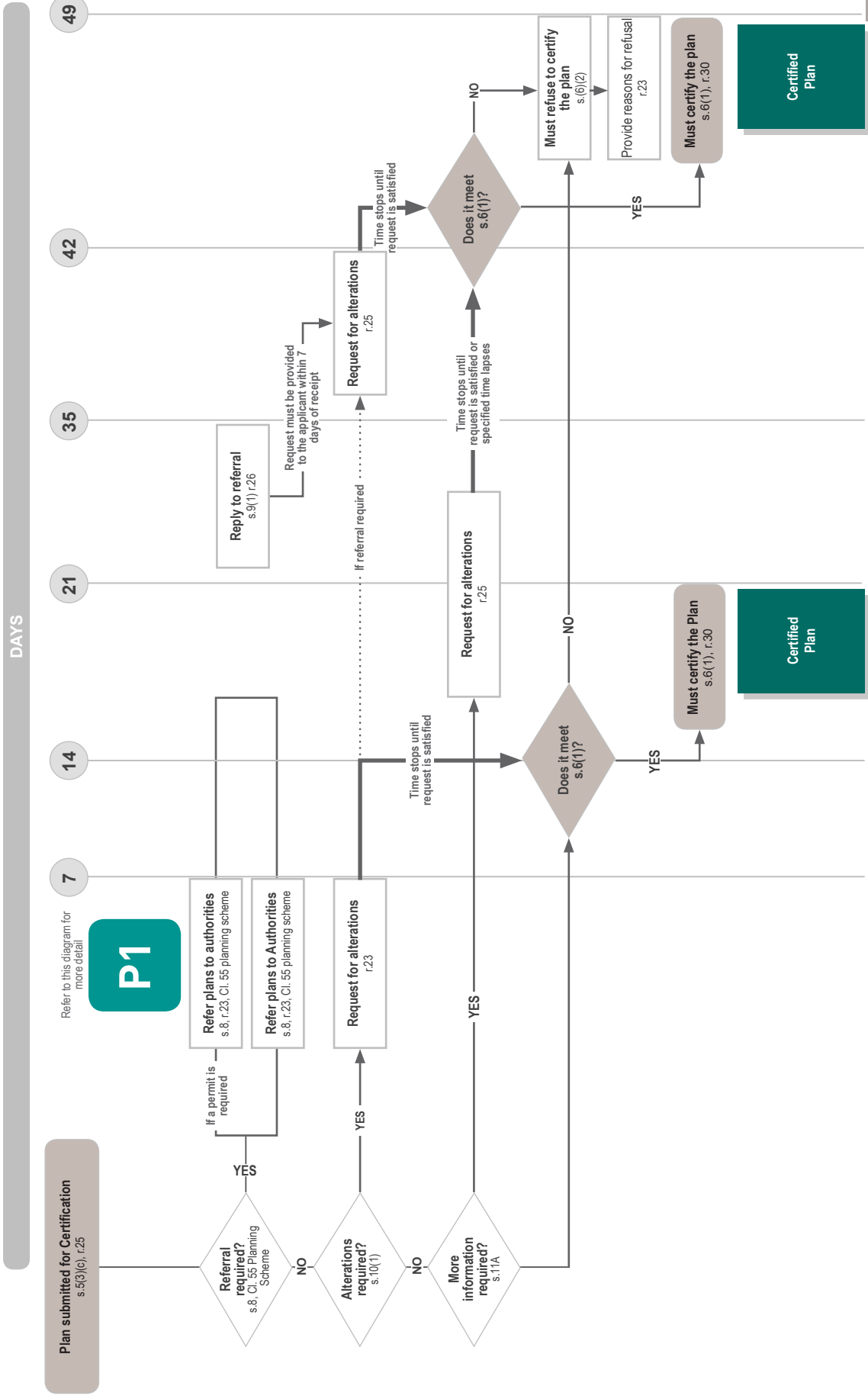
Such requirements must be met before the issue of a statement of compliance.

Open space contributions are addressed in more detail in Chapter 6.

A1 P1 The Planning Process

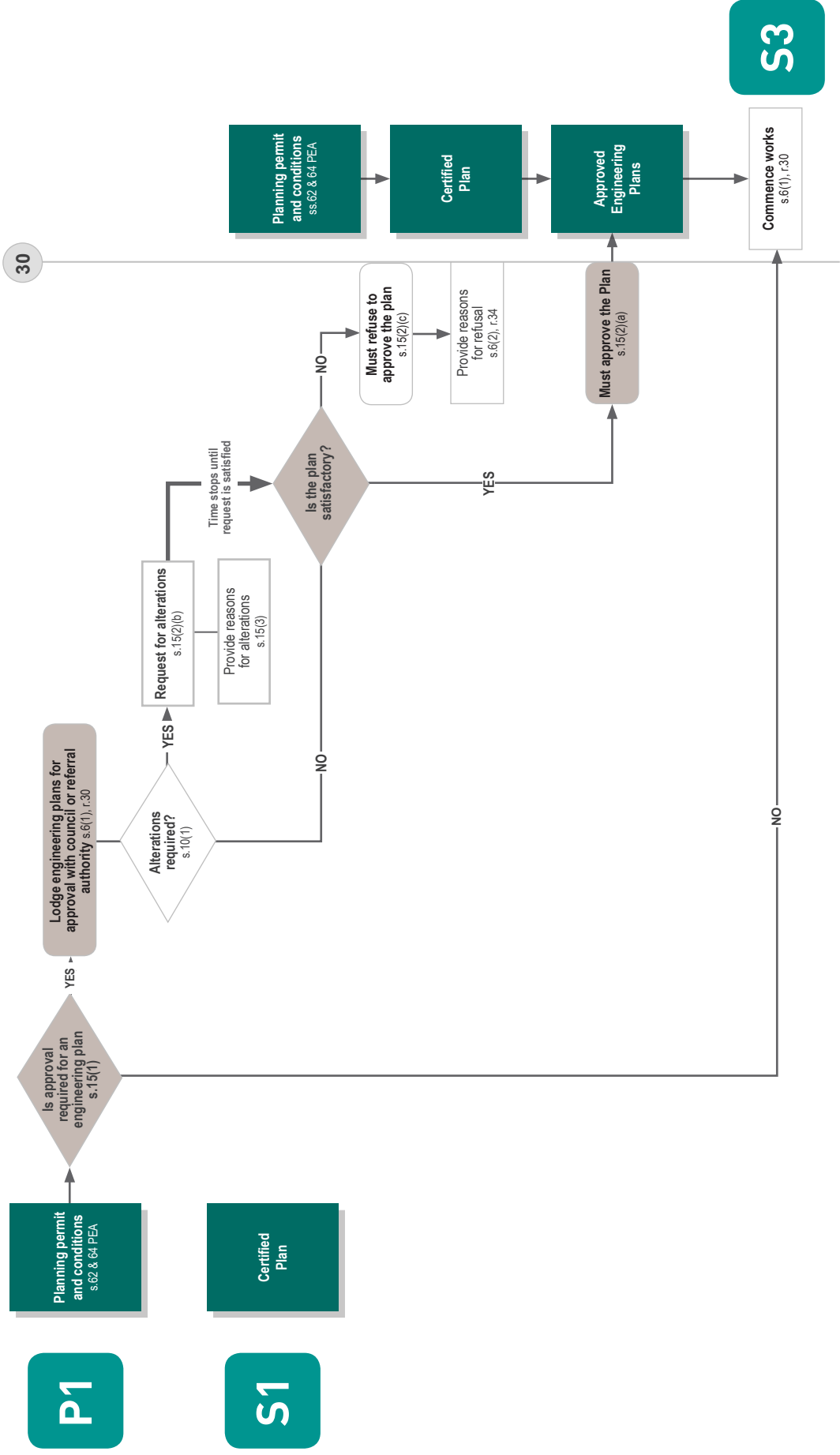


S1 The Certification Process



A3 S2 Subdivision works

DAYS



S3 Statement of Compliance

