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PROPOSAL

by MP Kaufmann, MAS, Mag. Keyl, Krumböck, BA and Dorner

concerning the **Provincial Act amending the Lower Austria Building Code 2014 (NÖ Sanierungsvereinfachungsgesetz – Lower Austria Renovation Simplification Act)**

The population of Lower Austria has been growing steadily since the 1960s – and is expected to grow by another 8 % by 2050.And with it, the demand for living space is steadily on the rise – and not least because of this growth. At the same time, the number of vacant properties continues to rise. Against this background and the goal of preserving areas that are valuable for agriculture as well as using up less land to build on, the challenge of creating sufficiently cheap and affordable housing for our compatriots is becoming ever greater.

Lower Austria makes great investments in affordable housing through the housing development fund known as NÖ Wohnbauförderung.691 million euros were spent on this in 2024 alone. . But money alone is not enough – it also takes a modern legal framework to make construction and renovation simpler and more affordable.At the same time, town centres must be invigorated further and land and soil must be used responsibly.This legislative proposal aims to achieve these objectives.After all, favourable and efficient construction plays a central role in the sustainable development of Lower Austria.

<u>Regarding the individual provisions:</u>

Re Article 1(3)(4):

The amendment to the order clarifies that the phrase ‘insofar as they require a permit under electricity law’ only refers to installations for the generation of electrical energy, especially since the Lower Austrian

Electricity Act 2005 only provides that a permit is required for generation installations.

Due to the exemption concerning buildings in connection with electrical wiring systems from the scope of the Building Code, questions as to the construction of transformer buildings and similar structures have arisen on numerous occasions.In the course of the expansion of renewable energy, transformer stations have recently been increasingly designed to be accessible by foot, which would mean that they would fulfil the definition of ‘building’ under the Lower Austrian building regulations. However, with regard to the relevant regulatory objectives (height, townscape), this type of construction still corresponds to the previous design of transformer stations for overhead lines.The insertion of ‘excluding buildings’ can therefore be omitted without this leading to a significant change in the legal situation.
Systems meant purely for storage do not constitute electrical cable systems and thus are still subject to the Building Code. However, battery storage systems are exempt from permitting and notification (Article 17(14)) and are thus excluded from the scope of application under Article 3(7).
The EU Hydrogen Strategy includes plans for the construction and expansion of a hydrogen pipeline network or the use of existing gas pipelines for hydrogen transport, as is largely the case in Austria. As with gas pipelines, there should therefore be an exemption from the scope of the Lower Austria Building Code 2014 for hydrogen pipelines.

Re Article 1(3)(7):
The elimination of the notification procedure makes it necessary to revise the wording.

Re Article 4(3) and Article 4(21):
A relaxation is to be created so that the light ingress surface of main windows can be below the reference level.For that reason, the reference level is being removed from the definitions for adequate lighting and main windows. To a certain extent, this also makes it possible to build habitable rooms below ground level.Article 67(1a) (excavation not more than 1.5 m) and Point 11.1 of Annex 3 to the Lower Austrian Structural Engineering Ordinance 2014 (NÖ BTV 2014) must be observed as before.

Re Article 4(8):
Due to the liberalisation of buildings in the clearance area (see Article 51(2)), it is also possible to build main buildings or parts of thereof in the clearance area. For that reason, the definition of clearance area had to be adapted accordingly.

Re Article 4(28):
Due to the omission of the obligation to construct non-public playgrounds, the definition in Article 4 can be omitted.

Re Article 5(2), first sentence:
Due to the omission of the notification obligation, the relevant procedural provisions are also largely obsolete. A three-month decision-making period now applies uniformly to all building permit procedures, provided that the project does not require authorisation under another law. Notwithstanding this special substantive provision, Article 73(1) AVG [General Administrative Procedures Act] continues to apply, so authorities are obliged to issue a decision on applications by parties without undue delay.

Re Article 5(2a):
The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.
The procedural provisions and time limit relating to installations for the generation of renewable energy resulting from the implementation of the RED III Directive will be adapted accordingly from the previous notification procedure for the simplified procedure and inserted into the structure of the existing paragraph 2a.
Due to the adjustment of the limit value in Article 15(9) (formerly Article 15(1)(2)(e)) from the previous 50 kW to the present 100 kW (limit value in Article 16d(2) of the RED III Directive), no separate provision for the time limits for decisions is required for these installations. Since the previous notification procedure had the effect of an authorisation function if no prohibition was issued, it is necessary to

include the assumption of approval in accordance with the wording of Article 16(2) of the RED III Directive (Article 5(2a), next to last sentence). The amended reference to Article 15(15)(b) (capacity of no more than 100 kW) ensures that the implementation of the RED III Directive is limited to the installations required under Article 16d(2) of this Directive and that installations with a capacity of more than 100 kW are excluded from this. This avoids golden plating.

Re Article 5(3), first sentence:

The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.

It is clarified that, even in the new simplified approval procedures under Article 15, an appeal to the provincial administrative court does not have suspensory effect.

Re Article 6(1), last sentence:

Due to the elimination of the notification obligation and the expansion of the simplified approval procedure, the reference (Article 15) must be corrected.

Neighbours already did not have the status of a party in the previous simplified approval procedure (Article 14 in conjunction with Article 18(1a)) and in the previous notification procedure. This should now be clarified for the new simplified approval procedure under Article 15 as well.

However, two situations (the alteration of structures [subparagraph 12] and the installation of machinery and equipment in structural connection with buildings [subparagraph 14]) explicitly refer to the possible violation of neighbour’s' rights under Article 6. For these projects, it is clarified that they trigger party status for neighbours despite being processed in the simplified procedure. However, such status as a party in the simplified approval procedure is to be seen as an exception. For all other projects under Article 15, as before, it remains the case that said offences do not trigger neighbours’ status as a party

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Re Article 6(6):

The possibility of expressly waiving status of party should also be created for projects under Article 15(12) and (14).

Re Article 11(1)(4):

Due to the elimination of the notification procedure and the expansion of the simplified approval procedure, an adaptation of the citation requirement is necessary.

Re Article 12(1), first sentence:

Due to the elimination of the notification obligation, the special provision for road land cession in the case of notifiable enclosures also no longer applies. Enclosures that do not constitute structural installations shall no longer trigger road land cession.

Since, in accordance with paragraph 3, the base areas are to be cleared of buildings (except the main building), wood and materials, there is no change in the scope and enforceability of the road land cession. In the case of enclosures that do not constitute structures, it cannot be assumed that they are of such high value and expense that special protection of the plot owner seems necessary. In addition, the location of the road line is to be considered to be known in most cases (development plan, course in nature, approval decisions, etc.).

As a result of the elimination of the notification obligation, the subdivision of the projects into projects subject to notification (subparagraph 1) and subject to approval (subparagraph 2) is also obsolete.

The previous Lit. (a) to (d) are identical in content to Subparagraphs 1 to 4.

In subparagraph 2, the citation is corrected from the former Article 18(1a) to the new Article 15 (simplified procedure). This does not result in any changes in terms of content.

Re Article 12(2) second sentence (omission):

As a result of the elimination of the notification obligation, the special provision on the road line and the level of traffic areas in the decision on the land cession in connection with projects subject to notification also ceases to apply. For projects subject to approval, this is already provided for in

Article 23(5) and will be retained.

Re Article 12(2a):

As a result of the elimination of the notification obligation, the special provision on the road line and the level of traffic areas in the decision on the land cession in connection with projects subject to notification also ceases to apply. For projects subject to approval, this is already provided for in Article 23(5) and will be retained.

Re Article 12a(1), first sentence:

The elimination of the notification procedure and the expansion of the simplified approval procedure require the provision to be adapted.

The requirement to establish the reference level continues to apply only in the case of the construction of a new building (Article 14(1)) or the construction of a structural installation (Article 14(2)). For this reason alone, a project pursuant to Article 15 is not capable of triggering a requirement for the establishment of the reference level. The corresponding clause can therefore be omitted

Re Article 13(2):

The elimination of the notification procedure and the expansion of the simplified approval procedure require the citations to be adapted.

Re Article 14 (general):

As a result of the elimination of the notification obligation, the simplified procedure has been expanded and refined. All situations that previously fell under Article 14 and were affected by the special provision under Article 18(1a) will be provided for directly in Article 15 in future. As a result, some provisions in Article 14 are no longer applicable or projects only fall under Article 14 if certain prerequisites are met. At the same time, all the conditions for approval were examined for the need for authorisation in the normal procedure, in particular in view of the fact that the simplified procedure under Article 15 will also enable neighbour’s' rights to be taken into account in certain cases in future.

An amendment to the introductory sentence clarifies that the projects under Article 15 are to be regarded as special provisions for the situations under Article 14. If

a project falls under a situation under to Article 15, a simplified approval procedure must be carried out.
In order to maintain a seamless structure of the list, Subparagraphs 6 to 8 back to the place of numbers that are feed up with the same content and are renumbered Subparagraphs 5 to 7.

Re Article 14(3):
All situations under Article 18(1a) are now included in Article 15, so the aspects mentioned are listed there and can be omitted under Article 14. This clarification of the assignment does not result in any change in terms of content. A possible infringement of rights under Article 6 has so far led to an approval procedure under Article 14(3), since the consideration of neighbour’s' rights in the procedure under Article 18(1a) was excluded. Since neighbour’s' rights are now taken into account in the simplified procedure under
Article 15 (see comments on Article 6(1)), an approval procedure in accordance with Article 14 is no longer required for the alteration of structures that could infringe rights under Article 6. Amendments that could infringe rights under Article 6 will therefore fall under Article 15 (simplified procedure) in future. Article 14(3) therefore now only applies to the alteration of structures if the stability of load-bearing components could be affected.

Re Article 14(4):
All the situations under Article 18(1a) are now incorporated into Article 15, which is why a clarification must be made on the requirement to obtain approval for boilers. Boilers which meet the criteria of Article 16(1)(3) or (3a) remain subject to notification. All other boilers with a rated heat output output not exceeding 400 kW must be approved in the simplified procedure (Article 15(13)); all other boilers with a nominal heat output of at least 400 kW must be approved in the procedure under Article 14(4).

On the omission of Article 14(5):

No special requirements are required for the application documents for the building authority's assessment of the storage of flammable liquids totalling 1000 litres outside commercial operating facilities. In addition, no supervision by a construction manager pursuant to Article 25(2) has been required for such projects so far.

Due to the energy transition, it is also to be expected that the storage of large quantities of flammable liquids will practically no longer be relevant for heating systems in the future, but will only take place in connection with agricultural inputs.

The storage of flammable liquids with a total volume of 1000 litres or more outside commercial operating facilities will therefore fall under Article 15 (simplified approval procedure) in future.

On the omission of Article 14(9):

The installation of machines and equipment in structural connection with buildings has already been covered by Article 18(1a) (simplified approval procedure) and will therefore be provided for in Article 15 in future.

Re Article 15:

Under the previous notification obligation under Article 15, failure to act on the part of the authority triggered a legal consequence. In practice, this has repeatedly led to difficulties and issues that are difficult to resolve. For example, it was often unclear what the legal consequences would be if incomplete documents were submitted and the municipality failed to communicate this. It was often not clear to the complainant what significance was to be attached to a lack of response from the authority and whether there was protection of legitimate expectations in the event of silence on the part of the authority.

According to the established case law of the supreme courts, the principle applies that a project subject to approval for which a building notification is submitted and handled as such by the authority does not become a project subject to notification. If, for example, a citizen merely notifies the authority of the planned construction of a structure (even though approval would be required under

Article 14(2)), the authority allows the time limit under Article 15 to pass unused and the citizen constructs the structure in question, this constitutes building without consensus, which – if the building is not eligible for approval – would have to be removed in the scope of a removal order from the building authority (see VwGH [Higher Administrative Court] 2000/05/0059, VwGH 2003/05/0181, and many others).
In order to increase legal certainty for both the parties concerned and the authorities, the notification procedure in its previous form is no longer required for that reason. Projects that were previously subject to the notification obligation will in future be handled in a simplified approval procedure. From a procedural point of view, this will hardly result in any changes, as building notifications have already had to be examined according to the same standards as applications for authorisation. The only thing being added is the issuing of a decision, which, however, does not usually have to meet any special requirements under the simplified procedure. The small amount of additional administrative work involved is therefore more than compensated for by the increase in legal certainty for all parties involved.
The decisive factor is that the change does not result in any additional burden for the applicants. Rather, the changeover serves the sole purpose of providing additional legal certainty for citizens.

On the occasion of this fundamental revision, a reassessment of the individual circumstances will be carried out, in which for some circumstances the approval requirement will no longer apply at all, free projects under Article 17 will be expanded and projects requiring approval, which were previously subject to Article 14, will be handled in a simplified procedure where possible.
For these simplified procedures – as was already the case for procedures under Article 18(1a) – less stringent requirements apply to the application documents and the appointment of construction supervisors. There is no general provision for neighbours to be parties to such projects, unless this individual provisions explicitly provide otherwise.
The revision will also result in a restructuring of the previous circumstances for notification,

which will be supplemented by the projects previously provided for under § 18(1a). The division into numbers, points and indents is omitted and the list will be based on the lists in Article 14 and Article 17 in future.
Since all procedural rules are now laid down in Article D (Articles 18 to 23), Articles 2 to 7 containing the procedural provisions for the previous notification procedure are omitted. As a result, the reference ‘Paragraph 1’ is no longer necessary.
The current Subparagraphs 1, 2, 3, 4, 6, 7, 8, 9 and 15 have been taken unchanged from the previous notifiable situations, with the following exceptions:

- In subparagraph 1, the situation is adapted accordingly due to the elimination of the obligation to construct non-public playgrounds and the introduction of the
  playground levy. It also includes the initial obligation to pay or a change in the amount of the playground levy. Since structural amendments requiring approval are in any case covered by separate offences (Article 14(3) or Article 15(12)), the – purely declaratory – note in subparagraph 1 (projects without structural measures) could be omitted.
- In subparagraph 3 (use of a plot as a parking space for vehicles and trailers)
  The creation and alteration of driveway entrances and exits to and from plots (previously Article 15(1)(2)(c)) is also provided for in the course of restructuring the situations due to the close regulatory connection. This does not result in any changes in terms of content.
- In subparagraph 4 (use of a plot of land as a storage area), the citation has been adapted without affecting the content.
- In subparagraph 6 (conditioning in rooms of existing buildings), the – purely declaratory – reference to ‘without structural alterations requiring authorisation’ could be omitted, as structural alterations requiring approval are covered in separate
  situations anyway (Article 14(3) and Article 15(12)).
- In subparagraph 9, the limit value for the authorisation requirement for photovoltaic installations is adapted to the corresponding limit value in the RED III Directive and increased from 50 kW
  to 100 kW. Since Article 16d(2) of the RED III Directive contains separate

procedural provisions and time limits for decisions on installations with a capacity of 100 kW or less,

a separate provision for installations between 50 kW and 100 kW can be omitted.

The adjustment thus serves to deregulate and simplify administration. At the same time, due to increasingly efficient panels, no significantly larger
use of land is to be expected.

- Subparagraph 15(a) clarifies that the demolition of buildings in protected zones is covered if no rights pursuant to Article 6 could be infringed; otherwise –
as was previously the case – approval will be required in accordance with Article 14(7) (new).

- In subparagraph 15(b), it is now generally stipulated for all projects listed in the following sub-points
that approval is only required for areas and parts of buildings that are visible from public traffic areas. The term ‘areas’ also covers the clearance areas previously referred to in the third indent. As before, the term ‘parts of buildings’ includes façades and roofs.
This amendment also applies to already existing protection zones and old town areas.
In Sublit. cc, the term ‘trellis’ is now used instead of the term ‘pergola’, since ‘pergola’ has now
taken on a broader meaning in everyday usage. The rewording thus serves to clarify that the term ‘pergola’ under building law still only refers to the original sense of the word as a ‘trellis’.

At the same time, the following situations cease to apply to the previous notifiable projects, so that they no longer require approval:

- Enclosures that do not constitute structural installations have so far only been subject to notification because they could trigger a road cession. This should no longer be the case in future (see Re Article 12 above). Since only structures are subject to the Building Code as a general rule, there is no need for an approval requirement for such enclosures.
- Mandatory parking spaces are part of the consensus under building law. As such, an alteration or conveyance cannot be approved without a change to the consensus,
or if the alteration or conveyance is able to be approved, the space in question does not constitute a mandatory parking space. The notification/approval requirement can thus be omitted.

- The installation of foil tunnels for agricultural, forestry and horticultural purposes on plots of land on open land will be completely exempt from approval and notification
  and will fall under Article 17 NÖ BO 2014 in future.

For the storage of flammable liquids, see Article 14(5) above.

The current Subparagraphs 10, 11, 12, 13 and 14 have been adopted unchanged from the previous situations laid down in Article 18(1a), with the following exceptions:

- Subparagraph 12 (alterations to structures) now contains all the prerequisites that were previously listed in Article 14(3), but which were already fulfilled under the previous legal situation were to be addressed in the simplified procedure in accordance with Article 18(1a)(2a) are now set out in Article 15. This does not result in any substantive change.
- In subparagraph 13 (replacement of boilers), clarification is provided on the approval requirement (see above on Article 14(4)).
- In subparagraph 14 (Installation of machinery and equipment in structural connection with structures), all requirements that were previously listed in Article 14(9) are set out in Article 15. For these projects, the implementation of a simplified procedure under Article 18(1a)(4) was already envisaged, which is why no substantive change arises from the restructuring.

Re Article 16(1)(1) and (5):

The elimination of the notification procedure and the expansion of the simplified approval procedure require the citations to be adapted.

Re Article 17 (heading and introductory sentence):

The elimination of the notification procedure makes it necessary to revise the wording in the heading and introductory sentence.

Re Article 17(2):

It is clarified that swimming pools and the technical installations (pumps, filters, etc.) and shafts required are also covered by the exemption from approval.

Re Article 17(5):

The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.

Re Article 17(6):

No approval should be required for the manufacture of sun shading facilities with a built-up area of up to 50 m² and their installation on buildings. The lists in the parentheses are demonstrative and are intended to make it clear that this does not include buildings or solid structural installations with closed roofs (terrace roofs, summer gardens, etc.). Instead, the exemption from approval applies to extendable and mobile facilities. The products included in the exemplary list are not subject to any special manufacturing requirements from a building law perspective. An approval requirement can thus be omitted. The built-up area is defined in Article 4(30).

Re Article 17(7):

The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.

Re Article 17(8):

The previous restriction of the exemption from authorisation to equipment sheds has often led to difficulties in demarcation in the past. The more general term ‘garden shed’ is intended to reduce the administrative burden in this regard and increase legal certainty. Since garden sheds are also only exempt from approval up to a built-up area of no more than 10 m² and a height of no more than 3 m, no negative effects on the use of plots are to be expected.

As before, the term ‘greenhouse’ refers to a house-like structure covered with glass or foil in which

plants are cultivated under especially favourable climatic conditions.

At the same time, the restriction to plots on building land no longer applies. Since garden sheds that do not require approval still require a residential building to be there,

only agricultural farmsteads and buildings on open land worthy of preservation are eligible for this. The removal of the restriction means that the construction of a garden shed and a greenhouse is now also permitted without approval.

Re Article 17(8a):

The installation of walk-in foil tunnels, which was previously subject to notification, is now to be exempt from approval on open land. By restricting the purposes of agriculture, forestry and horticulture, this simplification is intended to benefit those who need such installations for their operation. This does not include the construction of foil tunnels by private individuals who use them for personal or hobby use.

At the same time, it is clarified that only foil tunnels for plants and not for other purposes (such as animal husbandry) do not require approval. In addition, the approval is being expanded to include other protective and support devices for plants (e.g. bird or hail nets, vine aids for vines, parking agency crops for strawberries, etc.), again, for the purposes of agriculture, forestry and horticulture only.

Re Article 17(8b):

Containers are often set up in industrial and commercial areas for the (short-term) storage of goods. The new provision on the installation of containers with a maximum volume of 260 m^3 in total is intended to enable the installation of up to 3 pieces of 45-foot high cube containers or a correspondingly higher number of smaller containers in the operating and industrial area. For safety reasons, these may only be set up on one storey, i.e. side by side, without approval. This will reduce the administrative burden, while at the same time no significant negative effects are to be expected.

Re Article 17(9):

Instead of the term ‘pergola’, the term ‘trellis’ is now used, since the term ‘pergola’ has now taken on a broader meaning in

everyday usage. The rewording thus serves to clarify that the term ‘pergola’ under building law still only refers to a ‘trellis’, as in the original sense of the word.
Due to the elimination of the notification procedure and the expansion of the simplified approval procedure, an adaptation of the citation requirement is also necessary.

Re Article 17(12):
Due to their temporary nature, the temporary installation of sales stands, storage and sales containers for pyrotechnic goods does not generally require approval and is not subject to any other requirements under commercial law. However, these provisions under commercial law must be observed for these, in particular the Pyrotechnics Storage Ordinance [Pyrotechnik-Lagerverordnung] 2023.In order to continue to ensure that approval is not required, this is no longer based on the existence of an approval requirement under commercial law, but on the applicability of the provisions of commercial law.

Re Article 17(14):
The elimination of the notification procedure and the expansion of the simplified approval procedure require the citations to be adapted.

Re Article 17(17):
Not only approval procedures under industrial law, but also notification procedures under the Industrial Code are intended to ensure that weather protection facilities in guest gardens is not subject to approval under building law.

Re Article 17(24):
The temporary change in the intended use of buildings in the event of an emergency for as long as they are needed is intended to enable a rapid and unbureaucratic response to emergencies.
In this case, an emergency does not only denote a disaster as defined by the Lower Austrian Disaster Assistance Act 2016 (NÖ KHG 2016), but rather any unforeseeable event in which a large number of people are affected.

(such as train accidents, local flood events or local power outages).

Re Article 17(25):

In comparison to the previous legal situation (Article 26(2)), the new provision is intended to allow the installation of construction site equipment for all construction projects (e.g. also for construction projects that do not require approval or notification) without further approval, provided that the construction site equipment is necessary for the implementation of the project and the duration of the installation is limited to the period necessary for the construction work.

Construction site equipment includes facilities such as scaffolding, storage containers, tool containers, site offices, sanitary containers, break rooms and the like. Any accommodation for workers on a construction site is not covered by the exemption.

Re Article 18(1)(3)(e) and (6):

Due to the abolition of the notification procedure and the expansion of the simplified approval procedure, it is necessary to amend the citations.

Re Article 18(1a):

The requirement for documents for simplified procedures should continue to be provided for in Article 18(1a). This makes it clear that the simplified procedure is also in principle – with the relevant simplifications – a ‘normal’ approval procedure as defined by the Building Code and that the procedural rules of Section D are generally applicable. This includes e.g. the possibility for the building authority pursuant to Article 19(3) to request the submission of further documents if this is necessary for the assessment of the building project. Even though it will generally have to be taken into account that the legislator considers lower requirements to be necessary due to the assignment of a project to the simplified procedure, it may still be necessary to submit supplementary documents for the assessment of the project in individual cases and this possibility should not be ruled out ahead of time.

The requirement to submit an energy performance certificate in duplicate was essentially assumed from the previous Article 15(3) unchanged, although the reference to the fact that the building authority can refrain from checking the certificate in individual cases is omitted, as this is already generally stipulated for approval procedures in the second sentence of Article 20(1).
In addition, the wording has been adjusted and the quotation corrected, albeit without any substantive changes.

Re Article 19(1)(6):
The elimination of the notification procedure makes it necessary to revise the wording.
Of course, these can only be enclosures that, as structural installations, are subject to approval as per Article 14(2). Fences which do not constitute structural installations are now exempt from authorisation and notification (see Article 12 above).

Re Article 19(1a), first sentence:
Due to the elimination of the notification procedure and the expansion of the simplified approval procedure, an adaptation of the citation is necessary.
In addition, in accordance with the explanations to Ltg.-1378/B-23/3-2017 and Ltg.-228/B-23-2018, it should be clarified by law that plans from commercial engineering offices may also be used as the basis for the building authority’s assessment of the boundary line.

Re Article 20(1):
The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.
The wording has also been adapted, albeit without any substantive changes.

Re Article 21(1), first sentence:
The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.

Since it is the case anyway that only projects under Article 14 and Article 15 are subject to a preliminary examination (Article 20) and subsequently to proceedings with parties and neighbours (Article 21), a citation of Article 14 and/or Article 15 is not necessary here and can be omitted.

Re Article 21(3):

The contents of Paragraphs 3 and 4 are exchanged for a better clarification of the context.

The possible impairment of subjective public rights pursuant to Article 6 when altering buildings no longer leads to an approval requirement pursuant to Article 14

(3), but will fall under Article 15(12) in future. Since all projects under Article 15 are covered uniformly in Article 21(3)(c), Article 21(3)(a) shall be deleted. Points (b) to (d) shall be renumbered as (a) to (c).

Lit. c clarifies that Paragraphs 1 and 2 only apply to projects pursuant to Article 15(12) and (14) if neighbour’s' rights could also be violated. The scope of application thus corresponds to the previous Article 21(4)(1)(a) (alterations to or in a structure (Article 14(3)), provided that subjective public rights cannot be impaired).

For all other projects under Article 15, the neighbours do not have to be informed and – due to the lack of party status – they do not have the opportunity to raise objections. In accordance with Article 21(4), for all other projects under Article 15, the decision must also be notified only to parties (and not to neighbours).

Re Article 21(4):

The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.

Re Article 21(4a):

As was previously the case (with regard to projects subject to notification), projects under Article 15 shall continue to be treated together with a project under Article 14 if the applicant submits the projects together. Separate proceedings are still permissible if this is in the interests of expediency, speed, simplicity and cost savings.

Re Article 22(3):
Due to the elimination of the notification procedure and the expansion of the simplified approval procedure, an adaptation of the citation requirement is necessary.

Re Article 23(1), last sentence:
The documents required for the notification of completion for simplified procedures are provided for in Article 30(5). The right to use the construction project should also be included for these projects upon submission of the notice of completion. Instead of referring individually to Paragraphs 2, 3 and 5, there is a general reference to Article 30, since Paragraphs 1 and 4 do not contain any references to documents in any case.

Re Article 23(2a):
As was previously the case (with regard to projects subject to notification), projects under Article 15 shall continue to be treated together with a project under Article 14 if the applicant submits the projects together. The authority should decide on this in a decision. The division into points is necessary in order to clarify the various legal consequences (e.g. no requirement to have a construction supervisor for projects under Article 15).
Separate proceedings are still permissible if this is in the interests of expediency, speed, simplicity and cost savings.

Re Article 23(3), third sentence:
The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.

Re Article 24(6):
This paragraph contained special provisions for the time limits for implementation in the notification procedure. Due to the elimination of the notification procedure, this special provision may be omitted.

Re Article 25 (1), first sentence, and (1a):

As in the past, the obligation of the building owner to commission experts is to be waived in the simplified approval procedure. An exception to this should apply to the issuance of the energy certificate.

Re Article 25(2), first sentence:

Due to the restructuring of the authorisation facts, the citations have been reformulated and corrected without any changes to the content.

Re Article 26:

The authorisation to install the construction site equipment under Article 26(2) is now provided for in Article 17 for all construction projects. Due to the omission of paragraph 2, the ‘Paragraph 1’ is no longer required either.

Re Article 29(1)(1) and (2):

The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.

Regarding the omission of Article 30(1), second sentence:

The provision stipulated those notifiable deviations (Article 15) were to be presented in the notification of completion. Due to the elimination of the notification obligation, there can no longer be any deviations subject to notification either. The provision may therefore be omitted.

Re Article 30(2), Subparagraphs 2, 2a and 3:

The provision stipulated which documents were to be enclosed with the notification pursuant to paragraph 1 in the case of deviations (Article 15) subject to notification. Due to the elimination of the notification obligation, there can no longer be any deviations subject to notification either. The provision may therefore be omitted.

In order to maintain a seamless structure of the list, Subparagraph 2a is renumbered Subparagraph 2. The citation in Subparagraph 3 must be corrected accordingly.

Re Article 30(5):
Due to the abolition of the notification procedure and the expansion of the simplified approval procedure, it is necessary to amend the wording and the citations.

Re Article 33(1):
Due to the abolition of the notification procedure and the expansion of the simplified approval procedure, it is necessary to amend the citations.

Re Article 33a(4):
The elimination of the notification procedure makes it necessary to revise the wording.

Re Article 34:
Due to the abolition of the notification procedure and the expansion of the simplified approval procedure, it is necessary to amend the wording and the citations, without any changes to the content.

Re Article 35:
Due to the abolition of the notification procedure and the expansion of the simplified approval procedure, it is necessary to amend the wording and the citations, without any changes to the content.

Re Article 37(1)(2):
Due to the elimination of the notification procedure, the punitive norm in subparagraph 2 no longer applies to projects subject to notification. At the same time, a separate punitive norm is provided for the new simplified procedure under Article 15. Since the projects in the simplified procedure are comparatively minor projects, projects in the simplified authorisation procedure are to be regulated
in the same way as the previously notifiable projects
in paragraph 1(2).

Re Article 38(5) and Article 39(3), first sentence, fifth and sixth indents:

The possibility of exceeding the building height determined by a building class by making use of the new exemption pursuant to Article 53a(1a) should not result in any losses for the municipalities in terms of the levy for development and additions. The provisions have therefore been adapted. The wording and citations in Article 39(3) also had to be adapted due to the elimination of the notification procedure and the expansion of the simplified approval procedure.

Re Article 41(2):

The previous notification obligation for the alteration or conveyance without compensation of mandatory parking spaces is omitted. In this respect, reference is made to the comments on Article 15.

Since the alteration or conveyance without compensation of mandatory parking spaces constitutes an alteration to the consensus, this is only possible in an approval procedure.

In this procedure, the authority must determine the number of compulsory parking spaces that have not been created and prescribe the parking space compensatory levy.

Re Article 42:

Article 66 previously stipulated the obligation to construct non-public playgrounds. Since these often did not achieve the desired purpose, this obligation shall be dispensed with. Instead, residential buildings with more than four residential units are to be required to contribute to municipal infrastructure, the construction of public playgrounds (the ‘playground levy’ [Spielplatzabgabe]). The amount of the playground levy is based on the average construction costs of the non-public playgrounds previously provided for, amounts to EUR 500.00 per dwelling and is to be adjusted for inflation on an annual basis.

As in the past, the playground levy should also be paid if the conditions change in substance or amount. If additional
residential units are built in a residential complex with more than four

residential units,

the levy must be paid for these units. If the additional residential units exceed the threshold – of four residential units – the levy is to be paid for all dwellings for the first time. Existing dwellings before 1 March 2026 were previously
not subject to levy and should therefore continue not to be subject to the levy. Especially since a non-public playground has already been built for them or a playground compensatory levy has been paid. To promote renovation, changes of use and vertical extensions, the obligation to pay an (additional) playground levy for all buildings approved by the building authorities before
1 February 2015 is to be omitted entirely, using the criteria of § 48a.

<u>The following cases are conceivable:</u>

- A new residential complex with five dwellings is being built:
  The playground levy must be paid for all five dwellings.
- Two dwellings will be added to a building with three dwellings that was approved after 1 March 2026: The playground levy is payable for the entire residential complex, i.e. all five dwellings.
- Two dwellings are being added to a residential complex with five dwellings that was approved after 1 March 2026:
  :The playground levy must be paid for the two new dwellings. The playground levy for the five original dwellings was already due upon the
- first construction project.
  In the case of a building with three dwellings that was approved after 1 February 2015 but before 1 March 2026, two dwellings will be added: The playground levy is only payable for the two new dwellings. No playground levy is to be paid for dwellings approved before 28 February 2026.
- In the case of a residential complex with five residential units, which was approved by the building authority before 1 February 2015, an amendment is made in accordance with Article 48a (alteration of the building, increase in the number of dwellings, vertical addition of one floor).This creates two additional dwellings: No playground levy is to be paid for these dwellings (Paragraph 4).

- In the case of a residential complex with five residential units that was approved by the building authorities before 1 February 2015, a horizontal extension is added (the alteration does not fall under paragraph 4). This creates two additional dwellings: The playground levy must be paid for the two new dwellings.

Until now, the municipality determined the legally stipulated, required and unattainable size of the non-public playground in the planning permission (Article 66(6)).If this decision became legally binding, the municipality imposed the playground compensatory levy by means of a fee assessment. Due to the current omission of the determination of the need for and size of the non-public playground, the municipality can issue a fee assessment immediately after due date. This is intended to simplify administration.

The obligation to pay the levy is also to be waived if an agreement is reached with the municipality on the construction of or additional payment for a public playground. There are a variety of options, such as the purchase of play equipment or the assumption of ongoing maintenance costs. In addition, a public playground can also be built on a plot owned by a housing developer; the decisive factor is that the municipality acts as the operator of the public playground. The (previous) upper limit and the distance (previously Article 66 (4)) can be omitted for reasons of administrative economy.
The competence to conclude such an agreement is governed by the provisions of the Lower Austrian Municipal Code 1973 or the Lower Austrian City Law Organisation Act [NÖ Stadtrechtsorganisationsgesetz]. The general limits of value for legal transactions must be observed.

The playground levy, like the playground compensatory levy, is an exclusively municipal levy. The earmarking of the levy, which was previously provided for in Article 42 (4), is eliminated entirely. Playground compensatory levies collected to date shall continue to be earmarked for specific purposes.

Re Article 42a:

Municipalities will be able to tie the standard rate of the development levy (Article 38(6)) and the compensatory levies for parking spaces for motor vehicles and bicycles (Article 41 paragraph 3 and 5) to the construction cost index. This enables an automatic annual increase (index adjustment) and reduces the administrative burden on the municipalities.

In addition, it should be possible to tie the index adjustment to a threshold value. It is only when this has been exceeded that an adjustment is made to the unit rate of the development levy (Article 38(6)) or of the compensatory levies for parking spaces for motor vehicles and bicycles (Article 41(3) and (5)).

The starting point for the adjustment should always be the change in the indices from June of the previous year to June of the current year. The change to the amounts enters into effect on 1January of the following year. The adjusted amount shall be rounded to a full 10 cents and shall be announced by the Mayor on the official bulletin board.

Re Article 48a:

If a building is renovated or its use is changed, the existing building often has to be brought up to the current state of the art. This often leads to numerous requirements and high costs. Construction work on existing buildings in the scope of renovation and redensification projects should now be simpler and cheaper. This helps save land, reduce vacancy and revitalise town centres. Simplifications are to be created for certain additions of storeys, alterations without surface additions and changes in use.

The distinction in the renovation compared to new construction is objectively justified with regard to the costs of retrofitting in renovation, soil protection, the reduction of built-up land area and gains in the attractiveness of empty spaces.

The simplifications are to apply to structures approved by the building authorities before 1 February 2015.The date of 1 February 2015 was chosen because at that time the NÖ BO entered into force in 2014 and with the NÖ BTV 2014, the construction provisions from the OIB guidelines were also adopted for the first time. Reference is also made to this date in the case of existing simplifications (Article 49(5), Article 52(1), (2) and (4), Article 53a(10), Article 66(1)). According to the case law of the Administrative Court (including the Administrative Court of 13.12.1985, 83/17/0221), buildings with presumed consensus or with a declaratory decision pursuant to Article 70(6) are also deemed to have been approved by the building authorities.

Vertical additions (addition of storeys) are additions which do not increase land use for building. The simplifications should not apply to horizontal extensions, as this increases the built-up area and land use for building. Vertical additions (addition of storeys) should not be favoured without restriction, which means that only vertical additions by no more than one storey fall within the scope of Article 48a.This includes such things as expansions of existing storeys (e.g. expansion up to the area of the storey below) and additions of a maximum of one further storey. Since unconverted attic rooms do not count as an above-ground storey in accordance with Article 4(16), an attic conversion in this respect already constitutes an additional storey.

Article 48a allows deviations from the current structural engineering requirements for both the existing structure and the structural components of the vertical extension. Deviations are only permitted as in existing building, so that no further deterioration is possible. If there are windows that do not provide sufficient lighting, these windows may not be completely removed in habitable rooms, for example. Sanitary rooms in the dwelling, for example, may only be moved to the corridor if there are already dwellings without sanitary rooms in the existing building. However, the project may result in a deterioration of the original requirement level of the existing building without changing the existing building. It is therefore permissible to convert storage rooms into

habitable rooms, even if the previous storage room has no windows.

Deviation from current safety-related requirements should be permitted if the change in the situation of the existing building does not (or not significantly) deteriorate the original requirement level of the legally compliant existing building. The starting point is always the level of the existing and approved (legally compliant) building in place, which has been able to exist as it is and should continue to exist as it is.A ‘upgrading’ of this (legally compliant) existing building should only be necessary in the event of a change in the existing building situation if a significant deterioration in the safety level is otherwise to be expected.
The following cases are conceivable:

- In a residential complex with 20 dwellings, the approved escape route (in the legally compliant existing building) no longer meets current safety requirements. Now the residential complex is to be (vertically) extended by the addition of two dwellings. The change in the existing situation (two additional housing units) does not significantly deteriorate the safety level of the (previous) legally compliant existing building, as only two dwellings (10% of the previous existing building) are being added.
- In a residential complex with 8 dwellings on two levels (ground floor and upper floor), the stability (structural integrity) no longer meets to current safety-related requirements. Now, the residential complex is to be (vertically) extended by one storey. After the extension, the calculated useful capacity would only be 80 kg/m^2. The change to the existing situation (addition of another storey) significantly deteriorates the safety level of the (previous) legally compliant existing building. Therefore, the stability must be ‘upgraded’ to the current state of the art before the extension can be approved.

If the project results in a deterioration, a confirmation from an independent person authorised under trade law or in accordance with the Civil Engineers Act 2019 must be submitted for safety-related requirements. The authority must

base its judgement on this confirmation unless any doubts arise during the proceedings as to the accuracy of this confirmation. If no deterioration takes place, this can be done without confirmation. This essentially already corresponds to
numerous existing exemptions for existing buildings (e.g. Annex 2, Point 12, Annex 2.1, Point 6, Annex 2.2, Point 12, Annex 2.3, Point 6, Annex 3, Point 14, Annex 4, Point 9 and Annex 5, Point 6 of the NÖ BTV 2014).

Deviations from current quality-related requirements (e.g. lighting, sound insulation, sanitary facilities, accessibility) should always be possible in the cases of Article 48a as in existing buildings.

To differentiate between the safety-related and quality-related requirements, these are listed in greater detail in the parentheses. These are based on the designations in Article 43(1) and Annexes 1 to 5 of the NÖ BTV 2014.The building height to be complied with in accordance with Article 53a is not a safety-related or quality-related requirement, meaning that it must also be complied with when adding storeys in accordance with Article 48a(1).However, the possible deviations under Article 53a(1a) (new) are also applicable to existing buildings.
Special provisions have been created for deviating from the obligation to create parking spaces for motor vehicles (Article 63(1b)) and the payment of the playground levy (Article 42
(4)). In the absence of a more specific provision, the obligation to create parking spaces for bicycles must also be complied with in the case of projects under Article 48a.

Requirements that must be complied with due to EU regulations must be excluded from the simplifications. This mainly concerns the requirements for energy saving and thermal insulation (Article 44, Article 44a, Annex 6 NÖ BTV 2014), which are to be complied with on the basis of Directive (EU) 2018/844 and will have to be made more stringent in future due to Directive (EU) 2024/1275.The EU regulations implemented at are listed in Article 69 and concern Article 43a (electronic communication) and Article 45a (domestic installations for drinking water), among other things.

Examples:

An existing single-family house is to be renovated and converted. The house is to be divided into two residential units (ground floor and upper floor). The upper floor is accessible by a staircase with a width of 80 cm. Due to the division of the building, the staircase would have to be converted to the state of the art (minimum width of 90 cm). This is a safety-related requirement for escape routes (Annex 4 NÖ BTV 2014, Point 2.4.3).

The change to the existing situation (division of the detached house) does not significantly deteriorate the safety level of the (previous) legally compliant existing building. Therefore, if confirmed in accordance with Paragraph 2, an approval may also be granted without widening the staircase. In the event of an extension, the staircase could even be continued in the extended section at the existing width.

An existing office building is to be converted and additional offices installed in rooms that were previously used as storage rooms. The windows in the rooms do not comply with the current quality-related requirements for sound insulation for recreation rooms in office buildings (Annex 5 NÖ BTV 2014, Point 2.2.4).

Since sound insulation as a quality-related criterion is insignificant in the renovation, approval can also be granted without remodelling the windows.

One accommodation establishment has four double rooms that are rented out to guests. An additional double room and a single room are to be built in the course of a conversion project. As a result of the conversion, safety lighting on the escape routes (corridors, doors) would currently have to be retrofitted (safety-related requirement for fire protection according to NÖ BTV 2014, Annex 2, Point 5.4).

The change to the existing situation (three additional beds) does not significantly impair the safety level of the (previous) legally compliant existing building. For this reason, approval may also be granted without the installation of safety lighting with the necessary in accordance with paragraph 2.

Re Article 49(6):

As already provided for passenger lifts (Article 49(5)) and thermal insulation cladding (Article 52(4)), the renovation is intended to enable the prescribed building density to be exceeded for the construction or expansion of waste collection rooms . This only includes a need for a sufficient waste collection room, which is to be defined based on the size of the residential complex.

Re Article 51(2) to (6):

Amendments to Article 51(2) are intended to liberalise buildings in the clearance area. This enables even main buildings or parts thereof to be extended into the clearance area.

This is mainly intended to enable parts of main buildings without lounges in the clearance area (e.g. garages that do not have a structural separation from the main building and thus belong to it).In principle, parts of main building with recreation rooms are also permitted in the clearance areas, in which case the necessary lighting (Article 51(5) new) and fire protection (NÖ BTV 2014, Annex 2, Point 4) must also be taken into account in the future.

Previously, Article 51(2)(3) stipulated that the height of the fronts of buildings in the clearance area may not exceed 3m metres at any point. Now this height should apply only to the front facing the plot boundary and the parts of the other fronts in the clearance area. The amendment also allows such things as monopitch roofs, the higher part of which is already outside the clearance area.

In addition, the permissible size of buildings and structural installations in the clearance area will be increased from the present 100 m² to 150 m². This improves the usability of the construction site, especially for larger plots with an open construction type. In addition, further changes will be made to improve the systematic integration of the substantive amendments.

The previously further-reaching option of paragraph 4 (previous) is now summarised in paragraph 2(3). In terms of content, it is expanded to the effect that not only main buildings, but also outbuildings may be erected in the rear clearance area.

As was previously the case, paragraph 4 permits the construction of structural installations in the front and – where they are not buildings or structural installations as per paragraph 2 – in the side and rear clearance area.

A substantial change to the current legal situation is made by the first sentence of Article 51(6), according to which all buildings in the clearance area are only permitted if the sufficient exposure of the main windows of existing approved buildings on adjacent plots is not impaired. This serves to safeguard the existing situation of approved main buildings. In view of the renovation of old buildings, it must be ensured that the lighting of the main windows cannot be installed in these existing approved buildings.

The second sentence of Article 51(6) concerns light testing for structures over 3 m tall in the clearance area, which was previously included in Article 51(2)(3), Paragraphs 4 and 5.The previous wording ‘main windows of authorised buildings’ has been replaced by the wording ‘main windows of future approved buildings’ in accordance with the definitions in Article 4(21).This was necessary because the initial definition also includes existing approved buildings, whose lighting test is already regulated by the first sentence of Article 51(6).Furthermore, the sentence concerning open-land plots in the previous Article 51(4) could be omitted, as existing buildings in all dedications are already taken into account in the first sentence of Article 51(6). To summarise, the second sentence of Article 51(6) therefore does not contain any changes to the previous practice of light testing for structures over 3 m high in the building clearance area.

Re Article 53a(1a):

The provision in question is intended to make it possible – under certain conditions – to exceed the building class by 1.5 metres in the entire built-up area in the case of new buildings or renovations. Building slightly over the construction class should allow greater flexibility, make the built-up area more usable in buildings and not cause additional land consumption. In construction class II, for example, three full floors which cover the entire

surface of the built-up area, are not possible at present. The third storey is therefore

usually not built or only ‘set back’. This option creates more living space on the same floor area. Against this background, the provision appears to be objectively justified.

The exemption provision is only applicable if the building height is specified in the development plan in the form of a building class as defined in Article 4(5) (Article 31(2) NÖ ROG [Lower Austrian Regional Planning Act] 2014) or if provisions on building classes are to be applied accordingly on building land areas without a development plan in accordance with Article 54(3). Article 53(1a) is not applicable if the development plan specifies a maximum permissible building height as defined in Article 30(1) (3) NÖ ROG 2014.

The exemption should only apply to buildings with flat roofs. This is intended to prevent further undercutting of the height specifications in the development plan as well as the considerable exceeding of the previous limits and to prevent the creation of any further undeveloped roof spaces.

Thanks to the additional option, it is not necessary for this already increased height to be exceeded by a further metre in certain subsections (Article 53a (1) last sentence).

There are no changes to the option of calculating the permissible building height in the form of
the envelope (Article 53a (2)). Article 53a(3) (height of recessed storeys or recessed building components) and the limitation pursuant to Article 53a(4) (building height + 6 m) also remain unaffected. This is based on the building height according to the building class and not on its being increased by 1.5 metres.

Additional lighting problems are not to be expected as a result of the provision because, depending on the specific greater building height (Article 53), a greater building width must be complied with in accordance with Article 50(1). The exemption can also not be utilised if the lighting of houses on the opposite
side of the street can be impaired as defined by Article 53a(8).

Exceeding the construction class by taking advantage of the exemption under Article 53a(1a) is relevant for the calculation of levies for development and additions (see changes in Article 38(5) and Article 39(3)).

Re Article 53a(5):

At present, the number of floors may not exceed the construction class by more than 1, with some exceptions. This limitation on the number of storeys is to be omitted in future. Moreover, the omission constitutes an administrative simplification.

Re Article 53a(9):

In addition to the re-erection of a legally erected, existing building in an area without a development plan (see Article 54(3a)), re-erection in regulated building land should also be made possible. However, the planning regulations of the municipality must be observed.

A derogation from the urban development plan can therefore only be provided for if the municipal council agrees to it. Examples of cases may be where buildings only barely exceed the specified building class or also fall below a specified building height and this has not been sufficiently taken into account in the preparation of the development plan. In such a case, the municipal council should be allowed to anticipate an amendment to the development plan.

The provision is only applicable if, prior to the demolition of the existing building, building approval is sought for the construction of a new building in the form of a reconstruction within the footprint and building height of the existing building and the consent of the municipal council is obtained. Approval is at the free (spatial planning) discretion of the municipal council. There is no subjective right to the consent of the municipal council.

Re Article 54(3a):

The purpose of this provision is to allow the re-erection of legally constructed, existing buildings within the same shape and size, even if they no longer meet the current legal requirements in terms of building class, building height, construction method or building width. In this connection, the municipality should be able to further shape future development in building plans. The amendment therefore only concerns areas without a development plan.

The provision is only applicable if, prior to the demolition of the existing building, planning permission is sought for the construction of a new building in the form of a reconstruction within the footprint and building height of the existing building.
It follows from the current fire protection regulations (NÖ BTV 2014, Annex 2, Point 4) that the installation of windows is usually not possible at a distance of less than 2 m to the neighbouring plot. To this end, the provision stipulates that the current condition (of the existing building) may not be worsened with regard to fire protection (by the reconstructed building). This allows windows in the fire wall of the new building to a reasonable extent, even if the old building already had openings in the fire wall.

Re Article 55(1a):
The changes concerning the building width (distance to land boundaries) in Article 51 should also be adopted for the provisions concerning minimum distances of buildings on open land to zoning boundaries on building land. The amended order of the paragraphs in Article 51 and the wordings were adapted for this purpose.

Re Article 55(3):
Due to the abolition of the notification procedure and the expansion of the simplified approval procedure, it is necessary to amend the citations.

Re Article 56 (1), first sentence:
The elimination of the notification procedure and the expansion of the simplified approval procedure require the wording to be adapted.

Re Article 63(1a):
Buildings for assisted living, barrier-free living or young living are not expected to require an increased number of parking spaces. Due to the type of housing and the age of the residents in particular, it can be assumed that

it is not necessary to provide a parking space for every dwelling. It is therefore clarified that, as a general rule, the minimum number for those same forms of housing should be only half.
This should only include projects that meet the criteria for a target-group-specific subsidy for the form of housing ‘Assisted living’, ‘Barrier-free living’ or ‘Young living’ in accordance with Article 30(3) of the Lower Austrian Housing Subsidy Guidelines 2019.
The municipal council may, as has been the case so far, adopt provisions that deviate from this (Article 63(2)).

Re Article 63(1b):
In the case of renovations or changes of use, the obligation to create parking spaces for motor vehicles should also be simplified.
In contrast to Article 48a(1), however, it is not the complete vertical addition of a storey that is to be promoted, but only the spatially limited expansion of an unfinished attic (loft) space. This distinction seems necessary, particularly due to the additional burden on public transport planning, and the general addition of storeys (without expanding loft space) cannot be promoted.

By way of derogation, different time points should also be laid down for the complete removal of the obligation. Due to urban structures and public transport planning, a complete elimination of the parking space obligation when renovating existing buildings built before 1 February 2015 would lead to massive effects for municipalities and parking space management. Therefore, unlike in Article 48a(1), the existing building situation on 1 February 2015 should not be taken as a basis. Rather, only the 20-year existence of the building should lead to the complete elimination of the obligation in the event of renovation or change of use. The reference date here is based on the initial building permit for the existing property.

If the building has been in existence for less than 20 years, the obligation to construct up to two parking spaces is only waived if these are only of minor importance due to the local circumstances, in particular the traffic and

car park situation, and the costs of construction would be disproportionate for the owners. Particular attention must be paid to surrounding public parking areas or car parks when assessing the local conditions. If such public parking facilities are available in sufficient number and size, the mandatory parking spaces provided for by law are of secondary importance. The assessment of disproportionality must always be made on the basis of the economic viability of the undertaking and the costs involved. For example, if someone opens a massage parlour in
a single-family housing estate and would have to carry out extensive conversion work or make expensive additional purchases in order to fulfil the parking space obligation, this may be considered disproportionate. The construction of parking spaces for businesses that are likely to have a high demand for them (e.g. retail businesses, restaurants, etc.) should never be considered disproportionate.
Again, unlike Article 48a, the existing building on 1 February 2015 is not taken as a basis. On the contrary, in the event of any renovation or change of use, this advantage can also be claimed on the day after construction.

Re Article 63(7) and Article 65(4):

For the amendment or conveyance without replacement of mandatory parking spaces, see Re
Article 15 above.
As this will be treated as an alteration to the consensus that is subject to approval in future, a special procedural provision is no longer required for this either.
The breakdown into indents is no longer necessary due to the omission of the measures mentioned.

Re Article 65 (6):

As already provided for passenger lifts (Article 49(5)) and thermal insulation cladding (Article 52(4)), the renovation is intended to enable the prescribed building density to be exceeded for the construction or expansion of bicycle parking facilities.

Re Article 66:

The obligation to create non-public playgrounds no longer applies. It is replaced by the playground levy directly payable to the municipality (see Article 42
new).

Procedures for imposing a playground compensatory levy are to be conducted in accordance with the previous provisions if this is required on the basis of building approval issued before the entry into force of this amendment.

Re Article 70(2):

Due to the rescission of the playground compensatory levy, the reference to the fact that ordinances pursuant to the Lower Austrian Playground Act 2002, Provincial Law Gazette8215, which set a benchmark for the playground compensatory levy, are deemed to be ordinances as defined by the
Lower Austrian Building Code 2014, can be omitted.

Re Article 70(4):

Under Article 35(5) of the Lower Austrian Building Code 1976, side windows and ventilation openings in external fire walls could be approved with the consent of the residents as long as there were no fire safety concerns. The approval could be granted for a maximum of 25 years. That provision was repealed in 1993.As such, all windows approved that way are at least 30 years old.

In combination with Article 70(6) NÖ BO 2014, this would result in untenable unequal treatment of such secondary windows and ventilation openings. The result would be that an unapproved secondary window would be in a better position than a temporarily unapproved one.

Since the construction was only permitted anyway if there were no fire safety concerns at the time, such secondary windows and ventilation openings are to be permanently protected in their existing state.

Re Article 70(6):

The provision to date is limited to buildings on the one hand and building

land on the other. Both restrictions should be lifted. Provided that all other requirements are met (original building approval, deviation by more than

30 years, no objection from the building authorities, no new approval possible), a declaratory decision can also be issued on application for structures (e.g. walls, carports, cesspits) and buildings on open land. At the same time, a practical interpretation of the provision is to be ensured. On the basis of the wording, the position has often been taken up to now that any objection by the building authority, even if it did not occur until more than 30 years after the derogation from the original authorisation, precludes the application of Article 70(6).
However, this would ultimately contradict the explanatory memorandum for the introduction of this provision in the Lower Austria Building Code 2014.The reason given there is that in many cases these properties are now owned by successors in title who are not aware of or cannot be charged with the lack of building approval.
As a rule, it can be assumed that the legal successor will not immediately notice that there is a defect (in particular the deviation from an existing approval), but will only do so in the course of building authority proceedings. However, the system of building authority measures in accordance with Articles 34 to 36 NÖ BO 2014 stipulates that the building authority must take direct action if a defect as defined by these provisions is detected. There is no provision for a deadline for completing applications or any other postponement before a suitable measure has been adopted. This means, in conclusion, that, according to the wording of the Act, noticing a defect and the written complaint by the building authority must coincide immediately. An interpretation in this sense could therefore in many cases not achieve the objective of avoiding undue hardship for legal successors who are not aware of the lack of building approval or cannot be blamed for it, as intended in the explanatory memorandum.
It should therefore now be clarified that a deviation from the original building approval after 30 years without objection does not preclude the application of the provision, regardless of whether an objection is raised after the 30 years have elapsed. This ensures legal certainty for the persons affected and enables the provision to be applied in a more practical manner.

Re Article 70(21) and (22):

Entry into effect is set at 1 March 2026.

Pending proceedings are to be continued in accordance with the previous legal situation, as the extensive changes resulting from this amendment would mean a significant administrative burden and interference with the rights of applicants and neighbours if the amended provisions were also to be applied in proceedings already underway. In order to benefit from individual simplifications of this amendment, an applicant is free to withdraw an application and resubmit it for an ongoing procedure. Projects that no longer require approval would have to be withdrawn or the application would have to be rejected due to lack of approval.

It should still be possible to impose the playground compensatory levy in all cases in which – on the basis of the current legal situation – a need for a non-public playground has been or will be determined. This may concern proceedings that have already been concluded or are still pending on 1 March and must therefore be concluded under the old legal situation.

Re Article 70(21), second indent:

OIB Guideline 3 (‘Hygiene, Health and Environmental Protection’) currently contains detailed specifications for minimum room heights in habitable and non-habitable rooms.

The amendments in question are intended to remove the specific requirements for the
minimum room height in the Lower Austrian Structural Engineering Ordinance. The stipulation that the clear room height must ensure a sufficiently large air volume in accordance with the intended use, the room area and the number of people to be accommodated should continue to apply.

According to the explanatory comments on OIB Guideline 3, the literature indicates a minimum air volume for bedrooms of 6.00 m^3 per person present. This volume must be increased to 10 m^3 per person present if a physical activity or manual work
is being carried out. Employee protection provisions are not affected by the amendment and continue to apply (e.g. room height in workspaces in accordance with Article 23 AStV [Workplace Ordinance] and airspace in

accordance with Article 24(3) AStV).

The amendment serves the purpose of making the built-up area of buildings more usable in the case of new buildings, extensions and conversions and contributes to reducing land use for building. Below-average room heights are not to be expected, as such rooms would be difficult to sell on the property market.

Re Article 70(23):

As a result of the elimination of the notification obligation, the further handling of legally notified projects must be provided for.

Construction projects lawfully notified before 1 March 2026 shall be deemed to be approved projects upon this amendment’s entry into effect. From now on, the same provisions apply to legally notified construction projects as to authorised projects. This concerns, in particular, the provisions on verification of the condition of the construction, precautionary measures, the demolition order and emergency measures. The documents on which the lawful notification is based form the basis for the assessment.

Building notifications received by the building authorities (shortly) before 1 March 2026 are to be assessed in accordance with the previous legal situation. The notified project is only deemed to have been approved if the notification was lawful, i.e. if the authority has refrained from prohibiting the project or if the time limit under (previous) Article 15 has elapsed.

The undersigned thus submit the

P r o p o s a l :

The State Parliament is requested to adopt the following:

‘1.The enclosed draft legislation on the Provincial Act amending the Lower Austria Building Code 2014 (Lower Austria Renovation Simplification Act) is approved.

2.The State Government of Lower Austria is instructed to take the steps necessary to implement this legislative resolution.’

The President is requested to refer this proposal to the CONSTRUCTION COMMITTEE for preliminary deliberation.