Queensland

INTEGRATED PLANNING ACT 1997

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Queensland

INTEGRATED PLANNING ACT 1997

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INTEGRATED PLANNING ACT 1997

[as amended by all amendments that commenced on or before 19 December 2003]

An Act for a framework to integrate planning and development assessment so that development and its effects are managed in a way that is ecologically sustainable, and for related purposes

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

1.1.1 Short title

This Act may be cited as the *Integrated Planning Act 1997*.

1.1.2 Commencement

(1) This Act, other than chapter 2, part 2, division 2 and chapter 5, part 6, commences on a day to be fixed by proclamation.

(3) Chapter 5, part 6 commences on 31 March 2000.

PART 2—PURPOSE AND ADVANCING THE PURPOSE

1.2.1 Purpose of Act

The purpose of this Act is to seek to achieve ecological sustainability[1] by—

1 'Ecological sustainability' is defined in section 1.3.3 (Meaning of "ecological sustainability").

(a) coordinating and integrating planning at the local, regional and State levels; and

(b) managing the process by which development occurs; and

(c) managing the effects of development on the environment (including managing the use of premises).

1.2.2 Advancing Act's purpose

(1) If, under this Act, a function or power is conferred on an entity, the entity must—

(a) unless paragraph (b) or (c) applies—perform the function or exercise the power in a way that advances this Act's purpose; or

(b) if the entity is an assessment manager other than a local government—in assessing and deciding a matter under this Act, have regard to this Act's purpose; or

(c) if the entity is a referral agency other than a local government (unless the local government is acting as a referral agency under devolved or delegated powers)—in assessing and deciding a matter under this Act, have regard to this Act's purpose.

(2) Subsection (1) does not apply to code assessment under this Act.

1.2.3 What advancing this Act's purpose includes

(1) Advancing this Act's purpose includes—

(a) ensuring decision-making processes—

(i) are accountable, coordinated and efficient; and

(ii) take account of short and long-term environmental effects of development at local, regional, State and wider levels; and

(iii) apply the precautionary principle; and

(iv) seek to provide for equity between present and future generations; and

(b) ensuring the sustainable use of renewable natural resources and the prudent use of non-renewable natural resources; and

(c) avoiding, if practicable, or otherwise lessening, adverse environmental effects of development; and

(d) supplying infrastructure in a coordinated, efficient and orderly way, including encouraging urban development in areas where adequate infrastructure exists or can be provided efficiently; and

(e) applying standards of amenity, conservation, energy, health and safety in the built environment that are cost effective and for the public benefit; and

(f) providing opportunities for community involvement in decision making.

(2) For subsection (1)(a)(iii), the precautionary principle is the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage.

(3) In subsection (1)(b)—

"natural resources" includes biological, energy, extractive, land and water resources that are important to economic development because of their contribution to employment generation and wealth creation.

PART 3—INTERPRETATION

Division 1—Standard definitions

1.3.1 Definitions—the dictionary

The dictionary in schedule 10 defines particular words used in this Act.

Division 2—Key definitions

1.3.2 Meaning of "development"

"Development" is any of the following—

(a) carrying out building work;

(b) carrying out plumbing or drainage work;

(c) carrying out operational work;

(d) reconfiguring a lot;

(e) making a material change of use of premises.

1.3.3 Meaning of "ecological sustainability"

"Ecological sustainability" is a balance that integrates—

(a) protection of ecological processes and natural systems at local, regional, State and wider levels; and

(b) economic development; and

(c) maintenance of the cultural, economic, physical and social wellbeing of people and communities.

1.3.4 Meaning of "lawful use"

A use of premises is a **"lawful use"** of the premises if—

(a) the use is a natural and ordinary consequence of making a material change of use of the premises; and

(b) the making of the material change of use was in accordance with this Act.

Division 3—Supporting definitions and explanations for key definitions

1.3.5 Definitions for terms used in "development"

In this Act—

"building work"—

1. "Building work" means—

(a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or

(b) work regulated under the *Standard Building Regulation 1993*; or

(c) excavating or filling—

(i) for, or incidental to, the activities mentioned in paragraph (a); or

(ii) that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or

(d) supporting (whether vertically or laterally) land for activities mentioned in paragraph (a).

2. "Building work", for administering IDAS under the *Queensland Heritage Act 1992*, includes any of the following—

(a) painting or plastering that substantially alters the appearance of the place;

(b) renovations, alterations or additions to the place;

(c) excavations, disturbances or changes to landscape or natural features of land that substantially alters the appearance of the place;

(d) work on furniture, fittings and other objects—

(i) associated with the place; and

(ii) that contributes to the place's cultural heritage significance.

3. "Building work", for administering IDAS under the *Queensland Heritage Act 1992*, does not include development for which an exemption certificate has been issued under that Act.

"lot" means—

(a) a lot under the *Land Title Act 1994*;[2] or

(b) a separate, distinct parcel of land for which an interest is recorded in a register under the *Land Act 1994*; or

(c) common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or

---

2 *Land Title Act 1994*, schedule 2—

"lot" means a separate, distinct parcel of land created on—

(a) the registration of a plan of subdivision; or

(b) the recording of particulars of an instrument;

and includes a lot under the *Building Units and Group Titles Act 1980*.

(d) a lot or common property to which the *Building Units and Group Titles Act 1980* continues to apply;[3] or

(e) a community or precinct thoroughfare under the *Mixed Use Development Act 1993*; or

(f) a primary or secondary thoroughfare under the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*.

"material change of use", of premises, means—

(a) the start of a new use of the premises; or

(b) the re-establishment on the premises of a use that has been abandoned; or

(c) a material change in the intensity or scale of the use of the premises.

"operational work" means—

(a) extracting gravel, rock, sand or soil from the place where it occurs naturally; or

(b) conducting a forest practice; or

(c) excavating or filling that materially affects premises or their use; or

(d) placing an advertising device on premises; or

(e) undertaking work (other than destroying or removing vegetation not on freehold land) in, on, over or under premises that materially affects premises or their use; or

(f) clearing vegetation on freehold land; or

---

3 The *Building Units and Group Titles Act 1980* may continue to apply to the following Acts—

(a) the *Integrated Resort Development Act 1987*;

(b) the *Mixed Use Development Act 1993*;

(c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*;

(d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*;

(e) the *Sanctuary Cove Resort Act 1985*.

(g) operations of any kind and all things constructed or installed that allow taking, or interfering with, water (other than using a water truck to pump water) under the *Water Act 2000*;

but does not include building, drainage or plumbing work.

"reconfiguring a lot" means—

(a) creating lots by subdividing another lot; or

(b) amalgamating 2 or more lots; or

(c) rearranging the boundaries of a lot by registering a plan of subdivision; or

(d) dividing land into parts by agreement (other than a lease for a term, including renewal options, not exceeding 10 years, or an agreement for the exclusive use of part of the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*) rendering different parts of a lot immediately available for separate disposition or separate occupation; or

(e) creating an easement giving access to a lot from a constructed road.

1.3.6 Explanation of terms used in "ecological sustainability"

For section 1.3.3—

(a) ecological processes and natural systems are protected if—

(i) the life supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored for present and future generations; and

(ii) biological diversity is protected; and

(b) economic development occurs if there are diverse, efficient, resilient and strong economies (including local, regional and State economies) enabling communities to meet their present needs while not compromising the ability of future generations to meet their needs; and

(c) the cultural, economic, physical and social wellbeing of people and communities is maintained if—

(i) well-serviced communities with affordable, efficient, safe and sustainable development are created and maintained; and

(ii) areas and places of special aesthetic, architectural, cultural, historic, scientific, social or spiritual significance are conserved or enhanced; and

(iii) integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction are provided.

Division 4—General matters of interpretation

1.3.7 Words in this Act prevail over words in planning instruments

If a word in a planning instrument has a meaning that is inconsistent with the meaning of the same word in this Act, the meaning of the word in this Act prevails to the extent of the inconsistency.

1.3.8 References in Act to applicants, assessment managers, agencies etc.

In a provision of this Act about a development application, a reference to—

(a) the applicant is a reference to the person who made the application; and

(b) development, or the development, is a reference to development the subject of the application; and

(c) the assessment manager is a reference to the assessment manager for the application; and

(d) a referral agency, concurrence agency or advice agency is a reference to a referral agency, concurrence agency or advice agency for the application; and

(e) the local government is a reference to the local government for the local government area where the development is proposed; and

(f) an information request is a reference to an information request for assessing the application; and

(g) the acknowledgment notice is a reference to the acknowledgment notice for the application; and

(h) a referral agency response is a reference to a referral agency response for the application; and

(i) the development approval is a reference to the development approval for the application; and

(j) the land is a reference to the land that is the subject of the application; and

(k) the planning scheme is a reference to the planning scheme for the locality where the development is to take place; and

(l) a submitter is a reference to a submitter for the application; and

(m) the decision notice, is a reference to the decision notice for the application.

PART 4—EXISTING USES AND RIGHTS PROTECTED

1.4.1 Lawful uses of premises on 30 March 1998

To the extent an existing use of premises was lawful immediately before 30 March 1998, the use is taken to be a lawful use under this Act on 30 March 1998.

1.4.2 Lawful uses of premises protected

(1) Subsection (2) applies if immediately before the commencement of a planning instrument or an amendment of a planning instrument the use of premises was a lawful use of the premises.

(2) Neither the instrument nor the amendment can—

(a) stop the use from continuing; or

(b) further regulate the use; or

(c) require the use to be changed.[4]

4 For development on State land from 30 March 1998 to 31 March 2000, see repealed section 6.1.40 (Application of ch 1, pt 5).

1.4.3 Lawfully constructed buildings and works protected

To the extent a building or other work has been lawfully constructed or effected, neither a planning instrument nor an amendment of a planning instrument can require the building or work to be altered or removed.

1.4.4 New planning instruments can not affect existing development approvals

(1) This section applies if—

(a) a development approval exists for premises; and

(b) after the approval is given, a new planning instrument or an amendment of a planning instrument commences.

(2) To the extent the approval has not lapsed,[5] neither the planning instrument nor the amendment can stop or further regulate the development, or otherwise affect the approval.

1.4.5 Implied and uncommenced right to use premises protected

(1) Subsection (2) applies if—

(a) a development approval comes into effect for a development application; and

(b) when the application was properly made, a material change of use, for a use implied by the application, was self-assessable development or exempt development; and

(c) after the application was properly made, but before the use started, a new planning instrument, or an amendment of a planning instrument—

(i) declared the material change of use to be assessable development; or

(ii) changed an applicable code for the material change of use.

(2) The use is taken to be a lawful use in existence immediately before the commencement of the new planning instrument or amendment if—

(a) the development, the subject of the approval, is completed within the time stated for completion of the development in—

---

5 For when approvals lapse, see section 3.5.21 (When approval lapses).

(i) a permit; or

(ii) this Act; and

(b) the use of the premises starts within 5 years after the completion.

1.4.6 Strategic port land

Section 1.4.1 applies to lawful uses of strategic port land as if a reference to 30 March 1998 were a reference to 1 December 2000.

1.4.7 State forests

For this Act, each of the following is taken to be an existing lawful use of a State forest—

(a) conservation;

(b) conducting a forest practice;

(c) grazing;

(d) recreation.

1.4.8 Sch 8 may still apply to certain development

Nothing in this part stops development in relation to a lawful use being assessable or self-assessable development under schedule 8 if the development begins after schedule 8 starts to apply to it.

PART 5—APPLICATION OF ACT

1.5.1 Act binds all persons

(1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

CHAPTER 2—PLANNING

PART 1—LOCAL PLANNING INSTRUMENTS

Division 1—General provisions about planning schemes

2.1.1 Meaning of "planning scheme"

A **"planning scheme"** is an instrument made by a local government under division 3.[6]

2.1.2 Area to which planning schemes apply

A local government's planning scheme applies to the whole of the local government's area (the **"planning scheme area"**).

Division 2—Key concepts for planning schemes

2.1.3 Key elements of planning schemes

(1) A local government and the Minister must be satisfied that the local government's planning scheme—

(a) coordinates and integrates the matters (including the core matters) dealt with by the planning scheme, including any State and regional dimensions[7] of the matters; and

(b) identifies the desired environmental[8] outcomes for the planning scheme area; and

(c) includes measures that facilitate the desired environmental outcomes to be achieved; and

(d) includes performance indicators to assess the achievement of the desired environmental outcomes; and

---

6 The Minister also may make a planning scheme if the local government fails to comply with a direction under section 2.3.2.

7 State and regional dimensions of matters are explained in section 2.1.4.

8 For this Act, "environment" is defined in schedule 10 (Dictionary).

(e) if the local government is prescribed under a regulation—includes a benchmark development sequence.[9]

(2) Measures facilitating the desired environmental outcomes to be achieved include the identification of relevant—

(a) self-assessable development; and

(b) assessable development requiring code or impact assessment.

(3) To remove any doubt, it is declared that—

(a) a planning scheme may identify desired environmental outcomes for particular localities within the planning scheme area; and

(b) a local government may include a benchmark development sequence in its planning scheme even if the local government is not prescribed under a regulation.

2.1.3A Core matters for planning schemes

(1) Each of the following are **"core matters"** for the preparation of a planning scheme—

(a) land use and development;

(b) infrastructure;[10]

(c) valuable features.

(2) In subsection (1)(a)—

"land use and development" includes each of the following—

(a) the location of, and the relationships between, various land uses;

(b) the effects of land use and development;

(c) how mobility between places is facilitated;

(d) accessibility to areas;

(e) development constraints (including, but not limited to, population and demographic impacts).

(3) In subsection (1)(b)—

---

9 Other legislation also requires local governments to note certain matters on planning schemes, for example, the *Mineral Resources Act 1989*, section 319 requires a local government to note on its planning scheme the existence of certain mining tenures.

10 The term "infrastructure" is defined in schedule 10 (Dictionary).

"infrastructure" includes the extent and location of proposed infrastructure, having regard to existing infrastructure networks, their capacities and thresholds for augmentation.

(4) In subsection (1)(c)—

"valuable features" includes each of the following, whether terrestrial or aquatic—

(a) resources or areas that are of ecological significance (such as habitats, wildlife corridors, buffer zones, places supporting biological diversity or resilience, and features contributing to the quality of air, water (including catchments or recharge areas) and soil);

(b) areas contributing significantly to amenity (such as areas of high scenic value, physical features that form significant visual backdrops or that frame or define places or localities, and attractive built environments);

(c) areas or places of cultural heritage significance (such as areas or places of indigenous cultural significance, or aesthetic, architectural, historical, scientific, social or technological significance, to the present generation or past or future generations);

(d) resources or areas of economic value (such as extractive deposits, fishery resources, forestry resources, water resources, sources of renewable and non-renewable energy and good quality agricultural land).

2.1.4 State, regional and local dimensions of planning scheme matters

(1) A matter (including a core matter) in a planning scheme may have local, regional or State dimensions.

(2) A local dimension of a planning scheme matter is a dimension that is within the jurisdiction of local government but is not a regional or State dimension.

(3) A regional dimension of a planning scheme matter is a dimension—

(a) about which a regional planning advisory committee report makes a recommendation; or

(b) that can best be dealt with by the cooperation of 2 or more local governments.

(4) A State dimension of a planning scheme matter (including a matter reflected in a State planning policy) is a dimension of a State interest.

Division 3—Making, amending and consolidating planning schemes

2.1.5 Process for making or amending planning schemes

(1) The process stated in schedule 1 must be followed for making or amending a planning scheme.

(2) The process involves 3 stages—

- preliminary consultation and preparation stage[11]
- consideration of State interests and consultation stage[12]
- adoption stage.[13]

2.1.6 Compliance with sch 1

Despite section 2.1.5, if a planning scheme is made or amended in substantial compliance with the process stated in schedule 1, the planning scheme or amendment is valid so long as any noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the proposed scheme; or

(b) restricted the opportunity of the public under schedule 1 to make properly made submissions; or

(c) restricted the opportunity of the Minister to exercise the Minister's powers under schedule 1, sections 10, 11 and 18.

2.1.7 Effects of planning schemes and amendments

(1) A planning scheme made under this division for a planning scheme area—

(a) becomes the planning scheme for the area; and

---

11 See schedule 1, part 1.

12 See schedule 1, part 2.

13 See schedule 1, part 3.

(b) replaces any existing planning scheme applying to the area; and

(c) has effect on and from—

(i) the day the adoption of the planning scheme is notified in the gazette; or

(ii) if a later day for the commencement of the planning scheme is stated in the planning scheme—the later day.

(2) If a planning scheme is amended under this division, the amendment has effect on and from—

(a) the day the adoption of the amendment is notified in the gazette; or

(b) if a later day for the commencement of the amendment is stated in the amendment—the later day.

2.1.8 Consolidating planning schemes

(1) A local government may prepare a consolidated planning scheme.

(2) Schedule 1 does not apply to the preparation of the consolidated planning scheme.

(3) The consolidated planning scheme is, in the absence of evidence to the contrary, taken to be the local government's planning scheme as at the day the consolidation is, by resolution, adopted by the local government.

Division 4—Temporary local planning instruments

2.1.9 Meaning of "temporary local planning instrument"

A **"temporary local planning instrument"** is an instrument made by a local government under this division.

2.1.10 Extent of effect of temporary local planning instrument

(1) A temporary local planning instrument may suspend or otherwise affect the operation of a planning scheme for not more than 1 year, or a lesser period stated in the temporary local planning instrument, but can not amend a planning scheme.

(2) However, a temporary local planning instrument may be made only if the Minister is satisfied—

(a) there is a significant risk of serious environmental harm, within the meaning of the *Environmental Protection Act 1994*, section 17,[14] or serious adverse cultural, economic or social conditions occurring in the planning scheme area; and

(b) the delay involved in using the process under schedule 1 to amend the planning scheme would increase the risk.

2.1.11 Area to which temporary local planning instrument applies

A temporary local planning instrument may apply to all or only part of a planning scheme area.

2.1.12 Process for making temporary local planning instruments

(1) The process stated in schedule 2 must be followed for making a temporary local planning instrument.

(2) The process involves 2 stages—

- proposal stage[15]
- adoption stage.[16]

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14 *Environmental Protection Act 1994*, section 17—

"Serious environmental harm" is environmental harm (other than environmental nuisance)—

(a) that causes actual or potential harm to environmental values that is irreversible, of a high impact or widespread; or

(b) that causes actual or potential harm to environmental values of an area of high conservation value or special significance; or

(c) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount; or

(d) that results in costs of more than the threshold amount being incurred in taking appropriate action to—

(i) prevent or minimise the harm; and

(ii) rehabilitate or restore the environment to its condition before the harm.

15 See schedule 2, part 1.

16 See schedule 2, part 2.

2.1.13 Compliance with sch 2

If a temporary local planning instrument is made in substantial compliance with the process stated in schedule 2, the instrument is valid.

2.1.14 When temporary local planning instruments have effect

A temporary local planning instrument made under this division has effect—

(a) on and from—

(i) the day the adoption of the instrument is notified in the gazette; or

(ii) if a later day for the commencement of the instrument is stated in the instrument—the later day; and

(b) until the instrument expires or is repealed.

2.1.15 Repealing temporary local planning instruments

(1) A temporary local planning instrument may be repealed by—

(a) a resolution of a local government; or

(b) the adoption of a planning scheme or an amendment of a planning scheme that specifically repeals the instrument.

(2) However, a local government must have the Minister's written approval to make a resolution under subsection (1)(a) if the temporary local planning instrument—

(a) was made by the local government under the direction of the Minister under section 2.3.2(1)(c); or

(b) was made by the Minister under section 2.3.3 after a failure of the local government to comply with a direction of the Minister under section 2.3.2(1)(c).

(3) The local government must publish, in a newspaper circulating generally in the local government's area and in the gazette, a notice stating the following—

(a) the name of the local government;

(b) the name of the temporary local planning instrument being repealed;

(c) the day the resolution was made;

(d) the purpose and general effect of the resolution.

(4) On the day the notice is published in the gazette (or as soon as practicable after the day), the local government must give the chief executive a copy of the notice.

(5) The repeal takes effect—

(a) if the resolution is made under subsection (1)(a)—on the day the resolution is notified in the gazette; or

(b) if the resolution is made under subsection (1)(b)—on the day the resolution adopting the planning scheme is notified in the gazette.

Division 5—Planning scheme policies

2.1.16 Meaning of "planning scheme policy"

A **"planning scheme policy"** is an instrument that—

(a) supports the local dimension of a planning scheme; and

(b) supports local government actions under this Act for IDAS and for making or amending its planning scheme; and

(c) is made by a local government under this division.[17]

2.1.17 Area to which planning scheme policy applies

A planning scheme policy may apply to all or only part of a planning scheme area.

2.1.17A Inconsistency between planning instruments

To the extent a planning scheme policy is inconsistent with another planning instrument, the other planning instrument prevails.

17 The Minister also may make a planning scheme policy if the local government fails to comply with a direction under section 2.3.2.

2.1.18 Adopting planning scheme policies in planning schemes

(1) The only document made by a local government that the local government's planning scheme may, under the *Statutory Instruments Act 1992*, section 23, apply, adopt or incorporate, is a planning scheme policy.

(2) A planning scheme policy must not apply, adopt or incorporate another document prepared by the local government.

2.1.19 Process for making or amending planning scheme policies

The process stated in schedule 3 must be followed for making or amending a planning scheme policy.

(2) The process involves 3 stages—

- proposal stage[18]
- consultation stage[19]
- adoption stage.[20]

2.1.20 Compliance with sch 3

Despite section 2.1.19, if a planning scheme policy is made or amended in substantial compliance with the process stated in schedule 3, the planning scheme policy or amendment is valid so long as any noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the proposed planning scheme policy or amendment; or

(b) restricted the opportunity of the public under schedule 3 to make properly made submissions on the proposed policy or amendment.

18 See schedule 3, part 1.

19 See schedule 3, part 2.

20 See schedule 3, part 3.

2.1.21 Effects of planning scheme policies

(1) A planning scheme policy made under this division for a planning scheme area—

(a) becomes a policy for the area; and

(b) if the policy states that it replaces an existing policy—replaces the existing policy; and

(c) has effect on and from—

(i) the day the adoption of the policy is first notified in a newspaper circulating generally in the local government's area; or

(ii) if a later day for the commencement of the policy is stated in the policy—the later day.

(2) If a planning scheme policy is amended under this division, the amendment has effect on and from—

(a) the day the adoption of the amendment is first notified in a newspaper circulating generally in the local government's area; or

(b) if a later day for the commencement of the amendment is stated in the amendment—the later day.

2.1.22 Repealing planning scheme policies

(1) A local government, by resolution, may repeal a planning scheme policy (other than a planning scheme policy that is replaced by another planning scheme policy).

(2) If a local government makes a resolution under subsection (1), the local government must give the Minister a copy of the resolution.

(3) The local government must publish, in a newspaper circulating generally in the local government's area, a notice stating the following—

(a) the name of the local government;

(b) the name of the planning scheme policy being repealed;

(c) the day the resolution was made.

(4) On the day the notice is published (or as soon as practicable after the notice is published), the local government must give the chief executive a copy of the notice.

(5) The repeal takes effect on the day the notice is first published in the newspaper.

(6) Also, if a new planning scheme (other than an amendment of a planning scheme) is made for a planning scheme area, all existing planning scheme policies for the area are repealed on the day the adoption of the new planning scheme is notified in the gazette.

Division 6—Local planning instruments generally

2.1.23 Local planning instruments have force of law

(1) A local planning instrument is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law.

(2) A local planning instrument may not prohibit development on, or the use of, premises.

(3) A planning scheme or a temporary local planning instrument can regulate a use of premises, but only—

(a) by applying to the use a code identified in the planning scheme or temporary local planning instrument; and

(b) if—

(i) the use is a natural and ordinary consequence of making a material change of use of the premises happening after the code took effect; and

(ii) the making of the material change of use is assessable or self-assessable development.

(4) A planning scheme policy may only do 1 or more of the following—

(a) state information a local government may request for a development application;

(b) state the consultation the local government may carry out under section 3.2.5;

(c) state actions a local government may take to support the process for making or amending its planning scheme;

(d) contain standards identified in a code.

(5) Subsections (2) to (4) apply despite subsection (1).

2.1.24 Infrastructure intentions in local planning instruments not binding

If a local planning instrument indicates the intention of a local government or the State to provide infrastructure, it does not create an obligation on the local government or the State to provide the infrastructure.

2.1.25 Covenants not to conflict with planning schemes

Subject to section 3.5.37, a covenant under the *Land Act 1994*, section 373A(4) or the *Land Title Act 1994*, section 97A(3)(a) or (b) is of no effect to the extent it conflicts with a planning scheme—

(a) for the land subject to the covenant; and

(b) in effect when the document creating the covenant is registered.

PART 2—REVIEWING LOCAL PLANNING INSTRUMENTS

Division 1—Review of planning schemes by local government

2.2.1 Local government must review planning scheme every 8 years

(1) Each local government must complete a review of its planning scheme—

(a) within 8 years after the planning scheme was originally adopted; or

(b) if a review of the planning scheme has been previously completed—within 8 years after the completion of the last review.

(2) The review must include an assessment of the achievement of the desired environmental outcomes stated in the planning scheme having regard to the performance indicators stated in the scheme.

2.2.2 Courses of action local government may take

(1) After reviewing its planning scheme, the local government must, by resolution—

(a) propose to prepare a new scheme; or

(b) propose to amend the scheme; or

(c) if the local government is satisfied that the scheme is suitable to continue without amendment—decide to take no further action.

(2) A resolution by the local government under schedule 1 not to proceed with or adopt a proposed planning scheme is taken to be a decision under subsection (1)(c).

2.2.3 Report to be prepared about review if decision is to take no action

If a local government decides to take no further action under section 2.2.2(1)(c), the local government must—

(a) prepare a report stating the reasons why the local government decided to take no further action; and

(b) give a copy of the report to the chief executive.

2.2.4 Notice about report to be published

(1) After preparing the report mentioned in section 2.2.3, the local government must publish, in a newspaper circulating generally in the local government's area, a notice stating the following—

(a) the name of the local government;

(b) that the local government has prepared a report stating the reasons why the local government decided to take no further action under section 2.2.2(1)(c);

(c) that the report is available for inspection and purchase;

(d) a contact telephone number for information about the report;

(e) the period (the **"inspection period"**), being not less than 40 business days, during which the report is available for inspection and purchase.

(2) For all of the inspection period the local government must display a copy of the notice in a conspicuous place in the local government's public office.

2.2.5 Local government must review benchmark development sequence annually

(1) If a local government's planning scheme includes a benchmark development sequence, the local government must review the sequence each year in consultation with the State agencies that participated in the preparation of the sequence.

(2) Before the local government consults with the State agencies, the local government must assess the factors affecting the sequence since the last review and advise the agencies of any proposed amendments to the sequence.

PART 3—STATE POWERS

Division 1—Preliminary

2.3.1 Procedures before exercising powers

(1) Before a power is exercised under this part, the Minister must give written notice of the proposed exercise of the power to the local government to be affected by the exercise of the power.

(2) However, notice need not be given if the power is proposed to be exercised at the local government's request.

(3) The notice must state—

(a) the reasons for the proposed exercise of the power; and

(b) a time within which the local government may make submissions to the Minister about the proposed exercise of the power.

(4) The Minister must consider any submissions made under subsection (3) and advise the local government that the Minister has decided—

(a) not to exercise the power; or

(b) to exercise the power.

(5) If the Minister decides to exercise the power, the Minister must advise the local government the reasons for deciding to exercise the power.

Division 2—Exercising State powers

2.3.2 Power of Minister to direct local government to take action about local planning instrument

(1) If the Minister is satisfied that it is necessary to give a direction to protect or give effect to a State interest, the Minister may direct a local government to—

(a) review its planning scheme; or

(b) make a planning scheme or amend its planning scheme; or

(c) make or repeal a temporary local planning instrument; or

(d) make, amend or repeal a planning scheme policy.

(2) The direction may be as general or specific as the Minister considers appropriate and must state the reasonable time by which the local government must comply with the direction.

(3) The Minister may direct a local government to prepare a consolidated planning scheme.

2.3.3 Power of Minister if local government fails to comply with direction

(1) If the local government does not comply with the Minister's direction within the reasonable time stated in the direction, the Minister may act for the local government to take the action the Minister directed the local government to take.

(2) Anything done by the Minister under subsection (1) is taken to have been done by the local government and has the same effect as it would have had if the local government had done it.

(3) An expense reasonably incurred by the Minister in taking an action under subsection (1) may be recovered from the local government as a debt owing to the State.

2.3.4 Process if Minister takes directed action

The process for the Minister to take the action the Minister directed the local government to take is the same as the process for the local government to take the action except that—

(a) for making or amending a planning scheme, schedule 1, sections 10 and 18 do not apply; and

(b) for a temporary local planning instrument, schedule 2, section 2 does not apply.

2.3.5 References in schedules to local government etc.

If the Minister takes the action the Minister directed the local government to take, a reference in part 1 or 2 or schedule 1, 2 or 3 to—

(a) the local government's public office is a reference to the department's State office; and

(b) a decision taken by resolution of the local government is a reference to a decision of the Minister; and

(c) a local government's chief executive officer is a reference to the chief executive of the department.

PART 4—STATE PLANNING POLICIES

2.4.1 Meaning of "State planning policy"

(1) A **"State planning policy"** is an instrument, made by the Minister under this part, about matters of State interest.

(2) A State planning policy is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law.

2.4.2 Area to which State planning policies apply

A State planning policy has effect throughout the State unless the policy states otherwise.

2.4.3 Process for making or amending State planning policies

(1) The process stated in schedule 4 must be followed in making or amending a State planning policy.

(2) The process involves the following 3 stages—

- preparation stage[21]
- consultation stage[22]
- adoption stage.[23]

2.4.4 Compliance with sch 4

Despite section 2.4.3, if a State planning policy is made or amended in substantial compliance with the process stated in schedule 4, the policy or amendment is valid so long as any noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the proposed policy or amendment; or

(b) restricted the opportunity of the public under schedule 4 to make submissions on the proposed policy or amendment.

2.4.5 Effects of State planning policies

(1) A State planning policy made under this part—

(a) if the policy states that it replaces an existing policy—replaces the existing policy; and

(b) has effect on and from—

(i) the day the adoption of the policy is notified in the gazette; or

(ii) if a later day for the commencement of the policy is stated in the policy—the later day.

(2) If a State planning policy is amended under this part, the amendment has effect on and from—

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21 See schedule 4, part 1.

22 See schedule 4, part 2.

23 See schedule 4, part 3.

(a) the day the adoption of the amendment is notified in the gazette; or

(b) if a later day for the commencement of the amendment is stated in the amendment—the later day.

2.4.6 Repealing State planning policies

(1) The Minister may repeal a State planning policy by publishing a notice in—

(a) a newspaper circulating generally in the State; and

(b) the gazette.

(2) The notice must state the following—

(a) the name of the State planning policy being repealed;

(b) if the policy applies only to a particular area of the State—the name of the area or other information necessary to adequately describe the area;

(c) that the policy is repealed.

(3) The repeal has effect on and from—

(a) the day the notice is published in the gazette; or

(b) if a later day for the repeal is stated in the notice—the later day.

(4) The Minister must give each local government a copy of the notice.

PART 5—REGIONAL PLANNING ADVISORY COMMITTEES

Division 1—General provisions about regional planning advisory committees

2.5.1 What are regions

In this Act—

(a) there are no fixed geographical areas of the State constituting regions;[24] and

(b) a region may include the combined area of all or parts of 2 or more local government areas and an area not included in a local government area.

Division 2—Regional planning advisory committees

2.5.2 Establishment of committees

(1) The Minister may establish as many regional planning advisory committees as the Minister considers appropriate.

(2) A regional planning advisory committee may be established by—

(a) creating a new group of persons; or

(b) recognising an existing group of persons.

(3) Before establishing a regional planning advisory committee, the Minister must—

(a) prepare draft terms of reference for the proposed committee; and

(b) identify the proposed region and local governments likely to be affected by the advice of the proposed committee; and

(c) consult with the local governments and interest groups the Minister considers appropriate about—

(i) the draft terms of reference (including the term of the committee); and

(ii) the membership of the proposed committee; and

(iii) the extent of their, the Commonwealth's and the State's, proposed participation in, and support for, the proposed committee.

2.5.3 Particulars about committee

(1) In establishing a regional planning advisory committee, the Minister must state—

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24 Regions will vary according to the issues to be dealt with.

(a) the committee's name; and

(b) the membership of the committee; and

(c) the area covered by the region for which the committee is established; and

(d) the committee's terms of reference.

(2) The membership of the regional planning advisory committee—

(a) may be identified in general or specific terms; and

(b) without limiting the scope of possible membership, must include representatives of appropriate local governments.

(3) However, a local government may elect not to be represented on a regional planning advisory committee.

2.5.4 Changing committee

After consulting the committee and any other entities the Minister considers appropriate, the Minister may change any aspect of the committee, including, for example, its name, region, terms of reference and membership.

2.5.5 Operation of committee

A regional planning advisory committee may gather information and opinions in the way it considers appropriate, but should operate in an open and participatory way.

2.5.6 Reports of committee

A regional planning advisory committee must report its findings under its terms of reference to the Minister and the local governments of its region.

PART 6—DESIGNATION OF LAND FOR COMMUNITY INFRASTRUCTURE

Division 1—Preliminary

2.6.1 Who may designate land

A Minister or a local government (a **"designator"**) may, under this part, designate land for community infrastructure.[25]

2.6.2 Matters to be considered when designating land

Land may be designated for community infrastructure only if the designator is satisfied the community infrastructure will—

(a) facilitate the implementation of legislation and policies about environmental protection or ecological sustainability; or

(b) facilitate the efficient allocation of resources; or

(c) satisfy statutory requirements or budgetary commitments of the State or local government for the supply of community infrastructure; or

(d) satisfy the community's expectations for the efficient and timely supply of the infrastructure.

2.6.4 What designations may include

A designation may include—

(a) requirements about works or the use of the land for the community infrastructure such as the height, shape, bulk or location of the works on the land, vehicular access to the land, vehicular and pedestrian circulation on the land, hours of operation of the use, landscaping on the land and ancillary uses of the land; and

25 In this part, "Minister" includes any Minister of the Crown. See definition "Minister" in schedule 10 (Dictionary).

(b) other requirements designed to lessen the impacts of the works or the use of the land for community infrastructure, such as procedures for environmental management.

2.6.5 How IDAS applies to designated land

Development under a designation is exempt development, to the extent the development is either, or both, of the following—

(a) self-assessable development or assessable development under a planning scheme;

(b) the reconfiguration of a lot.

2.6.6 How infrastructure charges apply to designated land

If a public sector entity, that is a department or part of a department, proposes or starts development under a designation, the entity is not required to pay any infrastructure charge under chapter 5, part 1 (Infrastructure charges) for the development.

Division 2—Ministerial designation processes

2.6.7 Process for Minister to designate land

(1) The process stated in schedule 6 must be followed by a Minister to designate land unless the land is designated under section 2.6.8.

(2) The process involves 2 stages—

- consultation stage[26]
- designation stage.[27]

2.6.8 Minister may proceed straight to designation in certain circumstances

A Minister may designate land using the process stated in schedule 7 if the Minister is satisfied that—

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26 See schedule 6, part 1.

27 See schedule 6, part 2.

(a) either—

(i) the Coordinator-General has, under the *State Development and Public Works Organisation Act 1971*, section 29A,[28] carried out a coordination in relation to the community infrastructure; or

(ii) the Coordinator-General has, under the *State Development and Public Works Organisation Act 1971*, section 29K,[29] prepared a report evaluating an EIS for a project that includes the community infrastructure; or

(iii) the process under the *Environmental Protection Act 1994*, chapter 3, part 1 has been completed for an EIS for a project that includes the community infrastructure; or

(iv) the impacts of the infrastructure or the construction of the infrastructure have been assessed under chapter 3; and

(b) public consultation has already been carried out about the infrastructure under paragraph (a).

2.6.9 Compliance with sch 6 or 7

(1) Despite section 2.6.7, if a Minister makes a designation in substantial compliance with the process stated in schedule 6, the designation is valid so long as any noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the proposed designation; or

(b) restricted the opportunity of the public under schedule 6 to make submissions.

(2) Despite section 2.6.8, if the Minister makes a designation in substantial compliance with the process stated in schedule 7, the designation is valid.

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28 *State Development and Public Works Organisation Act 1971*, section 29A has been renumbered as section 25 (Supervision of environment).

29 *State Development and Public Works Organisation Act 1971*, section 29K has been renumbered as section 35 (Coordinator-General evaluates EIS, submissions, other material and prepares report).

2.6.10 Effects of ministerial designations

A designation made under this division—

(a) if the designation states that it replaces an existing designation—replaces the existing designation; and

(b) has effect on and from—

(i) the day the designation is notified in the gazette; or

(ii) if a later day for the commencement of the designation is stated in the notice—the later day.

2.6.11 When local government must include designation in planning scheme

If a local government receives a notice from a Minister stating that the Minister has made a designation in or near its planning scheme area, the local government must note the designation on—

(a) its planning scheme (if any); and

(b) any new planning scheme it makes before the designation ceases to have effect.

Division 3—Local government designation process

2.6.12 Designation of land by local governments

(1) A local government may only designate land by using the process stated in schedule 1 to include the designation as a substantive provision of its planning scheme.

(2) Subsection (1) applies whether or not the local government owns the land.

2.6.13 Designating land the local government does not own

(1) This section applies if the local government proposes to designate land it does not own.

(2) Before the start of the consultation period for making or amending a planning scheme intended to include the designation, the local government

must give written notice of the proposed designation to the owner of the land.

(3) The notice must state the following—

(a) the description of the land proposed to be designated, including a plan of the land;

(b) the type of community infrastructure for which the designation is proposed;

(c) the reasons for the designation;

(d) that written submissions about any aspect of the proposed designation may be given to the local government during the consultation period.

Division 4—Other matters about designations

2.6.14 Duration of designations

(1) A designation ceases to have effect—

(a) if the designation is made by a Minister—6 years after notice of the designation was published in the gazette (the **"designation cessation day"**); or

(b) if the designation is made by a local government—6 years after the planning scheme or amendment that incorporated the designation took effect (also the **"designation cessation day"**).

(2) If after designating land but before the designation cessation day, a local government makes a new planning scheme and includes an existing designation as a substantive provision of the new planning scheme—

(a) the existing designation continues to have effect until its designation cessation day under subsection (1); and

(b) section 2.6.13 does not apply to remaking the designation in the new planning scheme.

2.6.15 When designations do not cease

(1) A designation does not cease to have effect on the designation cessation day if—

(a) on the designation cessation day, an entity other than the State or the local government owns, or has a public utility easement over, the designated land and construction of community infrastructure started before the designation cessation day; or

(b) on the designation cessation day, the State or the local government owns, or has a public utility easement, for the same purpose as the designation, over, the designated land; or

(c) before the designation cessation day, the State or the local government gave a notice of intention to resume the designated land under the *Acquisition of Land Act 1967*, section 7;[30] or

(d) before the designation cessation day, the State or the local government signed an agreement to take under the *Acquisition of Land Act 1967* or to otherwise buy the designated land; or

(e) for a designation made by the Minister—before the designation cessation day, the Minister gave the local government written notice reconfirming the designation.

(2) However, if the State or a local government discontinues proceedings to resume designated land, whether before or after the designation cessation day, the designation ceases to have effect the day the proceedings are discontinued.

(3) To remove any doubt, it is declared that a designation of land or any notice given to an owner about a designation of land does not constitute a notice of intention to resume under of the *Acquisition of Land Act 1967,* section 7.

2.6.16 Reconfirming designation

(1) If the Minister gives a local government a written notice under section 2.6.15(1)(e) reconfirming a designation—

(a) the local government must display the notice in a conspicuous place in the local government's public office; and

(b) the Minister must—

(i) give the owner of the land a copy of the notice; and

(ii) publish the notice in the gazette; and

30 *Acquisition of Land Act 1967*, section 7 (Notice of intention to take land)

(c) the designation has effect for another 6 years after the notice is published in the gazette.

(2) When a local government receives a notice from the Minister reconfirming a designation in or near its planning scheme area, the local government must again note the designation on—

(a) its planning scheme (if any); and

(b) any new planning scheme it makes before the designation ceases to have effect.

(3) A reconfirmation of a designation is taken to be a designation to which sections 2.6.14 and 2.6.15 apply.

2.6.17 How designations must be shown in planning schemes

(1) If a local government designates land, or notes a designation of land by the Minister on its planning scheme, the designation or note must—

(a) identify the land; and

(b) state the type of community infrastructure for which the land was designated; and

(c) state the day the designation was made; and

(d) refer to any matters included as part of the designation under section 2.6.4; and

(e) be shown in the planning scheme in a way that other provisions in the planning scheme applying to the land remain effective even if the designation is repealed or ceases to have effect.

(2) To remove any doubt, it is declared that—

(a) a designation is part of a planning scheme; and

(b) designation is not the only way community infrastructure may be identified in a planning scheme; and

(c) the provisions of a planning scheme (other than the provision that designates land) applying to designated land remain effective even if the designation is repealed or ceases to have effect.

2.6.18 Repealing designations

(1) A Minister may repeal a designation made by the Minister by publishing a notice of repeal of the designation.

(2) A local government may repeal a designation made by the local government by publishing a notice of repeal of the designation.

(3) The notice must be published in the gazette and in a newspaper circulating generally in the area where the designated land is situated.

(4) The notice must state the following—

(a) that the designation has been repealed;

(b) the description of the land to which the designation applied;

(c) the purpose of the community infrastructure for which the land was designated;

(d) the reasons for the decision.

(5) If the repeal is made by the Minister, the Minister must give a copy of the notice to—

(a) each local government to which a notice about the making of the designation was given; and

(b) if the land is owned by an entity other than the State or the local government—the owner.

(6) If the repeal is made by the local government and the land is owned by an entity other than the local government, the local government must give a copy of the notice to the owner.

(7) The designation ceases to have effect on the day the notice is published in the gazette.

(8) If a local government repeals a designation or receives a notice from the Minister advising that the Minister has repealed a designation, the local government must note the repeal on its planning scheme.

2.6.19 Request to acquire designated land under hardship

(1) Subsection (3) applies if the owner of an interest in designated land (the **"designated interest"**) is suffering hardship because of the designation.

(2) However, subsection (3) does not apply if—

(a) the designated land is land—

(i) over which there is an existing public utility easement; or

(ii) for which a process has started under the *Acquisition of Land Act 1967* to acquire a public utility easement; and

(b) the designation is for community infrastructure for which the easement exists or is being acquired.

(3) The owner may ask the designator to buy—

(a) the designated interest; or

(b) if the owner has an interest in adjoining land and retaining the interest without the designated interest would also cause the owner hardship—the designated interest and the interest in the adjoining land.

(4) The designator must, within 40 business days after the request is received, decide to—

(a) grant the request; or

(b) take other action under section 2.6.21; or

(c) refuse the request.

(5) In deciding whether or not the owner is suffering hardship, the designator must consider each of the following—

(a) whether the owner must sell an interest mentioned in subsection (3)(a) or (b) without delay for personal reasons, including to avoid loss of income, and has tried unsuccessfully to sell the interest at a fair market value (disregarding the designation);

(b) whether the owner has a genuine intent to develop the interest, but development approval has been, or is likely to be, refused because of the designation;

(c) the extent to which development would be viable because of the designation if the owner exercised rights conferred under any development approval.

(6) In this section—

"adjoining land" means land—

(a) adjoining designated land; and

(b) in which the owner of the designated land has an interest.

2.6.20 If designator grants request

If the designator decides to grant the request, the designator must, within 5 business days after deciding the request, give the owner a notice stating that the designator proposes to buy the nominated interest.

2.6.21 Alternative action designator may take

If the designator decides not to buy the nominated interest, the designator may, instead of taking action under section 2.6.22 and within 5 business days after deciding the request, give the owner a notice stating that the designator proposes to—

(a) exchange the nominated interest for property held by the designator; or

(b) repeal the designation or remove the designation from the designated interest; or

(c) investigate the removal of the designation from the designated interest.

2.6.22 If designator refuses request

If the designator decides to refuse the request, the designator must, within 5 business days after deciding the request, give the owner a notice advising that—

(a) the request has been refused; and

(b) the owner may appeal against the decision.

2.6.23 If the designator does not act under the notice

(1) This section applies if the designator gave a notice under section 2.6.20 or 2.6.21 and, within 40 business days after giving the notice, the designator has not—

(a) signed an agreement with the owner to buy the nominated interest or to take the nominated interest under the *Acquisition of Land Act 1967*, section 15; or

(b) signed an agreement with the owner to exchange the nominated interest; or

(c) repealed the designation or removed the designation from the designated interest.

(2) The designator must, within 5 business days after the end of the period mentioned in subsection (1), give the owner a notice of intention to resume the nominated interest.

(3) The notice given under subsection (2) is taken to be a notice of intention to resume given under the *Acquisition of Land Act 1967*, section 7.

(4) However, the *Acquisition of Land Act 1967*, sections 13 and 41, do not apply to the resumption.[31]

2.6.24 How value of interest is decided

If an interest in designated land is taken under the *Acquisition of Land Act 1967*, the effect of the designation must be disregarded in deciding the value of the interest taken.

2.6.25 Ministers may delegate certain administrative powers about designations

A Minister may delegate the Minister's powers under sections 2.6.8, 2.6.9 and 2.6.20 to 2.6.23 to—

(a) the chief executive or a senior executive of any department for which the Minister has responsibility; or

(b) the chief executive officer of a public sector entity.

31 *Acquisition of Land Act 1967*, sections 7 (Notice of intention to take land), 13 (Owner may require a small parcel of severed land to be taken), 15 (Taking by agreement) and 41 (Disposal of land)

CHAPTER 3—INTEGRATED DEVELOPMENT ASSESSMENT SYSTEM (IDAS)

PART 1—PRELIMINARY

3.1.1 What is IDAS

"IDAS" is the system detailed in this chapter for integrating State and local government assessment and approval processes for development.[32]

3.1.2 Development under this Act

(1) Under this Act, all development is exempt development unless it is assessable development or self-assessable development.[33]

(2) Schedule 8 may identify exempt development that a planning scheme can not make assessable or self-assessable development.

(3) To the extent a planning scheme is inconsistent with schedule 8, the planning scheme is of no effect.

(4) However, to the extent a planning scheme is inconsistent with schedule 8 because the planning scheme states development is self-assessable, but schedule 8 states the development is assessable—

(a) codes in the planning scheme for the development are not applicable codes; but

(b) the codes must be complied with.

3.1.3 Code and impact assessment for assessable development

(1) A regulation, a planning scheme or a temporary local planning instrument may require impact or code assessment, or both impact and code assessment, for assessable development.

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32 This chapter sets out a number of ways the operation of IDAS can be adjusted to meet particular circumstances.

33 "Assessable development", "self-assessable development" and "exempt development" are defined in schedule 10 (Dictionary).

(2) However—

(a) if a regulation mentioned in subsection (1) requires code assessment for development, a planning scheme or temporary local planning instrument can not require impact assessment instead of code assessment for the aspect of development the code is about; and

(b) to the extent the planning scheme or temporary local planning instrument is inconsistent with a regulation mentioned in subsection (1), the planning scheme or temporary local planning instrument is of no effect.

(3) Subsection (2) applies whether a regulation mentioned in subsection (1) was made before or after the commencement of the planning scheme or temporary local planning instrument.

(4) A regulation under this or another Act may also identify a code, or a part of a code, as a code, or a part of a code, that can not be changed under a local planning instrument or a local law.

(5) To the extent a local planning instrument or a local law is inconsistent with the scope of a code, or the part of a code, identified in the regulation, the local planning instrument or local law is of no effect.

3.1.4 When is a development permit necessary

(1) A development permit is necessary for assessable development.[34]

(2) A development permit is not necessary for self-assessable development or exempt development.

(3) However—

(a) self-assessable development must comply with applicable codes;[35] and

(b) exempt development need not comply with codes or planning instruments.

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34 It is an offence to carry out assessable development without a development permit. See section 4.3.1 (Carrying out assessable development without permit).

35 It is an offence to carry out self-assessable development in contravention of applicable technical assessment codes. See section 4.3.2 (Self-assessable development must comply with codes).

3.1.5 Approvals under this Act

(1) A **"preliminary approval"** approves assessable development (but does not authorise assessable development to occur)—

(a) to the extent stated in the approval; and

(b) subject to the conditions in the approval.

(2) However, there is no requirement to get a preliminary approval for development.[36]

(3) A **"development permit"** authorises assessable development to occur—

(a) to the extent stated in the permit; and

(b) subject to—

(i) the conditions in the permit; and

(ii) any preliminary approval relating to the development the permit authorises, including any conditions in the preliminary approval.

3.1.6 Preliminary approval may override local planning instrument

(1) This section applies only to an application for a material change of use—

(a) requiring impact assessment; or

(b) processed as if it were an application requiring impact assessment.[37]

(2) In addition to approving assessable development, a preliminary approval may also do either or both of the following—

(a) state that any development that may take place on the land, the subject of the approval, may be either assessable (requiring code or impact assessment), self-assessable or exempt development or any combination of assessable, self-assessable or exempt development;

(b) identify any codes applying to development on the land.

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36 Preliminary approvals assist in the staging of approvals.

37 See section 6.1.28(2)(a) (IDAS must be used for processing applications).

(3) To the extent that a preliminary approval doing either or both of the things mentioned in subsection (2) is contrary to a local planning instrument, the approval prevails.

(4) However, subsection (2) no longer applies to development mentioned in subsection (2)(a) when the first of the following happens—

(a) the development approved by the preliminary approval and authorised by a later development permit is completed;

(b) the time limit for completing the development ends.

(5) To the extent a preliminary approval is inconsistent with schedule 8, the preliminary approval is of no effect.

(6) However, to the extent a preliminary approval is inconsistent with schedule 8 because the preliminary approval states development is self-assessable, but schedule 8 states the development is assessable—

(a) codes in the preliminary approval for the development are not applicable codes; but

(b) the codes must be complied with.

3.1.7 Assessment manager

(1) The **"assessment manager"**, for an application, is—

(a) if the development is wholly within a local government's area—the local government, unless a different entity is prescribed under a regulation; or

(b) if paragraph (a) does not apply—

(i) the entity prescribed under a regulation;[38] or

(ii) if no entity has been prescribed—the entity decided by the Minister.

(2) However, instead of making a decision under subsection (1)(b)(ii), the Minister may decide that the application, for which a decision under subsection (1)(b)(ii) would normally be made, be split into 2 or more applications.

38 Although a private certifier is not an assessment manager, the certifier can undertake certain functions of an assessment manager (see chapter 5, part 3).

(2A) If the entity prescribed or decided under subsection (1)(b) is a local government, the local government, in addition to its jurisdiction under the *Local Government Act 1993*, section 25, has the jurisdiction to assess and decide the application.

(3) The assessment manager administers applications.

3.1.8 Referral agencies

If an application is referred to a referral agency under part 3, the referral agency has, for assessing and deciding the application, the jurisdiction prescribed under a regulation.

3.1.9 Stages of IDAS

(1) IDAS involves the following possible stages—

- application stage[39]
- information and referral stage[40]
- notification stage[41]
- decision stage.[42]

(2) Not all stages, or all parts of a stage, apply to all applications.[43]

3.1.10 Self-assessable development and codes

Self-assessable development must comply with applicable codes.[44]

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39 See part 2.

40 See part 3.

41 See part 4.

42 See part 5.

43 An application for development approval for a domestic dwelling requiring code assessment only against the Standard Building Law, Standard Sewerage Law and Standard Water Supply Law will normally involve 2 stages of IDAS only—the application and decision stages. By contrast, an application for development approval for a factory requiring code assessment and a referral for workplace health and safety purposes involves 3 stages—the application, referral and decision stages.

44 It is an offence to carry out self-assessable development in contravention of applicable codes. See section 4.3.2 (Self-assessable development must comply with codes).

3.1.11 Native Title Act (Cwlth)

(1) Subsections (2) and (3) apply if an assessment manager takes action under the *Native Title Act 1993* (Cwlth), section 24HA or 24KA.

(2) If the assessment manager takes the action before the decision stage starts, the decision stage does not start until the action is completed.

(3) If the assessment manager takes the action after the decision stage has started, the decision stage stops the day after the action is taken and starts again the day after the action is completed.

PART 2—APPLICATION STAGE

Division 1—Application process

3.2.1 Applying for development approval

(1) Each application must be made to the assessment manager.[45]

(2) Each application must be made in the approved form.

(3) The approved form—

(a) must contain a mandatory requirements part including a requirement for—

(i) an accurate description of the land, the subject of the application; and

(ii) the written consent of the owner of the land to the making of the application; and

(b) may contain a supporting information part.

(4) Each application must be accompanied by—

(a) if the assessment manager is a local government—the fee set by resolution of the local government; or

45 A single application may be made for both a preliminary approval and a development permit.

(b) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act.

(5) If an application is a development application (superseded planning scheme), the application must also identify the superseded planning scheme under which assessment is sought or development is proposed.

(5A) If the development involves taking, or interfering with, a resource of the State, another Act may require the application to be supported by—

(a) evidence of an allocation of the resource; or

(b) the written consent of the chief executive, of the department in which the other Act is administered, to the application being made.[46]

(6) An application complying with subsections (1), (2), (3)(a), (4), (5) and (5A) is a **"properly made application"**.

(7) The assessment manager may refuse to receive an application that is not a properly made application.

(8) If the assessment manager receives, and after consideration accepts, an application that is not a properly made application, the application is taken to be a properly made application.

(9) Subsection (8) does not apply to an application unless the application contains—

(a) the written consent of the owner of any land to which the application applies; or

(b) any evidence required under subsection (5A).

(10) Subsection (3)(a)(ii) does not apply to an application if—

(a) the application is for work on land over which there is an existing public utility easement in favour of a public sector entity; and

(b) the applicant is the public sector entity.

(11) Subsection (3)(a)(ii) does not apply to an application if—

(a) the application is for building work or operational work on land designated for community infrastructure; and

(b) the building work or operational work is for the supply of the community infrastructure.

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46 For example, see the *Water Act 2000*, chapter 2, part 9 or chapter 8, part 2.

3.2.2 Approved material change of use required for certain developments

(1) This section applies if, at the time an application is made—

(a) a structure or works, the subject of an application, may not be used unless a development permit exists for the material change of use of premises for which the structure is, or works are, proposed; and

(b) there is no development permit for the change of use; and

(c) approval for the material change of use has not been applied for in the application or a separate application.

(2) The application is taken also to be for the change of use.

3.2.3 Acknowledgment notices generally

(1) The assessment manager for an application must give the applicant a notice (the **"acknowledgment notice")** within—

(a) if the application is other than a development application (superseded planning scheme)—10 business days after receiving the properly made application (the **"acknowledgment period"**); or

(b) if the application is a development application (superseded planning scheme)—30 business days after receiving the properly made application (also the **"acknowledgment period"**).

(1A) Subsection (1) does not apply if—

(a) the application requires code assessment only; and

(b) there are no referral agencies (other than building referral agencies), or all referral agencies have stated in writing that they do not require the application to be referred to them under the information and referral stage; and

(c) the application is not a development application (superseded planning scheme).

(2) The acknowledgment notice must state the following—

(a) which of the following aspects of development the application seeks a development approval for—

(i) carrying out building work;

(ii) carrying out plumbing or drainage work;

(iii) carrying out operational work;

(iv) reconfiguring a lot;

(v) making a material change of use of premises;

(vi) clearing vegetation on freehold land;

(b) the names of all referral agencies for the application;

(c) whether an aspect of the development applied for requires code assessment, and if so, the names of all codes that appear to the assessment manager to be applicable codes for the development;

(d) whether an aspect of the development applied for requires impact assessment, and if so, the public notification requirements;

(e) if the assessment manager does not intend to make an information request under section 3.3.6—that the assessment manager does not intend to make an information request;

(f) whether referral coordination is required.

3.2.5 Acknowledgment notices for applications under superseded planning schemes

(1) If an application is a development application (superseded planning scheme) in which the applicant advises that the applicant proposes to carry out development under a superseded planning scheme, the acknowledgment notice must state—

(a) that the applicant may proceed as proposed as if the development were to be carried out under the superseded planning scheme; or

(b) that a development permit is required for the application.

(2) If a notice is given under subsection (1)(a), section 3.2.3(2) does not apply.

(3) If an application is a development application (superseded planning scheme) in which the applicant asks the assessment manager to assess the application under the superseded planning scheme, the acknowledgment notice must state—

(a) that the application will be assessed under the superseded planning scheme; or

(b) that the application will be assessed under the existing planning scheme.

(4) If the applicant is given a notice under subsection (1)(a), the applicant may start the development for which the application was made as if the development were started under the superseded planning scheme.

(5) However, the applicant must start the development under subsection (4) within—

(a) if the development is a material change in use—4 years after the applicant is given the notice under subsection (1)(a); or

(b) if paragraph (a) does not apply—2 years after the applicant is given the notice under subsection (1)(a).

3.2.6 Acknowledgment notices if there are referral agencies or referral coordination is required

(1) If there are referral agencies for an application, the acknowledgment notice must also state—

(a) the address of each referral agency; and

(b) for each referral agency—whether the referral agency is a concurrence agency or an advice agency.

(2) If referral coordination is required, the acknowledgment notice must state that the applicant is required to give the chief executive—

(a) a copy of the application; and

(b) a copy of the acknowledgment notice; and

(c) the fee prescribed under a regulation under this or another Act.[47]

Division 2—General matters about applications

3.2.7 Additional third party advice or comment

(1) The assessment manager or a concurrence agency for an application may ask any person for advice or comment about the application at any stage.

47 See section 3.3.3 (Applicant gives material to referral agency).

(2) However asking for and receiving advice or comment must not extend any stage.

(3) There is no particular way advice or comment may be asked for and received and the request may be by publicly notifying the application.

(4) To remove any doubt, it is declared that public notification under subsection (3) is not notification under part 4, division 2.

3.2.8 Public scrutiny of applications

(1) The assessment manager must keep each application and any supporting material available for inspection and purchase from the time the assessment manager receives the application until—

(aa) if the application is not a properly made application—the assessment manager decides not to accept the application; or

(a) the application is withdrawn or lapses; or

(b) if paragraphs (aa) and (a) do not apply—the end of the last period during which an appeal may be made against a decision on the application.

(2) Subsection (1) does not apply to supporting material to the extent the assessment manager is satisfied the material contains—

(a) sensitive security information; or

(b) other information not reasonably necessary for a third party to access for the purpose of evaluating or considering the effects of the development.

(2A) Also, the assessment manager may remove the name, address and signature of each person who made a submission before making the submission available for inspection and purchase.

(3) In this section—

"supporting material" means—

(a) the acknowledgment notice; and

(b) any information request for the application; and

(c) any material (including site plans, elevations and supporting reports) about the aspect of the application assessable against or having regard to the planning scheme that—

(i) is in the assessment manager's possession when a request to inspect and purchase is made; and

(ii) has been given to the assessment manager at any time before a decision is made on the application.

3.2.9 Changing an application

(1) Before an application is decided, the applicant may change the application by giving the assessment manager written notice of the change.

(2) When the assessment manager receives notice of the change, the assessment manager must advise any referral agencies for the original application and the changed application of the receipt of the notice and its effect under subsection (3).

(3) The IDAS process stops on the day the notice of the change is received by the assessment manager and starts again—

(a) from the start of the acknowledgment period, if 1 or more of the following apply—

(i) the application is an application that requires an acknowledgment notice to be given and the acknowledgment notice for the original application has not been given;

(ii) there are referral agencies for the original application, the changed application or both the original application and the changed application;

(iii) the original application involved only code assessment but the changed application involves impact assessment; or

(b) if paragraph (a)(i), (ii) or (iii) does not apply—from the start of the information request period.

(4) However, the IDAS process does not stop if—

(a) the change merely corrects a mistake about—

(i) the name or address of the applicant or owner; or

(ii) the address or other property details of the land to which the application applies; and

(b) the assessment manager is satisfied the change would not adversely affect the ability of a person to assess the changed application.

(5) To remove any doubt, it is declared that this section does not apply if an applicant changes an application in response to an information request.

3.2.10 Notification stage does not apply to some changed applications

The notification stage does not apply to a changed application if—

(a) the original application involved impact assessment; and

(b) the notification stage for the original application had been completed when the IDAS process stopped; and

(c) the assessment manager is satisfied the change to the application, if the notification stage were to apply to the change, would not be likely to attract a submission objecting to the thing comprising the change.

3.2.11 Withdrawing an application

(1) At any time before the application is decided, the applicant may withdraw the application by giving written notice of the withdrawal to—

(a) the assessment manager; and

(b) any referral agency; and

(c) if the application requires referral coordination—the chief executive.

(2) If within 1 year of withdrawing the application, the applicant makes a later application that is not substantially different from the withdrawn application, any properly made submission about the withdrawn application is taken to be a properly made submission about the later application.

3.2.12 Applications lapse in certain circumstances

(1) An application lapses if—

(a) the next action to be taken for the application under the IDAS process is to be taken by the applicant; and

(b) the period mentioned in subsection (2) has elapsed since the applicant became entitled to take the action; and

(c) the applicant has not taken the action.

(2) For subsection (1), the period mentioned is—

(a) if the next action is complying with section 3.3.3[48]—3 months; or

(b) if the next action is complying with section 3.3.8—

(i) for an application required by an enforcement notice or in response to a show cause notice—3 months; or

(ii) for any other application—12 months; or

(c) for taking the actions mentioned in section 3.4.4[49]—20 business days; or

(d) if the next action is complying with section 3.4.7[50]—3 months.

(3) The period mentioned in subsection (2)(b) may be extended if the entity making the information request agrees with the applicant to extend the period.

3.2.13 Refunding fees

An assessment manager or a concurrence agency may, but need not, refund all or part of the fee paid to it to assess an application.

Division 3—End of application stage

3.2.15 When does application stage end

The application stage for a properly made application ends—

(a) if the application is an application that requires an acknowledgment notice to be given—the day the acknowledgment notice is given; or

(b) if the application is an application that does not require an acknowledgment notice to be given—the day the application was received.

48 Section 3.3.3 (Applicant gives material to referral agency)

49 Section 3.4.4 (Public notice of applications to be given)

50 Section 3.4.7 (Notice of compliance to be given to assessment manager)

PART 3—INFORMATION AND REFERRAL STAGE

Division 1—Preliminary

3.3.1 Purpose of information and referral stage

The information and referral stage for an application—

(a) gives the assessment manager, and any concurrence agencies, the opportunity to ask the applicant for further information needed to assess the application; and

(b) gives concurrence agencies the opportunity to exercise their concurrence powers; and

(c) gives the assessment manager the opportunity to receive advice about the application from referral agencies.

3.3.2 Referral agency responses before application is made

(1) Nothing in this Act stops a referral agency from giving a referral agency response on a matter within its jurisdiction about a development before an application for the development is made to the assessment manager.

(2) However—

(a) a referral agency is not obliged to give a referral agency response mentioned in subsection (1) before the application is made; and

(b) if the development is development requiring referral coordination, a statement in the referral agency response that the agency does not require a referral under section 3.3.3(3)(b)(i) is of no effect.

Division 2—Information requests

3.3.3 Applicant gives material to referral agency

(1) The applicant must give each referral agency—

(a) a copy of the application (unless the referral agency already has a copy of the application); and

(b) a copy of the acknowledgment notice (unless the referral agency was the entity that gave the notice or is a building referral agency); and

(c) if the referral agency is a concurrence agency—the agency's application fee prescribed under a regulation under this or another Act or, if the functions of the concurrence agency in relation to the application have been devolved or delegated to a local government, the fee that is, by resolution, adopted by the local government.

(2) The things mentioned in subsection (1)(a), (b) and (c) must be given to all referral agencies at about the same time.

(3) However, the applicant need not give a referral agency the things mentioned in subsection (1)(a), (b) and (c), if—

(a) the applicant gave the assessment manager a copy of the referral agency's response mentioned in section 3.3.2(1) with the application; and

(b) the referral agency's response states that—

(i) the agency does not require a referral under this section; or

(ii) the agency does not require a referral under this section if any conditions (including a time limit within which the application must be made) stated in the response are satisfied; and

(c) the statement is not stopped from having effect under section 3.3.2(2)(b), and any conditions mentioned in paragraph (b)(ii) are satisfied.

(4) The assessment manager may, on behalf of the applicant and with the applicant's agreement, comply with subsection (1) for a fee, not more than the assessment manager's reasonable costs of complying with subsection (1).

(5) To the extent the functions of a referral agency in relation to the application have been lawfully devolved or delegated to the assessment manager, subsections (1) to (4) (other than subsection (1)(c)) do not apply.

3.3.4 Applicant advises assessment manager

(1) After complying with section 3.3.3, the applicant must give the assessment manager written notice of—

(a) the day the applicant gave each referral agency the things mentioned in section 3.3.3(1)(a), (b) and (c); and

(b) if referral coordination is required—the day the applicant complied with section 3.3.5(2).

(2) To the extent the functions of a referral agency in relation to the application have been lawfully devolved or delegated to the assessment manager, subsection (1)(a) does not apply.

3.3.5 Referral coordination

(1) If the application involves 3 or more concurrence agencies, the information requests require coordination (**"referral coordination"**) by the chief executive.

(2) If referral coordination is required, the applicant must give the chief executive—

(a) a copy of the application; and

(b) a copy of the acknowledgment notice; and

(c) the fee prescribed under a regulation; and

(d) written notice of the day the applicant complied with section 3.3.3(1) for each referral agency.

3.3.6 Information requests to applicant (generally)

(1) This section does not apply if referral coordination is required.

(2) The assessment manager and each concurrence agency may ask the applicant, by written request (an **"information request"**), to give further information needed to assess the application.

(3) A concurrence agency may only ask for information about a matter that is within its jurisdiction.

(4) If the assessment manager makes the request, the request must be made—

(a) for an application requiring an acknowledgment notice to be given—within 10 business days after giving the acknowledgment notice (the **"information request period"**); and

(b) for an application that does not require an acknowledgment notice to be given—within 10 business days after the day the

application was received (also the **"information request period"**).

(4A) If a concurrence agency makes the request, the request must be made within 10 business days after the agency's referral day (also the **"information request period"**).

(5) If an information request is made by a concurrence agency, the concurrence agency must—

(a) give the assessment manager a copy of the request; and

(b) advise the assessment manager of the day the request was made.

(6) The assessment manager or a concurrence agency may, by written notice given to the applicant and without the applicant's agreement, extend the information request period by not more than 10 business days.

(7) Only 1 notice may be given under subsection (6) and it must be given before the information request period ends.

(8) The information request period may be further extended if the applicant, at any time, gives written agreement to the extension.

(9) If the information request period is extended for a concurrence agency, the concurrence agency must advise the assessment manager of the extension.

3.3.7 Information requests to applicant (referral coordination)

(1) This section applies if referral coordination is required.

(2) The chief executive may, within 20 business days after the chief executive receives the notice mentioned in section 3.3.5(2)(d) and after consulting the assessment manager and each referral agency—

(a) by written request (also an **"information request"**) ask the applicant to give further information needed to assess the application; or

(b) by written notice advise the applicant, the assessment manager and each referral agency that an information request will not be made under this section.

(3) The chief executive may, by written notice given to the applicant and without the applicant's agreement, extend the information request period by not more than 10 business days.

(4) Only 1 notice may be given under subsection (3) and it must be given before the information request period ends.

(5) The information request period may be further extended if the applicant, at any time, gives written agreement to the extension.

(6) If the chief executive extends the information request period, the chief executive must advise the assessment manager and each concurrence agency of the extension.

(7) If the chief executive does not give the applicant an information request under this section and has not given a notice under subsection (2)(b), the chief executive must advise the applicant, the assessment manager and each referral agency that an information request will not be made under this section.

3.3.8 Applicant responds to any information request

(1) If the applicant receives an information request from the assessment manager or a concurrence agency (the **"requesting authority"**), the applicant must respond by giving the requesting authority—

(a) all of the information requested; or

(b) part of the information requested together with a notice asking the requesting authority to proceed with the assessment of the application; or

(c) a notice—

(i) stating that the applicant does not intend to supply any of the information requested; and

(ii) asking the requesting authority to proceed with the assessment of the application.

(2) If the requesting authority is a concurrence agency, the applicant must also give a copy of the applicant's response to the assessment manager.

(3) If the applicant receives an information request from the chief executive carrying out referral coordination, the applicant must give the assessment manager and each referral agency (but not the chief executive) a written response to the information request supplying—

(a) all of the information requested; or

(b) part of the information requested together with a notice asking the assessment manager and each referral agency to proceed with the assessment of the application; or

(c) a notice—

(i) stating that the applicant does not intend to supply any of the information requested; and

(ii) asking the assessment manager and each referral agency to proceed with the assessment of the application.

3.3.9 Referral agency advises assessment manager of response

Each referral agency must, after receiving the applicant's response, advise the assessment manager of the day of the applicant's response under section 3.3.8.

Division 3—Referral assistance

3.3.10 When referral assistance may be requested

(1) The applicant may make a written request to the chief executive for assistance (**"referral assistance"**) for an information request to which the applicant has not responded.

(2) The chief executive may give referral assistance if the chief executive is satisfied that—

(a) the information request, being a concurrence agency's information request or an information request under referral coordination, is unreasonable or is inappropriate in the context of the application; or

(b) the request is in conflict with another information request.

3.3.11 Chief executive acknowledges receipt of referral assistance request

(1) After receiving a referral assistance request, the chief executive must give a notice acknowledging receipt of the request to—

(a) the applicant; and

(b) if the request involves the assessment manager—the assessment manager; and

(c) if the request involves a concurrence agency—the concurrence agency.

(2) The notice must state the day on which the request was received.

3.3.12 Chief executive may change information request

(1) If the chief executive decides to give referral assistance, the chief executive may, after consulting with the entity that made the information request, change the information request.

(2) However, the chief executive may change an information request made by a local government only if the local government agrees to the change.

(3) The chief executive must give a copy of the changed information request to the applicant and any entity whose information request has been changed.

3.3.13 Applicant may withdraw request for referral assistance

The applicant may, by written notice to the chief executive at any time, withdraw the request for referral assistance.

Division 4—Referral agency assessment

3.3.14 Referral agency assessment period

(1) The period a referral agency has to assess the application (the **"referral agency's assessment period"**) is—

(a) the number of business days, starting on the day immediately after the agency's referral day and being less than 30 business days, prescribed under a regulation; or

(b) if there is no regulation under paragraph (a)—30 business days, starting on the day after the agency's referral day.

(2) A referral agency's assessment period includes the information request period.

(3) A concurrence agency may, by written notice given to the applicant and without the applicant's agreement, extend its referral agency's assessment period by not more than—

(a) if a regulation under subsection (1)(a) has prescribed the referral agency's assessment period—the number of business days, being less than 20 business days, prescribed under a regulation; or

(b) if paragraph (a) does not apply—20 business days.

(4) A notice under subsection (3) may be given only before the referral agency's assessment period ends.

(5) The referral agency's assessment period may be further extended, including for the purpose of providing further information to the referral agency, if the applicant, before the period ends, gives written agreement to the extension.

(6) If the referral agency's assessment period is extended for a concurrence agency, the agency must advise the assessment manager of the extension.

(7) If referral coordination is not required, the referral agency's assessment period does not include—

(a) any extension for giving an information request; or

(b) any period in which the agency is waiting for a response to an information request.

(8) If referral coordination is required, the referral agency's assessment period does not include—

(a) if the chief executive gave an information request—the time between the agency's referral day and the day the applicant responds under section 3.3.8(3); or

(b) if the chief executive does not give an information request—the time between the agency's referral day and the day the chief executive gives notice that an information request will not be made.

3.3.15 Referral agency assesses application

(1) Each referral agency must, within the limits of its jurisdiction, assess the application—

(a) against the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the referral agency; and

(b) having regard to—

(i) any planning scheme in force, when the application was made, for the planning scheme area; and

(ii) any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme;[51] and

(iii) if the land to which the application relates is designated land—its designation; and

(c) for a concurrence agency—against any applicable concurrence agency code.

(2) Despite subsection (1) a referral agency—

(a) may give the weight it considers appropriate to any laws, planning schemes, policies and codes, of the type mentioned in subsection (1), coming into effect after the application was made, but before the agency's referral day; but

(b) must disregard any planning scheme for the planning scheme area if the referral agency's jurisdiction is limited to considering the effect of the Standard Building Regulation, Standard Sewerage Law and Standard Water Supply Law on building, plumbing or drainage work.

3.3.16 Referral agency's response

(1) If a concurrence agency wants the assessment manager to include concurrence agency conditions in the development approval, or to refuse the application, the concurrence agency must give its response (a **"referral agency's response"**) to the assessment manager, and give a copy of its response to the applicant, during the referral agency's assessment period.

(2) If an advice agency wants the assessment manager to consider its advice or recommendations when assessing the application, the advice agency must give its response (also a **"referral agency's response"**) to the

51 See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

assessment manager, and give a copy of its response to the applicant, during the referral agency's assessment period.

(3) If a referral agency does not give a response under subsection (1), the assessment manager may decide the application as if the agency had assessed the application and had no concurrence agency requirements.

3.3.17 How a concurrence agency may change its response

(1) Despite section 3.3.16(1), a concurrence agency may, after the end of the assessment period but before the application is decided, give a response or amend its response.

(2) Subsection (1) applies only if the applicant has given written agreement to the content of the response or the amended response.

(3) If a concurrence agency gives or amends a response under subsection (1), the concurrence agency must give—

(a) to the assessment manager—the response or the amended response and a copy of the agreement under subsection (2); and

(b) to the applicant—a copy of the response or the amended response.

3.3.18 Concurrence agency's response powers

(1) A concurrence agency's response may, within the limits of its jurisdiction, tell the assessment manager 1 or more of the following—

(a) the conditions that must attach to any development approval;

(b) that any approval must be for part only of the development;

(c) that any approval must be a preliminary approval only.

(2) Alternatively, a concurrence agency's response must, within the limits of its jurisdiction, tell the assessment manager—

(a) it has no concurrence agency requirements; or

(b) to refuse the application.

(3) A concurrence agency's response may also offer advice to the assessment manager about the application.

(4) A concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency is satisfied that—

(a) the development does not comply with a law, policy or code mentioned in section 3.3.15(1)(a) or (c); and

(b) compliance with the law, policy or code can not be achieved by imposing conditions.

(5) However, to the extent a concurrence agency's jurisdiction is about assessing the effects of development on designated land—

(a) subsection (4) does not apply; and

(b) the concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency is satisfied the development would compromise the intent of the designation and the intent of the designation could not be achieved by imposing conditions on the development approval.

(6) Subsection (2)(b) does not apply to the extent a concurrence agency's jurisdiction is about the assessment of the cost impacts of supplying infrastructure to development.

(7) If a concurrence agency's response requires an application to be refused or requires a development approval to include conditions, the response must include reasons for the refusal or inclusion.

3.3.19 Advice agency's response powers

(1) An advice agency's response may, within the limits of its jurisdiction—

(a) recommend the conditions that should attach to approval of the application; or

(b) recommend the application be refused.

(2) An advice agency's response may also offer advice to the assessment manager about the application or state that it has no advice to offer.

Division 5—End of information and referral stage

3.3.20 When does information and referral stage end

(1) If there are no referral agencies for the application, the information and referral stage ends when—

(a) the assessment manager states in the acknowledgment notice that it does not intend to make an information request; or

(b) if a request has been made—the applicant has finished responding to the request; or

(c) if neither paragraph (a) nor paragraph (b) applies—the assessment manager's information request period has ended.

(2) If there are referral agencies for the application, the information and referral stage ends when—

(a) the assessment manager has received the notice from the applicant under section 3.3.4;[52] and

(b) an action mentioned in subsection (1)(a) or (b) has happened or the assessment manager's information request period has ended; and

(c) all referral agency responses have been received by the assessment manager or, if all the responses have not been received, all referral agency assessment periods have ended.

PART 4—NOTIFICATION STAGE

Division 1—Preliminary

3.4.1 Purpose of notification stage

The notification stage gives a person—

(a) the opportunity to make submissions, including objections, that must be taken into account before an application is decided; and

(b) the opportunity to secure the right to appeal to the court about the assessment manager's decision.

52 Section 3.3.4 (Applicant advises assessment manager)

3.4.2 When notification stage applies

(1) The notification stage applies to an application if any part of the application requires impact assessment.

(2) Subsection (1) applies even if code assessment is required for another part of the application.

(3) Even if a concurrence agency advises the assessment manager it requires the application to be refused, the notification stage still applies to the application.

3.4.3 When can notification stage start

(1) If there are no concurrence agencies and the assessment manager has stated in the acknowledgment notice that the assessment manager does not intend to make an information request, the applicant may start the notification stage as soon as the acknowledgment notice is given.

(2) If no information requests have been made during the last information request period, the applicant may start the notification period as soon as the last information request period ends.

(3) If an information request has been made during the information request period, the applicant may start the notification period as soon as the applicant gives—

(a) all information request responses to all information requests made; and

(b) copies of the responses to the assessment manager.

Division 2—Public notification

3.4.4 Public notice of applications to be given

(1) The applicant (or with the applicant's written agreement, the assessment manager) must—

(a) publish a notice at least once in a newspaper circulating generally in the locality of the land; and

(b) place a notice on the land in the way prescribed under a regulation; and

(c) give a notice to the owners of all land adjoining the land.

(2) The notices must be in the approved form.

(3) If the assessment manager carries out notification on behalf of the applicant, the assessment manager may require the applicant to pay a fee, of not more than the assessment manager's reasonable costs for carrying out the notification.

(4) For subsection (1)(c), roads, land below high-water mark and the beds and banks of rivers are to be taken not to be adjoining land.

(5) In this section—

"owner", for land adjoining the land the subject of the application, means[53]—

(a) if the adjoining land is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—the primary thoroughfare body corporate; or

(b) if the adjoining land is subject to the *Mixed Use Development Act 1993*—the community body corporate; or

(c) subject to paragraphs (a) and (b), if the adjoining land is subject to the *Building Units and Group Titles Act 1980*—the body corporate; or

(d) if the adjoining land is, under the *Body Corporate and Community Management Act 1997* scheme land for a community titles scheme—

(i) the body corporate for the scheme; or

(ii) if the adjoining land is scheme land for more than 1 community titles scheme—the body corporate for the community titles scheme that is a principal scheme; or

(e) if there is a time sharing scheme on the adjoining land and the name and address of a person has been notified under the *Local Government Act 1993*, section 715[54]—the person; or

(f) if the adjoining land is land being bought from the State for an estate in fee simple under the *Land Act 1994*—the buyer; or

53 See the *Acts Interpretation Act 1954*, section 13A.

54 *Local Government Act 1993*, section 715 has been renumbered as section 1124 (Notice of time share scheme to local government).

(g) if the adjoining land is land granted in trust or reserved and set apart and placed under the control of trustees under the *Land Act 1994*—the trustees of the land; or

(h) if paragraphs (a) to (g) do not apply—the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for it if it were let to a tenant at a rent.

3.4.5 Notification period for applications

The "**notification period"** for the application—

(a) must be not less than—

(i) if there is no referral coordination for the application—15 business days starting on the day after the last action under section 3.4.4(1) is carried out; or

(ii) if there is referral coordination for the application—30 business days starting on the day after the last action under section 3.4.4(1) is carried out; and

(b) must not include any business day from 20 December in a particular year to 5 January in the following year, both days inclusive.

3.4.6 Requirements for certain notices

(1) The notice placed on the land must remain on the land for all of the notification period.

(2) Each notice given to the owner of adjoining land must be given at about the same time as the notice is published in the newspaper and placed on the land.

(3) All actions mentioned in subsection (2) must be completed within 5 business days after the first of the actions is carried out.

(4) A regulation may prescribe different notification requirements for an application for development on land located—

(a) outside any local government area; or

(b) within a local government area but in a location where compliance with section 3.4.4(1) would be unduly onerous or would not give effective public notice.

3.4.7 Notice of compliance to be given to assessment manager

If the applicant carries out notification, the applicant must, after the notification period has ended, give the assessment manager written notice that the applicant has complied with the requirements of this division.[55]

3.4.8 Circumstances when applications may be assessed and decided without certain requirements

Despite section 3.4.7, the assessment manager may assess and decide an application even if some of the requirements of this division have not been complied with, if the assessment manager is satisfied that any noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the application; or

(b) restricted the opportunity of the public to make properly made submissions.

3.4.9 Making submissions

(1) During the notification period, any person other than a concurrence agency may make a submission to the assessment manager about the application.

(2) The assessment manager must accept a submission if the submission is a properly made submission.

(3) However, the assessment manager may accept a written submission even if the submission is not a properly made submission.

(4) If the assessment manager has accepted a submission, the person who made the submission may, by written notice—

(a) during the notification period, amend the submission; or

(b) at any time before a decision about the application is made, withdraw the submission.

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55 It is an offence to give the assessment manager a notice under this section that is false or misleading (see section 4.3.7).

3.4.9A Submissions made during notification period effective for later notification period

(1) This section applies if—

(a) a person makes a submission under section 3.4.9(1) and the submission is a properly made submission or the assessment manager accepts the submission under section 3.4.9(3); and

(b) the notification stage for the application is repeated for any reason.

(2) The properly made submission is taken to be a properly made submission for the later notification period and the submitter may, by written notice—

(a) during the later notification period, amend the submission; or

(b) at any time before a decision about the application is made, withdraw the submission.

(3) The submission the assessment manager accepted under section 3.4.9(3) is taken to be part of the common material for the application unless the person who made the submission withdraws the submission before a decision is made about the application.

Division 3—End of notification stage

3.4.10 When does notification stage end

The notification stage ends—

(a) if notification is carried out by the applicant—when the assessment manager receives written notice under section 3.4.7; or

(b) if notification is carried out by the assessment manager on behalf of the applicant—when the notification period ends.

PART 5—DECISION STAGE

Division 1—Preliminary

3.5.1 When does decision stage start

(1) If an acknowledgment notice or referral to a building referral agency for an application is required, the decision stage for the application starts the day after all other stages applying to the application have ended.

(2) If subsection (1) does not apply to an application, the decision stage for the application starts—

(a) if an information request has been made about the application—the day the applicant responds to the information request;[56] or

(b) if an information request has not been made about the application—the day the application was received.

(3) However, the assessment manager may start assessing the application before the start of the decision stage.

3.5.2 Assessment necessary even if concurrence agency refuses application

This part applies even if a concurrence agency advises the assessment manager the concurrence agency requires the application to be refused.

Division 2—Assessment process

3.5.3 References in div 2 to codes, planning instruments, laws or policies

In this division (other than section 3.5.6), a reference to a code, planning instrument, law or policy is a reference to a code, planning instrument, law or policy in effect when the application was made.

56 See section 3.3.8 (Applicant responds to any information request).

3.5.4 Code assessment

(1) This section applies to any part of the application requiring code assessment.

(2) The assessment manager must assess the part of the application only against—

(a) applicable codes (other than concurrence agency codes the assessment manager does not apply); and

(b) subject to paragraph (a)—the common material.

(3) If the assessment manager is not a local government, the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application, are taken to be applicable codes in addition to the applicable codes mentioned in subsection (2)(a).

(4) If the application is a development application (superseded planning scheme) and the applicant has been given a notice under section 3.2.5(3)(a), the assessment manager must assess and decide the application as if—

(a) the application were an application to which the superseded planning scheme applied; and

(b) the existing planning scheme was not in force.

3.5.5 Impact assessment

(1) This section applies to any part of the application requiring impact assessment.

(2) If the application is for development in a planning scheme area, the assessment manager must carry out the impact assessment having regard to the following—

(a) the common material;

(b) the planning scheme and any other relevant local planning instruments;

(c) any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme;[57]

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57 See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

(d) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;

(e) if the assessment manager is not a local government—the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application;

(f) the matters prescribed under a regulation (to the extent they apply to a particular proposal).

(3) If the application is for development outside a planning scheme area, the assessment manager must carry out the impact assessment having regard to the following—

(a) the common material;

(b) if the development could materially affect a planning scheme area—the planning scheme and any other relevant local planning instruments;

(c) any relevant State planning policies;

(d) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;

(e) if the assessment manager is not a local government—the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application;

(f) the matters prescribed under a regulation (to the extent they apply to a particular proposal).

(4) If the application is a development application (superseded planning scheme) and the applicant has been given a notice under section 3.2.5(3)(a), subsection (2)(b) does not apply and the assessment manager must assess and decide the application as if—

(a) the application were an application to which the superseded planning scheme applied; and

(b) the existing planning scheme was not in force.

3.5.6 Assessment manager may give weight to later codes, planning instruments, laws and policies

(1) This section does not apply if the application is a development application (superseded planning scheme).

(2) In assessing the application, the assessment manager may give the weight it is satisfied is appropriate to a code, planning instrument, law or policy that came into effect after the application was made, but—

(a) before the day the decision stage for the application started; or

(b) if the decision stage is stopped—before the day the decision stage is restarted.

Division 3—Decision

3.5.7 Decision making period (generally)

(1) The assessment manager must decide the application within 20 business days after the day the decision stage starts (the **"decision making period"**).

(2) The assessment manager may, by written notice given to the applicant and without the applicant's agreement, extend the decision making period by not more than 20 business days.

(3) Only 1 notice may be given under subsection (2) and it must be given before the decision making period ends.

(4) However, the decision making period may be further extended, including for the purpose of providing further information to the assessment manager, if the applicant, before the period ends, gives written agreement to the extension.

(5) If there is a concurrence agency for the application, the decision must not be made before 10 business days after the day the information and referral stage ends, unless the applicant gives the assessment manager written notice that it does not intend to take action under section 3.5.9 or 3.5.10.

3.5.8 Decision making period (changed circumstances)

Despite section 3.5.7, the decision making period starts again from its beginning—

(a) if the applicant agrees to a concurrence agency giving the assessment manager a concurrence agency response or an amended concurrence agency response[58] after the end of the referral agency's assessment period—the day after the response or amended response is received by the assessment manager; or

(b) if the decision making period is stopped under section 3.5.9 or 3.5.10—the day after the assessment manager receives further written notice withdrawing the notice stopping the decision making period.

3.5.9 Applicant may stop decision making period to make representations

(1) If the applicant wishes to make representations to a referral agency about the agency's response, the applicant may, by written notice given to the assessment manager, for not more than 3 months, stop the decision making period at any time before the decision is made.

(2) If a notice is given, the decision making period stops the day the assessment manager receives the notice.

(3) The applicant may withdraw the notice at any time.

3.5.10 Applicant may stop decision making period to request chief executive's assistance

(1) The applicant may, at any time before the application is decided—

(a) by written notice (the **"request"**) given to the chief executive, ask the chief executive to resolve conflict between 2 or more concurrence agency responses containing conditions the applicant is satisfied are inconsistent; and

(b) by written notice given to the assessment manager, for not more than 3 months, stop the decision making period.

(2) The request must identify the conditions in the concurrence agency responses the applicant is satisfied are inconsistent.

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58 Under section 3.3.17, a concurrence agency may, with the agreement of the applicant, amend its response.

(3) After receiving the request, the chief executive must give a notice acknowledging receipt of the request to the applicant and each affected concurrence agency.

(4) In responding to the request, the chief executive may, after consulting the concurrence agencies, exercise all the powers of the concurrence agencies necessary to reissue 1 or more concurrence agency responses to address any inconsistency.

(5) If the chief executive reissues a concurrence agency response, the chief executive must give the response to the applicant and give a copy of the response to—

(a) the affected concurrence agency; and

(b) the assessment manager.

(6) The applicant may withdraw the notice given under subsection (1)(b) at any time.

3.5.11 Decision generally

(1) In deciding the application, the assessment manager must—

(a) approve all or part of the application and include in the approval any concurrence agency conditions; or

(b) approve all or part of the application subject to conditions decided by the assessment manager and include in the approval any concurrence agency conditions; or

(c) refuse the application.

(2) However, the decision must be based on the assessments made under division 2.

(3) To remove any doubt, it is declared that—

(a) a development approval includes the conditions imposed by the assessment manager and any concurrence agency; and

(b) the assessment manager may give a preliminary approval even though the applicant sought a development permit.

3.5.12 Decision if concurrence agency requires refusal

If a concurrence agency requires the application to be refused, the assessment manager must refuse it.

3.5.13 Decision if application requires code assessment

(1) This section applies to any part of the application requiring code assessment.

(2) The assessment manager's decision may conflict with an applicable code if there are sufficient grounds to justify the decision, having regard to the purpose of the code.

(3) However—

(a) if the application is for building work—the assessment manager's decision must not conflict with the *Building Act 1975*; and

(b) for assessment against a code in a planning scheme—the assessment manager's decision must not compromise the achievement of the desired environmental outcomes for the planning scheme area.

(4) The assessment manager may refuse the application only if the assessment manager is satisfied—

(a) the development does not comply with the applicable code; and

(b) compliance with the code can not be achieved by imposing conditions.

(5) Subsection (3)(b) applies only to the extent the decision is consistent with any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme.

3.5.14 Decision if application requires impact assessment

(1) This section applies to any part of the application requiring impact assessment.

(2) If the application is for development in a planning scheme area, the assessment manager's decision must not—

(a) compromise the achievement of the desired environmental outcomes for the planning scheme area; or

(b) conflict with the planning scheme, unless there are sufficient planning grounds to justify the decision.

(3) If the application is for development outside a planning scheme area, the assessment manager's decision must not compromise the achievement of the desired environmental outcomes for any planning scheme area that

would be materially affected by the development if the development were approved.

(4) Subsections (2)(a) and (3) apply only to the extent the decision is consistent with any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme.

3.5.15 Decision notice

(1) The assessment manager must give written notice of the decision in the approved form (the **"decision notice"**) to—

(a) the applicant; and

(b) each referral agency; and

(c) if the assessment manager is not the local government and the development is in a local government area—the local government.

(2) The decision notice must be given within 5 business days after the day the decision is made and must state the following—

(a) the day the decision was made;

(b) the name and address of each referral agency;

(c) whether the application is approved, approved subject to conditions or refused;

(d) if the application is approved subject to conditions—

(i) the conditions; and

(ii) whether each condition is a concurrence agency or assessment manager condition, and if a concurrence agency condition, the name of the concurrence agency;

(e) if the application is refused—

(i) whether the assessment manager was directed to refuse the application and, if so, the name of the concurrence agency directing refusal and whether the refusal is solely because of the concurrence agency's direction; and

(ii) the reasons for refusal;

(f) if the application is approved—whether the approval is a preliminary approval, a development permit or a combined preliminary approval and development permit;

(g) any other development permits necessary to allow the development to be carried out;

(h) any code the applicant may need to comply with for self-assessable development related to the development approved;

(i) whether or not there were any properly made submissions about the application;

(j) the rights of appeal for the applicant and any submitters.

(3) If the application is approved, the assessment manager must give a copy of the decision notice to each principal submitter within 5 business days after the earliest of the following happens—

(a) the applicant gives the assessment manager a written notice stating that the applicant does not intend to make representations mentioned in section 3.5.17(1);

(b) the applicant gives the assessment manager notice of the applicant's appeal;

(c) the applicant's appeal period ends.

(3A) If the application is refused, the assessment manager must give a copy of the decision notice to each principal submitter at about the same time as the decision notice is given to the applicant.

(4) A copy of the relevant appeal provisions must also be given with each decision notice or copy of decision notice.

(5) When the assessment manager gives a decision notice under subsection (1), the assessment manager must also give a copy of any plans and specifications approved by the assessment manager in relation to the decision notice.

(6) If the decision notice is given by a private certifier, this section applies subject to section 5.3.5.

(6) Also, if the owner of the land to which the approval attaches is an owner prescribed under a regulation, the assessment manager must, within 5 business days after the day the decision is made, give the owner the documents prescribed under a regulation.

(7) For subsection (6), a regulation may be made under this Act or the *Building Act 1975.*

Division 4—Representations about conditions and other matters

3.5.16 Application of div 4

This division applies only during the applicant's appeal period.

3.5.17 Changing conditions and other matters during the applicant's appeal period

(1) This section applies if the applicant makes representations to the assessment manager about a matter stated in the decision notice, other than a refusal or a matter about which a concurrence agency told the assessment manager under section 3.3.18(1).[59]

(2) If the assessment manager agrees with any of the representations, the assessment manager must give a new decision notice (the **"negotiated decision notice"**) to—

(a) the applicant; and

(b) each principal submitter; and

(c) each referral agency; and

(d) if the assessment manager is not the local government and the development is in a local government area—the local government.

(3) Only 1 negotiated decision notice may be given.

(4) The negotiated decision notice—

(a) must be given within 5 business days after the day the assessment manager agrees with the representations; and

(b) must be in the same form as the decision notice previously given; and

(c) must state the nature of the changes; and

(d) replaces the decision notice previously given.

(5) If the assessment manager does not agree with any of the representations, the assessment manager must, within 5 business days after the day the assessment manager decides not to agree with any of the

59 Section 3.3.18 (Concurrence agency's response powers)

representations, give a written notice to the applicant stating the decision about the representations.

(6) Before the assessment manager agrees to a change under this section, the assessment manager must reconsider the matters considered when the original decision was made, to the extent the matters are relevant.

3.5.18 Applicant may suspend applicant's appeal period

(1) If the applicant needs more time to make the written representations, the applicant may, by written notice given to the assessment manager, suspend the applicant's appeal period.

(2) The applicant may act under subsection (1) only once.

(3) If the written representations are not made within 20 business days after the day written notice was given to the assessment manager, the balance of the applicant's appeal period restarts.

(4) If the written representations are made within 20 business days after the day written notice was given to the assessment manager—

(a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the balance of the applicant's appeal period restarts the day after the assessment manager receives the notice of withdrawal; or

(b) if the assessment manager gives the applicant a notice under section 3.5.17(5)—the balance of the applicant's appeal period restarts the day after the applicant receives the notice; or

(c) if the assessment manager gives the applicant a negotiated decision notice—the applicant's appeal period starts again the day after the applicant receives the negotiated decision notice.

Division 5—Approvals

3.5.19 When approval takes effect

If the application is approved, or approved subject to conditions, the decision notice, or if a negotiated decision notice is given, the negotiated decision notice, is taken to be the development approval and has effect—

(a) if there is no submitter and the applicant does not appeal the decision to the court—from the time the decision notice is given

(or if a negotiated decision notice is given, from the time the negotiated decision notice is given); or

(b) if there is a submitter and the applicant does not appeal the decision to the court—when the submitter's appeal period ends; or

(c) if an appeal is made to the court—subject to the decision of the court, when the appeal is finally decided.

3.5.20 When development may start

(1) Development may start when a development permit for the development takes effect.

(2) Subsection (1) applies subject to any condition applying under section 3.5.31(1)(b)[60] to a development approval for the development.

3.5.21 When approval lapses

(1) The development approval for the application lapses at the end of the currency period for the approval unless—

(a) for development that is a material change of use—the change of use happens before the end of the currency period; or

(b) for a development permit that is reconfiguring a lot—the plan mentioned in section 3.7.2 for the reconfiguration of the lot is given to the local government for its approval before the end of the currency period; or

(c) for development not mentioned in paragraphs (a) and (b)—development under the approval substantially starts before the end of the currency period.

(2) To the extent the approval is for development that is a material change of use, the **"currency period"** is, if the application was not a development application (superseded planning scheme)—

(a) the 4 years starting the day the approval takes effect; or

(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

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60 Section 3.5.31 (Conditions generally)

(3) To the extent the approval is for development other than a material change of use, the **"currency period"** is, if the application was not a development application (superseded planning scheme)—

(a) the 2 years starting the day the approval takes effect; or

(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

(4) To the extent the approval is for development that is a material change of use, the **"currency period"** is, if the application was a development application (superseded planning scheme), the longest of the following—

(a) the 4 years starting the day the approval takes effect;

(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time;

(c) the 5 years starting the day the planning scheme or planning scheme policy, creating the superseded planning scheme, was adopted or the amendment, creating the superseded planning scheme, was adopted.

(5) To the extent the approval is for development other than a material change of use, the **"currency period"** is, if the application was a development application (superseded planning scheme), the longest of the following—

(a) the 2 years starting the day the approval takes effect;

(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time;

(c) the 5 years starting the day the planning scheme or planning scheme policy, creating the superseded planning scheme, was adopted or the amendment, creating the superseded planning scheme, was adopted.

(6) Despite subsections (2) to (5), to the extent the approval is for development that is reconfiguring a lot and the reconfiguration requires operational works, the **"currency period"** is—

(a) the 4 years starting the day the approval takes effect; or

(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

(7) If a monetary security has been given in relation to the approval, the security must be released if the approval lapses.

3.5.22 Request to extend currency period

(1) If, before the development approval lapses, a person wants to extend a currency period, the person must, by written notice—

(a) advise each entity that was a concurrence agency that the person is asking for an extension of the currency period; and

(b) ask the assessment manager to extend the currency period.

(2) The notices must be given at about the same time, and the notice to the assessment manager must include a copy of each notice given under subsection (1)(a).

(3) If the person asking for the extension is not the owner of the land, the subject of the application, the request must contain the owner's consent.

(4) If the assessment manager has a form for the request, the request must be in the form and be accompanied by—

(a) the fee for the request—

(i) if the assessment manager is a local government—set by a resolution of the local government; or

(ii) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act; and

(b) a copy of each notice given under subsection (1)(a).

3.5.23 Deciding request to extend currency period

(1) If there was no concurrence agency, the assessment manager must approve or refuse the extension within 30 business days after receiving the request.

(2) If there was a concurrence agency, the assessment manager—

(a) must not approve or refuse the extension until at least 20 business days after receiving the request; but

(b) must approve or refuse the extension within 30 business days after receiving the request.

(3) The assessment manager and the person making the request may agree to extend the period within which the assessment manager must decide the request.

(4) A concurrence agency given a notice under section 3.5.22(1)(a) may give the assessment manager a written notice advising—

(a) it has no objection to the extension being approved; or

(b) it objects to the extension being approved and give reasons for the objection.

(5) If the assessment manager does not receive a written notice within 20 business days after the day the request was received by the assessment manager, the assessment manager must decide the request as if the concurrence agency had no objection to the request.

(6) Despite subsection (5), if the development approval was subject to a concurrence agency condition about the currency period, the assessment manager must not approve the request unless the concurrence agency advises it has no objection to the extension being approved.

(7) If the assessment manager receives a written notice from a concurrence agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must have regard to the notice when deciding the request.

(8) The assessment manager may make a decision under this section even if the development approval was granted by the court.

(9) Despite section 3.5.21, the development approval does not lapse until the assessment manager decides the request.

(10) After deciding the request, the assessment manager must give written notice of the decision to the person asking for the extension and any concurrence agency that gave the assessment manager a notice under subsection (4).

3.5.24 Request to change development approval (other than a change of a condition)

(1) If a person wants a minor change to be made to a development approval, the person must, by written notice—

(a) advise each entity that was a concurrence agency that the person is asking for the change; and

(b) advise each entity that was a building referral agency, for the aspect of the application the subject of the request, that the person is asking for the change; and

(c) ask the assessment manager to make the change.

(2) The notices must be given at about the same time, and the notice to the assessment manager must include a copy of each notice given under subsection (1)(a).

(3) If the person asking for the change is not the owner of the land, the subject of the application, the request must contain the owner's consent.

(3A) If the development approval is for building work or operational work for the supply of community infrastructure on land designated for the community infrastructure—

(a) subsection (1) applies only to a person who intends to supply, or is supplying, the infrastructure; and

(b) subsection (3) does not apply.

(4) If the assessment manager has a form for the request, the request must be in the form and be accompanied by—

(a) the fee for the request—

(i) if the assessment manager is a local government—set by a resolution of the local government; or

(ii) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act; and

(b) a copy of the advice given to any concurrence or building referral agency for the application.

(5) This section does not apply if the change is a change of a condition of the development approval.

3.5.25 Deciding request to change development approval (other than a change of a condition)

(1) If there was no concurrence or building referral agency, the assessment manager must approve or refuse the change within 30 business days after receiving the request.

(2) If a concurrence or building referral agency is required to be given a notice under section 3.5.24(1)(a) or (b), the assessment manager—

(a) must not approve or refuse the change until the first of the following happens—

(i) a written notice has been received under subsection (4) from each concurrence or building referral agency;

(ii) the period of 20 business days after receiving the request ends; but

(b) must approve or refuse the change within 30 business days after receiving the request.

(3) The assessment manager and the person making the request may agree to extend the period within which the assessment manager must decide the request.

(4) A concurrence or building referral agency given a notice under section 3.5.24(1)(a) or (b) must give the assessment manager a written notice advising—

(a) it has no objection to the change being made; or

(b) it objects to the change being made and give reasons for the objection.

(5) If the assessment manager does not receive a written notice within 20 business days after the day the request was received by the assessment manager, the assessment manager must decide the request as if the concurrence or building referral agency had no objection to the request.

(6) If the assessment manager receives a written notice from a concurrence or building referral agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must have regard to the notice when deciding the request.

(7) The assessment manager may make a decision under this section even if the development approval was granted by the court.

(8) After deciding the request, the assessment manager must give written notice of the decision to the person asking for the change and any concurrence or building referral agency that gave the assessment manager a notice under subsection (4).

3.5.26 Request to cancel development approval

(1) The owner of the land, the subject of the application, or another person, with the owner's consent, may, by written notice ask the assessment manager to cancel the development approval.

(2) However, the owner must not ask the assessment manager to cancel the development approval in either of the following circumstances unless written consent to the cancellation is given by—

(a) if there is a written arrangement between the owner and another person under which the other person proposes to buy the land—the other person;

(b) if the application is for land the subject of a public utility easement—the entity in whose favour the easement is given.

(3) Subsections (1) and (2) apply only if the request is made before development under the development approval starts.

(3A) Subsection (1) applies to an owner of land designated for community infrastructure only if the owner is the entity who intends, or intended, to supply the infrastructure.

(4) The request must be accompanied by the fee for the request—

(a) if the assessment manager is a local government—set by a resolution of the local government; or

(b) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act.

(5) After receiving the notice and the fee, the assessment manager must cancel the approval and give notice of the cancellation to the person who applied for the cancellation and to each concurrence agency.

(6) If a monetary security has been given in relation to the approval, the security must be released if the approval is cancelled.

3.5.27 Certain approvals to be recorded on planning scheme

(1) If the development approval was given by a local government as assessment manager and the local government is satisfied the approval is inconsistent with the planning scheme, the local government must note the approval on its planning scheme.

(2) To remove any doubt, it is declared that—

(a) the note on the planning scheme is not an amendment of the planning scheme; and

(b) a contravention of subsection (1) does not affect the validity of the approval given.

3.5.28 Approval attaches to land

(1) The development approval attaches to the land, the subject of the application, and binds the owner, the owners successors in title and any occupier of the land.

(2) To remove any doubt, it is declared that subsection (1) applies even if later development (including reconfiguring a lot) is approved for the land (or the land as reconfigured).

Division 6—Conditions

3.5.29 Application of div 6

This division applies to each condition in a development approval whether the condition is a condition—

(a) a concurrence agency directs an assessment manager to impose; or

(b) decided by an assessment manager; or

(c) attached to the approval under the direction of the Minister.

3.5.30 Conditions must be relevant or reasonable

(1) A condition must—

(a) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or

(b) be reasonably required in respect of the development or use of premises as a consequence of the development.

(2) Subsection (1) applies despite the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, an assessment manager or concurrence agency.

3.5.31 Conditions generally

(1) A condition may—

(a) place a limit on how long a lawful use may continue or works may remain in place; or

(b) state a development may not start until other development permits, for development on the same premises, have been given or other development on the same premises (including development not covered by the development application) has been substantially started or completed; or

(c) require development, or an aspect of development, to be completed within a particular time and require the payment of security under an agreement under section 3.5.34[61] to support the condition.

(2) If a condition requires assessable development, or an aspect of assessable development, to be completed within a particular time and the assessable development or aspect is not completed within the time, the approval, to the extent it relates to the assessable development or aspect not completed, lapses.

3.5.32 Conditions that can not be imposed

(1) A condition must not—

(a) be inconsistent with a condition of an earlier development approval still in effect for the development; or

(b) require a monetary payment for the capital, operating and maintenance costs of, or works to be carried out for, community infrastructure; or

(c) state that works required to be carried out for a development must be undertaken by an entity other than the applicant; or

(d) require an access restriction strip; or

(e) limit the time a development approval has effect for a use or work forming part of a network of community infrastructure, other than State owned or State controlled transport infrastructure.

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61 Section 3.5.34 (Agreements)

(2) Nothing in this section stops a condition being imposed if the condition requires—

(a) a monetary payment, or works to be carried out, to protect or maintain the safety or efficiency of State owned or State controlled transport infrastructure; or

(b) a monetary payment for lessening the cost impacts of supplying infrastructure under section 3.5.35.

(3) In subsection (2)—

"State owned or State controlled transport infrastructure" means transport infrastructure under the *Transport Infrastructure Act 1994* that is owned or controlled by the State.[62]

3.5.33 Request to change or cancel conditions

(1) This section applies if—

(a) a person wants to change or cancel a condition; and

(b) no assessable development would arise from the change or cancellation.

(2) The person may, by written notice to the entity that decided the condition or required the condition to be imposed on or attached to the approval, ask the entity to change or cancel the condition.

(3) If the person is not the owner of the land to which the approval attaches, the request must contain the owner's consent.

(3A) If the development approval is for building work or operational work for the supply of community infrastructure on land designated for the community infrastructure—

(a) subsection (1) applies only to a person who intends to supply, or is supplying, the infrastructure; and

(b) subsection (3) does not apply.

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62 Under the *Transport Infrastructure Act 1994*, schedule 3—

"transport infrastructure" includes—

(a) air, busway, light rail, miscellaneous, public marine, rail or road transport infrastructure; and

(b) transport infrastructure relating to ports.

(4) If the entity has a form for the request, the request must be in the form and be accompanied by the fee for the request—

(a) if the entity is a local government—set by a resolution of the local government; or

(b) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act.

(5) The entity must decide the request within 20 business days after receiving the request.

(6) The entity and the person may agree to extend the period within which the entity must decide the request.

(7) To the extent relevant, the entity must assess and decide the request having regard to—

(a) the matters the entity would have regard to if the request were a development application; and

(b) if submissions were made about the application under which the condition was originally imposed—the submissions.

(7A) Also, if a building referral agency gave advice about an aspect of the application the subject of the request, the entity must have regard to the opinion of the agency about the change before deciding the request.

(8) The entity must give the person written notice of its decision.

(9) If the entity is a concurrence agency or the court, the entity must give the assessment manager written notice of any change or cancellation.

(10) The changed condition or cancellation takes effect from the day the notice is given to the person.

(11) Subsections (5) and (6) do not apply if the entity is the court.

3.5.34 Agreements

The applicant may enter into an agreement with an entity, including, for example, an assessment manager or a concurrence agency, to establish the obligations, or secure the performance, of a party to the agreement about a condition.

3.5.35 Limitations on conditions lessening cost impacts for infrastructure

(1) A condition requiring a monetary payment for lessening the cost impacts for infrastructure may be imposed only—

(a) for development that is inconsistent with—

(i) the form or scale of lots, works or uses under the planning scheme, having regard to the provisions of the planning scheme about infrastructure; or

(ii) the timing for infrastructure under the planning scheme; and

(b) to lessen the cost impacts for—

(i) State schools infrastructure; or

(ii) public transport infrastructure; or

(iii) State-controlled roads infrastructure; or

(iv) police or emergency services infrastructure; or

(v) a development infrastructure item; and

(c) having regard to guidelines approved by the chief executive about the method of calculating cost impacts.

(1A) Also, an entity may not impose a condition mentioned in subsection (1) for infrastructure that is not the entity's infrastructure.

(2) The condition complies with section 3.5.30, to the extent—

(a) the condition is for lessening the cost impacts for a development infrastructure item identified in an infrastructure charges plan; and

(b) the item is necessary, but not yet available, to service the land.

(2A) If the development mentioned in subsection (1)(a) is development for residential (including rural residential) purposes, the development is inconsistent with the timing for infrastructure under the planning scheme only if—

(a) the planning scheme includes a benchmark development sequence; and

(b) all or part of the premises is not in the first stage for development shown in the benchmark development sequence.

(3) Subsection (2) applies even if a development infrastructure item mentioned in subsection (1)(b)(v) is also intended to service other land.

(4) However, instead of imposing the condition, the applicant and an entity may enter into a written agreement to make infrastructure mentioned in subsection (1)(b) available to service the land.

(5) For infrastructure mentioned in subsection (1)(b)(i) to (iv)—

"cost impacts" means—

(a) the difference between—

(i) the present value of capital, operating and maintenance costs made necessary by the development; and

(ii) the present value of capital, operating and maintenance costs, if the approval had not been given; and

(b) the reasonable administrative costs for calculating the difference under paragraph (a).

(6) For a development infrastructure item (the **"item"**)—

"cost impacts" means—

(a) the difference between—

(i) the present value of capital costs made necessary by the development; and

(ii) the present value of capital costs, if the approval had not been given; and

(b) additional interest charges, other financing costs and operating and maintenance costs, made necessary by the development, for all development infrastructure items (other than the item) and payable by the entity to which the monetary payment must be paid; and

(c) the cost, or the anticipated cost, of amending the infrastructure charges plan because of the development; and

(d) reasonable administrative costs for calculating the difference under paragraph (a) and the charges and costs mentioned in paragraphs (b) and (c).

3.5.36 Matters a condition lessening cost impacts for infrastructure must deal with

(1) A condition permitted under section 3.5.35 must—

(a) identify the amount of the monetary payment; and

(b) state the entity to which the monetary payment must be paid.

(2) An amount identified under subsection (1)(a) must not be more than—

(a) to the extent the amount relates to the capital cost of infrastructure—the full capital cost; and

(b) to the extent the amount relates to the operating and maintenance costs of infrastructure—the additional operating and maintenance costs for 15 years.

(3) If a development approval is subject to a condition mentioned in subsection (1), the approval must also—

(a) for infrastructure under section 3.5.35(1)(b)(i) to (iv) that is a service—state the day by which the service is to be substantially started, having regard to the basis on which the cost impact was calculated; and

(b) for infrastructure under section 3.5.35(1)(b)(i) to (iv) that is other than a service—state the day by which construction of the infrastructure is to be substantially started, having regard to the basis on which the cost impact was calculated; and

(c) for a development infrastructure item necessary, but not yet available, to service the land—state the day by which the item is to be available to service the land, having regard to the basis on which the cost impact was calculated; and

(d) for a development infrastructure item not mentioned in paragraph (c)—state the day by which construction of the item is to be substantially started, having regard to the basis on which the cost impact was calculated.

(4) The monetary payment must be paid—

(a) for infrastructure mentioned in subsection (3)(a), (b) or (d)—at least 60 business days before the day stated under the subsection; or

(b) for infrastructure mentioned in subsection (3)(c)—the day the development starts.

(5) Despite subsection (4), the applicant and the entity requiring the monetary payment may agree in writing to another time or for the payment to be made by instalments.

(6) The entity to which the monetary payment has been paid must repay the payment to the owner of the land—

(a) for a payment made for infrastructure mentioned in subsection (3)(a)—if the service has not substantially started on the day stated under subsection (3)(a); or

(b) for a payment made for infrastructure mentioned in subsection (3)(b) or (d)—if the construction of the infrastructure has not substantially started on the day stated under the subsection; or

(c) if the development approval lapses or is cancelled.

(7) For infrastructure mentioned in subsection (3)(c), if the applicant complies with subsection (4)(b), the entity to which payment was made must substantially start the infrastructure by the day stated in subsection (3)(c) unless the applicant and the entity agree in writing to a different day.

3.5.37 Covenants not to be inconsistent with development approvals

(1) Subsection (2) applies if a covenant under the *Land Act 1994*, section 373A(4)[63] or the *Land Title Act 1994*, section 97A(3)(a) or (b)[64] is entered into in connection with a development application.

(2) The covenant is of no effect unless it is entered into—

(a) as a requirement of a condition of a development approval for the application; or

(b) under an infrastructure agreement.

63 *Land Act 1994*, section 373A (Covenant by registration)

64 *Land Title Act 1994*, section 97A (Covenant by registration)

PART 6—MINISTERIAL IDAS POWERS

Division 1—Ministerial direction

3.6.1 When Ministerial direction may be given

The Minister may give a direction under this division about an application only if—

(a) the assessment manager has not decided the application; and

(b) the development involves a State interest; and

(c) the matter the subject of the direction is not within the jurisdiction of a concurrence agency for the application.

3.6.2 Notice of direction

(1) The Minister may direct the assessment manager, by written notice, to take 1 or more of the following actions or to refuse the application—

(a) to attach to the development approval the conditions stated in the notice;

(b) to approve part only of the development;

(c) to give a preliminary approval only.

(2) The notice must state—

(a) the nature of the State interest giving rise to the direction; and

(b) the reasons for the Minister's direction.

(3) The Minister must give a copy of the notice to the applicant.

3.6.3 Effect of direction

(1) If the Minister gives a direction, the assessment manager, in deciding the application, must comply with the direction.

(2) For an appeal under sections 4.1.27 to 4.1.29, the Minister's direction is taken to be a concurrence agency's response and the chief executive is taken to be a co-respondent.

Division 2—Ministerial call in powers

3.6.4 Definition for div 2

In this division—

"Minister" includes the Minister administering the *State Development and Public Works Organisation Act 1971*.

3.6.5 When a development application may be called in

The Minister may, under this division, call in an application—

(a) only if the development involves a State interest; and

(b) at any time after the application is made until 10 business days after the later of the following—

(i) the day the chief executive receives notice of an appeal against the application;

(ii) the end of both the applicant's appeal period and the submitter's appeal period for the decision on the application.

3.6.6 Notice of call in

(1) The Minister may, by written notice given to the assessment manager, call in the application and—

(a) if the application has not been decided by the assessment manager—assess and decide the application in the place of the assessment manager; or

(b) if the application has been decided by the assessment manager—reassess and re-decide the application in the place of the assessment manager.

(2) The notice must state—

(a) the point in the IDAS process from which the process must restart; and

(b) the reasons for calling in the application.

(3) The Minister must give a copy of the notice to—

(a) the applicant; and

(b) any concurrence agency; and

(c) any submitter.

3.6.7 Effect of call in

(1) If the Minister calls in an application—

(a) the Minister is the assessment manager from the time the application is called in until the Minister gives the decision notice; and

(b) if the application is called in before the assessment manager makes a decision on the application—the Minister must continue the IDAS process from the point at which the application is called in; and

(c) if the application is called in after the assessment manager makes a decision on the application—the IDAS process starts again from a point in the IDAS process the Minister decides, but before the start of the decision stage; and

(d) until the Minister gives the decision notice a concurrence agency is taken to be an advice agency; and

(e) the Minister's decision on the application is taken to be the original assessment manager's decision but a person may not appeal against the Minister's decision;[65] and

(f) if an appeal was made before the application was called in—the appeal is of no further effect.

(2) The entity that was the assessment manager before the application was called in (the **"original assessment manager"**) must give the Minister all reasonable assistance the Minister requires to assess and decide the application, including giving the Minister—

(a) all material about the application the assessment manager had before the application was called in; and

(b) any material received by the assessment manager after the application is called in.

65 Also, see section 4.1.21(1)(a) and (1A) (Court may make declarations).

(3) When the Minister gives the decision notice to the applicant and each submitter and referral agency, the Minister also must give a copy of the notice to the original assessment manager.

3.6.8 Process if call in decision does not deal with all aspects of the application

(1) If the Minister's decision notice does not decide all aspects of the application, the Minister must, by written notice, refer the aspects not decided back to the assessment manager.

(2) If the Minister gives a notice under subsection (1), the notice must state the point in the IDAS process from which the process must restart for the aspects of the application not decided by the Minister.

3.6.9 Report about decision

(1) If the Minister calls in an application, the Minister must, after deciding the application, prepare a report about the Minister's decision.

(2) Without limiting subsection (1), the Minister must include the following in the report—

(a) a copy of the application;

(b) a copy of the notice given under section 3.6.6;

(c) a copy of any referral agency's response;

(d) an analysis of any submissions made about the application;

(e) a copy of the decision notice;

(f) the Minister's reasons for the decision;

(g) a copy of any notice given under section 3.6.8.

(3) The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after the Minister's decision is made.

PART 7—PLANS OF SUBDIVISION

3.7.1 Application of pt 7

This part applies to a plan (however called) for the reconfiguration of a lot if, under another Act, the plan requires the approval (in whatever form) of a local government before it can be registered or otherwise recorded under that Act.

Examples of plans to which this part applies—

1. A plan of subdivision that, under the *Land Title Act 1994*, section 50(g),[66] requires the approval of a local government
2. A building units plan or group titles plan that, under the *Building Units and Group Titles Act 1980*, section 9(7),[67] must be endorsed with, or be accompanied by, a certificate of a local government.

3.7.1A Definition for pt 7

In this part—

"plan" includes an agreement that reconfigures a lot by dividing land into parts rendering different parts of a lot immediately available for separate disposition or separate occupation, but does not include a lease for—

(a) a term, including renewal options, not exceeding 10 years;[68] or

(b) all or part of a building.

3.7.2 Plan for reconfiguring under development permit

(1) This section applies if the reconfiguration proposed to be effected by the plan is authorised by a development permit.

(2) The plan must be given to the local government for its approval before the end of the currency period for the permit.

(3) The local government must approve the plan, if—

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66 *Land Title Act 1994*, section 50 (Requirements for registration of plan of subdivision)

67 *Building Units and Group Titles Act 1980*, section 9 (Registration of plan)

68 See section 1.3.5 (Definitions for terms used in "development"), definition of "reconfiguring a lot", paragraph (d).

(a) the conditions of the development permit about the reconfiguration have been complied with; and

(b) for a reconfiguration that requires operational works—the conditions of the development permit for the operational works have been complied with; and

(c) there are no outstanding rates or charges levied by the local government or expenses that are a charge over the land under any Act; and

(d) the plan is prepared in accordance with the development permit.

(4) Alternatively, the local government may approve the plan, if—

(a) satisfactory security is given to the local government to ensure compliance with the requirements of subsection (3)(a) to (c); and

(b) the plan is prepared in accordance with the development permit.

(5) If the applicant has not complied with the requirements of subsection (3) or (4), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

3.7.3 Plan submitted under condition of development permit

(1) This section applies if the plan is required to be submitted to the local government under a condition of a development permit.

(2) The plan must be given to the local government—

(a) within the time stated in the condition; or

(b) if a time has not been stated in the condition—within 2 years after the decision notice containing the condition was given.

(3) The local government must approve the plan, if—

(a) the conditions of the development permit about the reconfiguration have been complied with; and

(b) there are no outstanding rates or charges levied by the local government or expenses that are a charge over the land under any Act; and

(c) the plan is prepared in accordance with the development permit.

(4) Alternatively, the local government must approve the plan, if—

(a) satisfactory security is given to the local government to ensure compliance with the requirements of subsection (3)(a) and (b); and

(b) the plan is prepared in accordance with the development permit.

(5) If the applicant has not complied with the requirements of subsection (3) or (4), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

3.7.4 Plan for reconfiguring that is not assessable development

(1) If the reconfiguration proposed to be effected by the plan is not assessable development, the plan may be given to the local government for its approval at any time.

(2) The local government must approve the plan, if—

(a) the plan is consistent with any development permit relevant to the plan; and

(b) there are no outstanding rates or charges levied by the local government or expenses that are a charge over the land under any Act.

(3) If the applicant has not complied with the requirements of subsection (2), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

3.7.5 Endorsement of approval

(1) The local government's approval must be given for the plan within 20 business days after the applicant complies with section 3.7.2(3) or (4), section 3.7.3(3) or (4) or section 3.7.4(2) and the local government receives the plan.

(2) The applicant may agree to an extension of the period mentioned in subsection (1).

3.7.6 When approved plan to be lodged for registration

The approved plan must be lodged for registration with the relevant registering authority within 6 months after the approval was given.

3.7.7 Local government approval subject to other Act

A requirement under this part for the local government to approve the plan has effect subject to any requirements of the Act under which the plan is to be registered or otherwise recorded.

3.7.8 When pt 7 does not apply

(1) This part does not apply to a plan (however called) for the reconfiguration of a lot if the reconfiguration is in relation to—

(a) the acquisition, including by agreement, under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, or an authorised electricity entity, for a purpose set out in the schedule of that Act; or

(b) the acquisition by agreement, other than under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, or an authorised electricity entity, for a purpose set out in the schedule of that Act; or

(c) land held by the State, or a statutory body representing the State, for a purpose set out in the *Acquisition of Land Act 1967,* schedule, whether or not the land relates to an acquisition; or

(d) a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*.

(2) Also, this part does not apply to a plan lodged under the *Acquisition of Land Act 1967*, section 12A,[69] as a result of a reconfiguration of a lot mentioned in subsection (1)(a).

(3) If, under subsection (1) or (2), this part does not apply to a plan, the *Land Title Act 1994*, sections 50(g) and (h) and 83(2)[70] do not apply to the registration of the plan.

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69 *Acquisition of Land Act 1967*, section 12A (Constructing authority must lodge new plan of survey for particular land)

70 *Land Title Act 1994*, sections 50 (Requirements for registration of plan of subdivision) and 83 (Registration of easement)

CHAPTER 4—APPEALS, OFFENCES AND ENFORCEMENT

PART 1—PLANNING AND ENVIRONMENT COURT

Division 1—Establishment and jurisdiction of court

4.1.1 Continuance of Planning and Environment Court

(1) The Planning and Environment Court, as formerly established, is continued in existence.

(2) The court is a court of record.

(3) The court has a seal that must be judicially noticed.

4.1.2 Jurisdiction of court

(1) The court has the jurisdiction given to it under any Act, including the jurisdiction to hear and decide every appeal made under this Act for the review of a decision of a tribunal.[71]

(2) Subject to section 4.2.7,[72] the jurisdiction given to the court under this Act is exclusive.

(3) Subject to division 13,[73] every decision of the court is final and conclusive and is not to be impeached for any informality or want of form or be appealed against, reviewed, quashed or in any way called in question in any court.

(4) If a proceeding comes before the court under another Act, subsection (3) applies subject to the other Act.

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71 See jurisdiction of tribunals in part 2, division 1 (Establishing, constituting and jurisdiction of tribunals).

72 Section 4.2.7 (Jurisdiction of tribunals)

73 Division 13 (Appeals to Court of Appeal)

4.1.3 Jurisdiction in chambers

Every proceeding must be heard and decided, and the decision given, in open court unless the rules of court about exercising the court's jurisdiction in chambers state that the court may sit in chambers and exercise the jurisdiction given by the rules for a matter.

Division 2—Powers of court

4.1.4 Subpoenas

(1) The court may summon a person as a witness and may—

(a) require the person to produce in evidence documents in the person's possession or power; and

(b) examine the person; and

(c) punish the person for not attending under the summons or for refusing to give evidence or for neglecting or refusing to produce the documents.

(2) Despite subsection (1), a person is not required to give evidence that may tend to incriminate the person.

(3) For subsection (1), a judge of the court has the same powers as a District Court judge.

4.1.5 Contempt and contravention of orders

(1) A judge of the court has the same power to punish a person for contempt of the court as the judge has to punish a person for contempt of a District Court.

(2) The *District Courts Act 1967,* section 129,[74] applies in relation to the court in the same way as it applies in relation to a District Court.

(3) If a person, at any time, contravenes an order of the court, the person is also taken to be in contempt of the court.

(4) If a person is taken to be in contempt of the court under subsection (3), the *District Courts Act 1967*, section 129(4) applies in relation to the contravention as if the person were an offender, and as if the

74 *District Courts Act 1967,* section 129 (Contempt)

expression "12 months" were "2 years" and the expression "84 penalty units" were "3 000 penalty units".

4.1.5A How court may deal with matters involving substantial compliance

(1) Subsection (2) applies if in a proceeding before the court, the court—

(a) finds a requirement of this Act, or another Act in its application to this Act, has not been complied with, or has not been fully complied with; but

(b) is satisfied the non-compliance, or partial compliance, has not substantially restricted the opportunity for a person to exercise the rights conferred on the person by this or the other Act.

(2) The court may deal with the matter in the way the court considers appropriate.

4.1.6 Terms of orders etc.

The court may make an order, give leave or do anything else it is authorised to do on the terms the court considers appropriate.

4.1.7 Taking and recording evidence etc.

The court must take evidence on oath, affirmation, affidavit or declaration and must record the evidence.

Division 3—Constituting court

4.1.8 Constituting court

(1) The Governor in Council must, from time to time by gazette notice, notify the names of District Court judges who are to be the judges who constitute the court.

(2) The Governor in Council may notify the name of District Court judges to constitute the court for a specified period only.

(3) A District Court judge who constitutes the court may do so even if another District Court judge is constituting the court at the same time.

(4) A failure to notify the name of a District Court judge under subsection (1) does not, and never has, affected the validity of any decision or order made by the judge constituting, or purporting to constitute, the court.

(5) A decision or order of a District Court judge constituting, or purporting to constitute, the court after the expiry of the period specified for the judge under subsection (2), is not, and never has been, invalidly made, merely because the decision or order was made after the expiry.

4.1.9 Jurisdiction of judges not impaired

The jurisdiction of a District Court judge named to constitute the court is not limited exclusively to the court.

Division 4—Rules and directions

4.1.10 Rules of court

(1) The Governor in Council, with the concurrence of 2 or more District Court judges of whom the Chief Judge is to be 1, may make rules about anything—

(a) required or permitted to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for the purposes of the court.

(2) Without limiting subsection (1), the rules may provide for the procedures of the court, including matters that may be dealt with in chambers or by a court official.

(3) The procedures of the court are governed by the rules.

(4) The rules are subordinate legislation.

4.1.11 Directions

(1) To the extent a matter about court procedure is not provided for by the rules, the matter may be dealt with by directions under this section.

(2) The Chief Judge of District Courts may issue directions of general application about the procedure of the court.

(3) A judge may issue directions about a particular case before the court when constituted by the judge.

Division 5—Parties to proceedings and court sittings

4.1.12 Where court may sit

The court may sit at any place.

4.1.13 Appearance

A party to a proceeding may appear personally or by lawyer or agent.

4.1.14 Adjournments

The court may—

(a) adjourn proceedings from time to time and from place to place; and

(b) adjourn proceedings to a time, or a time and place, to be fixed.

4.1.15 What happens if judge dies or is incapacitated

(1) This section applies if, after starting to hear a proceeding, the judge hearing the proceeding dies or becomes incapable of continuing with the proceeding.

(2) Another judge may—

(a) after consulting with the parties—

(i) adjourn the proceeding to allow the incapacitated judge to continue dealing when able; or

(ii) order the proceeding be reheard; or

(b) with the consent of the parties, make an order the judge considers appropriate about deciding the proceeding, or about completing the hearing of, and deciding the proceeding.

(3) An order mentioned in subsection (2)(b) is taken to be a decision of the court.

4.1.16 Stating case for Court of Appeal's opinion

(1) This section applies if a question of law arises during a proceeding and the judge considers it desirable that the question be decided by the Court of Appeal.

(2) The judge may state the question in the form of a special case for the opinion of the Court of Appeal.

(3) The special case may be stated only during the proceeding mentioned in subsection (1).

(4) Until the Court of Appeal has decided the special case, the court must not make a decision to which the question is relevant.

(5) When the Court of Appeal has decided the special case, the court must not proceed in a way, or make a decision, that is inconsistent with the Court of Appeal's decision on the special case.

Division 6—Other court officials and registry

4.1.17 Registrars and other court officials

The registrars, deputy registrars and other court officials of District Courts are the registrars, deputy registrars and other court officials of the court.

4.1.18 Registries

(1) Each District Court registry is the registry of the court.

(2) The registry of the court at Brisbane is the principal registry of the court.

(3) Subject to the registrar of the Brisbane District Court, the principal registry is under the control of the senior deputy registrar.

(4) The senior deputy registrar may give directions to the registrars, deputy registrars and other officers employed in the registries of the court.

4.1.19 Court records

(1) The registrar must keep minutes of the proceedings and records of the decisions of the court and perform the other duties the court directs.

(2) The records of the court held at a place must be kept in the custody of the registrar, deputy registrar or other court official at the place.

4.1.20 Judicial notice

All courts and persons acting judicially must take judicial notice of the appointment and signature of every person holding office under this part.

Division 7—Other court matters

4.1.21 Court may make declarations

(1) Any person may bring proceedings in the court for a declaration about—

(a) a matter done, to be done or that should have been done for this Act other than a matter for chapter 3, part 6, division 2;[75] and

(b) the construction of this Act and planning instruments under this Act; and

(c) the lawfulness of land use or development; and

(d) an infrastructure charge.

(1A) However, an assessment manager may bring proceedings about a matter done, to be done or that should have been done for chapter 3, part 6, division 2 for a development application if, when the application was called in under that division, the assessment manager—

(a) had not decided the application; or

(b) had refused the application.

(2) The proceeding may be brought on behalf of a person.

(3) If the proceeding is brought on behalf of a person, the person must consent or if the person is an unincorporated body, its committee or other controlling or governing body must consent.

(4) A person on whose behalf a proceeding is brought may contribute to, or pay, the legal costs incurred by the person bringing the proceeding.

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75 Chapter 3 (Integrated Development Assessment System (IDAS)), part 6 (Ministerial IDAS powers), division 2 (Ministerial call in powers)

(5) The court has jurisdiction to hear and decide a proceeding for a declaration about a matter mentioned in subsection (1).

(6) If a person starts a proceeding under this section, the person must, the day the person starts the proceeding, give the chief executive written notice of the proceeding.

(7) If the Minister is satisfied the proceeding involves a State interest, the Minister may elect to be a party to the proceeding by filing in the court a notice of election in the approved form.

4.1.22 Court may make orders about declarations

The court may also make an order about a declaration made under section 4.1.21.

4.1.23 Costs

(1) Each party to a proceeding in the court must bear the party's own costs for the proceeding.

(2) However, the court may order costs for the proceeding (including allowances to witnesses attending for giving evidence at the proceeding) as it considers appropriate in the following circumstances—

(a) the court considers the proceeding was instituted merely to delay or obstruct;

(b) the court considers the proceeding (or part of the proceeding) to have been frivolous or vexatious;

(c) a party has not been given reasonable notice of intention to apply for an adjournment of the proceeding;

(d) a party has incurred costs because the party is required to apply for an adjournment because of the conduct of another party;

(e) a party has incurred costs because another party has defaulted in the court's procedural requirements;

(f) without limiting paragraph (d), a party has incurred costs because another party has introduced (or sought to introduce) new material;

(g) if the proceeding is an appeal against a decision on a development application and the applicant did not, in responding

to an information request, give all the information reasonably requested before the decision was made;

(h) the court considers an assessment manager, a referral agency or a local government should have taken an active part in a proceeding and it did not do so;

(i) an applicant, submitter, referral agency, assessment manager or local government does not properly discharge its responsibilities in the proceedings.

(3) If a person brings a proceeding in the court for a declaration against an owner who sought the cancellation of a development approval without the consent of the other person mentioned in section 3.5.26, and the court makes the order, the court must award costs against the owner.

(4) If a person brings an appeal under section 4.1.35 and the appeal is not withdrawn, the court must award costs against the relevant Minister or local government—

(a) if the appeal is upheld; and

(b) if the appeal is against a deemed refusal—even if the appeal is not upheld.

(5) If a person brings a proceeding in the court for a declaration requiring a designator to give, under section 2.6.23,[76] a notice of intention to resume an interest in land under the *Acquisition of Land Act 1967* and the court makes an order about the declaration, the court must award costs against the designator.

(6) If a person brings a proceeding in the court for a declaration and order requiring an assessment manager to give, under section 3.2.3,[77] an acknowledgment notice and the court makes the order, the court must award costs against the assessment manager.

(7) If the court allows an assessment manager to withdraw from an appeal, the court must not award costs against the assessment manager.

(8) The court may, if it considers it appropriate, order the costs to be decided by the appropriate costs taxing officer of the Supreme Court, under the scale of costs prescribed by law for proceedings in the District Court.

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76 Section 2.6.23 (If the designator does not act under the notice)

77 Section 3.2.3 (Acknowledgment notices generally)

(9) If the court makes an order under subsection (8), the taxing officer may decide the appropriate scale to be used in taxing the costs.

(10) An order made under this section may be made an order of the District Court and enforced in the District Court.

4.1.24 Privileges, protection and immunity

A person who is one of the following has the same privileges, protection or immunity as the person would have if the proceeding were in the District Court—

(a) the judge presiding over the proceeding;

(b) a legal practitioner or agent appearing in the proceeding;

(c) a witness attending in the proceeding.

4.1.25 Payment of witnesses

Every witness summoned is entitled to be paid reasonable expenses by the party requiring the attendance of the witness.

4.1.26 Evidence of planning schemes

(1) If a chief executive officer of a local government is satisfied a document is a true copy of a planning scheme, or a part of the planning scheme, in force for the local government at a time stated in the document, the chief executive officer may so certify the document.

(2) In a proceeding, a document certified under subsection (1) is admissible in evidence as if it were the original scheme or part.

Division 8—Appeals to court relating to development applications

4.1.27 Appeals by applicants

(1) An applicant for a development application may appeal to the court against any of the following—

(a) the refusal, or the refusal in part, of a development application;

(b) a matter stated in a development approval, including any condition applying to the development, and the identification of a code under section 3.1.6;[78]

(c) the decision to give a preliminary approval when a development permit was applied for;

(d) the length of a currency period;

(e) a deemed refusal.

(2) An appeal under subsection (1)(a) to (d) must be started within 20 business days (the **"applicant's appeal period"**) after the day the decision notice or negotiated decision notice is given to the applicant.

(3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

4.1.28 Appeals by submitters

(1) A submitter for a development application may appeal to the court about—

(a) the giving of a development approval, including any conditions (or lack of conditions) or other provisions of the approval; or

(b) the length of a currency period for the approval.

(2) The appeal must be started within 20 business days (the **"submitter's appeal period"**) after the day the decision notice or negotiated decision notice is given to the submitter.

(3) If a person withdraws a submission before the application is decided, the person may not appeal the decision.

(4) If an application involves both impact assessment and code assessment, appeal rights for submitters are available only for the part of the application involving impact assessment.

(5) If an application is processed under section 6.1.28(2), appeal rights for submitters for the application are available only for the aspects of the development that would have required public notification under the repealed Act.

(6) If an application involves assessment against a concurrence agency code, appeal rights for submitters for the application are not available

78 Section 3.1.6 (Preliminary approval may override local planning instrument)

against the part of the approval that represents the concurrence agency's response for the code.

4.1.29 Appeals by advice agency submitters

(1) An advice agency may, within the limits of its jurisdiction, appeal to the court about the giving of a development approval for a development application if—

(a) the development application involves impact assessment; and

(b) the advice agency told the applicant and the assessment manager to treat its response to the application as a submission for an appeal.

(2) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.

4.1.30 Appeals for matters arising after approval given (co-respondents)

(1) For a development approval given for a development application, a person to whom any of the following notices have been given may appeal to the court against the decision in the notice—

(a) a notice giving a decision on a request for an extension of the currency period for an approval;

(b) a notice giving a decision on a request to make a minor change to an approval.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

(3) Subsection (1)(a) does not apply if the approval resulted from a development application (superseded planning scheme) that was assessed as if it were an application made under a superseded planning scheme.

(4) Also, a person who has made a request mentioned in subsection (1) may appeal to the court against a deemed refusal of the request.

(5) An appeal under subsection (4) may be started at any time after the last day the decision on the matter should have been made.

Division 9—Appeals to court about other matters

4.1.31 Appeals for matters arising after approval given (no co-respondents)

(1) A person to whom any of the following notices have been given may appeal to the court against the decision in the notice—

(a) a notice giving a decision on a request to change or cancel a condition of a development approval;

(b) a notice under section 6.1.44[79] giving a decision to change or cancel a condition of a development approval.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

(3) Also, a person who has made a request mentioned in subsection (1)(a) may appeal to the court against a deemed refusal of the request.

(4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

4.1.32 Appeals against enforcement notices

(1) A person who is given an enforcement notice may appeal to the court against the giving of the notice.

(2) The appeal must be started within 20 business days after the day notice is given to the person.

4.1.33 Stay of operation of enforcement notice

(1) The lodging of a notice of appeal about an enforcement notice stays the operation of the enforcement notice until—

(a) the court, on the application of the entity issuing the notice, decides otherwise; or

(b) the appeal is withdrawn; or

(c) the appeal is dismissed.

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79 Section 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)

(2) However, subsection (1) does not apply if the enforcement notice is about—

(a) a work, if the enforcement notice states the entity believes the work is a danger to persons or a risk to public health; or

(b) stopping the demolition of a work; or

(c) clearing vegetation on freehold land; or

(d) the removal of quarry material allocated under the *Water Act 2000*; or

(e) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (d), from Queensland waters.

4.1.33A Appeals against decisions to change approval conditions under the repealed Act

(1) A person who is dissatisfied with a decision made on an application to change the conditions attached to an approval given under section 2.19(3) or section 4.4 of the repealed Act may appeal to the court against—

(a) the decision; or

(b) a deemed refusal of the application.

(2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.

(3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

4.1.33B Appeals against local laws

(1) An applicant who is dissatisfied with a decision of a local government or the conditions applied under a local law about the use of premises or the erection of a building or other structure permitted by the planning scheme may appeal to the court against the decision or the conditions applied.

(2) The appeal must be started within 20 business days after the day notice of the decision is given to the applicant.

4.1.34 Appeals against decisions on compensation claims

(1) A person who is dissatisfied with a decision under section 5.4.8 or 5.5.3[80] for the payment of compensation may appeal to the court against—

(a) the decision; or

(b) a deemed refusal of the claim.

(2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.

(3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

4.1.35 Appeals against decisions on requests to acquire designated land under hardship

(1) A person who is dissatisfied with a designator's decision to refuse a request made by the person under section 2.6.19,[81] may appeal to the court against—

(a) the decision; or

(b) a deemed refusal of the request.

(2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.

(3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

4.1.37 Appeals from tribunals

(1) A party to a proceeding decided by a tribunal may appeal to the court against the tribunal's decision, but only on the ground—

(a) of error or mistake in law on the part of the tribunal; or

(b) that the tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

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80 Section 5.4.8 (Deciding claims for compensation) or 5.5.3 (Compensation for loss or damage)

81 Section 2.6.19 (Request to acquire designated land under hardship)

(2) An appeal against a tribunal's decision must be started within 20 business days after the day notice of the tribunal's decision is given to the party.

4.1.38 Court may remit matter to tribunal

If an appeal includes a matter within the jurisdiction of a tribunal and the court is satisfied the matter should be dealt with by a tribunal, the court must remit the matter to the tribunal for decision.

Division 10—Making an appeal to court

4.1.39 How appeals to the court are started

(1) An appeal is started by lodging written notice of appeal with the registrar of the court.

(2) The notice of appeal must state the grounds of the appeal.

(3) The person starting the appeal must also comply with the rules of the court applying to the appeal.

(4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

4.1.40 Certain appellants must obtain information about submitters

(1) If the applicant or a submitter for a development application appeals about the part of the application involving impact assessment, the appellant must ask the assessment manager to give the appellant the name and address of each principal submitter who made a properly made submission about the application and has not withdrawn the submission.

(2) The assessment manager must give the information requested under subsection (1) as soon as practicable.

4.1.41 Notice of appeal to other parties (div 8)

(1) An appellant under division 8 must, within 10 business days after the day the appeal is started (or if information is requested under section 4.1.40, within 10 business days after the day the appellant is given

the information) give written notice of the appeal to the chief executive and—

(a) if the appellant is an applicant—the assessment manager, any concurrence agency, any principal submitter whose submission has not been withdrawn and any advice agency treated as a submitter whose submission has not been withdrawn; or

(b) if the appellant is a submitter or an advice agency whose response to the development application is treated as a submission for an appeal—the assessment manager, the applicant and any concurrence agency; or

(c) if the appellant is a person to whom a notice mentioned in section 4.1.30 has been given—the assessment manager and any entity that was a concurrence agency for the development application.

(2) The notice must state—

(a) the grounds of the appeal; and

(b) if the person given the notice is not the respondent or a co-respondent under section 4.1.43—that the person, within 10 business days after the day the notice is given, may elect to become a co-respondent to the appeal by filing in the court a notice of election in the approved form.

4.1.42 Notice of appeal to other parties (div 9)

(1) An appellant under division 9 must, within 10 business days after the day the appeal is started give written notice of the appeal to—

(a) if the appellant is a person to whom a notice mentioned in section 4.1.31[82] has been given—the entity that gave the notice; or

(b) if the appellant is a person to whom an enforcement notice is given—the entity that gave the notice and if the entity is not the local government, the local government; or

(c) if the appellant is a person dissatisfied with a decision about compensation—the local government that decided the claim; or

82 Section 4.1.31 (Appeals for matters arising after approval given (no co-respondents))

(d) if the appellant is a person dissatisfied with a decision about acquiring designated land—the designator; or

(e) if the appellant is a party to a proceeding decided by a tribunal—the other party to the proceeding.

(2) The notice must state the grounds of the appeal.

4.1.43 Respondent and co-respondents for appeals under div 8

(1) This section applies to appeals under division 8 for a development application.

(2) The assessment manager is the respondent for the appeal.

(3) If the appeal is started by a submitter, the applicant is a co-respondent for the appeal.

(4) If the appeal is about a concurrence agency response, the concurrence agency is a co-respondent for the appeal.

(5) If the appeal is only about a concurrence agency response, the assessment manager may apply to the court to withdraw from the appeal.

(6) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.

(7) A person to whom a notice of appeal is required to be given under section 4.1.41 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.

4.1.44 Respondent and co-respondents for appeals under div 9

(1) This section applies if an entity is required under section 4.1.42 to be given a notice of an appeal.[83]

(2) The entity given written notice is the respondent for the appeal.

(3) However, if under a provision of the section more than 1 entity is required to be given notice, only the first entity mentioned in the provision is the respondent.

(4) The second entity mentioned in the provision may elect to be a co-respondent.

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83 Division 9 (Appeals to court about other matters)

4.1.45 How a person may elect to be co-respondent

(1) An entity elects to be a co-respondent by lodging in the court, within 10 business days after the day the notice of the appeal is given to the entity, a notice of election under the rules of court.

(2) If a principal submitter is entitled to elect to become a co-respondent, any other submitter for the submission may also elect to become a co-respondent to the appeal.

4.1.46 Minister entitled to be party to an appeal involving a State interest

If the Minister is satisfied an appeal involves a State interest, the Minister may, by filing in the court a notice of election in the approved form, elect to be a party to the appeal.

4.1.47 Lodging appeal stops certain actions

(1) If an appeal (other than an appeal under section 4.1.30) is started under division 8, the development must not be started until the appeal is decided or withdrawn.

(2) Despite subsection (1), if the court is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the court may allow the development or part of the development to start before the appeal is decided.

Division 11—Alternative dispute resolution

4.1.48 ADR process applies to proceedings started under this part

(1) The *District Courts Act 1967,* part 7[84] and the *Uniform Civil Procedure Rules 1999*, chapter 9, part 4[85] (together, the **"ADR provisions"**), apply to proceedings started under this part.

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84 *District Courts Act 1967,* part 7 (ADR processes)

85 *Uniform Civil Procedure Rules 1999*, chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

(2) However, to the extent there is any inconsistency between the cost provisions of the ADR provisions and the cost provisions of this Act, the cost provisions of the ADR provisions prevail.

(3) In applying the ADR provisions to a proceeding under this part—

(a) a reference to the court or the District Court is taken to be a reference to the Planning and Environment Court; and

(b) a reference to a District Court judge is taken to be a reference to a judge constituting the Planning and Environment Court; and

(c) definitions and other interpretative provisions of the *District Courts Act 1967* and the *Uniform Civil Procedure Rules 1999* relevant to the ADR provisions apply.

Division 12—Court process for appeals

4.1.49 Hearing procedures

The procedure for hearing an appeal is to be in accordance with—

(a) the rules of court; or

(b) if the rules make no provision or insufficient provision—directions of the judge constituting the court.

4.1.50 Who must prove case

(1) In an appeal by the applicant for a development application, it is for the appellant to establish that the appeal should be upheld.

(2) In an appeal by a submitter for a development application, it is for the applicant to establish that the appeal should be dismissed.

(3) In an appeal by an advice agency for a development application that told the applicant and the assessment manager to treat its response to the application as a submission for an appeal, it is for the applicant to establish that the appeal should be dismissed.

(4) In an appeal by a person who appeals under section 4.1.30 or 4.1.31,[86] it is for the appellant to establish that the appeal should be upheld.

(5) In an appeal by a person who is given an enforcement notice, it is for the entity that gave the notice to establish that the appeal should be dismissed.

(6) In an appeal by a person who is dissatisfied with a decision about compensation, it is for the local government that decided the claim to establish that the appeal should be dismissed.

(7) In an appeal by a person who is dissatisfied with a decision about acquiring designated land, it is for the designator to establish that the appeal should be dismissed.

(8) In an appeal by a party to a proceeding decided by a tribunal, it is for the appellant to establish that the appeal should be upheld.

4.1.51 Court may hear appeals together

The court may hear 2 or more appeals together.

4.1.52 Appeal by way of hearing anew

(1) An appeal is by way of hearing anew.

(2) However, if the appellant is the applicant or a submitter for a development application, the court—

(a) must decide the appeal based on the laws and policies applying when the application was made, but may give weight to any new laws and policies the court considers appropriate; and

(b) must not consider a change to the application on which the decision being appealed was made unless the change is only a minor change.

(3) To remove any doubt, it is declared that if the appellant is the applicant or a submitter for a development application—

(a) the court is not prevented from considering and making a decision about a ground of appeal (based on a concurrence

86 Section 4.1.30 (Appeals for matters arising after approval given (co-respondents)) or 4.1.31 (Appeals for matters arising after approval given (no co-respondents))

agency's response) merely because this Act required the assessment manager to refuse the application or approve the application subject to conditions; and

(b) in an appeal against a decision about a development application (superseded planning scheme) that was assessed as if it were an application made under a superseded planning scheme, the court also must—

(i) consider the appeal as if the application were made under the superseded planning scheme; and

(ii) disregard the planning scheme applying when the application was made.

4.1.54 Appeal decision

(1) In deciding an appeal the court may make the orders and directions it considers appropriate.

(2) Without limiting subsection (1), the court may—

(a) confirm the decision appealed against; or

(b) change the decision appealed against; or

(c) set aside the decision appealed against and make a decision replacing the decision set aside.

(3) If the court acts under subsection (2)(b) or (c), the court's decision is taken, for this Act (other than this decision) to be the decision of the entity making the appealed decision.

(4) If the appeal is an appeal against the decision of a tribunal, the court may return the matter to the tribunal with a direction that the tribunal make its decision according to law.

4.1.55 Court may allow longer period to take an action

In this part, if an action must be taken within a specified time, the court may allow a longer time to take the action if the court is satisfied there are sufficient grounds for the extension.

Division 13—Appeals to Court of Appeal

4.1.56 Who may appeal to Court of Appeal

(1) A party to a proceeding may, under the rules of court, appeal a decision of the court on the ground—

(a) of error or mistake in law on the part of the court; or

(b) that the court had no jurisdiction to make the decision; or

(c) that the court exceeded its jurisdiction in making the decision.

(2) However, the party may appeal only with the leave of the Court of Appeal or a judge of Appeal.

4.1.57 When leave to appeal must be sought and appeal made

(1) A party intending to seek leave of the Court of Appeal to appeal against a decision of the court must, within 30 business days after the court's decision is given to the party, apply to the Court of Appeal for leave to appeal against the decision.

(2) If the Court of Appeal grants the leave, the notice of appeal against the decision must be served and filed within 30 business days after the Court of Appeal grants leave to appeal.

4.1.58 Power of Court of Appeal

The Court of Appeal may do 1 or more of the following—

(a) return the matter to the court or judge for decision in accordance with the Court of Appeal's decision;

(b) affirm, amend, or revoke and substitute another order or decision for, the court's or judge's order or decision;

(c) make an order the Court of Appeal considers appropriate.

4.1.59 Lodging appeal stops certain actions

(1) If a decision on an appeal under division 8 (other than an appeal under section 4.1.30) is appealed under this division, the development must not be started until the appeal under this division is decided or withdrawn.

(2) Despite subsection (1), if the Court of Appeal is satisfied the outcome of the appeal before it would not be affected if the development or part of the development is started before the appeal before it is decided, the Court of Appeal may allow the development or part of the development to start before the appeal before it is decided.

PART 2—BUILDING AND DEVELOPMENT TRIBUNALS

Division 1—Establishing, constituting and jurisdiction of tribunals

4.2.1 Establishing building and development tribunals

(1) The chief executive may at any time establish a building and development tribunal.

(2) A tribunal may be established by the appointment of not more than 5 general referees[87] as the members constituting the tribunal.

(3) In establishing a tribunal, the chief executive must have regard to the matter with which the tribunal must deal.

(4) However, if a tribunal is being established only to hear an appeal against a local government's decision about the amenity and aesthetics assessment of a building under the Standard Building Regulation, the tribunal may be established by the appointment of 3 aesthetic referees as the members constituting the tribunal.

(5) The aesthetic referees appointed under subsection (4) must be—

(a) 1 individual who is an architect (who is the chairperson of the tribunal); and

(b) 1 individual who is not a member of, nor employed by the local government whose decision is being appealed and whose appointment has been discussed with the Local Government Association of Queensland; and

87 Referees are appointed under division 7.

(c) 1 individual whose appointment has been discussed with the Queensland Master Builders' Association and the Housing Industry Association.

4.2.2 Consultation about multiple member tribunals

(1) If a tribunal is to be constituted by more than 1 member, the chief executive must—

(a) consult with a representative of the Local Government Association of Queensland about the appointment of at least 1 of the referees as a member; and

(b) in the writing appointing the members, appoint 1 member as chairperson of the tribunal.

(2) Subsection (1) does not apply to a tribunal established under section 4.2.1(4).

4.2.3 Same members to continue for duration of tribunal

(1) A tribunal must continue to be constituted by the same members.

(2) If a tribunal can not complete a decision on a matter, the chief executive may establish another tribunal to hear the matter again from the beginning.

4.2.4 Referee with conflict of interest not to be member of tribunal

(1) This section applies to a referee if the chief executive advises the referee that the chief executive proposes to appoint the referee as a member of a tribunal, and either or both of the following apply—

(a) the tribunal is to hear a matter about premises—

(i) the referee owns; or

(ii) in relation to which the referee was, is, or is to be, an architect, builder, drainer, engineer, planner, plumber, plumbing inspector, private certifier, site evaluator or soil assessor; or

(iii) situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;

(b) the referee has a direct or indirect personal interest in a matter to be considered by the tribunal, and the interest could conflict with the proper performance of the referee's duties in relation to the tribunal's consideration of the matter.

(2) The referee must advise the chief executive that this section applies to the referee, and the chief executive must not appoint the referee to the tribunal.

4.2.5 Referee not to act as member of tribunal in certain cases

If a member of a tribunal is aware, or becomes aware, that the member should not have been appointed to the tribunal, the member must not act as a member of the tribunal.

4.2.6 Remuneration of members of tribunal

(1) A member of a tribunal must be paid the remuneration the Governor in Council decides.

(2) A member who is a public service officer must not be paid remuneration if the officer acts as a member during the officer's ordinary hours of duty as an officer but is entitled to be paid expenses necessarily incurred by the officer in so acting.

4.2.7 Jurisdiction of tribunals

(1) A tribunal has jurisdiction to decide any matter that under this or another Act may be appealed to it.

(2) However, an appeal to a tribunal under this Act may only be about—

(a) a matter under this Act that relates to the *Building Act 1975* or the *Plumbing and Drainage Act 2002*; or

(b) a matter prescribed under a regulation.

Division 2—Other tribunal officials

4.2.8 Appointment of registrar and other officers

(1) The chief executive may at any time by gazette notice appoint a registrar of building and development tribunals, and other officers the chief executive considers appropriate to help tribunals to perform their functions.

(2) A public service officer may be appointed under subsection (1) or may be assigned by the chief executive to perform duties to help tribunals, and may hold the appointment or perform the duties concurrently with any other appointment the officer holds in the public service.

Division 3—Appeals to tribunals relating to development applications

4.2.9 Appeals by applicants

(1) An applicant for a development application may appeal to a tribunal against any of the following—

(a) the refusal, or the refusal in part, of a development application;

(b) a matter stated in a development approval, including any condition applying to the development, but not including the identification of a code under section 3.1.6;[88]

(c) the decision to give a preliminary approval when a development permit was applied for;

(d) the length of a currency period;

(e) a deemed refusal.

(2) An appeal under subsection (1)(a) to (d) must be started within 20 business days (the **"applicant's appeal period"**) after the day the decision notice or negotiated decision notice is given to the applicant.

(3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

88 Section 3.1.6 (Preliminary approval may override local planning instrument)

4.2.10 Appeal by advice agency

(1) An advice agency may, within the limits of its jurisdiction, appeal to a tribunal about the giving of a development approval if the development application involves code assessment for the aspect of building work to be assessed against the *Building Act 1975*.

(2) The appeal must be started within 10 business days after the day the decision notice or negotiated decision notice is given to the advice agency.

4.2.11 Appeals for matters arising after approval given (co-respondents)

(1) For a development approval given for a development application, a person to whom any of the following notices have been given may appeal to a tribunal against the decision in the notice—

(a) a notice giving a decision on a request for an extension of the currency period for the approval;

(b) a notice giving a decision on a request to make a minor change to the approval.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

(3) Subsection (1)(a) does not apply if the approval resulted from a development application (superseded planning scheme) that was assessed as if it were an application made under a superseded planning scheme.

Division 4—Appeals to tribunal about other matters

4.2.12 Appeals for matters arising after approval given (no co-respondents)

(1) A person to whom any of the following notices have been given may appeal to a tribunal against the decision in the notice—

(a) a notice giving a decision on a request to change or cancel a condition of the development approval;

(b) a notice under section 6.1.44[89] giving a decision to change or cancel a condition of the development approval.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

4.2.12A Appeals for plumbing and drainage matters

(1) A person to whom any of the following notices have been given may appeal to a tribunal against the decision in the notice—

(a) an information notice under the *Plumbing and Drainage Act 2002* about a decision under section 85, 86 or 86A of that Act;

(b) a review notice under the *Plumbing and Drainage Act 2002,* section 133, about a review decision under that section.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

4.2.13 Appeals against enforcement notices

(1) A person who is given an enforcement notice may appeal to a tribunal against the giving of the notice.

(2) The appeal must be started within 20 business days after the day the notice is given to the person.

4.2.14 Stay of operation of enforcement notice

(1) The lodging of a notice of appeal about an enforcement notice stays the operation of the enforcement notice until—

(a) the tribunal, on the application of the entity issuing the notice, decides otherwise; or

(b) the appeal is withdrawn; or

(c) the appeal is dismissed.

(2) However, subsection (1) does not apply if the enforcement notice is about—

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89 Section 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)

(a) a work, if the enforcement notice states the entity believes the work is a danger to persons or a risk to public health; or

(b) stopping the demolition of a work; or

(c) clearing vegetation on freehold land; or

(d) the removal of quarry material allocated under the *Water Act 2000*; or

(e) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (d), from Queensland waters.

Division 5—Making an appeal to tribunal

4.2.15 How appeals to tribunals are started

(1) A person starts an appeal by lodging written notice of appeal, in the approved form, with the registrar of the tribunal.

(2) The notice of appeal must state the grounds of the appeal and be accompanied by the fee prescribed under a regulation.

4.2.16 Fast track appeals

(1) A person who is entitled to start an appeal under this part, may, by written request, ask the chief executive to appoint a tribunal to start hearing the appeal within 2 business days after starting the appeal.

(2) A request made under subsection (1) must be accompanied by the fee prescribed under a regulation.

(3) The chief executive may grant or refuse the request.

(4) The chief executive may grant the request only if all the parties to the appeal, including any person who could elect to become a co-respondent, have agreed in writing to the request.

(5) If the chief executive grants the request, the chief executive may as a condition of granting the request, require the person making the request to pay—

(a) the reasonable costs of the respondent and any co-respondents for the appeal after the request is granted; and

(b) an additional tribunal fee prescribed under a regulation.

(6) If the request is granted, any notice of appeal to be given and any election to be a co-respondent to the appeal under this part must be given or made before any hearing for the appeal starts.

4.2.16A Notice of appeal to other parties (under other Acts)

(1) For an appeal to the tribunal under another Act, the registrar must, within 10 business days after the day the appeal is started, give written notice of the appeal to any other person the registrar considers appropriate.

(2) The notice must state the grounds of the appeal.

4.2.17 Notice of appeal to other parties (div 3)

(1) For an appeal under division 3, the registrar must, within 10 business days after the day the appeal is started, give written notice of the appeal to—

(a) if the appellant is an applicant mentioned in section 4.2.9 or a person to whom a notice mentioned in section 4.2.11 has been given—the assessment manager, the private certifier (if any) and any concurrence agency or building referral agency for an aspect of the application the subject of the appeal; or

(b) if the appellant is a building referral agency—the applicant, the assessment manager, the private certifier (if any) and any other entity that was a concurrence agency for an aspect of the application.

(2) The notice must state—

(a) the grounds of the appeal; and

(b) if the person given the notice is not the respondent or a co-respondent under section 4.2.19[90]—that the person, within 10 business days after the day the notice is given, may elect to become a co-respondent to the appeal.

90 Section 4.2.19 (Respondent and co-respondents for appeals under div 3)

4.2.18 Notice of appeal to other parties (div 4)

(1) For an appeal under division 4, the registrar must, within 10 business days after the day the appeal is started, give written notice of the appeal to—

(a) if the appellant is a person to whom a notice mentioned in section 4.2.12 or 4.2.12A[91] has been given—the entity that gave the notice; or

(b) if the appellant is a person to whom an enforcement notice is given—the entity that gave the notice, and, if the entity is not the local government, the local government.

(2) The notice must state the grounds of the appeal.

4.2.19 Respondent and co-respondents for appeals under div 3

(1) This section applies to appeals under division 3 for a development application.

(2) The assessment manager is the respondent for the appeal.

(3) If the appeal is about a concurrence agency response, the concurrence agency is a co-respondent for the appeal.

(4) If the appeal is only about a concurrence agency response, the assessment manager may apply to the tribunal to withdraw from the appeal.

(5) The respondent and any co-respondents for an appeal are each entitled to be heard in the appeal as a party to the appeal.

(6) A person to whom a notice of appeal is required to be given under section 4.2.17 and who is not the respondent or a co-respondent for the appeal under subsections (1) to (3) may elect to be a co-respondent.

4.2.20 Respondent and co-respondents for appeals under div 4

(1) This section applies if an entity is required under section 4.2.18 to be given a notice of an appeal.

(2) The entity given written notice is the respondent for the appeal.

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91 Section 4.2.12 (Appeals for matters arising after approval given (no co-respondents)) or 4.2.12A (Appeals for plumbing and drainage matters)

(3) However, if under section 4.2.18(1)(b) more than 1 entity is required to be given notice—

(a) the first entity mentioned in the provision is the respondent; but

(b) the second entity mentioned in the provision may elect to be a co-respondent.

4.2.21 How a person may elect to be co-respondent

An entity elects to be a co-respondent by lodging in the tribunal, within 10 business days after the day the notice of the appeal is given to the entity, a notice of election in the approved form.

4.2.22 Registrar must ask assessment manager for material in certain proceedings

(1) If an appeal is about a deemed refusal, the registrar must ask the assessment manager to give the registrar—

(a) all material (including plans and specifications) about the aspect of the application being appealed; and

(b) a statement of the reasons the assessment manager had not decided the application during the decision making period or extended decision making period; and

(c) any other information the registrar requires.

(2) The assessment manager must give the material mentioned in subsection (1) within 10 business days after the day the registrar asks for the material.

4.2.23 Minister entitled to be represented in an appeal involving a State interest

If the Minister is satisfied that an appeal involves a State interest, the Minister is entitled to be represented in the appeal.

Division 6—Tribunal process for appeals

4.2.24 Establishing a tribunal

(1) When the registrar receives a notice of appeal within the time stated for starting the appeal, the registrar must give a copy of the notice to the chief executive.

(2) On receiving a copy of a notice of appeal from the registrar, the chief executive must, by the written appointment of a referee or referees, establish a tribunal to decide the appeal.

(3) The registrar must give each party to the appeal written notice that a tribunal has been established.

(4) If the registrar receives a notice of appeal that is not within the time stated for starting the appeal, the registrar must give the appellant notice stating that the notice of appeal is of no effect because it was not received within the time stated for starting the appeal.

4.2.25 Procedures of tribunals

(1) A tribunal must—

(a) conduct its business in the way prescribed under a regulation or, in so far as the way is not prescribed, as it considers appropriate; and

(b) make its decisions in a timely way.

(2) A tribunal may—

(a) sit at the times and places it decides; and

(b) hear 2 or more appeals together.

4.2.26 Costs

Each party to an appeal must bear the party's own costs for the appeal.

4.2.27 Tribunal may allow longer period to take an action

(1) In this part, if an action must be taken within a specified time, the tribunal may allow a longer time to take the action if the tribunal is satisfied there are sufficient grounds for the extension.

(2) Subsection (1) does not apply to a notice of appeal that is not received within the time stated for starting the appeal.

4.2.28 Appeal may be by hearing or written submission

The chairperson of the tribunal must decide whether the tribunal will—

(a) conduct a hearing for the appeal; or

(b) if all the parties to the appeal agree—decide the appeal on the basis of written submissions.

4.2.29 Appeals by hearing

If the appeal is to be by way of a hearing, the chairperson must—

(a) fix a time and place for the hearing; and

(b) give all the parties to the appeal written notice of the time and place of the hearing.

4.2.30 Right to representation at tribunal appeal hearing

(1) A party to an appeal may appear in person or be represented by an agent.

(2) A person must not be represented at an appeal by an agent who is a lawyer.

4.2.31 Conduct of hearings

(1) In conducting the hearing, the tribunal—

(a) need not proceed in a formal way; and

(b) is not bound by the rules of evidence; and

(c) may inform itself in the way it considers appropriate; and

(d) may seek the views of any person; and

(e) must give all persons appearing before it reasonable opportunity to be heard; and

(f) may prohibit or regulate questioning in the hearing.

(2) The tribunal may hear the appeal without hearing a person if the person is not present or represented at the time and place appointed for hearing the person.

(3) If, because of the time available for conducting the appeal, a person does not have an opportunity to be heard, or fully heard, the person may make a written submission about the matter to the tribunal.

4.2.32 Appeals by written submission

(1) If the tribunal is to decide the appeal on the basis of written submissions, the chairperson must—

(a) decide a reasonable time within which the tribunal may accept the written submissions; and

(b) give the parties written notice that the appeal is to be decided on the basis of written submissions.

(2) The notice must ask for written submissions about the appellant's grounds of appeal to be given to the chairperson within the time decided under subsection (1).

4.2.33 Matters the tribunal may consider in making a decision

If the appeal is about a development application (including about a development approval given for a development application), the tribunal must decide the appeal based on the laws and policies applying when the application was made, but may give the weight to any new laws and policies the tribunal considers appropriate.

4.2.34 Appeal decision

(1) In deciding an appeal the tribunal may make the orders and directions it considers appropriate.

(2) Without limiting subsection (1), the tribunal may—

(a) confirm the decision appealed against; or

(b) change the decision appealed against; or

(c) set aside the decision appealed against and make a decision replacing the decision set aside; or

(d) for a deemed refusal—

(i) order the assessment manager to decide the application by a stated time; and

(ii) if the assessment manager does not comply with the order under subparagraph (i)—decide the application; or

(e) if the application is for building work—with the consent of the appellant, vary the application so that the tribunal is satisfied—

(i) the building, when erected, will not have an extremely adverse affect on the amenity or likely amenity of the building's neighbourhood; and

(ii) the aesthetics of the building, when erected, will not be in extreme conflict with the character of the building's neighbourhood.

(3) If the tribunal acts under subsection (2)(b), (c), (d)(ii) or (e) the tribunal's decision is taken, for this Act (other than this division) to be the decision of the entity that made the decision being appealed.

(4) The chairperson of the tribunal must give all parties to the appeal, written notice of the tribunal's decision.[92]

(5) The decision of the tribunal takes effect—

(a) if a party to the proceeding does not appeal against the decision—at the end of the period during which the tribunal's decision may be appealed; or

(b) if an appeal is made to the court against the tribunal's decision—subject to the decision of the court, when the appeal is finally decided.

4.2.35 When decision may be made without representation or submission

The tribunal may decide the appeal without the representations or submissions of a person who has been given a notice under section 4.2.29(b) or section 4.2.32(1) if—

(a) for a hearing without written submissions—the person does not appear at the hearing; or

92 Any person receiving a notice may appeal the decision. See section 4.1.37 (Appeals from tribunals).

(b) for a hearing on the basis of written submissions—the person's submissions are not received within the time stated in the notice given under section 4.2.32(1).

4.2.35A Notice of compliance

If the tribunal orders or directs the assessment manager, including a private certifier acting as an assessment manager, to do something, the assessment manager must, after doing the thing, give the registrar written notice of doing the thing.

Division 7—Referees

4.2.36 Appointment of referees

(1) The Minister, by gazette notice, may appoint the number of persons the Minister considers appropriate to be general referees under this Act.

(2) The chief executive may, by written notice, appoint persons to be aesthetics referees for a tribunal established under section 4.2.1(4).

(3) A public service officer may be appointed as a referee.

(4) An officer appointed under subsection (2) holds the appointment concurrently with any other appointment the officer holds in the public service.

4.2.37 Qualifications of general referees

A general referee may be appointed as a member of a tribunal to hear and decide a matter only if the general referee has the qualifications, experience or qualifications and experience prescribed for the matter under a regulation.

4.2.38 Term of referee's appointment

(1) A person may be appointed—

(a) as a general referee—for the term the Minister considers appropriate, but the term must not be longer than 3 years; and

(b) as an aesthetics referee—for hearing 1 or more decisions, about the amenity and aesthetics of a building, that have been appealed.

(2) The term of appointment of a general referee must be stated in the notice of appointment.

(3) A referee may be reappointed.

(4) A referee may at any time resign the referee's appointment by writing under the referee's hand given to—

(a) if the referee is a general referee—the Minister; or

(b) if the referee is an aesthetics referee—the chief executive.

(5) The Minister may cancel a general referee's appointment at any time.

(6) The chief executive may cancel an aesthetics referee's appointment at any time.

4.2.39 General referee to make declaration

(1) A person appointed as a general referee must—

(a) sign a declaration in the approved form; and

(b) give the declaration to the chief executive as soon as the declaration is signed.

(2) The person must not sit as a member of a tribunal until the declaration has been given to the chief executive.

PART 3—DEVELOPMENT OFFENCES, NOTICES AND ORDERS

Division 1—Development offences

4.3.1A Additional meanings for defined terms in div 1

If a word used in this division, would apart from this section, have the meaning given by schedule 10, the word may, if the context requires, have the meaning given by section 6.1.1.

4.3.1 Carrying out assessable development without permit

(1) A person must not start assessable development unless there is an effective development permit for the development.

Maximum penalty—1 665 penalty units.

(2) Subsection (1) applies subject to section 4.3.6.

(3) Despite subsection (1), the maximum penalty is 17 000 penalty units if the assessable development is—

(a) the demolition of a building identified in a planning scheme as a building of cultural heritage significance; or

(b) on a registered place under the *Queensland Heritage Act 1992*.

4.3.2 Self-assessable development must comply with codes

A person must comply with applicable codes when carrying out self-assessable development.

Maximum penalty—165 penalty units.

4.3.2A Certain assessable development must comply with codes

A person must comply with codes mentioned in section 3.1.2(4) or 3.1.6(6) when carrying out assessable development.

Maximum penalty—165 penalty units.

4.3.3 Compliance with development approval

(1) A person must not contravene a development approval, including any condition in the approval.

Maximum penalty—1 665 penalty units.

(2) Subsection (1) applies subject to section 4.3.6.

(3) Also, subsection (1) does not apply to a contravention of a condition of a development approval imposed, or required to be imposed, by the administering authority under the *Environmental Protection Act 1994* as the assessment manager or a concurrence agency for the application for the approval.

(4) In subsection (1)—

"development approval" includes an approval under section 4.4(5) or 4.7(5)[93] of the repealed Act.

4.3.4 Compliance with identified codes about use of premises

(1) A person must not contravene a code identified, in a way provided for in this Act, as a code applying to the use of premises.

Maximum penalty—1 665 penalty units.

(2) Subsection (1) applies subject to section 4.3.6.

4.3.5 Offences about the use of premises

Subject to section 4.3.6, a person must not use premises—

(a) if the use is not a lawful use; or

(b) unless the use is in accordance with—

(i) for premises that have not been designated—a planning scheme or temporary local planning instrument that regulates the use of the premises;[94] or

(ii) for premises that have been designated—any requirements about the use of land that are part of the designation.[95]

Maximum penalty—1 665 penalty units.

4.3.6 Development or use carried out in emergency

(1) Sections 4.3.1, 4.3.3, 4.3.4 and 4.3.5 do not apply to a person if—

(a) the person starts development or a use because of an emergency endangering—

(i) the life or health of a person; or

(ii) the structural safety of a building; and

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93 Sections 4.4 (Assessment of proposed planning scheme amendment) and 4.7 (Assessment of regrowing of land in stages) of the repealed Act

94 See section 2.1.23(3) (Local planning instruments have force of law).

95 See section 2.6.4 (What designations may include).

(b) the person gives written notice of the development or use to the assessing authority as soon as practicable after starting the development or use.

(2) However, subsection (1) does not apply if the person is required by an enforcement notice or order to stop carrying out the development or use.

4.3.7 Giving a false or misleading notice

(1) A person must not give an assessment manager a notice under section 3.3.4 or 3.4.7[96] that is false or misleading.

Maximum penalty—1 665 penalty units.

(2) A person must not give the chief executive a notice under section 3.3.5[97] that is false or misleading.

Maximum penalty—1 665 penalty units.

Division 2—Show cause notices

4.3.8 Application of div 2

This division applies if an assessing authority proposes to give a person an enforcement notice other than an enforcement notice about[98]—

(a) work the authority reasonably believes is a danger to persons or a risk to public health; or

(b) work the authority reasonably believes is of a minor nature; or

(c) demolishing a work; or

(d) ceasing building work; or

(e) clearing vegetation on freehold land; or

(f) the removal of quarry material allocated under the *Water Act 2000*; or

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96 Section 3.3.4 (Applicant advises assessment manager) or 3.4.7 (Notice of compliance to be given to assessment manager)

97 Section 3.3.5 (Referral coordination)

98 Under section 5.3.5, a private certifier also has restricted rights under divisions 2 and 3.

(g) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (f), from Queensland waters.

4.3.9 Giving show cause notice

Before giving an enforcement notice, the assessing authority must give the person a notice (a **"show cause notice"**) inviting the person to show cause why the enforcement notice should not be given.

4.3.10 General requirements of show cause notice

(1) A show cause notice must—

(a) be in writing; and

(b) outline the facts and circumstances forming the basis for the assessing authority's belief that an enforcement notice should be given to the person; and

(c) state that representations may be made about the show cause notice; and

(d) state how the representations may be made; and

(e) state where the representations may be made or sent; and

(f) state—

(i) a day and time for making the representations; or

(ii) a period within which the representations must be made.

(2) The day or period stated in the notice must be, or must end, at least 20 business days after the notice is given.

Division 3—Enforcement notices

4.3.11 Giving enforcement notice

(1) If an assessing authority reasonably believes a person has committed, or is committing, a development offence, the authority may give a notice

(an **"enforcement notice"**) to the person requiring the person to do either or both of the following[99]—

(a) to refrain from committing the offence;

(b) to remedy the commission of the offence in the way stated in the notice.

(2) If the assessing authority giving the notice reasonably believes the person has committed, or is committing, the development offence in a local government area and the assessing authority is not the local government, the assessing authority must also give the local government a copy of the notice.

(2A) If the assessing authority gives the local government a copy of the notice under subsection (2) and the notice is later withdrawn, the assessing authority must give the local government written notice of the withdrawal.

(3) If a private certifier is engaged for an aspect of a development, the assessing authority must not give an enforcement notice in relation to the aspect until the assessing authority has consulted with the private certifier about the giving of the notice.

(3A) If the assessing authority is the private certifier, the assessing authority must not give an enforcement notice until the assessing authority has consulted with the assessment manager about the giving of the notice.

(4) Subsections (3) and (3A) do not apply if the assessing authority reasonably believes the work, in relation to which the enforcement notice is to be given, is dangerous.

(5) If the assessing authority is the private certifier or the local government, the assessing authority may not delegate its power to give an enforcement notice ordering the demolition of a building.

(6) An enforcement notice requiring any person carrying out development to stop carrying out the development may be given by fixing the notice to the premises, or the building or structure on the premises, in a way that a person entering the premises would normally see the notice.

(7) If, in relation to a development offence involving premises, the person who committed the offence is not the owner of the premises, the assessing authority may also give an enforcement notice to the owner

99 A person who receives an enforcement notice may appeal against the notice under section 4.1.32 (Appeals against enforcement notices).

requiring the owner to remedy the commission of the offence in the way stated in the notice.

4.3.12 Restriction affecting giving of enforcement notice

Subject to section 4.3.8, the assessing authority may give the enforcement notice only if, after considering all representations made by the person about the show cause notice within the time stated in the notice, the authority still believes it is appropriate to give the enforcement notice.

4.3.13 Specific requirements of enforcement notice

(1) Without limiting specific requirements an enforcement notice may impose, a notice may require a person to do any of the following—

(a) to stop carrying out development;

(b) to stop a stated use of a premises;

(c) to demolish or remove a work;

(d) to restore, as far as practicable, premises to the condition the premises were in immediately before development was started;

(e) to do, or not to do, another act to ensure development complies with a development approval or a code;

(f) to apply for a development permit;

(g) if the assessing authority reasonably believes a work is dangerous—

(i) to repair or rectify the work; or

(ii) to secure the work (whether by a system of supports or in another way); or

(iii) to fence off the work to protect persons.

(2) However, a person may be required to demolish or remove a work only if the assessing authority reasonably believes it is not possible and practical to take steps—

(a) to make the work comply with a development approval or a code; or

(b) if the work is dangerous—to remove the danger.

4.3.14 General requirements of enforcement notices

(1) An enforcement notice must—

(a) be in writing; and

(b) describe the nature of the alleged offence; and

(c) inform the person to whom the notice is given of the person's right to appeal against the giving of the notice.

(2) If an enforcement notice requires a person to do an act involving the carrying out of work, it also must give details of the work involved.

(3) If an enforcement notice requires a person to refrain from doing an act, it also must state either—

(a) a period for which the requirement applies; or

(b) that the requirement applies until further notice.

(4) If an enforcement notice requires a person to do an act, it also must state a period within which the act is required to be done.

(5) If an enforcement notice requires a person to do more than 1 act, it may state different periods within which the acts are required to be done.

4.3.15 Offences relating to enforcement notices

(1) A person who is given an enforcement notice must comply with the notice.

Maximum penalty—1 665 penalty units.

(2) A person must not damage, deface or remove an enforcement notice given under section 4.3.11(6).

Maximum penalty—1 665 penalty units.

4.3.16 Processing application required by enforcement or show cause notice

If a person applies for a preliminary approval or development permit as required by an enforcement notice or in response to a show cause notice, the person—

(a) must not discontinue the application, unless the person has a reasonable excuse; and

(b) must take all necessary and reasonable steps to enable the application to be decided as quickly as possible, unless the person discontinues the application with a reasonable excuse; and

(c) if the person appeals against the decision on the application—must take all necessary and reasonable steps to enable the appeal to be decided by the court as quickly as possible, unless the person has a reasonable excuse.

Maximum penalty—1 665 penalty units.

4.3.17 Assessing authority may take action

(1) If a person to whom an enforcement notice is given contravenes the notice by not doing something, the assessing authority (if it is not a local government) may do the thing.[100]

(2) Any reasonable costs or expenses incurred by an assessing authority in doing anything under subsection (1), may be recovered by the authority as a debt owing to it by the person to whom the notice was given.

Division 4—Offence proceedings in Magistrates Court

4.3.18 Proceedings for offences

(1) A person may bring a proceeding in a Magistrates Court on a complaint to prosecute another person for an offence against this part.

(2) The person may bring the proceeding whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

(3) However, proceedings may only be brought by the assessing authority for an offence under—

(a) section 4.3.1, 4.3.2 or 4.3.3 about the Standard Building Regulation; or

(b) section 4.3.2A, 4.3.7, 4.3.15 or 4.3.16.

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100 If the assessing authority is a local government it has similar powers under the *Local Government Act 1993*, section 1066 and has powers to recover its costs under sections 1067 and 1068.

4.3.19 Proceeding brought in a representative capacity

(1) A proceeding under section 4.3.18 may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

(a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body;

(b) if the proceeding is brought on behalf of an individual—the individual.

4.3.20 Magistrates Court may make orders

(1) After hearing the complaint, the Magistrates Court may make an order on the defendant it considers appropriate.

(2) The order may be made in addition to, or in substitution for, any penalty the court may otherwise impose.

(3) The order may require the defendant—

(a) to stop development or carrying on a use; or

(b) to demolish or remove a work; or

(c) to restore, as far as practicable, premises to the condition the premises were in immediately before development or use of the premises started; or

(d) to do, or not to do, another act to ensure development or use of the premises complies with a development approval or a code; or

(e) for development that has started—to apply for a development permit; or

(f) if the court believes a work is dangerous—

(i) to repair or rectify the work; or

(ii) to secure the work.

(4) The order must state the time, or period, within which the order must be complied with.

(5) A person who contravenes the order commits an offence against this Act.

Maximum penalty—1 665 penalty units or imprisonment for 12 months.

(6) If the order states that contravention of the order is a public nuisance, an assessing authority (other than a local government) may undertake any work necessary to remove the nuisance.[101]

(7) If an assessing authority carries out works under subsection (6), it may recover the reasonable cost of the works as a debt owing to the assessing authority from the person to whom the order was given.

4.2.21 Costs involved in bringing proceeding

If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

Division 5—Enforcement orders of court

4.3.22 Proceeding for orders

(1) A person may bring a proceeding in the court—

(a) for an order to remedy or restrain the commission of a development offence (an **"enforcement order"**); or

(b) if the person has brought a proceeding under paragraph (a) and the court has not decided the proceeding—for an order under section 4.3.24 (an **"interim enforcement order"**); or

(c) to cancel or change an enforcement order or interim enforcement order.

(2) However, if the offence under subsection (1)(a) is an offence under section 4.3.1, 4.3.2 or 4.3.3 about the Standard Building Regulation, the proceeding may be brought only by the assessing authority.

(3) The person may bring a proceeding under subsection (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

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101 If the assessing authority is a local government it has similar powers under the *Local Government Act 1993*, section 1066 and has powers to recover its costs under sections 1067 and 1068.

4.3.23 Proceeding brought in a representative capacity

(1) A proceeding under section 4.3.22 may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

(a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body;

(b) if the proceeding is brought on behalf of an individual—the individual.

4.3.24 Making interim enforcement order

(1) The court may make an interim enforcement order pending a decision of the proceeding if the court is satisfied it would be appropriate to make the order.

(2) The court may make the order subject to conditions, including a condition requiring the applicant for the order to give an undertaking to pay costs resulting from damage suffered by the respondent if the proceeding is unsuccessful.

4.3.25 Making enforcement order

(1) The court may make an enforcement order if the court is satisfied the offence—

(a) has been committed; or

(b) will be committed unless restrained.

(2) If the court is satisfied the offence has been committed, the court may make an enforcement order whether or not there has been a prosecution for the offence under division 4.

4.3.26 Effect of orders

(1) An enforcement order or an interim enforcement order may direct the respondent—

(a) to stop an activity that constitutes, or will constitute, a development offence; or

(b) not to start an activity that will constitute a development offence; or

(c) to do anything required to stop committing a development offence; or

(d) to return anything to a condition as close as practicable to the condition it was in immediately before a development offence was committed; or

(e) to do anything about a development or use to comply with this Act.

(2) Without limiting the court's powers, the court may make an order requiring—

(a) the repairing, demolition or removal of a building; or

(b) for a development offence relating to the clearing of vegetation on freehold land—

(i) rehabilitation or restoration of the area cleared; or

(ii) if the area cleared is not capable of being rehabilitated or restored—the planting and nurturing of stated vegetation on a stated area of equivalent size.

(3) An enforcement order or an interim enforcement order—

(a) may be in terms the court considers appropriate to secure compliance with this Act; and

(b) must state the time by which the order is to be complied with.

4.3.27 Court's powers about orders

(1) The court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—

(a) it appears to the court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or

(b) the person has previously engaged in an activity of the kind; or

(c) there is danger of substantial damage to property or injury to another person if the person engages, or continues to engage, in the activity.

(2) The court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—

(a) it appears to the court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or

(b) the person has previously failed to do a thing of the kind; or

(c) there is danger of substantial damage to property or injury to another person if the person fails, or continues to fail, to do the thing.

(3) The court may cancel or change an enforcement order or interim enforcement order.

(4) The court's power under this section is in addition to its other powers.

4.3.28 Costs involved in bringing proceeding

If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

Division 6—Application of Acts

4.3.29 Application of other Acts

(1) This section applies if another Act—

(a) specifies monetary penalties for offences about development greater or less than the penalties specified in this part; or

(b) provides that an activity specified in this part as a development offence is not an offence; or

(c) contains provisions about the carrying out of development in an emergency; or

(d) includes requirements about enforcement notices that are different to the requirements of this part; or

(e) includes provisions about the issuing of other notices having the same effect as enforcement notices; or

(f) includes requirements about proceedings for the prosecution for development offences or other offences that are different from the requirements of this part; or

(g) includes requirements about proceedings for enforcement orders that are different from the requirements of this part.

(2) The provisions of the other Act prevail over the provisions of this part to the extent of any inconsistency.

PART 4—LEGAL PROCEEDINGS

Division 1—Proceedings

4.4.1 Proceedings for offences

A proceeding for an offence against this Act may be instituted in a summary way under the *Justices Act 1886*.

4.4.2 Limitation on time for starting proceedings

A proceeding for an offence against this Act must start—

(a) within 1 year after the commission of the offence; or

(b) within 6 months after the offence comes to the complainant's knowledge.

4.4.3 Executive officers must ensure corporation complies with Act

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Division 2—Fines and costs

4.4.4 When fines payable to local government

(1) This section applies if—

(a) the assessing authority by which the administration and enforcement of a matter is carried out is a local government; and

(b) a proceeding for an offence about the matter is taken by the local government; and

(c) a court imposes a fine for the offence.

(2) The fine must be paid to the local government.

4.4.5 Order for compensation or remedial action

(1) This section applies if—

(a) a person is convicted of a development offence; and

(b) the court convicting the person finds that, because of the commission of the offence, another person—

(i) has suffered loss of income; or

(ii) has suffered a reduction in the value of, or damage to, property; or

(iii) has incurred costs or expenses in replacing or repairing property or in preventing or minimising, or attempting to

prevent or minimise, a loss, reduction or damage mentioned in subparagraph (i) or (ii).

(2) The court may order the person to do either or both of the following—

(a) pay to the other person an amount of compensation the court considers appropriate for the loss, reduction or damage suffered or costs or expenses incurred;

(b) take stated remedial action the court considers appropriate.

(3) An order under subsection (2) is in addition to the imposition of a penalty and any other order under this Act.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

4.4.6 Recovery of costs of investigation

(1) This section applies if—

(a) a person is convicted of an offence against this Act; and

(b) the court convicting the person finds the assessing authority has reasonably incurred costs and expenses in taking a sample or conducting an inspection, test, measurement or analysis during the investigation of the offence; and

(c) the assessing authority applies for an order against the person for the payment of the costs and expenses.

(2) The court may order the person to pay to the assessing authority the reasonable costs and expenses incurred by the authority if it is satisfied it would be just to make the order in the circumstances of the particular case.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Division 3—Evidence

4.4.7 Application of div 3

This division applies to a proceeding under or in relation to this Act.

4.4.8 Appointments and authority

It is not necessary to prove—

(a) the appointment of the chief executive or the chief executive officer (by whatever name called) of an assessing authority; or

(b) the authority of the chief executive or the chief executive officer (by whatever name called) of an assessing authority to do anything under this Act.

4.4.9 Signatures

A signature purporting to be the signature of the chief executive or the chief executive officer (by whatever name called) of an assessing authority is evidence of the signature it purports to be.

4.4.10 Matter coming to complainant's knowledge

In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

4.4.11 Instruments, equipment and installations

Any instrument, equipment or installation prescribed under a regulation that is used by an appropriately qualified person in accordance with any conditions prescribed under a regulation is taken to be accurate and precise in the absence of evidence to the contrary.

4.4.12 Analyst's certificate or report

A certificate or report purporting to be signed by an appropriately qualified person and stating any of the following matters is evidence of the matter—

(a) the person's qualifications;

(b) the person took, or received from a stated person, a stated sample;

(c) the person analysed the sample on a stated day, or during a stated period, and at a stated place;

(d) the results of the analysis.

4.4.13 Evidentiary aids generally

A certificate purporting to be signed by the chief executive officer (by whatever name called) of an assessing authority stating any of the following matters is evidence of the matter—

(a) a stated document is—

(i) an appointment or a copy of an appointment; or

(ii) a direction or decision, or a copy of a direction or decision, given or made under this Act; or

(iii) a notice, order or permit, or a copy of a notice, order or permit, given under this Act;

(b) on a stated day, or during a stated period, a stated person was or was not the holder of a development permit for stated development;

(c) on a stated day, or during a stated period, a development permit—

(i) was or was not in force for a stated person or development; or

(ii) was or was not subject to a stated condition;

(d) on a stated day, a stated person was given a stated notice or direction under this Act;

(e) a stated amount is payable under this Act by a stated person and has not been paid.

4.4.14 Responsibility for acts or omissions of representatives

(1) Subsections (2) and (3) apply in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent

authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

"representative" means—

(a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

"state of mind" of a person includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

CHAPTER 5—MISCELLANEOUS

PART 1—INFRASTRUCTURE CHARGES

Division 1—Preliminary

5.1.1 Meaning of "development infrastructure item"

(1) A **"development infrastructure item"** is land, capital works or land and capital works for any of the following infrastructure—

(a) urban water cycle management infrastructure (including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of waters and flood mitigation);

(b) transport infrastructure (including roads, vehicle lay-bys, traffic control devices, dedicated public transport corridors, public parking facilities predominantly serving a local area, cycle ways, pathways and ferry terminals);

(c) infrastructure for local community purposes.

(2) In subsection (1)—

"capital works", for local community purposes, means works that ensure land is suitable for development for its intended purpose.

"roads" does not include State-controlled roads.

"urban water cycle management infrastructure" includes rural residential water cycle management infrastructure.

5.1.2 Meaning of "desired standard of service"

A **"desired standard of service"**, for a network of development infrastructure items, is the standard of performance stated in an infrastructure charges plan for the network.

5.1.3 Meaning of "life cycle cost"

The **"life cycle cost"**, for a network of development infrastructure items, is the amount of the capital cost of the network plus the amount representing the present value of operating and maintenance costs of the network over 30 years, or the longer period decided by the entity preparing the infrastructure charges plan.

5.1.4 Meaning of "infrastructure charges plan"

(1) An **"infrastructure charges plan"** is the part of a planning scheme that—

(a) identifies development infrastructure items making up a network of development infrastructure items; and

(b) states the desired standard of service for the network having regard to user benefits and environmental effects of the network; and

(c) evaluates alternative ways of funding the items.

Example for subsection (1)(b)—

For water supply, the desired standard of service may be expressed as the minimum head of pressure available at each domestic or business service point.

(2) For development infrastructure items for which an infrastructure charge is intended, the plan must—

(a) explain why an infrastructure charge is intended for the items; and

(b) state the estimated proportion of the capital cost of the items to be funded by the charge; and

(c) include a schedule stating the estimated timing for, and estimated capital cost of, the items; and

(d) state the method or methods by which the charge must be calculated; and

(e) state each area in which the charge applies; and

(f) identify each type of lot, work or use, in respect of which, the charge applies; and

(g) for each type of lot, work or use in an area stated under paragraph (e)—calculate the rate at which the charge applies using a method stated under paragraph (d); and

(h) if the charge is payable by a person other than an applicant for a development approval—state when the charge is payable.

(3) The capital cost mentioned in subsection (2)(c) must be calculated so as to minimise the life cycle cost for the desired standard of service for the network.

(4) The infrastructure charges plan must be prepared having regard to any guidelines approved by the chief executive for preparing the plan.

(5) For an infrastructure charges plan, a planning scheme may also apply to a development infrastructure item even though the item is not within or wholly within a local government's area.

Division 2—Charging for development infrastructure items

5.1.5 Fixing infrastructure charges

(1) A local government may, in the way stated in this division, fix a charge for the capital cost of a development infrastructure item (an **"infrastructure charge"**).

(2) A local government need not, in circumstances it considers appropriate, fix an infrastructure charge in respect of a particular lot, work or use.

(3) However, a local government must not fix an infrastructure charge to fund the capital cost of a development infrastructure item servicing a work or use of land authorised under the *Mineral Resources Act 1989*.

5.1.6 Infrastructure charge must be based on plan and other matters

(1) An infrastructure charge must not be fixed for a development infrastructure item unless the item is identified in an infrastructure charges plan.

(2) For an item identified in an infrastructure charges plan, an infrastructure charge—

(a) must be fixed in accordance with the plan; and

(b) must not be more than the proportion of the cost of the item that reasonably can be apportioned to the premises for which the charge is fixed, taking into account the likely share of the usage of the item for the premises; and

(c) may take into account money already spent on supplying an existing development infrastructure item to the premises.

(3) Subsection (2)(c) applies only if the money already spent on supplying the existing item has not been recovered or is not intended to be recovered in another way.

5.1.7 Fixing a charge for an item not included in plan

(1) Despite section 5.1.6, a local government may fix, but only under this section, an infrastructure charge for a development infrastructure item not identified in the infrastructure charges plan.

(2) The infrastructure charge must only be—

(a) payable by an applicant; and

(b) for a development infrastructure item—

(i) that is a part of a network for which the local government is able to levy an infrastructure charge; and

(ii) the provision of which the local government considers is a minor departure from the infrastructure charges plan; and

(c) calculated—

(i) on the basis of the minimum life cycle cost necessary to achieve the desired standard of service for the network; and

(ii) having regard to any guidelines approved by the chief executive.

(3) If an infrastructure charge is fixed under this section, the local government must review and, if necessary, amend its infrastructure charges plan as soon as practicable after the charge is paid to reflect the approved development.

5.1.8 Notice of charge

If an infrastructure charge is fixed, the person who is to pay the charge must be given a written notice stating—

(a) the amount of the charge; and

(b) the land to which, for the purposes of recovery, the charge applies; and

(c) the day by which the charge is payable; and

(d) the development infrastructure item for which the charge has been fixed; and

(e) the person to whom the charge must be paid.

5.1.9 Actions required if charge is payable by applicant

(1) This section applies if the person to whom a notice under section 5.1.8 is to be given is an applicant under a development application for development resulting in a lot, work or use in respect of which the charge mentioned in the notice applies.

(2) If the application was made to a local government, the local government must give the notice under section 5.1.8, within 5 business days after the local government gives the applicant the decision notice about the development, to the applicant.

(3) If the application was made to an assessment manager other than a local government, the local government must give the notice under section 5.1.8, within 10 business days after the local government receives a copy of the decision notice from the assessment manager.

(4) If the application was made to a private certifier, the local government must give the notice under section 5.1.8, within 10 business

days after the day the local government receives a copy of the decision notice from the private certifier.

(5) If as a result of a decision of a court on the application, the local government fixes an infrastructure charge, the local government must give the notice under section 5.1.8 within 20 business days after the local government receives a copy of the decision about the appeal.

(6) If the assessment manager gives the applicant a negotiated decision notice and the development approved by the negotiated decision notice is different from the development approved in the decision notice in a way that affects the amount of the infrastructure charge, the local government may give the applicant a new notice under section 5.1.8 to replace the original notice.

(7) For subsection (6), the new notice must be given—

(a) if the assessment manager is the local government—within 5 business days after the negotiated decision notice is given; or

(b) if the assessment manager is not the local government—within 10 business days after the local government receives a copy of the negotiated decision notice from the assessment manager or private certifier.

(8) The local government may, with the written agreement of the applicant, give a new notice under section 5.1.8 to replace the original notice, if the original notice was in error.

(9) If the owner of the land the subject of the application is not the applicant, the owner must also be given a copy of any notice given to the applicant under this section.

5.1.10 When charge is payable by applicant

(1) The infrastructure charge is payable—

(a) if the notice of charge states that the development infrastructure item for which the charge is payable is necessary to service the premises for which the approval has been given before the use of the premises starts, but is not yet available to service the premises—

(i) for reconfiguring a lot—before works for the reconfiguration start; and

(ii) for building work—before the building work starts; or

(b) if paragraph (a) does not apply—

(i) for reconfiguring a lot—before the approval by the local government of the plan of subdivision; and

(ii) for building work—before the certificate of classification for the building work is issued.

(2) Despite subsection (1), if the infrastructure charge is payable for a material change of use, the charge must be paid before the change.

(3) For building work—

(a) if a local government gave the notice under section 5.1.8—the local government need not issue a certificate of classification until the infrastructure charge has been paid; or

(b) if a private certifier approved the building work—the private certifier must not issue a certificate of classification until the infrastructure charge has been paid.

5.1.11 When development infrastructure item must be supplied

(1) If the applicant complies with section 5.1.10, the development infrastructure item must be supplied—

(a) if the development infrastructure item for which the charge has been paid is necessary to service the premises for which the approval has been given before the use of the premises starts, but is not yet available to service the premises—

(i) for reconfiguring a lot—before the works for the reconfiguration are complete; and

(ii) for building work—before the issue of the certificate of classification for the building; and

(iii) for a material change of use—within 60 business days after the start of the use or the change of the use; or

(b) if paragraph (a) does not apply—within the time stated in the schedule to the infrastructure charges plan mentioned in section 5.1.4(2)(c).

(2) However, if it is not possible to supply the development infrastructure item within the times mentioned in subsection (1), the item must be supplied at the time agreed to in writing by the applicant and the local government.

5.1.12 Different times may be agreed on for paying the charge or supplying the development infrastructure item

Nothing in sections 5.1.10 and 5.1.11 stops the applicant and the person to whom the charge has been, or is to be, paid from agreeing in writing to—

(a) a different time for paying a charge or paying the charge in instalments; or

(b) a different time or times for making a development infrastructure item available to service land other than a time stated in section 5.1.11.

5.1.13 Charge may apply to items outside local government's area

The infrastructure charge applies even if the development infrastructure item servicing the lot, work or use is not within or wholly within the local government area.[102]

Division 3—Miscellaneous

5.1.14 Infrastructure charges taken to be a rate

(1) An infrastructure charge fixed by a local government is, for the purposes of recovery, taken to be a rate within the meaning of the *Local Government Act 1993*.

(2) However, if the local government and an applicant enter into a written agreement stating the charge is a debt owing to it by the applicant, subsection (1) does not apply.

5.1.15 Alternatives to paying infrastructure charges

(1) A person to whom a notice has been given under section 5.1.8 may, instead of paying the infrastructure charge, enter into a written agreement with the local government—

(a) to do the work for which the charge was fixed; or

102 See section 5.1.4 (Meaning of "infrastructure charges plan").

(b) if the development infrastructure item is land owned by the applicant—to give the land in fee simple.

(2) However, if the development infrastructure item is to be located on land owned by the person, the person—

(a) may carry out the work to the satisfaction of the entity to which the charge would have been paid; but

(b) must first give the entity any reasonable security the entity requires, or that may be agreed in writing between the person and the entity to secure performance of the work.

(3) For land for local community purposes, the local government may give the applicant a notice, in addition to, or instead of, the notice given under section 5.1.8, requiring the applicant to give to the local government, in fee simple, part of the land the subject of the development application.

(4) If the applicant is given a notice under subsection (3), the applicant must comply with the notice as soon as practicable.

(5) If the applicant is required to give land under subsection (3), or a combination of land under subsection (3) and an infrastructure charge, the total contribution must not be more than an area of land, or an area of land and money, representative of the amount of the charge, if only the charge had been payable.

(6) If subsection (1)(b) or (3) applies and the land is to be given to the local government for local community land, the land must be given on trust.

5.1.16 Public notice of proposed sale of certain land held in trust by local governments

(1) If a local government intends to sell land it obtained under section 5.1.15(1)(b) or 5.1.15(5), the local government must advertise its intention to sell by placing a notice of the sale in a newspaper circulating in the local government's area.

(2) The notice must contain the following—

(a) a description of the land proposed to be sold;

(b) the purpose for which the land was given on trust;

(c) the reason for proposing to sell the land;

(d) the reasonable time within which submissions must be made.

5.1.17 Local government to consider all submissions

The local government must consider all submissions in relation to the notice before making a decision about the sale.

5.1.18 Sale extinguishes the trust

If a local government complies with sections 5.1.16 and 5.1.17 and sells the land, the land is sold free of the trust.

PART 2—INFRASTRUCTURE AGREEMENTS

5.2.1 Meaning of "infrastructure agreement"

In this part—

"infrastructure agreement" means an agreement, as amended from time to time, mentioned in any of the following sections—

- section 3.5.35[103]
- section 3.5.36[104]
- section 5.1.11(2)[105]
- section 5.1.12[106]
- section 5.1.14(2)[107]
- section 5.1.15(1) and (2)[108]
- section 5.2.2(1).[109]

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103 Section 3.5.35 (Limitations on conditions lessening cost impacts for infrastructure)

104 Section 3.5.36 (Matters a condition lessening cost impacts for infrastructure must deal with)

105 Section 5.1.11 (When development infrastructure item must be supplied)

106 Section 5.1.12 (Different times may be agreed on for paying the charge or supplying the development infrastructure item)

107 Section 5.1.14 (Infrastructure charges taken to be a rate)

108 Section 5.1.15 (Alternatives to paying infrastructure charges)

109 Section 5.2.2 (Agreements may be entered into about infrastructure)

5.2.2 Agreements may be entered into about infrastructure

(1) A person may enter into a written agreement with a public sector entity about—

(a) funding a development infrastructure item in an infrastructure charges plan other than by an infrastructure charge; or

(b) supplying a development infrastructure item to a different standard than the standard stated for the item in an infrastructure charges plan; or

(c) supplying a development infrastructure item not identified in an infrastructure charges plan (whether or not an infrastructure charges plan has been prepared for the planning scheme); or

(d) supplying infrastructure other than development infrastructure items.

(2) To remove any doubt, it is declared that part 1 and chapter 3, part 5, division 6[110] do not stop a person from entering into an agreement under subsection (1) with a public sector entity.

5.2.3 Matters certain infrastructure agreements must contain

An infrastructure agreement must—

(a) if obligations under the agreement would be affected by a change in the ownership of the land, the subject of the agreement—include a statement about how the obligations must be fulfilled if there is a change of ownership; and

(b) if the fulfilment of obligations under the agreement depends on development entitlements that may be affected by a change to a planning instrument—include a statement about—

(i) the repayment of amounts paid, and reimbursement of amounts expended, under the agreement; and

(ii) changing or cancelling the obligations if the development entitlements are changed without the consent of the person who has to fulfil the obligations; and

(c) include any other matter prescribed under a regulation.

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110 Part 1 (Infrastructure charges) and chapter 3 (Integrated development assessment system (IDAS)), part 5 (Decision stage), division 6 (Conditions)

5.2.4 Copy of infrastructure agreements to be given to local government

If a public sector entity other than a local government is a party to an infrastructure agreement, and the local government for the area to which the agreement applies is not a party to the agreement, the public sector entity must give a copy of the agreement to the local government.

5.2.5 When infrastructure agreements bind successors in title

(1) If an owner of land to which an infrastructure agreement applies is a party to the agreement or consents to the development obligations being attached to the land, the development obligations attach to the land and bind the owner and the owner's successors in title of the land

(2) If the owner's consent under subsection (1) is given but is not endorsed on the agreement, the owner must give a copy of the document evidencing the owner's consent to the local government for the land to which the consent applies.

(3) However, if the agreement states that if the land is subdivided part of the land is to be released from the development obligations and the land is subdivided—

(a) the part of the land is released from the development obligations; and

(b) the development obligations are no longer binding on the owner of the part of the land.

(4) In this section—

"development obligations" means the obligations under the infrastructure agreement other than the obligations to be fulfilled by a public sector entity.

5.2.6 Exercise of discretion unaffected by infrastructure agreements

An infrastructure agreement is not invalid merely because its fulfilment depends on the exercise of a discretion by a public sector entity about an existing or future development application.

5.2.7 Infrastructure agreements prevail if inconsistent with development approval

To the extent an infrastructure agreement is inconsistent with a development approval, the agreement prevails.

PART 3—PRIVATE CERTIFICATION

5.3.1 Application of pt 3

This part applies to development under a development application only if the development requires code assessment under this Act.

5.3.2 Definition for pt 3

In this part—

"assessment manager", for an application to which this part applies, means the person who would have been the assessment manager if a private certifier had not been engaged under this part.

5.3.3 Who is a private certifier

(1) A **"private certifier"** is—

(a) an individual who—

(i) has the qualifications, necessary experience or licence prescribed under a regulation made under this or another Act for a certifier for a stated code; and

(ii) enters into contractual arrangements with clients to certify work for the code; and

(iii) carries out certification work for the code; or

(b) a corporation or public sector entity that—

(i) employs an individual mentioned in paragraph (a) to carry out the work for the corporation or entity; and

(ii) enters into contractual arrangements with clients to provide certification work that the individual carries out.

(2) To remove any doubt, it is declared that a development application is not a contractual arrangement under subsection (1).

5.3.4 Application must not be inconsistent with earlier approval and self-assessable development

(1) If the application the private certifier is assessing relates to an earlier development approval that has not lapsed and was given by the assessment manager, the private certifier must not approve the application if it is inconsistent with the earlier approval.

Maximum penalty—165 penalty units.

(2) If the application the private certifier is assessing relates to self-assessable development that may affect the position, height or form of building work, the private certifier must not approve the application if it is inconsistent with a local planning instrument declaring the development to be self-assessable development.

Maximum penalty—165 penalty units.

5.3.5 Private certifier may decide certain development applications and inspect and certify certain works

(1) For the types of development or works for which a private certifier has, or employs an individual with, the qualifications, necessary experience or licence, the private certifier may receive, assess and decide development applications as if the private certifier were the assessment manager.

(3) The private certifier must, when issuing the decision notice, include in the notice details of any other code the applicant may need to comply with in relation to the work to which the application relates.

(4) However, the private certifier must not decide the application until—

(a) all necessary development permits are effective for other assessable development related to the development; and

(b) all necessary preliminary approvals are effective for other assessable aspects of the development.

Maximum penalty—165 penalty units.

Example for subsection (4)(a)—

If a proposal involves building work, a material change of use and reconfiguring a lot, a private certifier who is engaged to assess and decide the building work application must

not decide that application until all necessary development permits are effective for the change of use and reconfiguring of the lot.

Example for subsection (4)(b)—

If a proposal requires assessment of building work against a planning scheme and the Standard Building Regulation, a private certifier who is engaged to assess and decide the building work application against the Standard Building Regulation must not decide that application until all necessary preliminary approvals are effective for the assessment of building work against the planning scheme.

(5) If the private certifier receives the application before all other assessments for permits and approvals mentioned in subsection (4) are completed—

(a) the certifier may start processing the application; and

(b) for timings under IDAS, the application is taken not to have been received until the day all other assessments are completed.

(6) If the private certifier approves the application, the private certifier must—

(a) within 5 business days after approving the application, give the assessment manager a copy of—

(i) the application; and

(ii) the decision notice or negotiated decision notice; and

(iii) any other documents prescribed under a regulation under this or another Act; and

(b) give the assessment manager the approved form for the documents mentioned in paragraph (a); and

(c) if the assessment manager is the local government—pay the fee fixed by the local government under the *Local Government Act 1993*, section 1071A(1)(e) for accepting the documents mentioned in paragraph (a).

Maximum penalty—20 penalty units.

(6A) If the assessment manager is a local government, the local government must, when the private certifier complies with subsection (6), immediately give the private certifier a document (**"the acknowledgment"**) acknowledging the receipt of the fee mentioned in subsection (6)(c).

(6B) If the private certifier approves the application, the private certifier must not give the applicant any of the documents mentioned in

subsection (6)(a)(ii) or (iii) until the private certifier has received the acknowledgment from the assessment manager.

Maximum penalty for subsection (6B)—40 penalty units.

(6C) If the private certifier approves the application, the private certifier must give the documents mentioned in subsection (6)(a)(ii) and (iii) to the applicant within 5 business days after the day the private certifier receives the acknowledgment.

(7) If the private certifier issues any certificate required by this or another Act, the private certifier must—

(a) within 5 business days after issuing the certificate, give the assessment manager a copy of the certificate; and

(b) if the assessment manager is the local government—

(i) pay the fee fixed by the local government under the *Local Government Act 1993*, section 1071A(1)(e) for accepting the documents mentioned in paragraph (a); and

(ii) give the local government the approved form for the documents.

Maximum penalty—20 penalty units.

5.3.6 Private certifier may act as assessing authority in certain circumstances

(1) For chapter 4, part 3, divisions 2 and 3, a private certifier is taken to be an assessing authority in relation to the types of development or works for which the private certifier has been engaged to carry out certification work.

(2) If a person fails to comply with an enforcement notice given by a private certifier under subsection (1), the private certifier must give the assessment manager written notice of the failure.

5.3.8 Private certifiers must act in the public interest

(1) A private certifier must act always in the public interest when performing the functions of a private certifier.

(2) In particular, a private certifier must not do any of the following—

(a) seek, accept or agree to accept a benefit (whether for the private certifier's benefit or another person) as a reward or inducement to act other than under this Act;

(b) act in a way contrary to a duty under this Act or a duty of the private certifier under any other Act under which the certifier is accredited;

(c) falsely claim that the private certifier has the qualifications, necessary experience or accreditation to be engaged as a private certifier;

(d) act outside the scope of the private certifier's powers;

(e) contravene a code of conduct approved under a regulation;

(f) act in a way, in relation to the certifier's practice, that is grossly negligent or grossly incompetent.

Maximum penalty—1 665 penalty units.

5.3.9 Engaging private certifiers

(1) If a private certifier is engaged—

(a) the engagement must be in writing and must state the certification fee; and

(b) the certifier must be paid the fee agreed to, even if the certifier does not approve the application or certify works because of noncompliance with any applicable codes or other valid reason for refusing approval or certification.

(2) If an applicant engages a private certifier, the private certifier must, within 5 business days after the engagement, give—

(a) the assessment manager written notice of the engagement; and

(b) the owner of the land to which the application relates written notice of—

(i) the name of the private certifier; and

(ii) the details, in an approved form, of the responsibilities of the private certifier in performing the certification work.

Maximum penalty—20 penalty units.

(3) If a private certifier is engaged to assess and decide a development application and this or another Act requires that work the subject of the

application be inspected or that a certificate be issued for the work, the private certifier must also be engaged to—

(a) inspect the work to ensure it complies with, or accept certification that it complies with, the development permit authorising the work, any conditions of the permit and the code against which the work must be assessed; and

(b) issue any certificate required under this or the other Act.

5.3.10 Private certifiers may not be engaged if there is a conflict of interest

A private certifier must not accept engagement as a private certifier for a development if the private certifier has a conflict of interest prescribed under a regulation under this or another Act.

5.3.11 Discontinuing engagement of private certifiers

(1) This section applies if the engagement of a private certifier is discontinued for any reason, including, for example, the resignation, disqualification, bankruptcy, insolvency, death or deregistration of the private certifier.

(2) The applicant must give the assessment manager written notice of the discontinuance within 5 business days after the discontinuance.

(3) The engagement is taken not to have been discontinued until the applicant has given the notice discontinuing the engagement.

5.3.12 Engaging replacement private certifier for application

(1) If the private certifier was engaged for assessing the application and the application has not yet been decided and the applicant intends to proceed with the application, the applicant may—

(a) engage a different private certifier (the **"replacement private certifier"**) for the development; or

(b) make the application to the assessment manager.

(2) In assessing the application, the replacement private certifier or assessment manager may start the application process at any stage of IDAS the replacement private certifier or assessment manager considers

appropriate to enable the replacement private certifier or assessment manager to make the appropriate decision on the application.

5.3.13 Engaging replacement private certifier to inspect work

(1) If the private certifier was engaged to inspect and certify work authorised by a development permit and the work has started, the work must not continue past the next notifiable inspection (if any) unless—

(a) if a replacement private certifier is engaged to inspect and certify the work—the replacement private certifier certifies the work; or

(b) if a replacement private certifier has not been engaged under paragraph (a)—the local government certifies the work.

(2) In subsection (1)—

"next notifiable inspection" means the next inspection of the work authorised by a development permit for which an inspector has to be notified under a planning scheme or this or any other Act.

5.3.15 Effect of transfer of functions to local government or replacement private certifier

(1) This section applies if, for work authorised by a development permit, the engagement of a private certifier is discontinued and—

(a) a replacement private certifier is engaged to inspect and certify the work; or

(b) if a replacement private certifier has not been engaged under paragraph (a)—the local government must inspect and certify the work.

(2) The replacement private certifier or local government is not liable for work carried out by the private certifier.

5.3.16 Liability insurance and performance bonds

(1) A regulation under this or another Act may state the type and limits of liability insurance, performance bond or similar type of security a private certifier must have or give in relation to a development application or work authorised by a development permit.

(2) A person must not carry out certification work unless the person has the insurance or has given the bond or security required under subsection (1).

Maximum penalty for subsection (2)—1 665 penalty units.

5.3.17 Documents to be kept by private certifiers

A regulation under this or another Act may prescribe the documents a private certifier must keep for audit purposes and the time for which the documents must be kept.

PART 4—COMPENSATION

5.4.1 Definition for pt 4

In this part—

"change", for an interest in land, means a change to the planning scheme or any planning scheme policy affecting the land.

"owner", of an interest in land, means an owner of the interest at the time a change to a planning scheme is made.

5.4.2 Compensation for reduced value of interest in land

An owner of an interest in land is entitled to be paid reasonable compensation by a local government if—

(a) a change reduces the value of the interest; and

(b) a development application (superseded planning scheme) for a development permit relating to the land has been made; and

(c) the application is assessed having regard to the planning scheme and planning scheme policies in effect when the application was made; and

(d) the assessment manager, or, on appeal, the court—

(i) refuses the application; or

(ii) approves the application in part or subject to conditions or both in part and subject to conditions.

5.4.3 Compensation for interest in land being changed to public purpose

An owner of an interest in land is entitled to be paid reasonable compensation by a local government if because of a change, the only purpose for which the land could be used (other than the purpose for which it was lawfully being used when the change was made) is for a public purpose.

5.4.4 Limitations on compensation under ss 5.4.2 and 5.4.3

(1) Despite sections 5.4.2 and 5.4.3, compensation is not payable if the change—

(a) has the same effect as another statutory instrument, in respect of which compensation is not payable; or

(b) is about a type of development that, before the coming into effect of this Act, would normally have been dealt with under a local law, including, for example, the filling or drainage of land; or

(c) is about the relationships between, the location of, or the physical characteristics of buildings, works or lots, but the yield achievable is substantially the same as it would have been before the change; or

(d) is about a designation made under chapter 2, part 6;[111] or

(e) is about the timing of development in a benchmark development sequence; or

(f) is about the matters identified in section 5.1.4(2) for an infrastructure charges plan; or

(g) removes or changes an item of infrastructure shown in the scheme; or

(h) affects development that, had it happened under the superseded planning scheme—

111 Chapter 2 (Planning), part 6 (Designation of land for community infrastructure)

(i) would have led to significant risk to persons or property from natural processes (including flooding, land slippage or erosion) and the risk could not have been significantly reduced by conditions attached to a development approval; or

(ii) would have caused serious environmental harm, as defined in the *Environmental Protection Act 1994*, section 17,[112] and the harm could not have been significantly reduced by conditions attached to a development approval.

(2) For subsection (1)(c), yield for residential building work is substantially the same if—

(a) the proposed residential building has a gross floor area of not more than 2 000m^2; and

(b) the gross floor area of the proposed residential building is reduced by not more than 15%.

(3) Also, compensation is not payable—

(a) for a matter under this part if compensation has already been paid for the matter to a previous owner of the interest in land; or

(b) for anything done in contravention of this Act; or

(c) if infrastructure shown in a planning scheme is not supplied, or supplied to a different standard, or supplied at a different time than the time stated in the planning scheme.

(4) If a matter for which compensation is payable under this part is also a matter for which compensation is payable under another Act, the claim for the compensation must be made under the other Act.

(5) In this section—

"gross floor area" means the sum of the floor areas (inclusive of all walls, columns and balconies, whether roofed or not) of all stories of every building located on a site, excluding the areas (if any) used for building services, a ground floor public lobby, a public mall in a shopping centre, and areas associated with the parking, loading and manoeuvring of motor vehicles.

"yield" means—

112 *Environmental Protection Act 1994*, section 17 (Serious environmental harm)

(a) for buildings and works—the gross floor area, or density of buildings or persons, or plot ratio, achievable for premises; and

(b) for reconfiguration—the number of lots in a given area of land.

5.4.5 Compensation for erroneous planning and development certificates

If a person suffers financial loss because of an error or omission in a planning and development certificate, the person is entitled to be paid reasonable compensation by the local government.

5.4.6 Time limits for claiming compensation

A claim for compensation under this part must be given to the local government—

(a) if the entitlement to claim the compensation is under section 5.4.2—within 6 months after the day the application mentioned in section 5.4.2(b) is refused or approved in part, or subject to conditions or approved both in part and subject to conditions; or

(b) if the entitlement to claim the compensation is under section 5.4.3—within 2 years after the day the change came into effect; or

(c) if the entitlement to claim the compensation is under section 5.4.5—at any time after the day the certificate is given.

5.4.7 Time limits for deciding and advising on claims

(1) The local government must decide each claim for compensation within 60 business days after the day the claim is made.

(2) The chief executive officer of the local government must, within 10 business days after the day the claim is decided—

(a) give the claimant written notice of the decision; and

(b) if the decision is to pay compensation—notify the amount of the compensation to be paid; and

(c) advise the claimant that the decision, including any amount of compensation payable, may be appealed.

5.4.8 Deciding claims for compensation

(1) In deciding a claim for compensation under this part, the local government must—

(a) grant all of the claim; or

(b) grant part of the claim and reject the rest of the claim; or

(c) refuse all of the claim.

(2) However, if the entitlement to claim the compensation is under section 5.4.3, the local government may decide the claim by—

(a) giving a notice of intention to resume the interest in the land under the *Acquisition of Land Act 1967*, section 7;[113] or

(b) in addition to making a decision under subsection (1)(b) or (c)—decide to amend the planning scheme so that use of the land for the purposes the land could have been used for under the superseded planning scheme would be consistent with the new or amended planning scheme or planning scheme policy.

5.4.9 Calculating reasonable compensation involving changes

(1) For compensation payable because of a change, reasonable compensation is the difference between the market values, appropriately adjusted having regard to the following matters, to the extent they are relevant—

(a) any limitations or conditions that may reasonably have applied to the development of the land if the land had been developed under the superseded planning scheme;

(b) any benefit accruing to the land from the change, including but not limited to the likelihood of improved amenity in the locality of the land;

(c) if the owner owns land adjacent to the interest in land, any benefit accruing to the adjacent land because of—

(i) the coming into effect of the change or any other change made before the claim for compensation was made; or

(ii) the construction of, or improvement to, infrastructure on the adjacent land under the planning scheme or planning

113 *Acquisition of Land Act 1967*, section 7 (Notice of intention to take land)

scheme policy (other than infrastructure funded by the owner) before the claim for compensation was made;

(d) the effect of any other changes to the planning scheme or planning scheme policy made since the change, but before the development application (superseded planning scheme) was made;

(e) if the application was a development application (superseded planning scheme) that is approved in part or subject to conditions—the effect of the approval on the value of the land.

(2) Despite subsection (1), if the land in respect of which compensation is claimed has, since the day of the change, become or ceased to be separate from other land, the amount of reasonable compensation must not be increased because the land has become, or ceased to be, separate from other land.

(3) In this section—

"difference between the market values" is the difference between the market value of the interest in land immediately before the change came into effect and the market value of the interest immediately after the change came into effect.

5.4.10 When compensation is payable

If compensation is payable under this part, the compensation must be paid within 30 business days after the last day an appeal could be made against the local government's decision about the payment of compensation, or if an appeal is made, within 30 business days after the day the appeal is decided.

5.4.11 Payment of compensation to be recorded on title

(1) The chief executive officer of the local government must give the registrar of titles written notice of the payment of compensation under section 5.4.2.[114]

(2) The notice must be in the form approved by the registrar.

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114 Section 5.4.2 (Compensation for reduced value of interest in land)

(3) The registrar must keep the information stated in the notice as information under the *Land Title Act 1994*, section 34.[115]

PART 5—POWER TO PURCHASE, TAKE OR ENTER LAND FOR PLANNING PURPOSES

5.5.1 Local government may take or purchase land

(1) This section applies if—

(a) a local government is satisfied that the taking of land would help to achieve the desired environmental outcomes stated in its planning scheme; or

(b) at any time after a decision notice has been given for a development application, the local government is satisfied—

(i) the development would create a need to construct infrastructure on the land or carry drainage over the land; and

(ii) the applicant has taken reasonable measures to obtain the agreement of the owner of the land to actions that would facilitate the construction of the infrastructure or the carriage of the drainage, but has not been able to obtain such an agreement; and

(iii) the action is necessary to allow the development to proceed.

(2) If the local government satisfies itself of a matter in subsection (1) and the Governor in Council approves of the taking of the land, the local government is taken to be a constructing authority under the *Acquisition of Land Act 1967* and under that Act may take land.

(3) If the local government satisfies itself of the matters in subsection (1)(b), it is immaterial that the applicant may also derive any measurable benefit from the resumption action.

(4) To avoid any doubt, it is declared that the local government's power under this section to purchase or take land as a constructing authority under

115 *Land Title Act 1994*, section 34 (Other information not part of the freehold land register)

the *Acquisition of Land Act 1967* includes the ability to purchase or take an easement under section 6[116] of that Act.

5.5.2 Assessment manager's power to enter land in certain circumstances

An assessment manager or its agent may enter land at all reasonable times to undertake works if the assessment manager is satisfied that—

(a) implementing a development approval would require the undertaking of works on land other than the land the subject of the application; and

(b) the applicant has taken reasonable steps to obtain the agreement of the owner of the land to enable the works to proceed, but has not been able to obtain such an agreement; and

(c) the action is necessary to implement the development approval.

5.5.3 Compensation for loss or damage

(1) Any person who incurs loss or damage because of the exercise by an assessment manager of powers under section 5.5.2 is entitled to be paid reasonable compensation by the assessment manager.

(2) A claim for the compensation must be made—

(a) to the assessment manager in the approved form; and

(b) within 2 years after the entitlement to compensation arose.

(3) The assessment manager must decide the claim within 40 business days after the claim is made.[117]

(4) If the assessment manager decides to pay compensation, the payment must be made within 10 business days after making the decision.

(5) The assessment manager may recover from the applicant the amount of any compensation for loss or damage paid under this part that is not attributable to the assessment manager's negligence.

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116 *Acquisition of Land Act 1967*, section 6 (Easements)

117 A person may appeal the decision under section 4.1.34 (Appeals against decisions on compensation claims).

PART 6—PUBLIC HOUSING

5.6.1 Application of pt 6

This part applies to development for public housing.

5.6.2 Definitions for pt 6

In this part—

"chief executive" means the chief executive of the department in which the *State Housing Act 1945* is administered.

"public housing"—

(a) means housing—

(i) provided by or on behalf of the State or a statutory body representing the State; and

(ii) for short or long term residential use; and

(iii) that is totally or partly subsidised by the State or a statutory body representing the State; and

(b) includes services provided for residents of the housing, if the services are totally or partly subsidised by the State or a statutory body representing the State.

5.6.3 How IDAS applies to development under pt 6

Development to which this part applies is, to the extent the development is self-assessable development or assessable development under a planning scheme, exempt development.

5.6.4 Chief executive must publicly notify certain proposed development

(1) This section applies to development for public housing the chief executive considers is substantially inconsistent with the planning scheme.

(2) Before starting the development, the chief executive must—

(a) give the local government information (including the plans or specifications) about the proposed development; and

(b) publicly notify the proposed development.

(3) The public notification must be carried out in the same way public notification of a development application is carried out under sections 3.4.4 to 3.4.6.

(4) Even though the public notification is to be carried out in the same way as public notification under sections 3.4.4 to 3.4.6, the form of the notice to be used for the public notification under this section is the form approved by the chief executive.

(5) The chief executive must have regard to any submissions received following the public notification before deciding whether or not to proceed with the proposed development.

5.6.5 Chief executive must advise local government about all development

(1) This section applies to development to which section 5.6.4 does not apply.

(2) Before the development starts, the chief executive must give the local government information (including the plans or specifications) about the proposed development.

PART 7—PUBLIC ACCESS TO PLANNING AND DEVELOPMENT INFORMATION

Division 1—Preliminary

5.7.1 Meaning of "available for inspection and purchase"

(1) A document mentioned in this Act as being available for inspection and purchase is **"available for inspection and purchase"** if the document, or a certified copy of the document is—

(a) for a document held by a local government—held in the local government's office and any other place decided by the local government; and

(b) for a document held by an assessment manager—held in the assessment manager's office and any other place decided by the assessment manager; and

(c) for a document held by a concurrence agency—held in the concurrence agency's office and any other place decided by the concurrence agency; and

(d) for a document held by the chief executive—held in the department's State office and any other place the chief executive approves.

(2) If a document is available for inspection and purchase, a person may—

(a) inspect the document free of charge at any time the office in which the document is held is open for business; and

(b) obtain a copy of the document, or part of the document, from the entity required to keep the document available for inspection.[118]

(3) An entity required to keep a document available for inspection and purchase may charge a person for supplying a copy of the document, or part of the document.

(4) The charge must not be more than the cost to the entity of—

(a) making the copy available to the person; and

(b) if the person asks for the material to be posted—the postage.

Division 2—Documents available for inspection and purchase or inspection only

5.7.2 Documents local government must keep available for inspection and purchase

(1) A local government must keep available for inspection and purchase the original or a certified copy of each of the following—

(a) its current planning scheme (including a consolidated planning scheme);

118 *Copyright Act 1968* (Cwlth) overrides this Act and may limit the copying of material subject to copyright.

(b) each amendment of the planning scheme;

(c) any proposed amendment of the planning scheme the local government has decided to proceed with making under schedule 1, section 16,[119] but has not been made;

(d) any current temporary local planning instrument for its area;

(e) each current planning scheme policy for its area;

(f) each superseded local planning instrument for its area;

(h) each study, report or explanatory statement prepared in relation to the preparation of a local planning instrument for its area;

(i) each current State planning policy applying to its area;

(j) any terms of reference for a regional planning advisory committee of which the local government is a member, or on which the local government has elected not to be represented;

(k) each report of a regional planning advisory committee given to the local government since the planning scheme immediately preceding its current planning scheme was made;

(l) any written direction of the Minister given to the local government to—

(i) make or amend a planning scheme; and

(ii) make or repeal a temporary local planning instrument; and

(iii) make, amend or repeal a planning scheme policy;

(n) each notice about the designation of land given to the local government by a Minister;

(o) each infrastructure agreement to which the local government is a party, or has been given to the local government under part 2;[120]

(p) each show cause notice and enforcement notice given by the local government under this Act or the *Building Act 1975*;

(q) each show cause notice and enforcement notice a copy of which was given to the local government under this Act or the *Building Act 1975* by an assessing authority or private certifier;

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119 Schedule 1 (Process for making or amending planning schemes), section 16 (Decision on proceeding with proposed planning scheme)

120 Part 2 (Infrastructure agreements)

(r) each enforcement order made by the court on the application of the local government;

(s) each notice the local government has received about an MHF consultation zone under the *Dangerous Goods Safety Management Act 2000* that has not been withdrawn.

(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form in 1 or more registers kept for the purpose.

5.7.3 Documents local government must keep available for inspection only

A local government must keep available for inspection only an official copy of this Act and every regulation made under this Act and still in force.

5.7.4 Documents assessment manager must keep available for inspection and purchase

(1) An assessment manager must keep available for inspection and purchase the original or a certified copy of each of the following—

(a) each decision notice and negotiated decision notice given by the assessment manager;

(b) each decision notice and negotiated decision notice a copy of which was given to the assessment manager by a private certifier;

(c) each written notice given to the assessment manager by the Minister calling in a development application;

(d) each direction given by the Minister directing the assessment manager to attach conditions to a development approval;

(e) each agreement to which the assessment manager or a concurrence agency is a party about a condition of a development approval;

(f) each show cause notice and enforcement notice given by the assessment manager as an assessing authority;

(g) each enforcement order made by the court on the application of the assessment manager as an assessing authority.

(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form in 1 or more registers kept for the purpose.

5.7.5 Documents assessment manager must keep available for inspection only

(1) An assessment manager must keep available for inspection only—

(a) an official copy of this Act and every regulation made under this Act and still in force; and

(b) a register of all development applications—

(i) made to the assessment manager; and

(ii) copies of which were given to the assessment manager by a private certifier.

(2) Subsection (1)(b) does not apply for a development application until the decision notice for the application has been given or the application lapses or is withdrawn.[121]

(3) The register must include the following for each development application—

(a) a property description that identifies the premises or the location of the premises to which the application related;

(b) the type of development applied for;

(c) the names of any referral agencies;

(d) whether the application was withdrawn, lapsed or decided;

(e) if the application was decided—

(i) the day the decision was made; and

(ii) whether the application was approved, approved subject to conditions or refused; and

(iii) for an application approved subject to conditions—whether any of the conditions included the conditions of a concurrence agency, and if so, the name of the concurrence agency; and

(iv) whether a negotiated decision notice also was given for the application; and

121 However, under section 3.2.8 (Public scrutiny of applications) a copy of the application and any supporting material may be obtained or inspected from the time the assessment manager gives the acknowledgment notice to the applicant.

(v) for an application that was approved—whether there has subsequently been a minor change to the approval;

(f) if there was an appeal about the decision—whether the decision was changed because of the outcome of the appeal.

(4) The register may be in hard copy or electronic form.

5.7.6 Documents chief executive must keep available for inspection and purchase

The chief executive must keep available for inspection and purchase the original or a certified copy of each of the following—

(a) all current State planning policies;

(b) all explanatory statements about current State planning policies;

(c) any terms of reference for all regional planning advisory committees;

(d) all reports of regional planning advisory committees;

(e) any written direction of the Minister given to a local government to—

(i) make or amend a planning scheme; and

(ii) make or repeal a temporary local planning instrument; and

(iii) make, amend or repeal a planning scheme policy;

(f) all reports of independent reviewers given to the Minister about current planning schemes;

(g) each notice given by the Minister directing the assessment manager to attach conditions to a development approval;

(h) each notice of a proceeding given to the chief executive under section 4.1.21;

(i) each notice of appeal given to the chief executive under section 4.1.41;

(j) each notice given by the Minister calling in a development application;

(k) each report prepared by the Minister under section 3.6.9(1).

5.7.7 Documents chief executive must keep available for inspection only

(1) The chief executive must keep the following available for inspection only—

(a) an official copy of this Act and every regulation made under this Act and in force;

(b) all current local government planning schemes (including all consolidated planning schemes);

(c) all amendments of the planning schemes;

(d) all current local government planning scheme policies;

(e) any current temporary local planning instrument.

(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form.

Division 3—Planning and development certificates

5.7.8 Application for planning and development certificate

(1) A person may apply to a local government for a limited, standard or full planning and development certificate for a premises.

(2) The application must be accompanied by the fee set by resolution of the local government for the certificate.

5.7.9 Limited planning and development certificates

A limited planning and development certificate must contain the following information for premises—

(a) a description of any planning scheme provisions applying specifically to the premises;

(b) a description of any designations applying to the premises;

(c) a statement of the amount of any infrastructure charge for the premises that has not been paid.

5.7.10 Standard planning and development certificates

(1) A standard planning and development certificate, in addition to the information contained in a limited planning and development certificate, must contain or be accompanied by the following information for premises—

(a) a copy of every decision notice or negotiated decision notice for a development approval that has not lapsed;

(b) details of any minor changes to the development approval;

(c) a copy of any judgment or order of the court about the development approval;

(d) a copy of any agreement to which the local government or a concurrence agency is a party about a condition of the development approval;

(e) a copy of any infrastructure agreement applying to the premises to which the local government is a party;

(f) a description of each proposed amendment of a planning scheme the local government has decided to proceed with under schedule 1, section 16,[122] but has not been adopted.

(2) For subsection (1) a development approval or a decision notice or negotiated decision notice for a development approval includes all continuing approvals mentioned in section 6.1.23(1)(a) to (d) but not a continuing approval mentioned in section 6.1.23(1)(e).[123]

5.7.11 Full planning and development certificates

(1) A full planning and development certificate, in addition to the information contained in a limited and standard planning and development certificate, must contain or be accompanied by the following information for premises—

(a) if there is currently in force for the premises a development approval containing conditions (including conditions about the carrying out of works or the payment of money, other than under an infrastructure agreement)—a statement about the fulfilment or

122 Schedule 1 (Process for making or amending planning scheme), section 16 (Decision on proceeding with proposed planning scheme)

123 Section 6.1.23 (Continuing effect of approvals issued before commencement)

non-fulfilment of each condition, at a stated day after the day the certificate was applied for;

(b) if there is an infrastructure agreement to which the local government is a party—

(i) if there are obligations under the agreement that have not been fulfilled—details of the nature and extent of the obligations not fulfilled; and

(ii) details of the giving of any security and whether any payment required to be made under the security has been made;

(c) advice of—

(i) any prosecution for a development offence in relation to the premises of which the local government is aware; or

(ii) proceedings for a prosecution for a development offence in relation to the premises of which the local government is aware.

(2) However, the applicant may request that a full certificate be given without the information normally contained in a limited and standard certificate.

(3) If a condition under subsection (1)(a) relates to the ongoing operating requirements of the use of premises, the statement need not make reference to the fulfilment or non-fulfilment of the conditions other than under subsection (1)(c).

5.7.12 Time within which planning and development certificate must be given

A local government must give a planning and development certificate to an applicant within—

(a) if the certificate is a limited certificate—5 business days after the day the certificate was applied for; or

(b) if the certificate is a standard certificate—10 business days after the day the certificate was applied for; or

(c) if the certificate is a full certificate—30 business days after the day the certificate was applied for.

5.7.13 Effect of planning and development certificate

In a proceeding, a planning and development certificate is evidence of the information contained in the certificate.

PART 8—GENERAL

5.8.1 Approved forms

The chief executive may approve forms for use under this Act.

5.8.1A Delegation by Minister

(1) The Minister may delegate the Minister's powers or functions under this Act to an appropriately qualified public service officer.

(2) In subsection (1)—

"appropriately qualified" includes having the qualifications, experience or standing appropriate to the exercise of the power or function.

"Minister" includes the Minister administering the *State Development and Public Works Organisation Act 1971* if that Minister is acting under chapter 3, part 6, division 2.[124]

Example of 'standing'—

If the person is an employee of the department, the person's classification level in the department.

5.8.2 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may—

(a) set fees payable under this Act; and

(b) create offences against the regulation and fix a maximum penalty of a fine of 165 penalty units for an offence against the regulation; and

124 See section 3.6.4 (Definition for div 2)

(c) prescribe a minor change of use that is not a material change of use.

5.8.3 Application of State Development and Public Works Organisation Act 1971

Nothing in this Act derogates from the powers and functions of the Coordinator-General under the *State Development and Public Works Organisation Act 1971*.

5.8.4 Application of Judicial Review Act 1991

(1) Subject to subsection (2), the *Judicial Review Act 1991* does not apply to the following matters under this Act—

(a) conduct engaged in for the purpose of making a decision;

(b) other conduct that relates to the making of a decision;

(c) the making of a decision or the failure to make a decision;

(d) a decision.[125]

(2) A person who, but for subsection (1), could have made an application under that Act in relation to a matter mentioned in subsection (1), may apply under part 4 of that Act for a statement of reasons in relation to the matter.

(3) In particular, for subsection (1), the Supreme Court does not have jurisdiction to hear and determine applications made to it under the *Judicial Review Act 1991*, part 3 or 5[126] in relation to matters mentioned in subsection (1).

5.8.5 References to Planning and Environment Court etc. in other Acts

(1) This section applies if another Act refers to—

(b) the Planning and Environment Court or a judge of that court; or

(c) a building tribunal or a referee as a member of that tribunal.

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125 However, under section 4.1.21, a person may bring proceedings in the Planning and Environment Court.

126 *Judicial Review Act 1991*, part 3 (Statutory orders of review) or 5 (Prerogative orders and injunctions)

(2) If the context permits, the reference may be taken to refer to the court, a judge of the court, a tribunal or a referee as a member of a tribunal.

(3) In subsection (1)—

"building tribunal" has the same meaning as in the *Building Act 1975*.

"referee" has the same meaning as in the *Building Act 1975*.

5.8.6 Evidence of planning instruments or notices of designation

(1) In a proceeding, a certified copy of a planning instrument or a notice of designation is evidence of the content of the instrument or notice.

(2) All courts, judges and persons acting judicially must take judicial notice of a certified copy of a planning instrument or a notice of designation.

(3) In a proceeding, a copy of the gazette or newspaper containing a notice about the making of a planning instrument is evidence of the matters stated in the notice.

5.8.7 Planning instruments presumed to be within jurisdiction

In a proceeding, the following are presumed unless the issue is raised—

(a) the competence of the Minister to make a planning instrument;

(b) the competence of a local government to make a local planning instrument.

5.8.8 Chief executive may issue guidelines

(1) The chief executive may issue guidelines about—

(a) matters to be considered in deciding if an action is a material change of use; or

(b) environmental assessment and public consultation procedures for designating land for community infrastructure under chapter 2, part 6.

(2) Before issuing a guideline, the chief executive must consult about the making of the guideline using the process under schedule 3, part 2 with necessary changes, as if the guideline were a planning scheme policy.

(3) If a guideline is issued, the chief executive must—

(a) notify the making of the guideline in the gazette; and

(b) keep the guideline available for inspection and purchase.

CHAPTER 6—TRANSITIONAL PROVISIONS

PART 1—TRANSITIONAL PROVISIONS FOR INTEGRATED PLANNING ACT 1997

Division 1—Preliminary

6.1.1 Definitions for pt 1

In this part—

"applicable codes", for self-assessable development, means—

(a) for building work—the standards and the Standard Building Regulation; or

(b) for development other than building work—the standards.

"assessable development" means—

(a) development specified in schedule 8, part 1; or

(b) development, not inconsistent with schedule 8, that—

(i) under the repealed Act, would have required an application to be made—

(A) for a continuing approval; or

(B) under section 4.3(1) of the repealed Act; or

(ii) because of an amendment to, or the commencement of, a transitional planning scheme, requires an application for development approval; or

(c) development to which paragraph (b)(i) would apply if, under the repealed Act, the development had not been carried out on State land.

"continuing approval" means a condition, certificate, permit or approval mentioned in section 6.1.23(1).

"former planning scheme" means a planning scheme under the repealed Act and each town planning by-law and subdivision of land by-law mentioned in section 8.10(6) of the repealed Act in force immediately before the commencement of this section.

"interim development control provision" means an interim development control provision under the repealed Act that was in force immediately before the commencement of this section.

"IPA planning scheme" means a planning scheme made under schedule 1.[127]

"local planning policy" means a local planning policy under the repealed Act in force immediately before the commencement of this section.

"self-assessable development" means—

(a) development specified in schedule 8, part 2; or

(b) development, not inconsistent with schedule 8, that—

(i) under the repealed Act, would not have required a continuing approval but would have been required to comply with standards; or

(ii) because of an amendment to, or the commencement of, a transitional planning scheme does not require a development approval but is required to comply with standards; or

(c) development to which paragraph (b)(i) would apply if, under the repealed Act, the development had not been carried out on State land.

"standards" means requirements, including a requirement mentioned in section 6.1.23(1A), under a transitional planning scheme or interim development control provision applying to development.

"State land" means all land that is not—

(a) freehold land, or land contracted to be granted in fee-simple by the State; or

127 Schedule 1 (Process for making or amending planning schemes)

(b) subject to a lease, licence or permit issued by the State under the *Land Act 1994*.

"transitional planning scheme" see sections 6.1.3 and 6.1.9(3).

"transitional planning scheme policy" see section 6.1.14.

Division 2—Planning schemes

6.1.2 Continuing effect of former planning schemes

(1) Despite the repeal of the repealed Act, each former planning scheme continues to have effect in the local government area for which it was made, subject to subsections (2) and (3).

(2) If a provision of a former planning scheme is inconsistent with chapter 3,[128] to the extent the provision is inconsistent, chapter 3 prevails, unless this chapter states otherwise.

(3) A prohibited use in a former planning scheme is taken to be an expression of policy that the use is inconsistent with the intent of the zone in which the use is prohibited.

6.1.3 What are transitional planning schemes

(1) The provisions (including any maps, plans, diagrams or the like) of a former planning scheme, for a local government area, that are not inconsistent with chapter 3 comprise the transitional planning scheme for the area, unless this chapter states otherwise.

(2) If there was more than 1 former planning scheme for a local government area, all the provisions of the former planning schemes for the area that are not inconsistent with chapter 3 comprise the transitional planning scheme for the area, unless this chapter states otherwise.

6.1.4 Transitional planning schemes for local government areas

(1) For this Act, other than this chapter, a transitional planning scheme (as amended from time to time under this part) is taken to be an IPA

128 Chapter 3 (Integrated development assessment system (IDAS))

planning scheme until it is replaced by, or converted to, an IPA planning scheme.

(2) Subsection (1) has effect even though the transitional planning scheme may not—

(a) advance the purpose of this Act; or

(b) comply with section 2.1.3.

6.1.5 Applying transitional planning schemes to local government areas

If a transitional planning scheme is comprised of all or parts of 2 or more former planning schemes, the part of the transitional planning scheme applying to a part of the area is the part of the former planning schemes that applied to the part of the area.

6.1.6 Amending transitional planning schemes

(1) A transitional planning scheme may be amended using the process for amending a planning scheme under schedule 1.[129]

(2) If a transitional planning scheme is amended under this section, the amended transitional planning scheme is still a transitional planning scheme under this Act.

6.1.7 Amending transitional planning schemes for consistency with ch 3

(1) This section applies if—

(a) a local government intends to amend a transitional planning scheme but does not intend to convert the transitional planning scheme to an IPA planning scheme under section 6.1.8; and

(b) the proposed amendment does not change the policy intent of the scheme (including matters that were the intentions set out under the local government's strategic plan, any development control plan or a zone under the repealed Act); and

129 Schedule 1 (Process for making or amending planning schemes)

(c) the local government gives the Minister a copy of the proposed amendment; and

(d) the Minister is satisfied the proposed amendment would, in every respect, make the transitional planning scheme more consistent with chapter 3 but does not change the policy intent of the scheme; and

(e) the Minister gives the local government written notice of the Minister's satisfaction under paragraph (d); and

(f) after receiving notice under paragraph (e), the local government, by resolution, proposes the amendment.

(2) If this section applies—

(a) schedule 1, sections 1 to 18, do not apply for the proposed amendment; and

(b) without further action, the local government may adopt the resolution under schedule 1, section 19.

(3) If a transitional planning scheme is amended under this section, the amended transitional planning scheme is still a transitional planning scheme under this Act.

6.1.8 Converting transitional planning schemes to IPA planning schemes

(1) If a local government intends to amend its transitional planning scheme and convert the scheme to an IPA planning scheme, the local government must—

(a) when publishing a notice under schedule 1, section 12—include in the notice a statement indicating the local government intends the transitional planning scheme, as amended, to be its IPA planning scheme; and

(b) have the written agreement of the Minister to the proposed conversion.

(2) If the local government complies with subsection (1)(a) and obtains the written agreement of the Minister to the proposed conversion, the transitional planning scheme is, when amended, the local government's IPA planning scheme.

6.1.9 Preparation of planning schemes under repealed Act may continue

(1) If immediately before the commencement of this section a local government was preparing a planning scheme under the repealed Act, the local government may—

(a) continue to prepare the scheme as if the repealed Act had not been repealed; or

(b) continue to prepare the scheme under this Act using the process, for the matters still to be addressed in the preparation of the scheme, stated in schedule 1.

(2) Despite subsection (1)(b) and regardless of the stage the local government may have reached in the preparation of the scheme, if the local government continues the preparation of the scheme under this Act, the local government must follow the process stated in schedule 1, sections 11 to 21.

(3) A proposed planning scheme mentioned in subsection (1)(a), that is approved by the Governor in Council after the commencement of this section, is a transitional planning scheme.

(3A) A prohibited use in a transitional planning scheme mentioned in subsection (3) is taken to be an expression of policy that the use is inconsistent with the intent of the zone in which the use is prohibited.

(4) A proposed planning scheme mentioned in subsection (1)(b), that is adopted by the local government after the commencement of this section, is an IPA planning scheme.

(5) For subsection (1), a local government is taken to have been preparing a planning scheme if—

(a) the local government had adopted a resolution under section 2.10(2)[130] of the repealed Act; or

(b) the Minister had directed the local government under section 2.12[131] of the repealed Act to prepare a planning scheme.

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130 Section 2.10 (Preparation of planning scheme) of the repealed Act

131 Section 2.12 (Powers of the Minister with regard to certain matters) of the repealed Act

6.1.10 Preparation of amendments to planning schemes under repealed Act may continue

(1) If immediately before the commencement of this section a local government or the Minister was preparing an amendment of a planning scheme under the repealed Act, the local government or the Minister may—

(a) continue to prepare the amendment as if the repealed Act had not been repealed; or

(b) if the amendment was being prepared to enable the planning scheme to be converted to an IPA planning scheme—continue to prepare the amendment under this Act using the process, for the matters still to be addressed in the preparation of the scheme, stated in schedule 1.[132]

(2) Despite subsection (1)(b) and regardless of the stage the local government may have reached in the preparation of the amendment, if the local government continues the preparation of the amendment under this Act, the local government must follow the process stated in schedule 1, sections 10 to 21.

(3) A proposed amendment mentioned in subsection (1)(a), that is approved by the Governor in Council after the commencement of this section, is an amendment of a transitional planning scheme.

(4) If a proposed amendment mentioned in subsection (1)(b), is adopted by the local government after the commencement of this section, the transitional planning scheme, as amended by the adopted amendment, is an IPA planning scheme.

(5) For subsection (1)—

(a) a local government is taken to have been preparing an amendment of a planning scheme if the local government had made a resolution to amend the planning scheme; or

(b) the Minister is taken to have been preparing an amendment of a planning scheme if the Minister had started to consider the matters specified in section 2.19[133] of the repealed Act.

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132 Schedule 1 (Process for making or amending planning schemes)

133 Section 2.19 (Assessment of proposed planning scheme amendment) of the repealed Act

6.1.10A Zoning of closed roads under transitional planning schemes

(1) This section applies if—

(a) a transitional planning scheme under chapter 6, part 1 is in force in a local government's area, or part of a local government's area; and

(b) a road, or part of a road, in the area for which the planning scheme is in force is closed or proposed to be closed; and

(c) the Governor in Council is satisfied—

(i) the land comprising the road or part of the road should be included in a zone consistent with the zoning of adjoining lands under the planning scheme; and

(ii) the proposed zoning would not substantially affect the public in an adverse way; and

(iii) the local government has agreed in writing to the Governor in Council acting under this section.

(2) The Governor in Council may, by gazette notice, zone the land in the way stated in the notice.

(3) The notice takes effect—

(a) if the road has been closed—on gazettal of the notice; or

(b) if the road has not been closed—on the closure of the road.

(4) When the notice takes effect, the planning scheme is taken to have been amended in the way stated in the notice as if the process stated in schedule 1 for amending a planning scheme had been followed.

6.1.10B Power to purchase or take land to achieve strategic intent of transitional planning scheme

(1) A local government may purchase or, with the prior approval of the Governor in Council, take under the *Acquisition of Land Act 1967* any land in its transitional planning scheme area required for a purpose that achieves the strategic intent of its transitional planning scheme.

(2) If the local government acts under subsection (1), the local government has all the powers and functions of an approved local government under the *Acquisition of Land Act 1967*.

(3) Without limiting subsection (1), the local government may act under subsection (1) if the land is required for the development or redevelopment of part of the scheme area.

(4) If the land is required for the development or redevelopment, subsection (1) does not authorise the local government to take the land until the land is included in a zone in which the use for that development or redevelopment is permitted.

(5) If the land is purchased or taken for the development or redevelopment, the local government, with the prior approval of the Governor in Council, may sell all or part of the land, subject to any conditions the Governor in Council decides.

(6) The sale must be under the *Local Government Act 1993*, chapter 6, part 3, division 3.[134]

(7) If the land, or any part of it, is sold before it has been developed or redeveloped by the local government, the terms of sale must ensure the land will be developed or redeveloped according to a design approved by the local government.

(8) In this section—

"transitional planning scheme area" means a local government area for which there is a transitional planning scheme.

6.1.11 Transitional planning schemes lapse after 5 years

(1) All transitional planning schemes lapse 5 years after the commencement of this section.

(2) If the Minister, by gazette notice, nominates a later day for a particular transitional planning scheme to lapse, subsection (1) does not have effect until the later day.[135]

134 *Local Government Act 1993*, chapter 6 (General operation of local governments), part 3 (Contracts and Tendering), division 3 (Disposal of land or goods)

135 The date for transitional planning schemes for certain local government areas has been extended to 30 June 2004 as notified in the gazette 20 December 2002 p 1278.

Division 3—Interim development control provisions

6.1.12 Continuing effect of interim development control provisions

(1) Despite the repeal of the repealed Act, each interim development control provision continues to have effect in the local government area for which it was made, subject to subsection (2).

(2) If any interim development control provision is inconsistent with chapter 3,[136] to the extent the provision is inconsistent, chapter 3 prevails.

6.1.12A Interim development control provisions for the shires of Wambo and Belyando

(1) Subsection (2) applies for the part of the shires of Wambo and Belyando for which there is no transitional planning scheme.

(2) The *Local Government (Planning and Environment) Regulation 1991*, section 6 and schedule 3, as in force immediately before the repeal of the regulation, and any definition or other provision of the regulation, to the extent it is relevant to section 6 or schedule 3—

(a) is taken to be an interim development control provision under this chapter for the part of the shire; and

(b) has effect from the commencement of this section until a planning scheme is approved for the part of the shire.

(3) Despite section 2 of the regulation, the consent of the local government is required for the use of land, or for the erection or use of a building or other structure, for the following purposes—

(a) kennels used for the boarding or breeding of more than 4 dogs or cats;

(b) lot feeding of stock;

(c) a piggery;

(d) a poultry farm.

(4) Subsections (2) and (3) apply despite the regulation having been repealed before the commencement of this section.

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136 Chapter 3 (Integrated development assessment system (IDAS))

Division 4—Planning scheme policies

6.1.13 Continuing effect of local planning policies

(1) Despite the repeal of the repealed Act, each local planning policy continues to have effect in the local government area for which it was made, subject to subsection (2).

(2) If a provision of a local planning policy is inconsistent with chapter 3, to the extent the provision is inconsistent, chapter 3 prevails, unless this chapter states otherwise.

6.1.14 What are transitional planning scheme policies

The provisions of local planning policies, for a local government area, that are not inconsistent with chapter 3 comprise the transitional planning scheme policies for the area.

6.1.15 Transitional planning scheme policies for local government areas

For this Act, other than this chapter, a transitional planning scheme policy for a local government area, is taken to be a planning scheme policy for the area until an IPA planning scheme is made for the area.

6.1.16 Amending transitional planning scheme policies

(1) A transitional planning scheme policy may be amended using the process for amending a planning scheme policy under schedule 3.

(2) If a transitional planning scheme policy is amended under this section, the amended transitional planning scheme policy is still a transitional planning scheme policy under this Act.

6.1.17 Amending transitional planning scheme policies for consistency with ch 3

(1) This section applies if—

(a) a local government intends to amend a transitional planning scheme policy to make the transitional planning scheme policy

more consistent with chapter 3 but does not change the intent of the policy; and

(b) the local government, by resolution, proposes the amendment.

(2) If this section applies—

(a) schedule 3, sections 1 to 4 and section 6,[137] do not apply for the proposed amendment; and

(b) without further action, the local government may adopt the proposed amendment under schedule 3, section 5.[138]

(3) If a transitional planning scheme policy is amended under this section, the amended transitional planning scheme policy is still a transitional planning scheme policy under this Act.

6.1.18 Repealing transitional planning scheme policies

(1) A local government may, by resolution, repeal a transitional planning scheme policy.

(2) The local government must publish a notice about the resolution at least once in a newspaper circulating generally in the local government's area advising that the transitional planning scheme policy has been repealed.

(3) The repeal takes effect the day the resolution is made.

6.1.19 Planning scheme policies may support transitional planning schemes

If a local government has a transitional planning scheme, the local government may make a planning scheme policy under this Act as if the transitional planning scheme were an IPA planning scheme.

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137 Schedule 3 (Process for making or amending planning scheme policies), sections 1 (Resolution proposing action), 2 (Public notice of proposed action), 3 (Public access to relevant documents), 4 (Consideration of all submissions) and 6 (Reporting to persons who made submissions about proposed action)

138 Schedule 3 (Process for making or amending planning scheme policies), section 5 (Resolution about adopting proposed planning scheme policy or amendment)

6.1.20 Planning scheme policies for infrastructure

(1) This section applies if—

(a) a local government has an IPA planning scheme; and

(b) the local government prepares a planning scheme policy about infrastructure.

(2) The planning scheme policy must specify, for a development application for the reconfiguration of a lot—

(a) the matters that were required to be specified in a local planning policy under section 6.2(6)(b)(i) and (ii)[139] of the repealed Act; and

(b) the monetary contribution to be paid to the local government instead of supplying an area of land for use as a park.

(3) However, if the local government has an infrastructure charges plan, the planning scheme policy must not deal with the same matters as the infrastructure charges plan.

(3A) This section applies despite section 2.1.23.

(4) This section expires on 31 March 2005.

6.1.21 IPA planning schemes cancel existing planning scheme policies

If an IPA planning scheme is adopted or a transitional planning scheme is converted to an IPA planning scheme, all existing transitional planning scheme policies and planning scheme policies supporting the transitional planning scheme are cancelled from the day the adoption is notified in the gazette.

Division 5—State planning policies

6.1.22 Continuing effect of State planning policies

Each State planning policy made under the repealed Act and in force immediately before the commencement of this section continues to have effect and is taken to be a State planning policy made under this Act.

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139 Section 6.2 (Contributions towards water supply and sewerage works) of the repealed Act

Division 6—Existing approvals and conditions

6.1.23 Continuing effect of approvals issued before commencement

(1) This section applies to—

(a) conditions set by, and certificates of compliance or similarly endorsed certificates (**"continuing approvals"**) issued by, a local government in relation to an application mentioned in section 4.1(5)[140] of the repealed Act and in force immediately before the commencement of this section; and

(b) permits (also **"continuing approvals"**) issued under section 4.13(12)[141] of the repealed Act, including modifications of the permits under section 4.15[142] of the repealed Act, in force immediately before the commencement of this section; and

(c) approvals (also **"continuing approvals"**), including modifications of the approvals under section 4.15 of the repealed Act, in force immediately before the commencement of this section and made in relation to applications made under the following sections of the repealed Act—

- section 5.1(1)[143]
- section 5.2(1)[144]
- section 5.9(1)[145]
- section 5.11(1)[146]
- section 5.12(1);[147] and

140 Section 4.1 (Applications) of the repealed Act

141 Section 4.13 (Assessment of town planning consent application) of the repealed Act

142 Section 4.15 (Modification of certain applications and approvals) of the repealed Act

143 Section 5.1 (Application for subdivision etc.) of the repealed Act. Applications for the subdivision of land incorporating a lake and mentioned in section 5.10 (Subdivision incorporating a lake) are also dealt with under section 5.1 of the repealed Act.

144 Section 5.2 (Subdivisions involving works) of the repealed Act

145 Section 5.9 (Staged subdivision) of the repealed Act

146 Section 5.11 (Application for amalgamation of land) of the repealed Act

147 Section 5.12 (Application for access easement) of the repealed Act

(d) approvals (also **"continuing approvals"**), by whatever name called, given under a former planning scheme but not included in paragraphs (a) to (c) in force immediately before the commencement of this section; and

(e) approvals (also **"continuing approvals"**) issued under the *Building Act 1975*, in force immediately before the commencement of this section.

(1A) However, a requirement in a local planning instrument for an action to be carried out to the satisfaction of a nominated person is not a continuing approval.

(2) Despite the repeal of the repealed Act, each continuing approval and any conditions attached to a continuing approval have effect as if the approval and the conditions were a development approval in the form of a preliminary approval or development permit, as the case may be.

Example for subsection (2)—

An application for a staged subdivision approval under section 5.9(1) of the repealed Act and a concurrent application under section 5.1(1) of the repealed Act for approval of the first stage of the staged subdivision would result *in*—

(a) for the section 5.9(1) application—a preliminary approval for reconfiguration of the whole of the land; and

(b) for the section 5.1(1) application—a development permit for reconfiguration of the land in stage 1.

(3) Subsection (2) has effect only for the period the continuing approval would have had effect if the repealed Act had not been repealed.

(4) If a continuing approval implies that a person has the right to use premises, the subject of the continuing approval, for a particular purpose (because the intended use of the premises did not also require a continuing approval) and the implied right existed, but the intended use had not started, immediately before the commencement of this section, the intended use is to be taken to be a use in existence immediately before the commencement if—

(a) the rights (other than the implied right) under the continuing approval are exercised within the time allowed for the rights to be exercised under the repealed Act; and

(b) the intended use is started within 5 years after the rights mentioned in paragraph (a) are exercised.

6.1.24 Certain conditions attach to land

(1) If a local government has set conditions in relation to a continuing approval, the conditions attach to the land on and from the commencement of this section and are binding on successors in title.

(2) Also, if an application to amend a former planning scheme was, or the conditions attached to an amendment were, approved under the repealed Act or under section 6.1.26 and conditions in relation to either amendment were attached to the land under the repealed Act or section 6.1.26—

(a) if the approval was given before the commencement of this section—the conditions remain attached to the land on and from the commencement of this section and are binding on successors in title; and

(b) if the approval was given under section 6.1.26—the conditions remain attached to the land on and from the day the approval was given and are binding on successors in title.

(3) Subsections (1) and (2) apply, despite—

(a) a later amendment of the transitional planning scheme; and

(b) the later introduction or amendment of an IPA planning scheme.

(4) In this section—

"former planning scheme" includes any planning scheme made under the repealed Act or an Act repealed by the repealed Act.

Division 7—Applications in progress

6.1.25 Effect of commencement on certain applications in progress

(1) If an application was made before the commencement of this section for a matter mentioned in section 6.1.23(1)(a) to (d)—

(a) processing of the application and all matters incidental to the processing (including any appeal made in relation to a decision about the application) must proceed as if the repealed Act had not been repealed; and

(b) any approval issued is taken to be a preliminary approval or development permit, as the case may be.

(1A) If an application was made before 30 April 1998 for a building approval under the *Building Act 1975*—

(a) processing of the application and all matters incidental to the processing (including any appeal made in relation to a decision about the application) must proceed as if the *Building and Integrated Planning Amendment Act 1998* had not commenced; and

(b) any approval issued is taken to be a preliminary approval or development permit, as the case may be.

(2) If a request made before the commencement of this section was for the revocation of a town planning consent, processing of the request and all matters incidental to the processing must proceed as if the repealed Act had not been repealed.

6.1.26 Effect of commencement on other applications in progress

(1) This section applies to—

(a) applications made before the commencement of this section under section 4.3(1), section 4.6(1) or section 4.9(1)[148] of the repealed Act; or

(b) an equivalent application made before the commencement of this section under the *Local Government Act 1936* or the *City of Brisbane Town Planning Act 1964*; or

(c) an application made under section 4.15[149] of the repealed Act relating to the modification of—

(i) an application mentioned in paragraph (a) or (b); or

(ii) the approval of an application mentioned in paragraph (a) or (b); or

(iii) conditions attaching to the approval of an application mentioned in paragraph (a) or (b).

(2) An application mentioned in subsection (1) must be processed and all matters incidental to the processing (including any appeal made in relation

148 Section 4.3 (Amendment of a planning scheme etc. by an applicant), 4.6 (Application for rezoning of land in stages) or 4.9 (Subsequent staged rezoning approvals) of the repealed Act

149 Section 4.15 (Modification of certain applications and approvals) of the repealed Act

to a decision about the application) must proceed as if the repealed Act had not been repealed.

(3) Subsection (4) applies if—

(a) at any time subsection (2) applies for an application mentioned in subsection (1); and

(b) applying subsection (2) requires the amendment of a planning scheme; and

(b) the local government has an IPA planning scheme.

(4) The Governor in Council may amend the IPA planning scheme using the processes under the repealed Act as if the IPA planning scheme were a former planning scheme.

6.1.27 Applications for compensation continue

If an application for compensation was made and has not been decided before the commencement of this section, the application must be decided as if the repealed Act had not been repealed.[150]

Division 8—Applications made or development carried out after the commencement of this division

6.1.28 IDAS must be used for processing applications

(1) To remove any doubt, it is declared that all development applications for assessable development made after the commencement of this section to which a transitional planning scheme or interim development control provision applies must be made and processed under this Act.

(2) If an application mentioned in subsection (1) were an application for the same development under the repealed Act and would have required public notification under the repealed Act—

(a) the application must be processed as if it were a development application requiring impact assessment; and

(b) a statement made under section 3.2.3(2)(d) on the acknowledgment notice that an aspect of the development

150 See the *Acts Interpretation Act 1954*, section 20 for other matters that are also saved when an Act is repealed.

applied for requires impact assessment is taken to mean that the application will be processed as if it were a development application requiring impact assessment.

(3) If an application mentioned in subsection (1) were an application for the same development under the repealed Act and would not have required public notification under the repealed Act—

(a) the application must be processed as if it were a development application requiring code assessment; and

(b) a statement made under section 3.2.3(2)(c) on any acknowledgment notice for the application that an aspect of the development applied for requires code assessment is taken to mean that the application will be processed as if it were a development application requiring code assessment; and

(c) despite section 3.2.3(2)(c), any acknowledgment notice for the application need not refer to codes.

6.1.29 Assessing applications (other than against the Standard Building Regulation)

(1) This section applies only for the part of the assessing aspects of development applications to which a transitional planning scheme or interim development control provision applies.

(2) Sections 3.5.4 and 3.5.5[151] do not apply for assessing the application.

(3) Instead, the following matters, to the extent the matters are relevant to the application, apply for assessing the application—

(a) the common material for the application;

(b) the transitional planning scheme;

(c) the transitional planning scheme policies;

(d) any planning scheme policy made after the commencement of this section;

(e) all State planning policies;

(f) the matters stated in section 8.2(1)[152] of the repealed Act;

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151 Sections 3.5.4 (Code assessment) and 3.5.5 (Impact assessment)

152 Section 8.2 (Environmental impact) of the repealed Act

(g) for an interim development control provision in force in a local government area—the interim development control provision;

(h) if the application is for development that before the commencement of this section would have required an application to be made under any of the following sections of the repealed Act—

(i) section 4.3(1)—the matters stated in section 4.4(3);[153]

(ii) section 5.1(1)[154]—the matters stated in section 5.1(3);

(iii) section 5.1(1) and section 5.10(1)[155] applies—the matters stated in sections 5.1(3) and 5.10(2);

(iv) section 5.2(1)[156]—the matters stated in section 5.2(2);

(v) section 5.9(1)[157]—the matters stated in section 5.9(3);

(vi) section 5.11(1)[158]—the matters stated in section 5.11(3);

(i) any other matter to which regard would have been given if the application had been made under the repealed Act.

6.1.30 Deciding applications (other than under the Standard Building Regulation)

(1) This section applies only for the part of the deciding aspects of a development application to which a transitional planning scheme or interim development control provision applies.

(2) Sections 3.5.13 and 3.5.14[159] do not apply for deciding the application.

(3) Instead, the assessment manager must, if the application is for development that before the commencement of this section would have

153 Sections 4.3 (Amendment of a planning scheme etc. by an applicant) and 4.4 (Assessment of proposed planning scheme amendment) of the repealed Act

154 Section 5.1 (Application for subdivision etc.) of the repealed Act

155 Section 5.10 (Subdivision incorporating a lake) of the repealed Act

156 Section 5.2 (Subdivisions involving works) of the repealed Act

157 Section 5.9 (Staged subdivision) of the repealed Act

158 Section 5.11 (Application for amalgamation of land) of the repealed Act

159 Sections 3.5.13 (Decision if application requires code assessment) and 3.5.14 (Decision if application requires impact assessment)

required an application to be made under any of the following sections of the repealed Act—

(a) section 4.3(1)—decide the application under section 4.4(5)[160] and (5A);

(b) section 4.12(1)—decide the application under section 4.13(5)[161] and (5A);

(c) section 5.1(1) (whether or not section 5.10(1)[162] applies)—decide the application under section 5.1(6) and (6A);

(d) section 5.2(1)[163]—decide the application under section 5.2(4), as if all words in that section after 'conditions' were omitted;

(e) section 5.9(1)[164]—decide the application under section 5.9(6) and (6A);

(f) section 5.11(1)[165]—decide the application under section 5.11(5);

(g) section 5.12(1)[166]—decide the application under section 5.12(4).

(4) If a development application is made for development that under a transitional planning scheme requires an application for the setting of conditions or the issue of a certificate of compliance or similarly endorsed certificate—

(a) the assessment manager may not refuse the application despite section 3.5.11(1)(c);[167] but

(b) a concurrence agency may still direct the assessment manager to refuse the application.

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160 Sections 4.3 (Amendment of a planning scheme etc. by an applicant) and 4.4 (Assessment of proposed planning scheme amendment) of the repealed Act

161 Sections 4.12 (Application for town planning consent) and 4.13 (Assessment of town planning consent application) of the repealed Act

162 Sections 5.1 (Application for subdivision etc.) and 5.10 (Subdivision incorporating a lake) of the repealed Act

163 Section 5.2 (Subdivisions involving works) of the repealed Act

164 Section 5.9 (Staged subdivision) of the repealed Act

165 Section 5.11 (Application for amalgamation of land) of the repealed Act

166 Section 5.12 (Application for access easement) of the repealed Act

167 Section 3.5.11 (Decision generally)

(5) If the assessment manager does not decide the application mentioned in subsection (4) within the decision making period, the application is taken to have been approved—

(a) without conditions imposed by the assessment manager; and

(b) subject to any matter a concurrence agency told the assessment manager under section 3.3.18(1).

(6) However, if a concurrence agency told the assessment manager to refuse the application—

(a) if subsection (4) applies—the assessment manager must refuse the application; or

(b) if subsection (5) applies—the application is taken to be refused.

6.1.30A Deeming of certain applications under transitional planning schemes

(1) This section applies if—

(a) a development application is made under a transitional planning scheme; and

(b) the application form indicates the application is for a material change of use only; and

(c) it reasonably can be inferred from the common material that the application also was for development other than the material change of use.

(2) The application, and any development approval for the application, is taken to be also for the other development.

(3) However—

(a) the development approval is taken to be a preliminary approval for the other development unless the development approval states the development approval is a development permit for some or all of the other development; and

(b) for the other development taken to be the subject of the preliminary approval—

(i) for building work—any later development application for the other development does not require assessment against the transitional planning scheme; and

(ii) for development other than building work—to the extent section 6.1.28 applies, any later development application for the other development is taken to be an application to which section 6.1.28(3) applies; and

(c) the other development is refused to the extent the development approval expressly states the other development is refused.

(4) Subsection (2) does not apply to the extent stated in a notice given to the assessment manager by the applicant before or after the development approval was given.

6.1.31 Conditions about infrastructure for applications

(1) Subsection (2) applies if—

(a) a local government is deciding a development application under a transitional planning scheme or an IPA planning scheme; and

(b) the local government has—

(i) a local planning policy about infrastructure or a planning scheme policy about infrastructure; or

(ii) a provision, that was included before the commencement of this section, in its planning scheme about monetary contributions for specified infrastructure.

(2) For deciding the aspect of the application relating to the local planning policy, the planning scheme policy or planning scheme provision—

(a) chapter 5, part 1[168] does not apply; and

(b) section 3.5.32(1)(b)[169] does not apply; and

(c) the local government may impose a condition on the development approval requiring land, works or a contribution towards the cost of supplying infrastructure (including parks) under a policy or provision mentioned in subsection (1)(b).

(3) However—

168 Chapter 5 (Miscellaneous), part 1 (Infrastructure charges)

169 Section 3.5.32 (Conditions that can not be imposed)

(a) if a condition imposed under subsection (2)(c) is inconsistent with an infrastructure agreement for supplying the infrastructure, to the extent of the inconsistency, the agreement prevails; or

(b) if the application is being decided under an IPA planning scheme, subsection (2) applies only until—

(i) 31 March 2005; or

(ii) if the Minister, by gazette notice, nominates a later day for a particular planning scheme—the later day.

(4) Subsection (5) applies if a local government is deciding a development application only under a transitional planning scheme.

(5) For deciding the application and to the extent the application is about the aspects of the application to be decided by the local government—

(a) section 3.5.32(1)(b)[170] does not apply; and

(b) chapter 5, part 1, division 7[171] does not apply.

6.1.32 Conditions about infrastructure for applications under interim development control provisions or subdivision of land by-laws

(1) This section applies if—

(a) the local government is deciding a development application; and

(b) the local government does not have a transitional planning scheme but has—

(i) an interim development control provision; or

(ii) a subdivision of land by-law continued in effect under section 8.10(7)[172] of the repealed Act.

(2) For deciding the application—

(a) section 3.5.32(1)(b)[173] does not apply; and

(b) the local government may impose a condition on a development approval requiring land, works or a contribution towards the cost

170 Section 3.5.32 (Conditions that can not be imposed)

171 Chapter 5 (Miscellaneous), part 1 (Infrastructure planning and funding), division 7 (Conditions local governments may impose for additional trunk infrastructure costs)

172 Section 8.10 (Savings and transitional) of the repealed Act

173 Section 3.5.32 (Conditions that can not be imposed)

of supplying infrastructure (including parks) as if the repealed Act had not been repealed.

(3) To the extent a condition imposed under subsection (2)(b) is inconsistent with an infrastructure agreement for supplying the infrastructure, the agreement prevails.

6.1.34 Consequential amendment of transitional planning schemes

(1) This section applies if under a transitional planning scheme an assessment manager is deciding a development application for assessable development that would, under the repealed Act, have first required the amendment of the former planning scheme.

(2) If the assessment manager approves the application, the local government may, by resolution and within 20 business days after the day the approval takes effect, adopt an amendment of its transitional planning scheme to reflect the approval.

(3) The amendment is an amendment of a planning scheme to which section 3.5.27 and schedule 1, sections 1 to 19 do not apply.

6.1.35 Self-assessable development under transitional planning schemes

Self-assessable development to which a transitional planning scheme or an interim development control provision applies must comply with applicable codes.

6.1.35A Applications to change conditions of rezoning approvals under repealed Act

(1) This section applies if a person wants to change the conditions attached to an approval given under section 2.19(3)(a) or 4.4(5) of the repealed Act.

(2) A person may—

(a) make a development application to achieve the change; or

(b) apply under section 4.3(1) or 4.15(1) of the repealed Act to change the conditions.

(3) If a person applies under subsection (2)(b) the application must be processed by the local government as if the repealed Act had not been repealed.

6.1.35B Development approvals prevail over conditions of rezoning approvals under repealed Act

A development approval given under this Act prevails, to the extent the approval is inconsistent with a condition—

(a) of an approval given under section 4.4(5) of the repealed Act; or

(b) decided under section 2.19(3) of the repealed Act.

6.1.35C Applications requiring referral coordination

(1) Referral coordination is required for an application—

(a) for development that is assessable under a planning scheme and that the assessment manager is satisfied is not minor or of an ancillary nature; and

(b) prescribed under a regulation.

(2) This section applies—

(a) despite section 3.3.5; and

(b) even if there are no concurrence agencies for the application.

(3) If an application requires referral coordination under subsection (1), section 3.2.3(1)[174] applies to the application (despite section 3.2.3(1A)).

Division 9—Planning and Environment Court

6.1.36 Appointments of judges continue

Judges of District Courts notified by gazette notice as judges who constituted the Planning and Environment Court before the commencement of section 4.1.1,[175] are, until a further notice is gazetted under this Act, the judges who, on and from the commencement, constitute the court.

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174 Section 3.2.3 (Acknowledgment notices generally)

175 Section 4.1.1 (Continuance of Planning and Environment Court)

6.1.37 Court orders continue

(1) An order made by the Planning and Environment Court before the commencement of section 4.1.1 and still in force immediately before the commencement, continues to have effect on and after the commencement.

(2) The order may be discharged or amended by the court under this Act.

6.1.38 Rules of court continue

(1) The rules of court in force immediately before the commencement of section 4.1.1 continue in force on and after the commencement as if they were made under section 4.1.10.[176]

(2) The rules may be amended or repealed under this Act.

6.1.39 Proceedings started under repealed Act continue

A proceeding started before the Planning and Environment Court under the repealed Act and not finished on the commencement of section 4.1.1, may be continued and completed by the court as if the repealed Act had not been repealed.[177]

Division 10—Miscellaneous

6.1.42 Application of ch 2, pt 3

Chapter 2, part 3[178] (in so far as the Minister may direct a local government to amend a planning scheme or repeal a transitional planning scheme policy) applies to transitional planning schemes and transitional planning scheme policies.

6.1.44 Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances

(1) This section applies if—

176 Section 4.1.10 (Rules of court)

177 See the *Acts Interpretation Act 1954*, section 20 for other matters that are also saved when an Act is repealed.

178 Chapter 2 (Planning), part 3 (State powers)

(a) before the commencement of this section another Act or a local law required a licence, permit, registration or other approval for development or for an activity that is the natural and ordinary consequence of the development; and

(b) the other Act or local law allowed for a condition of the licence, permit, registration or other approval to be changed or cancelled without the consent of any person; and

(c) the development is assessable development as defined for this part, and this Act generally; and

(d) the other Act or local law is repealed or amended; and

(e) if the Act or local law is amended—

(i) the requirement for the licence, permit, registration or other approval is removed; or

(ii) a condition of the licence, permit, registration or other approval that could have been imposed under the other Act or local law before the amendment may be imposed, under this Act, on the development approval.

(2) A condition of a development approval for the development, to the extent the condition could have been imposed by an entity under the other Act or local law before the Act or law was amended or repealed, may be changed or cancelled by the entity—

(a) if the entity, as a concurrence agency, directed the assessment manager to impose the condition; or

(b) if the entity, as the assessment manager, decided the condition; or

(c) if paragraph (a) or (b) does not apply—if the entity has jurisdiction for the condition.

(3) The change or cancellation may be made—

(a) without the consent of the owner of the land to which the approval attaches and any occupier of the land; but

(b) only to the extent the change or cancellation could have been made under the other Act or local law before it was amended or repealed.

(4) If the entity is satisfied it is necessary to change or cancel the condition, the entity must give a written notice to the owner of the land to which the approval attaches and any occupier of the land.

(5) The notice must state—

(a) the proposed change or cancellation and the reasons for the change or cancellation; and

(b) that each person to whom the notice is given may make written representations to the entity about the proposed change or cancellation; and

(c) the time (at least 15 business days after the notice is given to the holder) within which the representations may be made.

(6) After considering any representations the entity must give to each person to whom the notice was given—

(a) if the entity is not satisfied the change or cancellation is necessary—written notice stating it has decided not to change or cancel the condition; or

(b) if the entity is satisfied the change or cancellation is necessary—written notice stating it has decided to change or cancel the condition, including details of the changed or cancelled condition.

(7) If the entity is a concurrence agency, the entity must give the assessment manager written notice of the change or cancellation.

(8) The changed condition or cancellation takes effect from the day the notice was given to the owner of the land to which the approval attaches.

6.1.45 Infrastructure agreements

(1) An infrastructure agreement made under part 6, division 2[179] of the repealed Act and in force immediately before the commencement of this section continues, on and after the commencement, to have effect and is binding on the parties to the agreement as if the repealed Act had not been repealed.

(2) If an infrastructure agreement mentioned in subsection (1) or made under this Act contains permission criteria inconsistent with the *Integrated Planning Regulation 1998*, to the extent of the inconsistency, the agreement prevails.

(3) In this section—

179 Part 6 (Conditions, contributions, works and infrastructure agreements), division 2 (Infrastructure agreements) of the repealed Act

"permission criteria" means criteria under either or both of the following—

(a) for an agreement—

(i) mentioned in subsection (1)—the *Transport Infrastructure Act 1994*, section 40,[180] as in force immediately before 1 December 1999; or

(ii) made under this Act—the *Transport Infrastructure Act 1994*, section 40;

(b) the *Transport Operations (Passenger Transport) Act 1994*, section 145(4).[181]

6.1.45AA Rezoning agreements under previous Acts

(1) This section applies to an agreement made for securing the conditions of a rezoning approval if the conditions did not attach to the land, the subject of the approval, and bind successors in title.

(2) To the extent the agreement was validly made, still has effect and is not inconsistent with a condition of a development approval, nothing in the repealed Act or this Act affects the agreement.

(3) However, if an assessment manager is imposing a condition under this Act about infrastructure or a local government is fixing an infrastructure charge under chapter 5, part 1, any amount under the agreement that is payable or has been paid in relation to infrastructure must be taken into consideration.

6.1.45A Development control plans under repealed Act

(1) This section applies to a development control plan made under the repealed Act that includes a process—

(a) for making and approving plans (however named) with which development must comply in addition to, or instead of, the planning scheme; or

180 *Transport Infrastructure Act 1994*, section 40 (Impact of certain local government decisions on State-controlled roads)

181 *Transport Operations (Passenger Transport) Act 1994*, section 145 (Impact of certain decisions by local governments on public passenger transport)

(b) that provides for appeals against a decision under the plan.

(1A) An IPA planning scheme may include a development control plan mentioned in subsection (1) either with or without amendment.

(1B) If a proposed IPA planning scheme is to include an unamended development control plan, schedule 1, sections 3 to 8, 12 to 14 and 17 do not apply for the development control plan.

(1C) If a statement in the IPA planning scheme identifies the area of a development control plan included in the scheme, the following subsections apply for the area.

(1D) The repealed Act, the transitional planning scheme and any transitional planning scheme policies continue to apply to the extent necessary to administer the development control plan.

(1E) Sections 6.1.28 to 6.1.30 apply for assessing development applications in the development control plan area.

(1F) The development control plan may include or refer to codes or other measures of the planning scheme.

(2) To the extent the development control plan provides for the matters mentioned in subsection (1)—

(a) the development control plan is, and always has been, valid; and

(b) development under the development control plan must comply with the plans in the way stated in the development control plan; and

(c) if the development control plan states that an appeal may be made, and an appeal is made, the appeal is validly made.

(3) If the development control plan is changed after the commencement of this section in a way that, if this Act had not commenced, would have given rise to a claim for compensation under the repealed Act, the compensation may be claimed as if this Act had not commenced.

(4) Subsection (2) applies even if the process mentioned in subsection (1)(a) is inconsistent with chapter 3 or schedule 1.[182]

(5) Subsection (5A) applies to—

182 Chapter 3 (Integrated development assessment system (IDAS)) and schedule 1 (Process for making or amending planning schemes)

(a) a transitional planning scheme that includes the development control plan; or

(b) the development control plan, if it is included in an IPA planning scheme.

(5A) A transitional planning scheme or a development control plan, may be amended under—

(a) the provisions of this Act relating to the process for amending a planning scheme; or

(b) a process mentioned in subsection (1) to the extent stated in the development control plan.

(5B) A transitional planning scheme policy mentioned in subsection (1C) may be amended under—

(a) the provisions of this Act relating to the process for amending a planning scheme policy; or

(b) a process mentioned in subsection (1) to the extent stated in the development control plan.

(6) If the development control plan is amended under subsection (5A), subsections (2) and (3) continue to apply to the plan.

6.1.46 Local Government (Robina Central Planning Agreement) Act 1992

Despite the repeal of the repealed Act the *Local Government (Robina Central Planning Agreement) Act 1992* applies as if the repealed Act had not been repealed.

6.1.47 Delegations continue until withdrawn

A delegation made before the commencement of this section that is necessary to give effect to this part continues to have effect on and after the commencement until specifically withdrawn by the person who gave the delegation.

6.1.48 Registers must be kept available for inspection and purchase

All registers established and kept by local governments under the repealed Act must be kept available for inspection and purchase under this Act.

6.1.49 Town planning certificates may be used as evidence

In a proceeding, a town planning certificate issued under the repealed Act is evidence of the matters contained in the certificate.

6.1.50 Right to compensation continued

(1) If before the commencement of this section a person had a right to compensation under section 3.5[183] of the repealed Act, the person may exercise the right within the time stated in the repealed Act for exercising the right despite the repeal of the repealed Act.

(2) A claim in respect of a right mentioned in subsection (1) may be dealt with under section 3.5(2A) of the repealed Act as if the repealed Act had not been repealed.

(3) To remove any doubt, it is declared that a person who has a right to claim compensation under subsection (1) can not claim compensation under any other provision of this Act.

6.1.51 Orders in council about Crown land under repealed Act

(1) This section applies to—

(a) the extent that any orders in council made under the *Local Government Act 1936*, section 33(22A)[184] or under the *City of Brisbane Town Planning Act 1964*, section 7A(8)[185] are still in force immediately before the commencement of this section—the orders; and

183 Section 3.5 (Compensation) of the repealed Act

184 The repealed *Local Government Act 1936*, section 33 (Town Planning)

185 The repealed *City of Brisbane Town Planning Act 1964*, section 7A (Plan may include Crown land)

(b) all orders in council made under section 2.21(2)(c)[186] of the repealed Act.

(2) To remove any doubt, it is declared that all orders mentioned in subsection (1) and still in force immediately before the commencement of this section continue in force as if the orders were regulations made under this Act.

(3) Any development lawfully undertaken on premises to which an order in council mentioned in subsection (1) applied while the premises were owned by the State is and always has been lawful development and any use of the premises that is a natural and ordinary consequence of the development is a lawful use.

(4) Subsection (3) applies even though the premises may no longer be owned by the State.

6.1.51A Certain lawful uses, buildings and works validated

(1) Subsection (2) applies if—

(a) at any time before 30 March 1998 section 2.21(2)(c) of the repealed Act applied to premises mentioned in section 2.21(2)(b) of the repealed Act; and

(b) any lawful use of the premises immediately before the section applied to the premises, continued until immediately before 30 March 1998.

(2) To the extent the use continued, the use is a lawful use to which section 1.4.1 applies.

(3) Subsection (2) applies even though the use was not the subject of an order in council made under section 2.21(2)(c) of the repealed Act.

(4) Subsection (5) applies if—

(a) at any time before 30 March 1998 section 2.21(2)(c) of the repealed Act applied to premises mentioned in section 2.21(2)(b) of the repealed Act; and

(b) the premises were a lawful building or works immediately before the section applied to the premises.

186 Section 2.21 (Planning scheme may include Crown land) of the repealed Act

(5) A planning scheme or an amendment of a planning scheme must not require the building or works to be altered or removed.

(6) Subsection (5) applies even though the premises mentioned in subsection (4) were not the subject of an order in council made under section 2.21(2)(c) of the repealed Act.

6.1.53 References to repealed Act

A reference in an Act or document to the *Local Government (Planning and Environment) Act 1990* may, if the context permits, be taken to be a reference to this Act.

6.1.54 Provisions applying for State controlled roads

(1) Subsections (2) to (6) apply if the local government has, for its area—

(a) a transitional planning scheme; or

(b) an IPA planning scheme for which the Minister has given the local government a notice for this section.

(2) Subsection (3) applies if the chief executive is a concurrence agency for a development application in the area with a jurisdiction about State-controlled roads.

(3) Despite sections 3.5.32(1) and 3.5.35, the chief executive may tell the assessment manager that a road condition must be attached to a development approval for the development application.

(4) Subsections (5) and (6) apply if the chief executive is an advice agency for a development application in the area with a jurisdiction about State-controlled roads.

(5) The chief executive may make an information request for the development application and for sections 3.3.5 to 3.3.14, the chief executive is taken to be a concurrence agency for the application.

(6) Despite sections 3.5.32(1) and 3.5.35, the chief executive may recommend the assessment manager attach a road condition to a development approval for the development application.

(7) Despite section 3.5.35(2A), if a planning scheme does not include a benchmark development sequence, the chief executive may, for

development that is inconsistent with the timing for infrastructure under the planning scheme—

(a) if the chief executive is a concurrence agency for a development application in the area with a jurisdiction about State-controlled roads—tell the assessment manager to impose a condition to mitigate the cost impacts of the development; or

(b) if the chief executive is an advice agency for a development application in the area with a jurisdiction about State-controlled roads—recommend the assessment manager attach a condition to mitigate the cost impacts of the development.

(8) In this section—

"chief executive" means the chief executive administering the *Transport Infrastructure Act 1994*.

"road condition" means a condition that could have been imposed under the *Transport Infrastructure Act 1994*, section 42(4) immediately before the commencement of this section.

"State-controlled road" see *Transport Infrastructure Act 1994*, schedule 6.[187]

187 *Transport Infrastructure Act 1994*, schedule 6 (Dictionary)—

"State-controlled road" means a road or land, or part of a road or land, declared under section 23 to be a State-controlled road, and, for chapter 5, part 5, division 2, subdivision 2, see section 50.

Division 11—Transitional provision for Integrated Planning Amendment Act 2002

6.1.55 Particular proceedings end

Without limiting the effect of the *Integrated Planning Amendment Act 2002*, a proceeding under section 4.1.21 for a declaration about a matter done, to be done or that should have been done under chapter 3, part 6, division 2,[188] that has not been finally decided on the commencement of this section must not be further dealt with by the court.

PART 2—TRANSITIONAL PROVISIONS FOR INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003

Division 1—Transitional provisions generally

6.2.1 Transitional regulations for Integrated Planning and Other Legislation Amendment Act 2003

(1) A regulation (a **"transitional regulation"**) may make provision about a matter for which—

(a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the purposes of the *Integrated Planning and Other Legislation Amendment Act 2003*; and

(b) the *Integrated Planning and Other Legislation Amendment Act 2003* does not make provision or sufficient provision.

(2) A transitional regulation may have retrospective operation to a day not earlier than the date of assent of the *Integrated Planning and Other Legislation Amendment Act 2003*.

(3) A transitional regulation must declare it is a transitional regulation.

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188 Chapter 3 (Integrated Development Assessment System (IDAS)), part 6 (Ministerial IDAS powers), division 2 (Ministerial call in powers)

(4) This section and any transitional regulation expire 1 year after this section commences.

6.2.2 Particular planning scheme policies still valid

(1) This section applies to a planning scheme policy in force at the commencement of this section.

(2) To the extent the policy was valid at the commencement, the policy is still valid despite sections 2.1.16 and 2.1.23.[189]

189 Section 2.1.16 (Meaning of "planning scheme policy")
Section 2.1.23 (Local planning instruments have force of law)

SCHEDULE 1

PROCESS FOR MAKING OR AMENDING PLANNING SCHEMES

section 2.1.5

PART 1—PRELIMINARY CONSULTATION AND PREPARATION STAGE

1 Resolution to prepare planning scheme

(1) A local government may propose to prepare a planning scheme.

(2) In this schedule (other than in a provision specifically referring to an amendment of a planning scheme), a reference to a planning scheme includes a reference to an amendment of a planning scheme.

2 Local government may shorten process for amendments to planning schemes

(1) Sections 3 to 8 do not apply to an amendment of a planning scheme.

(2) Sections 10 to 18 also do not apply if the amendment is a minor amendment.

3 Statement of proposals for preparing planning scheme

(1) The local government must prepare a statement of its proposals for preparing the planning scheme.

(2) In particular, the statement must—

(a) identify matters the local government anticipates the planning scheme will address; and

(b) state how the local government intends to address each core matter (including its component parts) in preparing the planning scheme.

SCHEDULE 1 (continued)

(3) The local government must give a copy of the statement to the chief executive and to each adjoining local government.

5 Public notice of proposal

(1) After complying with section 3, the local government must publish, at least once in a newspaper circulating generally in the local government's area, a notice stating the following—

(a) the name of the local government;

(b) that the local government has prepared a statement of its proposal for preparing the planning scheme and that the statement is available for inspection and purchase;

(c) a contact telephone number for information about the statement;

(d) that written submissions about any aspect of the proposal may be made to the local government by any person;

(e) the period (the **"preliminary consultation period"**) during which the submissions may be made;

(f) the requirements for making a properly made submission under this part.

(2) The preliminary consultation period must be for at least 40 business days after the notice is first published under subsection (1).

(3) For all of the preliminary consultation period, the local government must display a copy of the notice in a conspicuous place in the local government's public office.

6 Public access to statement of proposal

For all of the preliminary consultation period, the local government must have a copy of the statement of proposal available for inspection and purchase.

SCHEDULE 1 (continued)

7 Consideration of all submissions

The local government must consider every properly made submission[190] about the proposal.

8 Minimum requirements for consultation

Sections 5, 6 and 7 state the minimum requirements for consultation with the public about the statement of proposal, but are not intended to prevent additional consultation.

9 Resolution proposing planning scheme

(1) If a local government has followed the process stated in section 1 and sections 3 to 8, the local government must—

(a) propose a planning scheme; or

(b) decide not to proceed with the preparation of the proposed planning scheme.[191]

(2) If section 2 applies to a proposal under this schedule, the local government must propose an amendment of its planning scheme.

(3) If the local government makes a resolution under subsection (1) or (2), the local government must give the Minister a copy of the proposed planning scheme.

190 "Properly made submission" is a term defined in schedule 10 (Dictionary).

191 Under chapter 2, part 2, a decision of a local government not to proceed to make a planning scheme is taken to be a decision not to review the planning scheme under the part.

SCHEDULE 1 (continued)

PART 2—CONSIDERATION OF STATE INTERESTS AND CONSULTATION STAGE

10 Minister may allow process to be shortened for certain amendments publicly consulted

(1) This section applies if—

(a) the Minister receives, under section 9(3), a copy of a proposed amendment of a planning scheme; and

(b) the Minister is satisfied there has already been adequate public consultation about the matter, the subject of the proposed amendment, because the proposed amendment reflects—

(i) the recommendation of a regional planning advisory committee on a matter; or

(ii) a decision previously made by an assessment manager on a development application; or

(iii) a standard or policy of the State; or

(iv) a decision taken by a local government or the Minister about a reviewer's report.

(2) The Minister may advise the local government it need not comply with sections 12 to 18.

(3) If the Minister advises the local government under subsection (2), section 11 does not apply to the proposed amendment.

11 Considering proposed planning scheme for adverse affects on State interests

(1) On receiving a copy of a proposed planning scheme under section 9(3), the Minister must consider whether or not State interests would be adversely affected by the proposed planning scheme.

(2) The Minister must advise the local government, having regard to the Minister's consideration under subsection (1)—

(a) that it may notify the proposed planning scheme; or

SCHEDULE 1 (continued)

(b) that it may notify the proposed planning scheme, but subject to compliance with conditions the Minister may impose about—

(i) the content of the proposed planning scheme; or

(ii) the way the planning scheme is notified.

(3) If the proposal is for the amendment of a planning scheme, the Minister may—

(a) as well as advising the local government under subsection (2), advise the local government that it need not comply with section 18 (other than section 18(7)(b)); or

(b) instead of advising the local government under subsection (2), advise the local government that, having regard to the Minister's consideration under subsection (1), it may not proceed further with the amendment.

(4) A condition imposed under subsection (2)(b)(ii) may only be for the purpose of providing public access to the proposed planning scheme to an extent greater than otherwise provided for in this schedule.

(5) Before notifying the proposed planning scheme, the local government must comply with any condition about the content of the proposed planning scheme imposed by the Minister under subsection (2)(b).

12 Public notice of, and access to, proposed planning scheme

(1) If the Minister advises the local government that it may notify the proposed planning scheme, the local government must publish, at least once in a newspaper circulating generally in the local government's area, a notice stating the following—

(a) the name of the local government;

(b) if the notice is about an amendment of the planning scheme—the purpose and general effect of the proposed amendment;

(c) if the notice is about an amendment of the planning scheme but the proposed amendment is intended to apply only to part of the planning scheme area—a description of the land or area to which the proposed amendment is intended to apply;

SCHEDULE 1 (continued)

(d) a contact telephone number for information about the proposed planning scheme;

(e) that the proposed planning scheme is available for inspection and purchase;

(f) that written submissions about any aspect of the proposed planning scheme may be made to the local government by any person;

(g) the period (the **"consultation period"**) during which the submissions may be made;

(h) the requirements for making a properly made submission under this part.

(2) The consultation period—

(a) for a proposed planning scheme—must extend for at least 60 business days after the first publication of the notice under subsection (1); and

(b) for a proposed amendment of a planning scheme—must extend for at least 30 business days after the first publication of the notice under subsection (1).

(3) For all of the consultation period, the local government must display a copy of the notice in a conspicuous place in the local government's public office.

13 Public access to proposed planning scheme

For all of the consultation period, the local government must have a copy of the proposed planning scheme available for inspection and purchase.

14 Consideration of all submissions

The local government must consider every properly made submission about the proposed planning scheme.

SCHEDULE 1 (continued)

15 Minimum requirements for consultation

Sections 12, 13 and 14 state the minimum requirements for consultation with the public about the proposed planning scheme, but are not intended to prevent additional consultation.

16 Decision on proceeding with proposed planning scheme

(1) After considering every properly made submission, the local government must decide whether to—

(a) proceed with the proposed planning scheme as notified; or

(b) proceed with the proposed planning scheme with modifications; or

(c) not proceed with the proposed planning scheme.

(2) If the local government decides to proceed with the proposed planning scheme with modifications and is satisfied the modifications make the proposed planning scheme significantly different from the proposed planning scheme as notified, it must recommence the process outlined in this schedule from section 12.

17 Reporting to persons who made submissions about proposed planning scheme

(1) This section applies if the local government receives any properly made submissions about the proposed planning scheme and proceeds under section 16(1)(a) or (b).

(2) The local government must prepare a report explaining in general terms how it has dealt with the submissions received and give to the principal submitter of each properly made submission—

(a) a copy of the report; or

(b) a copy of the part of the report relating to the matter about which the submission was made.

SCHEDULE 1 (continued)

18 Reconsidering proposed planning scheme for adverse effects on State interests

(1) If the local government decides to proceed with the proposed planning scheme without modifications, the local government must advise the Minister it is proceeding with the proposed planning scheme without modifications.

(2) If the local government decides to proceed with the proposed planning scheme with modifications, the local government must—

(a) advise the Minister it is proceeding with the proposed planning scheme with modifications; and

(b) tell the Minister what the modifications are; and

(c) give the Minister a copy of the proposed planning scheme with the modifications included; and

(d) give the Minister any other information the Minister requests about the proposed planning scheme including, for example, any submissions the local government has received about the proposed planning scheme.

(3) After receiving advice under subsection (1) or (2) and any information given under subsection (2)(d), the Minister must consider whether or not State interests would be adversely affected by the proposed planning scheme.

(4) The Minister must advise the local government, having regard to the Minister's consideration under subsection (3)—

(a) that it may adopt the proposed planning scheme; or

(b) that it may adopt the proposed planning scheme, but subject to compliance with conditions the Minister may impose about the content of the proposed planning scheme.

(5) If the Minister advises the local government under subsection (4), the Minister must identify the State planning policies the Minister is satisfied are appropriately reflected in the proposed planning scheme.

(6) For a proposed amendment of a planning scheme, the Minister may, instead of advising the local government under subsection (4), advise the local government that, having regard to the Minister's consideration under subsection (3), it may not proceed further with the amendment.

SCHEDULE 1 (continued)

(7) Before adopting the proposed planning scheme, the local government must—

(a) comply with any condition about the content of the proposed planning scheme imposed by the Minister under subsection (4)(b); and

(b) subject to any conditions mentioned in paragraph (a), incorporate in the proposed planning scheme the modifications mentioned in subsection (2); and

(c) state in the proposed planning scheme the State planning policies identified by the Minister under subsection (5).

PART 3—ADOPTION STAGE

19 Resolution about adopting proposed planning scheme

If a local government makes a resolution under section 9(1)(a) or 9(2), the local government must—

(a) if the local government has complied with any of the provisions of part 2 the local government must comply with for making a proposed planning scheme—adopt the proposed planning scheme; or

(b) decide not to proceed with the proposed planning scheme.

20 Public notice of adoption of, and access to, planning schemes

As soon as practicable after the planning scheme has been adopted, the local government must publish, at least once in both a newspaper circulating generally in the local government's area and in the gazette, a notice stating the following—

(a) the name of the local government;

(b) when the planning scheme was adopted;

(c) if the notice is about an amendment of the planning scheme—the purpose and general effect of the amendment;

SCHEDULE 1 (continued)

(d) that a copy of the planning scheme is available for inspection and purchase.

21 Copy of notice and planning scheme to chief executive

On the day the local government publishes the notice (or as soon as practicable after the day), the local government must give the chief executive—

(a) a copy of the notice; and

(b) 5 certified copies of the planning scheme.

SCHEDULE 2

PROCESS FOR MAKING TEMPORARY LOCAL PLANNING INSTRUMENTS

section 2.1.12

PART 1—PROPOSAL STAGE

1 Resolution to prepare temporary local planning instrument

A local government may propose a temporary local planning instrument.

2 Minister's approval required to proceed

(1) The local government must give the Minister a copy of the proposed temporary local planning instrument together with a statement of the reasons why the local government considers it necessary to adopt the proposed instrument.

(2) If the Minister is satisfied the proposed instrument should be made, the Minister—

(a) must advise the local government it may adopt the proposed instrument; and

(b) may impose conditions on the local government that the Minister considers appropriate.

(3) Before adopting the proposed instrument, the local government must—

(a) comply with any condition about the content of the proposed instrument imposed by the Minister under subsection (2)(b); and

(b) agree to comply with any other conditions imposed by the Minister under subsection (2)(b).

(4) If the Minister does not consider the proposed instrument should be made, the Minister must advise the local government it may not adopt the proposed instrument.

SCHEDULE 2 (continued)

PART 2—ADOPTION STAGE

3 Resolution about adopting proposed temporary local planning instrument

(1) If a local government makes a resolution under section 1 and is authorised under section 2 to adopt the proposed temporary local planning instrument, the local government must—

(a) adopt the proposed instrument; or

(b) if the Minister has imposed conditions for the proposed instrument under section 2—adopt the proposed instrument subject to the imposed conditions; or

(c) decide not to adopt the proposed instrument.

(2) If the local government acts under subsection (1)(c), the local government must give the Minister a copy of the resolution and the reasons for not adopting the proposed instrument.

4 Public notice of adoption of, and access to, temporary local planning instruments

As soon as practicable after the temporary local planning instrument has been adopted, the local government must publish, at least once in both a newspaper circulating generally in the local government's area and in the gazette, a notice stating the following—

(a) the name of the local government;

(b) when the instrument was adopted;

(c) the purpose and general effect of the instrument;

(d) if the instrument applies only to part of the planning scheme area—a description of the land or area to which the instrument applies;

(e) the date when the instrument will cease to have effect;

(f) that a copy of the instrument is available for inspection and purchase.

SCHEDULE 2 (continued)

5 Copy of notice and temporary local planning instrument to chief executive

On the day the notice is published in the gazette (or as soon as practicable after the day), the local government must give the chief executive—

(a) a copy of the notice; and

(b) 5 certified copies of the temporary local planning instrument.

SCHEDULE 3

PROCESS FOR MAKING OR AMENDING PLANNING SCHEME POLICIES

section 2.1.19

PART 1—PROPOSAL STAGE

1 Resolution proposing action

(1) A local government may propose—

(a) to make a planning scheme policy (whether or not the proposed policy will replace an existing policy); or

(b) to amend a planning scheme policy.

(2) The local government must prepare an explanatory statement about the action proposed under subsection (1).

PART 2—CONSULTATION STAGE

2 Public notice of proposed action

(1) The local government must publish, at least once in a newspaper circulating generally in the local government's area, a notice stating the following—

(a) the name of the local government;

(b) the name of the proposed planning scheme policy or policy being amended;

(c) the purpose and general effect of the proposed policy or amendment;

(d) a contact telephone number for information about the proposed policy or amendment;

SCHEDULE 3 (continued)

(e) that the proposed policy or amendment, and the explanatory statement, are available for inspection and purchase;

(f) that written submissions about any aspect of the proposed policy or amendment may be given to the local government by any person;

(g) the period (the **"consultation period"**) during which the submissions may be made;

(h) the requirements for making a properly made submission under this part.

(2) The consultation period must be for at least 20 business days after the notice is first published under subsection (1).

(3) For all of the consultation period, the local government must display a copy of the notice in a conspicuous place in the local government's public office.

3 Public access to relevant documents

For all of the consultation period, the local government must have a copy of the proposed planning scheme policy or amendment, and the explanatory statement, available for inspection and purchase.

4 Consideration of all submissions

The local government must consider every properly made submission about the proposed planning scheme policy or amendment.

PART 3—ADOPTION STAGE

5 Resolution about adopting proposed planning scheme policy or amendment

(1) After the local government has considered every properly made submission about the proposed planning scheme policy or amendment, the local government must—

SCHEDULE 3 (continued)

(a) adopt the proposed policy or amendment, as notified; or

(b) adopt the proposed policy or amendment, as modified, having regard to any submissions made about the proposal; or

(c) decide not to adopt the proposed policy or amendment.

(2) However, if the proposed planning scheme policy or amendment was proposed in response to a recommendation in a reviewer's report, subsection (1) does not apply and the local government must adopt the proposed policy or amendment.

6 Reporting to persons who made submissions about proposed action

(1) This section applies if the local government receives any properly made submissions about the proposed planning scheme policy or amendment.

(2) The local government must advise the principal submitter of each properly made submission of the decision and the reasons for the decision.

7 Public notice of adoption of, and access to, planning scheme policy or amendment

(1) As soon as practicable after the local government decides to adopt a planning scheme policy or amendment, the local government must publish, in a newspaper circulating generally in the local government's area, a notice stating the following—

(a) the name of the local government;

(b) the name of the policy adopted or amended;

(c) the day the resolution was made;

(d) the purpose and general effect of the resolution.

(2) If the resolution was to adopt a planning scheme policy, the notice also must state the following—

(a) the name of any existing policy replaced by the policy adopted;

(b) that a copy of the policy adopted is available for inspection and purchase.

SCHEDULE 3 (continued)

(3) If the resolution was to adopt an amendment of a planning scheme policy, the notice also must state that a copy of the amendment is available for inspection and purchase.

8 Copy of notice and policy or amendment to chief executive

On the day the notice is published (or as soon as practicable after the day), the local government must give the chief executive—

(a) a copy of the notice; and

(b) 3 certified copies of the planning scheme policy or amendment.

SCHEDULE 4

PROCESS FOR MAKING OR AMENDING STATE PLANNING POLICIES

section 2.4.3

PART 1—PREPARATION STAGE

1 Minister must notify intention to prepare proposed State planning policy

(1) If the Minister intends to prepare a proposed State planning policy, the Minister must publish a notice at least once in a newspaper circulating generally in the State.

(2) The notice may also be published in a regional newspaper the Minister considers appropriate.

(3) The notice must state the following—

(a) that the Minister intends to prepare a proposed State planning policy;

(b) the subject matter for the proposed policy;

(c) if the proposed policy is intended to apply only to a particular area of the State—the name of the area or other information necessary to adequately describe the area;

(d) that written submissions about the proposed policy may be given to the Minister by any person;

(e) the period (the **"consultation period"**) during which the submissions may be given.

(4) The period mentioned in subsection (3)(e) must be for at least 40 business days after the notice is first published under section (1).

SCHEDULE 4 (continued)

2 Minister may prepare proposed State planning policy or amendment

(1) After the Minister has considered all submissions made under section 1,[192] the Minister may prepare—

(a) a proposed State planning policy; or

(b) a proposed amendment of a State planning policy.

(2) The Minister must prepare an explanatory statement about the action proposed under subsection (1).

PART 2—CONSULTATION STAGE

3 Public notice of proposed action

(1) If the Minister acts under section 2, the Minister must publish a notice at least once in a newspaper circulating generally in the State.

(2) The notice may also be published in a regional newspaper the Minister considers appropriate.

(3) The notice must state the following—

(a) the name of the proposed State planning policy or policy being amended;

(b) the purpose and general effect of the proposed policy or amendment;

(c) if the proposed policy or amendment applies only to a particular area of the State—the name of the area or other information necessary to adequately describe the area;

(d) a contact telephone number for information about the proposed policy or amendment;

192 Section 1 need not be complied with if the proposal is for a State planning policy that is to have effect for less than 1 year or for a minor amendment of a State planning policy (see section 6 (Consultation stage does not apply in certain circumstances)).

SCHEDULE 4 (continued)

(e) that the proposed policy or amendment, and the explanatory statement, are available for inspection and purchase;

(f) that written submissions about any aspect of the proposed policy or amendment may be given to the Minister by any person;

(g) the period (the **"consultation period"**) during which the submissions may be given;

(h) the requirements for a properly made submission under this part.

(4) The consultation period must be for at least 40 business days after the notice is first published under subsection (1).

4 Public access to relevant documents

For all of the consultation period, the Minister must keep a copy of the proposed State planning policy or amendment, and the explanatory statement, available for inspection and purchase.

5 Consideration of all submissions

The Minister must consider every properly made submission about the proposed State planning policy or amendment.

6 Consultation stage does not apply in certain circumstances

Sections 1 and 3 to 5 need not be complied with if—

(a) the proposed State planning policy is to have effect for less than 1 year; or

(b) the amendment is a minor amendment of a State planning policy.

SCHEDULE 4 (continued)

PART 3—ADOPTION STAGE

7 Resolution about adopting proposed State planning policy or amendment

(1) Subsection (2) applies—

(a) if the consultation stage applies to the proposed State planning policy or amendment—after the Minister has considered every properly made submission about the proposed policy or amendment; or

(b) if the consultation stage does not apply to the proposed State planning policy or amendment—after the completion of the preparation stage.

(2) The Minister must—

(a) adopt the proposed policy or amendment, as notified; or

(b) adopt the proposed policy or amendment, as modified, having regard to any submissions made about the proposal; or

(c) decide not to adopt the proposed policy or amendment.

8 Reporting to persons who made submissions about proposed action

(1) This section applies if the consultation stage applied to the proposed State planning policy or amendment and the Minister received any properly made submissions about the proposed State planning policy or amendment.

(2) The Minister must advise each principal submitter of the Minister's decision and the reasons for the decision.

9 Public notice of adoption of, and access to, State planning policy or amendment

(1) If the Minister adopts a State planning policy or an amendment of a State planning policy, the Minister must publish a notice in the gazette and in a newspaper circulating generally in the State.

SCHEDULE 4 (continued)

(2) The notice also may be published in a regional newspaper the Minister considers appropriate.

(3) The notice must state the following—

(a) the name of the State planning policy adopted or policy amended;

(b) if the policy applies only to a particular area of the State—the name of the area or other information necessary to adequately describe the area;

(c) the day the State planning policy or amendment was adopted;

(d) the name of any existing policy replaced by the policy adopted;

(e) the purpose and general effect of the policy or amendment;

(f) that a copy of the policy or amendment is available for inspection and purchase.

10 Copies of State planning policies to local governments

The chief executive must give each local government the chief executive is satisfied is affected by the State planning policy or amendment a copy of the State planning policy or amendment adopted.

SCHEDULE 5

COMMUNITY INFRASTRUCTURE

section 2.6.1 and schedule 10, definition "community infrastructure"

1. The following are community infrastructure—

(a) aeronautical facilities;

(b) cemeteries and crematoriums;

(c) communication network facilities;

(d) community and cultural facilities, including child-care facilities, community centres, meeting halls, galleries and libraries;

(e) correctional facilities;

(f) educational facilities;

(g) emergency services facilities;

(h) hospitals and associated institutions;

(i) jetties, wharves, port facilities and navigational facilities;

(j) oil and gas pipelines;

(k) operating works under the *Electricity Act 1994*;

(l) parks and recreational facilities;

(m) railway lines, stations and associated facilities;

(n) State-controlled roads;

(o) transport infrastructure mentioned in section 5.1.1;[193]

(p) water cycle management infrastructure;

(q) waste management facilities;

193 Section 5.1.1 (Meaning of "development infrastructure item")

SCHEDULE 5 (continued)

(r) storage and works depots and the like including administrative facilities associated with the provision or maintenance of the community infrastructure mentioned in paragraphs (a) to (q);

(s) any other facility not mentioned in paragraphs (a) to (r) and intended primarily to accommodate government functions.

SCHEDULE 6

PROCESS FOR MINISTERIAL DESIGNATIONS

section 2.6.7

PART 1—CONSULTATION STAGE

1 Notice of proposed designation

(1) The Minister[194] must give written notice of the proposed designation to—

(a) the owner of any land to which the proposed designation applies; and

(b) each local government the Minister is satisfied the designation affects; and

(c) unless the local government has been notified under paragraph (b)—the local government nearest to the land proposed to be designated.

(2) The Minister must also publish, at least once in a newspaper circulating generally in the area of each local government given notice under subsection (1), a notice stating the following—

(a) a description or plan of the land proposed to be designated;

(b) the type of the proposed community infrastructure;

(c) the reasons for the proposed designation;

(d) a contact telephone number for information about the proposed designation;

(e) that written submissions about any aspect of the proposed designation may be given to the Minister by any person;

(f) the period (the **"consultation period"**) during which the submissions may be given;

194 In this schedule, Minister includes any Minister of the Crown. See "Minister" in schedule 10 (Dictionary).

SCHEDULE 6 (continued)

(g) the requirements for making a properly made submission under this part.

(3) The consultation period must be for at least 20 business days after the notice is first published under subsection (2).

(4) For all of the consultation period, each local government given notice under subsection (1) must display a copy of the notice in a conspicuous place in the local government's public office.

2 Consideration of all submissions and other matters

The Minister must consider—

(a) every properly made submission given to the Minister; and

(b) each relevant planning scheme; and

(c) any relevant State planning policy.

PART 2—DESIGNATION STAGE

3 Deciding designation proposal

After considering the matters under section 2, the Minister must—

(a) make the proposed designation, as notified; or

(b) make the proposed designation, with modifications, having regard to any submissions made about the proposal; or

(c) decide not to proceed with making the proposed designation.

4 Procedures after designation

(1) If the Minister designates land under section 3(a) or (b), the Minister must give a notice to—

(a) each local government given notice under section 1(1); and

(b) each owner of land to which the designation applies; and

SCHEDULE 6 (continued)

(c) each principal submitter who made a properly made submission about the proposed designation.

(2) The notice must state the following—

(a) that a designation has been made;

(b) the description of the land to which the designation applies;

(c) the type of community infrastructure for which the land has been designated;

(d) the reasons for the designation;

(e) any matters included as part of the designation under section 2.6.4[195] of this Act.

(3) The Minister must also publish, in the gazette, a notice stating the following—

(a) that a designation has been made;

(b) the description of the land to which the designation applies;

(c) the type of community infrastructure for which the land has been designated.

5 Procedures if designation does not proceed

(1) If the Minister decides not to proceed with making the proposed designation, the Minister must give a notice to the following—

(a) each local government given notice under section 1(1);

(b) each owner of land to which the proposed designation applied;

(c) every person who made a properly made submission about the proposed designation.

(2) The notice must state the following—

(a) that the Minister has decided not to proceed with the making of the proposed designation;

(b) the reasons for not proceeding with the making of the proposed designation.

195 Section 2.6.4 (What designations may include) of this Act

SCHEDULE 7

PROCESS FOR MINISTERIAL DESIGNATION IF CONSULTATION HAS PREVIOUSLY BEEN CARRIED OUT

section 2.6.8

1 Making designation

The Minister must make the designation.

2 Procedures after designation by Minister

(1) After making the designation, the Minister must give a notice to—

(a) each owner (other than a public sector entity) of land to which the designation applies; and

(b) each local government the Minister is satisfied the designation affects; and

(c) unless the local government has been notified under paragraph (b)—the local government nearest to the designated land.

(2) The notice must state the following—

(a) that a designation has been made;

(b) the description of the land to which the designation applies;

(c) the type of community infrastructure for which the land has been designated;

(d) the reasons for the designation;

(e) any matters included as part of the designation under section 2.6.4[196] of this Act.

(3) The Minister must also publish, in the gazette, a notice stating the following—

196 Section 2.6.4 (What designations may include) of this Act

SCHEDULE 7 (continued)

(a) that a designation has been made;

(b) the description of the land to which the designation applies;

(c) the type of community infrastructure for which the land has been designated.

SCHEDULE 8

ASSESSABLE, SELF–ASSESSABLE AND EXEMPT DEVELOPMENT

section 3.1.2(2) and schedule 10, definition "assessable development"

PART 1—ASSESSABLE DEVELOPMENT

1. Carrying out building work that is not self-assessable development or exempt development.

2. All development carried out on a registered place under the *Queensland Heritage Act 1992*, other than development—

(a) for which an exemption certificate under that Act has been issued; or

(b) that is emergency work or excluded work under that Act; or

(c) carried out by the State.

3. Carrying out operational work for the reconfiguration of a lot, if the reconfiguration is also assessable development.

3A. Carrying out operational work that is the clearing of native vegetation on freehold land, unless the clearing is—

(a) to the extent necessary to build a single residence and any reasonably associated building or structure; or

(b) necessary for essential management; or

(c) necessary for routine management in an area that is outside—

(i) an area of high nature conservation value; and

(ii) an area vulnerable to land degradation; and

(iii) a remnant endangered regional ecosystem shown on a regional ecosystem map; and

(iv) an area of unlawfully cleared vegetation; or

(d) in an urban area, other than an area mentioned in paragraph (c)(i) or (iii); or

SCHEDULE 8 (continued)

(e) in a non-urban area, other than an area mentioned in paragraph (c), and is—

(i) for the reconfiguration of a lot not involving the opening of a road; or

(ii) the natural and ordinary consequence of other assessable development and the total area of the part of the land on which the development occurs is less than 5 ha; or

(f) before 5 March 2001—the natural and ordinary consequence of other assessable development.

3B. Carrying out operational work that is operations of any kind and all things constructed or installed that allow taking, or interfering with, water (other than using a water truck to pump water) under the *Water Act 2000* if the operations allow, under the *Water Act 2000*—

(a) taking, or interfering with, water from a watercourse, lake or spring (other than under the *Water Act 2000*, section 20(2), (3) or (5)) or from a dam constructed on a watercourse; or

(b) taking, or interfering with, artesian water under the *Water Act 2000*; or

(c) taking, or interfering with—

(i) overland flow water, if the operations are mentioned as assessable development in a water resource plan under the *Water Act 2000*; or

(ii) subartesian water, if the operations are mentioned as assessable development in a water resource plan under the *Water Act 2000* or prescribed under a regulation; or

(d) controlling the flow of water into or out of a watercourse, lake or spring in an area declared under the *Water Act 2000* to be a drainage and embankment area if the operations are declared under the *Water Act 2000* to be assessable development.

3C. Carrying out operational work—

(a) that is the construction of a referable dam under the *Water Act 2000*; or

(b) that will increase the storage capacity of a referable dam by more than 10%.

SCHEDULE 8 (continued)

3D. Carrying out operational work that is—

(a) tidal works; or

(b) any of the following works carried out completely or partly within a coastal management district—

(i) interfering with quarry material on State coastal land above high water mark;

(ii) disposing of dredge spoil or other solid waste material in tidal water, other than under an allocation notice under the *Coastal Protection and Management Act 1995*;

(iii) draining or allowing drainage or flow of water or other matter across State coastal land above high water mark;

(iv) building a structure in a watercourse, other than in tidal water, if the structure interferes with the flow of water in the watercourse;

(v) reclaiming land under tidal water;

(vi) constructing an artificial waterway associated with the reconfiguration of a lot;

(vii) constructing an artificial waterway not associated with the reconfiguration of a lot on land, other than State coastal land, above high water mark if the maximum surface area of water in the waterway is at least 5 000 m^2;

(viii) constructing a bank or bund wall to establish a ponded pasture on land, other than State coastal land, above high water mark;

(ix) removing or interfering with coastal dunes on land, other than State coastal land, that is in an erosion prone area and above high water mark.

4. Reconfiguring a lot under the *Land Title Act 1994*, unless the plan of subdivision necessary for the reconfiguration—

(a) is a building format plan of subdivision that does not subdivide land on or below the surface of the land; or

(b) is for the amalgamation of 2 or more lots; or

SCHEDULE 8 (continued)

(c) is in relation to the acquisition, including by agreement, under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, or an authorised electricity entity, for a purpose set out in the schedule of that Act; or

(d) is in relation to the acquisition by agreement, other than under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, or an authorised electricity entity, for a purpose set out in the schedule of that Act; or

(e) is in relation to land held by the State, or a statutory body representing the State, for a purpose set out in the *Acquisition of Land Act 1967,* schedule, whether or not the land relates to an acquisition; or

(f) is for the reconfiguration of a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*; or

(g) is for the reconfiguration of a South Bank lot within the corporation area under the *South Bank Corporation Act 1989*.

4A. Making a material change of use of premises on strategic port land that is inconsistent with a land use plan approved under the *Transport Infrastructure Act 1994,* section 286.[197]

5. Making a material change of the use of premises for a brothel.

5A. Making a material change of use of premises if the premises are for a major hazard facility or possible major hazard facility, as defined under the *Dangerous Goods Safety Management Act 2000.*

6. Development prescribed under a regulation under the *Environmental Protection Act 1994* for this section for carrying out an environmentally relevant activity under that Act.[198]

197 *Transport Infrastructure Act 1994*, section 286 (Approval of land use plans)

198 For quarrying in a watercourse or lake, see *Environmental Protection Regulation 1998*, section 63A.

SCHEDULE 8 (continued)

PART 2—SELF–ASSESSABLE DEVELOPMENT

7. All building work declared under the Standard Building Regulation to be self-assessable development.

9. All building work carried out by or on behalf of the State, a public sector entity or a local government, other than exempt development.

9A. Carrying out operational work that is operations of any kind and all things constructed or installed for taking water if the operations allow—

(a) taking water from a watercourse, lake or spring under the *Water Act 2000*, section 20(3); or

(b) taking, or interfering with—

(i) overland flow water, if the operations are mentioned as self-assessable development in a water resource plan under the *Water Act 2000*; or

(ii) subartesian water, if the operations are mentioned as self-assessable development in a water resource plan under the *Water Act 2000* or prescribed under a regulation; or

(c) controlling the flow of water into or out of a watercourse, lake or spring in an area declared under the *Water Act 2000* to be a drainage and embankment area if the operations are declared under the *Water Act 2000* to be self-assessable development.

PART 3—EXEMPT DEVELOPMENT THAT MAY NOT BE MADE ASSESSABLE OR SELF–ASSESSABLE DEVELOPMENT

10. A material change of use of premises, or operational work, for an activity authorised under—

(a) the *Mineral Resources Act 1989*, including an activity for the purpose of 1 or more of the following Acts—

- *Alcan Queensland Pty. Limited Agreement Act 1965*

SCHEDULE 8 (continued)

- *Aurukun Associates Agreement Act 1975*
- *Central Queensland Coal Associates Agreement Act 1968*
- *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*
- *Mount Isa Mines Limited Agreement Act 1985*
- *Queensland Cement & Lime Company Limited Agreement Act 1977*
- *Queensland Nickel Agreement Act 1970*
- *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*; or

(b) the *Petroleum Act 1923* (other than an activity relating to the construction and operation of an oil refinery); or

(c) the *Petroleum (Submerged Lands) Act 1982*; or

(d) the *Offshore Minerals Act 1998*.

10A. A material change of use of premises implied by building work, plumbing work, drainage work or operational work if the work was substantially commenced by the State, or an entity acting for the State, before 31 March 2000.

10B. A mining activity to which an environmental authority (mining activities) under the *Environmental Protection Act 1994* applies.

10C. A petroleum activity as defined in the *Environmental Protection Act, 1994*, section 75.

11. All building work declared under the Standard Building Regulation to be exempt development.

12. A material change of use for a class 1 or class 2 building under the Building Code of Australia, part A3 if the use is for providing support services and short term accommodation for persons escaping domestic violence.

13. Operational work associated with—

(a) management practices for the conduct of an agricultural use, other than—

(i) the clearing of native vegetation on freehold land; or

SCHEDULE 8 (continued)

(ii) operations of any kind and all things constructed or installed for taking, or interfering with, water (other than using a water truck to pump water) if the operations are for taking, or interfering with, water under the *Water Act 2000*; and

(b) weed or pest control, unless it involves the clearing of native vegetation that is assessable development under item 3A; and

(ba) the use of fire under the *Fire and Rescue Authority Act 1990*; and

(bb) the conservation or restoration of natural areas; and

(c) the use of premises for forest practices.

14. Reconfiguring a lot other than a lot within the meaning of the *Land Title Act 1994*.

15. Reconfiguring a lot under the *Land Title Act 1994*, if the plan of subdivision necessary for the reconfiguration—

(a) is a building format plan of subdivision that does not subdivide land on or below the surface of the land; or

(b) is for the amalgamation of 2 or more lots; or

(c) is for the incorporation, under the *Body Corporate and Community Management Act 1997*, section 42A,[199] of a lot with common property for a community titles scheme; or

(d) is for the conversion, under the *Body Corporate and Community Management Act 1997*, section 42C,[200] of lessee common property within the meaning of that Act to a lot in a community titles scheme; or

(e) is in relation to the acquisition, including by agreement, under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, or an authorised electricity entity, for a purpose set out in the schedule of that Act; or

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199 *Body Corporate and Community Management Act 1997*, section 42A (Lease) (section 42A was renumbered as section 41 under the Body Corporate and Community Management Act 1997 s 269A.)

200 *Body Corporate and Community Management Act 1997*, section 42C (Effect of ending of authorisation) (section 42C was renumbered as section 43 under the Body Corporate and Community Management Act 1997 s 269A.)

SCHEDULE 8 (continued)

(f) is in relation to the acquisition by agreement, other than under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, or an authorised electricity entity, for a purpose set out in the schedule of that Act; or

(g) is in relation to land held by the State, or a statutory body representing the State, for a purpose set out in the *Acquisition of Land Act 1967,* schedule, whether or not the land relates to an acquisition; or

(h) is for the reconfiguration of a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*.

16. Development a person is directed to carry out under a notice, order or direction made under a State law.

17. Operational work or plumbing or drainage work (including maintenance or repair work) if the work is carried out by or on behalf of a public sector entity authorised under a State law to carry out the work.

18. Operational work that is digging or boring into land by an authorised person under *Coastal Protection and Management Act 1995*, section 70.

19. Operational work that is ancillary works and encroachments that are carried out in accordance with requirements specified by gazette notice by the chief executive under the *Transport Infrastructure Act 1994* or done as required by a contract entered into with the chief executive under the *Transport Infrastructure Act 1994*, section 50.

20. Operational work for the construction of a substituted railway crossing by a railway manager in response to an emergency under the *Transport Infrastructure Act 1994*, section 169.

21. Operational work performed by Queensland Rail under the *Transport Infrastructure Act 1994*, section 260.

21A. Operational work carried out under a rail feasibility investigator's authority granted under the *Transport Infrastructure Act 1994*.

21B. Operational work for a subscriber connection.

21C. Operational work for the construction of a navigational aid or sign for maritime navigation.

21D. Development within the meaning of the *South Bank Corporation Act 1989*, but only until the development completion date under that Act.

SCHEDULE 8 (continued)

PART 4—DEFINITIONS FOR SCHEDULE 8

22. In this schedule—

"ancillary works and encroachments" means the following things—

(a) sugar tramways;

(b) monorails;

(c) bridges, overhead conveyors or other overhead structures;

(d) tunnels;

(e) rest area facilities;

(f) monuments or statues;

(g) advertising signs or other advertising devices;

(h) traffic and service signs;

(i) bores, wells, pumps, windmills, pipes, channels, culverts, viaducts, tanks or dams;

(j) cables;

(k) means of access;

(l) paths or bikeways;

(m) grids or other stock facilities;

(n) buildings, shelters, awnings or mail boxes;

(o) poles, lighting, gates or fences.

"area of high nature conservation value" means an area of high nature conservation value as defined under the *Vegetation Management Act 1999*.

"area of unlawfully cleared vegetation" means an area of unlawfully cleared vegetation as defined under the *Vegetation Management Act 1999*.

"area vulnerable to land degradation" means an area vulnerable to land degradation as defined under the *Vegetation Management Act 1999*.

"artificial waterway" means an artificial waterway as defined under the *Coastal Protection and Management Act 1995*, section 5B.

SCHEDULE 8 (continued)

"brothel" see the *Prostitution Act 1999*, schedule 4.

"coastal dune" means a ridge or hillock of sand or other material—

(a) on the coast; and

(b) built up by the wind.

"coastal management district" means a coastal management district under the *Coastal Protection and Management Act 1995*, other than an area declared as a coastal management district under section 47(2) of that Act.

"erosion prone area" means an erosion prone area as defined under the *Coastal Protection and Management Act 1995*.

"essential management" means clearing native vegetation—

(a) for establishing or maintaining a fire break sufficient to protect a building, property boundary or paddock; or

(b) that is likely to endanger the safety of a person or property on the land because the vegetation is likely to fall; or

(c) for maintaining an existing fence, stock yard, shed, road or other built infrastructure; or

(d) for maintaining a garden or orchard.

"high water mark" means the ordinary high water mark at spring tides.

"non-urban area" means an area other than an urban area.

"ponded pasture" means a permanent or periodic pondage of water in which the dominant plant species are pasture species used for grazing or harvesting.

"quarry material", for schedule 8, part 1, item 3D, means quarry material as defined under the *Coastal Protection and Management Act 1995*.

"regional ecosystem map" means a regional ecosystem map as defined under the *Vegetation Management Act 1999*.

"remnant endangered regional ecosystem" means a remnant endangered regional ecosystem as defined under the *Vegetation Management Act 1999*.

"remnant vegetation" means remnant vegetation as defined under the *Vegetation Management Act 1999*.

SCHEDULE 8 (continued)

"routine management" means clearing native vegetation—

(a) for establishing a necessary fence, road or other built infrastructure that is on less than 5 ha; or

(b) that is not remnant vegetation; or

(c) for supplying fodder for stock, in drought conditions only.

"State coastal land" means State coastal land as defined under the *Coastal Protection and Management Act 1995*, section 12A.

"subscriber connection" means an installation for the sole purpose of connecting a building, structure, caravan or mobile home to a line that forms part of an existing telecommunications network.

"tidal water" means the sea and any part of a harbour or watercourse ordinarily within the ebb and flow of the tide at spring tides.

"tidal works"—

1. "Tidal works" means work in, on or above land under tidal water, or land that will or may be under tidal water because of development on or near the land.

2. "Tidal works" includes the construction of a basin, boat ramp, breakwater, bridge, dam, dock, dockyard, embankment, groyne, jetty, pipeline, pontoon, power line, seawall, slip, small craft facility, training wall or wharf and works in tidal water necessarily associated with the construction.

3. "Tidal works" does not include—

   (a) erecting a sign or other structure, including, for example, a navigational aid or sign for maritime navigation, under a direction made under another Act; or

   (b) building a drain that—

      (i) is less than 1 m deep; and

      (ii) has a cross sectional area less than 2.5 m^2; or

   (c) assessable development under schedule 8, part 1, table 4, item 5(b); or

   (d) removing quarry material that has accumulated within the boundaries of, or in an area adjoining, a previously

SCHEDULE 8 (continued)

approved tidal work to allow the work to be used for the function for which it was approved; or

(e) removing quarry material from land under tidal water, if the removal is for no other purpose than the sale of the material.

"urban area" means an area identified on a map in a planning scheme as an area for urban purposes, including rural residential purposes and future urban purposes.

"watercourse", for schedule 8, part 1, item 3D, means a river, creek or stream in which water flows permanently or intermittently—

(a) in a natural channel, whether artificially improved or not; or

(b) in an artificial channel that has changed the course of the watercourse.

SCHEDULE 10

DICTIONARY

section 1.3.1

"acknowledgment notice" see section 3.2.3(1).

"acknowledgment period" see section 3.2.3(1).

"advice agency", for a development application, means an entity prescribed under a regulation as an advice agency for the application, or if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

"agency's referral day", for a referral agency, means—

(a) if the functions of the agency in relation to the application have not been lawfully devolved or delegated to the assessment manager—the day the agency receives the things mentioned in section 3.3.3(1); or

(b) if the agency is a concurrence agency and the functions of the agency in relation to the application have been lawfully devolved or delegated to the assessment manager—

(i) if the applicant has paid the concurrence agency's application fee to the assessment manager before the day the acknowledgment notice is given—the day the acknowledgment notice is given; or

(ii) if the applicant has not paid the concurrence agency's application fee before the day the acknowledgment notice is given—the day the fee is paid.

"appellant" means a person who appeals to the court or a tribunal under chapter 4.

"applicable code", for development, means a code, including a concurrence agency code, that can reasonably be identified as applying to the development.

"applicant", for a development application mentioned in chapter 4, includes the person in whom the benefit of the application vests.

SCHEDULE 10 (continued)

"applicant", for chapter 3, means the applicant for a development application.

"applicant's appeal period", for an appeal—

(a) by an appellant to the court—see section 4.1.27(2); or

(b) by an appellant to a tribunal—see section 4.2.9(2).

"application", for chapter 3, means a development application.

"approved form" see section 5.8.1.

"assessable development" means—

(a) development specified in schedule 8, part 1; or

(b) for a planning scheme area—development that is not specified in schedule 8, part 1 but is declared under the planning scheme for the area to be assessable development.

"assessing authority" means—

(a) for development under a development permit other than development to which paragraph (c) applies—the assessment manager giving the permit or any concurrence agency for the application, each for the matters within their respective jurisdictions; or

(b) for assessable development not covered by a development permit—an entity that would have been the assessment manager or a concurrence agency for the permit if a development application had been made, each for the matters that would have been within their respective jurisdictions; or

(c) for assessable development for which a private certifier has been engaged to perform the functions of a private certifier under chapter 5, part 3—the private certifier or the local government; or

(d) for self assessable development other than building or plumbing work—the local government or the entity responsible for administering the code for the development; or

(e) for building or plumbing work carried out by or on behalf of a public sector entity—the chief executive (however described) of the entity; or

(f) for any other matter—the local government.

SCHEDULE 10 (continued)

"assessment manager" see section 3.1.7.

"authorised electricity entity" means an entity authorised, or taken to be authorised, under the *Electricity Act 1994*, section 116(1), to acquire land.

"available for inspection and purchase" see section 5.7.1.

"benchmark development sequence", for a planning scheme, means a development sequence—

(a) applying to the areas in the planning scheme where residential development is preferred over a 15 year period (or other period agreed to by the Minister); and

(b) dividing the areas into 3 successive 5 year stages (or other stages agreed to by the Minister); and

(c) prepared having regard to any guidelines approved by the chief executive about the method of preparation and the contents of the sequence.

"building" means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building.

"building referral agency" has the same meaning as in the *Standard Building Regulation 1993*.[201]

"building work" see section 1.3.5.

"capital costs", for items of infrastructure, includes the cost of planning and designing the item.

"certified copy", of a document, means—

(a) for a document held by a local government—a copy of the document certified by the chief executive officer of the local government as a true copy of the document; and

(b) for a document held by an assessment manager—a copy of the document certified by the assessment manager or the chief

201 *Standard Building Regulation 1993*, section 5—

"building referral agency" means a referral agency under IPA for aspects of the building work assessed against this regulation.

SCHEDULE 10 (continued)

executive officer of the assessment manager as a true copy of the document; and

(c) for a document held by a concurrence agency—a copy of the document certified by the chief executive officer of the concurrence agency as a true copy of the document; and

(d) for a document held by the department—a copy of the document certified by the chief executive of the department as a true copy of the document; and

(e) for a document held by the Minister—a copy of the document certified by the chief executive of any department the Minister has responsibility for as a true copy of the document.

"clear", for vegetation—

(a) means remove or cut down, ringbark, push over, poison or destroy the vegetation in any way; but

(b) does not include—

(i) destroying standing vegetation by stock, or lopping a tree; and

(ii) removing or cutting down, ringbarking, pushing over, poisoning or destroying the vegetation in any way as a forest practice.

"code" means a document or part of a document identified as a code—

(a) in a planning instrument; or

(b) for IDAS in this Act or another Act;[202] or

(c) in a preliminary approval.

"code assessment" means the assessment of development by the assessment manager only against the common material and applicable codes (other than codes, or parts of codes, a concurrence agency is required to assess an application against).

"common material", for a development application, means—

202 Under the *Acts Interpretation Act 1954*, section 7, "Act" includes a reference to a statutory instrument made or in force under an Act.

SCHEDULE 10 (continued)

(a) all the material about the application the assessment manager has received in the first 3 stages of IDAS, including any concurrence agency requirements, advice agency recommendations and contents of submissions that have been accepted by the assessment manager; and

(b) if a development approval for the development has not lapsed—the approval.

"community infrastructure" means community infrastructure stated in schedule 5.

"concurrence agency", for a development application, means an entity prescribed under a regulation as a concurrence agency for the application, or if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

"concurrence agency code", for a concurrence agency, means a code, or part of a code, the concurrence agency is required under this Act or another Act to assess a development application against.

"concurrence agency condition", for a development approval, means a condition imposed on the approval by a concurrence agency.

"consolidated planning scheme" means a document that accurately combines a local government's planning scheme, as originally made, with all amendments made to the planning scheme since the planning scheme was originally made.

"consultation period" for—

(a) making or amending a planning scheme—see schedule 1, section 12(2)(g); or

(b) making or amending a planning scheme policy—see schedule 3, section 2(1)(g); or

(c) making or amending a State planning policy—see schedule 4, section 3(3)(g); or

(d) making a ministerial designation of land—see schedule 6, section 1(2)(f); or

(e) a review under chapter 2, part 2, division 2—see section 2.2.12(2).

SCHEDULE 10 (continued)

"convicted" includes being found guilty, and the acceptance of a plea of guilty, by a court.

"core matter" see schedule 1, section 4.

"court" means the Planning and Environment Court continued in existence under section 4.1.1.

"currency period", for a development approval, see section 3.5.21.

"decision making period" see section 3.5.7.

"decision notice" see section 3.5.15.

"deemed refusal" means a refusal that is taken to have happened if a decision is not made—

(a) for a development application—by the end of the decision making period (including any extension of the decision making period); and

(b) for a request to make a change to a development approval or for a change to or cancellation of a condition of a development approval or for a request to extend a currency period—within the time allowed under this Act for the decision to be made; and

(c) for a request made by a person under section 2.6.19 or for a claim for compensation under chapter 5—by the time for making the decision has ended.

"designate" means identify for community infrastructure.

"designated land" means land designated under chapter 2, part 6.

"designation cessation day" see section 2.6.14.

"designator" means the Minister or the local government who designated land under chapter 2, part 6.

"desired standard of service" see section 5.1.2.

"destroy", for vegetation, includes destroy it by burning, flooding or draining.

"development" see section 1.3.2.

"development application" means an application for a development approval.

"development application (superseded planning scheme)" means—

SCHEDULE 10 (continued)

(a) for development that would not have required a development permit under a superseded planning scheme but requires a development permit under the planning scheme in force at the time the application is made, a development application—

(i) in which the applicant advises that the applicant proposes to carry out development under the superseded planning scheme; and

(ii) made only to a local government as assessment manager; and

(iii) made within 2 years after the day the planning scheme or planning scheme policy creating the superseded planning scheme was adopted or the amendment creating the superseded planning scheme was adopted.

(b) for any other development, a development application—

(i) in which the applicant asks the assessment manager to assess the application under a superseded planning scheme; and

(ii) made only to a local government as assessment manager; and

(iii) made within 2 years after the day the planning scheme or planning scheme policy creating the superseded planning scheme was adopted or the amendment creating the superseded planning scheme was adopted.

"development approval" means a decision notice or a negotiated decision notice that—

(a) approves, wholly or partially, development applied for in a development application (whether or not the approval has conditions attached to it); and

(b) is in the form of a preliminary approval, a development permit or an approval combining both a preliminary approval and a development permit in the one approval.[203]

"development infrastructure item" see section 5.1.1.

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203 Under section 3.5.11(3), conditions attached to a development approval are part of the approval.

SCHEDULE 10 (continued)

"development offence" means an offence against section 4.3.1, 4.3.2, 4.3.2A, 4.3.3, 4.3.4 or 4.3.5.

"development permit" see section 3.1.5(3).

"drainage work" see *Plumbing and Drainage Act 2002*, schedule.

"ecological sustainability" see section 1.3.3.

"enforcement notice" see section 4.3.11.

"enforcement order" see section 4.3.22(1)(a).

"entity" includes a department.

"environment" includes—

(a) ecosystems and their constituent parts including people and communities; and

(b) all natural and physical resources; and

(c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony, and sense of community; and

(d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a), (b) and (c) or affected by those matters.

"executive officer", of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

"exempt development" is development other than assessable or self-assessable development.

"forest practice"—

1. "Forest practice" means planting trees or managing, felling and removing standing trees for an ongoing forestry business in—

(a) a plantation; or

(b) native forest, if, in the native forest—

(i) the activities are conducted in a way that is consistent with a code applying to native forest management and

SCHEDULE 10 (continued)

approved by the Minister responsible for administering the *Vegetation Management Act 1999*; or

(ii) the activities are conducted in a way that—

(A) ensures restoration of a similar type, and to the extent, of the removed trees; and

(B) ensures trees are only felled for the purpose of being sawn into timber or processed into another value added product (other than woodchips for an export market); and

(C) does not cause land degradation as defined under the *Vegetation Management Act 1999*.

2. The term includes carrying out limited associated work, including, for example, drainage and other necessary engineering works.

3. The term does not include clearing native vegetation for the initial establishment of a plantation.

"freehold land" includes land in a freeholding lease under the *Land Act 1994*.

"IDAS" see section 3.1.1.

"impact assessment" means the assessment (other than code assessment) of—

(a) the environmental effects of proposed development; and

(b) the ways of dealing with the effects.

"information request" see sections 3.3.6 and 3.3.7.

"information request period" see section 3.3.6.

"infrastructure" includes land, facilities, services and works used for supporting economic activity and meeting environmental needs.

"infrastructure agreement" see section 5.2.1.

"infrastructure charge" see section 5.1.5.

"infrastructure charges plan" see section 5.1.4.

"interim enforcement order" see section 4.3.22(1)(b).

SCHEDULE 10 (continued)

"land" includes—

(a) any estate in, on, over or under land; and

(b) the airspace above the surface of land and any estate in the airspace; and

(c) the subsoil of land and any estate in the subsoil.

"lawful use" see section 1.3.4.

"life cycle cost" see section 5.1.3.

"local community purpose" means public recreation predominantly serving a local area, or other purpose prescribed under a regulation.

"local government area" means a part of the State—

(a) established as a local government area under the *Local Government Act 1993*; or

(b) declared to be a council area under the *Community Services (Aborigines) Act 1984* or the *Community Services (Torres Strait) Act 1984.*

"local planning instrument" means a planning scheme, temporary local planning instrument or planning scheme policy.

"lopping", a tree, means cutting or pruning its branches, but does not include—

(a) removing its trunk; and

(b) cutting or pruning its branches so severely that it is likely to die.

"lot" see section 1.3.5.

"material change of use" see section 1.3.5.

"Minister", in chapter 2, part 6 and in schedules 6 and 7, means any Minister of the Crown.

"minor amendment", of a planning instrument, means an amendment correcting or changing—

(a) an explanatory matter about the instrument; or

(b) the format or presentation of the instrument; or

(c) a grammatical or mapping error in the instrument; or

(d) a factual matter incorrectly stated in the instrument; or

SCHEDULE 10 (continued)

(e) redundant or outdated terms.

"minor change", for a development approval, means a change to the approval that would not, if the application for the approval were remade including the change—

(a) require referral to additional concurrence agencies; or

(b) cause development previously requiring only code assessment to require impact assessment; or

(c) for a development requiring impact assessment—be likely, in the assessment manager's opinion, to cause a person to make a properly made submission objecting to the proposal, if the circumstances allowed.

"native vegetation" means—

(a) a native tree; or

(b) a native plant, other than a grass or mangrove.

"negotiated decision notice" see section 3.5.17(2).

"network", for development infrastructure items, includes part of a network.

"notification period", for a development application, see section 3.4.5.

"operational work" see section 1.3.5.

"owner", of land, means the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for it if it were let to a tenant at a rent.

"party", for an appeal to the court or a tribunal, means the appellant, the respondent, any co-respondent for the appeal and, if the Minister is represented in the appeal, the Minister.

"person" includes a body of persons, whether incorporated or unincorporated.

"plan", for chapter 3, part 7, see section 3.7.1A.

"planning instrument" means a State planning policy, planning scheme, temporary local planning instrument or planning scheme policy.

"planning scheme" see section 2.1.1.

"planning scheme area" see section 2.1.2.

SCHEDULE 10 (continued)

"planning scheme policy" see section 2.1.16.

"plumbing work" see *Plumbing and Drainage Act 2002*, schedule.

"preliminary approval" see section 3.1.5(1).

"preliminary consultation period" see schedule 1, section 5(1)(e).

"premises" means—

(a) a building or other structure; or

(b) land (whether or not a building or other structure is situated on the land).

"principal submitter", for a properly made submission, means—

(a) if a submission is made by 1 person—the person; or

(b) if a submission is made by more than 1 person—the person identified as the principal submitter or if no person is identified as the principal submitter the submitter whose name first appears on the submission.

"private certifier" see section 5.3.3.

"properly made application" see section 3.2.1(6).

"properly made submission" means a submission that—

(a) is in writing and is signed by each person who made the submission; and

(b) is received on or before the last day of—

(i) if the submission is about a development application—the notification period; or

(ii) in any other case—the consultation period or preliminary consultation period; and

(c) states the name and address of each person who made the submission; and

(d) states the grounds of the submission and the facts and circumstances relied on in support of the grounds; and

(e) is made—

(i) if the submission is about a development application—to the assessment manager; or

SCHEDULE 10 (continued)

(ii) if the submission is about a proposed planning scheme, a proposed planning scheme policy or a proposed amendment of a planning scheme or a proposed amendment of a planning scheme policy—to the local government; or

(iii) if the submission is about a proposed planning scheme or a proposed amendment of a planning scheme being carried out by the Minister—to the Minister; or

(iv) if the submission is about a review under chapter 2, part 2, division 2—to the chief executive; or

(v) if the submission is about a proposed State planning policy or a proposed amendment of a State planning policy—to the Minister; or

(vi) if the submission is about a ministerial designation—to the Minister.

"public office", of a local government, means the premises kept as its public office under the *Local Government Act 1993*, section 37.[204]

"public sector entity"—

1. "Public sector entity" means—

(a) a department or part of a department; or

(b) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.

2. "Public sector entity" includes a government owned corporation.

"reconfiguring a lot" see section 1.3.5.

"referral agency" means a concurrence agency or advice agency.

"referral agency's assessment period" see section 3.3.14.

"referral agency's response" see section 3.3.16.

"referral assistance" see section 3.3.10.

"referral coordination" see section 3.3.5.

204 *Local Government Act 1993*, section 37 (Site of public office)

SCHEDULE 10 (continued)

"regional planning advisory committee" means a regional planning advisory committee established under section 2.5.2.

"repealed Act" means the *Local Government (Planning and Environment) Act 1990*.

"replacement private certifier" see section 5.3.12(1).

"requesting authority" see section 3.3.8(1).

"reviewer's report" means a report prepared by a reviewer under section 2.2.17(1).

"road" has the same meaning as in the *Transport Infrastructure Act 1994*.[205]

"self-assessable development" means—

(a) development specified in schedule 8, part 2; or

(b) for a planning scheme area—development that is not specified in schedule 8, part 2 but is declared under the planning scheme for the area to be self-assessable development.

"show cause notice" see section 4.3.9.

"stage" of IDAS, means a stage of the IDAS process mentioned in section 3.1.9.

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205 Under the *Transport Infrastructure Act 1994*—

"road"—

(a) for chapter 7A, part 3, has the meaning given in section 180G; and

(b) for chapter 7B, part 3, has the meaning given in section 180ZR; and

(c) does not include an area or thing that is busway land, busway transport infrastructure, light rail land or light rail transport infrastructure; and

(d) subject to paragraphs (a) to (c), means—

(i) an area of land dedicated to public use as a road; or

(ii) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or

(iii) a bridge, culvert, ferry, ford, tunnel or viaduct; or

(iv) a pedestrian or bicycle path; or

(v) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in subparagraphs (i) to (iv).

SCHEDULE 10 (continued)

"Standard Building Regulation" means the *Standard Building Regulation 1993*.

"Standard Plumbing and Drainage Regulation" see *Plumbing and Drainage Act 2002*, section 145(2).

"State-controlled road" has the same meaning as in the *Transport Infrastructure Act 1994*.[206]

"State interest" means—

(a) an interest that, in the Minister's opinion, affects an economic or environmental interest of the State or a region; or

(b) an interest in ensuring there is an efficient, effective and accountable planning and development assessment system.

"State planning policy" see section 2.4.1.

"submitter", for a development application, means a person who makes a properly made submission about the application.

"submitter's appeal period" see section 4.1.28(2).

"superseded planning scheme", for a planning scheme area, means the planning scheme, or any related planning scheme policies, in force immediately before—

(a) the planning scheme or policies, under which a development application is made, were adopted; or

(b) the amendment, creating the superseded planning scheme, was adopted.

"temporary local planning instrument" see section 2.1.9.

"tribunal" means a building and development tribunal established under section 4.2.1.

"use", in relation to premises, includes any use incidental to and necessarily associated with the use of the premises.

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206 Under the *Transport Infrastructure Act 1994*—

"State-controlled road" means a road or land, or part of a road or land, declared under section 23 to be a State-controlled road, and, for chapter 5, part 5, division 2, subdivision 2, see section 50.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 19 December 2003. Future amendments of the Integrated Planning Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key		Explanation	Key		Explanation
AIA	=	**Acts Interpretation Act 1954**	**(prev)**	=	**previously**
amd	=	**amended**	**proc**	=	**proclamation**
amdt	=	**amendment**	**prov**	=	**provision**
ch	=	**chapter**	**pt**	=	**part**
def	=	**definition**	**pubd**	=	**published**
div	=	**division**	**R[X]**	=	**Reprint No.[X]**
exp	=	**expires/expired**	**RA**	=	**Reprints Act 1992**
gaz	=	**gazette**	**reloc**	=	**relocated**
hdg	=	**heading**	**renum**	=	**renumbered**
ins	=	**inserted**	**rep**	=	**repealed**
lap	=	**lapsed**	**(retro)**	=	**retrospectively**
notfd	=	**notified**	**rv**	=	**revised edition**
o in c	=	**order in council**	**s**	=	**section**
om	=	**omitted**	**sch**	=	**schedule**
orig	=	**original**	**sdiv**	=	**subdivision**
p	=	**page**	**SIA**	=	**Statutory Instruments Act 1992**
para	=	**paragraph**	**SIR**	=	**Statutory Instruments Regulation 2002**
prec	=	**preceding**	**SL**	=	**subordinate legislation**
pres	=	**present**	**sub**	=	**substituted**
prev	=	**previous**	**unnum**	=	**unnumbered**

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to 1998 Act No. 13	30 March 1998	30 March 1998
1A	to 1998 Act No. 13	1 July 1998	3 July 1998
2	to 1998 Act No. 31	12 October 1998	30 October 1998
2A	to 1998 Act No. 43	27 November 1998	4 January 1999
2B	to 1999 Act No. 11	30 March 1999	6 April 1999
2C	to 1999 Act No. 30	16 June 1999	30 June 1999
2D	to 1999 Act No. 90	21 January 2000	17 February 2000
3	to 2000 Act No. 4	31 March 2000	7 April 2000
3A rv	to 2000 Act No. 4	1 July 2000	14 July 2000
3B rv3	to 2000 Act No. 34	15 September 2000	6 October 2000
3C rv	to 2000 Act No. 64	1 December 2000	6 December 2000
3D rv	to 2000 Act No. 64	1 January 2001	12 January 2001
3E rv	to 2000 Act No. 64	30 March 2001	11 May 2001
3F rv	to 2001 Act No. 29	25 May 2001	1 June 2001
4 rv	to 2001 Act No. 46	28 June 2001	3 August 2001

Reprint No.	Amendments included	Effective	Reprint date
4A rv	to 2001 Act No. 93	7 December 2001	11 January 2002
4B rv	to 2001 Act No. 100	19 December 2001	18 January 2002
4C rv	to 2002 Act No. 10	19 April 2002	3 May 2002
4D rv2	to 2002 Act No. 10	7 May 2002	10 May 2002
4E	to 2002 Act No. 44	7 May 2002	17 September 2002 (Column discontinued) Notes
4F rv	to 2002 Act No. 44	1 October 2002	
4G	to 2002 Act No. 77	21 February 2003	
4H	to 2003 Act No. 6	4 March 2003	
4I	to 2003 Act No. 10	28 March 2003	
4J	to 2003 Act No. 10	31 March 2003	provs exp 30 March 2003
4K	to 2003 Act No. 10	1 April 2003	provs exp 31 March 2003
4L	to 2003 Act No. 25	16 May 2003	
4M	to 2003 Act No. 25	27 June 2003	
4N	to 2003 Act No. 28	1 July 2003	
4O	to 2003 Act No. 64	16 October 2003	
4P	to 2003 Act No. 64	20 October 2003	
4Q	to 2003 Act No. 64	1 November 2003	
4R	to 2003 Act No. 64	14 November 2003	
4S	to 2003 Act No. 64	28 November 2003	
4T	to 2003 Act No. 64	1 December 2003	
4U	to 2003 Act No. 64	19 December 2003	

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1, 2

6 List of legislation

Integrated Planning Act 1997 No. 69

date of assent 1 December 1997

ss 1.1.1–1.1.2 commenced on date of assent

ch 2 pt 2 div 2 never proclaimed into force and om 2001 No. 100 s 4 (provisions were to commence 1 January 2002 (see s 1.1.2(2) as amd 1999 No. 59 s 46(2), 2000 No. 34 s 1144 sch 2))

ch 5 pt 6 commenced 31 March 2000 (see s 1.1.2(3) as amd 1999 No. 59 s 46(2))

sch 8 pt 1 item 1, sch 8 pt 2 items 7 and 9 commenced 30 April 1998 (see 1998 SL No. 56)

sch 8 pt 1 items 2, 5, sch 8 pt 2 item 8 and original sch 8 pt 1 item 3(a)–(t) (never proclaimed into force and om 1999 No. 59 s 51)

(proposed automatic commencement 3 December 1999 under AIA s 15DA(2)) (1998 SL No. 57 s 12(2) as ins 1998 SL No. 272 s 3 does not have effect)

(original proposed commencement 1 December 1998 but the commencing proclamation (1998 SL No. 56) was repealed 9 October 1998 (1998 SL No. 271))

sch 8 pt 1 item 3(a)–(t) (as sub 1999 No. 59 s 51) commenced 29 November 1999

sch 8 pt 1 item 6 commenced 1 July 1998 (see 1998 SL No. 56)

remaining provisions commenced 30 March 1998 (see 1998 SL No. 56)

amending legislation—

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3) pt 6

date of assent 23 March 1998

ss 1–2 commenced on date of assent

ss 70–71 commenced 25 March 2000 (automatic commencement under AIA s 15DA(2) (1998 SL No. 57 s 13(2) as ins 1998 SL No. 272 s 3) (sections mentioned were to commence 1 December 1998 but the commencing proclamation (1998 SL No. 55) was repealed 9 October 1998 (1998 SL No. 269))

s 178(4) commenced 1 July 1998 (1998 SL No. 55)

s 178(6)–(8) commenced 30 April 1998 (1998 SL No. 55)

remaining provisions commenced 30 March 1998 (1998 SL No. 55)

Integrated Planning and Other Legislation Amendment Act 1998 No. 31 ss 1, 2(1), (5) pt 2 (this Act is amended, see amending legislation below)

date of assent 3 September 1998

ss 1–2, 53 commenced on date of assent (see s 2(3))

s 49(1), (3) commenced 30 April 1998 (see s 2(1))

ss 3, 5–40, 45–48, 49(2), 50–52, 54–58 commenced 12 October 1998 (1998 SL No. 270)

remaining provisions commenced 4 September 2000 (automatic commencement under AIA s 15DA(2)) (1999 SL No. 193 s 2)

amending legislation—

Local Government and Other Legislation Amendment Act 2000 No. 4 ss 1, 2(5) pt 7 (amends 1998 No. 31 above)

date of assent 16 March 2000

commenced on date of assent

Transport Legislation Amendment Act (No. 2) 1998 No. 43 s 1 pt 6

date of assent 27 November 1998

commenced on date of assent

Integrated Planning and Other Legislation Amendment Act 1999 No. 11 pts 1–2 (this Act is amended, see amending legislation below)

date of assent 30 March 1999

ss 1–2, 4, 8, 11, 14, 15, 16(2)–(3) commenced on date of assent (see s 2(1)–(2))

ss 3, 5, 10 commenced 30 March 1998 (see s 2(4))

ss 7, 16(1) commenced 19 November 1998 (see s 2(3))

remaining provisions commenced 1 December 1999 (1999 SL No. 280)

amending legislation—

Local Government and Other Legislation Amendment Act (No. 2) 1999 No. 59 ss 1, 2(7) pt 9 (amends 1999 No. 11 above)
date of assent 29 November 1999
commenced on date of assent

Local Government and Other Legislation Amendment Act 1999 No. 30 ss 1, 2(4), pt 4
date of assent 16 June 1999
commenced on date of assent (see s 2(4))

Local Government and Other Legislation Amendment Act (No. 2) 1999 No. 59 ss 1, 2(2), (4), (6)–(7) pt 8
date of assent 29 November 1999
s 49 commenced 1 January 2000 (see s 2(2))
s 50 commenced 30 March 2000 (see s 2(4))
s 52 commenced 21 January 2000 (see s 2(6) and 2000 SL No. 3)
remaining provisions commenced on date of assent

Prostitution Act 1999 No. 73 ss 1, 2(2)–(3), 179 sch 3
date of assent 14 December 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (see s 2(2)–(3))

Vegetation Management Act 1999 No. 90 ss 1–2 pt 7 (this Act is amended, see amending legislation below)
date of assent 21 December 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 15 September 2000 (2000 SL No. 242)

amending legislation—

Vegetation Management Amendment Act 2000 No. 35 ss 1–2, 14–17 (amends 1999 No. 90 above)
date of assent 13 September 2000
commenced on date of assent

Natural Resources and other Legislation Amendment Act 2000 No. 2 pt 1 s 32 sch
date of assent 8 March 2000
commenced on date of assent

Local Government and Other Legislation Amendment Act 2000 No. 4 ss 1–2 pt 6 s 94 sch (this Act is amended, see amending legislation below)
date of assent 16 March 2000
ss 1–2 commenced on date of assent
ss 19, 24–25, 46, 72, 77–78, 80, 82 commenced 30 March 1998 (see s 2(1))
ss 64–67, 75, 85(3) commenced 31 March 2000 (see s 2(2))
ss 28, 31(2), 32, 36, 41, 47, 54, 68 commenced 1 July 2000 see s 2(3))
ss 22, 85(2) commenced 1 December 2000 (2000 SL No. 292)
s 62 never proclaimed into force and om 2001 No. 100 s 94 (provision was to commence 17 March 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 12 s 2(1))))
remaining provisions commenced on date of assent (see s 2(5))

amending legislation—

Integrated Planning and Other Legislation Amendment Act 2001 No. 100 ss 1–2(1), pt 5 (amends 2000 No. 4 above)
date of assent 19 December 2001
commenced on date of assent

Water Act 2000 No. 34 ss 1–2, 1144 sch 2 (this Act is amended, see amending legislation below)
date of assent 13 September 2000
ss 1–2, sch 2 amdts 1 and 14 commenced on date of assent (see s 2(2))
sch 2 amdts 6–11 never proclaimed into force and om 2001 No. 75 s 115(3)
sch 2 amdts 18–19 commenced 1 July 2000 (see s 2(1)(a))
remaining provisions commenced on 19 April 2002 (2002 SL No. 69) (provisions were to commence 13 September 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 158 s 2)))

amending legislation—

Water Amendment Act 2001 No. 75 ss 1, 2(3), 115(1)–(12) (amends 2000 No. 34 above)
date of assent 13 November 2001
commenced on date of assent

Integrated Planning and Other Legislation Amendment Act 2001 No. 100 ss 1–2(2), 99 (amends 2000 No. 34 above)
date of assent 19 December 2001
remaining provisions commenced 19 April 2002 (2002 SL No. 71)

Environmental Protection and Other Legislation Amendment Act 2000 No. 64 ss 1, 2(2), pt 3, ss 57(2), 174 sch
date of assent 24 November 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 January 2001 (2000 SL No. 350)

Dangerous Goods Safety Management Act 2001 No. 28 ss 1–2, 189(1) sch 1
date of assent 25 May 2001
ss 1–2 commenced on date of assent
remaining provisions commenced 7 May 2002 (2002 SL No. 86)

Local Government and Other Legislation Amendment Act 2001 No. 29 ss 1–2(1), pt 3
date of assent 25 May 2001
ss 11, 15 commenced 30 March 1998 (see s 2(1))
remaining provisions commenced on date of assent

State Development and Other Legislation Amendment Act 2001 No. 46 ss 1, 2(2)–(4), pt 5
date of assent 28 June 2001
ss 1–2 commenced on date of assent
remaining provisions commenced 28 June 2001 (2001 SL No. 101)

Prostitution Amendment Act 2001 No. 77 ss 1–2, 25
date of assent 15 November 2001
ss 1–2 commenced on date of assent
remaining provisions commenced 7 December 2001 (2001 SL No. 246)

Coastal Protection and Management and Other Legislation Amendment Act 2001 No. 93 pts 1, 3, s 24 sch (this Act is amended, see amending legislation below)
date of assent 10 December 2001
ss 1–2 commenced on date of assent
remaining provisions commenced 20 October 2003 (2003 SL No. 202)
(proposed commencement 11 December 2003 (automatic commencement under AIA s 15DA(2) (2002 SL No. 359 s 2)))

amending legislation—

Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(3)(b), 116, 119 (amends 2001 No. 93 above)
date of assent 16 October 2003
ss 1–2 commenced on date of assent
remaining provisions commenced on date of assent (see s 2(3)(b))

Integrated Planning and Other Legislation Amendment Act 2001 No. 100 pts 1–2, s 3 sch (this Act is amended, see amending legislation below)
date of assent 19 December 2001
ss 1–2, 3 (except the sch), 4, 19, 62 commenced on date of assent (see s 2(1))
ss 5, 11, 17, 20–21, 23–26, 28–30, 36, 42, 47, 54–56, 63, 69, 73–75 and 82 commenced 1 October 2002 (2002 SL No. 258)
remaining provisions never proclaimed into force and rep 2003 No. 64 s 111
Note—AIA s 15DA does not apply to this Act (see s 2(3))

amending legislation—

Plumbing and Drainage Act 2002 No. 77 ss 1–2, pt 13 (amends 2001 No. 100 above and is also amended see below)
date of assent 13 December 2002
ss 1–2 commenced on date of assent
remaining provisions never proclaimed into force and om 2003 No. 64 s 143

amending legislation—

Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(3)(e), 143 (amends 2002 No. 77 above)
date of assent 16 October 2003
ss 1–2 commenced on date of assent
remaining provisions commenced on date of assent (see s 2(3)(e))

Body Corporate and Community Management and Other Legislation Amendment Act 2003 No. 6 s 1, pt 5 (amends 2001 No. 100 above)
date of assent 4 March 2003
commenced on date of assent

Natural Resources and Other Legislation Amendment Act 2003 No. 10 pts 1, 4 (amends 2001 No. 100 above)
date of assent 28 March 2003
commenced on date of assent

Electricity and Other Legislation Amendment Act 2003 No. 28 pts 1, 4 (amends 2001 No. 100 above)
date of assent 23 May 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2003 (2003 SL No. 120)

Queensland Heritage and Other Legislation Amendment Act 2003 No. 32 pts 1, 5 (amends 2001 No. 100 above)
date of assent 23 May 2003
ss 1–2 commenced on date of assent
remaining provisions never proclaimed into force because the Act it would have amended was repealed 2003 No. 64 s 111

Environmental Protection and Another Act Amendment Act 2002 No. 10 pts 1, 3
date of assent 19 April 2002
commenced on date of assent

Integrated Planning Amendment Act 2002 No. 44
date of assent 17 September 2002
ss 1–2, 5 commenced on date of assent
remaining provisions commenced 25 May 2001 (see s 2)

Plumbing and Drainage Act 2002 No. 77 ss 1–2, pt 12 (this Act is amended, see amending legislation below)
date of assent 13 December 2002
ss 1–2 commenced on date of assent
ss 192, 214–216, pt 12 div 4 commenced 21 February 2003 (2003 SL No. 19)
pt 12 div 2 commenced 1 November 2003 (2003 SL No. 264)
remaining provisions commenced 14 November 2003 (see s 272)

amending legislation—

Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(3)(e), 139–142 (amends 2002 No. 77 above)
date of assent 16 October 2003
ss 1–2 commenced on date of assent
remaining provisions commenced on date of assent (see s 2(3)(e))

Local Government Legislation Amendment Act 2003 No. 2 s 1, pt 3
date of assent 4 March 2003
commenced on date of assent

Body Corporate and Community Management and Other Legislation Amendment Act 2003 No. 6 s 1, pt 4
date of assent 4 March 2003
commenced on date of assent

Natural Resources and Other Legislation Amendment Act 2003 No. 10 pts 1, 3
date of assent 28 March 2003
commenced on date of assent

South Bank Corporation and Other Acts Amendment Act 2003 No. 24 ss 1, 2(2), pt 3
date of assent 16 May 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 27 June 2003 (2003 SL No. 124)

Water and Other Legislation Amendment Act 2003 No. 25 pts 1–2
date of assent 16 May 2003
commenced on date of assent

Electricity and Other Legislation Amendment Act 2003 No. 28 pts 1, 3
date of assent 23 May 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2003 (2003 SL No. 120)

Queensland Heritage and Other Legislation Amendment Act 2003 No. 32 pts 1, 4
date of assent 23 May 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 28 November 2003 (2003 SL No. 267)

Housing Act 2003 No. 52 ss 1–2, 153 sch 2
date of assent 15 September 2003
ss 1–2 commenced on date of assent
remaining provisions commence 1 January 2004 (2003 SL No. 332)

Transport Infrastructure Act 1994 No. 8 s 491(3) sch 5 (this Act is amended, see amending legislation below)

amending legislation—

Transport Infrastructure and Another Act Amendment Act 2003 No. 54 ss 1–2, 34, 39 (amends 1994 No. 8 above)
date of assent 18 September 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 1 December 2003 (2003 SL No. 294)

Integrated Planning and Other Legislation Amendment Act 2003 No. 64 pts 1–2, s 3 sch
date of assent 16 October 2003
ss 1–2, 3, 18(2), 30–31, 37, 39–43, 48, 51–52, 61, 73, 75–76, 83–87, 89(1)–(2), 90–92, 95–97, 99–100, 103–106, 108, 110(2) and (4), 111, sch amdts 1–4, 6–10, 14–18 commenced on date of assent (see s 2(3)(a) and (g))
s 69(3) commenced 19 December 2003 (2003 SL No. 371)
s 89(3)–(6) commenced 14 November 2003 (2003 SL No. 271)
s 98 commenced 30 March 1998 (see s 2(1))
s 101 commenced 31 March 2003 (see s 2(2))
remaining provisions not yet proclaimed into force (see s 2(4))

Manufactured Homes (Residential Parks) Act 2003 No. 74 ss 1–2, 155 sch 1
date of assent 22 October 2003
ss 1–2 commenced on date of assent
remaining provisions commence 1 March 2004 (2003 SL No. 336)

Primary Industries and Other Legislation Amendment Act 2003 No. 82 ss 1, 2(2), pt 8
date of assent 6 November 2003
ss 1–2 commenced on date of assent
remaining provisions not yet proclaimed into force (see s 2(2))

Environmental Protection Legislation Amendment Act 2003 No. 95 ss 1, 2(2), pt 3
date of assent 3 December 2003
ss 1–2 commenced on date of assent
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