



# 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 15 March 2008]

**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<sup>1</sup> by—

- (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

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<sup>1</sup> Ecological sustainability is defined in section 1.3.3 (Meaning of *ecological sustainability*).

- (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***

- (1) 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 building assessment provisions under the *Building Act 1975* other than IDAS; 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;

*Integrated Planning Act 1997*

- (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.
- 4 *Building work* does not include undertaking—
  - (a) 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*; or
  - (b) tidal works.

**lot** means—

- (a) a lot under the *Land Title Act 1994*;<sup>2</sup> 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

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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*.



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- (d) a lot or common property to which the *Building Units and Group Titles Act 1980* continues to apply;<sup>3</sup> 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) generally—
  - (i) the start of a new use of the premises; or
  - (ii) the re-establishment on the premises of a use that has been abandoned; or
  - (iii) a material change in the intensity or scale of the use of the premises; or
- (b) for administering IDAS under the *Environmental Protection Act 1994* for environmentally relevant activities (other than for a mining activity, a petroleum activity or a mobile and temporary environmentally relevant activity)—
  - (i) the start of a new environmentally relevant activity on the premises; or
  - (ii) an increase in the threshold of an environmentally relevant activity on the premises; or
  - (iii) the re-establishment on the premises of an environmentally relevant activity that has been abandoned; or
  - (iv) a material change in the intensity or scale of an

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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*.

- environmentally relevant activity on the premises;  
or
- (c) the continuation of an environmentally relevant activity on the premises if—
- (i) an approval for the activity ceases to have effect because of the operation of the *Environmental Protection Act 1994*, section 619(2)(e) or 624(2)(b);<sup>4</sup> or
  - (ii) there is no development approval for the activity and it was, at any time before 4 October 2004, carried out without an environmental authority as required under the *Environmental Protection Act 1994*.<sup>5</sup>

***operational work***—

1 *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 in, on, over or under premises that materially affects premises or their use; or
- (f) clearing vegetation, including vegetation to which VMA applies; or
- (g) undertaking 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*; or
- (h) undertaking—

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4 *Environmental Protection Act 1994*, section 619 (Continuing effect of particular environmental authorities) or 624 (Effect of commencement on particular approvals)

5 See also section 6.6.1 (Deferment of application of s 4.3.1 to particular material changes of use).

- (i) tidal works; or
- (ii) work in a coastal management district; or
- (i) constructing or raising waterway barrier works; or
- (j) performing work in a declared fish habitat area; or
- (k) removing, destroying or damaging a marine plant; or
- (l) undertaking roadworks on a local government road.

2 *Operational work* does not include—

- (a) for items 1(a) to (f) and (j), any element of the work that is—
  - (i) building work other than building work for reconfiguring a lot; or
 

*Example of building work for reconfiguring a lot—*  
building a retaining wall
  - (ii) drainage work; or
  - (iii) plumbing work; or
- (b) clearing vegetation on—
  - (i) a forest reserve under the *Nature Conservation Act 1992*; or
  - (ii) a protected area under the *Nature Conservation Act 1992*, section 28; or
  - (iii) an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or
  - (iv) a forest entitlement area under the *Land Act 1994*.

*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.
- (2) For the definition of *building work* in subsection (1), paragraph (b), work includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure.

*Example—*

a management procedure under the fire safety standard under the *Building Act 1975* relating to a budget accommodation building

### **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**

- (1) 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.
- (2) To remove any doubt, it is declared that subsection (1) does not, and has never, affected or otherwise limited a requirement under another Act to obtain an approval for the existing use.
- (3) In this section—
- approval*** includes an environmental authority under the *Environmental Protection Act 1994*, as in force from time to time from 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.<sup>6</sup>

### **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,<sup>7</sup> neither the planning instrument nor the amendment can stop or further regulate the development, or otherwise affect the approval.

*Note—*

See also section 2.5B.19 (New planning instruments can not affect approved master plan).

### **1.4.5 Implied and uncommenced right to use premises protected**

- (1) Subsection (2) applies if—

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<sup>6</sup> 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).

<sup>7</sup> For when approvals lapse, see section 3.5.21 (When approval lapses if development not started).

- (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—
    - (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.<sup>8</sup>

##### **2.1.2    Area to which planning schemes apply**

- (1) A local government's planning scheme applies to the whole of the local government's area (the *planning scheme area*).
- (2) The local government may also apply its planning scheme for assessing prescribed tidal work in its tidal area to the extent stated in a code for prescribed tidal work.

#### **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<sup>9</sup> of the matters; and

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

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

- (b) identifies the desired environmental<sup>10</sup> outcomes for the planning scheme area; and
- (c) includes measures that facilitate the desired environmental outcomes to be achieved; and
- (d) includes a priority infrastructure plan.<sup>11</sup>

*Note—*

If land in the planning scheme area is a declared master planned area, the planning scheme must also include a structure plan for the master planned area. See section 2.5B.7.

- (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 planning scheme may identify desired environmental outcomes for particular localities within the planning scheme area.

### **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;<sup>12</sup>
  - (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;

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

11 For the contents of a priority infrastructure plan, see schedule 10, definition *priority infrastructure plan*.

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

- (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)—
- 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**

### **2.1.4A Application of div 3**

This division does not apply to amendments of a local government's planning scheme to include a structure plan.

*Note—*

For declared master planned areas, see part 5B and schedule 1A.

### **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<sup>13</sup>
- consideration of State interests and consultation stage<sup>14</sup>
- adoption stage.<sup>15</sup>

### **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
  - (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

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13 See schedule 1, part 1.

14 See schedule 1, part 2.

15 See schedule 1, part 3.

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 and adopt a consolidated planning scheme.
- (2) Schedule 1 does not apply to the preparation or adoption 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 on and from the day the consolidated planning scheme is adopted by the local government.
- (4) As soon as practicable after the local government adopts the consolidated planning scheme, the local government must give the chief executive a certified copy of the consolidated planning scheme.

### **2.1.8A Amending planning scheme to state compliance with State planning policy**

- (1) This section applies if the Minister gives written notice to a local government identifying a State planning policy, or part of a State planning policy, the Minister is satisfied is appropriately reflected in the planning scheme.
- (2) The local government may amend the planning scheme by stating in the planning scheme the State planning policy, or part of a State planning policy, identified under subsection (1).
- (3) Schedule 1 does not apply for making the amendment.
- (4) An amendment under this section, has effect on and from the day the amendment is adopted by the local government.
- (5) As soon as practicable after the local government adopts the amendment, the local government must give the chief executive a certified copy of the amendment.

## **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 up to 1 year, but—
  - (a) does not amend a planning scheme; and
  - (b) is not a change to a planning scheme under section 5.4.1.
- (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, 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<sup>16</sup>
- adoption stage.<sup>17</sup>

### **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; or

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<sup>16</sup> See schedule 2, part 1.

<sup>17</sup> See schedule 2, part 2.

- (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.
- (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.<sup>18</sup>

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<sup>18</sup> The Minister also may make a planning scheme policy if the local government fails to comply with a direction under section 2.3.2.

**2.1.17 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.

**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.
- (3) In this section—  
*document* does not include—
  - (a) a development approval; or
  - (b) a continuing approval under chapter 6; or
  - (c) an approval for an application mentioned in section 6.1.26.

**2.1.19 Process for making or amending planning scheme policies**

- (1) 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<sup>19</sup>

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<sup>19</sup> See schedule 3, part 1.

- consultation stage<sup>20</sup>
- adoption stage.<sup>21</sup>

### **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.

### **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

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<sup>20</sup> See schedule 3, part 2.

<sup>21</sup> See schedule 3, part 3.

- (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—
  - (a) on the day the notice is first published in the newspaper; or
  - (b) if the notice states a later day—on the later day.
- (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—
  - (a) the day the adoption of the new planning scheme is notified in the gazette; or
  - (b) if a later day for the commencement of the planning scheme is stated in the planning scheme—the later day.

## **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) Subject to part 5B, 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 3.2.7;
  - (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;
  - (e) include guidelines or advice about satisfying assessment criteria in the planning scheme.
- (5) Subsections (2) to (4) apply despite subsection (1).

### **2.1.24 Infrastructure intentions in local planning instruments not binding**

- (1) If a local planning instrument indicates the intention of a local government or a supplier of State infrastructure to supply infrastructure it does not create an obligation on the local government or the supplier to supply the infrastructure.
- (2) If a local government or a supplier of State infrastructure states a desired standard of service in a priority infrastructure plan, an entity does not have a right to expect or demand the standard.

### **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.

### **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 its priority infrastructure plan every 4 years**

- (1) Each local government prescribed under a regulation must review its priority infrastructure plan at least once every 4 years.
- (2) The review must be conducted in consultation with the State agencies that participated in the preparation of the plan.
- (3) However, before consulting with the State agencies, the local government must assess the factors affecting the plan since the last review and advise the agencies of any proposed amendments to the plan.

## **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 take an action in relation to a local planning instrument or a proposed local planning instrument.
- (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) Without limiting subsection (1), the direction may require the 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.
- (4) 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<sup>22</sup>
- consultation stage<sup>23</sup>
- adoption stage.<sup>24</sup>

#### **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—
  - (a) the day the adoption of the amendment is notified in the gazette; or

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22 See schedule 4, part 1.

23 See schedule 4, part 2.

24 See schedule 4, part 3.

- (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, other than designated regions; 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—
  - (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 5A                      Regional planning in designated regions**

### **Division 1                      Preliminary**

#### **2.5A.1 Application of pt 5A**

‘This part applies to a designated region.

#### **2.5A.2 What is a *designated region***

- (1) A *designated region* is—
  - (a) the local government areas, or the parts of local government areas, prescribed under a regulation; and
  - (b) Queensland waters adjacent to the local government areas or parts.
- (2) A regulation under subsection (1)(a) must give a name to each designated region it prescribes.

### **Division 2                      Regional coordination committees**

#### **2.5A.3 Establishment of regional coordination committee**

- (1) The regional planning Minister for a designated region must establish a regional coordination committee for the region.
- (2) However, subsection (3) applies if—
  - (a) a regional planning advisory committee is established under section 2.5.2 for a region; and
  - (b) the area covered by the region is the same or substantially the same as a designated region.
- (3) The regional planning advisory committee for the region is taken to be the regional coordination committee established for the designated region.

**2.5A.4 Function of regional coordination committee**

The function of a designated region's regional coordination committee is to advise the State, through the regional planning Minister for the region, about the development and implementation of the region's regional plan.

**2.5A.5 Membership of regional coordination committee**

- (1) A designated region's regional coordination committee has the membership decided by the regional planning Minister for the region by gazette notice.
- (2) A member of a designated region's regional coordination committee must be—
  - (a) a Minister; or
  - (b) a mayor or councillor of a local government of the region; or
  - (c) a person who has the appropriate qualifications, experience or standing to be a member of the committee.
- (3) However, this section does not apply if section 2.5A.3(3) applies to the designated region.

**2.5A.6 Dissolution of regional coordination committee**

The regional planning Minister for a designated region may dissolve its regional coordination committee at any time.

**2.5A.7 Quorum**

A quorum for a meeting of a regional coordination committee is 1 more than half the number of members of the committee.

**2.5A.8 Presiding at meetings**

- (1) The regional planning Minister for a designated region presides at all meetings of its regional coordination committee.

- (2) If the regional planning Minister for the designated region is absent, the member nominated by the Minister must preside.

### **2.5A.9 Conduct of meetings**

- (1) Meetings of a designated region's regional coordination committee must be conducted at the time and place the regional planning Minister for the region decides.
- (2) A regional coordination committee must conduct its business and proceedings at meetings in the way it decides from time to time.

## **Division 3                      Regional plans for designated regions**

### **2.5A.10 What is a *regional plan***

- (1) A *regional plan* for a designated region is an instrument made under section 2.5A.14(2) by the regional planning Minister for the region.
- (2) A regional plan is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law.

### **2.5A.11 Key elements of regional plan**

The regional planning Minister for a designated region must be satisfied its regional plan—

- (a) identifies—
  - (i) the desired regional outcomes for the region; and
  - (ii) the policies and actions for achieving the desired regional outcomes; and
- (b) identifies the desired future spacial structure of the region including—
  - (i) a future regional land use pattern; and
  - (ii) provision for regional infrastructure to service the future regional land use pattern, to inform—

- (A) local governments when preparing priority infrastructure plans; and
- (B) the State, local governments and other entities about infrastructure plans and investments; and
- (iii) key regional environmental, economic and cultural resources to be preserved, maintained or developed; and
- (iv) the way the resources are to be preserved, maintained or developed; and
- (v) for paragraph (b)(iii), regional landscape areas; and
- (c) includes any other relevant regional planning matter for this Act.

## **Division 4                    Preparing and making regional plans**

### **2.5A.12 Regional planning Minister to prepare draft regional plan**

- (1) The regional planning Minister for a designated region must prepare a draft regional plan for the region.
- (2) The regional planning Minister must consult with the designated region's regional coordination committee about preparing the draft.

### **2.5A.13 Notice of and public consultation on draft regional plan**

- (1) When the regional planning Minister for the designated region has prepared the draft regional plan for the region, that Minister must publish a notice—
  - (a) in the gazette; and
  - (b) at least once in a newspaper circulating in the region.
- (2) The notice must state the following—
  - (a) that the draft regional plan is available for inspection and purchase;

- (b) where copies of the draft regional plan are available for inspection and purchase;
  - (c) a contact telephone number for information about the draft regional plan;
  - (d) that written submissions about any aspect of the draft regional plan may be given to the regional planning Minister by any person;
  - (e) the period (the *consultation period*) during which the submissions may be made;
  - (f) the requirements for a properly made submission for this section.
- (3) The consultation period must be for at least 60 business days after the day the notice is gazetted.
  - (4) The regional planning Minister must send a copy of the notice and the draft regional plan to each local government in the designated region.
  - (5) The regional planning Minister may send a copy of the notice and the draft regional plan to any other entity the regional planning Minister considers appropriate.
  - (6) For all of the consultation period, the regional planning Minister must keep a copy of the draft regional plan available for inspection and purchase.

### **2.5A.14 Making regional plan**

- (1) The regional planning Minister for the designated region must—
  - (a) consider every properly made submission about the draft regional plan for the region; and
  - (b) consult with the designated region's regional coordination committee about making the regional plan.
- (2) After the regional planning Minister has acted under subsection (1), that Minister may—
  - (a) make the regional plan as provided for in the draft regional plan as published; or

- (b) make the regional plan and include any amendments of the draft regional plan the regional planning Minister considers appropriate.

### **2.5A.15 Notice of making of regional plan**

- (1) After the regional planning Minister for the designated region has made the regional plan for the region, that Minister must publish a notice about the making of the plan—
  - (a) in the gazette; and
  - (b) at least once in a newspaper circulating in the region.
- (2) The notice must state the following—
  - (a) the day the regional plan was made;
  - (b) where a copy of the plan may be inspected and purchased.
- (3) The regional plan for the designated region has effect on and from—
  - (a) the day the making of the regional plan is gazetted; or
  - (b) if a later day for the commencement of the regional plan is stated in the regional plan—the later day.

## **Division 5                      Amending or replacing regional plans**

### **2.5A.16 Regional planning Minister may amend or replace regional plan**

The regional planning Minister for a designated region may—

- (a) amend the region's regional plan; or
- (b) replace the region's regional plan with a new regional plan.

### **2.5A.17 How regional plan is amended or replaced**

- (1) Division 4 applies for amending a designated region's regional plan—

- (a) as if a reference in the division to the draft regional plan were a reference to the amendment; and
  - (b) as if a reference to 60 business days were a reference to 30 business days; and
  - (c) with any other necessary changes.
- (2) Division 4 also applies for making a new regional plan for a designated region.
- (3) If the regional plan is replaced by a new regional plan, the new regional plan has effect on and from—
- (a) the day the making of the new regional plan is gazetted; or
  - (b) if a later day for the commencement of the new regional plan is stated in the new regional plan—the later day.
- (4) When acting under section 2.5A.14, the regional planning Minister may also decide not to proceed with the amendment or replacement.
- (5) If the regional planning Minister for the designated region makes a decision under subsection (4), that Minister must publish a notice in the gazette stating that the Minister has decided not to proceed with the amendment or replacement.

### **2.5A.18 Particular amendments of regional plan**

- (1) This section applies if—
- (a) the regional plan for a designated region requires only a minor amendment; or
  - (b) the regional planning Minister for a designated region wishes to amend the region's regional plan to include a document to be made under the plan that—
    - (i) has been prepared by a public sector entity; and
    - (ii) the regional planning Minister is satisfied—
      - (A) demonstrates how the regional plan will be implemented; and
      - (B) has been subject to adequate public consultation.

*Editor's note—*

For local growth management strategies under the SEQ regional plan, see chapter 6, part 8, division 1.

- (2) The regional planning Minister for the designated region may make the amendment and division 4 does not apply to the making of the amendment.
- (3) If the regional planning Minister makes the amendment, the regional planning Minister must publish a notice about the making of the amendment—
  - (a) in the gazette; and
  - (b) at least once in a newspaper circulating in the region.
- (4) The notice must state the following—
  - (a) the day the amendment was made;
  - (b) where a copy of the regional plan, as amended, may be inspected and purchased.

## **Division 6                      Effect of regional plans**

### **2.5A.19 State interest**

For this Act, a designated region's regional plan is taken to be a State interest.

### **2.5A.20 Local governments to amend planning schemes to reflect regional plan**

- (1) This section applies to a local government prescribed under section 2.5A.2(1) for a designated region unless the regional planning Minister for the region gives the local government a written direction to the contrary.
- (2) The local government must amend its planning scheme under schedule 1 to reflect the designated region's regional plan as made, amended or replaced.
- (3) The regional planning Minister for the designated region may amend the planning scheme if—



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- (a) the regional planning Minister is satisfied a local government must amend its planning scheme under subsection (2); and
  - (b) the local government has not, within 90 business days after the day notice of the making of the designated region's regional plan was gazetted, complied with schedule 1, section 9(3) for the amendment.
- (4) Schedule 1, sections 12 to 17 and 19 to 21 apply for amending the planning scheme under subsection (3).
- (5) However, for subsection (4), and if the context requires, a reference in schedule 1 to—
- (a) the local government is a reference to the regional planning Minister for the designated region; and
  - (b) a decision of the local government is a reference to a decision of the regional planning Minister for the designated region; and
  - (c) a local government's chief executive officer is a reference to the chief executive of the department; and
  - (d) the local government's public office is a reference to the department's State office.
- (6) Anything done by the regional planning Minister under subsection (3) 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.
- (7) An expense reasonably incurred by the regional planning Minister in taking an action under subsection (3) may be recovered from the local government as a debt owing to the State.
- (8) The regional planning Minister may, in writing, extend the period mentioned in subsection (3)(b).
- (9) Nothing in this section affects or is affected by part 3.

**2.5A.21 Effect of regional plan on other plans, policies or codes**

- (1) This section does not apply in relation to a State planning regulatory provision.

*Note—*

For State planning regulatory provisions, see section 2.5C.5 (Relationship with other planning instruments).

- (2) An entity responsible for preparing or amending a plan, policy or code under an Act that may affect a matter under section 2.5A.11 must—
  - (a) in preparing the plan, policy or code, or the amendment of the plan, policy or code, take account of the region's regional plan; and
  - (b) state in the plan, policy or code how the plan, policy or code, or the amendment of the plan, policy or code, will reflect the region's regional plan for the matters under section 2.5A.11.
- (3) For this Act, to the extent there is an inconsistency between a regional plan and any other plan, policy or code under an Act of a planning nature, including any other planning instrument, the regional plan prevails.

## **Part 5B                      Master planning for particular    areas of State interest**

### **Division 1                      Preliminary**

#### **2.5B.1 Purpose of pt 5B**

The purpose of this part is to provide for the following—

- (a) the identification, by local governments, regional planning Ministers for designated regions and the Minister, of areas (called master planned areas) to be the subject of integrated land use and infrastructure planning;
- (b) for declared master planned areas, local governments to make, in conjunction with the State, integrated land use plans (called structure plans) setting out the broad

- environmental, infrastructure and development intent to guide detailed planning for the areas;
- (c) the processes for making structure plans;
  - (d) plans (called master plans) about the detailed planning of the areas;
  - (e) the processes for making and approving master plans;
  - (f) particular State assessment manager and referral agency functions under IDAS to be replaced with the role of State agencies who coordinate or participate in the making of structure plans and the approval of master plans for the areas.

## **Division 2                    Master planned areas**

### **2.5B.2 Identification of master planned areas**

- (1) A local government may identify an area as a master planned area in its planning scheme or in a document made under a regional plan.
- (2) The regional planning Minister for a designated region may identify an area as a master planned area for the region in—
  - (a) the regional plan for the region or in a document made under the regional plan; or
  - (b) a State planning regulatory provision; or
  - (c) a declaration made under section 2.5B.3 (a *master planned area declaration*).
- (3) The Minister may identify an area as a master planned area in—
  - (a) a State planning regulatory provision; or
  - (b) a declaration made under section 2.5B.3 (also a *master planned area declaration*).
- (4) A master planned area identified in a master planned area declaration is a *declared master planned area*.
- (5) A master planned area must be identified by reference to cadastral boundaries or metes and bounds.

- (6) Despite subsections (1) to (4), a wild river area can not be included in a master planned area.

*Note—*

An SEQ regional plan major development area under chapter 6, part 8, is taken to be identified for this section as a master planned area, but not as a declared master planned area. See section 6.8.8(2).

### **2.5B.3 Master planned area declarations**

- (1) A master planned area declaration is made by a notice published—
- (a) in the gazette; and
  - (b) in at least 1 newspaper circulating in the area of the local government.
- (2) The declaration must identify the master planned area and state—
- (a) the coordinating agency for the structure plan for the area; and
  - (b) the participating agencies for the structure plan for the area; and
  - (c) the jurisdiction or jurisdictions that the coordinating agency and each participating agency has under IDAS and for which they are the coordinating agency or a participating agency for the structure plan for the area; and

*Note—*

The jurisdiction is relevant to which agencies will be referral agencies for development applications relating to the area. See section 2.5B.64.

- (d) the timeframes for steps identified in schedule 1A for the making of the structure plan.
- (3) The declaration may identify other matters the Minister considers appropriate for the making of the structure plan or the master planning of the area.

**2.5B.4 Restriction on particular development applications in master planned area**

- (1) A development application for a preliminary approval to which section 3.1.6 applies may be made for a master planned area only—
  - (a) after the structure plan for the area takes effect; and
  - (b) if the structure plan states that a development application for a preliminary approval to which section 3.1.6 applies can be made.
- (2) A development application for a preliminary approval permitted to be made under subsection (1) can not seek to vary the effect of the structure plan area code included in the structure plan.
- (3) If the preliminary approval is issued it is of no effect to the extent it purports to vary the effect of the structure plan area code.

**2.5B.5 Notation of master planned areas on planning scheme**

- (1) The local government must note on its planning scheme for its planning scheme area each master planned area identified in—
  - (a) a regional plan or a document made under a regional plan; or
  - (b) a State planning regulatory provision; or
  - (c) a master planned area declaration.
- (2) The note is not an amendment of the planning scheme.
- (3) Failure to comply with subsection (1) does not affect the validity of the identification of the master planned area.

**Division 3                      Structure plans for master planned areas declared by the Minister****2.5B.6 Application of div 3**

This division applies only for a declared master planned area.

**2.5B.7 Local government's obligation to have structure plan**

The local government must have a structure plan for the area.

**2.5B.8 Content of structure plan**

- (1) The structure plan must be—
  - (a) a part of the local government's planning scheme; and
  - (b) an integrated land use plan, setting out the broad environmental, land use, infrastructure and development intended to guide detailed planning for the area.
- (2) The structure plan must—
  - (a) include a structure plan area code that—
    - (i) states the development entitlements and development obligations for the area; and
    - (ii) includes a structure plan map that gives a spatial dimension to the matters the subject of the code; and
  - (b) identify master planning requirements for all or part of the area, including for example—
    - (i) any master plans required to be made for the area or the part; and
    - (ii) any requirements with which master plans must comply; and
    - (iii) whether a master plan is required to be assessed by the State, and if so—
      - (A) the coordinating agency and the participating agencies for the master plan application for the master plan; and
      - (B) their jurisdiction for the application; and

*Note—*

The jurisdiction is relevant to which agencies will be referral agencies for development applications relating to the area. See section 2.5B.64.

- (iv) any requirements for public notification of master plans; and

- (v) any period that, under division 5, may be provided for in the structure plan; and

*Note—*

For the periods, see sections 2.5B.24(2) and 2.5B.35(2).

- (c) for development in the area—
  - (i) state development that is—
    - (A) exempt development; and
    - (B) self-assessable development; and
    - (C) assessable development requiring code or impact assessment; and
  - (ii) codes for the development.
- (3) The structure plan may—
  - (a) state desired environmental outcomes for the area; or
  - (b) state assessable development requiring impact assessment that a master plan may state is self-assessable development or assessable development requiring code assessment; or
  - (c) state that development can not be carried out in the area until there is a master plan for the area; or

*Note—*

See also section 4.3.5B(4) (Compliance with master plans).

- (d) state that a development application for a preliminary approval to which section 3.1.6 applies can be made for development in the area; or
- (e) include a regulated State infrastructure charges schedule.

### **2.5B.9 Relationship with schs 8 and 9**

- (1) The structure plan must be consistent with schedules 8 and 9.
- (2) However, the structure plan may state a level of assessment for the matters mentioned in the items mentioned in section 2.5B.63(1)(a) that is different from the level of assessment under schedule 8, part 1 or 2 for the matters.

- (3) To the extent the structure plan is inconsistent with what is required or permitted under subsections (1) and (2) the structure plan is of no effect.

### **2.5B.10 Provisions for making structure plan**

- (1) The structure plan must—
  - (a) be prepared as required by any guidelines prescribed under a regulation; and
  - (b) be made under schedule 1A.

*Editor's note—*

For structure plans under the SEQ regional plan, see chapter 6, part 8, division 1.

- (2) However, if the structure plan is made in substantial compliance with schedule 1A, the plan 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 structure plan; or
  - (b) restricted the opportunity of the public under schedule 1A to make a properly made submission; or
  - (c) restricted the opportunity of the Minister to perform the Minister's functions under schedule 1A, sections 3, 7 and 14.

### **2.5B.11 Provisions for new planning schemes**

- (1) Subsection (2) applies if the local government has complied with schedule 1A for making a structure plan but the planning scheme in which the plan was being sought to be included ceases to have effect.
- (2) The Minister may approve the inclusion of the structure plan in a new planning scheme with changes the Minister considers appropriate without the local government having to comply again with schedule 1A.
- (3) Subsection (4) applies if the local government has a structure plan (the *existing plan*) and it proposes to make a new planning scheme.



- (4) A structure plan (the *remade plan*) may be included in the new planning scheme without having to comply with schedule 1A if the Minister has agreed that the remade plan is substantially consistent with the existing plan.

### **2.5B.12 When structure plan takes effect**

The structure plan has effect on and from—

- (a) the day the adoption of the plan is notified in the gazette, under schedule 1A; or
- (b) if a later day for the commencement of the plan is stated in the plan—the later day.

## **Division 4                      General provisions about master plans**

### **2.5B.13 Application of div 4**

This division applies if the structure plan for a declared master planned area requires a master plan for all or part of the area.

### **2.5B.14 Local government approval required**

A person preparing a proposed master plan under the structure plan must apply for and obtain the local government's approval of the proposed plan, under division 5.

### **2.5B.15 Content of master plan**

- (1) The master plan must—
  - (a) include a master plan area code that—
    - (i) states the development entitlements and development obligations for the master planning unit for the plan; and
    - (ii) includes a master plan map that gives a spatial dimension to the matters the subject of the code; and

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- (b) for development in the master planning unit—
  - (i) state whether the development is—
    - (A) exempt development; or
    - (B) self-assessable development; or
    - (C) assessable development requiring code assessment; or
    - (D) assessable development requiring impact assessment; and
  - (ii) state codes for the development; and
  - (iii) state when the development must be completed.

*Note—*

If the development is not completed within the stated time, see section 2.5B.20 (When master plan ceases to have effect).

- (2) For subsection (1)(b)(i), the master plan may, for development in the master planning unit, state levels of assessment that vary the effect of a level of assessment stated in the structure plan for the master planning unit, in 1 or more of the following ways—
  - (a) if the structure plan provides that a master plan may state that assessable development requiring impact assessment is self-assessable development or assessable development requiring code assessment—vary the level of assessment;
  - (b) for development stated in the structure plan as code assessable development—vary its level of assessment to self-assessable development;
  - (c) increase any level of assessment stated in the structure plan.
- (3) For subsection (1)(b)(ii), the master plan may, for development in the master planning unit, identify a code for development that varies the effect of a code in the local government's planning scheme included in the structure plan for the master planning unit.
- (4) However, the code for development—

- (a) can not vary the effect of the structure plan area code identified in the structure plan; and
  - (b) must be substantially consistent with the code that it varies the effect of.
- (5) The master plan may—
- (a) require later master plans for the master planning unit; and
  - (b) state requirements with which a later master plan must comply.

### **2.5B.16 Relationship with schs 8 and 9**

- (1) The master plan must be consistent with schedules 8 and 9.
- (2) However, the master plan may state a level of assessment for the matters mentioned in the items mentioned in section 2.5B.63(1)(a) that is different from the level of assessment under schedule 8, part 1 or 2 for the matters.
- (3) To the extent the master plan is inconsistent with what is required or permitted under subsections (1) and (2) the master plan is of no effect.

### **2.5B.17 Relationship with local planning instruments**

To the extent the master plan is, by doing either or both of the things provided for under section 2.5B.15(1)(b)(i) or (ii), different to a local planning instrument, the master plan prevails.

### **2.5B.18 Master plan attaches to land in master planning unit**

- (1) The master plan attaches to all land in the master planning unit, and binds the owner, the owner's successors in title and any occupier of the land.

*Note—*

See also section 4.3.5B (Compliance with master plans).

- (2) To remove any doubt, it is declared that subsection (1) applies even if later development, including reconfiguring a lot, is

carried out or approved for the land, or the land is reconfigured.

### **2.5B.19 New planning instruments can not affect approved master plan**

If, after a master plan is approved, a new planning instrument, or an amendment of a planning instrument, commences, neither the planning instrument nor the amendment can change or otherwise affect the master plan.

### **2.5B.20 When master plan ceases to have effect**

A master plan ceases to have effect—

- (a) at the time stated in the plan as the time by which development in the master planning unit must be completed, whether or not the development has been completed; or
- (b) the earlier time when all development in the master planning unit has been carried out in accordance with the master plan.

## **Division 5                      Applying for and obtaining approval of proposed master plan**

### **Subdivision 1                Application stage for proposed master plan**

#### **2.5B.21 Who may apply**

A person may, under this division, apply (a *master plan application*) to the local government for the approval of a proposed master plan for a declared master planned area.

*Note—*

See also section 4.3.5B(4) (Compliance with master plans).

**2.5B.22 Requirements for application**

- (1) The master plan application must—
  - (a) be written; and
  - (b) if the application is made other than by the owner of the land in the master planning unit for the proposed master plan—contain, or be supported by, the owner’s written consent to the making of the application; and
  - (c) state—
    - (i) the proposed master plan; and
    - (ii) the master planning unit; and
    - (iii) the street address, property description and area of the master planning unit; and
    - (iv) the full name and postal address of the owner and the applicant; and
  - (d) be signed by the applicant; and
  - (e) be accompanied by the number of copies of the proposed master plan required by the local government and any coordinating agency to allow compliance with section 2.5B.23; and
  - (f) be accompanied by—
    - (i) any relevant regulatory fee fixed by a resolution of the local government; and
    - (ii) any other fee prescribed under a regulation.
- (2) The application is a properly made master plan application only if—
  - (a) it complies with subsection (1); or
  - (b) the local government receives and, after considering any noncompliance with subsection (1), accepts the application.

## **Subdivision 2 Information and response stage**

### **2.5B.23 Local government gives application to coordinating agency**

- (1) The local government must give any coordinating agency a copy of the master plan application within 10 business days after receiving it.
- (2) The coordinating agency must give a copy of the application to the participating agencies within 5 business days after the day the application is received by the coordinating agency.

### **2.5B.24 Request for information from applicant**

- (1) The participating agencies, the coordinating agency and the local government may ask the applicant, by written request (a *request for information*) to give further information needed to assess the master plan application.
- (2) A participating agency must within 40 business days or any lesser period provided for under the structure plan after the day (the *request date*) the application is received by the participating agency give the coordinating agency a written notice—
  - (a) making a request for information; or
  - (b) stating that the participating agency will not be making a request for information.
- (3) If there are participating agencies, the coordinating agency must—
  - (a) coordinate (the *coordinated request*) any requests for information by the participating agencies and its own request; and
  - (b) give the local government a written request making the coordinated request within 10 business days after the request date.
- (4) If there are no participating agencies, the coordinating agency must, within 40 business days after it receives the application, give the local government a written notice—

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- (a) making a request for information; or
  - (b) stating that the coordinating agency will not be making a request for information.
- (5) The local government must give any request for information received from the coordinating agency, as well as any request for information to be issued by the local government, to the applicant within—
- (a) 5 business days after the day the local government receives a request for information from the coordinating agency; or
  - (b) 15 business days after the request date if the local government does not receive a request for information from the coordinating agency; or
  - (c) if there is no coordinating agency—40 business days or any lesser period provided for under the structure plan after the day the application is received by the local government.
- (6) If a purported request for information by the coordinating agency is made after the period required under this section, the local government must give the applicant the purported request within 5 business days after receiving the request.

**2.5B.25 Applicant responds to any request for information**

- (1) If the applicant receives a request for information from the local government, the applicant must give the local government a written response to each request for information that—
- (a) gives all of the information requested; or
  - (b) gives part of the information requested together with a notice asking the coordinating agency and the local government to proceed with the assessment of the master plan application; or
  - (c) is a written notice—
    - (i) stating that the applicant does not intend to supply any of the information requested; and

- (ii) asking the coordinating agency and the local government to proceed with the assessment of the application.
- (2) The applicant must give the local government the response within—
  - (a) generally—the period that ends 12 months after the day the applicant received the request for information from the local government (the *usual period*); or
  - (b) if, within the usual period, the local government and any coordinating agency agree with the applicant to extend the usual period—that extended period.
- (3) The response must be accompanied by enough copies of it to allow subsections (4) and (5) to be complied with.
- (4) The local government must give the coordinating agency a copy of the response within 5 business days after the day the local government receives it.
- (5) The coordinating agency must give a participating agency a copy of the response within 5 business days after the day the coordinating agency receives it.
- (6) To remove any doubt, it is declared that this section does not prevent the applicant from responding to a purported request for information mentioned in section 2.5B.24(6).

### **2.5B.26 Lapsing of application if applicant does not respond**

If the applicant does not comply with section 2.5B.25(2), the master plan application lapses.

## **Subdivision 3 Consultation stage**

### **2.5B.27 When consultation is required**

- (1) The applicant must give public notice of the master plan application—
  - (a) in the circumstances stated in the structure plan for the master planned area; or



- (b) if the proposed master plan seeks to reduce the level of assessment of assessable development requiring impact assessment stated in the structure plan as being capable of being reduced in a master plan to self-assessable development or assessable development requiring code assessment.
- (2) The public notice must comply with section 2.5B.28 and 2.5B.29.
- (3) If the public notice is required, the applicant must give the local government a copy of the notice.

### **2.5B.28 Content requirements for public notice**

- (1) Any required public notice of the master plan application must be the publication, at least once in a newspaper circulating in the master planned area, of a notice stating the following—
  - (a) that the applicant has applied for approval of a proposed master plan;
  - (b) a description of the master plan and the master planning unit;
  - (c) a contact telephone number of the local government for information about the proposed master plan;
  - (d) that the application is open for inspection and purchase;
  - (e) that written submissions about any aspect of the application may be made to the local government by any person;
  - (f) the period (the *consultation period*) during which a submission may be made;
  - (g) that the making of a submission does not give rise to a right of appeal against a decision about the application;
  - (h) the requirements for a properly made submission.
- (2) The consultation period—
  - (a) must be at least 20 business days after the publication; 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.

### **2.5B.29 When public notice must be given**

- (1) Any required public notice of the master plan application must be published within 20 business days after—
  - (a) if a request for information is made under section 2.5B.24—the response to the request being given to the local government, under section 2.5B.25; or
  - (b) if no request for information is made under section 2.5B.24—the end of the period mentioned in section 2.5B.24(5)(b) or (c).
- (2) However, if—
  - (a) a purported request for information is made after the period required under section 2.5B.24; and
  - (b) the applicant elects to comply with the request before the end of the 20 business days mentioned in subsection (1);

the public notice must be given within 20 business days after the applicant complies with the request.

### **2.5B.30 Notice to comply with public notice requirement**

- (1) This section applies if public notice of the master plan application is required and the applicant does not comply with section 2.5B.29.
- (2) The local government may give the applicant a written notice requiring the public notice under section 2.5B.29 to be published within a stated period after the giving of the notice.
- (3) The stated period must be at least 10 business days after the giving of the notice.

### **2.5B.31 Lapsing of application if notice not complied with**

If the applicant does not comply with a notice under section 2.5B.30, the master plan application lapses.

**2.5B.32 Making submissions**

- (1) During the consultation period, any person may make a submission to the local government about the master plan application.
- (2) The local government must accept a submission if the submission is a properly made submission.
- (3) However, the local government may accept a written submission even if the submission is not a properly made submission.
- (4) If the local government has accepted a submission, the person who made the submission may, by written notice—
  - (a) during the consultation period, amend the submission; or
  - (b) at any time before a decision on the application is made by the local government, withdraw the submission.

**2.5B.33 Distribution of submissions**

- (1) The local government must, if asked by the coordinating agency, give a copy of each properly made submission or other submission accepted under section 2.5B.32(3) or amended under 2.5B.32(4)(a) to the coordinating agency—
  - (a) for a properly made submission—within 5 business days after the end of the consultation period; or
  - (b) for a submission accepted under section 2.5B.32(3) or amended under section 2.5B.32(4)(a)—within 5 business days after the submission is accepted or amended.
- (2) The local government must also advise the coordinating agency of any withdrawn submission within 5 business days after the local government is advised a submission is withdrawn.
- (3) The coordinating agency must give a copy of the submissions received by it under subsection (1), to the participating agencies within 5 business days after the day the coordinating agency receives the submissions from the local government.

- (4) The coordinating agency must advise the participating agencies of any withdrawn submission within 5 business days after the day the coordinating agency receives an advice under subsection (2).

## **Subdivision 4 State government decision stage**

### **2.5B.34 Assessment by participating agency and coordinating agency**

- (1) Any participating agency and any coordinating agency must assess the master plan application—
- (a) for participating agencies, within the limits of their jurisdiction as stated in the structure plan; and
  - (b) against the following—
    - (i) State planning regulatory provisions;
    - (ii) a regional plan not appropriately reflected in the structure plan;
    - (iii) State planning policies or parts of State planning policies not appropriately reflected in the structure plan;
    - (iv) if the master planning unit contains designated land, its designation;
    - (v) the structure plan for the master planned area;
    - (vi) other master plans applicable to the master planning unit for the proposed master plan;
    - (vii) State infrastructure agreements for the master planned area; and
  - (c) having regard to—
    - (i) the planning scheme and any other relevant local planning instrument; and
    - (ii) other master plans applicable to the master planned area.
- (2) In assessing the application, a participating agency or the coordinating agency may give the weight it is satisfied is

appropriate to a document of a type mentioned in subsection (1)(b) or (c) that came into effect after the application was made but before it acts under section 2.5B.35 or 2.5B.39.

### **2.5B.35 Participating agency's response**

- (1) A participating agency must advise the coordinating agency of its recommendation within the required period after—
  - (a) if the participating agency does not make a request for information—the day it received the master plan application; or
  - (b) if the participating agency makes a request for information—the day it receives the response to the request.
- (2) In this section—

*required period* means—

  - (a) generally—60 business days; or
  - (b) if the structure plan states a lesser period for the giving of the recommendation—the lesser period.

### **2.5B.36 Participating agency's response powers**

- (1) A participating agency may, within the limits of its jurisdiction as stated in the structure plan, recommend to the coordinating agency one or more of the following—
  - (a) that it has no conditions to include in an approval of the proposed master plan;
  - (b) conditions that must be included in an approval of the proposed master plan;
  - (c) that any approval must be for part only of the proposed master plan;
  - (d) that the master plan application be refused.
- (2) Subsection (1) is subject to section 2.5B.44.

**2.5B.37 Coordinating agency's assessment**

The coordinating agency must, within 20 business days after receiving the last response from a participating agency (the *coordinating agency assessment period*)—

- (a) consider each participating agency's response; and
- (b) make a preliminary assessment of the application, based on the assessment carried out under section 2.5B.34; and
- (c) if there is a conflict between the preliminary assessment and a participating agency's response, or between the responses of participating agencies, to seek to achieve in consultation with the relevant participating agency or agencies an agreed State government response to the master plan application.

**2.5B.38 Resolution of conflict by Minister**

- (1) If the coordinating agency can not resolve an agreed State government response to the master plan application, the coordinating agency must, within the coordinating agency assessment period, refer the matter to the Minister.
- (2) If a matter is referred to the Minister, the Minister must—
  - (a) establish a committee to prepare a report on the matters and having considered the report, decide the response to be provided by the coordinating agency; or
  - (b) having considered the written views of the parties, decide the response to be provided by the coordinating agency.
- (3) The Minister's decision must not be contrary to any relevant law.

**2.5B.39 Coordinating agency's decision**

- (1) The coordinating agency must advise the local government of the coordinating agency's decision within 5 business days after—

- (a) the end of the coordinating agency assessment period if there is an agreed State government response to the master plan application; or
  - (b) receiving the Minister's decision.
- (2) The coordinating agency's decision must tell the local government one or more of the following—
- (a) that it has no conditions to include in an approval of the proposed master plan;
  - (b) conditions (*coordinating agency conditions*) that must be included in an approval of the proposed master plan;
  - (c) that any approval must be for part only of the proposed master plan;
  - (d) that the master plan application be refused.
- (3) Subsection (2) is subject to section 2.5B.44.
- (4) To remove any doubt, it is declared that the coordinating agency may exercise any power of the participating agency that the participating agency would have exercised if it had been making the decision.

## **Subdivision 5      Local government decision stage**

### **2.5B.40 Decision making period**

- (1) If there is a coordinating agency for the master plan application, the local government must decide the application within the later of—
- (a) 60 business days after the day the applicant gave a response to a request for information under section 2.5B.25; or
  - (b) 40 business days after the day any coordinating agency advises the local government of its decision under section 2.5B.39.
- (2) If there is no coordinating agency for the master plan application, the local government must decide the application within 60 business days after—

- (a) if a request for information has been made for the application within the period (the *request period*) under section 2.5B.24(5)—the day the applicant gave a response to the request; or
- (b) if no request for information has been made for the application within the request period—the end of the request period.

### **2.5B.41 Assessment by local government**

- (1) The local government must assess the master plan application—
  - (a) against the following—
    - (i) the planning scheme and any other relevant local planning instrument;
    - (ii) State planning regulatory provisions;
    - (iii) a regional plan not appropriately reflected in the structure plan;
    - (iv) State planning policies or parts of State planning policies not appropriately reflected in the structure plan;
    - (v) the structure plan for the master planned area;
    - (vi) other master plans applicable to the master planning unit for the proposed master plan;
    - (vii) local infrastructure agreements for the master planned area; and
  - (b) having regard to the following—
    - (i) the application;
    - (ii) any requests for information and responses to them;
    - (iii) submissions accepted by the local government;
    - (iv) any coordinating agency's decision;
    - (v) other master plans applicable to the master planned area.



- (2) In assessing the application, the local government may give the weight it is satisfied is appropriate to a document of a type mentioned in subsection (1) that came into effect after the application was made but before the local government makes its decision on the application.

### **2.5B.42 Local government's decision generally**

- (1) In deciding the master plan application, the local government must—
  - (a) approve all or part of the proposed master plan and include in it, in the exact form given by any coordinating agency, any coordinating agency conditions; or
  - (b) approve all or part of the proposed master plan subject to conditions decided by the local government and include in it, in the exact form given by any coordinating agency, any coordinating agency conditions; or
  - (c) refuse the application.
- (2) An approval under subsection (1), may be given with or without changes to the proposed master plan.
- (3) The local government's decision must be based on the assessment carried out under section 2.5B.41.
- (4) For an approval under subsection (1)(a) or (b), if the coordinating agency's decision has, under section 2.5B.39(2) stated an action that must be taken, the local government must also take the action.

### **2.5B.43 Restrictions on giving approval**

- (1) The local government can not approve the proposed master plan if—
  - (a) it does not comply with, or would be inconsistent with the requirements for a master plan under, section 2.5B.15; or
  - (b) it is contrary to a State planning regulatory provision; or
  - (c) it conflicts with a regional plan not appropriately reflected in the structure plan; or

- (d) it conflicts with a State planning policy or part of a State planning policy not appropriately reflected in the structure plan; or
  - (e) it compromises the achievement of the desired environmental outcomes for—
    - (i) the local government's planning scheme area; or
    - (ii) the master planned area, as stated in the structure plan for the area; or
  - (f) it conflicts with the structure plan area code for the master planned area; or
  - (g) it conflicts with a master plan that already applies to the master planning unit; or
  - (h) any coordinating agency has stated that the proposed master plan must not be approved.
- (2) A decision to approve the proposed master plan (the *relevant plan*) must not be made before a decision has been made to approve another proposed master plan that the structure plan for the master planned area requires to be approved before the relevant plan.

*Note—*

See section 2.5B.8 (Content of structure plan).

- (3) If a master plan application for approval of the other proposed master plan is refused, the master plan application for the relevant plan must be refused.

### **2.5B.44 Conditions**

- (1) A condition included in a master plan must—
- (a) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development provided for in the master plan; or
  - (b) be reasonably required for the development or use of premises as a consequence of the development provided for in the master plan.
- (2) Without limiting subsection (1), a condition included in a master plan may—

- (a) limit how long a lawful use may continue or works may remain in place; or
- (b) state that development in the master planning unit can not start until—
  - (i) other master plans for the master planning unit have taken effect; or
  - (ii) development permits for assessable development in the master planning unit have taken effect; or
  - (iii) other development in the master planning unit has been substantially started or completed; or
- (c) relate to infrastructure if the condition is of a type that could have been imposed had the master plan application been a development application made at the same time as the master plan application; or
- (d) require compliance with an infrastructure agreement relating to the master planned area.

*Note—*

See also section 2.5B.58 (Modified application of provisions about infrastructure for master plan).

*Editor's note—*

For relevant provisions relating to development applications, see section 3.5.32, chapter 5, parts 1 and 2 and section 6.1.31.

- (3) A condition imposed under subsection (2)(d) is taken to comply with subsection (1).

### **2.5B.45 Notice of decision**

- (1) The local government must, within 5 business days after the day the local government decides the master plan application, give written notice about the decision to—
  - (a) the applicant; and
  - (b) any coordinating agency.
- (2) The local government must give the coordinating agency enough copies of the notice to allow the coordinating agency to comply with subsection (4).
- (3) The notice must—

- (a) state the decision and the day it was made; and
  - (b) include a copy of any master plan as approved; and
  - (c) if the application is refused, state whether—
    - (i) the local government was directed to refuse the application; and
    - (ii) the refusal was solely because of the coordinating agency's direction; and
  - (d) state the applicant's rights of appeal against the decision.
- (4) The coordinating agency must give a copy of the notice to each participating agency within 5 business days after the coordinating agency receives the notice from the local government.

### **2.5B.46 Representations about conditions and other matters**

- (1) This section applies if the applicant makes written representations to the local government about a matter stated in the notice given under section 2.5B.45 (the *original notice*), within the applicant's appeal period.
- (2) If the matter relates to coordinating agency conditions—
  - (a) the local government must give any coordinating agency a copy of the representations; and
  - (b) the coordinating agency must advise the local government whether or not it agrees with the representations.
- (3) If the relevant entity agrees with any of the representations, the local government must give a new notice under section 2.5B.45 (a *negotiated notice*) to—
  - (a) the applicant; and
  - (b) the coordinating agency.
- (4) Only 1 negotiated notice may be given.
- (5) The negotiated notice—
  - (a) must be given within 5 business days after the day the relevant entity agrees with the representations; and

- (b) must be in the same form as the original notice; and
  - (c) must state the nature of the changes; and
  - (d) replaces the original notice.
- (6) If the relevant entity does not agree with any of the representations, the local government must, within 5 business days after the day it decides not to agree with any of the representations, give a written notice to the applicant stating the decision on the representations.
- (7) Before the relevant entity agrees to a change under this section, it must reconsider the matters considered when the original decision was made by the relevant entity, to the extent the matters are relevant.
- (8) If the master plan approved by the negotiated notice is different from the master plan approved under section 2.5B.45 in a way that affects the amount of an infrastructure charge, regulated infrastructure charge or regulated State infrastructure charge—
- (a) the local government may give the applicant an infrastructure charges notice or a regulated infrastructure charges notice that replaces an existing infrastructure charges notice or regulated infrastructure charges notice; or
  - (b) the coordinating agency may give the applicant a new regulated State infrastructure charges notice that replaces an existing regulated State infrastructure charges notice.
- (9) In this section—
- relevant entity***, for the representations, means—
- (a) to the extent the representations relate to coordinating agency conditions—the coordinating agency; or
  - (b) otherwise—the local government.

### **2.5B.47 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 local government (the *suspension notice*), suspend the applicant's appeal period.

- (2) The applicant may act under subsection (1) only once.
- (3) If the representations are not made within 20 business days after the giving of the suspension notice, the balance of the applicant's appeal period restarts.
- (4) If the representations are made within 20 business days after the giving of the suspension notice—
  - (a) if the applicant gives the local government a notice withdrawing the suspension notice—the balance of the applicant's appeal period restarts the day after the local government receives the notice; or
  - (b) if the local government or the coordinating agency gives the applicant a notice under section 2.5B.46(8)—the balance of the applicant's appeal period restarts the day after the applicant receives the notice; or
  - (c) if the local government gives the applicant a negotiated notice for the master plan application—the applicant's appeal period starts again the day after the applicant receives the notice.

### **2.5B.48 When approval takes effect**

If the proposed master plan is approved, or approved subject to conditions, the plan takes effect—

- (a) if, after receiving notice of the decision under section 2.5B.45, the applicant gives the local government written notice that it will not be appealing the decision—from when the written notice is given; or
- (b) if at the end of the applicant's appeal period, the applicant has not appealed against the decision and no notice has been given under paragraph (a)—at the end of the applicant's appeal period; or
- (c) if an appeal is made to the court, subject to the decision of the court under section 4.1.54, when the appeal is finally decided.

## **Subdivision 6 Ministerial directions about application**

### **2.5B.49 Ministerial directions to local government**

- (1) This section applies if the Minister considers the local government has not—
  - (a) taken an action within the period required of it under this division; or
  - (b) made a decision on representations made to it under section 2.5B.46.
- (2) The minister may, by written notice, direct the local government to, within a stated reasonable period, take the action or make a decision on the representations.
- (3) The notice must state the reasons for deciding to give the direction.
- (4) The Minister must give the applicant and any coordinating agency a copy of the notice.
- (5) The local government must comply with the direction.

### **2.5B.50 Ministerial directions to applicant**

- (1) This section applies if the Minister considers the applicant has not taken an action required of it under this division.
- (2) The Minister may, by written notice, direct the applicant to take the action within a stated reasonable period.
- (3) The notice must state the reasons for deciding to give the direction.
- (4) The Minister must give the local government and any coordinating agency a copy of the notice.
- (5) The applicant must comply with the direction.

## **Subdivision 7      Miscellaneous provisions**

### **2.5B.51 Agreements about master plan**

The applicant may enter into an agreement with an entity, including, for example, the local government or coordinating agency or participating agency, to establish the obligations, or secure the performance, of the proposed master plan or the master plan when it takes effect.

### **2.5B.52 Native Title Act (Cwlth)**

- (1) Subsections (2) and (3) apply if a local government takes action under the *Native Title Act 1993* (Cwlth), section 24HA or 24KA relating to the master plan application.
- (2) If the local government takes the action before deciding the application, the deciding of the application must not start until the action is completed.
- (3) If the local government takes the action after the local government decision stage under subdivision 5 has started, that stage stops the day after the action is taken and starts again the day after the action is completed.

### **2.5B.53 Substantial compliance**

If the master plan is approved in substantial compliance with this division and has taken effect it 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 master plan; or
- (b) restricted the opportunity of the public to make a properly made submission about the relevant master plan application; or
- (c) restricted the opportunity of a coordinating agency, a participating agency or the local government to perform their functions under this division.



**2.5B.54 Changing application**

- (1) Before the master plan application is decided by the local government, the applicant may change the application by giving the local government written notice of the change.
- (2) The local government must give any coordinating agency a copy of the notice as soon as practicable after receiving it.
- (3) The steps under this division must be repeated for the application as changed.
- (4) However, subsection (3) does not apply if—
  - (a) the change is—
    - (i) to correct or change a matter mentioned in subsection (5); or
    - (ii) in response to a request for information; and
  - (b) the local government is satisfied the change would not adversely affect the ability of a person to assess the changed application.
- (5) For subsection (4)(a)(i), the matters are any of the following—
  - (a) an explanatory matter about the proposed master plan;
  - (b) its format or presentation;
  - (c) a grammatical or mapping error in the plan;
  - (d) a factual error in the plan;
  - (e) a redundant or outdated term in the plan;
  - (f) a mistake about the applicant's name or address or the owner of land in the master planning unit;
  - (g) a mistake about the street address, property description or area of the master planning unit.

**2.5B.55 Withdrawing application**

- (1) At any time before the master plan application is decided by the local government, the applicant may withdraw the application by giving written notice of the withdrawal to the local government.

- (2) The local government must give any coordinating agency a copy of the notice as soon as practicable after receiving it.

### **2.5B.56 Additional third party advice or comment**

- (1) The local government may, at any time before it decides the master plan application, ask any person for advice or comment about the application.
- (2) However asking for and receiving advice or comment does not extend any period under this division.
- (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) does not constitute a public notice of the application by the applicant.

### **2.5B.57 Public scrutiny of application and related material**

- (1) The local government must keep, for the master plan application, the following documents available for inspection and purchase—
  - (a) the application, including any documents lodged by the applicant in support of the application;
  - (b) any request for information, whether or not the request complied with section 2.5B.24;
  - (c) any information given to it in response to a request mentioned in paragraph (b);
  - (d) any properly made submission for the application;
  - (e) any third party advice or comment given under section 2.5B.56;
  - (f) any coordinating agency decision under section 2.5B.39.
- (2) The documents mentioned in subsection (1) must be kept available for inspection and purchase from when the local government receives them until—
  - (a) the application is withdrawn or lapses; or

- (b) if paragraph (a) does not apply—the end of the last period during which an appeal may be made against a decision on the application.
- (3) Subsection (1) does not apply to documents to the extent the local government is satisfied the documents contain sensitive security information.
- (4) Also, the local government may remove the name, address and signature of each person who made a submission before making the submission available for inspection and purchase.

## **Division 6                      Miscellaneous provisions about master plans**

### **2.5B.58 Modified application of provisions about infrastructure for master plan**

- (1) Chapter 5, parts 1 and 3 apply for a master plan and the relevant master plan application for it—
  - (a) as if a reference in the parts to a development application were a reference to the master plan application; and
  - (b) as if a reference in the parts to an applicant were a reference to a person who made the master plan application; and
  - (c) as if a reference in the parts to a development approval were a reference to an approval of a master plan; and
  - (d) as if a reference in the parts to a condition were a reference to a condition included in a master plan; and
  - (e) as if a reference in the parts to a State infrastructure provider were a reference to a coordinating agency; and
  - (f) as if a reference in the parts to an assessment manager were a reference to the local government; and
  - (g) as if a reference in the parts to a concurrence agency were a reference to a coordinating agency; and
  - (h) with other necessary changes.

- (2) However, the requirement under section 5.1.25(1) to give an acknowledgment notice under section 3.2.4 does not apply.
- (3) To remove any doubt, it is declared that subsection (1) does not affect the operation of chapter 5, parts 1 and 3, for a development application.

### **2.5B.59 Application to amend master plan**

- (1) A person may apply to amend a master plan.
- (2) The application must be made and decided under division 5 in the same way as a master plan application as if the proposed amendment were a proposed master plan.
- (3) However, the written consent of an owner of land in the master planning unit is not required if, in the local government's opinion, the proposed amendment does not materially affect the land.
- (4) Subject to subsection (3), the local government may accept the application even if it does not comply with the requirements applying for an application under division 5.

### **2.5B.60 Cancellation of master plan by local government**

- (1) The local government may cancel a master plan only if—
  - (a) all owners of land in the master planning unit have given written consent to the cancellation; and
  - (b) development under the plan has not started.
- (2) In this section—

*cancel* does not include amend or replace.

## **Division 7**

## **Development applications in declared master planned areas**

### **2.5B.61 Application of div 7**

This division applies for a development application, or proposed development application, for land in a declared master planned area.

**2.5B.62 Relationship with IDAS**

- (1) Requirements and restrictions under this division apply for the development application as well as any relevant requirements under IDAS.
- (2) If this division imposes a restriction on, or a requirement for, the granting of the development application, it can not be granted if the restriction applies or if the requirement has not been complied with.
- (3) If a provision of this division applying to the development application conflicts with a provision of IDAS, the provision of this division prevails to the extent of the inconsistency.
- (4) If a provision of this division prevents the making of the proposed development application, it can not be made.

**2.5B.63 Modified application of sch 8 if application relates to particular development**

- (1) This section applies for the development application if—
  - (a) the development is of a type stated in schedule 8—
    - (i) part 1, table 2, item 9 or 10; or
    - (ii) part 1, table 4, item 1A, 1B, 1C, 1D, 1E, 1F, 1G, 3, 5, 6, 8 or 9; or
    - (iii) part 1, table 5, item 1; or
    - (iv) part 2, table 4, item 1, 2 or 4; and
  - (b) the agency who would, other than for this section, have been a referral agency or the assessment manager for the development application was a coordinating agency or a participating agency stated in—
    - (i) the master plan declaration; or
    - (ii) the structure plan for the master planned area.
- (2) Schedule 8 applies to the development only if a regulation provides that the schedule applies to the development.

*Editor's note—*

- (a) schedule 8, part 1 (Assessable development), table 2 (Material change of use of premises)—

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- item 9 (For public passenger transport)
- item 10 (For railways)
- (b) schedule 8, part 1, table 4 (Operating works)—
  - item 1A (For clearing native vegetation on freehold land and indigenous land)
  - item 1B (For clearing native vegetation on leasehold land used for agriculture or grazing)
  - item 1C (For clearing native vegetation on land that is subject to a lease under the *Land Act 1994*, other than a lease used for agriculture or grazing)
  - item 1D (For clearing native vegetation on a road under the *Land Act 1994*)
  - item 1E (For clearing native vegetation on trust land under the *Land Act 1994*)
  - item 1F (For clearing native vegetation on unallocated State land under the *Land Act 1994*)
  - item 1G (For clearing native vegetation on land that is subject to a licence or permit under the *Land Act 1994*)
  - item 3 (For taking, or interfering with, water)
  - item 5 (For tidal work or work within a coastal management district)
  - item 6 (For constructing or raising waterway barrier works)
  - item 8 (For removal, destruction or damage of marine plants)
  - item 9 (For railways)
- (c) schedule 8, part 1, table 5 (Various aspects of development), item 1 (Development for quarrying in a watercourse or lake)
- (d) schedule 8, part 2 (Self-assessable development), table 4 (Operational work)—
  - item 1 (For taking or interfering with, water)
  - item 2 (For waterway barrier works)
  - item 4 (For the removal, destruction or damage of marine plants)

**2.5B.64 Exclusion of particular agencies as a referral agency**

- (1) An agency is not a referral agency for the development application to the extent that it has exercised a coordinating agency or participating agency's jurisdiction for the structure plan or a master plan for the master planned area.

*Note—*

The jurisdiction arises from the relevant master planned area declaration and the structure plan. See sections 2.5B.3 and 2.5B.8.

- (2) However, the agency is a referral agency for the application to the extent the development is assessable development under schedule 8 as it applies under section 2.5B.63.

### **2.5B.65 Exclusion of particular provisions about making application**

- (1) This section applies if there is a structure plan in force for the master planned area.
- (2) The following do not apply to the making of the development application or proposed development application—
  - (a) the requirements of any regulation under section 3.2.1(5);
  - (b) a provision of any other Act that imposes a requirement for, or a restriction on, the making of the application if the requirement or restriction relates to a State resource prescribed under section 3.2.1(5);

*Editor's note—*

For the prescribed State resources and the other Acts, see the *Integrated Planning Regulation 1998*, schedule 10.

- (c) a provision of any other Act that imposes a requirement for, or a restriction on, the making of the application.

*Examples of provisions for paragraph (c)—*

the *Water Act 2000*, section 967 and the *Vegetation Management Act 1999*, section 22A

- (3) This section applies despite any other Act.

### **2.5B.66 Additional provisions for when application is properly made**

- (1) This section applies if the structure plan for the master planned area requires a master plan for the development.

*Note—*

See also section 2.5B.8(2)(b).

- (2) For section 3.2.1(7), the development application is properly made only if the master plan has been approved.

*Note—*

See also section 2.5B.8(3)(c).

- (3) The development application is a properly made application under section 3.2.1(9) only if a master plan application for the master plan was made with or before the making of the development application.

### **2.5B.67 Provision about approval of master plan**

- (1) If the structure plan for the master planned area requires a master plan for the development and a proposed master plan for the development has not been approved, until the approval has been given—
  - (a) the assessment manager's decision can not be made; and
  - (b) the decision making period for the application is suspended.
- (2) If a master plan application for the master plan is refused, the development application must be refused.

### **2.5B.68 Decision must not be contrary to master plan**

The assessment manager's decision on the development application must not be contrary to a master plan for the master planned area.

### **2.5B.69 Assessable development requiring code assessment**

- (1) This section applies to any part of the development application requiring code assessment against a local planning instrument if the local government is the assessment manager.
- (2) Section 3.5.13(3) and (4) do not apply to the deciding of the application.
- (3) The local government must refuse the application if the local government is satisfied approving it would—



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- (a) compromise the achievement of the desired environmental outcomes for the local government's planning scheme area; or
  - (b) conflict with the purpose of the structure plan area code for the master planned area or the purpose of the master plan area code for the master planning unit; or
  - (c) conflict with a provision of an applicable code, other than the purpose of a code mentioned in paragraph (b).
- (4) Subsection (3)(a) or (b) do not apply if—
- (a) the compromise or conflict is necessary to further the outcomes of—
    - (i) if the local government's planning scheme is in the relevant area for a State planning regulatory provision—the provision; or
    - (ii) if the planning scheme is in a designated region—the region's regional plan; or
    - (iii) any State planning policy or part of a State planning policy; and
  - (b) the provision, plan, policy or part, is not identified in the structure plan as being appropriately reflected in the planning scheme.
- (5) Subsection (3)(c) does not apply if there are sufficient grounds to justify the decision despite the conflict, having regard to—
- (a) the purpose of the code; and
  - (b) if they are not identified in the planning scheme as being appropriately reflected in the local government's planning scheme—
    - (i) if the planning scheme is in the relevant area for a State planning regulatory provision—the provision; and
    - (ii) if the planning scheme is in a designated region—the region's regional plan; and
    - (iii) State planning policies or parts of State planning policies.

**2.5B.70 Assessable development requiring impact assessment**

- (1) This section applies to any part of the development application requiring impact assessment against a local planning instrument if the local government is the assessment manager.
- (2) The local government must, when carrying out the impact assessment under section 3.5.5, have regard to all master plans for the master planned area.
- (3) Section 3.5.14 does not apply to the deciding of the application.
- (4) The local government must refuse the application if the local government is satisfied approving it would—
  - (a) compromise the achievement of the desired environmental outcomes for the local government's planning scheme area; or
  - (b) conflict with the purpose of the structure plan area code for the master planned area or the master plan area code for the master planning unit; or
  - (c) conflict with a provision of the planning scheme, other than a provision mentioned in paragraphs (a) and (b).
- (5) Subsection (4)(a) and (b) do not apply if—
  - (a) the compromise or conflict is necessary to further the outcomes of—
    - (i) if the planning scheme is in the relevant area for a State planning regulatory provision—the provision; or
    - (ii) if the planning scheme is in a designated region—the region's regional plan; or
    - (iii) any State planning policy or part of a State planning policy; and
  - (b) the provision, plan, policies or part, is not identified in the structure plan as being appropriately reflected in the planning scheme.
- (6) Subsection (4)(c) does not apply if there are sufficient grounds to justify the decision despite the conflict.

**2.5B.71 Decision notice**

- (1) The decision notice for the development application must state—
  - (a) whether the assessment manager is satisfied its decision is one to which section 2.5B.69(3) or section 2.5B.70(4) applies; and
  - (b) if the assessment manager is satisfied its decision is one to which section 2.5B.69(3)(c) or section 2.5B.70(4)(c) applies—its reasons for the decision; and
  - (c) if the assessment manager is satisfied its decision is one to which section 2.5B.69(3)(c) or section 2.5B.70(4)(c) applies—its reasons for the decision, including a statement of the sufficient grounds mentioned in section 2.5B.69(5) or 2.5B.70(6).
- (2) Section 3.5.15(2)(1) does not apply for the decision notice.

**2.5B.72 Additional restriction on starting of development**

The development can not start until all master plans that the structure plan requires for the land have taken effect.

*Note—*

See section 4.3.5B(4) (Compliance with master plans).

**2.5B.73 Notation of master plan on planning scheme**

- (1) This section applies if the master plan is approved and is in force.
- (2) The local government must—
  - (a) note the master plan on its planning scheme; and
  - (b) give the chief executive written notice of the notation and the land to which the note relates.
- (3) The note is not an amendment of the planning scheme.
- (4) Failure to comply with subsection (2) does not affect the validity of the master plan.

## **Division 8                      Funding of master planning**

### **2.5B.74 Agreement to fund structure plan**

- (1) A local government may enter into an agreement with owners or occupiers of land in a declared master planned area, or another person who has an interest in the matter, to fund the preparation of a structure plan.
- (2) However, the agreement may be entered into only if the local government has adopted a policy that prescribes the basis on which the funding is to be provided.

*Note—*

Funding for a structure plan may also be the subject of an infrastructure agreement. See section 5.2.3.

### **2.5B.75 Special charge for making a structure plan**

- (1) A local government may, by resolution, make and levy on an owner or occupier of rateable land in a declared master planned area a special charge on the land if—
  - (a) the charge is for making the structure plan for the area; and
  - (b) in the local government's opinion—
    - (i) the land, or the owner or occupier of the land, has or will specially benefit from the making of the structure plan; or
    - (ii) the owner or occupier of the land, or the use made or to be made of the land, has, or will, specially contribute to the need for the making of the structure plan.
- (2) The charge may be made and levied on the bases the local government considers appropriate.
- (3) However, if an amount has been paid, or is payable, to the local government under an agreement under section 2.5B.74 or an infrastructure agreement for the making of the structure plan, the local government must take into account the amount in levying the charge.

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- (4) The local government may fix a minimum amount of the charge.
- (5) Without limiting subsection (2), the amount of the charge may vary according to the extent to which, in the local government's opinion—
  - (a) the land, or the owner or occupier of the land, has or will specially benefit from the making of the structure plan; or
  - (b) the owner or occupier of the land, or the use made or to be made of the land, has, or will, specially contribute to the need for the making of the structure plan.
- (6) The local government's resolution making the charge must identify—
  - (a) the rateable land to which the charge applies; and
  - (b) the overall plan for the making of the structure plan.
- (7) The overall plan must—
  - (a) be adopted by the local government by resolution either before, or at the same time as, the local government first makes the charge; and
  - (b) identify the rateable land to which the charge applies; and
  - (c) describe the process for the making of the structure plan; and
  - (d) state the estimated cost of implementing the overall plan; and
  - (e) state the estimated time for implementing the overall plan.
- (8) The local government may identify parcels of rateable land to which the charge applies in any way it considers appropriate.
- (9) In this section—

*rateable land* see the *Local Government Act 1993*, section 957.

## **Part 5C**                      **State planning regulatory provisions**

### **Division 1**                      **General provisions**

#### **2.5C.1 Power to make State planning regulatory provision**

The Minister may, by complying with division 2, make a State planning regulatory provision for a part of the State (a *relevant area*).

#### **2.5C.2 Restriction on making State planning regulatory provision**

- (1) The Minister may make a State planning regulatory provision only if the Minister is satisfied the provision is necessary to—
  - (a) implement a regional plan or a structure plan for a declared master planned area; or
  - (b) prevent a compromise of the implementation of—
    - (i) a proposed regional plan for a designated region or a proposed designated region; or
    - (i) a structure plan or proposed structure plan for a master planned area or a proposed master planned area; or
  - (c) provide for—
    - (i) a regulated State infrastructure charges schedule for a master planned area, under section 5.3.2; or
    - (ii) a regulated infrastructure charge for the supply of trunk infrastructure, under section 5.1.5.
- (2) However, the Minister may also make a State planning regulatory provision if the Minister is satisfied—
  - (a) there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions occurring in a planning scheme area; and
  - (b) giving a direction under section 2.3.2 would not be the most appropriate way to address the risk.

*Note—*

Section 6.8.12 (Transition of validated planning documents to master planning documents) also allows the making of State planning regulatory provisions.

### **2.5C.3 Content of State planning regulatory provision**

A State planning regulatory provision may—

- (a) declare development to be assessable or self-assessable development; and
- (b) require impact or code assessment, or both impact and code assessment, for assessable development, including assessable development mentioned in paragraph (a); and
- (c) include a code for IDAS, or other criteria for the assessment of development applications; and
- (d) otherwise regulate development by, for example—
  - (i) stating aspects of development that may not occur in stated localities; or
  - (ii) stating aspects of development that may not occur in stated localities until—
    - (A) a stated structure plan within a planning scheme or another stated planning instrument has been made; or
    - (B) a stated master plan has been approved; or
    - (C) a stated development application has been approved; and
- (e) state transitional arrangements for development applications or master plan applications affected by the provision; and
- (f) provide for a matter mentioned in section 2.5C.2.

### **2.5C.4 State interest**

For this Act, a State planning regulatory provision is taken to be a State interest.

**2.5C.5 Relationship with other planning instruments**

- (1) If there is an inconsistency between a State planning regulatory provision and another planning instrument, the State planning regulatory provision prevails to the extent of the inconsistency.
- (2) Subject to subsection (1), a State planning regulatory provision does not amend the other planning instrument.

**2.5C.6 Status of State planning regulatory provision**

- (1) A State planning regulatory provision is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law.
- (2) A State planning regulatory provision is not subordinate legislation.

**2.5C.7 Particular State planning regulatory provisions to be ratified by Parliament**

- (1) This section applies to a State planning regulatory provision made to—
  - (a) implement a regional plan; or
  - (b) prevent a compromise of the implementation of a proposed regional plan for a designated region or a proposed designated region.
- (2) The following Minister must table a copy of the provision in the Legislative Assembly within 14 sitting days after the making of the provision—
  - (a) if the provision is made for a purpose mentioned in subsection (1)(a) or (b)—the regional planning Minister;
  - (b) otherwise—the Minister.
- (3) If the provision is not ratified by Parliament within 14 sitting days after the day the copy is tabled, the provision ceases to have effect.



**2.5C.8 State planning regulatory provisions that are subject to disallowance**

- (1) This section applies to a State planning regulatory provision made because the Minister was satisfied there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions occurring in a planning scheme area.
- (2) The *Statutory Instruments Act 1992*, sections 49, 50 and 51, apply to the provision as if it were subordinate legislation.

*Editor's note—*

*Statutory Instruments Act 1992*, sections 49 (Subordinate legislation must be tabled), 50 (Disallowance) and 51 (Limited saving of operation of subordinate legislation that ceases to have effect)

**Division 2                      Making State planning regulatory provisions****2.5C.9 Notice of and public consultation on draft State planning regulatory provision**

- (1) The Minister must prepare a draft of any proposed State planning regulatory provision.
- (2) When the Minister has prepared the draft State planning regulatory provision, the Minister must publish a notice—
  - (a) in the gazette; and
  - (b) at least once in a newspaper circulating in the relevant area.
- (3) The notice must state the following—
  - (a) that the draft State planning regulatory provision is available for inspection and purchase;
  - (b) where copies of the draft State planning regulatory provision are available for inspection and purchase;
  - (c) a contact telephone number for information about the draft State planning regulatory provision;

- (d) that written submissions about any aspect of the draft State planning regulatory provision may be given to the Minister by any person;
  - (e) the period (the *consultation period*) during which the submissions may be made;
  - (f) the requirements for a properly made submission.
- (4) The consultation period must be for at least 30 business days after the day the notice is gazetted.
  - (5) The Minister must give a copy of the notice and the draft State planning regulatory provision to each local government whose local government area includes the relevant area.
  - (6) The Minister may give a copy of the notice and the draft State planning regulatory provision to any other entity the Minister considers appropriate.
  - (7) For all of the consultation period, the Minister must keep a copy of the draft State planning regulatory provision available for inspection and purchase.
  - (8) The Minister may, during the consultation period, amend, replace or remove the draft State planning regulatory provision, other than to change the relevant area.

### **2.5C.10 Making State planning regulatory provision**

- (1) The Minister must consider every properly made submission about the draft State planning regulatory provision.
- (2) After the Minister has acted under subsection (1), the Minister must—
  - (a) make the State planning regulatory provision as provided for in the draft State planning regulatory provision as published; or
  - (b) make the State planning regulatory provision and include any amendments of the draft State planning regulatory provision the Minister considers appropriate; or
  - (c) decide not to make a State planning regulatory provision as mentioned in paragraph (a) or (b).

**2.5C.11 Notice and taking effect of State planning regulatory provision**

- (1) After the Minister has made the State planning regulatory provision, the Minister must publish a notice about the making of the provision—
  - (a) in the gazette; and
  - (b) at least once in a newspaper circulating in the region.
- (2) The notice must state—
  - (a) the day the State planning regulatory provision was made; and
  - (b) where a copy of the provision may be inspected and purchased.
- (3) Subject to sections 2.5C.7 and 2.5C.8, the State planning regulatory provision takes effect on and from—
  - (a) the day the making of the State planning regulatory provision is gazetted; or
  - (b) if a later day for the commencement of the State planning regulatory provision is stated in the State planning regulatory provision—the later day.

**Division 3                      Effect of drafts and draft amendments****2.5C.12 Effect of draft State planning regulatory provision and draft amendments**

- (1) This section applies to—
  - (a) a draft State planning regulatory provision published under division 2, as amended from time to time under section 2.5C.9(8) (the *draft provision*); or
  - (b) a draft State planning regulatory provision as amended by a draft amendment of the provision under division 4 (also the *draft provision*).

- (2) The draft provision has effect as if it were a State planning regulatory provision until the earlier of the following happens—
  - (a) a decision to make a State planning regulatory provision is made under section 2.5C.10(2)(a) or (b) relating to the draft provision and the State planning regulatory provision takes effect under section 2.5C.11(3);
  - (b) a decision not to make a State planning regulatory provision is made under section 2.5C.10(2)(c) relating to the draft provision.

## **Division 4                    Amendment or repeal of State    planning regulatory provisions**

### **2.5C.13 Minor amendments**

- (1) The Minister may make a minor amendment of a State planning regulatory provision.
- (2) If the Minister makes the amendment, the Minister must publish a notice about the making of the amendment—
  - (a) in the gazette; and
  - (b) at least once in a newspaper circulating in the relevant area.
- (3) The notice must state—
  - (a) the day the amendment was made; and
  - (b) where a copy of the State planning regulatory provision, as amended, may be inspected and purchased.

### **2.5C.14 Other amendments**

The Minister may make an amendment, other than a minor amendment, of a State planning regulatory provision only if the procedures under division 2 for the making of a State planning regulatory provision have been followed, as if—

- (a) a reference in the division to making a State planning regulatory provision were a reference to the making of the amendment; and
- (b) a reference in the division to a draft State planning regulatory provision were a reference to the amendment; and
- (c) with other necessary changes.

### **2.5C.15 Repeals**

- (1) The Minister may repeal a State planning regulatory provision by publishing a notice in—
  - (a) the gazette; and
  - (b) a newspaper circulating in the relevant area.
- (2) The notice must state—
  - (a) the name of the State planning regulatory provision being repealed; and
  - (b) the relevant area for the State planning regulatory provision; and
  - (c) that the State planning regulatory provision is repealed.
- (3) The repeal has effect on and from—
  - (a) the day the notice is gazetted; 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 whose local government area includes the relevant area a copy of the notice.

## **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.<sup>25</sup>

#### **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

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<sup>25</sup> 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.

### **2.6.5A Relationship of designation to State Development and Public Works Organisation Act 1971**

- (1) Subsection (2) applies if land in a declared State development area under the *State Development and Public Works Organisation Act 1971* is designated under this part.
- (2) Despite section 84 of that Act, use of the land in accordance with the designation—
  - (a) is taken to be a use of the land in accordance with the approved development scheme for the land under that Act; and
  - (b) is not a use that contravenes section 84 of that Act.

## **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 for the development.

## **Division 2                    Ministerial designation processes**

### **2.6.7 Matters the Minister must consider before designating land**

- (1) Before designating land, the Minister must be satisfied that, for the development, the subject of the proposed designation—
  - (a) adequate environmental assessment has been carried out; and
  - (b) in carrying out environmental assessment under paragraph (a), there was adequate public consultation; and
  - (c) adequate account has been taken of issues raised during the public consultation; and
  - (d) for land to which section 2.6.5A applies—adequate account has been taken of the approved development scheme mentioned in that section.
- (2) The Minister must also consider—
  - (a) every properly made submission under subsection (4); and
  - (b) each relevant State planning policy; and
  - (c) for land in a designated region—the region’s regional plan; and
  - (d) for land in a relevant area for a State planning regulatory provision—the provision; and
  - (e) for land in a declared master planned area—any master plans for the area; and
  - (f) each relevant planning scheme.
- (3) For subsection (1), there has been adequate environmental assessment and public consultation in carrying out environmental assessment if—
  - (a) the assessment and consultation has been carried out as required by guidelines made by the chief executive under section 5.9.9 for assessing the impacts of the development; or



- (b) the processes under chapter 3, part 4 and part 5, division 2, have been completed for a development application for the community infrastructure to which the designation relates; or
  - (c) the process under chapter 5, part 8, division 2, has been completed for an EIS for development for the community infrastructure; or
  - (d) the process under schedule 1, section 12, has been carried out for a planning scheme, or an amendment of a planning scheme, that includes the community infrastructure; or
  - (e) the process has been carried out under schedule 1A, section 8, for a structure plan for a declared master planned area that includes the community infrastructure; or
  - (f) the coordinator-general has, under the *State Development and Public Works Organisation Act 1971*, section 35,<sup>26</sup> prepared a report evaluating an EIS for, or including, development for the community infrastructure; or
  - (g) the process under the *Environmental Protection Act 1994*, chapter 3, part 1<sup>27</sup> has been completed for an EIS for development for the community infrastructure.
- (4) However, if written notice of the proposed designation has not been given to each of the following entities about an action mentioned in subsection (3), the Minister must give written notice of the proposed designation to the entities inviting submissions about the proposed designation—
- (a) the owner of any land to which the proposed designation applies;
  - (b) each local government the Minister is satisfied the designation affects.

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26 *State Development and Public Works Organisation Act 1971*, section 35 (Coordinator-General evaluates EIS, submissions, other material and prepares report)

27 *Environmental Protection Act 1994*, chapter 3 (Environmental impact statements), part 1 (EIS process)

- (5) A notice given under subsection (4) must give the entities at least 15 business days to make a submission.

### **2.6.8 Procedures after designation**

- (1) If the Minister designates land, the Minister must give a notice to—
- (a) each owner of the land; and
  - (b) each local government the Minister is satisfied the designation affects; and
  - (c) the chief executive.
- (2) The notice must state each of the following—
- (a) the designation has been made;
  - (b) the description of the land;
  - (c) the type of community infrastructure for which the land has been designated;
  - (d) any matters mentioned in section 2.6.4 and included as part of the designation.
- (3) The Minister must also publish a gazette notice stating the matters mentioned in subsection (2)(a) to (c).

### **2.6.9 Procedures if designation does not proceed**

If the Minister decides not to proceed with a proposed designation, the Minister must give a notice, stating that the designation will not proceed, to the persons mentioned in section 2.6.8(1)(a) and (b).

### **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.
- (3) However, land identified in a priority infrastructure plan as land for community infrastructure is not designated land unless it is also specifically identified as designated 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 a public sector entity 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, a public sector entity 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, a public sector entity or the local government gave a notice of intention to resume the designated land under the *Acquisition of Land Act 1967*, section 7;<sup>28</sup> or
  - (d) before the designation cessation day, a public sector entity 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 a public sector entity 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—

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

- (i) give the owner of the land a copy of the notice; and
  - (ii) publish the notice in the gazette; and
- (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; and
  - (c) the chief executive.
- (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.<sup>29</sup>

**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.

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<sup>29</sup> *Acquisition of Land Act 1967*, sections 7 (Notice of intention to take land), 13 (Owner may require small parcel of severed land to be taken), 15 (Taking by agreement) and 41 (Disposal of land)

### **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.

## **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.<sup>30</sup>

*Note—*

Chapter 2, part 5B, has particular provisions for development applications in declared master planned areas.

#### **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.<sup>31</sup>
- (2) Schedule 9 identifies development that a planning scheme or a temporary local planning instrument can not declare to be assessable development or self-assessable development.

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<sup>30</sup> This chapter sets out a number of ways the operation of IDAS can be adjusted to meet particular circumstances.

<sup>31</sup> *Assessable development, exempt development and self-assessable development* are defined in schedule 10 (Dictionary).

- (3) Subject to section 2.5B.9, to the extent a planning scheme is inconsistent with schedule 8 or 9, 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.

*Note—*

See also chapter 2, part 5B (Master planning for particular areas of State interest)

- (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.<sup>32</sup>
- (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;<sup>33</sup> and
  - (b) exempt development need not comply with codes, master plans for declared master planned areas or planning instruments, other than a State planning regulatory provision.
- (4) Nothing in subsection (3)(b) stops a planning instrument, a master plan for a declared master planned area or a development approval affecting exempt development if—
  - (a) the development is the natural and ordinary consequence of another aspect of development that is assessable or self-assessable development; and
  - (b) the effect mitigates impacts of the assessable or self-assessable development.

*Example for subsection (4)—*

A development approval for a material change of use may include conditions, including, for example, conditions about landscaping, parking or buildings that are the natural and ordinary consequence of the material change of use if the conditions would mitigate impacts, including, for example, visual amenity, noise or traffic generation, of the material change of use.

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

33 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 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.<sup>34</sup>
- (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 a local planning instrument

- (1) This section applies if—
  - (a) an applicant applies for a preliminary approval; and
  - (b) part of the application states the way in which the applicant seeks the approval to vary the effect of any local planning instrument for the land.

*Note—*

A preliminary approval to which this section applies may be made for a master planned area only if so permitted under the structure plan for the area. See section 2.5B.4 (Restriction on particular development applications in master planned area).

- (2) Subsection (3) applies to the extent the application is for—
  - (a) development that is a material change of use; and
  - (b) the part mentioned in subsection (1)(b).

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34 Preliminary approvals assist in the staging of approvals.

- (3) If the preliminary approval approves the material change of use, the preliminary approval may, in addition to the things an approval may do under part 5, do either or both of the following for development relating to the material change of use—
  - (a) state that the development is—
    - (i) assessable development (requiring code or impact assessment); or
    - (ii) self-assessable development; or
    - (iii) exempt development;
  - (b) identify any codes for the development.
- (4) Subsection (5) applies to the extent the application is for—
  - (a) development other than a material change of use; and
  - (b) the part mentioned in subsection (1)(b).
- (5) If the preliminary approval approves the development, the preliminary approval may, in addition to the things an approval may do under part 5, do either or both of the following for the development—
  - (a) state that the development is—
    - (i) assessable development (requiring code or impact assessment); or
    - (ii) self-assessable development; or
    - (iii) exempt development;
  - (b) identify codes for the development.
- (6) To the extent the preliminary approval, by doing either or both of the things mentioned in subsection (3) or (5), is different to the local planning instrument, the approval prevails.
- (7) However, subsection (3) or (5) no longer applies to development mentioned in subsection (3)(a) or (5)(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) any time limit for completing the development ends.

- (8) To the extent the preliminary approval is inconsistent with schedule 8 or 9, the preliminary approval is of no effect.

### **3.1.7 Assessment manager**

- (1) The *assessment manager*—
- (a) for an application mentioned in schedule 8A—is the entity stated for the application; and
  - (b) administers and decides an application, but may not always assess all aspects of development for the application.<sup>35</sup>
- (2) If the assessment manager is to be decided by the Minister under schedule 8A, the Minister may instead require the application to be split into 2 or more applications.
- (3) If a local government is the assessment manager for development not completely within the local government's planning scheme area—
- (a) subsection (1) applies despite the *Local Government Act 1993*, section 25;<sup>36</sup> and
  - (b) to the extent the application is for development for prescribed tidal work, the local government has the jurisdiction to assess the application in addition to any other jurisdiction it may have for assessing the application.
- (4) If an individual (however called) is the assessment manager and has 1 or more jurisdictions as a concurrence agency, the person is not a concurrence agency but the person's jurisdiction as assessment manager includes each jurisdiction the person would have had as a concurrence agency.

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35 See section 3.5.3A (When assessment manager must not assess part of an application).

36 *Local Government Act 1993*, section 25—

#### **25 Jurisdiction of local government**

Each local government has jurisdiction (the *jurisdiction of local government*) to make local laws for, and otherwise ensure, the good rule and government of, its territorial unit.



**3.1.7A Concurrence agencies if Minister decides assessment manager**

- (1) This section applies if—
  - (a) the assessment manager for an application is decided by the Minister; and
  - (b) the Minister is satisfied 1 or more other entities, that are not concurrence agencies for the application, could have been the assessment manager for the application.
- (2) The Minister may state that 1 or more of the entities are to be a concurrence agency for the application.
- (3) An entity that becomes a concurrence agency under subsection (2) has the jurisdiction it would have had if it were the assessment manager.

**3.1.8 Referral agencies for development applications**

- (1) A referral agency has, for assessing and responding to the part of a development application giving rise to the referral, the jurisdiction or jurisdictions prescribed under a regulation.

*Note—*

For declared master planned areas, see however section 2.5B.64 (Exclusion of particular agencies as a referral agency).

- (2) If 2 or more entities prescribed as referral agencies are the same individual (however called), the entities are taken to be a single referral agency with multiple jurisdictions.

**3.1.9 Stages of IDAS**

- (1) IDAS involves the following possible stages—
  - application stage<sup>37</sup>
  - information and referral stage<sup>38</sup>
  - notification stage<sup>39</sup>

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37 See part 2.

38 See part 3.

39 See part 4.

- decision stage.<sup>40</sup>
- (2) Not all stages, or all parts of a stage, apply to all applications.<sup>41</sup>

### **3.1.10 Self-assessable development and codes**

Self-assessable development must comply with applicable codes.<sup>42</sup>

### **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.

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40 See part 5.

41 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.

42 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).

## **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 in the approved form.<sup>43</sup>
- (2) The approved form—
  - (a) must contain a mandatory requirements part including a requirement for an accurate description of the land; and
  - (b) may contain a supporting information part.
- (3) Subject to subsections (12) and (13), each application must contain, or be supported by, the written consent of the owner of the land to the making of the application if the application is for—
  - (a) a material change of use of premises or a reconfiguration of a lot; or
  - (b) work on land below high-water mark and outside a canal as defined under the *Coastal Protection and Management Act 1995*; or
  - (c) work on rail corridor land as defined under the *Transport Infrastructure Act 1994*.
- (4) Each application must be accompanied by the fee—
  - (a) if the assessment manager is a local government—fixed by resolution of the local government; or
  - (b) if the assessment manager is another public sector entity—prescribed under a regulation under this or another Act.
- (5) To the extent the development involves a State resource prescribed under a regulation, the regulation may require the

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<sup>43</sup> A single application may be made for both a preliminary approval and a development permit.

application to be supported by 1 or more of the following prescribed under the regulation for the development—

- (a) evidence of an allocation of, or an entitlement to, the resource;
  - (b) evidence the chief executive of the department administering the resource is satisfied the development is consistent with an allocation of, or an entitlement to, the resource;
  - (c) evidence the chief executive of the department administering the resource is satisfied the development application may proceed in the absence of an allocation of, or an entitlement to, the resource.
- (5A) The document containing the evidence may state a day, not less than 6 months after the date of the document, after which the evidence in the document may not be used under subsection (5).
- (6) Subsection (3) does not apply for an application to the extent—
- (a) subsection (5) applies to the application; or
  - (b) another Act requires the application to be supported by 1 or more of the things mentioned in subsection (5)(a) to (c).<sup>44</sup>
- (7) An application is a *properly made application* if—
- (a) the application is made to the assessment manager; and
  - (b) the application is made in the approved form; and
  - (c) the mandatory requirements part of the approved form is correctly completed; and
  - (d) the application is accompanied by the fee for administering the application; and
  - (e) if subsection (6) applies—the application is supported by the evidence required under subsection (5); and
  - (f) the development would not be contrary to a State planning regulatory provision.

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44 See, for example, the *Water Act 2000*, sections 967, 969 and 971.

*Note—*

For particular provisions relating to a declared master planned area, see also section 2.5B.65 (Exclusion of particular provisions about making application) and 2.5B.66 (Additional provisions for when application is properly made).

- (8) The assessment manager may refuse to receive an application that is not a properly made application.
- (9) 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.
- (10) Subsection (9) does not apply to an application—
  - (a) unless the application contains—
    - (i) the written consent of the owner of any land to which the application applies; or
    - (ii) any evidence required under subsection (5); or
  - (b) if the development would be contrary to a State planning regulatory provision.
- (12) To the extent the land, the subject of the application, has the benefit of an easement and the development is not inconsistent with the terms of the easement, the consent of the owner of the servient tenement is not required.
- (13) The consent of the owner of the land is not required to the extent—
  - (a) the land, the subject of the application, is acquisition land; and
  - (b) the application relates to the purpose for which the land is to be taken or acquired.

### **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.

### **3.2.2A Approved operational works for marine plants required for certain developments**

- (1) This section applies if, at the time an application is made—
- (a) a material change of use of premises or reconfiguration of a lot, the subject of an application, may not be performed unless a development permit exists for operational work that is the removal, destruction or damage of a marine plant on or near the premises or lot; and
  - (b) there is no development permit for the operational work; and
  - (c) approval for the operational work has not been applied for in the application or a separate application.
- (2) The application is taken also to be for the operational work.

### **3.2.2B Approved operational work for retaining walls required for certain development**

- (1) This section applies if, when an application is made—
- (a) a material change of use of premises or reconfiguration of a lot, the subject of an application, may not be performed unless a development permit exists for operational work that is the building of a retaining wall on or near the premises or lot; and
  - (b) there is no development permit for the operational work; and
  - (c) approval for the operational work has not been applied for in the application or a separate application.
- (2) The application is taken also to be for the operational work.

**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;
  - (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.

### **3.2.4 Acknowledgment notices for development inconsistent with priority infrastructure plans**

- (1) This section applies, in addition to section 3.2.3, if the development is—
  - (a) either or both of the following—
    - (i) completely or partly outside a priority infrastructure area;
    - (ii) inconsistent with the assumptions about the type, scale, location or timing of future development stated in the priority infrastructure plan; and
  - (b) for any or all of the following—
    - (i) residential purposes;
    - (ii) retail or commercial purposes;
    - (iii) industrial purposes;
    - (iv) community and government purposes related to a purpose mentioned in subparagraphs (i) to (iii).
- (2) The acknowledgment notice must also state—
  - (a) specific details about the matters mentioned in subsection (1)(a); and
  - (b) additional trunk infrastructure costs may be imposed under section 5.1.25; and
  - (c) additional infrastructure costs may be imposed under section 5.1.28.



**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**

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.

**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.
- (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 and related material**

- (1) The assessment manager must keep, for each application, the following documents available for inspection and purchase—
  - (a) the application, including any supporting material;
  - (b) any acknowledgment notice;
  - (c) any information request;
  - (d) any properly made submission;
  - (e) any referral agency response.
- (2) The documents mentioned in subsection (1) must be kept available for inspection and purchase from the time the assessment manager receives the application until—

- (a) the application is withdrawn or lapses; or
  - (b) if paragraph (a) does not apply—the end of the last period during which an appeal may be made against a decision on the application.
- (3) Subsection (1) does not apply to supporting material to the extent the assessment manager is satisfied the material contains sensitive security information.
- (4) 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.

### **3.2.9 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.
- (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—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—20 business days; or
  - (d) if the next action is complying with section 3.4.7—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.
- (4) Subsection (5) applies if—
  - (a) under subsection (3) the applicant asks for an extension in relation to subsection (2)(b); and
  - (b) the entity making the information request does not respond to the request by the applicant until 5 days before the period mentioned in subsection (2)(b) ends, or later; and
  - (c) the entity does not agree to the extension.
- (5) The period mentioned in subsection (2)(b) does not end until 10 business days after the response, advising that the entity does not agree to the extension, is received.

**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.

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

**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) 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 the day the applicant gave each referral agency the things mentioned in section 3.3.3(1)(a), (b) and (c).
- (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) does not apply.

### **3.3.6 Information requests to applicant**

- (1) 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.
- (2) A concurrence agency may only ask for information about a matter that is within its jurisdiction.
- (3) 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*).
- (4) 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 by each entity under subsection (6) and the notice must be given before the entity's 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.

### **3.3.8 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.

### **3.3.9 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 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.
- (2A) The referral agency's assessment period mentioned in subsection (1) applies even if there is no information request period for the application because an EIS is required.
- (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) 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.

### **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) each of the following, if they are not identified in the planning scheme as being appropriately reflected in the planning scheme—

- (A) State planning policies, or parts of State planning policies;<sup>45</sup>
  - (B) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision;
  - (C) for the planning scheme of a local government in a designated region—the region’s regional plan; 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 building assessment provisions, on building 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

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<sup>45</sup> See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

*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.

- (3) If a concurrence 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.
- (4) However, the referral agency's response is taken to be a refusal of the application if—
  - (a) the application is a building development application; and
  - (b) the concurrence agency is the local government; and
  - (c) the matter being decided by the concurrence agency is a matter other than assessing the amenity and aesthetic impact of a building or structure; and
  - (d) the concurrence agency does not give a response under subsection (1).

### **3.3.17 How a concurrence agency may change its response**

- (1) Despite section 3.3.16, 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 or the Minister has given the concurrence agency a direction under section 3.6.2.
- (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;
  - (d) a different period for section 3.5.21(1)(b), (2)(c) or (3)(b).
- (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.
- (5) To the extent a concurrence agency's jurisdiction is about assessing the effects of development on designated land, the concurrence agency may only tell the assessment manager to refuse the application if—
  - (a) the concurrence agency is satisfied the development would compromise the intent of the designation; and
  - (b) the intent of the designation could not be achieved by imposing conditions on the development approval.
- (6) To the extent a local government's concurrence agency jurisdiction is about assessing the amenity and aesthetic impact of a building or structure, the concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency considers—
  - (a) the building or structure, when built, will have an extremely adverse effect on the amenity or likely amenity of its neighbourhood; or

- (b) the aesthetics of the building or structure, when built, will be in extreme conflict with the character of its neighbourhood.
- (7) 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.
- (8) If a concurrence agency's response, other than a refusal taken to have been given, under section 3.3.16(4), requires an application to be refused or requires a development approval to include conditions, the response must include reasons for the refusal or inclusion.
- (9) Subsection (8) does not apply to a refusal mentioned in section 3.3.16(4).

### **3.3.19 Advice agency's response powers**

- (1) An advice agency's response may, within the limits of its jurisdiction, recommend to the assessment manager 1 or more of the following—
  - (a) the conditions that should attach to any development approval;
  - (b) that any approval should be for part only of the application;
  - (c) that any approval should be a preliminary approval only.
- (2) Alternatively, an advice agency's response may, within the limits of its jurisdiction, advise the assessment manager—
  - (a) it has no advice agency recommendations; or
  - (b) it should refuse the application.
- (3) An advice agency's response may also do either or both of the following—
  - (a) offer other advice to the assessment manager about the application;
  - (b) tell the assessment manager to treat the response as a properly made submission.

## **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; 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.

### **3.4.2 When the notification stage applies**

- (1) The notification stage applies to an application if either of the following applies—
  - (a) any part of the application requires impact assessment;
  - (b) the application is an application to which section 3.1.6 applies.
- (2) Subsection (1) applies even if—
  - (a) code assessment is required for another part of the application; or
  - (b) a concurrence agency advises the assessment manager it requires the application to be refused.
- (3) However, subsection (1)(b) does not apply if—
  - (a) a preliminary approval to which section 3.1.6 applies has been given for land; and
  - (b) the application does not seek to change the type of assessment for the development or, if it does, it seeks only 1 or both of the following—
    - (i) to change development requiring code assessment to self-assessable development;
    - (ii) to increase the level of assessment for development; and
  - (c) a code proposed as part of the application is substantially consistent with a code in the preliminary approval.

- (4) However, this part does not apply for an application to which chapter 5, part 8A applies.<sup>46</sup>

### **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.

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<sup>46</sup> See chapter 5 (Miscellaneous), part 8A (Notification stage for particular aquaculture development) for the notification stage that applies for development applications to which that part applies.

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- (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<sup>47</sup>—
- (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 1124<sup>48</sup>—the person; or

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

48 *Local Government Act 1993*, section 1124 (Notice of time share scheme to local government)

- (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
- (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 15 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.<sup>49</sup>

**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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<sup>49</sup> 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;<sup>50</sup> 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

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<sup>50</sup> See section 3.3.8 (Applicant responds to any information request).

code, planning instrument, law or policy in effect when the application was made.

### **3.5.3A When assessment manager must not assess part of an application**

- (1) This section applies to the part of an application (the *coordinated part*) for which, were it a separate development application, there would be a different assessment manager.
- (2) Despite sections 3.5.4 and 3.5.5, the assessment manager must not assess the development, the subject of the coordinated part.

### **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; and
  - (c) if they are not identified in the planning scheme as being appropriately reflected in the planning scheme—
    - (i) State planning policies, or parts of State planning policies;<sup>51</sup> and
    - (ii) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision; and
    - (iii) for the planning scheme of a local government in a designated region—the region’s regional plan; and
  - (d) if the assessment manager is an infrastructure provider—the priority infrastructure plan.<sup>52</sup>

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

52 See chapter 5, part 1 (Infrastructure planning and funding).



- (2A) However, subsection (2)(c) does not apply for the part of an application involving assessment against the *Building Act 1975*.
- (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; and
  - (c) for chapter 5, part 1, the infrastructure provisions of the existing planning scheme applied; and
  - (d) for section 6.1.31, the existing planning scheme policy or planning scheme provision applied.

### **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) if they are not identified in the planning scheme as being appropriately reflected in the planning scheme—

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- (i) State planning policies, or parts of State planning policies;<sup>53</sup> and
- (ii) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision; and
- (iii) for the planning scheme of a local government in a designated region—the region’s regional plan;

*Note—*

For declared master planned areas, see also section 2.5B.70 (Assessable development requiring impact assessment).

- (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;

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<sup>53</sup> See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

- (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; and
  - (c) for chapter 5, part 1, the infrastructure provisions of the existing planning scheme applied; and
  - (d) for section 6.1.31, the existing planning scheme policy or planning scheme provision applied.

### **3.5.5A Assessment for s 3.1.6 preliminary approvals that override a local planning instrument**

- (1) Subsection (2) applies to the part of an application for a preliminary approval mentioned in section 3.1.6 that states the way in which the applicant seeks the approval to vary the effect of any applicable local planning instrument for the land.
- (2) The assessment manager must assess the part of the application having regard to each of the following—
  - (a) the common material;
  - (b) the result of the assessment manager’s assessment of the development under section 3.5.4 or 3.5.5, or both;
  - (c) the effect the proposed variations would have on any right of a submitter for following applications, with particular regard to the amount and detail of supporting material for the current application available to any submitters;

- (d) the consistency of the proposed variations with aspects of the planning scheme, other than those sought to be varied;
- (e) if they are not identified in the planning scheme as being appropriately reflected in the planning scheme—
  - (i) State planning policies, or parts of State planning policies;<sup>54</sup> and
  - (ii) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision; and
  - (iii) for the planning scheme of a local government in a designated region—the region’s regional plan;
- (f) the matters prescribed under a regulation (to the extent they apply to a particular proposal).

### **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.

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<sup>54</sup> See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

## **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<sup>55</sup> 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

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<sup>55</sup> Under section 3.3.17, a concurrence agency may, with the agreement of the applicant, amend its response.

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.
- (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 attach to the approval, in the exact form given by the concurrence agency, any concurrence agency conditions; or
  - (b) approve all or part of the application subject to conditions decided by the assessment manager and attach to the approval, in the exact form given by the concurrence agency, any concurrence agency conditions; or
  - (c) refuse the application.
- (2) The assessment manager's decision must be based on the assessments made under division 2.
- (3) For an approval under subsection (1)(a) or (b), if a concurrence agency's response has, under section 3.3.18(1)(b) or (c), stated an action that must be taken, the assessment manager must also take the action.
- (4) If a concurrence agency response has stated that the application must be refused, the assessment manager must refuse the application.
- (4A) Despite subsections (2) and (3), the assessment manager's decision must not be contrary to a State planning regulatory provision.
- (5) Subsections (1) to (4) do not apply to any part of an application for a preliminary approval mentioned in section 3.1.6 that states the way in which the applicant seeks the

approval to vary the effect of any applicable local planning instrument for the land.<sup>56</sup>

- (6) It is declared that—
- (a) a development approval includes any conditions—
    - (i) imposed by the assessment manager; and
    - (ii) a concurrence agency has given in a response under section 3.3.16 or 3.3.17, or an amended response under section 3.3.17; and
  - (b) the assessment manager may give a preliminary approval even though the applicant sought a development permit; and
  - (c) if the assessment manager approves only part of an application, the balance of the application is taken to be refused.

*Note—*

For declared master planned areas, see also section 2.5B.68 (Decision must not be contrary to master plan).

### **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 must approve the application if the assessment manager is satisfied the application complies with all applicable codes whether or not conditions are required for the development to comply with the codes.
- (3) Subject to subsection (2), the assessment manager's decision may conflict with an applicable code only if there are

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<sup>56</sup> Section 3.5.14A establishes rules for decision making about the part of an application mentioned in subsection (5).



sufficient grounds to justify the decision despite the conflict, having regard to—

- (a) the purpose of the code; and
- (b) if they are not identified in the planning scheme as being appropriately reflected in the planning scheme—
  - (i) State planning policies, or parts of State planning policies;<sup>57</sup> and
  - (ii) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision; and
  - (iii) for the planning scheme of a local government in a designated region—the region’s regional plan.

*Note—*

For declared master planned areas, see also section 2.5B.69 (Assessable development requiring code assessment).

- (4) However, if the decision is made under subsection (3)(a) and the assessment is 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.

### **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 grounds to justify the decision despite the conflict.

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<sup>57</sup> See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

- (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) do not apply if compromising the achievement of the desired environmental outcomes is necessary to further the outcomes of any of the following if they are not identified in the planning scheme as being appropriately reflected in the planning scheme—
  - (a) State planning policies, or parts of State planning policies;<sup>58</sup>
  - (b) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision;
  - (c) for the planning scheme of a local government in a designated region—the region's regional plan.

*Note—*

For declared master planned areas, see also section 2.5B.70 (Assessable development requiring impact assessment).

### **3.5.14A Decision if application under s 3.1.6 requires assessment**

- (1) In deciding the part of an application for a preliminary approval mentioned in section 3.1.6 that states the way in which the applicant seeks the approval to vary the effect of any applicable local planning instrument for the land, the assessment manager must—
  - (a) approve all or some of the variations sought; or
  - (b) subject to section 3.1.6(3) and (5)—approve different variations from those sought; or
  - (c) refuse the variations sought.

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<sup>58</sup> See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

- (2) However—
- (a) to the extent development applied for under other parts of the application is refused, any variation relating to the development must also be refused; and
  - (b) the assessment manager's decision must not compromise the achievement of the desired environmental outcomes for the planning scheme area; and
  - (c) paragraphs (a) and (b) do not apply if compromising the achievement of the desired environmental outcomes is necessary to further the outcomes of any of the following if they are not identified in the planning scheme as being appropriately reflected in the planning scheme—
    - (i) State planning policies, or parts of State planning policies;<sup>59</sup>
    - (ii) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision;
    - (iii) for the planning scheme of a local government in a designated region—the region's regional plan.

### **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; and
  - (d) if the application is a building development application—each designated person for the application.

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<sup>59</sup> See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

- (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—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;
  - (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) if all or part of the application is for a preliminary approval mentioned in section 3.1.6 and the assessment manager has approved a variation to an applicable local planning instrument—the variation;
  - (h) any other development permits necessary to allow the development to be carried out;
  - (i) any code the applicant may need to comply with for self-assessable development related to the development approved;
  - (j) whether or not there were any properly made submissions about the application and for each properly made submission, the name and address of the principal submitter;
  - (k) whether the assessment manager considers the assessment manager's decision conflicts with any of the

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following if relevant to its assessment under section 3.5.4 or 3.5.5—

- (i) applicable codes (other than concurrence agency codes the assessment manager does not apply);
- (ii) the planning scheme and any other relevant local planning instrument;
- (iii) if the following are not identified in the planning scheme as being appropriately reflected in the planning scheme—
  - (A) State planning policies, or parts of State planning policies;
  - (B) for the planning scheme of a local government in the relevant area for a State planning regulatory provision—the provision;
  - (C) for the planning scheme of a local government in a designated region—the region’s regional plan;

*Note—*

For declared master planned areas, see also section 2.5B.71 (Decision notice).

- (iv) if the assessment manager is an infrastructure provider—the priority infrastructure plan;
  - (v) 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;
  - (l) if the assessment manager is satisfied the decision conflicts with any of the matters stated in paragraph (k)—the reasons for the decision, including a statement of the sufficient grounds mentioned in sections 3.5.13(3) and 3.5.14(2)(b);
  - (m) the rights of appeal for the applicant and any submitters.
- (2A) To remove doubt, it is declared that subsection (2)(l) does not require the assessment manager to give reasons for each condition of approval.

- (2B) Also, if the application is a building development application, the decision notice must include the approved drawings for the development approval.
- (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.
- (5A) If the decision notice is given by a private certifier, this section applies subject to the *Building Act 1975*, chapter 4, part 6.<sup>60</sup>
- (6) In this section—
- designated person***, for a building development application, means—
- (a) if the building to which the application relates is, under the Building Code of Australia, a single detached class 1a building or a class 10 building or structure—the owner of the building; and

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<sup>60</sup> *Building Act 1975*, chapter 4, part 6 (Regulation of building assessment work and the issuing of building development approvals by private certifiers)

- (b) any other person nominated on the approved form under section 3.2.1(2),<sup>61</sup> as the person to receive documents.

## **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).
- (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

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61 Section 3.2.1 (Applying for development approval)

- (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 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.
- (7) If 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 an infrastructure charge or regulated infrastructure charge, the local government may give the applicant a new infrastructure charges notice under section 5.1.8 or regulated infrastructure charges notice under section 5.1.18 to replace the original notice.
- (8) If 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 a regulated State infrastructure charge, the relevant State infrastructure provider may give the applicant a new regulated State infrastructure charges notice under section 5.3.4 to replace the original notice.

### **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**

- (1) 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—
    - (i) the decision notice is given; or
    - (ii) if a negotiated decision notice is given—the negotiated decision notice is given; or
  - (b) if there is a submitter and the applicant does not appeal the decision to the court, the earlier of the following—
    - (i) when the submitter's appeal period ends;

- (ii) the day the last submitter gives the assessment manager written notice that the submitter will not be appealing the decision; or
  - (c) if an appeal is made to the court, subject to section 4.1.47(2) and the decision of the court under section 4.1.54—when the appeal is finally decided.
- (2) However, if the approval relates to land that was acquisition land to which section 3.2.1(13) applied when the application was made, the development approval does not have effect until the later of the following—
  - (a) the day the land is taken or acquired under the *State Development and Public Works Organisation Act 1971* or *Acquisition of Land Act 1967*;
  - (b) the time the development approval would, other than for this subsection, have effect.
- (3) If a submitter acts under subsection (1)(b)(ii), the assessment manager must give the applicant a copy of the submitter's notice.
- (4) In this section—

*submitter* includes an advice agency that has told the assessment manager to treat its response as a properly made submission.<sup>62</sup>

### **3.5.20 When development may start**

- (1) Development may start when a development permit for the development takes effect.

*Note—*

For declared master planned areas, see also section 2.5B.72 (Additional restriction on starting of development).

- (2) Subsection (1) applies subject to any condition applying under section 3.5.31(1)(b) to a development approval for the development.

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<sup>62</sup> See section 3.3.19 (Advice agency's response powers).

**3.5.21 When approval lapses if development not started**

- (1) To the extent a development approval is for a material change of use of premises, the approval lapses if the first change of use under the approval does not happen within the following period (the *relevant period*)—
  - (a) 4 years starting the day the approval takes effect; or
  - (b) if the approval states a different period from when the approval takes effect—the stated period.
- (2) To the extent a development approval is for reconfiguring a lot, the approval lapses if a plan for the reconfiguration is not given to the local government under section 3.7.2(2) within the following period (also the *relevant period*)—
  - (a) for reconfiguration not requiring operational works—2 years starting the day the approval takes effect;
  - (b) for reconfiguration requiring operational works—4 years starting the day the approval takes effect;
  - (c) if the approval states a different period from when the approval takes effect—the stated period.
- (3) To the extent a development approval is for development other than a material change of use of premises or reconfiguring a lot, the approval lapses if the development does not substantially start within the following period (also the *relevant period*)—
  - (a) 2 years starting the day the approval takes effect;
  - (b) if the approval states a different period from when the approval takes effect—the stated period.
- (4) Despite subsections (1) and (2), if there is 1 or more related approvals for a development approval mentioned in subsection (1) or (2), the relevant period is taken to have started on the day the latest related approval takes effect.
- (5) If a monetary security has been given in relation to any development approval, the security must be released if the approval lapses under this section.
- (6) The lapsing of a development approval for a material change of use of premises or reconfiguring a lot does not cause an approval mentioned in subsection (3) to lapse.

(7) In this section—

***related approval***, for a development approval for a material change of use of premises (the ***earlier approval***), means—

- (a) the first development approval for a development application made to a local government or private certifier within 2 years of the start of the relevant period, that is—
  - (i) to the extent the earlier approval is a preliminary approval—a development permit for the material change of use of premises; or
  - (ii) to the extent the earlier approval is a development permit or a preliminary approval for development mentioned in section 3.1.6(3)(a)(ii) or (iii)—a development permit for building work or operational work necessary for the material change of use of premises to take place; and
- (b) each further development permit, for a development application made to a local government or private certifier within 2 years of the day the last related approval takes effect, that is for building work or operational work necessary for the material change of use of premises to take place.

***related approval***, for a development approval for reconfiguring a lot (also the ***earlier approval***), means—

- (a) the first development permit for a development application made to a local government within 2 years of the start of the relevant period, that is—
  - (i) to the extent the earlier approval is a preliminary approval—for the reconfiguration; or
  - (ii) to the extent the earlier approval is a development permit for reconfiguring a lot—for operational work related to the reconfiguration; and
- (b) each further development permit, for a development application made to a local government within 2 years of the day the last related approval takes effect, that is for operational work related to the reconfiguration.

**3.5.21A When approval lapses if development started but not completed**

- (1) A condition under division 6 may require—
  - (a) development, or an aspect of development, to be completed within a particular time; and
  - (b) the payment of security under an agreement under section 3.5.34 to support the condition.
- (2) Subsection (3) applies if—
  - (a) a condition requires assessable development, or an aspect of assessable development, to be completed within a particular time; and
  - (b) the assessable development, or aspect, is started but not completed within the time.
- (3) The approval, to the extent it relates to the assessable development or aspect not completed, lapses.
- (4) However, even though the approval has lapsed, any security paid under subsection (1)(b) may be used in a way stated by the approval, including, for example, to finish the development.

**3.5.22 Request to extend period in s 3.5.21**

- (1) If, before a development approval lapses under section 3.5.21, a person wants to extend a period mentioned in that section, 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 period; and
  - (b) ask the assessment manager to extend the 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 is not the owner of the land to which the approval attaches, the request must be accompanied by the owner's consent.

- (4) Subsection (5) applies if an application for the approval were made at the time the request is made and evidence under section 3.2.1(5) would be required to support the application.
- (5) The request must also be accompanied by the written agreement of the chief executive from whom evidence would need to be obtained under section 3.2.1(5).
- (6) If the assessment manager has a form for the request, the request must be in the form and be accompanied by the fee—
  - (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—prescribed under a regulation under this or another Act.
- (7) A request under this section may not be withdrawn.

### **3.5.23 Deciding request under s 3.5.22**

- (1) In deciding a request under section 3.5.22, the assessment manager must only have regard to—
  - (a) the consistency of the approval, including its conditions, with the current laws and policies applying to the development, including, for example, the amount and type of infrastructure contributions, or infrastructure charges payable under an infrastructure charges schedule; and
  - (b) the community's current awareness of the development approval; and
  - (c) whether, if the request were refused—
    - (i) further rights to make a submission may be available for a further development application; and
    - (ii) the likely extent to which those rights may be exercised; and
  - (d) the views of any concurrence agency for the approval.

- (2) If there was no concurrence agency, the assessment manager must approve or refuse the extension within 30 business days after receiving the request.
- (3) 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; and
  - (b) must approve or refuse the extension within 30 business days after receiving the request.
- (4) The assessment manager and the person making the request may agree to extend the period within which the assessment manager must decide the request.
- (5) A concurrence agency given a notice under section 3.5.22(1)(a) may give the assessment manager a written notice—
  - (a) stating it has no objection to the extension being approved; or
  - (b) stating it objects to the extension being approved and giving reasons for the objection.
- (6) 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.
- (7) Despite subsection (6), if the development approval is subject to a concurrence agency condition about the period mentioned in section 3.5.21, the assessment manager must not approve the request unless the concurrence agency advises it has no objection to the extension being approved.
- (8) 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.
- (9) The assessment manager may make a decision under this section even if the development approval was granted by the court.

- (10) Despite section 3.5.21, the development approval does not lapse until the assessment manager decides the request.
- (11) 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 (5).

### **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 is not the owner of the land to which the approval attaches, the request must be accompanied by the owner's consent unless the approval relates to land that was acquisition land to which section 3.2.1(13) applied when the application for the approval was made.
- (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.
- (3B) Subsection (3C) applies if an application for the approval were made at the time the request is made and evidence under section 3.2.1(5) would be required to support the application.



- (3C) The request must also be accompanied by the written agreement of the chief executive from whom evidence would need to be obtained under section 3.2.1(5).
- (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, subsection (1) does not apply if development under the development approval has started.
- (3) Also, cancellation can not be requested under subsection (1) 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 person proposing to buy the land; or
  - (b) if the application is for land the subject of a public utility easement—the entity in whose favour the easement is given; or
  - (c) if an application for the approval were made at the time the request is made and evidence under section 3.2.1(5) would be required to support the application—the chief executive from whom evidence would need to be obtained under that section.
- (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) Subsection (2) applies if a local government—
  - (a) gives a development approval and is satisfied the approval is inconsistent with the planning scheme; or
  - (b) gives a development approval mentioned in section 3.1.6; or
  - (c) decides to apply a superseded planning scheme for a purpose mentioned in section 3.2.5(1)(a) or 3.2.5(3)(a).

- (2) The local government must—
  - (a) note the approval or decision on its planning scheme; and
  - (b) give the chief executive written notice of the notation and the land to which the note relates.

*Note—*

For declared master planned areas, see also section 2.5B.73 (Notation of master plan on planning scheme).

- (3) The note is not an amendment of the planning scheme.
- (4) Failure to comply with subsection (2) does not affect the validity of the approval or decision.

### **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 owner's 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 compliance with an infrastructure agreement relating to the land.
- (2) A condition imposed under subsection (1)(c) is taken to comply with section 3.5.30.

### **3.5.31A Conditions requiring compliance**

- (1) Subsection (2) applies if, for a matter prescribed under a regulation, a condition requires a document or work to be assessed for compliance with a condition.
- (2) The assessment and the process for the assessment must be carried out in the way prescribed under the regulation.

### **3.5.32 Conditions that can not be imposed**

- (1) A condition must not—

*Integrated Planning Act 1997*

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- (a) be inconsistent with a condition of an earlier development approval still in effect for the development; or
  - (b) for infrastructure to which chapter 5, part 1 applies, require (other than under chapter 5, part 1)—
    - (i) a monetary payment for the establishment, operating and maintenance costs of the infrastructure; or
    - (ii) works to be carried out for the 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.
- (2) This section does not stop a condition being imposed that requires a monetary payment, or works to be carried out—
- (a) to protect or maintain—
    - (i) the safety or efficiency of existing or proposed State owned or State controlled transport infrastructure; or
    - (ii) the safety or efficiency of railways under the *Transport Infrastructure Act 1994*; or
  - (b) to ensure the efficient provision of public passenger transport through public passenger transport infrastructure within the meaning of the *Transport Planning and Coordination Act 1994*, whether or not the infrastructure is State owned or State controlled.
- (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.<sup>63</sup>

### **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 be accompanied by 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.
- (3B) Subsection (3C) applies if an application for the approval were made at the time the request is made and evidence under section 3.2.1(5) would be required to support the application.
- (3C) The request must also be accompanied by the written agreement of the chief executive from whom evidence would need to be obtained under section 3.2.1(5).
- (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—

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63 *Transport Infrastructure Act 1994*, schedule 6—

***transport infrastructure*** includes—

- (a) air, busway, light rail, miscellaneous, public marine, rail or road transport infrastructure; and
- (b) transport infrastructure relating to ports.

- (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.

**3.5.33A When condition may be changed or cancelled by assessment manager or concurrence agency**

- (1) This section applies for a development condition under another Act if, under the other Act, ‘development condition’ is defined with reference to a development approval.
- (2) However, if under the other Act an entity is authorised to change or cancel conditions of a development approval in a



different way, the other Act prevails to the extent of any inconsistency with this section.

- (3) The development condition may be changed or cancelled by—
  - (a) if the condition was imposed as a concurrence agency condition—the entity that was the concurrence agency; or
  - (b) if the condition was imposed by an assessment manager—the entity that was the assessment manager; or
  - (c) if paragraph (a) or (b) does not apply—the entity that has jurisdiction for the condition.
- (4) However, the condition may be changed or cancelled only on a ground mentioned in the other Act.<sup>64</sup>
- (5) The change or cancellation may be made without the consent of the owner of the land to which the approval attaches and any occupier of the land.
- (6) Section 3.5.30 applies to the changed condition.
- (7) If the entity is satisfied it is necessary to change or cancel the condition, the entity must give written notice to the owner of the land to which the approval attaches and any occupier of the land.
- (8) 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 a written submission to the entity about the proposed change or cancellation; and
  - (c) the time, which must be at least 15 business days after the notice is given to the holder, within which the submission may be made.
- (9) After considering any submissions, the entity must give to each person to whom the notice was given—

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<sup>64</sup> See, for example, the *Environmental Protection Act 1994*, section 73C.

- (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, and include details of the changed conditions or cancellation.
- (10) If the entity was a concurrence agency, the entity must also give the entity that was the assessment manager written notice of the change or cancellation.
- (11) The changed condition or cancellation takes effect from the day the notice is given to the owner of the land.

### **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.

### **3.5.37 Covenants not to be inconsistent with development approvals**

- (1) Subsection (2) applies if a covenant under the *Land Act 1994*, section 373A(4)<sup>65</sup> or the *Land Title Act 1994*, section 97A(3)(a) or (b)<sup>66</sup> 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.

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65 *Land Act 1994*, section 373A (Covenant by registration)

66 *Land Title Act 1994*, section 97A (Covenant by registration)

## **Part 6 Ministerial IDAS powers**

### **Division 1 Ministerial directions**

#### **3.6.1 Ministerial directions to assessment managers**

- (1) The Minister may, by written notice, give a direction to an assessment manager for a development application, in any of the following circumstances—
  - (a) if—
    - (i) the assessment manager has not decided the application; and
    - (ii) the development involves a State interest; and
    - (iii) the matter the subject of the direction is not within the jurisdiction of a concurrence agency for the application;
  - (b) if the assessment manager has not decided the application by the end of the decision making period, including any extension of the decision making period;
  - (c) if the assessment manager has not made a decision on representations made to the assessment manager under section 3.5.17;
  - (d) if the assessment manager has not otherwise complied with the period for taking an action under IDAS.
- (2) The direction may require the assessment manager—
  - (a) if subsection (1)(a) applies—to take one or more of the following actions—
    - (i) to refuse the application;
    - (ii) to attach to any development approval the conditions stated in the notice;
    - (iii) to approve only part of the application;
    - (iv) to give a preliminary approval only;
    - (v) for an application for a preliminary approval to which section 3.1.6 applies—

- (A) to approve all or some of the variations sought; or
  - (B) subject to section 3.1.6(3) and (5)—to approve different variations from those sought; or
  - (C) to refuse the variations sought; or
- (b) if subsection (1)(b) applies—to decide the development application within a stated period of at least 20 business days; or
  - (c) if subsection (1)(c) applies—to decide whether to give a negotiated decision notice within a stated period of at least 20 business days; or
  - (d) if subsection (1)(d) applies—to take the action within the reasonable period stated in the direction.
- (3) The notice must state—
    - (a) the reasons for deciding to give the direction; and
    - (b) for a direction under subsection (2)(a)—the State interest giving rise to the direction.
  - (4) The Minister must give the applicant and any referral agencies a copy of the notice.
  - (5) The assessment manager must comply with the direction.
  - (6) For an appeal under any of sections 4.1.27 to 4.1.29 the Minister's direction under subsection (2)(a) is taken to be a concurrence agency's response and the chief executive is taken to be a co-respondent.

### **3.6.2 Ministerial directions to concurrence agencies**

- (1) The Minister may, by written notice, give a direction to a concurrence agency if the Minister is satisfied—
  - (a) there are inconsistencies between 2 or more concurrence agency responses; or
  - (b) that the concurrence agency's response contains a condition that does not comply with section 3.5.30 or 3.5.32; or

- (c) that the concurrence agency's response is not within the limits of its jurisdiction; or
  - (d) that the concurrence agency has not assessed an application under the Act; or
  - (e) that the concurrence agency has not complied with the reasonable period for taking an action under IDAS.
- (2) The direction may require the concurrence agency—
- (a) if subsection (1)(a) applies—to reissue the concurrence agency's response to address the inconsistency; or
  - (b) if subsection (1)(b) applies—to reissue the concurrence agency's response without the condition or with a modified condition; or
  - (c) if subsection (1)(c) applies—to reissue the concurrence agency's response in a stated way to ensure the concurrence agency's response is within the limits of its jurisdiction; or
  - (d) if subsection (1)(d) applies—to reissue the concurrence agency's response in a stated way to ensure the concurrence agency has assessed the application under the Act; or
  - (e) if subsection (1)(e) applies—to take the action within the reasonable period stated in the direction.
- (3) The notice must state the reasons for deciding to give the direction.
- (4) The Minister must give the assessment manager, the applicant and any other referral agency a copy of the notice.
- (5) The concurrence agency must comply with the direction.

*Note—*

If the Minister gives a direction under this section, the concurrence agency may give or amend its response after the end of the assessment period for the application. See section 3.3.17(2).

### **3.6.3 Ministerial directions to applicants**

- (1) The Minister may, by written notice, give a direction to an applicant if the applicant has not complied with a stage of IDAS or an aspect of a stage of IDAS.

- (2) The Minister may, by written notice, direct the applicant to, within a stated reasonable period, take stated action relating to the stage or aspect to ensure compliance with IDAS.
- (3) The notice must state the reasons for deciding to give the direction.
- (4) The notice may also state the point in the IDAS process from which the process must restart.
- (5) The Minister must give the assessment manager and the referral agencies a copy of the notice.
- (6) The applicant must comply with the direction.
- (7) If the direction states the point in the IDAS process from which the process must restart and the applicant complies with the direction, the process must, for the application, restart at that point.

## **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;<sup>67</sup> 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.
- (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.
- (4) Subsection (5) applies despite subsection (1)(b) and (c), for an application called in by the regional planning Minister for a designated region.
- (5) The regional planning Minister for the designated region may, by written notice given to the applicant and the relevant local government, suspend the IDAS process until the number of days stated in the notice after—
- (a) publication of a notice under section 2.5A.13 about the designated region's draft regional plan; or
  - (b) publication of a notice under section 2.5A.14 about the designated region's regional plan.
- (6) Despite subsection (1), the regional planning Minister for the designated region may by written notice, at the end of the suspension of the IDAS process, refer the application to the original assessment manager to assess and decide.

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67 Also, see section 4.1.21(1)(a) and (1A) (Court may make declarations).



- (7) The notice mentioned in subsection (6) must state the point in the IDAS process from which, and the day on which, the process must restart for the application.
- (8) For assessing the application, whether by the regional planning Minister for the designated region after acting under subsection (5) or the original assessment manager, section 3.5.3 does not apply designated region's regional plan or a planning scheme amendment reflecting the designated region's regional plan.

### **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),<sup>68</sup> 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),<sup>69</sup> 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;<sup>70</sup> or
- (b) all or part of a building.

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68 *Land Title Act 1994*, section 50 (Requirements for registration of plan of subdivision)

69 *Building Units and Group Titles Act 1980*, section 9 (Registration of plan)

70 See section 1.3.5 (Definitions for terms used in *development*), definition of *reconfiguring a lot*, paragraph (d).

**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 while the permit still has effect.
- (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) 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*; or
  - (e) the acquisition of land for a water infrastructure facility.
- (2) Also, this part does not apply to a plan lodged under the *Acquisition of Land Act 1967*, section 12A,<sup>71</sup> 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)<sup>72</sup> do not apply to the registration of the plan.

## **Part 8                      Applying IDAS to mobile and temporary environmentally relevant activities**

### **3.8.1 Mobile and temporary environmentally relevant activities**

- (1) For administering IDAS under the *Environmental Protection Act 1994*, carrying out a mobile and temporary environmentally relevant activity is taken to be development.
- (2) For applying IDAS to assessable development mentioned in schedule 8, part 1, table 5, item 3, the following changes to IDAS apply—

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<sup>71</sup> *Acquisition of Land Act 1967*, section 12A (Constructing authority must lodge new plan of survey for particular land)

<sup>72</sup> *Land Title Act 1994*, sections 50 (Requirements for registration of plan of subdivision) and 83 (Registration of easement)

- (a) a description of the land and the consent of the owner of the land is not a mandatory part of the approved form; and
- (b) the development approval does not attach to land; and
- (c) the development approval applies for the activity wherever it is carried out; and
- (d) the development approval applies to and binds any person carrying out the activity under the approval; and
- (e) written consent of the person (the *applicant*) who applied for the development approval is required for any one who carries out the activity the subject of the approval who is not an agent or employee of the applicant.

## **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.<sup>73</sup>
- (2) Subject to section 4.2.7, the jurisdiction given to the court under this Act is exclusive.
- (3) Subject to division 13, 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.

### **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.

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<sup>73</sup> See jurisdiction of tribunals in part 2, division 1 (Establishing, constituting and jurisdiction of tribunals).



- (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 Court of Queensland Act 1967*, section 129,<sup>74</sup> 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 Court of Queensland Act 1967*, section 129(4) applies in relation to the contravention as if the person were an offender, and as if the expression *12 months* were *2 years* and the expression *84 penalty units* were *3000 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.

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<sup>74</sup> *District Court of Queensland Act 1967*, section 129 (Contempt)

**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; and
  - (b) the construction of this Act and planning instruments and master plans under this Act; and
  - (c) the lawfulness of land use or development.
- (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.
- (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 or master plan application and the applicant did not, in responding to an information request, or to a request for information for the master plan application, 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, or a coordinating agency for a master plan application, 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, or a coordinating agency for a master plan application, 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, 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, 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.
- (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 or master plans**

- (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 or master plan, 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 plan, or part of the scheme or plan.

**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;

- (c) the decision to give a preliminary approval when a development permit was applied for;
  - (d) the length of a period mentioned in section 3.5.21;
  - (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—general**

- (1) A submitter for a development application may appeal to the court only against—
- (a) the part of the approval relating to the assessment manager's decision under section 3.5.14 or 3.5.14A; or
  - (b) for an application processed under section 6.1.28(2)—the part of the approval about the aspects of the development that would have required public notification under the repealed Act.
- (2) To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—
- (a) the giving of a development approval;
  - (b) any provision of the approval including—
    - (i) a condition of, or lack of condition for, the approval; or
    - (ii) the length of a period mentioned in section 3.5.21 for the approval.
- (3) However, a submitter may not appeal if the submitter—
- (a) withdraws the submission before the application is decided; or
  - (b) has given the assessment manager a notice under section 3.5.19(1)(b)(ii).

- (4) The appeal must be started within 20 business days (the *submitter's appeal period*) after the decision notice or negotiated decision notice is given to the submitter.

#### **4.1.28A Additional and extended appeal rights for submitters for particular development applications**

- (1) This section applies to a development application to which chapter 5, part 8A applies.
- (2) A submitter of a properly made submission for the application may appeal to the court about a referral agency response made by a prescribed concurrence agency for the application.
- (3) However, the submitter may only appeal against a referral agency response to the extent it relates to—
- (a) if the prescribed concurrence agency is the chief executive (environment)—development for an environmentally relevant activity mentioned in the *Environmental Protection Regulation 1998*, schedule 1, item 1;<sup>75</sup> or
  - (b) if the prescribed concurrence agency is the chief executive (fisheries)—development that is—
    - (i) a material change of use of premises for aquaculture; or
    - (ii) operational work that is the removal, damage or destruction of a marine plant.
- (4) Despite section 4.1.28(1), the submitter may appeal against the following matters for the application even if the matters relate to code assessment—
- (a) a decision about a matter mentioned in section 4.1.28(2) if it is a decision of the chief executive (fisheries);
  - (b) a referral agency response mentioned in subsection (2).

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<sup>75</sup> *Environmental Protection Regulation 1998*, schedule 1, item 1 (Aquacultural and agricultural activities)

**4.1.29 Appeals by advice agency submitters**

- (1) Subsection (1A) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.<sup>76</sup>
- (1A) The advice agency may, within the limits of its jurisdiction, appeal to the court about any part of the approval relating to the assessment manager's decision under section 3.5.14 or 3.5.14A.
- (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.
- (3) However, if the advice agency has given the assessment manager a notice under section 3.5.19(1)(b)(ii), the advice agency may not appeal the decision.

**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 a period mentioned in section 3.5.21;
  - (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.

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76 See section 3.3.19 (Advice agency's response powers).

- (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**

### **4.1.30A Appeals by applicant for approval of a proposed master plan**

- (1) A person who has applied for an approval of a proposed master plan may appeal to the court against—
  - (a) the refusal, or the refusal in part, to give the approval; or
  - (b) a matter stated in the notice of decision about the application; or
  - (c) a deemed refusal.
- (2) An appeal under subsection (1)(a) or (b) must be started within 20 business days (the *applicant's appeal period*) after the day the applicant is given the notice of the decision.
- (3) An appeal under subsection (1)(c) may be started at any time after the last day a decision on the matter should have been made.

### **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 3.5.33A(9)(b) or 6.1.44 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.
- (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; or
  - (f) development the assessing authority reasonably believes is causing erosion or sedimentation.

**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 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, 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.

#### **4.1.36 Appeals about infrastructure charges**

- (1) This section applies to a person who has been given, and is dissatisfied with, an infrastructure charges notices.
- (2) The person may appeal to the court against the notice.
- (3) The appeal must be started within 20 business days after the day the notice is given to the person.
- (4) An appeal under this section may only be about—
  - (a) the methodology used to establish the charge in the infrastructure charges schedule; or
  - (b) an error in the calculation of the charge.

#### **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.
- (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).

#### **4.1.41 Notice of appeal to other parties (div 8)**

- (1) An appellant under division 8 must give written notice of the appeal to—
  - (a) if the appellant is an applicant—
    - (i) the chief executive; and
    - (ii) the assessment manager; and
    - (iii) any concurrence agency; and
    - (iv) any principal submitter whose submission has not been withdrawn; and

- (v) 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—
    - (i) the chief executive; and
    - (ii) the assessment manager; and
    - (iii) any referral agency; and
    - (iv) the applicant; or
  - (c) if the appellant is a person to whom a notice mentioned in section 4.1.30 has been given—
    - (i) the chief executive; and
    - (ii) the deciding entity; and
    - (iii) any entity that was a concurrence agency or building referral agency for the development application to which the notice relates.
- (2) The notice must be given within—
- (a) if paragraph (b) does not apply—10 business days after the appeal is started; or
  - (b) if the appellant is a submitter or advice agency whose response to the development application is treated as a submission for an appeal—2 business days after the appeal is started.
- (3) 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 may, within 10 business days after the notice is given, 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 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
  - (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) Subsections (2) to (8) apply for appeals under sections 4.1.27 to 4.1.29.
- (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) Any submitter may elect to become a co-respondent to the appeal.
- (5) If the appeal is about a concurrence agency response, the concurrence agency is a co-respondent for the appeal.
- (6) If the appeal is only about a concurrence agency response, the assessment manager may apply to the court to withdraw from the appeal.
- (7) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.
- (8) 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.

- (9) For an appeal under section 4.1.30—
- (a) the assessment manager is the respondent; and
  - (b) any entity that was a concurrence agency or a building referral agency for the development application to which a notice under section 3.6.1(1)(a) relates may elect to become 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.
- (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.

#### **4.1.45 How an entity may elect to be a co-respondent**

An entity that is entitled to elect to be a co-respondent to the appeal may do so, within 10 business days after notice of the appeal is given to the entity, by following the rules of court for the election.

#### **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 Court of Queensland Act 1967*, part 7<sup>77</sup> and the *Uniform Civil Procedure Rules 1999*, chapter 9, part 4<sup>78</sup> (together, the **ADR provisions**), apply to proceedings started under this part.
- (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 Court of Queensland Act 1967* and the *Uniform Civil Procedure Rules 1999* relevant to the ADR provisions apply.

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77 *District Court of Queensland Act 1967*, part 7 (ADR processes)

78 *Uniform Civil Procedure Rules 1999*, chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

## **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, or a person who has applied for approval of a proposed master plan, 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, 4.1.31, 4.1.33A, 4.1.33B or 4.1.36, 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, or is a person who has applied for approval of a proposed master plan, 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 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) Further, if the appellant is a person who has applied for approval of a proposed master plan, the court is not prevented from considering and making a decision about a ground of appeal (based on any coordinating agency's response) merely because this Act required the local government to refuse the application or include conditions in any approval of a master plan.

#### **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<sup>79</sup> 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 referral agency's response decision about the amenity and aesthetic impact of a building or structure, 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

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79 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* (other than a matter under that Act that may or

must be decided by the Building Services Authority)<sup>80</sup> 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;
  - (c) the decision to give a preliminary approval when a development permit was applied for;

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<sup>80</sup> For appeals against the authority's decisions under the *Building Act 1975*, see the *Building Act 1975*, section 189 (Appeals to Commercial and Consumer Tribunal about decisions under pt 3).

- (d) the length of a period mentioned in section 3.5.21;
  - (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.

#### **4.2.10 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 a period mentioned in section 3.5.21;
  - (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 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 building and plumbing and drainage matters**

- (1) If—
  - (a) a person has been given, or entitled to be given—
    - (i) an information notice under the *Building Act 1975* about a decision other than a decision under that Act made by the Building Services Authority; or
    - (ii) an information notice under the *Plumbing and Drainage Act 2002*, about a decision under part 4 or 5 of that Act;<sup>81</sup> or
  - (b) a person—
    - (i) was an applicant for a building development approval; and
    - (ii) is dissatisfied with a decision under the *Building Act 1975* by a building certifier or referral agency about inspection of building work the subject of the approval;

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81 *Plumbing and Drainage Act 2002*, part 4 (Compliance assessment) or 5 (Chief executive approvals)

the person may appeal against the decision to a tribunal.

- (2) An appeal under subsection (1) must be started within 20 business days after the day the person is given notice of the decision.
- (3) If—
  - (a) under the *Building Act 1975*, a person makes an application other than a building development application to a local government; and
  - (b) the period required under that Act for the local government to decide the application (the *decision period*) has passed; and
  - (c) the local government has not decided the application;the person may appeal to a tribunal against the lack of the decision and for the tribunal to decide the application as it were the local government.
- (4) An appeal under subsection (3) must be started within 20 business days after the end of the decision period.

#### **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—
  - (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—that the person, within 10 business days after the day the notice is given, may elect to become a co-respondent to the appeal.

**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 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.

- (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.<sup>82</sup>
- (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.

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82 Any person receiving a notice may appeal the decision. See section 4.1.37 (Appeals from tribunals).



**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
- (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 carry out assessable development unless there is an effective development permit for the development.

Maximum penalty—1665 penalty units.

- (2) Subsection (1)—

- (a) applies subject to sections 4.3.6 and 4.3.6A; and
- (b) does not apply to development carried out under section 3.5.21A(4).

- (3) Despite subsection (1), the maximum penalty is 17000 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**

- (1) A person must comply with applicable codes for self-assessable development.

Maximum penalty—165 penalty units.

- (2) Subsection (1) does not apply to a contravention of a standard environmental condition of a code of environmental compliance under the *Environmental Protection Act 1994*.

#### **4.3.2A Certain assessable development must comply with codes**

A person must comply with codes mentioned in section 3.1.2(4) 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—1665 penalty units.

- (2) Subsection (1) applies subject to sections 4.3.6 and 4.3.6A.
- (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)<sup>83</sup> 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—1665 penalty units.

- (2) Subsection (1) applies subject to sections 4.3.6 and 4.3.6A.

#### **4.3.5 Offences about the use of premises**

Subject to sections 4.3.6 and 4.3.6A, a person must not use premises—

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83 Sections 4.4 (Assessment of proposed planning scheme amendment) and 4.7 (Assessment of rezoning of land in stages) of the repealed Act

- (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;<sup>84</sup> or
  - (ii) for premises that have been designated—any requirements about the use of land that are part of the designation.<sup>85</sup>

Maximum penalty—1665 penalty units.

#### **4.3.5A Compliance with State planning regulatory provisions**

Subject to chapter 1, part 4, a person must not carry out development in the relevant area for a State planning regulatory provision if the development is contrary to a State planning regulatory provision for the area.

Maximum penalty—1665 penalty units.

#### **4.3.5B Compliance with master plans**

- (1) This section is subject to chapter 1, part 4.
- (2) This section does not apply to development carried out on designated land in accordance with the relevant designation.
- (3) A person must not carry out development in a declared master planned area if the carrying out of the development is contrary to a master plan for the area.

Maximum penalty—1665 penalty units.

- (4) A person must not carry out development in a declared master planned area if the structure plan for the area requires that the development can not be carried out in the master planned area until there is a master plan for the development.

Maximum penalty—1665 penalty units.

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84 See section 2.1.23(3) (Local planning instruments have force of law).

85 See section 2.6.4 (What designations may include).

**4.3.6 General exemption for emergency development or use**

- (1) Sections 4.3.1 and 4.3.3 to 4.3.5B do not apply to a person if—
  - (a) the person carries out development or a use, other than operational work that is tidal works, because of an emergency endangering—
    - (i) the life or health of a person; or
    - (ii) the structural safety of a building; and
  - (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.

**4.3.6A Coastal emergency exemption for operational work that is tidal works**

- (1) This section applies to operational work (the *emergency work*) if all of the following circumstances apply—
  - (a) the emergency work is tidal works;
  - (b) other than for this section, a development permit would have been required to carry out the emergency work;
  - (c) the emergency work is necessary to ensure the following are not, or are not likely to be, endangered by a coastal emergency—
    - (i) the structural safety of an existing structure for which there is a development permit for operational work that is tidal works; or
    - (ii) the life or health of a person; or
    - (iii) the structural safety of a building.
- (2) Sections 4.3.1, 4.3.3, 4.3.4 and 4.3.5 do not apply to a person who carries out the emergency work if—
  - (a) the person has made a safety management plan for the emergency work, after having regard to the following matters—

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- (i) the long-term safety of members of the public who have access to the emergency work or any structure to which the emergency work relates;
    - (ii) if practicable, the advice of any registered professional engineer who has conducted an audit of any structure to which the emergency work relates; and
  - (b) the person complies with the safety management plan; and
  - (c) the person takes reasonable precautions and exercises proper diligence to ensure the emergency work, and any structure to which the emergency work relates, are in a safe condition; and
  - (d) without limiting paragraph (c), the person commissions a registered professional engineer to conduct an audit of any structure to which the emergency work relates, to ensure the emergency work and the structure are in a safe condition; and
  - (e) as soon as reasonably practicable after starting the emergency work, the person—
    - (i) makes a development application for any development permit that would otherwise be required for the work; and
    - (ii) gives the assessment manager for the application written notice of the work and a copy of the safety management plan.
- (3) However, subsection (2) does not apply if the person is required by an enforcement notice or order to stop carrying out the emergency work.
- (4) Also, subsection (2) ceases to apply, if the development application is refused.
- (5) If, under subsection (4), subsection (2) ceases to apply, the person must remove the emergency work as soon as practicable.

Maximum penalty—1665 penalty units.

- (6) In this section—

*registered professional engineer* means a registered professional engineer under the *Professional Engineers Act 2002* or a person registered as a professional engineer under an Act of another State.

#### **4.3.7 Giving a false or misleading document**

- (1) A person must not give an assessment manager a notice under section 3.3.4, 3.4.7 or 5.8A.7 that is false or misleading.

Maximum penalty—1665 penalty units.

- (2) A person must not give to the assessment manager or a concurrence agency, or to a local government to which a master plan application has been made, a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—1665 penalty units.

- (3) Subsection (2) does not apply to a person who, when giving the document—

(a) informs the assessment manager or concurrence agency or local government of the extent to which the document is false or misleading; and

(b) gives the correct information to the assessment manager or a concurrence agency or local government if the person has, or can reasonably obtain, the correct information.

- (4) A complaint against a person for an offence against subsection (2) is sufficient if it states that the document was false or misleading to the person's knowledge.



## **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—

- (a) work the authority reasonably believes is a danger to persons or a risk to public health; or
- (aa) work the authority reasonably believes is an immediate threat to the safety or operational integrity of a railway; 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
- (g) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (f), from Queensland waters; or
- (h) development the authority reasonably believes is causing erosion or sedimentation.

### **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<sup>86</sup>—
- (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.

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<sup>86</sup> A person who receives an enforcement notice may appeal against the notice under section 4.1.32 (Appeals against enforcement notices).

- (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 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, a code or a master plan;
  - (f) to apply for a development permit or make a master plan application;
  - (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;
  - (h) to prepare and submit to the assessing authority a compliance program demonstrating how compliance with the enforcement notice will be achieved.
- (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, a code or a master plan; 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—1665 penalty units.
- (2) A person must not damage, deface or remove an enforcement notice given under section 4.3.11(6).  
Maximum penalty—1665 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 or makes a master plan application 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—1665 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.<sup>87</sup>
- (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—

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<sup>87</sup> 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.

- (a) section 4.3.1, 4.3.2 or 4.3.3 about the building assessment provisions; or
- (b) section 4.3.2A, 4.3.7, 4.3.15 or 4.3.16.

#### **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, a code or a master plan; or
  - (e) for development that has started—to apply for a development permit or make a master plan application; 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—1665 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.<sup>88</sup>
- (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.

#### **4.3.21 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

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<sup>88</sup> 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.



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 building assessment provisions, 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.

#### **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, or during a stated period—
    - (i) there was or was not a master plan for stated land or development; or
    - (ii) a stated condition was included in a master plan;
  - (e) on a stated day, a stated person was given a stated notice or direction under this Act;
  - (f) 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.

## **Division 4                      Appeals about other matters**

### **4.4.15 Appeals for compliance assessment**

- (1) For an assessment mentioned in section 3.5.31A, a person may appeal—
  - (a) in the circumstances prescribed under a regulation; and
  - (b) to the entity prescribed in the regulation; and
  - (c) within the time and in the way prescribed under the regulation.
- (2) The entity prescribed under the regulation must be the tribunal or the court.
- (3) The regulation may prescribe the provisions of part 1 or 2 that are to apply for hearing and deciding the appeal.

## **Chapter 5      Miscellaneous**

### **Part 1            Infrastructure planning and funding**

#### **Division 1        Preliminary**

##### **5.1.1    Purpose of pt 1**

The purpose of this part is to—

- (a) seek to integrate land use and infrastructure plans; and
- (b) establish an infrastructure planning benchmark as a basis for an infrastructure funding framework; and
- (c) establish an infrastructure funding framework that is equitable and accountable; and
- (d) integrate State infrastructure providers into the framework.

*Note—*

For declared master planned areas, see also section 2.5B.58 (Modified application of provisions about infrastructure for master plan).

#### **Division 2        Non-trunk infrastructure**

##### **5.1.2    Conditions local governments may impose for non-trunk infrastructure**

- (1) If a local government imposes a condition about non-trunk infrastructure, the condition may only be for supplying infrastructure for 1 or more of the following—
  - (a) networks internal to the premises;
  - (b) connecting the premises to external infrastructure networks;

- (c) protecting or maintaining the safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component.
- (2) The condition must state—
- (a) the infrastructure to be supplied; and
  - (b) when the infrastructure must be supplied.

## **Division 3                    Trunk infrastructure**

### **5.1.3 Priority infrastructure plans for trunk infrastructure**

Each priority infrastructure plan<sup>89</sup> must be prepared as required by guidelines prescribed under a regulation.

### **5.1.4 Funding trunk infrastructure for certain local governments**

- (1) Under this Act, a local government may levy a charge for supplying trunk infrastructure under either—
- (a) an infrastructure charges schedule; or
  - (b) a regulated infrastructure charges schedule.<sup>90</sup>
- (3) Subsection (1) does not stop a local government from—
- (a) having, or not having, an infrastructure charges schedule for a part of a trunk infrastructure network; or
  - (b) adopting infrastructure charges schedules at different times.

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<sup>89</sup> See section 2.1.3(1)(d) (Key elements of planning schemes).

<sup>90</sup> See the *Local Government Act 1993*, chapter 14 (Rates and charges), part 2 (Making and levying rates and charges) for a local government's power to levy rates and charges in other ways.

## **Division 4                      Trunk infrastructure funding under an infrastructure charges schedule**

### **5.1.5 Making or amending infrastructure charges schedules**

- (1) Despite section 2.1.5, an infrastructure charges schedule must be prepared or amended as required by—
  - (a) guidelines prescribed under a regulation; and
  - (b) the process stated in schedule 1.
- (2) The schedule, or an amendment of the schedule, has effect on and from—
  - (a) the day the adoption of the schedule, or the amendment of the schedule, 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 schedule, or the amendment of the schedule, is stated in the schedule, or the amendment—the later day.
- (3) The Minister may seek advice or comment from the Queensland Competition Authority about—
  - (a) the consideration of State interests under schedule 1, section 11; or
  - (b) another matter relating to an infrastructure charges schedule.
- (4) However, the seeking of advice or comment under subsection (3) does not stop the process under schedule 1.

### **5.1.6 Key elements of an infrastructure charges schedule**

- (1) An infrastructure charges schedule must state each of the following—
  - (a) a charge (an *infrastructure charge*) for each trunk infrastructure network identified in the schedule;
  - (b) the estimated proportion of the establishment cost of each network to be funded by the charge;
  - (c) when it is anticipated the infrastructure forming part of the network will be provided;

- (d) the estimated establishment cost of the infrastructure;
  - (e) each area in which the charge applies;
  - (f) each type of lot or use for which the charge applies;
  - (g) how the charge must be calculated for—
    - (i) each area mentioned in paragraph (e); and
    - (ii) each type of lot or use mentioned in paragraph (f).
- (2) An infrastructure charge may also apply to trunk infrastructure—
- (a) despite section 2.1.2—that is not within, or completely within, the local government’s area; or
  - (b) that is not owned by the local government, if the owner of the infrastructure agrees; or
  - (c) supplied by a local government on a State-controlled road.<sup>91</sup>
- (3) For subsection (1)(a), an infrastructure charge may be stated as—
- (a) a monetary amount; or
  - (b) a number of units (*charge units*).
- (4) If an infrastructure charge is stated as a number of charge units, the local government must set the amount for each charge unit by resolution.
- (5) The current amount for a charge unit must be stated in the local government’s infrastructure charges register.
- (6) The method for indexing the amount for a charge unit and the indices used in setting the amount for the charge unit must be identified in the infrastructure charges schedule.

### **5.1.7 Infrastructure charges**

- (1) The infrastructure charge—
- (a) must be for a trunk infrastructure network that services, or is planned to service, premises and is identified in the

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91 See the *Transport Infrastructure Act 1994*, sections 32 and 41.

- priority infrastructure plan; and
- (b) must not be more than the proportion of the establishment cost of the network that reasonably can be apportioned to the premises for which the charge is stated, taking into account—
    - (i) the usage of the network by the premises; or
    - (ii) the capacity of the network allocated to the premises.
  - (2) Also, if the infrastructure charge is levied for an existing lawful use, it must be based on the current share of usage of the network at the time the charge is levied.
  - (3) Subsection (2) does not apply if the local government and the owner of the land to which the charge relates otherwise agree in writing.
  - (4) However, an infrastructure charge must not be levied for a work or use of land authorised under the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

### **5.1.8 Infrastructure charges notices**

- (1) A notice requiring the payment of an infrastructure charge (an *infrastructure charges notice*) must state each of the following—
  - (a) the amount of the charge;
  - (b) the land to which the charge applies;
  - (c) when the charge is payable;
  - (d) the trunk infrastructure network for which the charge has been stated;
  - (e) the person to whom the charge must be paid.
- (2) If the notice is given as a result of a development approval, the local government must give the notice to the applicant—
  - (a) if the local government is the assessment manager—at the same time as the approval is given; or
  - (b) in any other case—within 10 business days after the

local government receives a copy of the approval.

- (3) If the notice is not given as a result of a development approval, the local government must give the notice to the owner of the land.
- (4) The charge is not recoverable unless the entitlements under the approval are exercised.
- (5) The notice lapses if the approval stops having effect.<sup>92</sup>

### **5.1.9 When infrastructure charges are payable**

An infrastructure charge is payable—

- (a) if the charge applies to reconfiguring a lot that is assessable development—before the local government approves the plan of subdivision under chapter 3, part 7; or
- (b) if the charge applies to building work that is assessable development—before the certificate of classification for the building work is issued; or
- (c) if the charge applies to a material change of use—before the change happens; or
- (d) if paragraphs (a), (b) and (c) do not apply—on the day stated in the infrastructure charges notice.

### **5.1.10 Application of infrastructure charges**

- (1) An infrastructure charge levied and collected—
  - (a) for a network of trunk infrastructure, must be used to provide infrastructure for the network; or
  - (b) for works required for the local function of State-controlled roads, must be used to provide works on the State-controlled roads.
- (2) However, if the local government and the State infrastructure provider for State-controlled roads agree, the infrastructure charge may be used to provide works for the local government road network.

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92 See section 3.5.21 (When approval lapses if development not started).



**5.1.11 Accounting for infrastructure charges**

- (1) An infrastructure charge levied and collected for local works on State infrastructure must be separately accounted for.
- (2) To remove any doubt, it is declared that an infrastructure charge levied and collected by a local government need not be held in trust.

**5.1.12 Agreements about, and alternatives to, paying infrastructure charges**

- (1) Despite sections 5.1.8 and 5.1.9, a person to whom an infrastructure charges notice has been given and the infrastructure provider may enter into a written agreement about 1 or more of the following—
  - (a) whether the charge may be paid at a different time from the time stated in the notice, and whether it may be paid by instalments;
  - (b) whether infrastructure may be supplied instead of paying all or part of the charge;<sup>93</sup>
  - (c) whether infrastructure that delivers the same standard of service as that identified in the priority infrastructure plan may be supplied instead of the infrastructure identified in the infrastructure charges schedule;
  - (d) if section 5.1.8(2)(a) applies for the charge and the infrastructure is land owned by the applicant—whether land in fee simple may be given instead of paying the charge or part of the charge.
- (2) For development infrastructure that is land, 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 person to—
  - (a) give to the local government, in fee simple, part of the land the subject of the development application; or
  - (b) give to the local government, in fee simple, part of the land the subject of the development application and an

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93 See the *Transport Infrastructure Act 1994*, sections 32 and 41 for works involving a State-controlled road.

infrastructure charge.

- (3) If the applicant is required to give land under subsection (2)(a), or a combination of land and a charge under subsection (2)(b), the total value of the contribution must not be more than the amount of the charge mentioned in section 5.1.8(1).
- (4) The applicant must comply with the notice as soon as practicable.
- (5) If subsection (1)(d) or (2) applies and the land is to be given to the local government for public parks infrastructure or local community facilities, the land must be given on trust.

### **5.1.13 Local government may supply different trunk infrastructure from that identified in a priority infrastructure plan**

A local government may supply different trunk infrastructure from the infrastructure identified in the priority infrastructure plan if the infrastructure supplied delivers the same desired standard of service for the relevant network.

### **5.1.14 Infrastructure charges taken to be a rate**

- (1) An infrastructure charge levied 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 or person, subsection (1) does not apply.

## **Division 5                      Trunk infrastructure funding under a regulated infrastructure charges schedule**

### **5.1.15 Regulated infrastructure charge**

A regulation or State planning regulatory provision may provide for—

- (a) a charge for the supply of trunk infrastructure; and
- (b) development for which the charge may be levied.

### **5.1.16 Adopting and notifying regulated infrastructure charges schedule**

- (1) A local government may, by resolution, adopt a schedule of charges (a *regulated infrastructure charges schedule*) for the establishment cost of trunk infrastructure in a local government area.
- (2) Each charge in the schedule must not be more than the amount provided for under a regulation or State planning regulatory provision.
- (3) The schedule must state—
  - (a) the charge for each trunk infrastructure network identified in the schedule; and
  - (b) development to which the charge applies; and
  - (c) the areas within which each charge applies.
- (4) As soon as practicable after the local government decides to adopt a regulated infrastructure charges schedule, 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 a regulated infrastructure charges schedule, for the supply of trunk infrastructure in the local government's area, has been adopted;
  - (c) the day the resolution was made;
  - (d) the day the schedule applies;
  - (e) whether the schedule replaces an existing schedule;
  - (f) that a copy of the schedule is available for inspection and purchase.
- (5) 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 schedule.
- (6) The schedule has effect on and from—
- (a) the day the adoption of the schedule 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 schedule is stated in the schedule—the later day.
- (7) A copy of the schedule must be attached to each copy of the local government's planning scheme.
- (8) To remove any doubt, it is declared that the schedule is not part of the local government's planning scheme.

### **5.1.17 Regulated infrastructure charges**

- (1) A charge in a regulated infrastructure charges schedule (a *regulated infrastructure charge*) for premises must be for a trunk infrastructure network that services, or is planned to service, the premises and is identified in the priority infrastructure plan.
- (2) However, a regulated infrastructure charge must not be levied for a work or use of land authorised under the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

### **5.1.18 Regulated infrastructure charges notice**

- (1) A notice requiring the payment of a regulated infrastructure charge (a *regulated infrastructure charges notice*) must state each of the following—
- (a) the amount of the charge;
  - (b) the land to which the charge applies;
  - (c) when the charge is payable;
  - (d) the trunk infrastructure network for which the charge has been stated.
- (2) The local government must give the notice to the applicant—

- (a) if the local government is the assessment manager—at the same time as the development approval is given; or
  - (b) in any other case—within 10 business days after the local government receives a copy of the approval.
- (3) The charge is not recoverable unless the entitlements under the approval are exercised.
- (4) The notice lapses if the approval stops having effect.<sup>94</sup>

### **5.1.19 When regulated infrastructure charges are payable**

A regulated infrastructure charge is payable—

- (a) if the charge applies to reconfiguring a lot that is assessable development—before the local government approves the plan of subdivision under chapter 3, part 7; or
- (b) if the charge applies to building work that is assessable development—before the certificate of classification for the building work is issued; or
- (c) if the charge applies to a material change of use—before the change happens; or
- (d) otherwise—on the day stated in the regulated infrastructure charges notice.

### **5.1.20 Application of regulated infrastructure charges**

A regulated infrastructure charge levied and collected for a network of trunk infrastructure must be used to provide infrastructure for the network.

### **5.1.21 Accounting for regulated infrastructure charges**

To remove any doubt, it is declared that a regulated infrastructure charge levied and collected by a local government need not be held in trust.

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94 See section 3.5.21 (When approval lapses if development not started).

**5.1.22 Agreements about, and alternatives to, paying regulated infrastructure charges**

Despite sections 5.1.18 and 5.1.19, a person to whom a regulated infrastructure charges notice has been given and the infrastructure provider may enter into a written agreement about 1 or more of the following—

- (a) whether the charge may be paid at a different time from the time stated in the notice, and whether it may be paid by instalments;
- (b) whether infrastructure may be supplied instead of paying all or part of the charge.

**5.1.23 Regulated infrastructure charges taken to be a rate**

- (1) A regulated infrastructure charge levied 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 or person, subsection (1) does not apply.

**Division 6                      Conditions local governments may impose for necessary trunk infrastructure****5.1.24 Conditions local governments may impose for necessary trunk infrastructure**

- (1) This section applies if—
  - (a) existing trunk infrastructure necessary to service the premises is not adequate and trunk infrastructure adequate to service the premises is identified in the priority infrastructure plan; or
  - (b) trunk infrastructure to service the premises is necessary, but is not yet available and is identified in the priority infrastructure plan; or
  - (c) trunk infrastructure identified in the priority

infrastructure plan is located on the premises.

- (2) A local government may require different trunk infrastructure from the infrastructure identified in the priority infrastructure plan if the required infrastructure delivers the same desired standard of service for the relevant network.
- (3) The local government may impose a condition requiring the applicant to supply the trunk infrastructure mentioned in subsection (1) or (2), even if the infrastructure will service other premises.
- (4) The condition must state—
  - (a) the trunk infrastructure to be supplied; and
  - (b) when the infrastructure must be supplied.
- (5) Subsection (6) applies if—
  - (a) the trunk infrastructure mentioned in subsection (3) services, or is planned to service, other premises; and
  - (b) the amount of the value of the infrastructure is more than the amount of the value of the charge for the network for the premises.
- (6) The applicant—
  - (a) does not have to pay an infrastructure charge for the network; and
  - (b) is entitled to a refund from the infrastructure provider, on terms agreed with the infrastructure provider, for the proportion of the establishment cost of the trunk infrastructure mentioned in subsection (3)—
    - (i) that reasonably can be apportioned to the other users' premises mentioned in subsection (5)(a); and
    - (ii) collected, or to be collected, under an infrastructure charges schedule.
- (7) If subsection (6) does not apply, the amount of the value of the infrastructure supplied under the condition for a network must be offset against any charge that may be levied for the premises under section 5.1.8 for the network.
- (8) A condition imposed under subsection (3) complies with

section 3.5.30—

- (a) for subsection (1)(a) or (b)—
  - (i) to the extent the infrastructure is necessary to service the premises; and
  - (ii) if the infrastructure is the most efficient and cost effective solution for servicing the premises; and
- (b) for subsection (1)(c)—to the extent the infrastructure is not an unreasonable imposition on—
  - (i) the development; or
  - (ii) the use of premises as a consequence of the development.

## **Division 7                      Conditions local governments may impose for additional trunk infrastructure costs**

### **5.1.25 Conditions local governments may impose for additional trunk infrastructure costs**

- (1) A local government may not impose a condition requiring the payment of additional trunk infrastructure costs unless the local government has given an acknowledgment notice under section 3.2.4.
- (2) A local government may impose a condition requiring the payment of additional trunk infrastructure costs only if the development—
  - (a) is—
    - (i) inconsistent with the assumptions about the type, scale, location or timing of future development stated in the priority infrastructure plan; or
    - (ii) for premises completely or partly outside the priority infrastructure area; and
  - (b) would impose additional trunk infrastructure costs on the infrastructure provider after taking into account either or both of the following—



- (i) infrastructure charges or regulated infrastructure charges levied for the development;
  - (ii) trunk infrastructure supplied, or to be supplied by the applicant under divisions 4 to 6.
- (3) A condition mentioned in subsection (2) must state each of the following—
  - (a) why the condition is required;
  - (b) the amount of the payment required;
  - (c) details of the infrastructure for which the payment is required;
  - (d) when the payment must be made;
  - (e) the person to whom the payment must be made;
  - (f) the applicant may elect to supply all or part of the infrastructure instead of making payment for the infrastructure to be supplied;
  - (g) if the applicant makes an election under paragraph (f)—
    - (i) any requirements for supplying the infrastructure; and
    - (ii) when the infrastructure must be supplied.
- (4) Unless the applicant and the infrastructure provider otherwise agree in writing, for subsection (3)(d), the payment must be made—
  - (a) if the trunk infrastructure is necessary to service the premises—by the day the development, or work associated with the development, starts; or
  - (b) if the trunk infrastructure is not necessary to service the premises—
    - (i) for reconfiguring a lot—before the local government approves the plan of subdivision under chapter 3, part 7; or
    - (ii) for other development—before the use commences.
- (5) Subsection (6) applies if—
  - (a) a development approval no longer has effect; and

- (b) a payment for the additional trunk infrastructure costs has been made; and
  - (c) construction of the infrastructure has not substantially commenced before the approval ceased having effect.
- (6) The local government must repay to the person who made the payment any part of the payment the local government has not spent, or contracted to spend, on the design and construction of the infrastructure.
- (7) A condition imposed under this division complies with section 3.5.30, to the extent the trunk infrastructure is necessary, but not yet available, to service development, even if the infrastructure is also intended to service other development.
- (8) A local government may not impose a condition under this division for a supplier of State infrastructure.
- (9) Nothing in this division stops a local government from—
- (a) levying a charge for the establishment cost of the component of the trunk infrastructure network included in the infrastructure charges schedule; or
  - (b) imposing a condition for non-trunk infrastructure; or
  - (c) imposing a condition for necessary trunk infrastructure.

### **5.1.26 Local government additional trunk infrastructure costs in priority infrastructure areas**

- (1) The costs that may be required by a local government under section 5.1.25, for development completely in the priority infrastructure area, may only include—
- (a) for trunk infrastructure to be supplied earlier than anticipated in the priority infrastructure plan—the difference between the establishment cost of the infrastructure made necessary by the development and the amount of any charge paid for the infrastructure; or
  - (b) for trunk infrastructure associated with a different type, scale or intensity of development from that anticipated in the priority infrastructure plan—

- (i) for a different type, a greater scale or a greater intensity of development—the establishment cost of any additional trunk infrastructure made necessary by the development; or
  - (ii) for a lesser scale or lesser intensity of development—the difference between the establishment cost of the infrastructure identified in the plan and the establishment cost of the infrastructure necessary for the development.
- (2) The applicant is entitled to a refund from the infrastructure provider, on terms agreed with the infrastructure provider, for the proportion of the establishment cost of the infrastructure—
  - (a) that reasonably can be apportioned to the other users of the infrastructure mentioned in subsection (1)(a) or (1)(b)(i); and
  - (b) collected, or to be collected, under an infrastructure charges schedule.

### **5.1.27 Local government additional trunk infrastructure costs outside priority infrastructure areas**

- (1) The costs that may be required under section 5.1.25, for development completely or partly outside the priority infrastructure area, may only include, for each network—
  - (a) the establishment cost of any trunk infrastructure made necessary by the development; and
  - (b) either or both of the following establishment costs of any temporary infrastructure—
    - (i) costs required to ensure the safe or efficient operation of the infrastructure mentioned in paragraph (a); or
    - (ii) costs made necessary by the development; and
  - (c) the decommissioning, removal and rehabilitation costs of any temporary infrastructure mentioned in paragraph (b); and

- (d) the maintenance and operating costs of the infrastructure mentioned in paragraphs (a) and (b), for up to 5 years.
- (2) Subsection (3) applies if the planning scheme indicates the premises is part of an area intended for future development for—
  - (a) residential purposes; or
  - (b) retail or commercial purposes; or
  - (c) industrial purposes.
- (3) For subsection (1)(a), trunk infrastructure made necessary by the development includes the trunk infrastructure necessary to service the balance of the area mentioned in subsection (2).

## **Division 8**

## **Conditions State infrastructure providers may impose for infrastructure**

### **5.1.28 Conditions State infrastructure provider may impose**

- (1) A State infrastructure provider may impose a condition about either or both of the following—
  - (a) infrastructure;
  - (b) works to protect the operation of the infrastructure.
- (2) The condition must be only for—
  - (a) protecting or maintaining the safety or efficiency of the provider's infrastructure network; or
  - (b) additional infrastructure costs; or
  - (c) protecting or maintaining the safety and efficiency of public passenger transport.

*Examples of a condition for safety or efficiency—*

- 1 a deceleration lane and entry access to a shopping centre development
- 2 traffic signals at an intersection 1 block from a shopping centre development

*Integrated Planning Act 1997*

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- 3 upgrading transverse drainage under a State-controlled road because of increased hard stand parking area from development
- 4 road shoulder widening added to reconstruction of a road because of increased traffic loading to stop road edge wear
- 5 provision of a bus stop and adjacent pull-in bay in a large residential subdivision to accommodate a public passenger transport service
- 6 provision of a bus turning lane at an intersection for a shopping centre development because of increased traffic loading
- 7 upgrade of traffic control devices at a rail level crossing because of increased vehicular crossings from nearby residential development

*Example of a condition for additional infrastructure costs—*

contribution for the construction of road works on a State-controlled road when land, not in the priority infrastructure area is developed as a large town-house estate—such as for the provision of footpaths, kerb and channel with ancillary drainage and a landscaped noise buffer

- (3) A condition under subsection (1) may require either or both of the following—
  - (a) infrastructure to be supplied at a different standard to the standard stated in the priority infrastructure plan;
  - (b) different infrastructure to be supplied to the infrastructure identified in the priority infrastructure plan.
- (4) Subsection (5) applies if infrastructure mentioned in subsection (3)—
  - (a) has replaced, or is to replace, infrastructure for which a local government has collected, or may collect, an infrastructure charge; and
  - (b) provides the same desired standard of service as the replaced infrastructure.
- (5) The local government must—
  - (a) give the charge collected to the State infrastructure provider to be used—
    - (i) for the construction of the infrastructure; or
    - (ii) to reimburse the person who constructed the infrastructure; or

- (b) enter into an agreement with the State infrastructure provider and the person required to comply with the condition about when payment of the charge collected will be made—
  - (i) for the construction of the infrastructure; or
  - (ii) to reimburse the person who constructed the infrastructure.
- (6) In this section—

***infrastructure network***, for State owned or State controlled transport infrastructure, means transport infrastructure under the *Transport Infrastructure Act 1994* that is owned or controlled by the State.

***safety or efficiency of the provider's infrastructure network*** means the safety of any of the users of the provider's infrastructure network and others impacted by the network or the efficiency of the use of the provider's infrastructure network.<sup>95</sup>

### **5.1.29 Requirements for conditions about safety or efficiency**

- (1) A condition imposed under section 5.1.28(2)(a) for supplying, or contributing toward the cost of, infrastructure must state—
  - (a) the infrastructure or works to be supplied or the contribution to be made; and
  - (b) when the infrastructure or works must be supplied or the contribution made.
- (2) Subsection (3) applies if—
  - (a) a development approval no longer has effect; and
  - (b) a contribution for infrastructure for safety and efficiency has been made; and
  - (c) construction of the infrastructure had not substantially commenced before the approval ceased to have effect.

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<sup>95</sup> See any guidelines made by the chief executive administering the *Transport Infrastructure Act 1994* about safety or efficiency of a provider's infrastructure network.

- (3) The State infrastructure provider must repay, to the person who made the contribution, any part of the contribution the State infrastructure provider has not spent, or contracted to spend, on the design and construction of the infrastructure before the provider is told the approval has ceased to have effect.

### **5.1.30 Requirements for conditions about additional infrastructure costs**

- (1) A State infrastructure provider may impose a condition under section 5.1.28(2)(b) only to the extent the development—
  - (a) is—
    - (i) inconsistent with the assumptions stated in the priority infrastructure plan; or
    - (ii) for premises completely or partly outside the priority infrastructure area; and
  - (b) imposes additional infrastructure costs on the State infrastructure provider.
- (2) A condition mentioned in subsection (1) must state each of the following—
  - (a) why the condition is required;
  - (b) the amount of the payment required;
  - (c) details of the infrastructure for which the payment is required;
  - (d) when the payment must be made;
  - (e) the person to whom the payment must be made;
  - (f) the applicant may elect to supply all or part of the infrastructure instead of making payment for the infrastructure to be supplied;
  - (g) if the applicant makes an election under paragraph (f)—
    - (i) any requirements for supplying the infrastructure; and
    - (ii) when the infrastructure must be supplied.

- (3) Unless the applicant and the infrastructure provider otherwise agree in writing, for subsection (2)(d), the payment must be made—
  - (a) if the trunk infrastructure is necessary to service the premises—by the day the development, or work associated with the development, starts; or
  - (b) if the trunk infrastructure is not necessary to service the premises—
    - (i) for reconfiguring a lot—before the local government approves the plan of subdivision under chapter 3, part 7; or
    - (ii) for other development—before the use commences.
- (4) Subsection (5) applies if—
  - (a) a development approval no longer has effect; and
  - (b) a payment for the additional infrastructure costs has been made; and
  - (c) construction of the infrastructure has not substantially commenced before the approval ceased having effect.
- (5) The State infrastructure provider must repay to the person who made the payment any part of the payment the State infrastructure provider has not spent, or contracted to spend, on the design and construction of the infrastructure before the provider is told the approval has ceased to have effect.
- (6) A condition imposed under this division complies with section 3.5.30, to the extent the infrastructure is necessary, but not yet available, to service development, even if the infrastructure is also intended to service other development.

### **5.1.31 State infrastructure provider additional infrastructure costs in priority infrastructure areas**

- (1) The costs that may be required by a State infrastructure provider under section 5.1.30, for development completely in the priority infrastructure area, may only include—



- (a) for infrastructure to be supplied earlier than the time anticipated in the priority infrastructure plan, the difference between—
    - (i) the present value of the establishment cost of the infrastructure; and
    - (ii) the present value of the establishment cost of the infrastructure, if the approval had not been given; or
  - (b) for infrastructure associated with a different type, scale or intensity of development from that anticipated in the priority infrastructure plan—the establishment cost of any additional infrastructure made necessary by the development.
- (2) The applicant is entitled to a refund from the State infrastructure provider, on terms agreed with the State infrastructure provider, and the local government for the proportion of the establishment cost of the infrastructure—
- (a) that reasonably can be apportioned to the other users' premises mentioned in subsection (1)(b); and
  - (b) collected, or to be collected, under an infrastructure charges schedule.

### **5.1.32 State infrastructure provider additional infrastructure costs outside priority infrastructure areas**

- (1) The costs that may be required under section 5.1.30, for development completely or partly outside the priority infrastructure area, may only include—
- (a) the establishment cost of any infrastructure made necessary by the development; and
  - (b) the maintenance and operating costs of the infrastructure mentioned in paragraph (a) for up to 5 years; and
  - (c) the establishment, maintenance and operating costs of any temporary infrastructure required to ensure the safe or efficient operation of the infrastructure mentioned in paragraph (a) for up to 5 years.

- (2) Subsection (3) applies if the planning scheme indicates the premises is part of an area intended for future development for—
  - (a) residential purposes; or
  - (b) retail or commercial purposes; or
  - (c) industrial purposes.
- (3) For subsection (1)(a), infrastructure made necessary by the development includes the infrastructure necessary to service the balance of the area mentioned in subsection (2).

## **Division 9                      Miscellaneous**

### **5.1.33 Agreements for infrastructure partnerships**

- (1) A person may enter into a written agreement with a public sector entity about—
  - (a) supplying or funding infrastructure; or
  - (b) refunding payments made towards the cost of supplying or funding infrastructure.
- (2) Subsection (1) has effect despite divisions 2 to 8 or chapter 3, part 5, division 6.

### **5.1.34 Sale of certain land held on trust by local governments**

- (1) Subsection (2) applies if—
  - (a) a local government intends to sell land it holds on trust in fee simple; and
  - (b) the land is held on trust for public parks infrastructure or local community facilities; and
  - (c) the local government completely or partly obtained the land in relation to an infrastructure charge levied, or a condition of an approval given, under this or the repealed Act; and
  - (d) the sale of the land would not be inconsistent with a current infrastructure agreement under which the local government obtained the land.

- (2) The local government must advertise its intention to sell the land by placing a notice of the sale in a newspaper circulating in the local government's area.
- (3) The notice must contain—
  - (a) a description of the land proposed to be sold; and
  - (b) the purpose for which the land was given on trust; and
  - (c) the reason for proposing to sell the land; and
  - (d) the reasonable time within which submissions must be made.
- (4) The local government must consider all submissions in relation to the notice before making a decision about the sale.
- (5) If a local government complies with this section and sells the land—
  - (a) the land is sold free of the trust; and
  - (b) the proceeds of the sale must be used for providing public parks infrastructure or land for local community facilities servicing the land.

## **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 3.5.34, to the extent the agreement is about a condition for the payment for, or the supply of, infrastructure
- section 5.1.6
- section 5.1.7
- section 5.1.12

- section 5.1.14
- section 5.1.22
- section 5.1.23
- section 5.1.24
- section 5.1.25
- section 5.1.26
- section 5.1.28
- section 5.1.30
- section 5.1.31
- section 5.1.33.

### **5.2.3 Content of infrastructure agreements**

- (1) 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.
- (2) To remove any doubt, it is declared that an infrastructure agreement may—
  - (a) include matters that are not within the jurisdiction of a public sector entity that is a party to the agreement; and

- (b) relate to—
  - (i) the making of a structure plan for a declared master planned area; or
  - (ii) master plans for a master planned area.
- (3) However—
  - (a) if the public sector entity is a local government; and
  - (b) it is proposed to include in the agreement a provision for payment to the local government for making the structure plan;

the amount payable must take into account any amounts paid or payable to the local government under chapter 2, part 5B, division 8, for making the structure plan.

#### **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—

- (a) a structure plan or proposed structure plan; or
- (b) a master plan or an application for approval of a master plan; or
- (c) an existing or future development application.

### **5.2.7 Infrastructure agreements prevail if inconsistent with particular instruments**

- (1) To the extent an infrastructure agreement is inconsistent with a development approval or master plan, the agreement prevails.
- (2) To the extent an infrastructure agreement is inconsistent with an infrastructure charges notice, a regulated State infrastructure charges notice or a regulated infrastructure charges notice, the agreement prevails.

## **Part 3 Funding of State infrastructure in master planned areas**

### **5.3.1 Purpose of pt 3**

The purpose of this part is to—

- (a) seek to integrate land use and State infrastructure plans for master planned areas; and
- (b) establish an infrastructure funding framework for State infrastructure in master planned areas; and
- (c) integrate State infrastructure providers into the framework.

*Note—*

See also section 2.5B.58 (Modified application of provisions about infrastructure for master plan).

### **5.3.2 Power to make regulated State infrastructure charges schedule for master planned area**

- (1) A structure plan may include, or a State planning regulatory provision may provide for, a regulated State infrastructure charges schedule for a master planned area.
- (2) The Minister may seek advice or comment from the Queensland Competition Authority about a regulated State infrastructure charges schedule for a master planned area.

*Note—*

An SEQ regional plan major development area under chapter 6, part 8, is a master planned area for this section. See section 6.8.8(2).

### **5.3.3 Content of regulated State infrastructure charges schedule**

- (1) A regulated State infrastructure charges schedule for a master planned area must state—
  - (a) the infrastructure network that services, or is planned to service, the area; and
  - (b) a charge for the supply of the State infrastructure for the area (a *regulated State infrastructure charge*); and
  - (c) the development for which the charge may be levied.
- (2) A regulated State infrastructure charges schedule may also state a matter related to a matter mentioned in subsection (1).

**5.3.4 Regulated State infrastructure charges notice**

- (1) A notice requiring the payment of a regulated State infrastructure charge (a *regulated State infrastructure charges notice*) must state each of the following—
  - (a) the amount of the charge;
  - (b) the land to which the charge applies;
  - (c) when the charge is payable;
  - (d) the State infrastructure network for which the charge has been stated.
- (2) If the notice is given as a result of a development approval—
  - (a) the relevant State infrastructure provider must give the notice to the applicant at the same time as the concurrence agency's response is given to the assessment manager; and
  - (b) the charge is not recoverable unless the entitlements under the development approval are exercised; and
  - (c) the notice lapses if the approval stops having effect.
- (3) If the notice is not given as a result of a development approval, the relevant State infrastructure provider must give the notice to the owner of the land.
- (4) The amount of a regulated State infrastructure charge must take account of any relevant infrastructure charge for State infrastructure.

*Example—*

an infrastructure charge relating to the local function of State-controlled roads

**5.3.5 When regulated State infrastructure charge is payable**

A regulated State infrastructure charge is payable by the recipient of the relevant State infrastructure charges notice—

- (a) if the charge applies to reconfiguring a lot that is assessable development—before the local government approves the plan of subdivision under chapter 3, part 7; or



- (b) if the charge applies to building work that is assessable development—before the certificate of classification for the building work is issued; or
- (c) if the charge applies to a material change of use—before the change of use happens; or
- (d) otherwise—on the day stated in the regulated State infrastructure charges notice.

### **5.3.6 Application of regulated State infrastructure charge**

A regulated State infrastructure charge levied and collected for a network of State infrastructure must be used to provide infrastructure for the network.

### **5.3.7 Accounting for regulated State infrastructure charges**

To remove any doubt, it is declared that a regulated State infrastructure charge levied and collected by a State infrastructure provider need not be held in trust.

### **5.3.8 Infrastructure agreements about, and alternatives to paying regulated State infrastructure charges**

Despite sections 5.3.4 and 5.3.5, a person to whom a regulated State infrastructure charges notice has been given and the State infrastructure provider may enter into an infrastructure agreement for the charge, including, for example, that—

- (a) the charge may be paid at a different time from the time stated in the notice, and whether it may be paid by instalments; or
- (b) whether the State infrastructure may be supplied instead of paying all or part of the charge; or
- (c) land in fee simple may be given instead of paying the charge or part of the charge; or
- (d) other infrastructure, or contributions to other infrastructure, may be provided instead of paying the charge or part of the charge.

**5.3.9 Recovery of regulated State infrastructure charges**

- (1) A regulated State infrastructure charge is a charge in favour of the State on the land to which the charge applies.
- (2) The *Local Government Act 1993*, section 1018 and chapter 14, part 7, apply for the charge—
  - (a) as if it were a rate under that Act; and
  - (b) as if a reference in the provisions to an overdue rate were a reference to the charge; and
  - (c) as if a reference in the provisions to a local government were a reference to the State; and
  - (d) as if a reference in the provisions to the chief executive officer of a local government were a reference to the executive officer of the State infrastructure provider that gave the relevant regulated State infrastructure charges notice; and
  - (e) with other necessary changes.

*Editor's note—*

*Local Government Act 1993*, section 1018 (Overdue rates may bear interest) and chapter 14, part 7 (Recovery of rates)

**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, other than a temporary local planning instrument, in relation to 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 the clearing of vegetation; 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; or
  - (e) is about the matters comprising a priority infrastructure plan; or
  - (ea) is about the matters comprising a planning scheme policy to which section 6.1.20 applies; 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—
    - (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,<sup>96</sup> and the harm could not have been significantly reduced by conditions attached to a development approval; or
  - (i) is about any of the matters comprising a structure plan for a declared master planned area.
- (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 2000m<sup>2</sup>; and
  - (b) the gross floor area of the proposed residential building is reduced by not more than 15%.
- (3) Also, compensation is not payable—

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96 *Environmental Protection Act 1994*, section 17 (Serious environmental harm)

- (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—

- (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;<sup>97</sup> 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 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;

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<sup>97</sup> *Acquisition of Land Act 1967*, section 7 (Notice of intention to take land)

- (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, disregarding any temporary local planning instrument, 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.
- (2) The notice must be in the form approved by the registrar.
- (3) The registrar must keep the information stated in the notice as information under the *Land Title Act 1994*, section 34.<sup>98</sup>

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98 *Land Title Act 1994*, section 34 (Other information not part of the freehold land register)



## **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 to achieve any of the outcomes in a structure plan made by the local government; or
  - (b) at any time after a development approval or master plan has taken effect, the local government is satisfied—
    - (i) the development the subject of the development approval or master plan would create a need to construct infrastructure on land or carry drainage over land; and
    - (ii) the applicant for the development approval or the approval of the master plan 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 the *Acquisition of Land Act 1967* includes the ability to purchase or take an easement under section 6<sup>99</sup> 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.<sup>100</sup>

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<sup>99</sup> *Acquisition of Land Act 1967*, section 6 (Easements)

<sup>100</sup> A person may appeal the decision under section 4.1.34 (Appeals against decisions on compensation claims).

- (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.

## **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 *Housing Act 2003* 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.

**5.6.3A How infrastructure charges apply for development under part 6**

If the State, or a statutory body representing the State, proposes or starts development under this part, the State or body is not required to pay any infrastructure charge under chapter 5, part 1 for the 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.<sup>101</sup>
- (3) An entity required to keep a document available for inspection and purchase may charge a person for supplying a copy of the

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101 *Copyright Act 1968* (Cwlth) overrides this Act and may limit the copying of material subject to copyright.

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 the designated type of copy of each of the following—
  - (a) its current planning scheme (including a consolidated planning scheme);
  - (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 or schedule 1A, section 13, 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;

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- (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;
- (m) for each local government in the relevant area for a State planning regulatory provision—a copy of the provision;
- (ma) for a local government in a designated region—a copy of the region’s regional plan;
- (mb) each master planned area declaration for its planning scheme area;
- (mc) each master plan for declared master planned areas in its planning scheme area;
- (n) each notice about the designation of land given to the local government by a Minister;
- (na) a register (the *infrastructure charges register*) of all infrastructure charges levied by the local government;
- (nb) a register (the *regulated infrastructure charges register*) of all regulated infrastructure charges levied by the local government;
- (nc) each regulated infrastructure charges schedule adopted by the local government;
- (o) each infrastructure agreement to which the local government is a party, or has been given to the local government under part 2;
- (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

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- Act or the *Building Act 1975* by an assessing authority or private certifier;
- (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 2001* that has not been withdrawn;
  - (t) planning scheme maps for the designation, under the *Building Act 1975*, of bush fire prone areas for the Building Code of Australia;
  - (u) its register of resolutions about land liable to flooding, made under the *Building Act 1975*;
  - (v) its register of exemptions granted under the *Building Act 1975*, chapter 8;<sup>102</sup>
  - (w) each record that it must keep under the *Building Act 1975*, section 230;<sup>103</sup>
  - (x) all development information it has about building development applications, other than information that may be purchased from the registrar of titles;
  - (y) its register mentioned in the *Building Act 1975*, section 251.<sup>104</sup>
- (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.
- (3) The infrastructure charges register and the regulated infrastructure charges register must, for each charge levied, include each of the following—
- (aa) for the infrastructure charges register—the amount of a charge unit decided by the local government under section 5.1.6(3);

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102 *Building Act 1975*, chapter 8 (Swimming pool fencing)

103 *Building Act 1975*, section 230 (Local government's fire safety record-keeping obligations)

104 *Building Act 1975*, section 251 (Register of notices given)



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- (a) the real property description of the land to which the charge applies;
  - (b) the schedule under which the charge was levied;
  - (c) the amount of the charge levied;
  - (d) the amount of the charge unpaid;
  - (e) the number of units of demand charged for;
  - (f) if the charge was levied as a result of a development approval—the approval reference number and the day the approval will lapse;
  - (g) if infrastructure was to be provided instead of paying the charge—details of any infrastructure still to be provided.
- (4) Despite subsection (1), the obligation under that subsection does not apply to the extent the local government is reasonably satisfied a document mentioned in subsection (1) (t) to (y) contains—
- (a) sensitive security information; or
  - (b) information of a purely private nature about an individual, including, for example, someone’s residential address.
- (5) Also, the obligation under subsection (1)(x) only applies if the person seeking the information applies for it in the approved form.
- (6) In this section—
- designated type of copy***, for a document, means—
- (a) for a document mentioned in subsection (1) (a) to (s)—a certified copy; or
  - (b) otherwise—an ordinary copy.
- development information***, for a building development application, means information about any of the following—
- (a) the physical characteristics and location of infrastructure related to the application;
  - (b) local government easements, encumbrances or estates or interests in land likely to be relevant to the application;

- (c) site characteristic information likely to affect the assessment of the application.

*Examples of information mentioned in paragraph (c)—*

- design levels of proposed road or footway works
- design or location of stormwater connections
- design or location of vehicle crossings
- details of any heritage listed buildings
- discharge of swimming pool backwash water
- flood level information
- limitations on driveway gradients
- limitations on the capacity of sewerage, stormwater and water supply services
- location of any erosion control districts
- location of contaminated land
- location of land-slip areas
- location of mine subsidence areas

### **5.7.3 Documents local government must keep available for inspection only**

- (1) A local government must keep the following documents available for inspection only—
- (a) an official copy of this Act, the *Building Act 1975*, and every regulation made under the Acts and still in force;
  - (b) the Building Code of Australia;
  - (c) a register of all master plan applications made to the local government.
- (2) However, subsection 1(c) does not apply for a master plan application until—
- (a) the application is withdrawn or lapses; or
  - (b) if paragraph (a) does not apply—the end of the last period during which an appeal may be made against a decision on the application.

*Note—*

For access to master plan applications until subsection (1)(c) applies, see section 2.5B.57 (Public scrutiny of application and related material).

- (3) The register must include the following for each master plan application—
  - (a) a property description of the master planning unit;
  - (b) the type of master plan applied for;
  - (c) the names of any coordinating agency and participating agencies;
  - (d) whether the application was withdrawn, lapsed or decided;
  - (e) if the application was decided, the following—
    - (i) the day the decision was made;
    - (ii) whether the proposed master plan was approved, approved with the inclusion of conditions or refused;
    - (iii) if the proposed master plan was approved, whether coordinating agency conditions were included in the plan, and if so, the coordinating agency's name;
    - (iv) whether a negotiated notice was also given for the application.
- (4) The register may be in hard copy or electronic form.

#### **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 the designated type of 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;
  - (h) for each building development application approved for a building in its area—
    - (i) if, under the *Building Act 1975*, the application was made to a private certifier (class A)—the documents relating to the application given to the local government, under section 86 of that Act;<sup>105</sup> or
    - (ii) if the application was made to the local government—the application and the approval documents for the application as defined under the *Building Act 1975*;
  - (i) inspection certificates or other documents about the inspection of building work that, under the *Building Act 1975*, the assessment manager must keep.
- (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.
  - (3) If the assessment manager has a website of a type stated in guidelines approved by the chief executive, for subsection (1)(a), the assessment manager must publish all decision notices and negotiated decision notices given after the commencement of this subsection on the website in the way stated in the guidelines.

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105 *Building Act 1975*, section 86 (Requirements on approval of application)

- (4) Subsection (3) does not apply to a decision notice or a negotiated decision notice given by a private certifier.
- (5) Despite subsection (1), the obligation under the subsection does not apply to the extent the assessment manager is reasonably satisfied a document mentioned in subsection (1) (h) or (i) contains—
  - (a) sensitive security information; or
  - (b) information of a purely private nature about an individual, including, for example, someone's residential address.
- (6) Also, the obligation under subsection (1)(h) applies only until—
  - (a) if the building the subject of the approval is, under the Building Code of Australia, a class 10 building, other than a swimming pool fence, the earlier of the following to happen—
    - (i) the building's demolition or removal;
    - (ii) the end of 10 years from when the approval was given; or
  - (b) if the building the subject of the approval is of any other class under the Building Code of Australia or is a swimming pool fence—the building's demolition or removal.
- (7) In this section—

*designated type of copy*, for a document, means—

  - (a) for a document mentioned in subsection (1)(a) to (g)—a certified copy; or
  - (b) otherwise—an ordinary copy.

### **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.<sup>106</sup>
- (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
    - (v) for an application that was approved—whether there has subsequently been a minor change to the approval;

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<sup>106</sup> However, under section 3.2.8 (Public scrutiny of applications and related material) 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.

- (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**

- (1) The chief executive must keep available for inspection and purchase the original or the designated type of 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;
  - (fa) each State planning regulatory provision;
  - (fb) the regional plan for each designated region;
  - (fc) master planned area declarations;
  - (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);
  - (l) each final terms of reference, EIS and EIS assessment report prepared in accordance with chapter 5, part 8;
  - (m) if the State has entered into a bilateral agreement with the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)—any material the agreement requires to be made publicly available by the State;
  - (n) each guideline issued by the chief executive under section 5.9.9;
  - (o) each notice given under section 2.6.8(1)(c);
  - (p) the Queensland Development Code.
- (2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form.
- (3) However, the chief executive must not charge anyone for supplying a copy of all or part of the Queensland Development Code.
- (4) In this section—
- designated type of copy***, for a document, means—
- (a) for the Queensland Development Code—an ordinary copy; or
  - (b) otherwise—a certified copy.
- Queensland Development Code*** see the *Building Act 1975*, section 13.<sup>107</sup>

### **5.7.7 Documents chief executive must keep available for inspection only**

- (1) The chief executive must keep the following available for inspection only—

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<sup>107</sup> *Building Act 1975*, section 13 (What is the Queensland Development Code (or QDC))



- (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.

#### **5.7.7A Documents particular entities required to keep available for inspection and purchase**

- (1) This section applies if an assessment manager or referral agency has imposed a condition on a development approval that requires a document (the *assessable document*) to be assessed for compliance with a condition.<sup>108</sup>
- (2) The assessment manager or referral agency must keep available for inspection and purchase the original or certified copy of each of the following—
- (a) the assessable document;
  - (b) any document that includes—
    - (i) an assessment of the assessable document; or
    - (ii) a decision about the assessable document; or
    - (iii) a direction given in relation to the assessable document.

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108 See section 3.5.31A (Conditions requiring compliance).

## **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 summary of the provisions of any planning scheme, including any infrastructure charges schedule or regulated infrastructure charges schedule, applying specifically to the premises;
- (b) if any of the State planning regulatory provisions apply to the premises—a description of the provisions that apply;
- (c) a description of any designations applying to the premises.

### **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 decision to approve or refuse an application to amend a planning scheme made under section 4.3 of the repealed Act, including any conditions of approval;
  - (c) a copy of each master plan applying to the premises;

- (d) a copy of every notice of decision or negotiated notice about a master plan application for a master plan in force for the planning scheme area for the premises;
  - (e) a copy of any information recorded for the premises in the infrastructure charges register or regulated infrastructure charges register;
  - (f) details of any minor changes to the development approval;
  - (g) a copy of any judgment or order of the court about the development approval or a condition included in the master plan;
  - (h) a copy of any agreement to which the local government or a concurrence agency is a party about a condition of the development approval;
  - (i) a copy of any infrastructure agreement applying to the premises to which the local government is a party or that it has received a copy of under section 5.2.4;
  - (j) a description of each proposed amendment of a planning scheme the local government has decided to proceed with under schedule 1, section 16 or schedule 1A, section 13, 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).

### **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

- non-fulfilment of each condition, at a stated day after the day the certificate was applied for;
- (b) if there is a master plan that applies to the premises that includes conditions, including conditions of a type mentioned in paragraph (a)—a statement about the fulfilment or non-fulfilment of each condition, at a stated day after the day the certificate was applied for;
  - (c) 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;
  - (d) 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                      Environmental impact statements**

### **Division 1                Preliminary**

#### **5.8.1 When EIS process applies**

This part applies for development prescribed under a regulation, if the development is—

- (a) or is proposed to be, the subject of a development application; or
- (b) for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure; or
- (c) or is proposed to be, the subject of a master plan application.

#### **5.8.2 Purpose of EIS process**

The purpose of the EIS process is as follows—

- (a) to assess—
  - (i) the potential adverse and beneficial environmental, economic and social impacts of the development; and

- (ii) management, monitoring, planning and other measures proposed to minimise any adverse environmental impacts of the development;
- (b) if practicable, to consider feasible alternative ways to carry out the development;
- (c) to give enough information about the matters mentioned in paragraphs (a) and (b) to the proponent, Commonwealth and State authorities and the public;
- (d) to prepare or propose an environmental management plan for the development;
- (e) for development under section 5.8.1(a)—to help the assessment manager and any concurrence agencies to make an informed decision about the development application;
- (f) for development under section 5.8.1(b)—to help the designator to make an informed decision about—
  - (i) whether or not to proceed with a proposed designation; and
  - (ii) if the designation proceeds—the requirements included in the designation;<sup>109</sup>
- (g) for development under section 5.8.1(c)—to help the local government and any coordinating agency and participating agency to make an informed decision on the master plan application;
- (h) to meet any assessment requirements under—
  - (i) the Commonwealth Environment Act for development that is, or includes, a controlled action under that Act; or
  - (ii) a bilateral agreement;<sup>110</sup>

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109 See section 2.6.4 (What designations may include).

110 For controlled actions under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), see section 67 (What is a *controlled action*?) of that Act.

For assessment requirements of controlled actions, see chapter 4, part 8 (Assessing impacts of controlled actions) of that Act.

For bilateral agreements, see chapter 3 (Bilateral agreements) of that Act.

- (i) to allow the State to meet its obligations, if any, under a bilateral agreement.

## **Division 2                    EIS process**

### **5.8.3    Applying for terms of reference**

- (1) A proponent of development to which this part applies must apply to the chief executive for terms of reference for an EIS for the development.
- (2) The application must be made in the approved form and be accompanied by the fee prescribed under a regulation for administering the terms of reference.
- (3) If an applicant proposes to make 1 or more applications for preliminary approval for the development, the EIS must be prepared for the first of the applications.
- (4) If an applicant proposes to make 1 or more master plan applications for the development, the EIS must be prepared for the first of the applications.
- (5) Despite subsections (3) and (4), if the chief executive agrees that the EIS can be prepared for a stated later application, the EIS must be prepared for that application.

### **5.8.4    Draft terms of reference for EIS**

- (1) Subsection (2) applies—
  - (a) after the chief executive receives the application; and
  - (b) if the chief executive, having regard to criteria prescribed under a regulation, is satisfied draft terms of reference for the EIS should be publicly notified; and
  - (c) after consulting the relevant entities mentioned in section 5.8.13(b), (c) and (d).
- (2) The chief executive must prepare draft terms of reference that allow the purposes of the EIS to be achieved for the development.
- (3) The chief executive must publish a notice stating each of the following—

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- (a) a description of the development and of the land on which the development is proposed to be carried out;
  - (b) that the chief executive has prepared draft terms of reference for the EIS;
  - (c) where a copy of the draft terms of reference may be inspected and, on payment of a reasonable fee, purchased;
  - (d) that anyone may make written comments to the chief executive about the draft terms of reference;
  - (e) the day by which comments must be made (the ***last day for making comments***) and the address for making comments;
  - (f) another matter prescribed under a regulation.
- (4) The notice must be published at least once in the way prescribed under a regulation.
- (5) The last day for making comments must not be earlier than 15 business days after the notice is published.
- (6) The fee mentioned in subsection (3)(c) must not be more than the actual cost of producing the copy.
- (7) The chief executive must, until the last day for making comments, keep—
- (a) a copy of the draft terms of reference available for inspection and purchase; and
  - (b) brief details about the draft terms of reference available on the department's web site on the internet.
- (8) Until the last day for making comments, any person may make written comments to the chief executive about the draft terms of reference.
- (9) Also, the chief executive must give a copy of the notice and the draft terms of reference to—
- (a) each local government whose local government area the chief executive is satisfied the draft terms of reference relate; and



- (b) for development that is, or is proposed to be, the subject of a development application—each entity that is, or would be, a referral agency; and
  - (c) for development that is, or is proposed to be, the subject of a master plan application—any coordinating agency.
- (10) A local government receiving a copy of the draft terms of reference must make the copy available for inspection and purchase until the last day of the comment period.

### **5.8.5 Terms of reference for EIS**

- (1) The chief executive must—
- (a) if the chief executive has acted under section 5.8.4—finalise the terms of reference and give them to the proponent within 10 business days after the end of the comment period; or
  - (b) if the chief executive has not prepared draft terms of reference—
    - (i) prepare draft terms of reference the chief executive is satisfied will allow the purposes of the EIS to be achieved for the development; and
    - (ii) give them to the proponent within 20 business days after the chief executive receives the application.
- (2) For subsection (1)(a), the chief executive must take account of any comments received on or before the last day for making comments.
- (3) The chief executive may extend the period for preparing or finalising the terms of reference if the chief executive gives the proponent notice of the extension before the period ends.
- (4) The notice must state a new day by which the chief executive must give the proponent the terms of reference.
- (5) The chief executive must, within 5 business days after the chief executive gave a copy of the terms of reference to the proponent, also give a copy of the terms of reference—
- (a) to the extent the development for which the terms of reference have been prepared is, or is proposed to be, the subject of a development application to—

- (i) the assessment manager and all referral agencies;  
or
  - (ii) the entities that would be the assessment manager and all referral agencies for a development application for the development, if an application is made; and
- (b) to the extent the development for which the terms of reference have been prepared is for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure—to the entity who would be the designator under chapter 2, part 6; and
- (c) to the extent the development for which the terms of reference have been prepared is, or is proposed to be, the subject of a master plan application—to the local government and any coordinating agency.

### **5.8.6 Preparation of draft EIS**

- (1) The proponent must prepare a draft EIS and give it to the chief executive together with the fee prescribed under a regulation for administering the remaining EIS process.
- (2) If the chief executive is satisfied the draft EIS addresses the terms of reference and includes any matters prescribed under a regulation for inclusion in the draft EIS, the chief executive must give the proponent a written notice to that effect.

### **5.8.7 Public notification of draft EIS**

- (1) After the proponent has received notice under section 5.8.6(2), the proponent must—
  - (a) publish a notice stating each of the following—
    - (i) a description of the development and of the land on which the development is proposed to be carried out;
    - (ii) where a copy of the draft EIS and any associated documents decided by the chief executive may be inspected and, on payment of a reasonable fee, purchased;

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- (iii) that anyone may make written submissions to the chief executive about the draft EIS;
    - (iv) the day by which submissions must be made (the *last day for making submissions*) and the address for making a submission;
    - (v) another matter prescribed under a regulation; and
  - (b) to the extent the development for which the EIS has been prepared is, or is proposed to be, the subject of a development application, give a copy of the draft EIS to—
    - (i) the assessment manager and all referral agencies; or
    - (ii) the entities that would be the assessment manager and all referral agencies for a development application for the development, if an application is made; and
  - (c) to the extent the development for which the EIS has been prepared is for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure, give a copy of the draft EIS to the entity who would be the designator under chapter 2, part 6; and
  - (d) to the extent the development for which the EIS has been prepared is, or is proposed to be, the subject of a master plan application—give a copy of the draft EIS to the local government and any coordinating agency.
- (2) The notice must be published at least once in the way prescribed under a regulation.
  - (3) The last day for making submissions must not be earlier than 30 business days after the notice is published.
  - (4) The fee mentioned in subsection (1)(a) must not be more than the actual cost of producing the copy.
  - (5) The chief executive must, until the last day for making submissions, keep—
    - (a) a copy of the draft EIS and any associated documents decided by the chief executive available for inspection and purchase; and

- (b) brief details about the draft EIS available on the department's web site on the internet.
- (6) The chief executive must give a copy of the notice and the draft EIS to each local government whose local government area the chief executive is satisfied the EIS relates.
- (7) A local government receiving a copy of the draft EIS must make the copy available for inspection and purchase until the last day for making submissions.

### **5.8.8 Making submissions on draft EIS**

- (1) Until the last day for making submissions—
  - (a) any person may make a submission to the chief executive about the draft EIS; and
  - (b) the chief executive must accept properly made submissions about the draft EIS.
- (2) However, the chief executive may accept a submission even if the submission is not a properly made submission.
- (3) If the chief executive accepts a submission, the person who made the submission may, by notice given to the chief executive—
  - (a) until the last day for making submissions—amend the submission; or
  - (b) at any time before the chief executive gives the EIS to the assessment manager—withdraw the submission.

### **5.8.9 Chief executive evaluates draft EIS, submissions and other relevant material**

- (1) The chief executive must, after the last day for making submissions and consulting the relevant entities mentioned in section 5.8.13(b), (c) and (d), consider each of the following—
  - (a) the draft EIS;
  - (b) all properly made submissions;
  - (c) other submissions accepted by the chief executive about the draft EIS;

- (d) any other material the chief executive considers is relevant to the draft EIS.
- (2) After considering the matters mentioned in subsection (1), the chief executive must give the proponent a notice—
  - (a) asking the proponent to change the draft EIS in a way stated in the notice; or
  - (b) stating the chief executive has accepted the draft EIS as the EIS for the development.
- (3) The chief executive's action under subsection (2) must be based on the chief executive's considerations under subsection (1).
- (4) If the chief executive asks the proponent to change the draft EIS, the chief executive must, when the chief executive is satisfied with the changed draft EIS, give the proponent a notice stating the chief executive has accepted the changed draft as the EIS for the development.

### **5.8.10 EIS assessment report**

The chief executive must prepare a report (an *EIS assessment report*) about the EIS within 30 business days after the chief executive gave the proponent the notice under section 5.8.9(2)(b).

### **5.8.11 Criteria for preparing report**

In preparing the EIS assessment report, the chief executive must consider each of the following—

- (a) the terms of reference for the EIS;
- (b) the EIS;
- (c) all properly made submissions and any other submissions accepted by the chief executive;
- (d) any other material the chief executive considers is relevant to preparing the report.

**5.8.12 Required content of report**

The EIS assessment report must—

- (a) address the adequacy of the EIS in addressing the terms of reference; and
- (b) address the adequacy of any environmental management plan for the development; and
- (c) make recommendations about the suitability of the development; and
- (d) recommend any conditions on which any approval required for the development may be given; and
- (e) contain any other matter prescribed under a regulation.

**5.8.13 Who the chief executive must give EIS and other material to**

The chief executive must, within 5 business days after the chief executive completes the EIS assessment report, give the EIS, copies of all properly made submissions, copies of submissions the chief executive has accepted and the EIS assessment report, to—

- (a) the proponent; and
- (b) to the extent the development for which the EIS has been prepared is, or is proposed to be, the subject of a development application—
  - (i) the assessment manager and all referral agencies; or
  - (ii) the entities that would be the assessment manager and all referral agencies for a development application for the development, if an application is made; and
- (c) to the extent the development for which the EIS has been prepared is for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure—the entity who would be the designator under chapter 2, part 6; and
- (d) to the extent the development for which the EIS has been prepared is, or is proposed to be, the subject of a

- master plan application—the local government and any coordinating agency; and
- (e) another entity prescribed under a regulation.

### **Division 3                      How EIS process affects IDAS**

#### **5.8.14 How IDAS applies for development the subject of an EIS**

- (1) Subsection (2) applies to a development application to the extent the development is the subject of the EIS.
- (2) For the application—
- (a) the EIS and the EIS assessment report are part of the supporting material; and
  - (b) sections 3.3.6 to 3.3.9 and the notification stage do not apply; and
  - (c) for development requiring impact assessment—a properly made submission about the draft EIS is taken to be a properly made submission about the application; and
  - (d) if there is a referral agency—the referral agency’s assessment period does not start unless the chief executive gives the referral agency the material under section 5.8.13; and
  - (e) if there is no referral agency—the decision stage does not start unless the chief executive gives the assessment manager the material under section 5.8.13; and
  - (f) if the application is changed in a way that the development is substantially different—the EIS process starts again for the development.
- (3) If the application has not been made, subsection (2) applies only to the extent—
- (a) the application is made within 3 months after the chief executive gives the applicant all of the material as required by section 5.8.13; and
  - (b) the development is substantially the same as the development to which the EIS relates.

- (4) The chief executive may extend the time mentioned in subsection (3)(a) at any time before the period ends.

## **Division 4                    How EIS process affects designation**

### **5.8.15 Matters a designator must consider**

- (1) Subsection (2) applies to the extent the development, the subject of the EIS, is development for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure.
- (2) In fulfilling the designator's duties under sections 1.2.2(1)(a) and 1.2.3(1), the designator must have regard to the EIS and the EIS assessment report.

## **Part 8A                        Notification stage for particular aquaculture development**

### **Division 1                    Preliminary**

#### **5.8A.1 Purpose of notification stage under this part**

The notification stage under this part gives a person—

- (a) the opportunity to make submissions, including objections, that must be taken into account—
- (i) by the assessment manager before deciding a development application for which this part applies; or
- (ii) by a concurrence agency before giving a referral agency response, to the extent the response relates to development mentioned in section 5.8A.2(1); and



- (b) the opportunity to secure the right to appeal to the court about—
  - (i) the assessment manager's decision; or
  - (ii) a referral agency response by the concurrence agency.<sup>111</sup>

### **5.8A.2 When notification stage under this part applies**

- (1) This part applies for a development application—
  - (a) for which—
    - (i) the chief executive (fisheries) is the assessment manager or a concurrence agency; and
    - (ii) the chief executive (environment) is a concurrence agency; and
  - (b) for development that—
    - (i) is a material change of use of premises—
      - (A) for a hatchery for the production of larvae; or
      - (B) for aquaculture carried out in ponds with a surface area of more than 5 hectares; and
    - (ii) is carried out completely or partly on land within the area with the following boundaries—
      - the line every point of which is 5km inland from the line of the highest astronomical tide;
      - the parallel of latitude 24°30'00" south;
      - the western boundary of the Great Barrier Reef Marine Park;
      - the parallel of latitude 10°41'20" south; and
    - (iii) will cause the discharge of waste into waters.
- (2) However, this part does not apply if—
  - (a) part 8 applies to the development; or

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111 See, in particular, section 4.1.28A (Additional and extended appeal rights for submitters for particular development applications).

- (b) there is a preliminary approval for the development and the preliminary approval was subject to this part.
- (3) In this section—

***Great Barrier Reef Marine Park*** means the Great Barrier Reef Marine Park established under the *Great Barrier Reef Marine Park Act 1975* (Cwlth).

***highest astronomical tide*** means the highest level of the tides that can be predicted to occur under average meteorological conditions and under any combination of astronomical conditions.

### **5.8A.3 When can notification stage start**

- (1) 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.
- (2) 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 and each prescribed concurrence agency for the application.

## **Division 2                      Public notification**

### **5.8A.4 Public notice of proposed development**

- (1) The applicant or, if the applicant has agreed in writing, the assessment manager for the development application 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 carried 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, see section 3.4.4(5).

### **5.8A.5 Notification period for development applications**

The *notification period* for the application must—

- (a) be no less than 30 business days starting on the day after the last action under section 5.8A.4 is carried out; and
- (b) not include any business days between 20 December and 5 January (in the following year).

### **5.8A.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 5.8A.4(1) would be unduly onerous or would not give effective public notice.

**5.8A.7 Notice of compliance to be given to assessment manager and concurrence agency**

- (1) If the applicant carries out notification, the applicant must, after the notification period has ended—
  - (a) give the assessment manager and each prescribed concurrence agency for the application, written notice that the applicant has complied with the requirements of this division; and
  - (b) give the assessment manager written notice that the applicant has given the prescribed concurrence agency the notice mentioned in paragraph (a).<sup>112</sup>
- (2) If the assessment manager carries out notification, the assessment manager, must, after the notification period has ended, give each prescribed concurrence agency for the application, written notice that the assessment manager has complied with the requirements of this division.

**5.8A.8 Circumstances when applications may be assessed and decided without certain requirements**

Despite section 5.8A.7, the assessment manager may assess and decide the application even if some of the requirements of this division have not been complied with, if—

- (a) the assessment manager is satisfied that any noncompliance has not—
  - (i) adversely affected the awareness of the public of the existence and nature of the application; or
  - (ii) restricted the opportunity of the public to make properly made submissions; and
- (b) each prescribed concurrence agency for the application has given written consent to the assessment and decision being made in this way.

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

**5.8A.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) A person who has made a properly made 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.
- (4) The assessment manager must within 5 business days after the end of the notification period—
  - (a) give a copy of any properly made submission to each prescribed concurrence agency; and
  - (b) if the person who made the submission amends or withdraws the submission under subsection (3)—notify the prescribed concurrence agency that the submission has been amended or withdrawn.

**5.8A.10 Submissions made during notification period effective for later notification period**

- (1) This section applies if—
  - (a) a person makes a properly made submission under section 5.8A.9(1); and
  - (b) the notification stage for the application is repeated for any reason.
- (2) The 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.

## **Division 3                    End of notification stage**

### **5.8A.11 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 5.8A.7(1); or
- (b) if notification is carried out by the assessment manager on behalf of the applicant—when each prescribed concurrence agency receives written notice under section 5.8A.7(2).

## **Division 4                    Changed referral agency provisions for applications to which this part applies**

### **5.8A.12 Referral agency must not respond before notification stage ends**

- (1) This section applies if the chief executive (environment) or chief executive (fisheries) is the concurrence agency for the development application.
- (2) Despite section 3.3.2, the concurrence agency must not give a referral agency response for a matter relating to the development to which the application relates before the notification stage for the application ends.

### **5.8A.13 Adjusted referral agency assessment period**

- (1) This section applies if the chief executive (environment) or chief executive (fisheries) is the concurrence agency for the development application.
- (2) Despite section 3.3.14(1), the referral agency's assessment period for the concurrence agency is a period of 30 days starting on the day after the concurrence agency has received both of the following—

- (a) a notice of compliance under section 5.8A.7;
- (b) a copy of all the properly made submissions.

## **Part 9                      General**

### **5.9.1    Approved forms**

The chief executive may approve forms for use under this Act.

### **5.9.2    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) The regional planning Minister may delegate his or her powers or functions under this Act to an appropriately qualified public service officer.
- (3) The Minister administering the *State Development and Public Works Organisation Act 1971*, if acting under chapter 3, part 6, division 2, may delegate his or her powers or functions under the division to an appropriately qualified public service officer.

### **5.9.3    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
  - (c) prescribe a minor change of use that is not a material change of use.

**5.9.4 Application of State Development and Public Works Organisation Act 1971**

- (1) Nothing in this Act derogates from the powers and functions of the Coordinator-General under the *State Development and Public Works Organisation Act 1971*.
- (2) Nothing in chapter 2, part 5A affects in any way the *State Development and Public Works Organisation Act 1971*.

**5.9.5 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.<sup>113</sup>
- (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<sup>114</sup> in relation to matters mentioned in subsection (1).

**5.9.6 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

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113 However, under section 4.1.21, a person may bring proceedings in the Planning and Environment Court.

114 *Judicial Review Act 1991*, part 3 (Statutory orders of review) or 5 (Prerogative orders and injunctions)



- (c) a building tribunal or a referee as a member of that tribunal.
- (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*.

### **5.9.7 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.

### **5.9.8 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.

### **5.9.9 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; or
  - (c) the type of assessment manager websites on which decision notices and negotiated decision notices must be published under section 5.7.4, and the way in which the notices must be published; or
  - (d) the form in which local planning instruments must be given to the chief executive under any of the following—
    - (i) schedule 1, section 21(b);
    - (ii) schedule 1A, section 17(b);
    - (iii) schedule 2, section 5(b);
    - (iv) schedule 3, section 8(b).
- (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 building assessment provisions; 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 or schedule 9, 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.

***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 or schedule 9, 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
- (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, 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 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.
- (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
  - (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)<sup>115</sup> of the repealed Act; or
  - (b) the Minister had directed the local government under section 2.12<sup>116</sup> of the repealed Act to prepare a planning scheme.

### **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.
- (2) Despite subsection (1)(b) and regardless of the stage the local government may have reached in the preparation of the

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115 Section 2.10 (Preparation of planning scheme) of the repealed Act

116 Section 2.12 (Powers of the Minister with regard to certain matters) of the repealed Act



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<sup>117</sup> 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

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117 Section 2.19 (Assessment of proposed planning scheme amendment) of the repealed Act

- 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.<sup>118</sup>
- (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.

## **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, to the extent the provision is inconsistent, chapter 3 prevails.

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118 *Local Government Act 1993*, chapter 6 (General operation of local governments), part 3 (Contracts and related activities), division 3 (Procedural contracting model)

**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.

**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, 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.

- (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.

### **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 state each of the following—
  - (a) a contribution (an *infrastructure contribution*) for each development infrastructure network identified in the policy;
  - (b) the estimated proportion of the establishment cost of each network to be funded by the contribution;
  - (c) when it is anticipated the infrastructure forming part of the network will be provided;
  - (d) the estimated establishment cost of the infrastructure;

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- (e) each area in which the contribution applies;
  - (f) each type of lot or use for which the contribution applies;
  - (g) how the contribution must be calculated for—
    - (i) each area mentioned in paragraph (e); and
    - (ii) each type of lot or use mentioned in paragraph (f).
- (2A) An infrastructure contribution may apply to development infrastructure—
- (a) despite section 2.1.2—that is not within, or completely within, the local government’s area; or
  - (b) that is not owned by the local government, if the owner of the infrastructure agrees; or
  - (c) supplied by a local government on a State-controlled road.<sup>119</sup>
- (2B) The infrastructure contribution must be for a development infrastructure network that services, or is planned to service, premises and is identified in the policy.
- (2C) The infrastructure contribution required under the policy may be calculated—
- (a) in the way permitted under the repealed Act; or
  - (b) as if it were an infrastructure charge under this Act.
- (2D) If a policy prepared under this section requires an infrastructure contribution for works for the local function of a State-controlled road, the contribution must be—
- (a) separately accounted for; and
  - (b) used to provide works on a State-controlled road.
- (3) However, if the local government has an infrastructure charges plan, an infrastructure charges schedule or a regulated infrastructure charges schedule, the planning scheme policy must not deal with the same matters as the infrastructure charges plan, the infrastructure charges schedule or the regulated infrastructure charges schedule.

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119 See the *Transport Infrastructure Act 1994*, sections 32 and 41.

- (3A) This section applies despite section 2.1.23.
- (4) This section ceases to have effect, in relation to the planning scheme, on—
  - (a) 30 June 2008; or
  - (b) if the Minister, by gazette notice, nominates a later day for the planning scheme—the later day.

### **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—

- (a) the day the adoption of the IPA planning scheme is notified in the gazette; or
- (b) if a later day for the commencement of the IPA planning scheme is stated in the IPA planning scheme—the later day.

## **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.

## **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



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- similarly endorsed certificates (*continuing approvals*) issued by, a local government in relation to an application mentioned in section 4.1(5)<sup>120</sup> 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)<sup>121</sup> of the repealed Act, including modifications of the permits under section 4.15<sup>122</sup> 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)<sup>123</sup>
  - section 5.2(1)<sup>124</sup>
  - section 5.9(1)<sup>125</sup>
  - section 5.11(1)<sup>126</sup>
  - section 5.12(1);<sup>127</sup> and
- (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

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120 Section 4.1 (Applications) of the repealed Act

121 Section 4.13 (Assessment of town planning consent application) of the repealed Act

122 Section 4.15 (Modification of certain applications and approvals) of the repealed Act

123 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.

124 Section 5.2 (Subdivisions involving works) of the repealed Act

125 Section 5.9 (Staged subdivision) of the repealed Act

126 Section 5.11 (Application for amalgamation of land) of the repealed Act

127 Section 5.12 (Application for access easement) of the repealed Act

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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

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- 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.
- (3) Subsection (4) applies if—
- (a) an approval mentioned in subsection (1)(b) or (1A)(b) implies that a person has the right to use premises, the subject of the approval, for a particular purpose; and
  - (b) when the approval was given, a material change of use for a use implied by the approval was self-assessable development or exempt development; and
  - (c) after the approval was given, 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.
- (4) The implied use is to be taken to be a use in existence immediately before the commencement of the new planning instrument or amendment if—
- (a) the rights (other than the implied right) under the approval are exercised within the time allowed for the

- rights to be exercised under the approval or this Act; and
- (b) the implied use is started within 5 years after the rights mentioned in paragraph (a) are exercised.

### **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)<sup>128</sup> 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<sup>129</sup> 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 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

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128 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

129 Section 4.15 (Modification of certain applications and approvals) of the repealed Act

- (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, part 4, 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.<sup>130</sup>

## **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 applied for requires impact assessment is taken to mean that the application will be processed as if

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<sup>130</sup> See the *Acts Interpretation Act 1954*, section 20 for other matters that are also saved when an Act is repealed.

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 building assessment provisions)**

- (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 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;

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- (f) the matters stated in section 8.2(1)<sup>131</sup> of the repealed Act;

*Editor's note—*

For regional plans, see also sections 6.4.1 and 6.8.10.

- (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);<sup>132</sup>
  - (ii) section 5.1(1)<sup>133</sup>—the matters stated in section 5.1(3);
  - (iii) section 5.1(1) and section 5.10(1)<sup>134</sup> applies—the matters stated in sections 5.1(3) and 5.10(2);
  - (iv) section 5.2(1)<sup>135</sup>—the matters stated in section 5.2(2);
  - (v) section 5.9(1)<sup>136</sup>—the matters stated in section 5.9(3);
  - (vi) section 5.11(1)<sup>137</sup>—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.

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131 Section 8.2 (Environmental impact) of the repealed Act

132 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

133 Section 5.1 (Application for subdivision etc.) of the repealed Act

134 Section 5.10 (Subdivision incorporating a lake) of the repealed Act

135 Section 5.2 (Subdivisions involving works) of the repealed Act

136 Section 5.9 (Staged subdivision) of the repealed Act

137 Section 5.11 (Application for amalgamation of land) of the repealed Act



**6.1.30 Deciding applications (other than under the building assessment provisions)**

- (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 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 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)<sup>138</sup> and (5A);
  - (b) section 4.12(1)—decide the application under section 4.13(5)<sup>139</sup> and (5A);
  - (c) section 5.1(1) (whether or not section 5.10(1)<sup>140</sup> applies)—decide the application under section 5.1(6) and (6A);
  - (d) section 5.2(1)<sup>141</sup>—decide the application under section 5.2(4), as if all words in that section after ‘conditions’ were omitted;
  - (e) section 5.9(1)<sup>142</sup>—decide the application under section 5.9(6) and (6A);
  - (f) section 5.11(1)<sup>143</sup>—decide the application under section 5.11(5);

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138 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

139 Sections 4.12 (Application for town planning consent) and 4.13 (Assessment of town planning consent application) of the repealed Act

140 Sections 5.1 (Application for subdivision etc.) and 5.10 (Subdivision incorporating a lake) of the repealed Act

141 Section 5.2 (Subdivisions involving works) of the repealed Act

142 Section 5.9 (Staged subdivision) of the repealed Act

143 Section 5.11 (Application for amalgamation of land) of the repealed Act

- (g) section 5.12(1)<sup>144</sup>—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); but
  - (b) a concurrence agency may still direct the assessment manager to refuse the application.
- (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.

*Editor's note—*

For regional plans, see also sections 6.4.1 and 6.8.10.

### **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 does not apply; and
  - (b) section 3.5.32(1)(b) 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—
  - (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) 30 June 2008; or
    - (ii) if the Minister, by gazette notice, nominates a later day for a particular planning scheme—the later day.

### **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)<sup>145</sup> of the repealed Act.
- (2) For deciding the application—
  - (a) section 3.5.32(1)(b) 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 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.

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145 Section 8.10 (Savings and transitional) of the repealed Act

**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 Future effect of approvals for applications mentioned in s 3.1.6**

- (1) Subsection (2) applies if—
  - (a) a development application in which the applicant sought to vary the effect of a planning scheme in 1 or more of the ways mentioned in section 3.1.6(2), as that section was immediately before the commencement of this section, is made; and
  - (b) the application was made before the commencement of this section; and
  - (c) the application has been, or is, approved.
- (2) To the extent the approval does either or both of the following, the approval is valid—

- (a) approves the development applied for;
- (b) does 1 or more of the things mentioned in section 3.1.6(3) or 3.1.6(5).

## **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, are, until a further notice is gazetted under this Act, the judges who, on and from the commencement, constitute the 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.
- (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.<sup>146</sup>

## **Division 10                      Miscellaneous**

### **6.1.42 Application of ch 2, pt 3**

Chapter 2, part 3 (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—
  - (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

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<sup>146</sup> See the *Acts Interpretation Act 1954*, section 20 for other matters that are also saved when an Act is repealed.



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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<sup>147</sup> 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—
- 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,<sup>148</sup> as in force immediately before 1 December 1999; or

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147 Part 6 (Conditions, contributions, works and infrastructure agreements), division 2 (Infrastructure agreements) of the repealed Act

148 *Transport Infrastructure Act 1994*, section 40 was renumbered as section 42 (Impact of certain local government decisions on State-controlled roads) under the *Transport Infrastructure Act 1994*, section 126O.

- (ii) made under this Act—the *Transport Infrastructure Act 1994*, section 40;
- (b) the *Transport Operations (Passenger Transport) Act 1994*, section 145(4).

### **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
  - (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.

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- (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.
- (5) Subsection (5A) applies to—
  - (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.

*Editor's note—*

For structure plans and master plans for development control plans, see also section 6.8.12 (Transition of validated planning documents to master planning documents).

#### **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<sup>149</sup> 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)<sup>150</sup> or under the *City of Brisbane Town Planning Act 1964*, section 7A(8)<sup>151</sup> are still in force immediately before the commencement of this section—the orders; and
  - (b) all orders in council made under section 2.21(2)(c)<sup>152</sup> 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

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149 Section 3.5 (Compensation) of the repealed Act

150 The repealed *Local Government Act 1936*, section 33 (Town Planning)

151 The repealed *City of Brisbane Town Planning Act 1964*, section 7A (Plan may include Crown land)

152 Section 2.21 (Planning scheme may include Crown land) of the repealed Act

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.
- (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 section 3.5.32(1), 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 3.3.6 to 3.3.14, the chief executive is taken to be a concurrence agency for the application.
- (6) Despite sections section 3.5.32(1), the chief executive may recommend the assessment manager attach a road condition to a development approval for the development application.
- (7) 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.

## Part 2 **Transitional provisions for Integrated Planning and Other Legislation Amendment Act 2003**

### Division 1 **Transitional provisions generally**

#### 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.

#### 6.2.3 **When s 3.5.31A applies**

Section 3.5.31A applies for applications decided on or after the commencement of this section.

## **Division 2                    Transitional provisions for designation**

### **6.2.4    Designation processes continue**

If before the commencement of this section a designator has started designation procedures under chapter 2, part 6, and schedule 6 or schedule 7, the designator may complete the procedures as if the *Integrated Planning and Other Legislation Amendment Act 2003*, part 2, division 2 had not commenced.

## **Division 3                    Transitional provisions for infrastructure**

### **6.2.5    Transitional provisions for infrastructure charges plans**

- (1) If immediately before the commencement of this section an infrastructure charges plan was in force—
  - (a) the infrastructure charges plan continues to have effect as if it were an infrastructure charges schedule; and
  - (b) a reference to—
    - (i) the infrastructure charges plan is taken to be a reference to an infrastructure charges schedule; and
    - (ii) infrastructure identified in the plan is taken to be a reference to trunk infrastructure; and
  - (c) for sections 3.2.4 and 5.1.25, an assumption about the type, scale, location or timing of future development on which the plan is based has effect as if the assumption were stated in a priority infrastructure plan.
- (2) If immediately before the commencement of this section a local government was preparing an infrastructure charges plan, the local government may continue to prepare the plan as if the *Integrated Planning and Other Legislation Amendment Act 2003* had not commenced.

- (3) If a plan mentioned in subsection (2), is adopted by the local government after the commencement of this section—
  - (a) the plan is taken to be an infrastructure charges schedule; and
  - (b) a reference to the plan is taken to be a reference to an infrastructure charges schedule; and
  - (c) a reference to infrastructure identified in the plan is taken to be a reference to trunk infrastructure; and
  - (d) for sections 3.2.4 and 5.1.25, an assumption about the type, scale, location or timing of future development on which the plan is based has effect as if the assumption were stated in a priority infrastructure plan.
- (4) If an infrastructure charges plan mentioned in subsections (1) to (3) includes public parks infrastructure—
  - (a) the infrastructure is taken to have been validly included in the plan; and
  - (b) any infrastructure charge levied under the plan is taken to have been validly levied.

### **6.2.6 When planning schemes do not require priority infrastructure plans**

An IPA planning scheme does not have to include a priority infrastructure plan until the day mentioned in section 6.1.31(3)(b) applying to the scheme.

### **6.2.7 Priority infrastructure plans**

- (1) This section applies if—
  - (a) a local government was preparing a plan similar to a priority infrastructure plan before the commencement of this section; and
  - (b) the plan, when completed, complies with the criteria prescribed for the preparation of priority infrastructure plans; and

- (c) the Minister, under schedule 1, section 18, advises the local government that it may adopt the plan.
- (2) The plan is taken to be a priority infrastructure plan.

### **6.2.8 Infrastructure charges schedules**

- (1) This section applies if—
  - (a) a local government was preparing a schedule similar to an infrastructure charges schedule before the commencement of this section; and
  - (b) the schedule, when completed, complies with the criteria prescribed for the preparation of an infrastructure charges schedule; and
  - (c) the Minister, under schedule 1, section 18, advises the local government that it may adopt the schedule.
- (2) The schedule is taken to be an infrastructure charges schedule.

### **6.2.9 Reduction of charge for infrastructure supplied under conditions**

- (1) Subsection (2) applies if—
  - (a) a development approval is subject to conditions imposed under section 6.1.31; and
  - (b) after the conditions are imposed, the local government prepares an infrastructure charges plan or an infrastructure charges schedule for the supply of infrastructure for which the conditions were imposed; and
  - (c) the local government intends to levy a charge on the premises for the infrastructure.
- (2) The local government must reduce the charge having regard to any contributions made or infrastructure supplied under the condition.

### **6.2.10 Appeals about infrastructure contribution conditions imposed under planning scheme policies**

- (1) This section applies if—

- (a) a local government has a planning scheme policy for infrastructure prepared under section 6.1.20; and
  - (b) the policy requires infrastructure contributions for urban water cycle management and transport infrastructure; and
  - (c) the policy was prepared as an infrastructure charges plan but has been adopted as a planning scheme policy; and
  - (d) the local government has, under section 6.1.31, imposed a condition on a development approval requiring the applicant to pay contributions for the infrastructure.
- (2) Any appeal about the condition must proceed as if it were an appeal under section 4.1.36.

## **Part 3**

# **Transitional provision for Vegetation Management and Other Legislation Amendment Act 2004**

### **6.3.1 Application of VMA for mining and petroleum activities**

The following paragraph is taken to have been inserted in schedule 8, part 1, item 3A on 15 September 2000 and had effect until the commencement of this section—

- (g) a mining activity or a petroleum activity as defined under the *Environmental Protection Act 1994*.

## **Part 4**

# **Transitional provision for Integrated Planning and Other Legislation Amendment Act 2004**

### **6.4.1 Effect of SEQ regional plan for assessing and deciding applications under transitional planning schemes**

- (1) Subsections (2) and (3) apply—
  - (a) for development on premises in the SEQ region; and
  - (b) for assessing a development application to which section 6.1.29 applies.
- (2) In addition to the matters mentioned in section 6.1.29(3), the SEQ regional plan also applies for assessing the application.
- (3) To the extent of any inconsistency between the SEQ regional plan and a matter stated in section 6.1.29(3), the SEQ regional plan prevails.
- (4) A requirement under section 6.1.30 to refuse a development application because the application conflicts with any relevant strategic plan or development control plan under a transitional planning scheme only applies to the extent the requirement is consistent with the SEQ regional plan.

## **Part 5**

# **Transitional provision for Environmental Protection and Other Legislation Amendment Act 2004**

### **6.5.1 When particular development approvals lapse**

- (1) This section applies if during the currency period for a development approval for a material change of use given after 30 March 1998—

- (a) a development permit for works associated with the change of use takes, or took, effect; and
  - (b) the works are, or were, substantially started.
- (2) Despite section 3.5.21(1), the development approval for the material change of use lapses on 30 December 2006 or at the end of the currency period, whichever is the later.
- (3) However, the development approval does not lapse if the change of use happens before 30 December 2006 or the end of the currency period, whichever is the later.
- (4) Subsection (5) applies if, for a development approval—
- (a) the currency period for the approval has lapsed; but
  - (b) subsection (2) still has effect.
- (5) A person may apply to extend the date mentioned in subsection (2) using sections 3.5.22 and 3.5.23 as if the date were the day the currency period for the development approval ended.
- (6) For this section—

*currency period* has the same meaning it had immediately before the commencement of the *Integrated Planning and Other Legislation Amendment Act 2006*, section 39.

*works associated with the change of use* includes works, including, for example, demolishing, excavating or filling, carried out to prepare premises for carrying out other works associated with the material change of use of premises.

## **Part 6**                      **Transitional provision for Environmental Protection and Other Legislation Amendment Act 2005**

### **6.6.1 Deferment of application of s 4.3.1 to particular material changes of use**

Section 4.3.1 does not apply to the carrying out of a material change of use of premises mentioned in section 1.3.5, definition *material change of use*, paragraph (c), until 12 months after the commencement of that paragraph.

## **Part 7**                      **Transitional provisions for Integrated Planning and Other Legislation Amendment Act 2006**

### **6.7.1 Referral coordination required for undecided applications**

- (1) This section applies to a development application if the application—
  - (a) has not been decided by the day the *Integrated Planning and Other Legislation Act 2006*, section 26 commences; and
  - (b) but for this section, would have required referral coordination.
- (2) Despite the commencement, if referral coordination has not been carried out for the application, the application still requires referral coordination.
- (3) In this section—

*referral coordination* means referral coordination under this Act, as it was before the commencement.



**6.7.1A Notification period for particular applications**

- (1) This section applies to a development application if—
  - (a) it requires public notification under chapter 3, part 4; and
  - (b) it is made after the commencement of the *Integrated Planning and Other Legislation Amendment Act 2006*, section 26; and
  - (c) any of the following apply for the application—
    - (i) there are 3 or more concurrence agencies;
    - (ii) all or part of the development—
      - (A) is assessable under a planning scheme; and
      - (B) is prescribed under a regulation;
    - (iii) all or part of the development is the subject of an application for a preliminary approval mentioned in section 3.1.6.
- (2) Despite section 3.4.5(a), the notification period, under that section, for the application is 30 business days starting on the day after the last action under section 3.4.4(1) is carried out.

**6.7.2 Currency periods for development approvals that have not lapsed**

- (1) Sections 3.5.21 to 3.5.23, as amended by the *Integrated Planning and Other Legislation Act 2006*, section 39, apply for a development approval—
  - (a) that has not lapsed; and
  - (b) whether or not the approval was given before or after the commencement of that section.
- (2) A reference to the currency period in a development approval given before the commencement is taken to be a reference to the relevant period mentioned in section 3.5.21 after the commencement.
- (3) However, a request made under section 3.5.22 but not decided before the commencement must be decided as if the amendment had not commenced.

- (4) Despite subsection (1), if the approval had not lapsed only because section 6.5.1, as it applied before the commencement, stopped it from lapsing, only section 6.5.1, as it applies after the commencement, applies for the approval.

### **6.7.3 Sufficient grounds for decisions**

- (1) This section applies to a development application if the application was made, but not decided, before the *Integrated Planning and Other Legislation Act 2006*, section 36 commenced.
- (2) Sections 3.5.13 and 3.5.14, as they were before the commencement, apply for the application.

### **6.7.4 Decision notices for applications made before commencement**

- (1) This section applies to a development application if the application was made, but not decided, before the *Integrated Planning and Other Legislation Act 2006*, section 38 commenced.
- (2) Section 3.5.15, as it was before the commencement, applies for the application.

## **Part 8 Transitional provisions for Urban Land Development Authority Act 2007**

### **Division 1 Provisions for SEQ regional plan**

#### **6.8.1 Definitions for div 1**

In this division—

*amendment* includes replacement.

*commencement* means the commencement of this section.

**former**, for a provision mentioned in this division, means the provision to which the reference relates is a provision of this Act as in force before the commencement.

**new**, for a provision mentioned in this division, means the provision to which the reference relates is a provision of this Act as in force from the commencement.

**regulatory provisions** means regulatory provisions under former section 2.5A.12.

**SEQ region** means the area, including the area of any Queensland waters, that comprised the SEQ region under former section 2.5A.2 immediately before the date of assent of the *Urban Land Development Authority Act 2007*.

**SEQ regional plan** means the instrument made by the regional planning Minister under former section 2.5A.15(2) in existence under this Act immediately before the date of assent of the *Urban Land Development Authority Act 2007*.

**SEQ regional plan local growth management strategy** means a local growth management strategy under former section 2.5A.20(5).

**SEQ regional plan major development area** means an area mentioned in former section 2.5A.20(5), definition *major development area*, identified or purportedly identified under that provision at any time before the commencement.

**SEQ regional plan structure plan** means a structure plan under former section 2.5A.20(5).

## **6.8.2 SEQ region becomes a designated region**

- (1) The SEQ region is, from the commencement, taken to be a designated region under new section 2.5A.2, with the name SEQ region, as if it has been prescribed under a regulation made under that section.
- (2) Subsection (1) does not prevent the amendment of the designated region, under new section 2.5A.2.

**6.8.3 SEQ regional plan becomes the regional plan for the SEQ region**

- (1) The SEQ regional plan is, from the commencement, taken to be the regional plan for the SEQ region as a designated region.
- (2) To remove any doubt, it is declared that the regional plan continues to be a statutory instrument under the *Statutory Instruments Act 1992*.
- (3) Subsection (1) does not prevent the amendment of the regional plan, under new chapter 2, part 5A, division 5.

**6.8.4 Regulatory provisions included in SEQ regional plan become State planning regulatory provisions**

- (1) The regulatory provisions included in the SEQ regional plan are, from the commencement, taken to be State planning regulatory provisions for the SEQ region.
- (2) Subsection (1) does not prevent the amendment of the State planning regulatory provisions for the SEQ region, under new chapter 2, part 5C, division 4.

**6.8.5 References in SEQ regional plan and regulatory provisions**

- (1) This section applies to a reference in the SEQ regional plan or the regulatory provisions to—
  - (a) a local growth management strategy; or
  - (b) a major development area; or
  - (c) a structure plan.
- (2) From the commencement—
  - (a) a reference to a local growth management strategy is taken to be a reference to an SEQ regional plan local growth management strategy; and
  - (b) a reference to a major development area is taken to be a reference to an SEQ regional plan major development area; and
  - (c) a reference to a structure plan is taken to be a reference to an SEQ regional plan structure plan.

### **6.8.6 Local growth management strategy**

An SEQ regional plan local growth management strategy may be included in the regional plan for the SEQ region, using the process under new section 2.5A.18.

### **6.8.7 Structure plan**

- (1) This section applies to a local government whose local government area is in the SEQ region if—
  - (a) the local government has resolved to prepare an SEQ regional plan structure plan—
    - (i) before the commencement; or
    - (ii) if the regional planning Minister for the SEQ region and the Minister approve the preparation of the plan—after the commencement; and
  - (b) the local government has prepared the plan; and
  - (c) the regional planning Minister has approved the plan.
- (2) The Minister must, under schedule 1, section 18, advise the local government that it may—
  - (a) adopt the plan as an amendment of its planning scheme; or
  - (b) adopt the plan as an amendment of its planning scheme, but subject to compliance with conditions the Minister may impose about the content of the proposed amendment of its planning scheme.
- (3) If the local government adopts the plan as an amendment of its planning scheme, section 5.4.4(1)(i) applies to the amendment as if it were about a matter consisting of a structure plan for a declared master planned area.

### **6.8.8 Major development areas**

- (1) From the commencement, the regional planning Minister for the SEQ region may, in a written notice to a relevant local government, identify an SEQ regional plan major development area in the SEQ region.

- (2) An SEQ regional plan major development area is taken to be a master planned area identified under section 2.5B.1, but it is not a declared master planned area.
- (3) In this section—  
*relevant local government* means a local government whose local government area is in the SEQ region.

### **6.8.9 Existing SEQ regional coordination committee**

The SEQ regional coordination committee established under former section 2.5A.3 is, from the commencement, taken to be the regional coordination committee for the SEQ region.

### **6.8.10 Effect of regional plan for assessing and deciding applications under transitional planning schemes**

- (1) Subsections (2) and (3) apply—
  - (a) for development on premises in a designated region other than the SEQ region; and
  - (b) for the purposes of assessing a development application to which section 6.1.29 applies.

*Note—*

For assessing a development application to which section 6.1.29 applies for development on premises in the SEQ region, see section 6.4.1.

- (2) In addition to the matters mentioned in section 6.1.29(3), the designated region's regional plan also applies for assessing the application.
- (3) To the extent of any inconsistency between the designated region's regional plan and a matter stated in section 6.1.29(3), the regional plan prevails.
- (4) A requirement under section 6.1.30 to refuse a development application because the application conflicts with any relevant strategic plan or development control plan under a transitional planning scheme applies only to the extent the requirement is consistent with the designated region's regional plan.

**Division 2****Provisions for chapter 2, part 5B****6.8.11 Master plans prevail over conditions of rezoning approvals under repealed Act**

A master plan under this Act prevails, to the extent the plan 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.

**6.8.12 Transition of validated planning documents to master planning documents**

- (1) This section applies to a development control plan, transitional planning scheme, transitional planning scheme policy or other plan (the *validated planning document*) to which section 6.1.45A applies.
- (2) A State planning regulatory provision (the *transitional regulatory provision*) may provide for—
  - (a) the transition of the validated planning document to a structure plan for a declared master planned area, and a master plan or master plans for the area; and
  - (a) any other matter related to the transition.
- (3) Without limiting subsection (2), the transitional regulatory provision may provide for all or any of the following—
  - (a) the identification of the master planned area for the structure plan;
  - (b) how the structure plan is made;
  - (c) how master plans for the identified master planned area are made, with or without approval;
  - (d) infrastructure agreements relating to the identified master planned area.
- (4) If the transition mentioned in subsection (2)(a) is made under the transitional regulatory provision—

- (a) the validated planning document ceases to have effect to the extent provided for under the provision; and
  - (b) section 6.1.45A ceases to apply for the validated planning document.
- (5) This section applies despite chapter 2 and section 6.1.45A to the extent provided for under the transitional regulatory provision.
  - (6) However, on the making of the transition, this Act applies to the structure plan, the master planned area and any master plan made under the transitional regulatory provision as if they had been made under chapter 2, part 5B.
  - (7) Section 2.5C(7)(2) applies to a transitional regulatory provision.

## **Division 3                      Miscellaneous provision**

### **6.8.13 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 master plan, nothing in the repealed Act or this Act affects the agreement.
- (3) If—
  - (a) a coordinating agency or the local government is proposing to include a condition about infrastructure in a proposed master plan; or
  - (b) a local government is fixing an infrastructure charge under chapter 5, part 1; or
  - (c) a coordinating agency or State infrastructure provider is giving a regulated State infrastructure charges notice;any amount relating to infrastructure that has been paid, or is payable, under the agreement must be taken into account.



## **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; and

**Schedule 1 (continued)**

- (c) if the local government is in a designated region—state how the local government anticipates the planning scheme will reflect the region’s regional plan.
- (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<sup>153</sup> 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.

**8A Requirements for priority infrastructure plans**

- (1) This section applies if a local government is—
  - (a) making a planning scheme or infrastructure charges schedule that includes a priority infrastructure plan; or
  - (b) amending a planning scheme or infrastructure charges schedule to include or amend a priority infrastructure plan.
- (2) Before the local government makes a proposal under section 9, the local government must agree with the suppliers of State infrastructure for the priority infrastructure plan about—
  - (a) assumptions for the priority infrastructure plan; and
  - (b) the location and size of the priority infrastructure area.
- (3) If the parties can not agree on the matters mentioned in subsection (2), the Minister must—
  - (a) establish a committee to prepare a report on the matters and having considered the report, decide the matters; or
  - (b) having considered the written views of the parties, decide the matters.

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<sup>153</sup> *Properly made submission* is a term defined in schedule 10 (Dictionary).

## Schedule 1 (continued)

**9 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.<sup>154</sup>
- (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 proposes a planning scheme under subsection (1) or (2), the local government must give the Minister a copy of the proposed planning scheme.

## **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 that the proposed amendment reflects 1 or more of the following, and that there has already been adequate public consultation about the matter, the subject of the proposed amendment—
    - (i) the recommendation of a regional planning advisory committee on a matter;

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<sup>154</sup> 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)**

- (ii) if the local government is in a designated region—the region’s regional plan;
  - (iii) another standard or policy of the State;
  - (iv) a decision previously made by an assessment manager on a development application;
  - (v) an infrastructure charges schedule associated with a priority infrastructure plan included in the planning scheme.
- (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
  - (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

**Schedule 1 (continued)**

- (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;
  - (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;

**Schedule 1 (continued)**

- (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.

**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—

**Schedule 1 (continued)**

- (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.

**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—



**Schedule 1 (continued)**

- (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) Subsection (5A) applies if the Minister—
- (a) advises the local government under subsection (4); and
  - (b) is satisfied each of the following are appropriately reflected in the proposed planning scheme—
    - (i) State planning policies, or parts of State planning policies;
    - (ii) if the local government is in a designated region—the region's regional plan.
- (5A) The Minister must also advise the local government that he or she is satisfied under subsection (5)(b).
- (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

**Schedule 1 (continued)**

regard to the Minister's consideration under subsection (3), it may not proceed further with the amendment.

- (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 details of the advice given by the Minister under subsection (5A).

## **Part 3                      Adoption stage**

### **19      Adopting proposed planning scheme**

- (1) If a local government proposes a planning scheme 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.
- (2) If the local government decides not to proceed with the proposed planning scheme, it must, as soon as practicable after making the decision publish, at least once in both a newspaper circulating generally in the local government's area and in the gazette, a notice stating—
  - (a) the name of the local government; and
  - (b) that the local government has decided not to proceed with the proposed planning scheme; and

**Schedule 1 (continued)**

- (c) the reasons for the decision.
- (3) 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 copy of the notice.

**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;
- (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 in the form mentioned in section 5.9.9(1)(d).

## **Schedule 1A      Process for amending planning scheme to include a structure plan**

section 2.5B.10

### **Part 1                      Making of structure plan amendment**

#### **1                      Master planning process**

- (1) The local government must carry out the master planning required to make a structure plan for a declared master planned area.
- (2) A participating agency must, within the limits of the laws it administers and the policies that are reasonably identifiable as policies it applies, participate in the master planning carried out by the local government to make a structure plan for a declared master planned area.
- (3) The coordinating agency must coordinate the involvement of the participating agencies in the master planning process required to make a structure plan for a declared master planned area.
- (4) The local government and the coordinating agency must agree on the proposed structure plan.
- (5) If the local government, a participating agency or the coordinating agency can not agree on a matter mentioned in subsections (1) to (4), the Minister must—
  - (a) establish a committee to prepare a report on the matter and having considered the report, decide the matter; or
  - (b) having considered the written views of the parties, decide the matter.

## Schedule 1A (continued)

**2 Proposing a structure plan**

- (1) If the local government and the coordinating agency have agreed on the proposed structure plan, the local government must propose an amendment of its planning scheme to include the proposed structure plan.
- (2) If the local government has proposed an amendment of its planning scheme to include the proposed structure plan under subsection (1), the local government must give the Minister a copy of the proposed amendment to its planning scheme including the proposed structure plan (the *structure plan amendment*).

**Part 2**  
**Consideration of State  
interests and consultation  
stage****3 Considering proposed structure plan amendment for  
adverse effects on State interests**

- (1) On receiving the copy of the structure plan amendment, under section 2(2), the Minister must consider whether or not State interests would be adversely affected by the proposed structure plan amendment.
- (2) The Minister must advise the local government, having regard to the Minister's consideration under subsection (1), that it may start consultation on the proposed structure plan amendment on conditions the Minister believes appropriate.
- (3) Before starting consultation on the proposed structure plan amendment, the local government must comply with any condition imposed by the Minister under subsection (2).

## Schedule 1A (continued)

**4 Consultation on the proposed structure plan amendment**

If the Minister advises the local government that it may start consultation on the proposed structure plan amendment under section 3(2)—

- (a) the local government must start consultation with the significant landowners and stakeholders of the relevant master planned area for the proposed structure plan amendment; and
- (b) the local government may prepare and negotiate a local infrastructure agreement with the significant landowners and stakeholders of the relevant master planned area; and
- (c) the coordinating agency may prepare and negotiate a State infrastructure agreement with the significant landowners and stakeholders of the relevant master planned area.

**5 Resolution of conflict**

(1) If the parties can not agree on the matters mentioned in section 4, the Minister must—

- (a) establish a committee to prepare a report on the matters or obtain the written views of the parties; and
- (b) having considered the written report or views of the parties, decide—
  - (i) whether to extend the period during which consultation must take place; or
  - (ii) that the consultation process ends and that the local government, participating agencies and the coordinating agency must re-start the master planning process; or
  - (iii) that the structure plan preparation process ends and that the declaration for the master planned area be repealed.

## Schedule 1A (continued)

- (2) The Minister's decision must not be contrary to any relevant law.

## **Part 3**

### **Consideration of State interests and notification stage**

#### **6 Decision on proceeding with proposed structure plan amendment**

- (1) Following consultation on the proposed structure plan amendment under section 4—
  - (a) the local government must decide whether to—
    - (i) proceed with the proposed structure plan amendment and any local infrastructure agreement; or
    - (ii) decide not to proceed with the proposed structure plan amendment and any local infrastructure agreement; and
  - (b) the coordinating agency must decide whether to—
    - (i) proceed with the proposed structure plan amendment and any State infrastructure agreement; or
    - (ii) decide not to proceed with the proposed structure plan amendment and any State infrastructure agreement.
- (2) If the local government and the coordinating agency decide to proceed with the proposed structure plan amendment and any local infrastructure agreement and any State infrastructure agreement, the local government must give the Minister a copy of the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement.

## Schedule 1A (continued)

- 7 Reconsidering proposed structure plan amendment for adverse effects on State interests**
- (1) On receiving a copy of the proposed structure plan amendment under section 6(2), the Minister must consider whether or not State interests would be adversely affected by the proposed structure plan amendment, any local infrastructure agreement or any State infrastructure agreement.
  - (2) The Minister must advise the local government, having regard to the Minister's consideration under subsection (1) that it may notify the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement on the conditions the Minister believes appropriate.
  - (3) Before giving notice of the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement, the local government must comply with any condition imposed by the Minister under subsection (2).
- 8 Public notice of, and access to, proposed structure plan amendment**
- (1) If the Minister advises the local government that it may give notice of the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement under section 7(2), the local government must publish, at least once in a newspaper circulating in the local government's area, a notice stating the following—
    - (a) the name of the local government;
    - (b) the purpose and general effect of the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement;
    - (c) a description of the land or area to which the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement is intended to apply;



**Schedule 1A (continued)**

- (d) a contact telephone number for information about the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement;
  - (e) that the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement are available for inspection and purchase;
  - (f) that written submissions about any aspect of the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement 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 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.

**9 Public access to proposed structure plan amendment**

For all of the consultation period, the local government must have a copy of the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement available for inspection and purchase.

**10 Consideration of submissions**

The local government must consider properly made submissions about the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement.

**Schedule 1A (continued)****11 Minimum notification requirements for consultation**

Sections 8, 9 and 10 state the minimum requirements for notification to the public about the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement, but are not intended to prevent additional notification.

**12 Reporting to persons who made submissions about proposed structure plan amendment**

- (1) This section applies if the local government receives properly made submissions about the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement and proceeds under section 13(1)(a) or the local government does not proceed under section 13(1)(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.

**Part 4 Adoption stage****13 Decision on proceeding with proposed structure plan amendment**

- (1) Following notice of the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement under section 7—
  - (a) the local government must decide whether to—

**Schedule 1A (continued)**

- (i) proceed with the proposed structure plan amendment, any local infrastructure agreement and a report under section 12 about submissions on the proposed amendment (a *submissions report*); or
  - (ii) decide not to proceed with the proposed structure plan amendment, any local infrastructure agreement and a submissions report; and
- (b) the coordinating agency must decide whether to—
- (i) proceed with the proposed structure plan amendment and any State infrastructure agreement; or
  - (ii) decide not to proceed with the proposed structure plan amendment and any State infrastructure agreement.
- (2) If the local government and the coordinating agency decide to proceed as mentioned in subsection (1)(a)(i) and (b)(i), the local government must give the Minister a copy of—
- (a) the proposed structure plan amendment; and
  - (b) any local infrastructure agreement; and
  - (c) any State infrastructure agreement; and
  - (d) the submissions report.

**14 Reconsidering proposed structure plan amendment for adverse affects on State interests**

- (1) On receiving the copy of the proposed structure plan amendment under section 13(2), the Minister must consider whether or not State interests would be adversely affected by the proposed structure plan amendment, any local infrastructure agreement and any State infrastructure agreement.
- (2) The Minister must advise the local government, having regard to the Minister's consideration under subsection (1) that it may—
- (a) adopt the proposed structure plan amendment; or

**Schedule 1A (continued)**

- (b) adopt the proposed structure plan amendment, but subject to compliance with conditions the Minister believes appropriate.
- (3) Subsection (4) applies if the Minister—
  - (a) advises the local government under subsection (2); and
  - (b) is satisfied the following are appropriately reflected in the proposed structure plan amendment—
    - (i) State planning policies or parts of State planning policies;
    - (ii) for a proposed structure plan amendment by a local government in the SEQ region—the regional plan for the SEQ region.
- (4) The Minister must also advise the local government that the Minister is satisfied under subsection (3)(b).
- (5) Before adopting the proposed structure plan amendment, the local government must—
  - (a) comply with any condition imposed under subsection (2)(b); and
  - (b) state in the proposed structure plan amendment details of the advice given by the Minister under subsection (4).

**15 Adopting proposed structure plan amendment**

- (1) If a local government proposes a structure plan amendment under section 2, the local government must—
  - (a) if it has complied with all of the provisions of parts 2 and 3 that it must comply with to make a proposed structure plan amendment and has the Minister's advice under section 14(2) that it may adopt the amendment—adopt the proposed structure plan amendment; or
  - (b) decide not to proceed with the proposed structure plan amendment.
- (2) If the local government decides not to proceed with the proposed structure plan amendment, it must, as soon as

**Schedule 1A (continued)**

practicable after making the decision publish, at least once in both a newspaper circulating in the local government's area and in the gazette, a notice stating—

- (a) the name of the local government; and
  - (b) that the local government has decided not to proceed with the proposed structure plan amendment; and
  - (c) the reasons for the decision.
- (3) On the last day the local government publishes the notice, or as soon as practicable after that day, the local government must give the chief executive a copy of the notice.

**16 Public notice of adoption of, and access to, structure plan amendment**

As soon as practicable after the proposed structure plan amendment has been adopted, the local government must publish, at least once in both a newspaper circulating 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 proposed structure plan amendment was adopted;
- (c) the purpose and general effect of the proposed structure plan amendment;
- (d) that a copy of the proposed structure plan amendment is available for inspection and purchase.

**17 Copy of notice and structure plan amendment to chief executive**

On the day the local government publishes the notice, or as soon as practicable after that day, the local government must give the chief executive—

- (a) a copy of the notice; and

**Schedule 1A (continued)**

- (b) 5 certified copies of the proposed structure plan amendment in the form mentioned in section 5.9.9(1)(d).

## **Schedule 2      Process for making temporary local planning instruments**

section 2.1.12

### **Part 1                      Proposal stage**

#### **1      Proposal 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                      Adopting proposed temporary local planning instrument**

- (1) If a local government 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 written notice of 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 in the form mentioned in section 5.9.9(1)(d).

## **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.

**4A Consultation stage does not apply in certain circumstances**

Sections 1(2) and 2 to 4 need not be complied with if the amendment is a minor amendment of a planning schedule policy.

## Schedule 3 (continued)

**Part 3                      Adoption stage****5                      Resolution about adopting proposed planning scheme policy or amendment**

After the local government has considered every properly made submission about the proposed planning scheme policy or amendment, the local government 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.

**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.

**Schedule 3 (continued)**

- (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.
- (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 in the form mentioned in section 5.9.9(1)(d).

## 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,<sup>155</sup> 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;

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<sup>155</sup> 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)**

- (d) a contact telephone number for information about the proposed policy or amendment;
  - (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            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*

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;
- (ia) miscellaneous transport infrastructure under the *Transport Infrastructure Act 1994*;
- (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 schedule 10, definition *development infrastructure*;
- (p) water cycle management infrastructure;
- (q) waste management facilities;
- (r) storage and works depots and the like including administrative facilities associated with the provision or

**Schedule 5 (continued)**

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 8 Assessable development and self-assessable development

schedule 10, definitions *assessable development* and *self-assessable development*

*Note—*

Section 2.5B.63 modifies the application of this schedule for particular types of development in declared master planned areas.

### Part 1 Assessable development

**Table 1: Building work**

For the Building Act 1975 <sup>a</sup>	
1	Building work that is not— (a) self-assessable; and (b) declared under the <i>Building Act 1975</i> to be exempt development.
For declared fish habitat area	
2	For assessing building work against the <i>Fisheries Act 1994</i> , building work in a declared fish habitat area if it is not self-assessable development.

a Table 1, item 1 commenced 30 March 1998.

## Schedule 8 (continued)

Table 2: Material change of use of premises

For an environmentally relevant activity <sup>a</sup>	
1	Making a material change of use of premises for an environmentally relevant activity, other than— (a) a mining activity; or (b) a petroleum activity; or (c) a mobile and temporary environmentally relevant activity; or (d) an environmentally relevant activity, or aspects of an environmentally relevant activity, for which a code of environmental compliance has been made under the <i>Environmental Protection Regulation 1998</i> ; or (e) in an urban development area.
For a brothel <sup>b</sup>	
2	Making a material change of use of premises for a brothel as defined under the <i>Prostitution Act 1999</i> .
On strategic port land <sup>c</sup>	
3	Making a material change of use of premises on strategic port land that is inconsistent with the land use plan approved under the <i>Transport Infrastructure Act 1994</i> , section 286 (Approval of land use plans).
For a major hazard facility <sup>d</sup>	
4	Making a material change of use of premises for a major hazard facility or possible major hazard facility as defined under the <i>Dangerous Goods Safety Management Act 2001</i> .
Contaminated land management	
5	Making a material change of use of premises if all or part of the land forming part of the premises is on the environmental management register or contaminated land register under the <i>Environmental Protection Act 1994</i> , unless— (a) a suitability statement has been given and a site management plan has been approved for the land for the intended use and the application only involves— (i) the fit-out of a building on the land; or (ii) minor site excavation, including, for example, post holes for open-sided non-habitable structures; or

## Schedule 8 (continued)

Table 2: Material change of use of premises

	<p>(b) there is currently a notifiable activity on the land and the activity is continuing; or</p> <p>(c) the proposed use is industrial and only involves minor site excavation, including, for example, post holes for open-sided non-habitable structures; or</p> <p>(d) the land is used for a mining activity or petroleum activity; or</p> <p>(e) the land is in an urban development area.</p>
6	<p>Making a material change of use of premises, other than premises in an urban development area, if all or part of the land forming part of the premises is used for, or if there is no existing use was last used for—</p> <p>(a) a notifiable activity; or</p> <p>(b) an industrial activity (other than for a mining activity or petroleum activity), and the proposed use is for child care, educational, recreational or residential purposes, including a caretaker residence on industrial land;</p> <p>unless for paragraph (a)—</p> <p>(c) a suitability statement, removing the land from the environmental management register, has been given under the <i>Environmental Protection Act 1994</i> for the existing use, or if there is no existing use, the last use, and the following both apply—</p> <p>(i) no new notifiable activity has occurred on the land since the suitability statement was issued;</p> <p>(ii) the land is not otherwise contaminated by a hazardous contaminant; or</p> <p>(d) a suitability statement has been given, and a site management plan has been approved, for the land for the intended use, and the application involves only—</p> <p>(i) the fit-out of a building on the land; or</p> <p>(ii) minor site excavation, including, for example, post holes for open-sided non-habitable structures; or</p> <p>(e) the land is used for a mining activity or petroleum activity.</p>
7	<p>Making a material change of use of premises, other than premises in an urban development area, if all or part of the premises is in an area for which an area management advice has been given for natural mineralisation or industrial activity (other than for a mining activity or petroleum activity), and the proposed use is for child care, educational, recreational or residential purposes, including a caretaker residence on industrial land.</p>

## Schedule 8 (continued)

**Table 2: Material change of use of premises**

For aquaculture	
8	For assessing a material change of use of premises against the <i>Fisheries Act 1994</i> , making a material change of use of premises for aquaculture if it is not self-assessable development.
For public passenger transport	
9	Making a material change of use of premises, other than premises in an urban development area, prescribed under a regulation for this table.
For railways	
10	Making a material change of use of premises, other than premises in an urban development area, prescribed under a regulation for this table.
For a wild river area	
11	Making a material change of use of premises to the extent the premises is in a wild river area and the proposed use is for agricultural or animal husbandry activities, as defined under the <i>Wild Rivers Act 2005</i> .

- a Table 2, item 1 originally commenced 1 July 1998, and was subsequently amended.
- b Table 2, item 3 commenced 1 July 2000.
- c Table 2, item 4 commenced 1 December 2000.
- d Table 2, item 5 commenced 7 May 2002.



## Schedule 8 (continued)

Table 3: Reconfiguring a lot

Under the <i>Land Title Act 1994</i> <sup>a</sup>	
1	<p>Reconfiguring a lot under the <i>Land Title Act 1994</i>, unless the plan of subdivision necessary for the reconfiguration—</p> <p>(a) is a building format plan of subdivision that does not subdivide land on or below the surface of the land; or</p> <p>(b) is for the amalgamation of 2 or more lots; or</p> <p>(c) is for the incorporation, under the <i>Body Corporate and Community Management Act 1997</i>, section 41,<sup>b</sup> of a lot with common property for a community titles scheme; or</p> <p>(d) is for the conversion, under the <i>Body Corporate and Community Management Act 1997</i>, section 43,<sup>c</sup> of lessee common property within the meaning of that Act to a lot in a community titles scheme; or</p> <p>(e) is in relation to the acquisition, including by agreement, under the <i>Acquisition of Land Act 1967</i> or otherwise, of land by—</p> <p style="padding-left: 20px;">(i) a constructing authority, as defined under that Act, for a purpose set out in paragraph (a) of the schedule to that Act; or</p> <p style="padding-left: 20px;">(ii) an authorised electricity entity; or</p> <p>(f) is in relation to land held by the State, or a statutory body representing the State and the land is being subdivided for a purpose set out in the <i>Acquisition of Land Act 1967</i>, schedule, paragraph (a) whether or not the land relates to an acquisition; or</p>
	<p>(g) is for the reconfiguration of a lot comprising strategic port land as defined in the <i>Transport Infrastructure Act 1994</i>; or</p> <p>(h) is for the reconfiguration of a South Bank lot within the corporation area under the <i>South Bank Corporation Act 1989</i>; or</p> <p>(i) is for the <i>Transport Infrastructure Act 1994</i>, section 240; or</p> <p>(j) is in relation to the acquisition of land for a water infrastructure facility; or</p> <p>(k) is in relation to land in an urban development area.</p>

a Table 3, item 1, other than paragraphs (e)(ii) and (h) commenced on 30 March 1998.

b *Body Corporate and Community Management Act 1997*, section 41 (Lease)

c *Body Corporate and Community Management Act 1997*, section 43 (Effect of ending of authorisation)

## Schedule 8 (continued)

Table 4: Operational works

For clearing native vegetation on freehold land and indigenous land	
1A	<p>Operational work that is the clearing of native vegetation on freehold land and indigenous land, unless the clearing is—</p> <ul style="list-style-type: none"> <li>(a) the clearing of vegetation to which VMA does not apply; or</li> <li>(b) for a forest practice, other than on indigenous land on which the State owns the trees; or</li> <li>(c) to the extent necessary for building on a lot, other than indigenous land, a single residence, and any reasonably associated building or structure, if the building of the residence— <ul style="list-style-type: none"> <li>(i) is building work for which a development permit for a building development application has been issued; or</li> <li>(ii) is building work mentioned in part 2, table 1, item 1; or</li> <li>(iii) is development to which chapter 5, part 6<sup>a</sup> applies; or</li> </ul> </li> <li>(ca) to the extent necessary for building residences on indigenous land, and any reasonably associated building or structure, for Aboriginal or Torres Strait Islander inhabitants of the land or persons providing educational, health, police or other community services for the inhabitants if the building of the residences— <ul style="list-style-type: none"> <li>(i) is building work for which a development permit for a building development application has been issued; or</li> <li>(ii) is building work mentioned in part 2, table 1, item 1; or</li> <li>(iii) is development to which chapter 5, part 6 applies; or</li> </ul> </li> <li>(d) necessary for essential management; or</li> <li>(e) in an area shown on a property map of assessable vegetation as a category X area; or</li> <li>(f) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or</li> <li>(g) for urban purposes in an urban area that is— <ul style="list-style-type: none"> <li>(i) shown on a property map of assessable vegetation as a category 2 area or a category 3 area; or</li> <li>(ii) if there is no property map of assessable vegetation for the area—a remnant of concern regional ecosystem or a remnant not of concern regional ecosystem; or</li> </ul> </li> <li>(ga) for urban purposes in an urban area in a wild river high preservation area and the vegetation is— <ul style="list-style-type: none"> <li>(i) a remnant of concern regional ecosystem; or</li> <li>(ii) a remnant not of concern regional ecosystem; or</li> <li>(iii) not remnant vegetation; or</li> </ul> </li> </ul>

## Schedule 8 (continued)

Table 4: Operational works

	<ul style="list-style-type: none"> <li>(h) necessary for routine management in an area of the land— <ul style="list-style-type: none"> <li>(i) shown on a property map of assessable vegetation as a category 3 area; or</li> <li>(ii) for which there is no property map of assessable vegetation and the vegetation is a remnant not of concern regional ecosystem; or</li> </ul> </li> <li>(i) on indigenous land, gathering, digging or removing forest products for— <ul style="list-style-type: none"> <li>(i) the purpose of improving the land or for use under the <i>Local Government (Aboriginal Lands) Act 1978</i>, section 28; or</li> <li>(ii) use under the <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984</i>, section 62; or</li> </ul> </li> <li>(j) for a specified activity; or</li> <li>(k) in an urban development area.</li> </ul>
<b>For clearing native vegetation on leasehold land used for agriculture or grazing</b>	
1B	<p>Operational work that is the clearing of native vegetation on land subject to a lease issued under the <i>Land Act 1994</i> for agriculture or grazing purposes, unless the clearing is—</p> <ul style="list-style-type: none"> <li>(a) the clearing of vegetation to which VMA does not apply; or</li> <li>(b) to the extent necessary, for building on a lot a single residence, and any reasonably associated building or structure, if the building of the residence— <ul style="list-style-type: none"> <li>(i) is building work for which a development permit for a building development application has been issued; or</li> <li>(ii) is building work mentioned in part 2, table 1, item 1; or</li> <li>(iii) is development to which chapter 5, part 6 applies; or</li> </ul> </li> <li>(c) necessary for essential management; or</li> <li>(d) in an area shown on a property map of assessable vegetation as a category X area; or</li> <li>(e) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation and the area has been cleared after 31 December 1989; or</li> </ul>

## Schedule 8 (continued)

Table 4: Operational works

	<p>(f) necessary for routine management in an area of the land—</p> <p>(i) shown on a property map of assessable vegetation as a category 3 area or category 4 area; or</p> <p>(ii) for which there is no property map of assessable vegetation, and the vegetation is a remnant not of concern regional ecosystem or the vegetation is not remnant vegetation; or</p> <p>(g) for a specified activity.</p>
<p><b>For clearing native vegetation on land that is subject to a lease under the <i>Land Act 1994</i>, other than a lease used for agriculture or grazing</b></p>	
1C	<p>Operational work that is the clearing of native vegetation on land, other than land in an urban development area, subject to a lease under the <i>Land Act 1994</i>, other than a lease issued for agriculture or grazing purposes, unless the clearing is consistent with the purpose of the lease and is—</p> <p>(a) the clearing of vegetation to which VMA does not apply; or</p> <p>(b) to the extent necessary, for building on a lot a single residence, and any reasonably associated building or structure, if the building of the residence—</p> <p>(i) is building work for which a development permit for a building development application has been issued; or</p> <p>(ii) is building work mentioned in part 2, table 1, item 1; or</p> <p>(iii) is development to which chapter 5, part 6 applies; or</p> <p>(c) necessary for essential management; or</p> <p>(d) in an area shown on a property map of assessable vegetation as a category X area; or</p> <p>(e) for rental category 3.1, 3.2, 4, 5, 8.2, 9.1 and 9.2 leases under the <i>Land Regulation 1995</i> in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or</p> <p>(f) for a specified activity.</p>

## Schedule 8 (continued)

Table 4: Operational works

For clearing native vegetation on a road under the <i>Land Act 1994</i>	
1D	<p>Operational work that is the clearing of native vegetation on a road under the <i>Land Act 1994</i>, unless the clearing is—</p> <ul style="list-style-type: none"> <li>(a) carried out by a local government and is— <ul style="list-style-type: none"> <li>(i) necessary to construct road infrastructure or to source construction material for roads; or</li> <li>(ii) in an urban area and the vegetation is a remnant not of concern regional ecosystem or the vegetation is not remnant vegetation; or</li> <li>(iii) for an activity approved by the chief executive administering VMA; or</li> </ul> </li> <li>(b) necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure; or</li> <li>(c) by fire under the <i>Fire and Rescue Service Act 1990</i> to reduce hazardous fuel load; or</li> <li>(d) necessary to maintain infrastructure located on the road, other than fences; or</li> <li>(e) necessary to maintain an existing boundary fence to the maximum width of 1.5m; or</li> <li>(f) necessary for reasonable access to adjoining land from the existing formed road for a maximum distance of 100m with a maximum width of 10m; or</li> <li>(g) necessary to maintain an existing firebreak or garden located on the road; or</li> <li>(h) for a specified activity; or</li> <li>(i) in an urban development area.</li> </ul>

## Schedule 8 (continued)

Table 4: Operational works

For clearing native vegetation on trust land under the <i>Land Act 1994</i>	
1E	Operational work that is the clearing of native vegetation on trust land under the <i>Land Act 1994</i> , other than indigenous land, unless the clearing is— <ul style="list-style-type: none"> <li>(a) by the trustee and is—               <ul style="list-style-type: none"> <li>(i) necessary for essential management; or</li> <li>(ii) in an area shown on a property map of assessable vegetation as a category X area; or</li> <li>(iii) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or</li> <li>(iv) for an activity approved by the chief executive administering VMA; or</li> </ul> </li> <li>(b) for a specified activity; or</li> <li>(c) in an urban development area.</li> </ul>
For clearing native vegetation on unallocated State land under the <i>Land Act 1994</i>	
1F	Operational work that is the clearing of native vegetation on unallocated State land under the <i>Land Act 1994</i> , unless the clearing is— <ul style="list-style-type: none"> <li>(a) carried out by the chief executive administering that Act and is necessary for—               <ul style="list-style-type: none"> <li>(i) essential management; or</li> <li>(ii) the control of non-native plants or declared pests; or</li> </ul> </li> <li>(b) for a specified activity; or</li> <li>(c) in an urban development area.</li> </ul>
For clearing native vegetation on land that is subject to a licence or permit under the <i>Land Act 1994</i>	
1G	Operational work that is the clearing of native vegetation on land that is subject to a license or permit under the <i>Land Act 1994</i> , unless the clearing is— <ul style="list-style-type: none"> <li>(a) carried out by the licensee or permittee and is necessary for essential management; or</li> <li>(b) for a specified activity.</li> </ul>

## Schedule 8 (continued)

Table 4: Operational works

Associated with reconfiguration <sup>b</sup>	
2	Operational works for the reconfiguration of a lot, other than a lot in an urban development area, if the reconfiguration is also assessable development.
For taking, or interfering with, water <sup>c</sup>	
3	<p>Operational work of any kind, other than in an urban development area, and for all things constructed or installed that allow the taking, or interfering with, water (other than using a water truck to pump water) under the <i>Water Act 2000</i>, if the operations allow, under that Act—</p> <p>(a) taking or interfering with, water from a watercourse, lake or spring (other than under the <i>Water Act 2000</i>, section 20(2), (3) or (5)) or from a dam constructed on a watercourse or lake if it is not self-assessable development</p> <p>(b) taking, or interfering with, artesian water under the <i>Water Act 2000</i>; or</p> <p>(c) taking, or interfering with—</p> <p style="padding-left: 20px;">(i) overland flow water, if the operations are mentioned as assessable development in a water resource plan under the <i>Water Act 2000</i>, a wild river declaration or prescribed under a regulation under this Act or the <i>Water Act 2000</i></p> <p style="padding-left: 20px;">(ii) subartesian water, if the operations are mentioned as assessable development in a water resource plan under the <i>Water Act 2000</i>, a wild river declaration or prescribed under a regulation under this Act or the <i>Water Act 2000</i></p> <p>(d) interfering with overland flow water in an area declared under the <i>Water Act 2000</i> to be a drainage and embankment area if the operations are declared under that Act or a wild river declaration to be assessable development.</p>
For a referable dam <sup>d</sup>	
4	<p>Operational work that—</p> <p>(a) is the construction of a referable dam as defined under the <i>Water Act 2000</i>; or</p> <p>(b) will increase the storage capacity of a referable dam by more than 10%.</p>

## Schedule 8 (continued)

Table 4: Operational works

For tidal work or work within a coastal management district <sup>e</sup>	
5	<p>Operational work, other than excluded work, that is—</p> <p>(a) tidal work; or</p> <p>(b) any of the following carried out completely or partly within a coastal management district—</p> <ul style="list-style-type: none"> <li>(i) interfering with quarry material on State coastal land above high-water mark;</li> <li>(ii) disposing of dredge spoil or other solid waste material in tidal water;</li> <li>(iii) draining or allowing drainage or flow of water or other matter across State coastal land above high-water mark;</li> <li>(iv) constructing or installing works in a watercourse and not assessable under item 3 or 4;</li> <li>(v) reclaiming land under tidal water;</li> <li>(vi) constructing an artificial waterway associated with the reconfiguration of a lot;</li> <li>(vii) constructing an artificial waterway not associated with the reconfiguring of a lot on land, other than State coastal land, above high-water mark if the maximum surface area of water on the waterway is at least 5000m<sup>2</sup></li> <li>(viii) constructing a bank or bund wall to establish a ponded pasture on land, other than State coastal land, above high-water mark;</li> <li>(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; or</li> </ul> <p>(c) carried out in an urban development area.</p>
For constructing or raising waterway barrier works	
6	For assessing operational work against the <i>Fisheries Act 1994</i> , operational work that is the constructing or raising of a waterway barrier works if it is not self-assessable development.
For works in a declared fish habitat area	
7	For assessing operational work against the <i>Fisheries Act 1994</i> , operational work completely or partly within a declared fish habitat area if it is not self-assessable development.



## Schedule 8 (continued)

**Table 4: Operational works**

For removal, destruction or damage of marine plants	
8	For assessing operational work against the <i>Fisheries Act 1994</i> , operational work that is the removal, destruction or damage of a marine plant if it is not self-assessable development and not in an urban development area.
For railways	
9	Operational work, other than operational work in an urban development area, prescribed under a regulation for this table.
For a wild river area	
10	Operational work for agricultural or animal husbandry activities, as defined under the <i>Wild Rivers Act 2005</i> , in a wild river area if the operations are declared, under the wild river declaration for the area, to be assessable development.

- a Chapter 5, part 6 (Public housing)
- b Table 4, item 2 commenced 30 March 1998.
- c Table 4, item 3 commenced 19 April 2002.
- d Table 4, item 4 commenced 19 April 2002.
- e Table 4, item 5 commenced 4 October 2004.

**Table 5: Various aspects of development**

Development for quarrying in a watercourse or lake	
1	All aspects of development for removing quarry material from a watercourse or lake as defined under the <i>Water Act 2000</i> , other than in an urban development area, if an allocation notice is required under that Act.
Development on a heritage registered place	
2	All aspects of development carried out on a registered place as defined under the <i>Queensland Heritage Act 1992</i> , other than development— (a) for which an exemption certificate under that Act has been issued; or (b) that is emergency work; or (c) carried out by the State; or (d) in an urban development area.

## Schedule 8 (continued)

**Table 5: Various aspects of development**

For an environmentally relevant activity	
3	A mobile and temporary environmentally relevant activity for which a code of environmental compliance has not been made under the <i>Environmental Protection Regulation 1998</i> .
4	An environmentally relevant activity (other than a mining activity or a petroleum activity) for which a code of environmental compliance has been made under the <i>Environmental Protection Regulation 1998</i> , but only to the extent development for the activity is in a wild river area.

## Part 2 Self-assessable development

**Table 1: Building work**

By the State, a public sector entity or a local government <sup>a</sup>	
1	Building work carried out by or on behalf of the State, a public sector entity or a local government, other than building work declared under the <i>Building Act 1975</i> to be exempt development.
For the Building Act 1975 <sup>b</sup>	
2	Building work declared under the <i>Building Act 1975</i> to be self-assessable development.

## Schedule 8 (continued)

**Table 1: Building work**

For declared fish habitat area	
3	<p>For assessing building work against the <i>Fisheries Act 1994</i>, building work in a declared fish habitat area if the work is reasonably necessary for—</p> <ul style="list-style-type: none"> <li>(a) the maintenance of existing structures, including, for example, the following structures, if the structures were constructed in compliance with all the requirements, under any Act, relating to a structure of that type— <ul style="list-style-type: none"> <li>(i) boat ramps, boardwalks, drains, fences, jetties, roads, safety signs, swimming enclosures and weirs;</li> <li>(ii) existing powerlines or associated powerline infrastructure; or</li> </ul> </li> <li>(b) educational or research purposes relating to the fish habitat area; or</li> <li>(c) monitoring the impact of development on the declared fish habitat area; or</li> <li>(d) the construction of structures, including, for example, safety signs, swimming enclosures and aids to navigation, if— <ul style="list-style-type: none"> <li>(i) the impact on the area is minor; and</li> <li>(ii) the structures are constructed in compliance with all the requirements, under any Act, relating to a structure of that type.</li> </ul> </li> </ul>

a Table 1, item 1 commenced 30 March 1998.

b Table 1, item 2 commenced 30 March 1998.

## Schedule 8 (continued)

**Table 2: Material change of use of premises**

For aquaculture	
1	<p>For assessing a material change of use of premises against the <i>Fisheries Act 1994</i>, making a material change of use of premises for aquaculture, other than in a wild river area, if the change of use of premises does not cause the discharge of waste into Queensland waters and the aquaculture—</p> <p>(a) is—</p> <ul style="list-style-type: none"> <li>(i) of indigenous freshwater fish species listed in the <i>Fisheries (Freshwater) Management Plan 1999</i>, schedule 6; and</li> <li>(ii) in a catchment listed in that schedule for that species for aquarium display or human consumption only; and</li> <li>(iii) carried out in ponds, or using above-ground tanks, that have a total water surface area of no more than 5ha; or</li> </ul> <p>(b) is of indigenous freshwater fish for aquarium display or human consumption only, or nonindigenous freshwater fish for aquarium display only, and is carried out using only above-ground tanks that have—</p>
	<ul style="list-style-type: none"> <li>(i) a floor area, excluding water storage area, of no more than 50m<sup>2</sup>; and</li> <li>(ii) a roof impervious to rain water; or</li> </ul> <p>(c) is of indigenous marine fish for aquarium display only and is carried out using only above-ground tanks that have a total floor area, excluding water storage areas, of no more than 50m<sup>2</sup>.</p>

**Table 3: Reconfiguring a lot**

1	Table not used.

## Schedule 8 (continued)

Table 4: Operational work

For taking or interfering with, water <sup>a</sup>	
1	<p>Operational work of any kind, other than in an urban development area, and for all things constructed or installed that allow the taking of, or interfering with, water (other than using a water truck to pump water) under the <i>Water Act 2000</i>, if the operations allow, under that Act—</p> <p>(a) taking water from a watercourse, lake or spring under the <i>Water Act 2000</i>, section 20(3); or</p> <p>(b) taking, or interfering with—</p> <p style="padding-left: 20px;">(i) water in a watercourse, lake or spring, other than under section 20(2), (3) or (5), of the <i>Water Act 2000</i>, if the operations are mentioned as self-assessable development in a water resource plan under the <i>Water Act 2000</i> or, a wild river declaration or are prescribed under a regulation under this Act or the <i>Water Act 2000</i>; or</p> <p style="padding-left: 20px;">(ii) overland flow water, if the operations are mentioned as self-assessable development in a water resource plan under the <i>Water Act 2000</i>, a wild river declaration or prescribed under a regulation under this Act or the <i>Water Act 2000</i></p> <p style="padding-left: 20px;">(iii) subartesian water, if the operations are mentioned as self-assessable development in a water resource plan under the <i>Water Act 2000</i>, a wild river declaration or prescribed under a regulation under this Act or the <i>Water Act 2000</i></p> <p>(c) interfering with overland flow water in an area declared under the <i>Water Act 2000</i> to be a drainage and embankment area if the operations are declared under that Act or a wild river declaration to be self-assessable development.</p>
For waterway barrier works	
2	<p>For assessing operational work against the <i>Fisheries Act 1994</i>, operational work for constructing or raising a waterway barrier works, other than in a wild river area, if the waterway barrier works is—</p> <p>(a) temporary; or</p> <p>(b) minor; or</p> <p>(c) rebuilt on a regular basis.</p>

## Schedule 8 (continued)

Table 4: Operational work

For works in a declared fish habitat area	
3	<p>For assessing operational work against the <i>Fisheries Act 1994</i>, operational work completely or partly within a declared fish habitat area if the works are reasonably necessary for—</p> <ul style="list-style-type: none"> <li>(a) the maintenance of existing structures, including, for example, the following structures, if the structures were constructed in compliance with all the requirements, under any Act, relating to a structure of that type— <ul style="list-style-type: none"> <li>(i) boat ramps, boardwalks, drains, fences, jetties, roads, safety signs, swimming enclosures and weirs;</li> <li>(ii) existing powerlines or associated powerline infrastructure; or</li> </ul> </li> <li>(b) educational or research purposes relating to the fish habitat area; or</li> <li>(c) monitoring the impact of development on the declared fish habitat area; or</li> <li>(d) the construction or placement of structures, including, for example, safety signs, swimming enclosures and aids to navigation, if— <ul style="list-style-type: none"> <li>(i) the impact on the area is minor; and</li> <li>(ii) the structures are constructed in compliance with all the requirements, under any Act, relating to a structure of that type; or</li> </ul> </li> <li>(e) public benefit works, including, for example, the construction of runnels for mosquito control, the removal of Lyngbya and seed collection for site rehabilitation, if the impact on the area is minor.</li> </ul>
For the removal, destruction or damage of marine plants	
4	<p>For assessing operational work against the <i>Fisheries Act 1994</i>, operational work that is the removal, destruction or damage of marine plants if the removal, destruction or damage—</p> <ul style="list-style-type: none"> <li>(a) is of dead marine wood on unallocated State land, other than in a wild river area, for trade or commerce; or</li> <li>(b) is reasonably necessary for the maintenance of existing structures, including, for example, the following structures, if the structures were constructed in compliance with all the requirements, under any Act, relating to a structure of that type—</li> </ul>

## Schedule 8 (continued)

**Table 4: Operational work**

	<ul style="list-style-type: none"> <li>(i) boat ramps, boardwalks, drains, fences, jetties, roads, safety signs, swimming enclosures and weirs;</li> <li>(ii) existing drainage structures;</li> <li>(iii) existing powerlines or associated powerline infrastructure; or</li> <li>(c) is reasonably necessary for educational or research purposes or for monitoring the impact of development on marine plants; or</li> <li>(d) is reasonably necessary for the construction or placement of structures, including, for example, swimming enclosures, safety signs, aids to navigation, fences, pontoons, public boat ramps and pipelines, if— <ul style="list-style-type: none"> <li>(i) the extent of the removal, destruction or damage is minor; and</li> <li>(ii) the structures were constructed in compliance with all the requirements, under any Act, relating to a structure of that type; or</li> </ul> </li> <li>(e) is reasonably necessary for the construction of runnels for mosquito control, removal of Lyngbya, seed collection for site rehabilitation or the collection of marine plants for fishing bait, or handicraft.</li> </ul>
<b>For local government roads</b>	
5	For assessing road works on a local government road, other than in an urban development area, under the <i>Transport Planning and Coordination Act 1994</i> , section 8C, operational works that are road works on a local government road.

a Table 2, item 1 commenced 19 April 2002.

**Table 5: Various aspects of development**

<b>For an environmentally relevant activity</b>	
1	<p>An environmentally relevant activity, or aspects of an environmentally relevant activity, for which a code of environmental compliance has been made under the <i>Environmental Protection Regulation 1998</i>, but only to the extent development for the activity is not in a wild river area, other than—</p> <ul style="list-style-type: none"> <li>(a) a mining activity; or</li> <li>(b) a mobile and temporary environmentally relevant activity; or</li> <li>(c) a petroleum activity.</li> </ul>

## Schedule 8A Assessment manager for development applications

section 3.1.7

Table 1

Item	Application type	Assessment manager
Local government planning schemes and local government tidal areas		
1	<p>If the application is for—</p> <ul style="list-style-type: none"> <li>(a) development completely in a single local government area and—               <ul style="list-style-type: none"> <li>(i) any aspect of the development is assessable against the planning scheme; or</li> <li>(ii) is for building work, that, under the <i>Building Act 1975</i>, is assessable against the building assessment provisions; or</li> <li>(iii) is for the reconfiguration of a lot; or</li> <li>(iv) is for a brothel as defined under the <i>Prostitution Act 1999</i>; or</li> <li>(v) is operational works associated with the reconfiguration of a lot; or</li> </ul> </li> <li>(b) prescribed tidal work completely in a single local government tidal area; or</li> <li>(c) prescribed tidal work partly in a single local government tidal area and in no other local government tidal area or port authority's strategic port land tidal area; or</li> <li>(d) prescribed tidal work starting in a local government tidal area and extending into another local government's tidal area but in no port authority's strategic port land tidal area; or</li> <li>(e) operational work mentioned in schedule 8, part 1, table 4, item 5(b)(vi).</li> </ul>	Local government



## Schedule 8A (continued)

Table 2

Item	Application type	Assessment manager
<b>Strategic port land and strategic port land tidal areas</b>		
1	<p>If table 1 does not apply and the application is for—</p> <p>(a) development completely in a single port authority's strategic port land; or</p> <p>(b) tidal work completely in a single port authority's strategic port land tidal area; or</p> <p>(c) tidal work partly in a single port authority's strategic port land tidal area and in no local government tidal area or another port authority's strategic port land tidal area.</p>	Port authority

Table 3

Item	Application type	Assessment manager
<b>Environmentally relevant activities</b>		
1	<p>If tables 1 and 2 do not apply and the application is for—</p> <p>(a) development for an environmentally relevant activity as defined under the <i>Environmental Protection Act 1994</i>; and</p> <p>(b) no other assessable development.</p>	Administering authority
<b>Vegetation clearing</b>		
2	<p>If tables 1 and 2 do not apply and the application is for—</p> <p>(a) operational work for the clearing of native vegetation; and</p> <p>(b) no other assessable development.</p>	Chief executive administering the <i>Vegetation Management Act 1999</i>

## Schedule 8A (continued)

Table 3

Item	Application type	Assessment manager
<b>Taking or interfering with water</b>		
3	<p>If tables 1 and 2 do not apply and the application is for—</p> <p>(a) operational work for—</p> <p style="padding-left: 20px;">(i) the taking or interfering with, water under the <i>Water Act 2000</i>; or</p> <p style="padding-left: 20px;">(ii) construction of a referable dam under the <i>Water Act 2000</i> or that will increase the storage capacity of a referable dam by more than 10%; and</p> <p>(b) no other assessable development.</p>	Chief executive administering the <i>Water Act 2000</i>
<b>Major hazard facilities</b>		
4	<p>If tables 1 and 2 do not apply and the application is for—</p> <p>(a) material change of use for a major hazard facility or possible major hazard facility as defined in the <i>Dangerous Goods Safety Management Act 2001</i>; and</p> <p>(b) no other assessable development.</p>	Chief executive administering the <i>Dangerous Goods Safety Management Act 2001</i>
<b>Quarrying in a watercourse or lake</b>		
5	<p>If tables 1 and 2 do not apply and the application is for—</p> <p>(a) removing quarry material from a watercourse or lake as defined under the <i>Water Act 2000</i> if an allocation notice is required under that Act; and</p> <p>(b) no other assessable development.</p>	Chief executive administering the <i>Water Act 2000</i>

## Schedule 8A (continued)

Table 3

Item	Application type	Assessment manager
<b>Tidal work or work within a coastal management district</b>		
6	If tables 1 and 2 do not apply and the application is for— <ul style="list-style-type: none"> <li>(a) operational work that is—               <ul style="list-style-type: none"> <li>(i) tidal work not in a port authority's strategic port land tidal area or in local government's tidal area; or</li> <li>(ii) work carried out completely or partly within a coastal management district; and</li> </ul> </li> <li>(b) no other assessable development.</li> </ul>	Chief executive administering the <i>Coastal Protection and Management Act 1995</i>
<b>A heritage registered place</b>		
7	If tables 1 and 2 do not apply and the application is for— <ul style="list-style-type: none"> <li>(a) assessable development on a registered place as defined under the <i>Queensland Heritage Act 1992</i>; and</li> <li>(b) no other assessable development.</li> </ul>	Queensland Heritage Council
<b>Contaminated land management</b>		
8	If tables 1 and 2 do not apply and the application is for— <ul style="list-style-type: none"> <li>(a) assessable development under schedule 8, part 1, table 2, item 5, 6 or 7; and</li> <li>(b) no other assessable development.</li> </ul>	Chief executive administering the <i>Environmental Protection Act 1994</i>
<b>Aquaculture</b>		
9	If tables 1 and 2 do not apply and the application is for— <ul style="list-style-type: none"> <li>(a) material change of use for aquaculture under the <i>Fisheries Act 1994</i>; and</li> <li>(b) no other assessable development.</li> </ul>	Chief executive administering the <i>Fisheries Act 1994</i>

## Schedule 8A (continued)

Table 3

Item	Application type	Assessment manager
<b>Fisheries development other than aquaculture</b>		
10	<p>If tables 1 and 2 do not apply and the application is for—</p> <p>(a) building work in a declared fish habitat area or operational work that is 1 or more of the following—</p> <ul style="list-style-type: none"> <li>(i) the constructing or raising a waterway barrier works;</li> <li>(ii) work carried out completely or partly within a declared fish habitat area;</li> <li>(iii) the removal, destruction or damage of a marine plant; and</li> </ul> <p>(b) no other assessable development.</p>	Chief executive administering the <i>Fisheries Act 1994</i>
<b>For a wild river area</b>		
11	<p>If tables 1 and 2 do not apply and the application is for—</p> <p>(a) assessable development under—</p> <ul style="list-style-type: none"> <li>(i) schedule 8, part 1, table 2, item 11; or</li> <li>(ii) schedule 8, part 1, table 4, item 10; and</li> </ul> <p>(b) no other assessable development.</p>	Chief executive administering the <i>Wild Rivers Act 2005</i>

## Schedule 8A (continued)

Table 4

Item	Application type	Assessment manager
<b>Applications involving multiple jurisdictions</b>		
1	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <p>(a) 2 or more of the following—</p> <ul style="list-style-type: none"> <li>(i) an environmentally relevant activity for which the chief executive administering the <i>Environmental Protection Act 1994</i> is the administering authority;</li> <li>(ii) development on contaminated land;</li> <li>(iii) operational work that is tidal work or work carried out completely or partly within a coastal management district;</li> <li>(iv) assessable development on a registered place as defined in the <i>Queensland Heritage Act 1992</i>; and</li> </ul> <p>(b) no other assessable development.</p>	<p>The chief executive administering the <i>Coastal Protection and Management Act 1995</i>, the <i>Environmental Protection Act 1994</i> and the <i>Queensland Heritage Act 1992</i></p>
2	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <p>(a) 2 or more of the following—</p> <ul style="list-style-type: none"> <li>(i) operational work for the clearing of native vegetation under the <i>Vegetation Management Act 1999</i>;</li> <li>(ii) operational work for the taking or interfering with, water under the <i>Water Act 2000</i>;</li> <li>(iii) operational work for the construction of a referable dam under the <i>Water Act 2000</i> or that will increase the storage capacity of a referable dam by more than 10%;</li> <li>(iv) development for removing quarry material from a watercourse or lake as defined under the <i>Water Act 2000</i> if an allocation notice is required under that Act; and</li> </ul> <p>(b) no other assessable development.</p>	<p>The chief executive administering the <i>Vegetation Management Act 1999</i> and the <i>Water Act 2000</i></p>

## Schedule 8A (continued)

Table 4

Item	Application type	Assessment manager
3	<p>If tables 1, 2 and 3 do not apply and the application, whether or not the application is also for 1 or more of the matters mentioned in item 2(a), is for—</p> <p>(a) development for an environmentally relevant activity mentioned in the <i>Environmental Protection Regulation 1998</i>, schedule 1, item 19 (dredging material) or 20 (extracting rock or other material), or for a combination of environmentally relevant activities mentioned in any of the following combinations of items in that schedule—</p> <p>(i) items 19 and 20;</p> <p>(ii) items 19 and 22 (screening etc. materials);</p> <p>(iii) items 20 and 22;</p> <p>(iv) items 19, 20 and 22; and</p> <p>(b) removing quarry material from a watercourse or lake as defined under the <i>Water Act 2000</i> if an allocation notice is required under that Act; and</p> <p>(c) no other assessable development.</p>	The chief executive administering the <i>Water Act 2000</i>
4	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <p>(a) building work in a declared fish habitat area or operational work carried out completely or partly within a declared fish habitat area, whether or not the application also involves operational work for waterway barrier works; and</p> <p>(b) operational work that is tidal work or work carried out completely or partly within a coastal management district; and</p> <p>(c) no other assessable development.</p>	The chief executive administering the <i>Fisheries Act 1994</i>

## Schedule 8A (continued)

Table 4

Item	Application type	Assessment manager
5	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <ul style="list-style-type: none"> <li>(a) operational work that is the construction or raising of a waterway barrier works and any or none of the following— <ul style="list-style-type: none"> <li>(i) building work in a declared fish habitat area;</li> <li>(ii) operational work carried out completely or partly within a declared fish habitat area;</li> <li>(iii) operational work that is the removal, destruction or damage of a marine plant; and</li> </ul> </li> <li>(b) operational work— <ul style="list-style-type: none"> <li>(i) for the taking or interfering with, water under the <i>Water Act 2000</i>; or</li> <li>(ii) that is the construction of a referable dam under the <i>Water Act 2000</i> or that will increase the storage capacity of a referable dam by more than 10%; and</li> </ul> </li> <li>(c) no other assessable development.</li> </ul>	The chief executive administering the <i>Water Act 2000</i>
5A	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <ul style="list-style-type: none"> <li>(a) operational work that is the construction or raising of a waterway barrier works; and</li> <li>(b) operational work for the clearing of native vegetation under the <i>Vegetation Management Act 1999</i>; and</li> <li>(c) one or more of the matters stated in item 2(a)(ii) to (iv); and</li> <li>(d) no other assessable development.</li> </ul>	The chief executive administering the <i>Vegetation Management Act 1999</i> and the <i>Water Act 2000</i>

## Schedule 8A (continued)

Table 4

Item	Application type	Assessment manager
6	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <ul style="list-style-type: none"> <li>(a) a material change of use for aquaculture; and</li> <li>(b) either or both of the following, whether or not the application also includes development mentioned in schedule 8, part 1, table 4, items 6 to 8— <ul style="list-style-type: none"> <li>(i) development for an environmentally relevant activity mentioned in the <i>Environmental Protection Regulation 1998</i>, schedule 1, item 1 (Aquaculture);</li> <li>(ii) operational work that is tidal work or work carried out completely or partly within a coastal management district; and</li> </ul> </li> <li>(b) no other assessable development.</li> </ul>	The chief executive administering the <i>Fisheries Act 1994</i>
7	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <ul style="list-style-type: none"> <li>(a) operational work for 1 or more of the following— <ul style="list-style-type: none"> <li>(i) constructing or raising a waterway barrier works;</li> <li>(ii) the removal, destruction or damage of a marine plant; and</li> </ul> </li> <li>(b) operational work that is tidal work or work carried out completely or partly within a coastal management district; and</li> <li>(c) no other assessable development.</li> </ul>	The chief executive administering the <i>Coastal Protection and Management Act 1995</i>
8	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <ul style="list-style-type: none"> <li>(a) development prescribed under a regulation for schedule 8, part 1, table 2; and</li> <li>(b) no other assessable development.</li> </ul>	The chief executive administering the <i>Transport Infrastructure Act 1994</i> or the <i>Transport Planning and Coordination Act 1994</i>



## Schedule 8A (continued)

Table 4

Item	Application type	Assessment manager
9	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <p>(a) development prescribed under a regulation for schedule 8, part 1, table 4; and</p> <p>(b) no other assessable development.</p>	<p>The chief executive administering the <i>Transport Infrastructure Act 1994</i> or the <i>Transport Planning and Coordination Act 1994</i></p>
10	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <p>(a) operational work for clearing native vegetation under the <i>Vegetation Management Act 1999</i>; and</p> <p>(b) assessable development under—</p> <p>(i) schedule 8, part 1, table 2, item 11; or</p> <p>(ii) schedule 8, part 1, table 4, item 10; and</p> <p>(c) no other assessable development.</p>	<p>The chief executive administering the <i>Vegetation Management Act 1999</i> and the <i>Wild Rivers Act 2005</i></p>
11	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <p>(a) operational work—</p> <p>(i) for taking or interfering with water under the <i>Water Act 2000</i>; or</p> <p>(ii) that is the construction of a referable dam under the <i>Water Act 2000</i> or that will increase the storage capacity of a referable dam by more than 10%; and</p> <p>(b) assessable development under—</p> <p>(i) schedule 8, part 1, table 2, item 11; or</p> <p>(ii) schedule 8, part 1, table 4, item 10; and</p> <p>(c) no other assessable development.</p>	<p>The chief executive administering the <i>Water Act 2000</i> and the <i>Wild Rivers Act 2005</i></p>

## Schedule 8A (continued)

Table 4

Item	Application type	Assessment manager
12	<p>If tables 1, 2 and 3 do not apply and the application is for—</p> <p>(a) operational work for clearing native vegetation under the <i>Vegetation Management Act 1999</i>; and</p> <p>(b) operational work—</p> <p>(i) for taking or interfering with water under the <i>Water Act 2000</i>; or</p> <p>(ii) that is the construction of a referable dam under the <i>Water Act 2000</i> or that will increase the storage capacity of a referable dam by more than 10%; and</p> <p>(c) assessable development under—</p> <p>(i) schedule 8, part 1, table 2, item 11; or</p> <p>(ii) schedule 8, part 1, table 4, item 10; and</p> <p>(d) no other assessable development.</p>	<p>The chief executive administering the <i>Vegetation Management Act 1999</i>, the <i>Water Act 2000</i> and the <i>Wild Rivers Act 2005</i></p>

Table 5

Item	Application type	Assessment manager
<b>Decided by the Minister</b>		
1	Development not stated in tables 1 to 4	The entity decided by the Minister administering this Act

## Schedule 8A (continued)

**Table 6**

<b>Item</b>	<b>Application type</b>	<b>Assessment manager</b>
<b>Concurrence agency assessment manager</b>		
1	<p>An application—</p> <p>(a) for an aspect of development, a concurrence agency, under section 3.3.18(1)(c), told the assessment manager that approval for the aspect must be a preliminary approval only; and</p> <p>(b) if the preliminary approval states that the assessment manager does not require any further assessment of the proposal in relation to the development permit; and</p> <p>(c) if the application is for the development permit only for the aspect of development for which the preliminary approval was given.</p>	The entity that would have been the concurrence agency for the application

## Schedule 9      Development that is exempt from assessment against a planning scheme<sup>156</sup>

section 3.1.2

**Table 1: Building work**

1	Table not used.

**Table 2: Material change of use of premises**

By the State, or an entity acting for the State	
1	Making 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.
For a class 1 or 2 building under the Building Code of Australia (BCA)	
2	Making a material change of use of premises for a class 1 or 2 building under the Building Code of Australia (BCA), part A3 if the use is for providing support services and short term accommodation for persons escaping domestic violence.

**Table 3: Reconfiguring a lot**

Other than a lot within the meaning of the <i>Land Title Act 1994</i>	
1	Reconfiguring a lot other than a lot within the meaning of the <i>Land Title Act 1994</i> .

<sup>156</sup> Development listed in schedule 9 can not be made assessable or self-assessable development against a planning scheme. However, the development may still be assessable against schedule 8.

## Schedule 9 (continued)

Table 3: Reconfiguring a lot

Under the <i>Land Title Act 1994</i>	
2	<p>Reconfiguring a lot under the <i>Land Title Act 1994</i>, if the plan of subdivision necessary for the reconfiguration—</p> <ul style="list-style-type: none"> <li>(a) is a building format plan of subdivision that does not subdivide land on or below the surface of the land; or</li> <li>(b) is for the amalgamation of 2 or more lots; or</li> <li>(c) is for the incorporation, under the <i>Body Corporate and Community Management Act 1997</i>, section 41,<sup>a</sup> of a lot with common property for a community titles scheme; or</li> <li>(d) is for the conversion, under the <i>Body Corporate and Community Management Act 1997</i>, section 43,<sup>b</sup> of lessee common property within the meaning of that Act to a lot in a community titles scheme; or</li> <li>(e) is in relation to the acquisition, including by agreement, under the <i>Acquisition of Land Act 1967</i> or otherwise, of land by— <ul style="list-style-type: none"> <li>(i) a constructing authority, as defined under that Act, for a purpose set out in paragraph (a) of the schedule to that Act; or</li> <li>(ii) an authorised electricity entity; or</li> </ul> </li> <li>(f) is in relation to land held by the State, or a statutory body representing the State, and the land is being subdivided for a purpose set out in the <i>Acquisition of Land Act 1967</i>, schedule, paragraph (a), whether or not the land relates to an acquisition;</li> <li>(g) is for the reconfiguration of a lot comprising strategic port land as defined under the <i>Transport Infrastructure Act 1994</i>;</li> <li>(h) is for the <i>Transport Infrastructure Act 1994</i>, section 240;</li> <li>(i) is in relation to the acquisition of land for a water infrastructure facility.</li> </ul>

a *Body Corporate and Community Management Act 1997*, section 41 (Lease)

b *Body Corporate and Community Management Act 1997*, section 43 (Effect of ending of authorisation)

Table 4: Operational work

By or on behalf of a public sector entity	
1	Operational work or plumbing or drainage work (including maintenance and 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.

## Schedule 9 (continued)

Table 4: Operational work

For ancillary works and encroachments	
2	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 <i>Transport Infrastructure Act 1994</i> or done as required by a contract entered into with the chief executive under the <i>Transport Infrastructure Act 1994</i> , section 47.
For substitute railway crossing	
3	Operational work for the construction of a substitute railway crossing by a railway manager in response to an emergency under the <i>Transport Infrastructure Act 1994</i> , section 169.
Performed by Queensland Rail	
4	Operational work performed by Queensland Rail under the <i>Transport Infrastructure Act 1994</i> , section 260.
Under a rail feasibility investigator's authority	
5	Operational work carried out under a rail feasibility investigator's authority granted under the <i>Transport Infrastructure Act 1994</i> .
Under the <i>Coastal Protection and Management Act 1995</i>	
6	Operational work that is the digging or boring into land by an authorised person under the <i>Coastal Protection and Management Act 1995</i> , section 134.
7	Operational work for a navigational aid or sign for maritime navigation.
For subscriber connections	
8	Operational work for a subscriber connection.

## Schedule 9 (continued)

Table 4: Operational work

For agriculture	
9	Operational work associated with— <ul style="list-style-type: none"> <li>(a) management practices for the conduct of an agricultural use, other than—               <ul style="list-style-type: none"> <li>(i) the clearing of native vegetation; or</li> <li>(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 <i>Water Act 2000</i>; or</li> </ul> </li> <li>(b) weed or pest control, unless it involves the clearing of native vegetation; or</li> <li>(c) the use of fire under the <i>Fire and Rescue Service Act 1990</i>; or</li> <li>(d) the conservation or restoration of natural areas; or</li> <li>(e) the use of premises for forest practices.</li> </ul>
For removing quarry material	
10	Operational work for removing quarry material from a State forest, timber reserve, forest entitlement area or Crown land as defined under the <i>Forestry Act 1959</i> .
For the removal, destruction or damage of marine plants	
11	Operational work that is the removal, destruction or damage of marine plants.

## Schedule 9 (continued)

Table 5: All aspects of development

Mining and petroleum activities	
1	<p>Development for an activity authorised under—</p> <p>(a) the <i>Mineral Resources Act 1989</i>, including an activity for the purpose of 1 or more of the following Acts—</p> <ul style="list-style-type: none"> <li>• <i>Alcan Queensland Pty. Limited Agreement Act 1965</i></li> <li>• <i>Central Queensland Coal Associates Agreement Act 1968</i></li> <li>• <i>Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957</i></li> <li>• <i>Mount Isa Mines Limited Agreement Act 1985</i></li> <li>• <i>Queensland Nickel Agreement Act 1970</i></li> <li>• <i>Thiess Peabody Coal Pty. Ltd. Agreement Act 1962</i>; or</li> </ul> <p>(b) the <i>Petroleum Act 1923</i> or the <i>Petroleum and Gas (Production and Safety) Act 2004</i> (other than an activity relating to the construction and operation of an oil refinery); or</p> <p>(c) the <i>Petroleum (Submerged Lands) Act 1982</i>; or</p> <p>(d) the <i>Offshore Minerals Act 1998</i>.</p>
2	All aspects of development for a mining activity to which an environmental authority (mining activities) under the <i>Environmental Protection Act 1994</i> applies.
3	All aspects of development for a petroleum activity as defined in the <i>Environmental Protection Act 1994</i> , section 75.
Geothermal exploration	
3A	Any aspect of development for geothermal exploration carried out under a geothermal exploration permit under the <i>Geothermal Exploration Act 2004</i> .
Directed under a notice, order or direction under a State law	
4	All aspects of development a person is directed to carry out under a notice, order or direction made under a State law.
Community infrastructure activities	
5	All aspects of development for community infrastructure prescribed under a regulation.



## Schedule 9 (continued)

**Table 5: All aspects of development**

South Bank	
6	Development within the meaning of the <i>South Bank Corporation Act 1989</i> , but only until the development completion date under that Act.
Urban development areas	
7	All aspects of development for an urban development area.

## Schedule 10 Dictionary

### section 1.3.1

***acknowledgment notice*** see section 3.2.3(1).

***acknowledgment period*** see section 3.2.3(1).

***acquisition land*** means land—

- (a) proposed to be taken or acquired under the *State Development and Public Works Organisation Act 1971* or *Acquisition of Land Act 1967*; and
- (b) in relation to which a notice of intention to resume under the *Acquisition of Land Act 1967* has been served, and the proposed taking or acquisition has not been discontinued; and
- (c) that has not been taken or acquired.

***administering authority*** has the meaning given by the *Environmental Protection Act 1994*.

***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

## Schedule 10 (continued)

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.

***ancillary works and encroachments*** see the *Transport Infrastructure Act 1994*, schedule 6.

***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***—

- (a) for chapter 3, means the applicant for a development application; or
- (b) for a development application mentioned in chapter 4, includes the person in whom the benefit of the application vests.

***applicant's appeal period***, for an appeal—

- (a) by an appellant to the court, for a development application—see section 4.1.27(2); or
- (b) by an appellant to the court, for a master plan application—see section 4.1.30A(2); or
- (c) by an appellant to a tribunal—see section 4.2.9(2).

***application***, for chapter 3, means a development application.

***appropriately qualified***, for the delegation of a power, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing*—

a person's classification level in the public service

***approved form*** see section 5.9.1.

***aquaculture*** see the *Fisheries Act 1994*, schedule.

## Schedule 10 (continued)

**artificial waterway** means an artificial waterway as defined under the *Coastal Protection and Management Act 1995*, section 8.

**assessable development**—

- 1 Generally, *assessable development* means development stated in schedule 8, part 1, other than to the extent that part is modified under section 2.5B.63.
- 2 The term also includes development declared under a State planning regulatory provision to be assessable development.
- 3 For a planning scheme area, the term also includes other development not stated in schedule 8, part 1, but declared to be assessable development under any of the following that applies to the area—
  - (a) the planning scheme for the area;
  - (b) a temporary local planning instrument;
  - (c) a master plan for a declared master planned area;
  - (d) a preliminary approval to which section 3.1.6 applies.

**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

## Schedule 10 (continued)

- (c) for assessable development for which a private certifier (class A) is, under the *Building Act 1975*, chapter 6,<sup>157</sup> engaged to perform private certifying functions under that Act—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 development to which a State planning regulatory provision applies—the chief executive; or
- (g) for any other matter—the local government.

**assessment manager** see section 3.1.7.

**associated powerline infrastructure**, in relation to powerlines, includes the following—

- (a) access tracks used to access maintenance works on the powerlines or for routine inspections;
- (b) electricity supply infrastructure, including, for example, power boxes, power posts and stays;
- (c) warning signs or limited sign viewing arcs relating to the powerlines.

**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.

**bed and banks**—

- 1 *Bed and banks*, of a watercourse or lake, for the definition *specified activity*, means land over which the

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<sup>157</sup> *Building Act 1975*, chapter 6 (Provisions about private certifiers and other building certifiers)

## Schedule 10 (continued)

water of the watercourse or lake normally flows or that is normally covered by the water, whether permanently or intermittently.

- 2 *Bed and banks*, does not include land adjoining or adjacent to the bed or banks that is from time to time covered by floodwater.

***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 assessment provisions*** see the *Building Act 1975*, section 30.<sup>158</sup>

***building certifier***—

- 1 A building certifier is an individual who, under the *Building Act 1975*, is licensed as a building certifier.
- 2 A reference to a building certifier includes a reference to a private certifier.

***Building Code of Australia***—

- 1 The ***Building Code of Australia*** is the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board.
- 2 A reference to the code includes the edition as amended from time to time by amendments published by the board.

***building development application*** means a development application to the extent it is for building work.

***building work*** see section 1.3.5.

***business day*** does not include a day between 26th December of a year and 1 January of the following year.

***category 2 area*** means a category 2 area as defined under VMA.

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<sup>158</sup> *Building Act 1975*, section 30 (Relevant laws and other documents for assessment of building work)

## Schedule 10 (continued)

**category 3 area** means a category 3 area as defined under VMA.

**category 4 area** means a category 4 area as defined under VMA.

**category X area** means a category X area as defined under VMA.

**certificate of classification** see the *Building Act 1975*, schedule 2.

**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 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.

**chief executive (environment)** means the chief executive of the department in which the *Environmental Protection Act 1994* is administered.

**chief executive (fisheries)** means the chief executive of the department in which the *Fisheries Act 1994* is administered.

## Schedule 10 (continued)

**clear**, for vegetation—

- (a) means remove, cut down, ringbark, push over, poison or destroy in any way including by burning, flooding or draining; but
- (b) does not include destroying standing vegetation by stock, or lopping a tree.

**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 54(2) of that Act.

**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;<sup>159</sup> or
- (c) in a master plan for a declared master planned area; or
- (d) in a preliminary approval to which section 3.1.6 applies.

**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—

- (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

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<sup>159</sup> 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)

- 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; and
  - (c) an infrastructure agreement applicable to the land the subject of the application.

***Commonwealth Environment Act*** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

***community infrastructure*** means community infrastructure stated in schedule 5.

***concurrency 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.

***concurrency 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.

***concurrency 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***—

- (a) for making or amending a planning scheme—see schedule 1, section 12(1)(g); or
- (b) for making or amending a planning scheme policy—see schedule 3, section 2(1)(g); or
- (c) for making or amending a State planning policy—see schedule 4, section 3(3)(g); or

## Schedule 10 (continued)

- (d) for making a regional plan—see section 2.5A.13(2)(e); or
- (e) for amending a regional plan—means the consultation period under section 2.5A.13(2)(e) as applied under section 2.5A.17; or
- (f) for making a structure plan for a declared master planned area—see schedule 1A, section 8(1)(g); or
- (g) for a master plan application—see section 2.5B.28(1)(f); or
- (h) for making or amending a State planning regulatory provision—see section 2.5C.9(3)(e); or
- (i) for making a ministerial designation of land—the period for the making of submissions stated in any notice given under section 2.6.7(4).

**convicted** includes being found guilty, and the acceptance of a plea of guilty, by a court.

**coordinating agency** for—

- (a) a structure plan for a declared master planned area—means the entity identified as the coordinating agency in the master planned area declaration for the area; or
- (b) a master plan application—means an entity identified as a coordinating agency in the structure plan for the relevant master planned area or an entity otherwise identified by the Minister as a coordinating agency.

**coordinating agency assessment period** see section 2.5B.37.

**coordinating agency conditions**, for a master plan application or a master plan, see section 2.5B.39(2)(b).

**core matter**, for the preparation of a planning scheme, see section 2.1.3A.

**court** means the Planning and Environment Court continued in existence under section 4.1.1.

## Schedule 10 (continued)

***dead marine wood*** means a branch or trunk that—

- (a) is a part of a dead marine plant; or
- (b) was a part of a marine plant.

***decision making period*** see section 3.5.7.

***decision notice*** see section 3.5.15.

***declared fish habitat area*** see the *Fisheries Act 1994*, schedule.

***declared master planned area*** see section 2.5B.2(4).

***declared pest*** means a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002*.

***deemed refusal***, for a proceeding under chapter 4, part 1 or 2, 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 period mentioned in section 3.5.21—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; and
- (d) for a master plan application—by the end of the period under section 2.5B.40 for the deciding of the application.

***designate*** means identify for community infrastructure.

***designated land*** means land designated under chapter 2, part 6.

***designated region*** see section 2.5A.2(1).

***designation cessation day*** see section 2.6.14.

## Schedule 10 (continued)

***designator*** means the Minister or the local government who designated land under chapter 2, part 6.

***desired standard of service***, for a network of development infrastructure, means the standard of performance stated in the priority infrastructure plan.

***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—

- (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 took effect or the amendment creating the superseded planning scheme took effect; or
- (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

## Schedule 10 (continued)

- (iii) made within 2 years after the day the planning scheme or planning scheme policy creating the superseded planning scheme took effect or the amendment creating the superseded planning scheme took effect.

***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.<sup>160</sup>

***development infrastructure*** means—

- (a) land or works, or both land and works for—
  - (i) urban and rural residential water cycle management infrastructure (including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of waters and flood mitigation, but not urban and rural residential water cycle management infrastructure that is State infrastructure); or
  - (ii) 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, ferry terminals and the local function, but not any other function, of State-controlled roads);<sup>161</sup> or

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<sup>160</sup> Under section 3.5.11(3), conditions attached to a development approval are part of the approval.

<sup>161</sup> The chief executive administering the *Transport Infrastructure Act 1994* may make guidelines, including guidelines defining the local function of State-controlled roads.

## Schedule 10 (continued)

- (iii) public parks infrastructure supplied by a local government (including playground equipment, playing fields, courts and picnic facilities); or
- (b) land, and works that ensure the land is suitable for development, for local community facilities, including, for example—
  - (i) community halls or centres; or
  - (ii) public recreation centres; or
  - (iii) public libraries.

***development offence*** means an offence against section 4.3.1, 4.3.2, 4.3.2A, 4.3.3, 4.3.4, 4.3.5 4.3.5A or 4.3.5B.

***development permit*** see section 3.1.5(3).

***draft EIS*** means a draft EIS for section 5.8.6.

***draft terms of reference***, for an EIS, means a document prepared by the chief executive under section 5.8.4(2).

***drainage work*** see *Plumbing and Drainage Act 2002*, schedule.

***ecological sustainability*** see section 1.3.3.

***EIS*** means a document the chief executive is satisfied—

- (a) addresses the terms of reference; and
- (b) without limiting paragraph (a)—
  - (i) describes the development in sufficient detail to establish its likely environmental effects; and
  - (ii) identifies the likely beneficial and adverse environmental effects of the development; and
  - (iii) states the ways any adverse environmental effects may be mitigated; and
  - (iv) has been prepared using current information, and methodologies that represent best environmental practice.

***EIS assessment report*** see section 5.8.10.

## Schedule 10 (continued)

**EIS process** means the process mentioned in chapter 5, part 8.

**emergency work**, for schedule 8, part 1, table 5, item 2—

1 *Emergency work* means reversible work that is necessary to give temporary support, shelter or security to a registered place, a protected area or protected object, as defined by the *Queensland Heritage Act 1992*—

(a) because it has been, or is likely to be, damaged by fire or natural disaster; or

(b) because of accidental or intentional damage.

2 *Emergency work* does not include demolition.

**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.

**environmentally relevant activity** see the *Environmental Protection Act 1994*, section 18.

**environmental management plan**, for development to which the EIS process applies, means a document prepared by the proponent that proposes conditions and mechanisms to manage the potential environmental impacts of the development.

## Schedule 10 (continued)

***erosion prone area*** see the *Coastal Protection and Management Act 1995*.

***essential management*** means clearing native vegetation—

- (a) for establishing or maintaining a necessary fire break to protect infrastructure other than a fence, road or vehicular track, if the maximum width of the fire break is equivalent to 1.5 times the height of the tallest vegetation adjacent to the infrastructure, or 20m, whichever is the greater; or
- (b) for establishing a necessary fire management line if the maximum width of the clearing for the fire management line is 10m; or
- (c) necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure; or
- (d) by fire under the *Fire and Rescue Service Act 1990* to reduce hazardous fuel load; or
- (e) necessary to maintain infrastructure including airstrips, buildings, fences, helipads, roads, stock yards, vehicular tracks, watering facilities and constructed drains other than contour banks, other than to source construction material; or
- (f) for maintaining a garden or orchard, other than clearing predominant canopy trees to maintain under-plantings established within remnant vegetation; or
- (g) on land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes to source construction timber to repair existing infrastructure on the land, if—
  - (i) the infrastructure is in need of immediate repair; and
  - (ii) the clearing does not cause land degradation as defined by VMA; and
  - (iii) restoration of a similar type, and to the extent of the removed trees, is ensured; or



## Schedule 10 (continued)

- (h) by the owner on freehold land to source construction timber to maintain infrastructure on any land of the owner, if—
  - (i) the clearing does not cause land degradation as defined by VMA; and
  - (ii) restoration of a similar type, and to the extent of the removed trees, is ensured.

***establishment cost***, for infrastructure, means—

- (a) the cost of preparing an infrastructure charges schedule, including the desired standards of service and plans for trunk infrastructure used to calculate the charges stated in the infrastructure charges schedule; and
- (b) on-going administration costs for the infrastructure charges schedule for the infrastructure; and
- (c) for future infrastructure—all costs for the design, financing and construction of the infrastructure and for land acquisition for the infrastructure; and
- (d) for existing infrastructure—
  - (i) the residual financing cost of the existing infrastructure; and
  - (ii) the cost of reconstructing the same works using contemporary materials, techniques and technologies; and
  - (iii) if the land acquisition for the infrastructure was completed after 1 January 1990—the value of the land at the time it was acquired, adjusted for inflation.

***excluded work***—

- 1 *Excluded work*, for schedule 8, part 1, table 4, item 5, means maintenance work on a lawful work.
- 2 *Excluded work*, for schedule 8, part 1, table 4, item 5(b)(i), (iii) and (ix), also means—
  - (a) minor work that—

## Schedule 10 (continued)

- (i) has insignificant impact on coastal management; and
  - (ii) is reversible or expendable; or
  - (b) work for which an exemption certificate under the *Coastal Protection and Management Act 1995* has been issued.
- 3 *Excluded work* does not include work to which section 4.3.6 applies.

***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, on freehold land or indigenous land, for an ongoing forestry business in a—
- (a) plantation; or
  - (b) native forest, if, in the native forest—
    - (i) all the activities are conducted in a way that is consistent with a code applying to a native forest practice; or
    - (ii) if there is no code, all 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

## Schedule 10 (continued)

(C) does not cause land degradation as defined under VMA.

- 2 The term includes carrying out limited associated work, including, for example, drainage, construction and maintenance of roads or vehicular tracks, 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*.

**grounds**, for sections 3.5.13 and 3.5.14—

- 1 *Grounds* means matters of public interest.
- 2 *Grounds* does not include the personal circumstances of an applicant, owner or interested party.

**hazardous contaminant** see the *Environmental Protection Act 1994*, schedule 3.

**high-water mark** see the *Coastal Protection and Management Act 1995*.

**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.

**indigenous freshwater fish** means a fish that is—

- (a) a freshwater fish as defined in the *Fisheries (Freshwater) Management Plan 1999*, schedule 8, part 2; and
- (b) indigenous, within the meaning of the *Fisheries Act 1994*, schedule, definition *indigenous fisheries resources*, to—
  - (i) only Queensland freshwaters; or

## Schedule 10 (continued)

- (ii) both Queensland freshwaters and Queensland tidal waters.

***indigenous land*** means, for regulating the clearing of vegetation under VMA, land held under a following Act by, or on behalf of or for the benefit of, Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes—

- (a) the *Local Government (Aboriginal Lands) Act 1978*;
- (b) the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;
- (c) the *Aboriginal Land Act 1991*;
- (d) the *Torres Strait Islander Land Act 1991*;
- (e) the *Land Act 1994*.

***indigenous marine fish*** means a fish that is indigenous, within the meaning of the *Fisheries Act 1994*, schedule, definition *indigenous fisheries resources*, to only Queensland tidal waters.

***information request*** see section 3.3.6.

***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 5.1.6.

***infrastructure charges notice*** see section 5.1.8.

***infrastructure charges plan*** means an infrastructure charges plan under this Act before the commencement of the *Integrated Planning and Other Legislation Amendment Act 2003*, part 2, division 3.

***infrastructure charges register*** see section 5.7.2.

***infrastructure charges schedule*** means an infrastructure charges schedule under chapter 5, part 1, division 4.

## Schedule 10 (continued)

***infrastructure provider***, for an application, means a local government that is the assessment manager and—

- (a) supplies trunk infrastructure for development; or
- (b) has an agreement with another entity that supplies trunk infrastructure to the local government area.

***interim enforcement order*** see section 4.3.22(1)(b).

***IPA planning scheme*** means a planning scheme made under schedule 1.

***lake*** see the *Water Act 2000*.

***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.

***local government***, for a provision of this Act about a master planned area, means the local government whose local government area includes the area.

***local government area*** means a part of the State established as a local government area under the *Local Government Act 1993*.

***local government road*** has the same meaning as in the *Transport Planning and Coordination Act 1994*.

***local infrastructure agreement*** means an infrastructure agreement entered into by a local government.

***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

## Schedule 10 (continued)

- (b) cutting or pruning its branches so severely that it is likely to die.

*lot* see section 1.3.5.

*Lyngbya* means a plant of the genus *Lyngbya*.

*making* a structure plan or master plan includes preparing it.

*master plan* means a master plan approved under section 2.5B.42 that is still in force, including a condition included in the plan.

*master plan application* see section 2.5B.21.

*master planned area* means an area identified under section 2.5B.2 as a master planned area.

*master planned area declaration* see section 2.5B.2.

*master planning unit*, for a master plan or proposed master plan, means the declared master planned area, or part of the declared master planned area, to which the master plan or proposed master plan applies.

*material change of use* see section 1.3.5.

*marine plant* see the *Fisheries Act 1994*, section 8.

*mining activity*—

- 1 *Mining activity* see the *Environmental Protection Act 1994*, section 147.
- 2 *Mining activity* includes an activity, circumstance, or matter provided for under, or to which, a special agreement Act applies and carried out on a mining tenement under the *Mineral Resources Act 1989*.

*Minister* means—

- (a) in chapter 2, part 6—any Minister of the Crown; and
- (b) in chapter 2, part 5A, 5B or 5C, or chapter 3, part 6—
  - (i) generally—the Minister administering the part; or
  - (ii) for a matter the regional planning Minister is satisfied relates to chapter 2, part 5A, 5B or

## Schedule 10 (continued)

5C—the regional planning Minister for the region;  
and

- (c) in chapter 3, part 6, division 2, includes the Minister administering the *State Development and Public Works Organisation Act 1971*; and
- (d) in any other provision of this Act—the Minister administering the provision.

**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
- (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.

**mobile and temporary environmentally relevant activity** see the *Environmental Protection Act 1994*, schedule 3.

**native forest practice** means a forest practice other than in a plantation.

**native vegetation** means a native tree or plant other than the following—

- (a) grass or non-woody herbage;

## Schedule 10 (continued)

- (b) a plant within a grassland regional ecosystem prescribed under a regulation under VMA;
- (c) a mangrove.

***negotiated decision notice*** see section 3.5.17(2).

***negotiated notice***, for a master plan application, see section 2.5B.46(3).

***network***, for development infrastructure items, includes part of a network.

***nonindigenous freshwater fish*** means a freshwater fish, as defined in the *Fisheries (Freshwater) Management Plan 1999*, schedule 8, part 2, that is not an indigenous freshwater fish.

***non-trunk infrastructure*** means development infrastructure that is not trunk infrastructure.

***notifiable activity*** see the *Environmental Protection Act 1994*, schedule 3.

***notification period***—

- (a) for a development application to which chapter 5, part 8A applies—see section 5.8A.5; or
- (b) for another 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.

***participating agency*** for—

- (a) a structure plan for a declared master planned area—means an entity identified as a participating agency in the master planned area declaration for the area; or
- (b) a master plan application—means an entity identified as a participating agency in the structure plan for the relevant master planned area or an entity otherwise identified by the Minister as a participating agency.



## Schedule 10 (continued)

**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.

**petroleum activity** see the *Environmental Protection Act 1994*, schedule 3.

**plan**, for chapter 3, part 7, see section 3.7.1A.

**planning instrument** means a State planning policy, a designated region's regional plan, a State planning regulatory provision, a planning scheme, a temporary local planning instrument or a planning scheme policy.

**planning scheme** see section 2.1.1.

**planning scheme area** see section 2.1.2.

**planning scheme policy** see section 2.1.16.

**plans for trunk infrastructure** means the part of a priority infrastructure plan that identifies the trunk infrastructure network that exists or may be supplied to service future growth in the local government's area to meet the desired standard of service stated in the plan.

**plumbing work** see *Plumbing and Drainage Act 2002*, schedule.

**ponded pasture** means a permanent or periodic pondage of water in which the dominant plant species are pasture species used for grazing or harvesting.

**port authority** see the *Transport Infrastructure Act 1994*, schedule 3.

**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

## Schedule 10 (continued)

- (b) land (whether or not a building or other structure is situated on the land).

**prescribed concurrence agency**, in relation to a development application to which chapter 5, part 8A applies, means either or both of the following persons if the person is a concurrence agency for the application—

- (a) the chief executive (environment);  
 (b) the chief executive (fisheries).

**prescribed tidal work** means work prescribed under a regulation under this or another Act.

**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.

**priority infrastructure area**, for a local government—

- 1 *Priority infrastructure area* means the area—
- (a) that is used, or approved for use, for any or all of the following—
- (i) residential purposes, other than rural residential purposes;
- (ii) retail and commercial purposes;
- (iii) industrial purposes;
- (iv) community and government purposes related to a purpose mentioned in subparagraphs (i) to (iii); and
- (b) that will accommodate at least 10 years, but not more than 15 years, of growth for the purposes mentioned in paragraph (a).
- 2 *Priority infrastructure area* includes an area not mentioned in item 1 that—

## Schedule 10 (continued)

- (a) the local government decides to include in the area; and
- (b) is serviced by development infrastructure.

***priority infrastructure plan*** means the part of a planning scheme that—

- (a) identifies the priority infrastructure area; and
- (b) includes the plans for trunk infrastructure the local government intends to supply or for which infrastructure charges will be levied; and
- (c) identifies, if required by a supplier of State infrastructure with a relevant jurisdiction—
  - (i) a statement of intent for State-controlled roads; or
  - (ii) the roads implementation program under the *Transport Infrastructure Act 1994*, section 11; and
- (d) states the assumptions about the type, scale, location and timing of future growth on which the plan is based; and
- (e) states the desired standard of service for each development infrastructure network identified in the plan; and
- (f) includes any infrastructure charges schedule.

***private certifier*** means a building certifier whose license under the *Building Act 1975* has private certification endorsement under that Act.

***private certifier (class A)*** means a private certifier whose license under the *Building Act 1975* has development approval endorsement under that Act.

***properly made application*** see section 3.2.1(7).

***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—

## Schedule 10 (continued)

- (i) if the submission is about a draft EIS or a designation—on or before the last day for making the submission; or
  - (ii) if the submission is about a development application—during the notification period; or
  - (iii) in any other case—during 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
  - (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 designated region's regional plan—to the regional planning Minister for the region; or
  - (v) if the submission is about a master plan application—to the local government; or
  - (vi) if the submission is about a proposed State planning policy or a proposed amendment of a State planning policy—to the Minister; or
  - (vii) if the submission is about a ministerial designation—to the Minister.

## Schedule 10 (continued)

***property map of assessable vegetation*** means a property map of assessable vegetation as defined under VMA.

***proponent*** means the person who proposes development to which chapter 5, part 8 applies.

***public office***, of a local government, means the premises kept as its public office under the *Local Government Act 1993*, section 37.<sup>162</sup>

***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.

***quarry material***, for schedule 8, part 1, table 4, item 5, means quarry material as defined under the *Coastal Protection and Management Act 1995*.

***Queensland Competition Authority*** means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*.

***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.

***regional ecosystem map*** means a regional ecosystem map as defined under the *Vegetation Management Act 1999*.

***regional plan*** see section 2.5A.10.

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<sup>162</sup> *Local Government Act 1993*, section 37 (Site of public office)

## Schedule 10 (continued)

*Note—*

For the SEQ region, see also chapter 6 (Transitional provisions), part 8 (Transitional provisions for Urban Land Development Authority Act 2007), division 1 (Provisions for SEQ regional plan).

***regional planning advisory committee*** means a regional planning advisory committee established under section 2.5.2.

***regional planning Minister***, for a designated region, means the Minister administering chapter 2, part 5A, 5B or 5C, for the region.

***regulated infrastructure charge*** see section 5.1.17.

***regulated infrastructure charges notice*** see section 5.1.18.

***regulated infrastructure charges register*** see section 5.7.2.

***regulated infrastructure charges schedule*** see section 5.1.16.

***regulated State infrastructure charge*** see section 5.3.3(1)(b).

***regulated State infrastructure charges notice*** see section 5.3.4(1).

***regulated State infrastructure charges schedule*** means a regulated State infrastructure charges schedule made under sections 5.3.2 and 5.3.3.

***relevant area***, for a State planning regulatory provision, see section 2.5C.1.

***remnant endangered regional ecosystem*** means a remnant endangered regional ecosystem as defined under the *Vegetation Management Act 1999*.

***remnant not of concern regional ecosystem*** means a remnant not of concern regional ecosystem as defined under VMA.

***remnant of concern regional ecosystem*** means a remnant of concern regional ecosystem as defined under VMA.

***remnant vegetation*** means remnant vegetation as defined under the *Vegetation Management Act 1999*.

***repealed Act*** means the *Local Government (Planning and Environment) Act 1990*.

## Schedule 10 (continued)

***request for information***, for a master plan application, see section 2.5B.24(1).

***requesting authority*** see section 3.3.8(1).

***road*** has the same meaning as in the *Transport Infrastructure Act 1994*.

***road works*** see the *Transport Infrastructure Act 1994*, schedule 6.

***routine management*** means clearing native vegetation—

- (a) to establish a necessary fence, road or vehicular track if the maximum width of clearing for the fence, road or track is 10m; or
- (b) to construct necessary built infrastructure other than contour banks, fences, roads or vehicular tracks if—
  - (i) the clearing is not to source construction timber; and
  - (ii) the total extent of clearing is less than 2ha; and
  - (iii) the total extent of the infrastructure is on less than 2ha; or
- (c) by the owner on freehold land to source construction timber for establishing necessary infrastructure on any land of the owner, if—
  - (i) the clearing does not cause land degradation as defined by VMA; and
  - (ii) restoration of a similar type, and to the extent of the removed trees, is ensured; or
- (d) before 30 June 2004, for sustainable harvesting of fodder for stock on freehold land, in drought conditions only.

***self-assessable development***—

- 1 Generally, *self-assessable development* means development stated in schedule 8, part 2, other than to the extent that part is modified under section 2.5B.63.

## Schedule 10 (continued)

- 2 The term also includes development declared under a State planning regulatory provision to be self-assessable development.
- 3 For a planning scheme area, the term also includes other development not stated in schedule 8, part 2, but declared to be self-assessable development under any of the following that applies to the area—
  - (a) the planning scheme for the area;
  - (b) a temporary local planning instrument;
  - (c) a master plan for a declared master planned area;
  - (d) a preliminary approval to which section 3.1.6 applies.

***SEQ region*** see section 6.8.1.

***SEQ regional plan*** see section 6.8.1.

***serious environmental harm*** see the *Environmental Protection Act 1994*, section 17.

***show cause notice*** see section 4.3.9.

***site management plan*** see the *Environmental Protection Act 1994*, schedule 3.

***special agreement Act*** see the *Environmental Protection Act 1994*, section 614(2).

***specified activity*** means—

- (a) clearing under a development approval for a material change of use or the reconfiguration of a lot, if the approval is given for a development application—
  - (i) made after the commencement of this definition; and
  - (ii) for which the chief executive administering VMA is a concurrence agency; or
- (ab) clearing an area of vegetation that is less than 0.125ha within a watercourse or lake for an activity (other than an activity relating to a material change of use of premises or the reconfiguring of a lot) that is subject to



## Schedule 10 (continued)

an approval process and is approved under this or another Act if—

- (i) the area is shown on a property map of assessable vegetation as a category 3 area, a category 4 area or a category X area; or
  - (ii) for the area, there is no property map of assessable vegetation and the vegetation is a remnant not of concern regional ecosystem or the vegetation is not remnant vegetation; or
- (b) a traditional Aboriginal or Torres Strait Islander cultural activity, other than a commercial activity; or
  - (c) a mining activity or a petroleum activity as defined under the *Environmental Protection Act 1994*; or
  - (ca) any aspect of development for geothermal exploration carried out under a geothermal exploration permit under the *Geothermal Exploration Act 2004*; or
  - (d) an activity under the *Fire and Rescue Service Act 1990*, section 53, 68 or 69; or
  - (e) an activity under—
    - (i) the *Electricity Act 1994*, section 101 or 112A; or
    - (ii) the *Electricity Regulation 2006*, section 17; or
  - (f) for a State-controlled road under the *Transport Infrastructure Act 1994*—
    - (i) road works carried out on the State-controlled road; or
    - (ii) ancillary works and encroachments carried out under section 50 of that Act; or
  - (g) clearing, for routine transport corridor management and safety purposes, on existing rail corridor land, new rail corridor land, non-rail corridor land or commercial corridor land (within the meaning of the *Transport Infrastructure Act 1994*) that is not subject to a commercial lease; or
  - (h) any activity authorised under the *Forestry Act 1959*.

## Schedule 10 (continued)

**stage** of IDAS, means a stage of the IDAS process mentioned in section 3.1.9.

**Standard Plumbing and Drainage Regulation** see *Plumbing and Drainage Act 2002*, section 145(2).

**State coastal land** means State coastal land as defined under the *Coastal Protection and Management Act 1995*, section 17.

**State-controlled road** has the same meaning as in the *Transport Infrastructure Act 1994*.<sup>163</sup>

**State infrastructure** means any of the following—

- (a) State schools infrastructure;
- (b) public transport infrastructure;
- (c) State-controlled roads infrastructure;
- (d) emergency services infrastructure;
- (e) health infrastructure, including hospitals and associated institutions infrastructure;
- (f) freight rail infrastructure;
- (g) State urban and rural residential water cycle management infrastructure, including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of water and flood mitigation;
- (h) justice administration facilities, including court or police facilities.

**State infrastructure agreement** means an infrastructure agreement entered into by a public sector entity other than a local government.

**State infrastructure provider** means a concurrence agency that—

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<sup>163</sup> *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 24 to be a State-controlled road, and, for chapter 6, part 5, division 2, subdivision 2, see section 53.

## Schedule 10 (continued)

- (a) supplies, or contributes toward the cost of, State infrastructure; or
- (b) administers a regional plan for a designated region.

***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.

***statement of intent***, for a State-controlled road, means a statement about the State-controlled road, including proposals for the provision of transport infrastructure included in the roads implementation program under the *Transport Infrastructure Act 1994*, section 11.

***State planning policy*** see section 2.4.1.

***State planning regulatory provision*** means—

- (a) a State planning regulatory provision made under section 2.5C.1; or
- (b) a draft State planning regulatory provision that under section 2.5C.12, has effect as a State planning regulatory provision.

*Note*—

See also section 6.8.12 (Transition of validated planning documents to master planning documents).

***strategic port land*** see the *Transport Infrastructure Act 1994*, section 286(5).

***structure plan***, for a declared master planned area, means the structure plan for the area, made under chapter 2, part 5B.

***structure plan amendment***, for schedule 1A, see schedule 1A, section 2(2).

***submitter***, for a development application, means a person who makes a properly made submission about the application.

## Schedule 10 (continued)

**submitter's appeal period** see section 4.1.28(2).

**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.

**suitability statement** see the *Environmental Protection Act 1994*, schedule 3.

**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.

**supporting material** means 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—

- (a) was given to the assessment manager by the applicant; and
- (b) is in the assessment manager's possession when the request to inspect and purchase is made.

**temporary local planning instrument** see section 2.1.9.

**terms of reference**, for an EIS, means the terms of reference prepared by the chief executive under section 5.8.5.

**tidal area**, for a local government—

- 1 *Tidal area*, for a local government, means—
  - (a) to the extent both banks of a tidal river or estuarine delta are in the local government's area, the part of the river or delta below high-water mark that is—
    - (i) from the mouth of the river or delta as far up the river or delta as the spring tides ordinarily flow and reflow; and

## Schedule 10 (continued)

- (ii) adjacent to the local government's area; and
  - (b) to the extent 1 bank of a tidal river or estuarine delta is in the local government's area, the part of the river or delta between high-water mark and the middle of the river or delta that is—
    - (i) from the mouth of the river or delta as far up the river or delta as the spring tides ordinarily flow and reflow; and
    - (ii) adjacent to the local government's area; and
  - (c) if the boundary of the local government's area is the high-water mark or is seaward of the high-water mark—the area that is seaward and within 50m of the high-water mark.
- 2 *Tidal area*, for a local government, does not include a tidal area for strategic port land.

*tidal area*, for strategic port land, means—

- (a) to the extent both banks of a tidal river or estuarine delta are part of the strategic port land, the part of the river or delta below high-water mark that is—
  - (i) from the mouth of the river or delta as far up the river or delta as the spring tides ordinarily flow and reflow; and
  - (ii) adjacent to the strategic port land; and
- (b) to the extent 1 bank of a tidal river or estuarine delta is part of the strategic port land, the part of the river or delta between high-water mark and the middle of the river or delta that is—
  - (i) from the mouth of the river or delta as far up the river or delta as the spring tides ordinarily flow and reflow; and
  - (ii) adjacent to the strategic port land; and
- (c) if the boundary of the strategic port land is the high-water mark or is seaward of the high-water

## Schedule 10 (continued)

mark—the area that is seaward and within 50m of the high-water mark.

***tidal water*** see the *Coastal Protection and Management Act 1995*.

***tidal works*** see the *Coastal Protection and Management Act 1995*.

***tribunal*** means a building and development tribunal established under section 4.2.1.

***trunk infrastructure*** means development infrastructure identified in a priority infrastructure plan as trunk infrastructure.

***trust land*** means, for regulating the clearing of vegetation under VMA, trust land under the *Land Act 1994*, other than indigenous land.

***urban area*** means—

- (a) an area, other than a rural residential or future rural residential area, identified as a priority infrastructure area in a priority infrastructure plan; or
- (b) if no priority infrastructure area exists, an area identified in a gazette notice by the chief executive under VMA as an urban area; or
- (c) if no priority infrastructure area exists or gazette notice has been published—an area identified on a map in a planning scheme as an area for urban purposes, including future urban purposes, but not rural residential or future rural residential purposes.

***urban development area*** means an urban development area under the *Urban Land Development Authority Act 2007*.

***urban purposes*** means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes, but not including environmental, conservation, rural, natural or wilderness area purposes.

***use***, in relation to premises, includes any use incidental to and necessarily associated with the use of the premises.

## Schedule 10 (continued)

**VMA** means the *Vegetation Management Act 1999*.

**watercourse**—

- 1 *Watercourse*, for schedule 8, part 1, table 4, item 5(b)(iv), 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.
- 2 *Watercourse*, for the definition *specified activity*—
  - (a) means a river, creek or stream in which water flows permanently or intermittently—
    - (i) in a natural channel, whether artificially improved or not; or
    - (ii) in an artificial channel that has changed the course of the watercourse; and
  - (b) includes the bed and banks and any other element of a river, creek or stream confining or containing water.

**water infrastructure facility** means a measure, outcome, works or anything else that Queensland Water Infrastructure Pty Ltd (ACN 119 634 427) is directed to carry out or achieve under—

- (a) the *State Development and Public Works Organisation Act 1971*; or
- (b) the *Water Act 2000*.

**waterway barrier works** see the *Fisheries Act 1994*, schedule.

**wild river area** see the *Wild Rivers Act 2005*, schedule.

**wild river declaration** see the *Wild Rivers Act 2005*, schedule.

**wild river high preservation area** means a high preservation area under the *Wild Rivers Act 2005*.

## 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 15 March 2008. 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 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.

Reprint No.	Amendments to	Effective	Reprint date
1	1998 Act No. 13	30 March 1998	30 March 1998
1A	1998 Act No. 13	1 July 1998	3 July 1998
2	1998 Act No. 31	12 October 1998	30 October 1998
2A	1998 Act No. 43	27 November 1998	4 January 1999
2B	1999 Act No. 11	30 March 1999	6 April 1999
2C	1999 Act No. 30	16 June 1999	30 June 1999
2D	1999 Act No. 90	21 January 2000	17 February 2000
3	2000 Act No. 4	31 March 2000	7 April 2000
3A rv	2000 Act No. 4	1 July 2000	14 July 2000
3B 3rv	2000 Act No. 34	15 September 2000	6 October 2000
3C rv	2000 Act No. 64	1 December 2000	6 December 2000
3D rv	2000 Act No. 64	1 January 2001	12 January 2001
3E rv	2000 Act No. 64	30 March 2001	11 May 2001
3F rv	2001 Act No. 29	25 May 2001	1 June 2001
4 rv	2001 Act No. 46	28 June 2001	3 August 2001

*Integrated Planning Act 1997*

Reprint No.	Amendments to	Effective	Reprint date
4A rv	2001 Act No. 93	7 December 2001	11 January 2002
4B rv	2001 Act No. 100	19 December 2001	18 January 2002
4C rv	2002 Act No. 10	19 April 2002	3 May 2002
4D 2rv	2002 Act No. 10	7 May 2002	7 May 2002
4E	2002 Act No. 44	25 May 2001	17 September 2002
Reprint No.	Amendments included	Effective	Notes
4F rv	2001 Act No. 100	1 October 2002	
4G	2002 Act No. 77	21 February 2003	
4H	2003 Act No. 2	4 March 2003	
	2003 Act No. 6		
4I	2003 Act No. 10	28 March 2003	
4J	—	31 March 2003	provs exp 30 March 2003
4K	—	1 April 2003	provs exp 31 March 2003
4L	2003 Act No. 25	16 May 2003	
4M	2003 Act No. 24	27 June 2003	
4N	2003 Act No. 28	1 July 2003	
4O	2003 Act No. 64	16 October 2003	
4P	2001 Act No. 93	20 October 2003	
4Q	2002 Act No. 77	1 November 2003	
4R	2002 Act No. 77	14 November 2003	
	2003 Act No. 64		
4S	2003 Act No. 32	28 November 2003	
4T	1994 Act No. 8 (amd 2003 Act No. 54)	1 December 2003	
4U	2003 Act No. 64	19 December 2003	
4V	2003 Act No. 52	1 January 2004	
4W	2003 Act No. 74	1 March 2004	R4W withdrawn, see R5
5	—	1 March 2004	
5A	2004 Act No. 5	13 May 2004	
5B	2004 Act No. 1	21 May 2004	
5C	2003 Act No. 64	4 June 2004	
5D	2004 Act No. 20	17 September 2004	
5E rv	2003 Act No. 64 (amd 2004 Act No. 1; 2004 Act No. 5; 2004 Act No. 20)	4 October 2004	
	2003 Act No. 95		
5F rv	2004 Act No. 20	5 October 2004	
5G rv	—	17 October 2004	provs exp 16 October 2004 R5G rv withdrawn, see R6 2rv
6 2rv	—	17 October 2004	Revision notice issued for R6
6A rv	2004 Act No. 48	17 December 2004	
6B rv	2004 Act No. 25	31 December 2004	
6C rv	2004 Act No. 37	1 January 2005	

Reprint No.	Amendments included	Effective	Notes
6D	2003 Act No. 82 (amd 2004 Act No. 20)	1 March 2005	
6E	2004 Act No. 12 (amd 2005 Act No. 8)	25 March 2005	
6F	2004 Act No. 40	19 September 2005	
6G	2005 Act No. 41	14 October 2005	
6H	2005 Act No. 49	2 November 2005	
6I	2005 Act No. 53	18 November 2005	
7	2005 Act No. 42	2 December 2005	
7A	2005 Act No. 53	1 January 2006	
7B	2005 Act No. 39	1 March 2006	
7C	2005 Act No. 19	24 March 2006	
7D rv	2006 Act No. 11 (amd 2006 Act No. 36)	30 March 2006	
7E	1975 Act No. 11 (amd 2006 Act No. 36) 2006 Act No. 36	1 September 2006	
7F	2006 Act No. 11	27 October 2006	
7G	2006 Act No. 54 2006 Act No. 59	7 December 2006	
7H	2006 Act No. 11	8 December 2006	R7H withdrawn, see R8
8	—	8 December 2006	
8A	2006 Act No. 11	31 March 2007	
8B	2007 Act No. 17	23 April 2007	
8C	2007 Act No. 21	26 April 2007	
8D	2007 Act No. 19	18 May 2007	
8E	2006 Act No. 60	1 July 2007	
8F	2007 Act No. 41	21 September 2007	
8G	2007 Act No. 57	16 November 2007	
8H	2007 Act No. 41	23 November 2007	
8I	2007 Act No. 59	15 March 2008	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1, 2
Renumbered provisions	6

## 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

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)

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)

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))

ss 3, 5–40, 45–48, 49(2), 50–52, 54–58 commenced 12 October 1998 (1998 SL No. 270)

s 49(1), (3) commenced 30 April 1998 (see s 2(1))

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 (see s 2(5))

**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 (see s 2(7))

**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 22, 85(2) commenced 1 December 2000 (2000 SL No. 292)

ss 28, 31(2), 32, 36, 41, 47, 54, 68 commenced 1 July 2000 see s 2(3))

s 62 never proclaimed into force and om 2001 No. 100 s 94

ss 64–67, 75, 85(3) commenced 31 March 2000 (see s 2(2))

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 (see s 2(5))

**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 19 April 2002 (2002 SL No. 69)

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 (see s 2(3))

**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

ss 1–2 commenced on date of assent

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

s 174 sch amdt 1 commenced 1 January 2001 (amdt could not be given effect)

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)

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

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 commenced 1 January 2004 (2003 SL No. 332)

**Transport Infrastructure Act 1994 No. 8 s 491(3) sch 5 (prev s 200A(3) sch 2B) (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 (this Act is amended, see amending legislation below)**

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 36 commenced 4 June 2004 (2004 SL No. 72, but note SIA s 32(2))

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))

s 110(3) (to the extent it ins defs “area of high nature conservation value”, “area of unlawfully cleared vegetation”, “area vulnerable to land degradation” and “non-urban area”) never proclaimed into force and on 2004 No. 1 s 37(1)

remaining provisions commenced 4 October 2004 (2004 SL No. 199)

amending legislation—

**Vegetation Management and Other Legislation Amendment Act 2004 No. 1 pts 1, 4, s 44(1) sch 1 (amends 2003 No. 64 above)**

date of assent 29 April 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 21 May 2004 (2004 SL No. 62)

**Aurukun Associates Agreement Repeal Act 2004 No. 5 ss 1, 8 sch (amends 2003 No. 64 above)**

date of assent 13 May 2004

commenced on date of assent

**Geothermal Exploration Act 2004 No. 12 ss 1–2, ch 8 pt 3 (amends 2003 No. 64 above and is also amended see below)**

date of assent 31 May 2004

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and on 2005 No. 8 s 83

amending legislation—

**Mineral Resources and Other Legislation Amendment Act 2005 No. 8 ss 1, 83 (amends 2004 No. 12 above)**

date of assent 18 March 2005

commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 2004 No. 20 ss 1–2, 33–34 (amends 2003 No. 64 above)**

date of assent 3 September 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 17 September 2004 (2004 SL No. 191)

**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 commenced 1 March 2004 (2003 SL No. 336)

**Primary Industries and Other Legislation Amendment Act 2003 No. 82 ss 1, 2(2), pt 8 (this Act is amended, see amending legislation below)**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2005 (2004 SL No. 304)

amending legislation—

**Integrated Planning and Other Legislation Amendment Act 2004 No. 20 pts 1, 6 (amends 2003 No. 82 above)**

date of assent 3 September 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 17 September 2004 (2004 SL No. 191)

**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

remaining provisions commenced 4 October 2004 (2004 SL No. 207)

**Vegetation Management and Other Legislation Amendment Act 2004 No. 1 pts 1, 3, s 44(1) sch 1**

date of assent 29 April 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 21 May 2004 (2004 SL No. 62)

**Aurukun Associates Agreement Repeal Act 2004 No. 5 ss 1, 8 sch**

date of assent 13 May 2004

commenced on date of assent

**Geothermal Exploration Act 2004 No. 12 ss 1–2, ch 8 pt 2 (this Act is amended, see amending legislation below)**

date of assent 31 May 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 25 March 2005 (2005 SL No. 43)

amending legislation—

**Mineral Resources and Other Legislation Amendment Act 2005 No. 8 ss 1, 83 (amends 2004 No. 12 above)**

date of assent 18 March 2005

commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 2004 No. 20 pts 1–2, s 3 sch**

date of assent 3 September 2004

ss 1–2 commenced on date of assent

ss 3, 7–8, 20, 26–27, 32(1), (3) commenced 17 September 2004 (2004 SL No. 191)

remaining provisions commenced 5 October 2004 (2004 SL No. 192)

**Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), 995–998 (prev ss 935–938)**

date of assent 12 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 31 December 2004 (2004 SL No. 308)

**Local Government (Community Government Areas) Act 2004 No. 37 ss 1–2, 86 sch 1**

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2005 (2004 SL No. 266)

**Transport and Other Legislation Amendment Act (No. 2) 2004 No. 40 pts 1, 6**

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 19 September 2005 (2005 SL No. 177)

**Environmental Protection and Other Legislation Amendment Act 2004 No. 48 pts 1, 4**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 17 December 2004 (2004 SL No. 315)

**Water and Other Legislation Amendment Act 2005 No. 19 ss 1, 2(2)(a), pt 3**

date of assent 19 May 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 24 March 2006 (2006 SL No. 19)

**Plumbing and Drainage and Other Legislation Amendment Act 2005 No. 39 pts 1–2**

date of assent 1 September 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2006 (see s 2)

**Vegetation Management and Other Legislation Amendment Act 2005 No. 41 pts 1, 3**

date of assent 14 October 2005

commenced on date of assent

**Wild Rivers Act 2005 No. 42 ss 1–2, 52 sch 1**

date of assent 14 October 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 2 December 2005 (2005 SL No. 287)

**Transport Legislation Amendment Act 2005 No. 49 ss 1, 89 sch**

date of assent 2 November 2005

commenced on date of assent

**Environmental Protection and Other Legislation Amendment Act 2005 No. 53 pts 1, 6**

date of assent 18 November 2005

ss 1–2 commenced on date of assent

ss 106(2), 107–111 commenced 1 January 2006 (2005 SL No. 318)

remaining provisions commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 2006 No. 11 pts 1–2, s 3 sch (this Act is amended, see amending legislation below)**

date of assent 30 March 2006

ss 1–2 commenced on date of assent

ss 42, 45 commenced 27 October 2006 (2006 SL No. 251)

s 70 commenced 8 December 2006 (2006 SL No. 299)

s 75 commenced 30 March 2006 (see s 2(1))

ss 18, 20–30, 33, 41, 82(2) commenced 31 March 2007 (automatic commencement under AIA s 15DA(2))

ss 49(2), 55(2) not yet proclaimed into force (automatic commencement under AIA s 15DA(2) deferred to 31 March 2008 (2007 SL No. 38 s 2))

remaining provisions commenced on date of assent

amending legislation—

**Building and Other Legislation Amendment Act 2006 No. 36 pts 1, 3A (amends 2006 No. 11 above)**

date of assent 10 August 2006

commenced on date of assent (see s 2)

**Building Act 1975 No. 11 s 283(3)(b) (prev s 69(3)(b)) (this Act is amended, see amending legislation below)**

amending legislation—

**Building and Other Legislation Amendment Act 2006 No. 36 ss 1–2, 69 (amends 1975 No. 11 above)**

date of assent 10 August 2006

ss 1–2 commenced on date of assent

remaining provision commenced 1 September 2006 (2006 SL No. 226)

**Building and Other Legislation Amendment Act 2006 No. 36 pts 1, 3**

date of assent 10 August 2006

ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 September 2006 (2006 SL No. 226)

**State Development and Other Legislation Amendment Act 2006 No. 54 pts 1, 3**

date of assent 7 December 2006  
 commenced on date of assent

**Wild Rivers and Other Legislation Amendment Act 2006 No. 59 pts 1, 7, s 85 sch**

date of assent 7 December 2006  
 commenced on date of assent

**Electricity and Other Legislation Amendment Act 2006 No. 60 ss 1–2, 177 sch**

date of assent 7 December 2006  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2007 (2007 SL No. 15)

**Community Ambulance Cover and Other Acts Amendment Act 2007 No. 17 ss 1, 2(2), pt 8**

date of assent 23 April 2007  
 commenced on date of assent (see s 2(2))

**Land and Other Legislation Amendment Act 2007 No. 19 pts 1, 3**

date of assent 23 April 2007  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 18 May 2007 (2007 SL No. 88)

**Local Government and Other Legislation Amendment Act 2007 No. 21 pts 1, 6**

date of assent 26 April 2007  
 commenced on date of assent

**Urban Land Development Authority Act 2007 No. 41 ss 1–2, pt 8**

date of assent 11 September 2007  
 ss 1–2 commenced on date of assent  
 ss 183–184, 188 not yet proclaimed into force (see s 2)  
 ss 197, 203 (to the extent it ins the Integrated Planning Act 1997 s 5.3.2(2) from '(2)' to 'area.'), 225(2), (4) commenced 23 November 2007 (2007 SL No. 279)  
 remaining provisions commenced 21 September 2007 (2007 SL No. 235)

**Queensland Heritage Act 1992 No. 9 s 104B(4)(a) (this Act is amended, see amending legislation below)**

amending legislation—

**Queensland Heritage and Other Legislation Amendment Act 2007 No. 50 ss 1–2, 43 (amends 1992 No. 9 above)**

date of assent 25 October 2007  
 ss 1–2 commenced on date of assent  
 remaining provision not yet proclaimed into force (see s 2)

**Queensland Heritage and Other Legislation Amendment Act 2007 No. 50 pts 1, 3**

date of assent 25 October 2007  
 ss 1–2 commenced on date of assent  
 remaining provisions not yet proclaimed into force (see s 2)

**Water and Other Legislation Amendment Act 2007 No. 57 s 1, pt 3**

date of assent 16 November 2007

commenced on date of assent

**Local Government and Other Legislation (Indigenous Regional Councils) Amendment Act 2007 No. 59 ss 1–2, 152 sch**

date of assent 22 November 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 15 March 2008 (2007 SL No. 336)

## 7 List of annotations

**This reprint has been renumbered—see table of renumbered provisions in endnote 9****Commencement**

**s 1.1.2** amd 1999 No. 59 s 46; 2000 No. 34 s 1144 sch 2 (amdt could not be given effect); 2001 No. 100 s 4; 2001 No. 93 s 24 sch (amdt could not be given effect)

**What advancing this Act’s purpose includes**

**s 1.2.3** amd 2001 No. 100 s 5

**Definitions for terms used in “development”**

**s 1.3.5** amd 2006 No. 36 s 72(3)  
 def “**building work**” amd 1998 No. 13 s 69(2)–(3); 1998 No. 31 s 4(1)  
 sub 2003 No. 32 s 26  
 amd 2003 No. 64 s 36(1); 2006 No. 36 s 72(1)  
 def “**drainage work**” amd 1998 No. 31 s 4(2)  
 om 2002 No. 77 s 193  
 def “**material change of use**” amd 1998 No. 13 s 69(1)  
 sub 2003 No. 95 s 49  
 amd 2005 No. 53 s 103  
 def “**operational work**” amd 1999 No. 90 s 76; 2000 No. 34 s 1144 sch 2  
 (amd 2001 No. 75 s 115(1)); 2004 No. 1 s 30; 2005 No. 40 s 21  
 sub 2003 No. 64 s 36(2) (amd 2004 No. 1 s 35)  
 amd 2004 No. 20 s 4; 2003 No. 82 s 72; 2004 No. 40 s 21; 2006 No. 36 s 72(2)  
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s 4.2.10 amd 1998 No. 13 s 122

**Appeals for matters arising after approval given (co-respondents)**

s 4.2.11 amd 1998 No. 13 s 182; 2006 No. 11 s 51

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s 4.2.12A ins 2002 No. 77 s 196 (amd 2003 No. 64 s 139)  
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s 4.2.14 amd 1998 No. 13 s 123; 2001 No. 100 s 47

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s 4.2.16A ins 2000 No. 4 s 51

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**s 4.2.37** amd 1998 No. 13 s 128(2)

**Term of referee's appointment**

**s 4.2.38** sub 1998 No. 13 s 129

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**Carrying out assessable development without permit**

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**Self-assessable development must comply with codes**

**s 4.3.2** ins 2003 No. 95 s 53  
amd 2006 No. 11 s 53

**Certain assessable development must comply with codes**

**s 4.3.2A** ins 1998 No. 13 s 131  
amd 2000 No. 4 s 53; 2003 No. 64 s 3 sch

**Compliance with development approval**

**s 4.3.3** amd 1998 No. 13 s 132; 1998 No. 31 s 39; 2005 No. 53 s 107

**Compliance with identified codes about use of premises**

**s 4.3.4** amd 2005 No. 53 s 108

**Offences about the use of premises**

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amd 2005 No. 53 s 109

**Compliance with State planning regulatory provisions**

**s 4.3.5A** ins 2004 No. 20 s 21  
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**s 4.3.5B** ins 2007 No. 41 s 189

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**prov hdg** amd 2005 No. 53 s 110(1)  
**s 4.3.6** amd 2003 No. 64 s 84; 2005 No. 53 s 110(2); 2007 No. 41 s 190

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**s 4.3.6A** ins 2005 No. 53 s 111

**Giving a false or misleading document**

**s 4.3.7** amd 2003 No. 82 s 77  
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amd 2007 No. 41 s 191

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s 4.3.8 amd 1998 No. 13 s 134; 1999 No. 90 s 82; 2000 No. 34 s 1144 sch 2 (amd 2001 No. 100 s 99); 2001 No. 100 s 55; 2004 No. 40 s 23; 2006 No. 11 s 55(1)

**Giving enforcement notice**

s 4.3.11 amd 1998 No. 13 s 135; 2000 No. 4 s 54; 2001 No. 100 s 56; 2003 No. 64 s 85

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s 4.3.13 amd 2003 No. 64 s 3 sch; 2006 No. 11 s 56; 2007 No. 41 s 192

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s 4.3.16 sub 2003 No. 64 s 87  
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s 4.3.18 amd 1998 No. 13 s 136; 2000 No. 4 s 55; 2006 No. 36 s 83

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s 4.3.20 amd 1999 No. 11 s 8; 2007 No. 41 s 194

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s 4.3.26 amd 1999 No. 90 s 83 (amd 2000 No. 35 s 14); 2000 No. 4 s 56

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s 4.4.13 amd 2007 No. 41 s 195

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s 5.1.5 amd 2003 No. 2 s 21  
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**Key elements of an infrastructure charges schedule**

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s 5.1.7 amd 1999 No. 11 s 9  
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**When infrastructure charges are payable**

s 5.1.9 sub 2003 No. 64 s 22

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s 5.1.10 sub 2003 No. 64 s 22  
amd 2006 No. 11 s 60

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s 5.1.11 sub 2003 No. 64 s 22

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**Local government may supply different trunk infrastructure from that identified in a priority infrastructure plan**

s 5.1.13 sub 2003 No. 64 s 22

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**Division 5—Trunk infrastructure funding under a regulated infrastructure charges schedule**

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s 5.1.15 amd 1998 No. 31 s 40  
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**Adopting and notifying regulated infrastructure charges schedule**

- s 5.1.16    amd 2000 No. 4 s 57  
               sub 2003 No. 64 s 22  
               amd 2007 No. 41 s 199

**Regulated infrastructure charges**

- prov hdg    amd 1998 No. 13 s 139  
 s 5.1.17    sub 2003 No. 64 s 22  
               amd 2004 No. 25 s 997

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- s 5.1.18    sub 2003 No. 64 s 22

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- s 5.1.19    ins 2003 No. 64 s 22

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- s 5.1.20    ins 2003 No. 64 s 22

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- s 5.1.21    ins 2003 No. 64 s 22

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- s 5.1.22    ins 2003 No. 64 s 22

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- div hdg    ins 2003 No. 64 s 22

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s 5.1.30 ins 2003 No. 64 s 22  
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s 5.1.33 ins 2003 No. 64 s 22

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s 5.1.34 ins 2003 No. 64 s 22

**Meaning of “infrastructure agreement”**

s 5.2.1 amd 2003 No. 64 s 23; 2004 No. 20 s 3 sch

**Agreements may be entered into about infrastructure**

s 5.2.2 amd 1998 No. 13 s 140; 2000 No. 4 s 58  
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**Content of infrastructure agreements**

prov hdg sub 2007 No. 41 s 200(1)  
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s 5.2.5 amd 2000 No. 4 s 59

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s 5.2.6 amd 2000 No. 4 s 60; 2007 No. 41 s 201

**Infrastructure agreements prevail if inconsistent with particular instruments**

prov hdg amd 2007 No. 41 s 202(1)  
s 5.2.7 ins 2000 No. 4 s 62  
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**Purpose of pt 3**

- s 5.3.1 prev s 5.3.1 om 2006 No. 36 s 85  
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**Power to make regulated State infrastructure charges schedule for master planned area**

- s 5.3.2 prev s 5.3.2 om 2006 No. 36 s 85  
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**Content of regulated State infrastructure charges schedule**

- s 5.3.3 prev s 5.3.3 amd 1998 No. 13 s 141  
sub 1998 No. 31 s 41; 2002 No. 77 s 205  
om 2006 No. 36 s 85  
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**Regulated State infrastructure charges notice**

- s 5.3.4 prev s 5.3.4 amd 1998 No. 13 s 142  
sub 2002 No. 77 s 206  
om 2006 No. 36 s 85  
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**When regulated State infrastructure charge is payable**

- s 5.3.5 prev s 5.3.5 sub 1998 No. 13 s 143  
amd 1999 No. 30 s 24; 2001 No. 100 s 62; 2002 No. 77 ss 198 (amd 2003 No. 64 s 140), 207 (amd 2003 No. 64 s 142); 2003 No. 64 s 89  
om 2006 No. 36 s 85  
pres s 5.3.5 ins 2007 No. 41 s 203

**Application of regulated State infrastructure charge**

- s 5.3.6 prev s 5.3.6 sub 1998 No. 13 s 143  
amd 2002 No. 77 s 208  
om 2006 No. 36 s 85  
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- s 5.3.7 prev s 5.3.7 sub 1998 No. 13 s 143  
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**Infrastructure agreements about, and alternatives to paying regulated State infrastructure charges**

- s 5.3.8 prev s 5.3.8 amd 2000 No. 4 s 63; 2002 No. 77 s 209  
om 2006 No. 36 s 85  
pres s 5.3.8 ins 2007 No. 41 s 203

**Recovery of regulated State infrastructure charges**

- s 5.3.9 prev s 5.3.9 amd 1998 No. 31 s 44; 2002 No. 77 s 210  
om 2006 No. 36 s 85  
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**Private certifiers may not be engaged if there is a conflict of interest**

- s 5.3.10 amd 2002 No. 77 s 211  
om 2006 No. 36 s 85

**Discontinuing engagement of private certifiers**

s 5.3.11 amd 2002 No. 77 s 212  
om 2006 No. 36 s 85

**Engaging replacement private certifier for application**

s 5.3.12 om 2006 No. 36 s 85

**Engaging replacement private certifier to inspect work**

s 5.3.13 om 2006 No. 36 s 85

**Minister or an accrediting body may disqualify a private certifier**

s 5.3.14 om 1998 No. 13 s 144

**Effect of transfer of functions to local government or replacement private certifier**

s 5.3.15 om 2006 No. 36 s 85

**Liability insurance and performance bonds**

s 5.3.16 amd 2002 No. 77 s 213  
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**Documents to be kept by private certifiers**

s 5.3.17 om 2006 No. 36 s 85

**Compensation for reduced value of interest in land**

s 5.4.2 amd 1998 No. 13 s 182; 2001 No. 100 s 63; 2003 No. 64 s 90

**Limitations on compensation under ss 5.4.2 and 5.4.3**

s 5.4.4 amd 2003 No. 64 ss 26, 91; 2006 No. 11 s 64; 2007 No. 41 s 204

**Compensation for erroneous planning and development certificates**

s 5.4.5 prov hdg amd 1998 No. 13 s 145

**Calculating reasonable compensation involving changes**

s 5.4.9 amd 1998 No. 13 s 182; 2006 No. 11 s 65

**Local government may take or purchase land**

s 5.5.1 amd 2006 No. 11 s 66; 2007 No. 41 s 205

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s 5.6.1 sub 2000 No. 4 s 64

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s 5.6.2 sub 2000 No. 4 s 64  
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s 5.6.3A ins 2004 No. 20 s 22

**Chief executive must publicly notify certain proposed development**

prov hdg amd 2000 No. 4 s 66(1)

s 5.6.4 amd 2000 No. 4 s 66(2)–(5)

**Chief executive must advise local government about all development**

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s 5.6.5 amd 2000 No. 4 s 67(2)–(3)

**Meaning of “available for inspection and purchase”**

s 5.7.1 amd 1998 No. 13 s 146

**Documents local governments must keep available for inspection and purchase**

s 5.7.2 amd 1998 No. 13 s 147; 2001 No. 28 s 189(1) sch 1; 2003 No. 64 ss 27, 92; 2004 No. 20 s 23; 2006 No. 11 s 67; 1975 No. 11 s 283(3)(b) (amd 2006 No. 36 s 69); 2006 No. 36 s 86; 2007 No. 41 s 206

**Documents local government must keep available for inspection only**

s 5.7.3 sub 2006 No. 36 s 87  
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**Documents assessment manager must keep available for inspection and purchase**

s 5.7.4 amd 1998 No. 13 s 148; 2006 No. 11 s 68; 2006 No. 36 s 88; 2006 No. 59 s 85 sch

**Documents assessment manager must keep available for inspection only**

s 5.7.5 amd 1998 No. 13 s 149; 2000 No. 64 s 174 sch; 2003 No. 64 s 3 sch

**Documents chief executive must keep available for inspection and purchase**

prov hdg amd 1998 No. 13 s 150(1)  
s 5.7.6 amd 1998 No. 13 s 150(2)–(5); 2000 No. 4 s 68; 2003 No. 64 ss 5, 93, 3 sch; 2004 No. 20 s 24; 2006 No. 36 s 89; 2006 No. 59 s 85 sch; 2007 No. 41 s 208

**Documents chief executive must keep available for inspection only**

s 5.7.7 sub 1998 No. 13 s 151  
amd 2001 No. 100 s 69

**Documents particular entities required to keep available for inspection and purchase**

s 5.7.7A ins 2003 No. 82 s 78

**Limited planning and development certificates**

s 5.7.9 sub 2003 No. 64 s 28  
amd 2004 No. 20 s 25; 2007 No. 41 s 209

**Standard planning and development certificates**

s 5.7.10 amd 1998 No. 31 s 45; 2003 No. 64 s 29; 2007 No. 41 s 210

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s 5.7.11 amd 2007 No. 41 s 211

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s 5.8.1 ins 2003 No. 64 s 94 (amd 2004 No. 20 s 34)  
amd 2007 No. 41 s 212

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s 5.8.2 ins 2003 No. 64 s 94  
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- s 5.9.2** (prev s 5.8.5) ins 2000 No. 34 s 1144 sch 2  
reloc and renum 2003 No. 64 s 3 sch  
amd 2004 No. 20 s 26

**Regulation-making power**

- s 5.9.3** amd 2001 No. 100 s 73

**Application of State Development and Public Works Organisation Act 1971**

- s 5.9.4** amd 1998 No. 13 s 152; 2000 No. 64 s 174 sch; 2004 No. 20 s 27

**Application of Judicial Review Act 1991**

- s 5.9.5** amd 2001 No. 100 s 74

**Chief executive may issue guidelines**

- s 5.9.9** ins 2001 No. 100 s 75  
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- pt hdg** sub 2003 No. 64 s 96(1)

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- pt hdg** sub 2003 No. 64 s 96(2)

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- s 6.1.1** def **“applicable codes”** sub 1998 No. 13 s 153(1)  
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- def **“assessable development”** sub 1998 No. 13 s 153(2)  
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- def **“former planning scheme”** sub 1998 No. 13 s 153(3)
- def **“IPA planning scheme”** om 2006 No. 11 s 3 sch
- def **“self-assessable development”** sub 1998 No. 13 s 153(4)  
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amd 2003 No. 64 s 3 sch
- def **“standards”** ins 2000 No. 4 s 69(2)
- def **“State land”** ins 2000 No. 4 s 69(2)
- def **“transitional planning scheme”** amd 1998 No. 31 s 46(2)

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- s 6.1.2** amd 1998 No. 13 s 154

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- s 6.1.3** amd 1998 No. 13 s 155

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- s 6.1.4** amd 1998 No. 13 s 156

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s 6.1.9 amd 1998 No. 31 s 47

**Preparation of amendments to planning schemes under repealed Act may continue**

s 6.1.10 amd 1998 No. 13 s 157

**Zoning of closed roads under transitional planning schemes**

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**Power to purchase or take land to achieve strategic intent of transitional planning scheme**

s 6.1.10B ins 2000 No. 4 s 70

**Interim development control provisions for the shires of Wambo and Belyando**

s 6.1.12A ins 2001 No. 29 s 14

**Continuing effect of local planning policies**

s 6.1.13 amd 1998 No. 13 s 158

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s 6.1.17 amd 1998 No. 13 s 159

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s 6.1.20 amd 1998 No. 13 s 160; 2002 No. 77 s 214; 2003 No. 64 s 97; 2004 No. 20 s 3 sch; 2006 No. 11 s 71; 2007 No. 21 s 68

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s 6.1.21 amd 2006 No. 11 s 72

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s 6.1.23 amd 1998 No. 13 s 161; 1998 No. 31 s 48

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s 6.1.24 amd 2003 No. 64 s 98 (retro)

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s 6.1.25 amd 1998 No. 13 s 162; 1998 No. 31 s 49(1) (retro), (2), (3) (retro); 2004 No. 20 s 28

**Effect of commencement on other applications in progress**

s 6.1.26 amd 1998 No. 13 s 163; 2003 No. 64 s 99; 2004 No. 20 s 3 sch

**IDAS must be used for processing applications**

s 6.1.28 amd 1998 No. 13 s 164; 1998 No. 31 s 50

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prov hdg sub 1998 No. 13 s 166(1)

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s 6.1.30A ins 2000 No. 4 s 72 (retro)

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s 6.1.31 amd 1998 No. 13 s 167; 1998 No. 31 s 51; 2000 No. 4 s 73; 2002 No. 77 s 215; 2003 No. 64 s 30; 2004 No. 20 s 3 sch; 2006 No. 11 s 73; 2007 No. 21 s 69

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s 6.1.32 amd 2000 No. 4 s 74

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s 6.1.34 amd 1998 No. 13 s 168  
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s 6.1.35A prev s 6.1.35A ins 1998 No. 13 s 169  
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s 6.1.35B ins 1998 No. 13 s 169  
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s 6.1.35C ins 1998 No. 13 s 169  
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s 6.1.40 exp 30 March 2000 (see s 6.1.40(4))

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s 6.1.41 om 2003 No. 64 s 3 sch

**Application of ch 2, pt 6 for Transport Infrastructure Act 1994**

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s 6.1.44 amd 1998 No. 13 s 170; 2001 No. 46 s 27; 2003 No. 64 s 3 sch

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s 6.1.45 amd 2000 No. 4 s 79(2)  
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s 6.1.45AA ins 2003 No. 64 s 103

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s 6.1.45A ins 1998 No. 13 s 171

amd 2000 No. 4 s 80 (retro); 2001 No. 29 s 15 (retro); 2003 No. 64 s 104;  
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s 6.1.46 amd 2000 No. 4 s 81; 2002 No. 77 s 216

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s 6.1.50 amd 1998 No. 13 s 172; 1998 No. 31 s 55; 2000 No. 64 s 174 sch

**Orders in council about Crown land under repealed Act**

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**Certain lawful uses, buildings and works validated**

s 6.1.51A ins 2000 No. 4 s 82 (retro); 2003 No. 64 s 3 sch

**Transitional regulations**

s 6.1.52 amd 2002 No. 77 s 218

exp 31 March 2003 (see s 6.1.52(4))

**References to repealed Act**

s 6.1.53 ins 1998 No. 13 s 174

**Provisions applying for State-controlled roads**

s 6.1.54 ins 1999 No. 11 s 12 (amd 1999 No. 59 s 54)

amd 2003 No. 64 s 105; 1994 No. 8 s 491(3) sch 5 (amd 2003 No. 54 ss 34,  
39); 2006 No. 11 s 74; 2006 No. 59 s 85 sch

**Division 11—Transitional provision for Integrated Planning Amendment Act 2002**

div hdg ins 2002 No. 44 s 5

om 2004 No. 20 s 3 sch

**Particular proceedings end**

s 6.1.55 ins 2002 No. 44 s 5

om 2004 No. 20 s 3 sch

**PART 2—TRANSITIONAL PROVISIONS FOR INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003**

pt hdg sub 2003 No. 64 s 106

**Division 1—Transitional provisions generally**

div hdg ins 2003 No. 64 s 106

**Transitional regulations for Integrated Planning and Other Legislation Amendment Act 2003**

s 6.2.1 sub 2003 No. 64 s 106

exp 16 October 2004 (see s 6.2.1(4))

**Particular planning scheme policies still valid**

s 6.2.2 sub 2003 No. 64 s 106

**When s 3.5.31A applies**

s 6.2.3 sub 2003 No. 64 s 107

**Division 2—Transitional provisions for designation****div hdg** ins 2003 No. 64 s 6**Designation processes continue****s 6.2.4** ins 2003 No. 64 s 6**Division 3—Transitional provisions for infrastructure****div 3** (ss 6.2.5–6.2.10) ins 2003 No. 64 s 32**PART 3—TRANSITIONAL PROVISION FOR VEGETATION MANAGEMENT  
AND OTHER LEGISLATION AMENDMENT ACT 2004****pt 3** (s 6.3.1) prev pt 3 (s 6.3.1) om R1 (see RA s 40)

pres pt 3 (s 6.3.1) ins 2004 No. 1 s 31

**PART 4—TRANSITIONAL PROVISION FOR INTEGRATED PLANNING AND  
OTHER LEGISLATION AMENDMENT ACT 2004****pt 4** (s 6.4.1) ins 2004 No. 20 s 30**PART 5—TRANSITIONAL PROVISION FOR ENVIRONMENTAL  
PROTECTION AND OTHER LEGISLATION AMENDMENT ACT 2004****pt hdg** amd 2006 No. 11 s 3 sch**pt 5** ins 2004 No. 48 s 142**When particular development approvals lapse****s 6.5.1** amd 2006 No. 11 s 75 (amd 2006 No. 36 s 95C) (retro)**PART 6—TRANSITIONAL PROVISION FOR ENVIRONMENTAL  
PROTECTION AND OTHER LEGISLATION AMENDMENT ACT 2005****pt 6** (s 6.6.1) ins 2005 No. 53 s 112**PART 7—TRANSITIONAL PROVISIONS FOR INTEGRATED PLANNING AND  
OTHER LEGISLATION AMENDMENT ACT 2006****pt 7** (ss 6.7.1–6.7.4) ins 2006 No. 11 s 76**PART 8—TRANSITIONAL PROVISIONS FOR URBAN LAND DEVELOPMENT  
AUTHORITY ACT 2007****pt 8** (ss 6.8.1–6.8.13) ins 2007 No. 41 s 224**SCHEDULE 1—PROCESS FOR MAKING OR AMENDING PLANNING  
SCHEMES****PART 1—PRELIMINARY CONSULTATION AND PREPARATION STAGE****Resolution to prepare planning scheme****s 1** amd 2003 No. 64 s 3 sch**Local government may shorten process for amendments to planning schemes****s 2** amd 1998 No. 13 s 175(1)–(2)

sub 2001 No. 100 s 82(1)

**Statement of proposals for preparing planning scheme****s 3** amd 2004 No. 20 s 31(1); 2007 No. 41 s 225(1)**Core matters for planning schemes****s 4** amd 1999 No. 11 s 13

om 2001 No. 100 s 82(2)

**Public notice of proposal**

s 5           amd 1998 No. 13 s 175(3)

**Requirements for priority infrastructure plans**

s 8A           ins 2003 No. 64 s 33  
                  amd 2006 No. 11 s 77(1); 2007 No. 41 s 225(2)

**Proposing planning scheme**

prov hdg    amd 2004 No. 20 s 3 sch  
s 9           amd 2003 No. 64 s 3 sch; 2004 No. 20 s 3 sch

**PART 2—CONSIDERATION OF STATE INTERESTS AND CONSULTATION  
STAGE****Minister may allow process to be shortened for certain amendments publicly  
consulted**

s 10           amd 2004 No. 20 s 31(2); 2007 No. 41 s 225(3)–(4)

**Considering proposed planning scheme for adverse affects on State interests**

prov hdg    sub 2001 No. 100 s 82(3)  
s 11           amd 1998 No. 31 s 56; 2000 No. 4 s 83; 2001 No. 100 s 82(4)–(5)

**Public notice of, and access to, proposed planning scheme**

s 12 prov hdg amd 1998 No. 13 s 175(4)

**Decision on proceeding with proposed planning scheme**

s 16           amd 1998 No. 13 s 175(5); 2003 No. 64 s 3 sch

**Reporting to persons who made submissions about proposed planning scheme**

s 17           amd 1998 No. 13 s 175(6)

**Reconsidering proposed planning scheme for adverse effects on State interests**

s 18           amd 2004 No. 20 s 31(3)–(4); 2007 No. 41 s 225(5)–(6)

**Adopting proposed planning scheme**

prov hdg    amd 2004 No. 20 s 3 sch  
s 19           amd 2003 No. 64 s 3 sch; 2004 No. 20 s 3 sch; 2006 No. 11 s 77(2)

**Copy of notice and planning scheme to chief executive**

s 21           amd 2006 No. 11 s 77(3)

**SCHEDULE 1A—PROCESS FOR AMENDING PLANNING SCHEME TO  
INCLUDE A STRUCTURE PLAN**

sch 1A       ins 2007 No. 41 s 226

**SCHEDULE 2—PROCESS FOR MAKING TEMPORARY LOCAL PLANNING  
INSTRUMENTS****Proposal to prepare temporary local planning instrument**

s 1 prov hdg amd 2004 No. 20 s 3 sch

**Adopting proposed temporary local planning instrument**

prov hdg    amd 2004 No. 20 s 3 sch  
s 3           amd 2003 No. 64 s 3 sch; 2004 No. 20 s 3 sch

**Public notice of adoption of, and access to, temporary local planning instruments**

s 4           amd 1999 No. 11 s 14

**Copy of notice and temporary local planning instrument to chief executive**  
**s 5**            amd 2006 No. 11 s 78

**SCHEDULE 3—PROCESS FOR MAKING OR AMENDING PLANNING SCHEME POLICIES**

**Resolution proposing action**  
**s 1**            amd 2003 No. 64 s 3 sch

**Consultation stage does not apply in certain circumstances**  
**s 4A**          ins 2006 No. 11 s 79(1)

**Resolution about adopting proposed planning scheme policy or amendment**  
**s 5**            amd 2003 No. 64 s 3 sch; 2006 No. 11 s 3 sch

**Public notice of adoption of, and access to, planning scheme policy or amendment**  
**s 7**            amd 2000 No. 64 s 174 sch; 2003 No. 64 s 3 sch

**Copy of notice and policy or amendment to chief executive**  
**s 8**            amd 2006 No. 11 s 79(2)

**SCHEDULE 4—PROCESS FOR MAKING OR AMENDING STATE PLANNING POLICIES**

**Minister must notify intention to prepare proposed State planning policy**  
**s 1**            amd 1998 No. 13 s 176(1)

**Minister may prepare proposed State planning policy or amendment**  
**s 2**            amd 1998 No. 13 s 176(2)

**Consultation stage does not apply in certain circumstances**  
**s 6**            amd 1998 No. 13 s 176(3)

**Adopting proposed State planning policy or amendment**  
**s 7 prov hdg** amd 2004 No. 20 s 3 sch

**Public notice of adoption of, and access to, State planning policy or amendment**  
**s 9**            amd 2000 No. 64 s 174 sch

**Copies of State planning policies to local governments**  
**s 10**          sub 2003 No. 64 s 108

**SCHEDULE 5—COMMUNITY INFRASTRUCTURE**  
 amd 1998 No. 13 s 177; 2000 No. 4 s 84; 2003 No. 64 s 34

**SCHEDULE 6—PROCESS FOR MINISTERIAL DESIGNATIONS**  
 om 2003 No. 64 s 7

**SCHEDULE 7—PROCESS FOR MINISTERIAL DESIGNATION IF CONSULTATION HAS PREVIOUSLY BEEN CARRIED OUT**  
 om 2003 No. 64 s 7

**SCHEDULE 8—ASSESSABLE DEVELOPMENT AND SELF-ASSESSABLE DEVELOPMENT**

**sch hdg**      sub 2004 No. 20 s 3 sch  
**sch**            amd 1998 No. 13 s 178; 1998 No. 31 s 57; 1998 No. 43 s 29; 1999 No. 11 s 15; 1999 No. 59 s 51; 1999 No. 73 s 179 sch 3; 1999 No. 90 s 84 (amd 2000 No. 35 s 15); 2000 No. 4 s 85; 2000 No. 34 s 1144 sch 2 (amd 2001 No. 75 s 115(4)–(12)) (amds 18–19 (retro)); 2000 No. 64 ss 59, 174 sch;

2001 No. 28 s 189(1) sch 1; 2002 No. 10 s 7; 2003 No. 6 s 125; 2003 No. 10 s 10; 2003 No. 24 s 46; 2003 No. 28 s 38; 2001 No. 93 s 21 (amd 2003 No. 64 s 119); 2003 No. 32 s 28; 1994 No. 8 s 491(3) sch 5 (amd 2003 No. 54 ss 34, 39); 2003 No. 74 s 155 sch 1; 2004 No. 5 s 8 sch; 2004 No. 1 s 32; 2004 No. 1 s 32  
 sub 2003 No. 64 s 109 (amd 2004 No. 1 s 36(1))  
 amd 2003 No. 95 s 54; 2004 No. 20 s 3 sch; 2004 No. 48 s 143; 2003 No. 82 s 80 (amd 2004 No. 20 s 49); 2004 No. 40 s 25; 2005 No. 41 s 8; 2005 No. 49 s 89 sch; 2005 No. 42 s 52 sch 1; 2005 No. 53 s 113; 2006 No. 11 s 80, s 3 sch; 2006 No. 36 s 93; 2006 No. 59 ss 45, 85 sch; 2007 No. 17 s 60; 2007 No. 19 s 8; 2007 No. 41 s 227; 2007 No. 57 s 7; 2007 No. 59 s 152 sch

#### **SCHEDULE 8A—ASSESSMENT MANAGER FOR DEVELOPMENT APPLICATIONS**

**sch hdg** amd 2006 No. 59 s 85 sch  
**sch** ins 2003 No. 64 s 109 (amd 2004 No. 1 s 36(2))  
 amd 2003 No. 95 s 55; 2004 No. 20 s 3 sch; 2004 No. 48 s 144; 2003 No. 82 s 82 (amd 2004 No. 20 s 50); 2004 No. 40 s 26; 2005 No. 42 s 52 sch 1; 2005 No. 19 s 175; 2006 No. 11 s 81, s 3 sch; 2006 No. 36 s 94

#### **SCHEDULE 9—DEVELOPMENT THAT IS EXEMPT FROM ASSESSMENT AGAINST A PLANNING SCHEME**

**sch hdg** amd 2006 No. 59 s 85 sch  
**sch** prev sch 9 amd 1998 No. 13 s 179  
 om R1 (see RA s 40)  
 pres sch 9 ins 2003 No. 64 s 109 (amd 2004 No. 5 s 8 sch; 2004 No. 1 s 36(3))  
 amd 2004 No. 20 s 3 sch; 2004 No. 48 s 145; 2004 No. 25 s 998; 2003 No. 82 s 82; 2004 No. 12 s 144 (amd 2005 No. 8 s 83); 2006 No. 11 s 3 sch; 2007 No. 17 s 61; 2007 No. 41 s 228

#### **SCHEDULE 10—DICTIONARY**

def “**accrediting body**” sub 1998 No. 13 s 180(1)–(2)  
 om 2002 No. 77 s 217  
 amd 2003 No. 64 s 110(1) (amdt could not be given effect)  
 def “**acquisition land**” ins 2006 No. 54 s 19  
 def “**administering authority**” ins 2003 No. 64 s 110(3)  
 def “**agency’s referral day**” amd 1998 No. 13 s 180(3)  
 sub 1998 No. 31 s 58(1)–(2)  
 def “**ancillary works and encroachments**” ins 2003 No. 64 s 110(3)  
 amd 2006 No. 11 s 3 sch  
 def “**applicable code**” ins 1998 No. 13 s 180(2)  
 amd 2000 No. 4 s 86(3)  
 def “**applicant**” sub 2006 No. 11 s 82(1), (3)  
 def “**applicant’s appeal period**” sub 2007 No. 41 s 229(1)–(2)  
 def “**appropriately qualified**” ins 2004 No. 20 s 32(4)  
 def “**aquaculture**” ins 2003 No. 82 s 83  
 def “**artificial waterway**” ins 2003 No. 64 s 110(3)  
 amd 2004 No. 20 s 3 sch  
 def “**assessable development**” sub 1998 No. 13 s 180(1)–(2); 2007 No. 41 s 229(1)–(2)

- def “**assessing authority**” amd 1998 No. 31 s 58(3); 1999 No. 11 s 16(1) (retro)  
 sub 2000 No. 4 s 86(1)–(2)  
 amd 2004 No. 20 s 32(5); 2006 No. 36 s 95(3); 2007 No. 41 s 229(3)
- def “**associated powerline infrastructure**” ins 2003 No. 82 s 83
- def “**authorised electricity entity**” ins 2003 No. 28 s 39
- def “**bed and banks**” ins 2005 No. 41 s 9(2)
- def “**benchmark development sequence**” sub 1999 No. 11 s 16(2)  
 om 2003 No. 64 s 35(1)
- def “**building**” sub 1998 No. 13 s 180(1)–(2)
- def “**building assessment provisions**” ins 2006 No. 36 s 95(2)  
 amd 1975 No. 11 s 283(3)(b) (amd 2006 No. 36 s 69)
- def “**building certifier**” ins 2006 No. 36 s 95(2)
- def “**Building Code of Australia**” ins 2006 No. 36 s 95(2)
- def “**building development application**” ins 2006 No. 36 s 95(2)
- def “**building referral agency**” ins 1998 No. 31 s 58(2)  
 om 2006 No. 36 s 95(1)
- def “**business day**” ins 2003 No. 64 s 110(3)
- def “**capital costs**” om 2003 No. 64 s 35(1)
- def “**category 2 area**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**category 3 area**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**category 4 area**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**category X area**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**certificate of classification**” ins 2007 No. 41 s 229(2)
- def “**chief executive (environment)**” ins 2003 No. 82 s 83
- def “**chief executive (fisheries)**” ins 2003 No. 82 s 83
- def “**clear**” ins 1999 No. 90 s 85  
 sub 2004 No. 1 s 33(1)–(2)
- def “**coastal dune**” ins 2003 No. 64 s 110(3)
- def “**coastal management district**” ins 2003 No. 64 s 110(3)  
 amd 2004 No. 20 s 3 sch
- def “**code**” sub 1998 No. 13 s 180(1)–(2)  
 amd 2007 No. 41 s 229(4)
- def “**common material**” amd 2007 No. 41 s 229(5)
- def “**Commonwealth Environment Act**” ins 2006 No. 11 s 82(3)
- def “**concurrence agency code**” ins 2000 No. 4 s 86(2)
- def “**consultation period**” sub 2003 No. 64 s 8  
 amd 2004 No. 20 s 32(6); 2007 No. 41 s 229(6)–(7)
- def “**coordinating agency**” ins 2007 No. 41 s 229(2)
- def “**coordinating agency assessment period**” ins 2007 No. 41 s 229(2)
- def “**coordinating agency conditions**” ins 2007 No. 41 s 229(2)
- def “**core matter**” sub 2004 No. 20 s 3 sch
- def “**currency period**” om 2006 No. 11 s 82(1)
- def “**dead marine wood**” ins 2003 No. 82 s 83
- def “**declared fish habitat area**” ins 2003 No. 82 s 83
- def “**declared master planned area**” ins 2007 No. 41 s 229(2)
- def “**declared pest**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**deemed refusal**” amd 2000 No. 4 s 86(4)–(6); 2004 No. 20 s 32(7); 2006 No. 11 s 82(4); 2007 No. 41 s 229(8)
- def “**designated region**” ins 2007 No. 41 s 229(2)

- def “**desired standard of service**” sub 2003 No. 64 s 35(1)–(2)
- def “**destroy**” ins 1999 No. 90 s 85
- def “**development application (superseded planning scheme)**” ins 1998 No. 13 s 180(2)  
 amd 2004 No. 20 s 3 sch; 2006 No. 11 s 82(5)
- def “**development infrastructure**” ins 2003 No. 64 s 35(2)  
 amd 2006 No. 11 s 82(6); 2007 No. 41 s 229(9)
- def “**development infrastructure item**” om 2003 No. 64 s 35(1)
- def “**development offence**” amd 2000 No. 4 s 86(7)  
 sub 2004 No. 20 s 32(2), (4)  
 amd 2007 No. 41 s 229(10)
- def “**draft EIS**” ins 2006 No. 11 s 82(3)
- def “**draft regulatory provisions**” ins 2004 No. 20 s 32(3)  
 om 2007 No. 41 s 229(1)
- def “**draft terms of reference**” ins 2006 No. 11 s 82(3)
- def “**drainage work**” sub 2002 No. 77 s 200(1)–(2)
- def “**EIS**” ins 2003 No. 64 s 110(3)
- def “**EIS assessment report**” ins 2003 No. 64 s 110(3)
- def “**EIS process**” ins 2006 No. 11 s 82(3)
- def “**emergency work**” ins 2004 No. 20 s 32(4)
- def “**environmentally relevant activity**” ins 2003 No. 95 s 56
- def “**environmental management plan**” ins 2006 No. 11 s 82(3)
- def “**environmental nuisance**” ins 2006 No. 11 s 82(3)  
 om 2006 No. 59 s 85 sch
- def “**erosion prone area**” ins 2003 No. 64 s 110(3)
- def “**essential management**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37)  
 amd 2007 No. 19 s 9(1)–(2)
- def “**establishment cost**” ins 2003 No. 64 s 35(2)  
 amd 2004 No. 20 s 32(8); 2006 No. 11 s 82(7)–(9)
- def “**excluded work**” ins 2004 No. 48 s 146
- def “**forest practice**” ins 1999 No. 90 s 85  
 sub 2004 No. 1 s 33(1)–(2)  
 amd 2007 No. 19 s 9(3)–(4)
- def “**freehold land**” ins 1999 No. 90 s 85
- def “**freehold land**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))  
 om 2006 No. 11 s 82(10)
- def “**grounds**” ins 2006 No. 11 s 82(3)
- def “**hazardous contaminant**” ins 2003 No. 95 s 56
- def “**high-water mark**” ins 2003 No. 64 s 110(3)
- def “**indigenous freshwater fish**” ins 2003 No. 82 s 83
- def “**indigenous land**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**indigenous marine fish**” ins 2003 No. 82 s 83
- def “**information request**” amd 2006 No. 11 s 3 sch
- def “**infrastructure charge**” sub 2003 No. 64 s 35(1)–(2)
- def “**infrastructure charges notice**” ins 2003 No. 64 s 35(2)
- def “**infrastructure charges plan**” sub 2003 No. 64 s 35(1)–(2)
- def “**infrastructure charges register**” ins 2003 No. 64 s 35(2)
- def “**infrastructure charges schedule**” ins 2003 No. 64 s 35(2)
- def “**infrastructure provider**” ins 2003 No. 64 s 35(2)
- def “**IPA planning scheme**” ins 2006 No. 11 s 82(3)

- def **“lake”** ins 2005 No. 41 s 9(2)
- def **“life cycle cost”** om 2006 No. 11 s 3 sch
- def **“local community purpose”** om 2003 No. 64 s 35(1)
- def **“local government”** ins 2007 No. 41 s 229(2)
- def **“local government area”** sub 1999 No. 59 s 52  
 amd 2004 No. 37 s 86 sch 1  
 sub 2007 No. 59 s 152 sch
- def **“local government road”** ins 2004 No. 40 s 27
- def **“local infrastructure agreement”** ins 2007 No. 41 s 229(2)
- def **“lopping”** ins 1999 No. 90 s 85
- def **“Lyngbya”** ins 2007 No. 57 s 8
- def **“making”** ins 2007 No. 41 s 229(2)
- def **“marine plant”** ins 2003 No. 82 s 83
- def **“master plan”** ins 2007 No. 41 s 229(2)
- def **“master plan application”** ins 2007 No. 41 s 229(2)
- def **“master planned area”** ins 2007 No. 41 s 229(2)
- def **“master planned area declaration”** ins 2007 No. 41 s 229(2)
- def **“master planning unit”** ins 2007 No. 41 s 229(2)
- def **“mining activity”** ins 2003 No. 95 s 56
- def **“Minister”** sub 2004 No. 20 s 32(1), (3)  
 amd 2007 No. 41 s 229(11)
- def **“minor amendment”** sub 2003 No. 64 s 110(2) and (4)
- def **“mobile and temporary environmentally relevant activity”** ins 2003 No. 95 s 56
- def **“native forest practice”** ins 2004 No. 1 s 33(2)
- def **“native vegetation”** ins 1999 No. 90 s 85  
 sub 2004 No. 1 s 33(1)–(2)
- def **“negotiated decision notice”** amd 2000 No. 64 s 174 sch
- def **“negotiated notice”** ins 2007 No. 41 s 229(2)
- def **“nonindigenous freshwater fish”** ins 2003 No. 82 s 83
- def **“non-trunk infrastructure”** ins 2003 No. 64 s 35(2)
- def **“notifiable activity”** ins 2003 No. 95 s 56
- def **“notification period”**, for a development application, see section 3.4.5, om 2006 No. 59 s 85 sch
- def **“notification period”**, for a development application to which chapter 5, part 8A applies, ins 2003 No. 82 s 83
- def **“participating agency”** ins 2007 No. 41 s 229(2)
- def **“petroleum activity”** ins 2003 No. 95 s 56
- def **“plan”** ins 1998 No. 31 s 58(2)
- def **“planning instrument”** sub 2004 No. 20 s 32(1), (3)  
 amd 2007 No. 41 s 229(12)
- def **“plans for trunk infrastructure”** ins 2003 No. 64 s 35(2)
- def **“plumbing work”** sub 2002 No. 77 s 200(1)–(2)
- def **“ponded pasture”** ins 2003 No. 64 s 110(3)
- def **“port authority”** ins 2003 No. 64 s 110(3)
- def **“preliminary consultation period”** ins 2003 No. 64 s 110(4)
- def **“premises”** amd 1999 No. 11 s 16(3)
- def **“prescribed concurrence agency”** ins 2003 No. 82 s 83
- def **“prescribed tidal work”** ins 2003 No. 64 s 110(3)
- def **“principal submitter”** amd 1998 No. 13 s 180(4)



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- def “**priority infrastructure area**” ins 2003 No. 64 s 35(2)  
 amd 2006 No. 11 s 82(11)
- def “**priority infrastructure plan**” ins 2003 No. 64 s 35(2)  
 amd 2006 No. 11 s 82(12)–(13)
- def “**private certifier**” sub 2006 No. 36 s 95(1)–(2)
- def “**private certifier (class A)**” ins 2006 No. 36 s 95(2)
- def “**properly made application**” sub 2003 No. 64 s 110(1), (3)
- def “**properly made submission**” amd 2004 No. 20 s 32(9); 2007 No. 41 s 229(13)–(14)
- def “**property map of assessable vegetation**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**proponent**” ins 2006 No. 11 s 82(3)
- def “**public sector entity**” sub 2003 No. 64 s 110(2) and (4)
- def “**quarry material**” ins 2003 No. 64 s 110(3)  
 amd 2005 No. 41 s 9(3)
- def “**Queensland Competition Authority**” ins 2007 No. 41 s 229(2)
- def “**referral assistance**” om 2006 No. 11 s 82(2)
- def “**referral coordination**” om 2006 No. 11 s 82(2)
- def “**regional ecosystem map**” ins 2003 No. 64 s 110(3)
- def “**regional plan**” ins 2007 No. 41 s 229(2)
- def “**regional planning Minister**” ins 2004 No. 20 s 32(3)  
 sub 2007 No. 41 s 229(1)–(2)
- def “**regulated infrastructure charge**” ins 2003 No. 64 s 35(2)
- def “**regulated infrastructure charges notice**” ins 2003 No. 64 s 35(2)
- def “**regulated infrastructure charges register**” ins 2003 No. 64 s 35(2)
- def “**regulated infrastructure charges schedule**” ins 2003 No. 64 s 35(2)
- def “**regulated State infrastructure charge**” ins 2007 No. 41 s 229(2)
- def “**regulated State infrastructure charges notice**” ins 2007 No. 41 s 229(2)
- def “**regulated State infrastructure charges schedule**” ins 2007 No. 41 s 229(2)
- def “**regulatory provisions**” ins 2004 No. 20 s 32(3)  
 om 2007 No. 41 s 229(1)
- def “**relevant area**” ins 2007 No. 41 s 229(2)
- def “**remnant endangered regional ecosystem**” ins 2003 No. 64 s 110(3)
- def “**remnant not of concern regional ecosystem**” ins 2003 No. 64 s 110(3)  
 (amd 2004 No. 1 s 37(2))
- def “**remnant of concern regional ecosystem**” ins 2003 No. 64 s 110(3)  
 (amd 2004 No. 1 s 37(2))
- def “**remnant vegetation**” ins 2003 No. 64 s 110(3)
- def “**replacement private certifier**” om 2006 No. 36 s 95(1)
- def “**request for information**” ins 2007 No. 41 s 229(2)
- def “**reviewer’s report**” om 2006 No. 11 s 3 sch
- def “**road works**” ins 2004 No. 40 s 27
- def “**routine management**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37)  
 amd 2007 No. 19 s 9(5)–(6)
- def “**self-assessable development**” sub 1998 No. 13 s 180(1)–(2); 2007 No. 41 s 229(1)–(2)
- def “**SEQ region**” ins 2004 No. 20 s 32(3)  
 sub 2007 No. 41 s 229(1)–(2)

- def “**SEQ regional plan**” ins 2004 No. 20 s 32(3)  
sub 2007 No. 41 s 229(1)–(2)
- def “**serious environmental harm**” ins 2007 No. 41 s 229(2)
- def “**site management plan**” ins 2003 No. 95 s 56
- def “**special agreement Act**” ins 2003 No. 95 s 56
- def “**specified activity**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))  
amd 2004 No. 12 s 145 (amd 2005 No. 8 s 83); 2005 No. 41 s 9(4); 2006  
No. 59 s 85 sch; 2006 No. 60 s 177 sch
- def “**Standard Building Regulation**” ins 1998 No. 13 s 180(2)  
om 2006 No. 36 s 95(1)
- def “**Standard Plumbing and Drainage Regulation**” ins 2002 No. 77 s  
200(2)
- def “**State coastal land**” ins 2003 No. 64 s 110(3)  
amd 2004 No. 20 s 3 sch
- def “**State infrastructure**” ins 2003 No. 64 s 35(2)  
amd 2007 No. 41 s 229(15)
- def “**State infrastructure agreement**” ins 2007 No. 41 s 229(2)
- def “**State infrastructure provider**” ins 2003 No. 64 s 35(2)  
sub 2007 No. 41 s 229(1)–(2)
- def “**State planning regulatory provision**” ins 2007 No. 41 s 229(2)
- def “**statement of intent**” ins 2003 No. 64 s 35(2)
- def “**strategic port land**” ins 2003 No. 64 s 110(3)  
amd 2006 No. 11 s 3 sch
- def “**structure plan**” ins 2007 No. 41 s 229(2)
- def “**structure plan amendment**” ins 2007 No. 41 s 229(2)
- def “**subscriber connection**” ins 2003 No. 64 s 110(3)
- def “**suitability statement**” ins 2003 No. 95 s 56
- def “**superseded planning scheme**” sub 2000 No. 4 s 86(1)–(2)
- def “**supporting material**” ins 2003 No. 64 s 110(3)
- def “**terms of reference**” ins 2006 No. 11 s 82(3)
- def “**tidal area**” ins 2003 No. 64 s 110(3)
- def “**tidal water**” ins 2003 No. 64 s 110(3)
- def “**tidal works**” ins 2003 No. 64 s 110(3)  
sub 2004 No. 20 s 32(2), (4)
- def “**transitional development application**” om 1998 No. 13 s 180(1)
- def “**trunk infrastructure**” ins 2003 No. 64 s 35(2)
- def “**trust land**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**urban area**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37)  
amd 2006 No. 11 s 82(14)
- def “**urban development area**” ins 2007 No. 41 s 229(2)
- def “**urban purposes**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**VMA**” ins 2003 No. 64 s 110(3) (amd 2004 No. 1 s 37(2))
- def “**voluntary environmental agreement**” ins 2006 No. 54 s 19
- def “**watercourse**” ins 2003 No. 64 s 110(3)  
sub 2005 No. 41 s 9(1)–(2)
- def “**water infrastructure facility**” ins 2007 No. 17 s 62
- def “**waterway barrier works**” ins 2003 No. 82 s 83
- def “**wild river area**” ins 2005 No. 42 s 52 sch 1  
amd 2006 No. 59 s 85 sch
- def “**wild river declaration**” ins 2005 No. 42 s 52 sch 1

amd 2006 No. 59 s 85 sch  
 def “**wild river high preservation area**” ins 2006 No. 59 s 85 sch

## **8 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

### **Form 1 Development Application**

#### **IDAS Assessment Checklist—Version 21**

pubd gaz 29 February 2008 p 1009

#### **Part A Common details—Version 3**

pubd gaz 29 February 2008 p 1009

#### **Part B Building work requiring assessment against the Building Act 1975—Version 3**

pubd gaz 29 February 2008 p 1009

#### **Part C Heritage registered place—Version 2**

pubd gaz 29 February 2008 p 1009

#### **Part D Material change of use assessable against a planning scheme—Version 3**

pubd gaz 29 February 2008 p 1009

#### **Part E Building &/or operational work assessable against a planning scheme—Version 3**

pubd gaz 29 February 2008 p 1009

#### **Part F Reconfiguring a lot—Version 3**

pubd gaz 29 February 2008 p 1009

#### **Part G Environmentally Relevant Activity (ERA)—Version 4**

pubd gaz 29 February 2008 p 1009

#### **Part H Licensed brothel—Version 4**

pubd gaz 29 February 2008 p 1009

#### **Part I Strategic port land—Version 2**

pubd gaz 29 February 2008 p 1009

#### **Part J Clearing native vegetation under the Vegetation Management Act 1999—Version 5**

pubd gaz 29 February 2008 p 1009

#### **Part K<sub>1</sub> Taking artesian or sub-artesian water—Version 5**

pubd gaz 29 February 2008 p 1009

#### **Part K<sub>2</sub> Watercourse pump—Version 3**

pubd gaz 29 February 2008 p 1009

**Part K<sub>3</sub> Water storage—Version 3**

pubd gaz 29 February 2008 p 1009

**Part K<sub>4</sub> Gravity diversion from a watercourse—Version 3**

pubd gaz 29 February 2008 p 1009

**Part K<sub>5</sub> Referable dam—Version 3**

pubd gaz 29 February 2008 p 1009

**Part K<sub>6</sub> Watercourse diversion—Version 3**

pubd gaz 29 February 2008 p 1009

**Part K<sub>7</sub> removal of quarry material from a watercourse—Version 3**

pubd gaz 29 February 2008 p 1009

**Part K<sub>8</sub> Taking overland flow—Version 4**

pubd gaz 29 February 2008 p 1009

**Part K<sub>9</sub> Work in a watercourse not covered by Parts K1 – K8 or K10—Version 3**

pubd gaz 29 February 2008 p 1009

**Part K<sub>10</sub> Interfering with overland flow—Version 2**

pubd gaz 29 February 2008 p 1009

**Part L Major hazard facility or possible major hazard facility—Version 3**

pubd gaz 29 February 2008 p 1009

**Part M Tidal work (other than prescribed tidal work) & coastal management districts—Version 3**

pubd gaz 29 February 2008 p 1009

**Part N Contaminated land—Version 2**

pubd gaz 29 February 2008 p 1009

**Part O<sub>1</sub> Aquaculture—Version 2**

pubd gaz 29 February 2008 p 1009

**Part O<sub>2</sub> Marine plants; declared Fish Habitat Areas—Version 2**

pubd gaz 29 February 2008 p 1009

**Part O<sub>3</sub> Building or raising waterway barrier works—Version 2**

pubd gaz 29 February 2008 p 1009

**Part P Prescribed tidal work—Version 2**

pubd gaz 29 February 2008 p 1009

**Part Q Agricultural activities in a wild river area—Version 2**

pubd gaz 29 February 2008 p 1009

**Part R Animal husbandry activities in a wild river area—Version 2**

pubd gaz 29 February 2008 p 1009

**Attachment 1 Development Application (superseded planning scheme)—Version 3**

pubd gaz 29 February 2008 p 1009

- Attachment 2 Preliminary approval overriding the planning scheme—Version 3**  
pubd gaz 29 February 2008 p 1009
- Form 2 Version 4—Development Application—Request to change an existing approval**  
pubd gaz 30 November 2007 p 1822
- Form 7 Version 1—Public Notification**  
pubd gaz 27 March 1998 p 1305
- Form 8 Version 1—Notification of engagement of a private certifier to owner**  
pubd gaz 7 November 2003 p 754
- Form 10 Version 3—Building and Development Tribunals Appeal Notice**  
pubd gaz 14 November 2003 p 868
- Form 17 Version 1—Statutory Declaration**  
pubd gaz 3 July 1998 p 1183
- Form 18 Version 1.1—Notification of engagement of a private certifier to owner**  
pubd gaz 21 November 2003 p 957
- Form 20 Version 1—Lodgement of building work documentation**  
pubd gaz 7 November 2003 p 754
- Form PEC–1 Version 2—Heading to documents**  
pubd gaz 19 May 2000 p 214
- Form PEC–2 Version 04/2005—Notice of Appeal**  
pubd gaz 8 April 2005 p 1130
- Form PEC–3 Version 2—Originating application**  
pubd gaz 19 May 2000 p 214
- Form PEC–4 Version 04/2005—Application in Pending Proceeding**  
pubd gaz 8 April 2005 p 1130
- Form PEC–5 Version 2—Affidavit**  
pubd gaz 19 May 2000 p 214
- Form PEC–6 Version 2—Entry of appearance**  
pubd gaz 19 May 2000 p 214
- Form PEC–7 Version 2—Election to co-respond**  
pubd gaz 19 May 2000 p 214
- Form PEC–8 Version 2—Judgment/Order**  
pubd gaz 19 May 2000 p 214
- Form PEC–9 Version 2—Notice requiring optional early settlement procedure**  
pubd gaz 19 May 2000 p 214
- Form PEC–10 Version 2—Entry of proceeding**  
pubd gaz 19 May 2000 p 214
- Form PEC–11—Judgement of the court**  
pubd gaz 25 June 1999 p 920

**Form PEC-12—Notice of election**

pubd gaz 25 June 1999 p 920

**9 Table of renumbered provisions**

under the Reprints Act 1992 s 43 as required by the Integrated Planning Act 1997 s 5.8.9

[Reprint No. 6]

Previous	Renumbered as
ch 5, pt 7A hdg . . . . .	ch 5, pt 8 hdg
5.7A.1 . . . . .	5.8.1
5.7A.2 . . . . .	5.8.2
5.7A.3 . . . . .	5.8.3
5.7A.4 . . . . .	5.8.4
5.7A.5 . . . . .	5.8.5
5.7A.6 . . . . .	5.8.6
5.7A.7 . . . . .	5.8.7
5.7A.8 . . . . .	5.8.8
5.7A.9 . . . . .	5.8.9
5.7A.10 . . . . .	5.8.10
5.7A.11 . . . . .	5.8.11
5.7A.12 . . . . .	5.8.12
5.7A.13 . . . . .	5.8.13
5.7A.14 . . . . .	5.8.14
5.7A.15 . . . . .	5.8.15
ch 5, pt 8 hdg . . . . .	ch 5, pt 9 hdg
5.8.1 . . . . .	5.9.1
5.8.1A . . . . .	5.9.2
5.8.2 . . . . .	5.9.3
5.8.3 . . . . .	5.9.4
5.8.4 . . . . .	5.9.5
5.8.5 . . . . .	5.9.6
5.8.6 . . . . .	5.9.7
5.8.7 . . . . .	5.9.8
5.8.8 . . . . .	5.9.9

**10 Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in footnotes to the text.