



Southern Moreton Bay Islands Development Entitlements Protection Act 2004

Current as at 3 July 2017

Reprint note

This is the last reprint before repeal. Repealed on 11 April 2019 by 2019 Act No. 11 s 230.

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Queensland

Southern Moreton Bay Islands Development Entitlements Protection Act 2004

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Southern Moreton Bay Islands Development Entitlements Protection Act 2004

An Act to establish development entitlements for particular land on the Southern Moreton Bay Islands

1 Short title

This Act may be cited as the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*.

2 Definitions

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

3 Application of Act

This Act applies for an SMBI application and an SMBI request.

4 What is an SMBI application

An *SMBI application* is a superseded planning scheme application—

- (a) in relation to a class 1 building on prescribed land; and
- (b) made by or on behalf of an owner of the prescribed land; and
- (c) for which the applicant states the owner wishes this Act to apply for its assessment.

4A What is an SMBI request

An *SMBI request* is a request mentioned in the Planning Act, section 29(4)(b) to a local government—

- (a) about development that would not have required a development permit under the superseded planning scheme but requires a development permit under the Redland's IPA planning scheme; and
- (b) in relation to a class 1 building on prescribed land; and
- (c) made by or on behalf of the owner of the prescribed land within 10 years after the day the Redland's IPA planning scheme has effect; and
- (d) for which the person making the request states the owner wishes this Act to apply.

5 What is prescribed land

Prescribed land is land on the Southern Moreton Bay Islands that is—

- (a) included in the Residential A, Comprehensive Development or Rural Non Urban zone immediately before the Redland's IPA planning scheme had effect; and
- (b) located entirely in the Conservation zone under the scheme; and
- (c) prescribed under a regulation.

Editor's note—

The Redland's IPA planning scheme took effect on 30 March 2006.

6 Who is an owner

- (1) An *owner*, of prescribed land, means an individual who is solely or as a joint tenant or as a tenant in common, legally or beneficially entitled to an estate of freehold in possession in the land immediately before the end of the consultation period for the Redland's IPA planning scheme.
- (2) The term does not include—

- (a) a person who is an executor, administrator or trustee in relation to the individual; or
- (b) a mortgagee in possession of the land.

7 Modified application of Planning Act

- (1) Despite the Planning Act, section 29(6), if a person makes an SMBI request, the local government must agree to the request.
- (2) The Planning Act, chapter 2, part 4, division 1 does not apply for an SMBI application.
- (3) For the Planning Act, an SMBI application must be assessed under the superseded planning scheme.
- (4) Despite the Planning Act, section 73, any development approval in relation to an SMBI application lapses if the land, the subject of the application, is sold or transferred to an individual other than another owner of the land before a final inspection certificate, under the *Building Act 1975*, is issued for the building for which the development approval was issued.
- (5) Prescribed land may not be taken under the Planning Act, section 263 unless all owners of the land agree.

8 Certain rights unaffected

- (1) This Act does not stop an owner of prescribed land from claiming compensation under the Planning Act, chapter 2, part 4, division 2 in relation to a public purpose change affecting the land if an SMBI application or SMBI request has not been made for the land.
- (2) In this section—
public purpose change see the Planning Act, section 30(3).

9 Council may buy land at any time

This Act does not stop the council from buying prescribed land at any time.

10 Regulation-making power

The Governor in Council may make regulations under this Act.

11 Transitional provision for Sustainable Planning Act 2009

- (1) This section applies to a development application (superseded planning scheme) as defined under this Act before the commencement that was made but not decided before the commencement.
- (2) This Act as in force before the commencement continues to apply for the application as if the *Sustainable Planning Act 2009* had not commenced.
- (3) In this section—
commencement means the day this section commences.

12 Transitional provision for Planning (Consequential) and Other Legislation Amendment Act 2016

- (1) Subsection (2) applies to an SMBI application or SMBI request, as defined in this Act immediately before the commencement, made before the commencement.
- (2) This Act, as in force immediately before the commencement, continues to apply in relation to the SMBI application or SMBI request as if the *Planning (Consequential) and Other Legislation Amendment Act 2016* had not been enacted.

Note—

See also the Planning Act, chapter 8, part 1.

- (3) Subsection (4) applies to a development approval in relation to an SMBI application, as defined in this Act immediately before the commencement, given before the commencement.
- (4) Section 7(4), as in force immediately before the commencement, continues to apply in relation to the development approval.

Schedule Dictionary

section 2

assessment manager, for a development application, means the person who is the assessment manager under the Planning Act for the application.

class 1 building means a class 1 building within the meaning of the *Building Act 1975*.

consultation period, for the Redland's IPA planning scheme, see the repealed *Integrated Planning Act 1997*, schedule 10.

council means—

- (a) in relation to any matter arising before the commencement of this definition—the Redland Shire Council; or
- (b) otherwise—the Redland City Council.

development see the Planning Act, schedule 2.

development application means a development application under the Planning Act.

development approval means a development approval under the Planning Act.

development permit means a development permit under the Planning Act.

owner see section 6.

Planning Act means the *Planning Act 2016*.

prescribed land see section 5.

Redland's IPA planning scheme means the planning scheme for the council that took effect on 30 March 2006.

SMBI application see section 4.

SMBI request see section 4A.

Southern Moreton Bay Islands means Karragarra Island, Lamb Island, Macleay Island, Perulpa Island and Russell Island.

superseded planning scheme means the planning scheme in force for the Redland local government area immediately before the Redland's IPA planning scheme took effect.

superseded planning scheme application means a development application—

- (a) for development to which the superseded planning scheme applies; and
- (b) made to the council as assessment manager for the application; and
- (c) made within 10 years after the day the Redland's IPA planning scheme had effect.