

# LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT

No. 61 of 1990

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No. 61 of 1990

**An Act to provide for town planning and related environmental matters in Local Authority Areas, including the City of Brisbane, and for related purposes**

[ASSENTED TO 18TH SEPTEMBER, 1990]



BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

## PART 1—PRELIMINARY

**1.1 Short title.** This Act may be cited as the *Local Government (Planning and Environment) Act 1990*.

**1.2 Commencement.** (1) Section 1.1 and this section commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act commences on a day appointed by Proclamation.

(3) The day appointed under subsection (2) is in this Act referred to as the commencement of this Act.

**1.3 Objectives.** The objectives of the Act are—

- (a) to provide a code by which a Local Authority or the Minister may undertake the planning of an area to facilitate orderly development and the protection of the environment;
- and
- (b) to provide an adequate framework for a person to apply for approval in respect of a development proposal and to provide for appropriate appeal rights in respect thereof.

**1.4 Interpretation.** (1) In this Act, unless the contrary intention appears—

“access” means the practical means of entry for persons and vehicles onto an allotment from a constructed road which abuts the allotment or, where permitted by a Local Authority pursuant to section 5.12, access by means of an easement;

“adjoining allotment”, in relation to a particular allotment, means an allotment which has a common boundary with the particular allotment (whether such boundary is measurable or not);

“adjoining owner”, in relation to a particular allotment, means—

- (a) where an adjoining allotment is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985-1989*—the primary thoroughfare body corporate within the meaning of the relevant Act;
- (b) where an adjoining allotment is an allotment in respect of which a time sharing scheme has been implemented and the name and address of a person has been notified pursuant to section 52A of the Local Government Act—that person;
- (c) where an adjoining allotment is land granted in trust or reserved and set apart and placed under the control of

trustees pursuant to the *Land Act 1962-1989*—the trustees of that land;

(d) in all other cases—the owner of an adjoining allotment; “allotment”—

(a) means a single parcel of land—

(i) the current boundaries of which are defined on a plan of survey deposited in the Department of Geographic Information or registered under the Real Property Acts;

(ii) leased or intended to be leased as a miner’s homestead lease under the *Miner’s Homestead Leases Act 1913-1986*;

(b) does not include a lot registered under the *Building Units and Group Titles Act 1980-1988*;

“amend”, in relation to a planning scheme, includes to add to, to omit, to alter or to modify;

“application” means an application in writing;

“appropriate fee” means the fee—

(a) determined by resolution by a Local Authority in respect of applications and requests of a particular type; and

(b) which applies at the date a relevant application or request is lodged;

“approval” means—

(a) in respect of the Minister’s approval—the Minister’s approval in writing;

(b) in respect of the Local Authority’s approval— approval, with or without conditions, in writing;

“Area” means the district in which a Local Authority has jurisdiction;

“building”—

(a) means a fixed structure that is wholly or partly enclosed by walls and is roofed;

(b) includes a part of a building;

“by-law” means a by-law or ordinance made by a Local Authority;

“Chairman” means the Mayor or Chairman of a Local Authority or the President of a Joint Board;

“City of Brisbane Act” means the *City of Brisbane Act 1924-1989*;

“Clerk” means the person appointed by a Local Authority to act as Town Clerk or Shire Clerk or the person appointed by a Joint Board to act as the Clerk;

“consolidated planning scheme” means a planning scheme approved by the Governor in Council pursuant to section 2.17;

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“Court” means The Planning and Environment Court;

“Crown” means the Crown in right of the State;

“Crown land” means—

- (a) land that is not alienated by the Crown as to any estate or interest therein;
- (b) land for which a permit to occupy has issued under the *Land Act 1962-1989* and land for which a lease has issued under the *Irrigation Areas (Land Settlement) Act 1962-1972*;
- (c) land that is held by any person representing the Crown or by a trustee in trust for the Crown;
- (d) a road or land that is reserved and set apart or held in trust under the *Land Act 1962-1989* for a public purpose;
- (e) any other land, or any building or other structure or part thereof, that is occupied by the Crown or by any person representing the Crown;
- (f) harbour lands or industrial lands within the meaning of section 62A of the *Harbours Act 1955-1989* (other than land that is the subject of a sale or is leased for purposes other than harbour purposes),

and that, in the case specified in paragraph (c), (d) or (e), is not the subject of any sale or letting by the Crown, by the person representing the Crown or, as the case may be, by the trustee;

“development control plan” means a plan for the orderly growth, development or conservation of an area, that conforms with section 2.5 and is approved by the Governor in Council;

“Director” means the Director of Local Government;

“elected representatives” means those persons (other than senators) who represent in the Shire or Town Councils and the State and Commonwealth Parliaments the division, electoral ward or electorate, as the case may be, in which the relevant land is situated;

“economic impact assessment” means a report with respect to a major shopping development prepared pursuant to section 8.3;

“environment” includes—

- (a) ecosystems and their constituent parts including people and communities;
- (b) all natural and physical resources;
- (c) those qualities and characteristics of locations, places and areas, however large or small, which 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 which affect the matters referred to in paragraphs (a), (b) and (c) or which are affected by those matters;

“environmental impact statement” means a document prepared pursuant to section 8.2 which includes—

- (a) a description of the proposal;
  - (b) the terms of reference which set out the matters and things to be assessed in the conduct of the environmental impact study;
  - (c) a statement of the potential environmental impacts of the proposal;
- and
- (d) such information collected and assessed in an environmental impact study which substantiates the findings referred to in paragraph (c);

“erect” includes—

- (a) erect or commence or continue to erect;
  - (b) do, or commence or continue to do any work in the course of or for the purpose of erecting;
  - (c) perform any structural work or make or do any alteration, addition or rebuilding that increases the gross floor area of a building;
  - (d) move from one position on an allotment to another position on or partly on the same allotment or another allotment;
  - (e) re-erect, with or without alteration, on or partly on the same or another allotment;
- or
- (f) where a building or structure is located on more than one allotment—
    - (i) move to another position on the same allotments or any of them or to another allotment or allotments;
- or
- (ii) re-erect with or without alteration on another position on the same allotments or any of them or on another allotment or allotments;

“executive officer”, in relation to a body corporate, means each of the chairman of directors, managing director or other executive officer (by whatever name called) and every member of the executive body thereof (by whatever name called);

“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;

“harbour purposes” means a use—

- (a) directly in connexion with the management and operation of a harbour for the purposes of, or in connexion with, the transport of people, freight or commodities;
- or
- (b) for industry or other undertakings which require close geographical proximity to that harbour;

“interim development control provisions” means—

- (a) those regulations approved pursuant to section 2.22; and
- (b) those by-laws continued in force and effect pursuant to section 8.10 (5),  
for the purpose of regulating development in a proposed planning scheme area in a particular Local Authority Area pending the introduction of a planning scheme;

“Joint Board” means a Joint Local Authority Board constituted under the Local Government Act;

“Local Authority” means a Local Authority or Joint Board constituted under the Local Government Act for an Area or the Brisbane City Council constituted under the City of Brisbane Act, as the case may require;

“Local Government Act” means the *Local Government Act 1936-1989*;

“major shopping development” means a development or an extension of or part of a development which development, extension or part is predominantly or wholly used for retailing to the public and includes—

- (a) the use, for that purpose, of land exceeding 2.5 hectares in area (or such other area as the Governor in Council may from time to time prescribe);
- or
- (b) the erection of or the use, for that purpose, of an area of a building or structure or part thereof exceeding 6 000 square metres gross floor area (or such other area as the Governor in Council may from time to time prescribe);

“Member of the Court” means the person who, for the time being, constitutes the Court;

“Minister” includes a Minister of the Crown for the time being acting for or on behalf of the Minister;

“newspaper” means a newspaper circulating in the relevant Area or that part of that Area to which a proposal relates;

“notify” means to notify in writing and where applicable, in accordance with section 4.1 (4);

“open to inspection” means available, free of charge, during the hours of conduct of public business, to any person for the purpose of perusal or the making, by that person, of a copy—

- (a) at the office of the Local Authority;
- (b) where approved by the Director, at a place within 1 km of that office;
- and
- (c) for the purposes of section 2.18 (6), also at the office of the Director;

“owner”, in relation to an allotment—

- (a) means—
  - (i) where an allotment is subdivided under the *Building Units and Group Titles Act 1980-1988*—the body corporate;
  - (ii) where an allotment is being purchased from the Crown for an estate in fee simple pursuant to the *Land Act 1962-1989*—the purchaser;
  - (iii) in all other cases—the person for the time being entitled to receive the rent of the allotment in respect of which the word is used or would be entitled to receive the rent thereof if the allotment were let to a tenant at a rent;
- (b) includes the Crown;

“park” means any land used or intended for use as a public garden or public recreation area, whether or not the land is in a natural state;

“permissible use” means a use of premises which may only be undertaken pursuant to a planning scheme with the approval of the Local Authority granted pursuant to section 4.13;

“permitted use” means a use of premises which may be undertaken pursuant to a planning scheme without the approval of the Local Authority notwithstanding that the Local Authority may require an application for the setting of conditions or the issue of a certificate of compliance or in respect of any other matter;

“person” includes a body of persons, whether incorporated or unincorporated;

“planning scheme” means a scheme for town planning which conforms with section 2.1 and is approved by the Governor in Council;

“planning scheme area” means the area included within a planning scheme;

“premises” includes land, buildings and other structures and any part thereof;

“principal objector” means—

- (a) where an objection is duly lodged by one person—that person;
- (b) where an objection (whether in the form of a letter or petition) is duly lodged by more than one person—the objector identified as the principal objector on the objection or, where no person is so identified, each objector whose name first appears on each page of the objection;

“prohibited use” means a use of premises which by virtue of the zone in which the premises are situated, is a use which is not a permitted use or a permissible use;

“property description” means the usual form a relevant registering authority uses to describe land within its register;

“public utility” means an installation or undertaking for—

- (a) the public supply of water, hydraulic power, electricity or gas;
  - (b) the provision to the public of telephone services or sewerage or drainage works;
- or

- (c) transport services operated by a statutory corporation;

“Real Property Acts” means the *Real Property Act 1861-1989* and the *Real Property Act 1877-1988*;

“registering authority” means—

- (a) the Registrar of Titles appointed under the *Registrar of Titles Act of 1884*;
- (b) the Registrar of Dealings appointed under the *Land Act 1962-1989*;
- (c) the Queensland Housing Commission constituted under the *State Housing Act 1945-1989*;
- (d) the Harbours Corporation constituted under the *Harbours Act 1955-1989*;
- (e) the relevant Harbour Board constituted or deemed to have been constituted under the *Harbours Act 1955-1987* or other relevant statutory body which has the powers, authorities, functions and duties of a Harbour Board conferred or imposed on it by any Act;

or

- (f) the relevant registrar appointed under the *Mineral Resources Act 1989-1990* or the *Miners' Homestead Leases Act 1913-1990*, as the case may require,

as the tenure and location of the particular land may require;

“road” means—

- (a) a street or road dedicated to the public;
- and

- (b) a bridge or ferry and the approaches thereto;

“sewerage headworks” means those works, structures or equipment

determined by a Local Authority pursuant to section 6.2 (6) (b) (ii) to be sewerage headworks;

“sewerage works external”—

- (a) means those works, structures or equipment necessary for the purpose of connecting sewerage works internal to a Local Authority sewerage scheme;
- (b) does not include sewerage headworks or sewerage works internal;

“sewerage works internal” means those works, structures or equipment necessary for the reticulation of sewage from allotments into which land is proposed to be subdivided;

“site contamination report” means a written report given pursuant to section 8.3A on the suitability of land for a proposed use and prepared with respect to a proposal or an application made under section 2.18, 4.3 or 4.6;

“strategic plan” means a plan that specifies in general terms the future preferred dominant land uses for the planning scheme area for the progressive development of lands within that area, that conforms with section 2.4 and is approved by the Governor in Council;

“structure” includes any building, wall, fence or other structure or anything affixed to or projecting from any building, wall, fence or other structure and any part of a structure;

“subdivision” means the division of land into parts by means of:—

- (a) sale, transfer or partition;
- (b) any agreement, dealing or instrument inter vivos (other than a lease for any term not exceeding 5 years without the right of renewal) rendering different parts thereof immediately available for separate disposition or separate occupation;
- (c) the issue of a certificate of title under the Real Property Acts in respect of a part of the land;

or

- (d) the excision of land from an allotment for dedication to the Crown;

“town planning” includes all matters necessary or expedient for securing the improvement, orderly development, healthfulness, amenity, embellishment, convenience, conservation or commercial advancement of an Area or a part of an Area;

“use” in relation to land, includes the carrying out of excavation work in or under land and the placing on land of any material or thing which is not a building or structure and any use which is incidental to and necessarily associated with the lawful use of the relevant land;



“water supply headworks” means those works, structures or equipment determined by a Local Authority pursuant to section 6.2 (6) (b) (ii) to be water supply headworks;

“water supply works external”—

- (a) means those works, structures or equipment necessary for the purpose of connecting water supply works internal to a Local Authority water supply scheme;
- (b) does not include water supply headworks or water supply works internal;

“water supply works internal” means those works, structures or equipment necessary for the reticulation of water supply to allotments into which land is proposed to be subdivided;

“working day” means a day when the office of the relevant Local Authority (or where applicable, the Director) is scheduled to be open for the conduct of business;

“zone” means one of the divisions into which a planning scheme area may be divided by the planning scheme for the purposes thereof.

(2) In this Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## PART 2—PLANNING SCHEMES

**2.1 Composition of planning scheme.** A planning scheme is to consist of—

- (a) planning scheme provisions for the regulation, implementation and administration of the planning scheme;
- (b) zoning maps and any regulatory maps;
- (c) a strategic plan;
- (d) a development control plan (if any);
- (e) any amendment approved by the Governor in Council in respect of the planning scheme.

**2.2 Planning scheme provisions.** Provisions for the regulation, implementation and administration of a planning scheme are to include—

- (a) the designation of each zone;
- (b) a statement of the intent of each of the zones;
- (c) requirements for—
  - (i) the use of premises;
  - (ii) the erection of buildings;  
and
  - (iii) the subdivision of land;
- (d) administrative requirements for—
  - (i) the form of making of applications;
  - (ii) matters for consideration in deciding applications;
  - (iii) the keeping of records and registers in respect of the planning scheme;
  - (iv) matters relating to offences;  
and
  - (v) other matters necessary for the proper and orderly administration of the planning scheme.

**2.3 Zoning and regulatory maps.** (1) Zoning maps are to depict the zones into which a planning scheme area is divided.

(2) Regulatory maps are to depict areas which are subject to particular planning controls.

(3) Zoning maps and regulatory maps are to have a cadastral base.

**2.4 Strategic plan.** A strategic plan is to include—

(a) a map or series of maps depicting preferred dominant land uses for the area;

(b) a statement of objectives in respect of each of the preferred dominant land uses together with other criteria for determining the type, scale or distribution of other uses required as an integral component to service each preferred dominant land use;

(c) criteria for the implementation of the plan.

**2.5 Development control plan.** A development control plan is to include—

(a) a map or series of maps that indicate the intentions for the future development of designated parts or the whole of a planning scheme area;

(b) statements of the intent of the development control plan;

(c) criteria for the implementation of the plan.

**2.6 Supporting documents to a planning scheme.** (1) Each planning scheme, where applicable, is to be supported by—

(a) planning studies (if any) prepared pursuant to section 2.7;  
or

(b) planning policies (if any) prepared pursuant to section 2.8, or where applicable, both.

(2) The supporting documents referred to in subsection (1) do not form part of a planning scheme.

**2.7 Planning studies.** (1) A planning study is to be prepared in connexion with the formulation of each strategic plan and each development control plan.

(2) Each planning study is to include an assessment of each of the following matters which are relevant to the formulation of the strategic plan or the development control plan:—

(a) topography;

(b) natural or built environment (or both);

(c) regional land use patterns;

(d) public utility infrastructure systems and transport systems;

(e) regional or local economic and employment factors;

(f) the social and cultural features of the population, including housing;

(g) any constraints and opportunities in respect of development;

(h) in the case of a strategic plan, any reasonable development options available.

**2.8 Planning policies.** (1) A Local Authority may by resolution adopt planning policies which are not inconsistent with this Act and may amend or rescind those policies.

(2) Full details of each planning policy adopted pursuant to subsection (1) and each amendment or rescission of a planning policy so adopted are, as soon as practicable, to be recorded (together with the date it was made, amended or rescinded, as the case may be) in a register called the "Register of Planning Policies" to be kept by the Local Authority for that purpose.

(3) The Clerk is to give public notice in a newspaper of each new, amended or rescinded planning policy adopted pursuant to subsection (2) and in respect of each new policy or amendment, the purport thereof.

(4) On the date of commencement of a new planning scheme (other than a consolidated scheme pursuant to section 2.17), all planning policies existing immediately prior to the commencement of the new planning scheme cease to have effect.

(5) Each planning policy (other than planning policies referred to in sections 6.2 (6) and 8.2 (2)) is to have application throughout the planning scheme area.

**2.9 Planning scheme and supporting documents open to inspection.**

(1) Each Local Authority, in respect of which a planning scheme is in force, is to keep open to inspection—

- (a) a copy of each planning scheme in force for the time being in the Local Authority;
- (b) its Register of Planning Policies (if any);  
and
- (c) each planning study prepared pursuant to section 2.7 in respect of each planning scheme in force for the time being in the Local Authority.

(2) A copy of any document referred to in subsection (1) is to be available for sale to the public upon payment of such amount as the Local Authority may determine but not exceeding the cost of printing or otherwise reproducing the copy.

(3) The Director is to keep open to inspection at the Director's office at all times during which that office is open for the transaction of public business, a copy of each planning scheme that is in force in Queensland for the time being and any relevant planning study prepared in conjunction with that planning scheme.

(4) Each Local Authority is to retain all its superseded planning schemes (whether superseded prior to or after the commencement of this Act) and upon the receipt of a written request and the prior payment of the appropriate fee is, within 7 days of the receipt of the request, to make the planning scheme or part thereof open to inspection to the applicant who may, upon the payment of a further fee as specified in subsection (2), obtain a copy of the planning scheme or part thereof.

**2.10 Preparation of planning scheme.** (1) A Local Authority may prepare a planning scheme for its Area or a part of its Area.

(2) Where a Local Authority intends to prepare a planning scheme, it is to adopt a resolution to that effect defining the area it is proposed to include within the planning scheme.

(3) A copy of the resolution adopted pursuant to subsection (2) is to be forwarded to the Minister and where the resolution is in respect of part of the Area it is to be accompanied by a map delineating the area defined in the resolution.

**2.11 Prior approval of Minister required in certain instances.** (1) Notwithstanding section 2.1, the Minister may exempt a Local Authority from the requirement that a strategic plan be prepared in respect of a proposed planning scheme, upon application being made to the Minister by the Local Authority for that purpose.

(2) A Local Authority is to obtain the approval of the Minister—

(a) prior to commencing the preparation of a development control plan;

and

(b) in respect of each proposal to extend the designated area of application of an existing development control plan as an amendment of a planning scheme pursuant to section 2.18 (2) (c).

(3) A Local Authority is to obtain the approval of the Minister prior to proposing to include an additional area in a planning scheme pursuant to section 2.18 (2) (a).

(4) A Local Authority is to obtain the approval of the Minister prior to commencing the consolidation of a planning scheme pursuant to sections 2.16 (4) (b) and 2.17 (1).

**2.12 Powers of the Minister with regard to certain matters.** (1) The Minister may direct a Local Authority to prepare a planning scheme for all or part of its Area.

(2) Where the Minister gives a direction under subsection (1), the Local Authority is, as soon as is practicable and at its own cost, to proceed with the work specified in the direction.

(3) The Minister may direct a Local Authority to prepare a consolidated planning scheme.

(4) The Minister may, at the request of a Local Authority, have a planning scheme prepared upon such terms and conditions as may be agreed between the Minister and the Local Authority.

(5) The power of the Minister to have a planning scheme prepared pursuant to subsection (4) includes the power to recommend the introduction of interim development control provisions for the proposed planning scheme area pursuant to section 2.22; and a request made

under subsection (4) is to be taken to be an application made by the Local Authority in accordance with section 2.22.

(6) Preparation of a planning scheme pursuant to subsection (4) is to be limited to the preparation of documentation which is acceptable to the Local Authority as a statement of its planning proposals for the area and upon completion of the documentation that planning scheme is to be taken to be a planning scheme prepared by the Local Authority for the purposes of giving public notice pursuant to section 2.14.

**2.13 Certain town planning work to be undertaken by certificated town planner.** (1) Subject to subsection (2), each Local Authority is to ensure that the person who is responsible to it for—

- (a) the preparation of its planning scheme;
- (b) the preparation of amendments to its planning scheme pursuant to section 2.18 (2);
- (c) the performance of work required to be performed by the Local Authority's town planner pursuant to a planning scheme;
- (d) the assessment of an application made in respect of a major shopping development,

holds (and at all times during which the person performs any work specified in this subsection, continues to hold) a certificate as town planner, prescribed by the Local Government Town Planners Regulations 1981.

(2) The Minister may exempt a Local Authority from the requirements of subsection (1) upon application being made to the Minister by the Local Authority for that purpose.

**2.14 Public notice of planning schemes.** (1) Before application is made to the Minister for approval of a planning scheme by the Governor in Council, a Local Authority is, by advertisement published at least once in the Gazette and in a newspaper, to give public notice in the prescribed manner of its intention to make the application.

(2) The Local Authority is to keep the proposed planning scheme and supporting documents (if any) open to inspection from the date public notice is first given under subsection (1) to the last day for the receipt of submissions referred to in subsection (3).

(3) The Local Authority is to determine the last day for the receipt of submissions which is to be a day not less than 60 days after the first day that the proposed planning scheme will be open to inspection.

(4) (a) Any person may, on or before the last day for the receipt of submissions, request the Local Authority to supply the person with a copy of the proposed planning scheme and supporting documents, if any, or part thereof (other than any relevant maps of the planning scheme) upon payment of such amount as the Local Authority may determine but not exceeding the cost of printing (or otherwise reproducing) the copy and postage, where posted.

(b) Where a request is made, the Local Authority is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

(5) A person may on or before the last day for the receipt of submissions make a submission to the Local Authority in respect of the proposed planning scheme.

(6) A submission made under subsection (5)—

(a) is to be in writing and signed by each person who made the submission;

(b) is to be addressed to and lodged with the Clerk;

(c) is to state—

(i) the name and address of each person who made the submission;

and

(ii) the grounds of the submission and the facts and circumstances relied on in support of those grounds.

(7) After the last day for the receipt of submissions, the Local Authority is to forthwith consider every submission made in accordance with subsections (5) and (6).

**2.15 Approval of planning scheme by Governor in Council.** (1) An application by a Local Authority for the approval of the Governor in Council of a planning scheme is to be made to the Minister within 90 days after the last day for the receipt of submissions referred to in section 2.14 or, if the Minister upon application being made by the Local Authority allows a longer period or periods, the period or periods so allowed.

(2) An application made under subsection (1) is to be accompanied by—

(a) the proposed planning scheme and supporting documents (if any) that were open to inspection;

(b) a copy of the page on which each advertisement published in accordance with section 2.14 (1) appeared;

(c) a copy of each submission duly made pursuant to section 2.14;

and

(d) the representations by the Local Authority in respect of those submissions.

(3) The Minister is to cause every application made pursuant to this section and all submissions and representations accompanying the application to be examined by the Director who is to prepare a report to the Minister in respect of the application and any other relevant matters.

(4) The Minister is to consider the report prepared by the Director under subsection (3) and, having regard to that report, is to make such

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recommendations to the Governor in Council as the Minister considers appropriate.

(5) The Governor in Council, in considering the recommendation of the Minister in respect of a planning scheme, may either—

(a) approve the planning scheme, in whole or in part;

or

(b) refuse to approve the planning scheme.

(6) The power of the Governor in Council to approve a planning scheme in part includes power to make such amendments of the planning scheme as the Governor in Council considers appropriate.

(7) The Governor in Council may approve a planning scheme under subsection (5) notwithstanding that certain provisions of section 2.14 have not been complied with, where the Governor in Council is satisfied that the non-compliance has not adversely affected the awareness of the public of the existence and nature of the proposed planning scheme nor restricted the opportunity of the public to exercise the rights conferred by section 2.14.

(8) (a) Where the Governor in Council pursuant to subsection (5) approves a planning scheme, an Order in Council notifying the approval is to be published in the Gazette.

(b) Upon publication of the Order in Council, the planning scheme becomes and is the planning scheme for the area and has the force of law.

(c) The Director is to record the date of the approval on any supporting documents referred to in subsection (2) (a).

**2.16 Local Authority to administer planning scheme.** (1) A Local Authority is to implement, administer and enforce every planning scheme approved for its Area or part of its Area and is bound thereby.

(2) A Local Authority is, within 7 years following the date of publication of each Order in Council last notifying approval of a planning scheme (other than an amendment of that planning scheme) within its Area, to review that planning scheme (including all the amendments thereto) to determine the suitability of that planning scheme for the area to which it applies.

(3) Where a Local Authority, by resolution, determines pursuant to subsection (2) that a planning scheme is suitable for continued operation, it is to report to the Minister accordingly.

(4) Where a Local Authority, by resolution, determines pursuant to subsection (2) that a planning scheme is unsuitable for continued operation, it is to—

(a) prepare a new planning scheme;

(b) subject to section 2.11 (4), prepare a consolidated planning scheme;

or

- (c) amend the planning scheme to provide for any amendment that is required pursuant to its determination.

(5) A Local Authority is, by resolution, to determine to prepare a new planning scheme to supersede the existing planning scheme within 10 years following the date of publication of each Order in Council last notifying approval of a planning scheme (other than an amendment of that planning scheme) within its Area.

(6) A Local Authority may apply to the Minister for an extension of the period referred to in subsection (5) and the Minister may, where the Local Authority provides reasonable grounds in support of that extension, grant such extension or extensions as the Minister considers appropriate.

**2.17 Consolidated planning scheme.** (1) A Local Authority is to, pursuant to section 2.12 (3), or may, pursuant to section 2.16 (4) (b), prepare a consolidated planning scheme which accurately combines all of the amendments made to a planning scheme since its first approval in a manner that does not change the rights and obligations of any person under the existing planning scheme.

(2) A consolidated planning scheme prepared by a Local Authority under subsection (1) is to be submitted to the Minister together with a certificate by the Clerk stating that the consolidated planning scheme accurately reproduces the existing planning scheme.

(3) Upon receipt of a consolidated planning scheme under subsection (2), the Director is to examine the consolidated planning scheme submitted by the Local Authority to ensure its accuracy and having confirmed its accuracy, or having corrected it to ensure its accuracy, is to prepare a report to the Minister who is to submit it to the Governor in Council who may approve the consolidated planning scheme.

(4) Where the Governor in Council pursuant to subsection (3) approves a consolidated planning scheme, an Order in Council notifying the approval is to be published in the Gazette.

(5) A consolidated planning scheme approved under subsection (3) is to be the planning scheme for an area and is to supersede the planning scheme for that area existing immediately prior to the approval of the consolidated planning scheme without any change to the rights and obligations of any person under the existing planning scheme.

**2.18 Amendment of a planning scheme by Minister or Local Authority.** (1) A planning scheme may, on the recommendation of the Minister, be amended at any time by the Governor in Council.



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- (2) A Local Authority may propose to amend a planning scheme—
- (a) by including an additional area in the planning scheme area and by applying land use controls to that area consistent with the planning scheme;
  - (b) by including a strategic plan or amending an existing strategic plan;
  - (c) by including a development control plan or extending the designated area of application of an existing development control plan;
  - (d) by amending the provisions referred to in section 2.2 where those amendments are required pursuant to a review under section 2.16;
  - (e) in respect of several allotments, by zoning or rezoning land or amending a regulatory map, or amending a development control plan map, where those zonings, rezonings or amendments, are required pursuant to a review under section 2.16.
- (3) A Local Authority may propose to amend a planning scheme—
- (a) by excluding areas from the planning scheme area;
  - (b) by amending the provisions referred to in section 2.2 where those amendments are not required pursuant to a review under section 2.16;
  - (c) by zoning or rezoning land or amending a regulatory map (having first considered the matters specified in section 2.19 (2));
  - (d) by amending a development control plan other than by extension of its designated area of application (having first considered the matters specified in section 2.19 (2)).

(3A) The Minister, having first considered the matters specified in section 2.19 (2), may propose to amend a planning scheme by zoning or rezoning such land as may be prescribed.

(4) Where the Minister or a Local Authority (in this section and sections 2.19 and 2.20 called the “proponent”) proposes to amend a planning scheme, the proponent is, by advertisement published at least once in a newspaper, to give public notice of the proposal in the manner and form prescribed.

(5) Where a proposal is in respect of subsection (3) (d) (and applies to a particular allotment), (3) (c), or (3A), public notice is also to be given in the manner and form prescribed—

- (a) by posting a notice on the relevant land or as prescribed;  
and
- (b) by serving notice on the owner of the relevant land, on all adjoining owners, and on elected representatives.

(6) The proposal is to be kept open to inspection from the date public notice is first given under subsection (4) to the last day for the receipt of submissions referred to in subsection (7).

(7) The proponent is to determine the last day for the receipt of submissions which is to be a day not less than—

(a) where a proposal is made under subsection (2)—60 days;

or

(b) where a proposal is made under subsection (3) or (3A)—20 working days,

after compliance with subsections (4) and (5).

(8) (a) Any person may, on or before the last day for the receipt of submissions, request a Local Authority (or where the Minister is the proponent, either the Local Authority or the Director) to supply the person with a copy of the proposal or part thereof (other than any maps, photographs or drawings of the proposal) upon payment of such amount as the proponent may determine but not exceeding the cost of printing (or otherwise reproducing) the copy and postage, where posted.

(b) Where a request is made, the proponent is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

(9) A person may on or before the last day for the receipt of submissions make a submission in respect of the proposal.

(10) A submission made under subsection (9)—

(a) is to be in writing and signed by each person who makes the submission;

(b) is to be addressed to and lodged with the Clerk (or where the Minister is the proponent with the Director);

(c) is to state—

(i) the name and address of each person who made the submission;

and

(ii) the grounds of the submission and the facts and circumstances relied on in support of those grounds.

**2.19 Assessment of proposed planning scheme amendment.** (1) A proponent is to forthwith consider every submission made in accordance with section 2.18 (9) and (10).

(2) Where the proposal is a proposal in respect of section 2.18 (3) (d) (and applies to a particular allotment), or (3) (c) or (3A), the

proponent is to assess each of the following matters to the extent they are relevant to the proposal:—

- (a) whether the proposal, if approved, or buildings erected in conformity with the proposal, or both the proposal, if approved, and the buildings so erected would—
  - (i) create a traffic problem, increase an existing traffic problem or detrimentally affect the efficiency of the existing road network;
  - (ii) detrimentally affect the amenity of the neighbourhood;
  - (iii) create a need for increased facilities;
- (b) the balance of zones in the planning scheme area as a whole or that part of that area within which the relevant land is situated and the need for the proposed planning scheme amendment;
- (c) whether the inclusion of the land in the zone in which the land is proposed to be included would be in accordance with, or conflict with, the implementation of the strategic plan (if any) or the intent of a development control plan (if any);
- (d) whether the land or any part thereof is so low-lying or so subject to inundation as to be unsuitable for use for all or any of the permitted or permissible uses in the zone in which the land is proposed to be included;
- (e) whether, having regard to the permitted or permissible uses of the land and the potential for subdivision in the zone in which it is proposed to be included, water, gas, electricity, sewerage and other essential services should be made available to the land and to each separate allotment thereof if the land were subsequently subdivided;
- (f) the impact of the proposal on the environment (whether or not an environmental impact statement has been prepared);
- (g) the situation, suitability and amenity of the land in relation to neighbouring localities;
- (h) the matters contained within an economic impact assessment, (if any);
- (i) where the land is land prescribed pursuant to section 8.3A, the site contamination report in respect of the land;
- (j) such other matters, having regard to the nature of the application, as are relevant.

(3) After considering any submissions pursuant to subsection (1) and assessing relevant matters under subsection (2), the proponent is to decide, by resolution (where applicable), if the proposal, the subject of the public notice—

- (a) should be proceeded with (with or without conditions);
- (b) with certain modifications resulting from submissions made, should be proceeded with;

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or

- (c) should not be proceeded with and where such a decision is made the proposal thereupon ceases to be a proposal.

**2.20 Approval of planning scheme amendment by Governor in Council.** (1) An application by a Local Authority, as proponent, for the approval of the Governor in Council of a proposal to amend a planning scheme is to be made to the Minister within 60 days after the last day for the receipt of submissions referred to in section 2.18 or, if the Minister upon application being made by the Local Authority allows a longer period, the period so allowed.

(2) An application made under subsection (1) is to be accompanied by—

- (a) a copy of the proposal which was open to inspection pursuant to section 2.18, including the relevant maps (if any);
- (b) a statement of the grounds on which the application is made and of the facts and circumstances relied on by the Local Authority in support of those grounds;
- (c) copies of all public notices given by the Local Authority pursuant to section 2.18 (4) and a copy of the notice served pursuant to section 2.18 (5) (b) in respect of the proposal with sufficient information to establish the manner in which the notices were given;
- (d) where relevant, a statement (certified as to its accuracy by the Clerk) setting out the information contained in the public notice of the proposal posted on land pursuant to section 2.18 (5);
- (e) a certificate by the Clerk that the public notice procedures referred to in section 2.18 have been complied with;
- (f) a copy of each submission duly made pursuant to section 2.18 (9) and (10);
- (g) the representations by the Local Authority in respect of those submissions;
- (h) the assessment by the Local Authority (where applicable) of the matters set forth in section 2.19 (2) and copies of any reports submitted in respect thereof;
- (i) details of any modifications made pursuant to section 2.19 (3) (b).

(3) The Minister is to cause every application made pursuant to subsection (1) and all submissions and representations accompanying the application to be examined by the Director who is to prepare a report to the Minister in respect of the application and any other relevant matters.

(4) The Minister is to consider the report prepared by the Director under subsection (3) and, having regard to that report, is to make such recommendation to the Governor in Council as the Minister considers appropriate.

(5) Where the Minister, as proponent, decides to proceed with a proposal to amend a planning scheme pursuant to section 2.19 the Minister is to make a recommendation to the Governor in Council in support of the proposal.

(6) The Governor in Council, in considering the recommendation of the Minister in respect of an amendment of a planning scheme, may either—

(a) approve the amendment of the planning scheme, in whole or in part;

or

(b) refuse to approve the amendment of the planning scheme.

(7) The power of the Governor in Council to approve an amendment of a planning scheme includes power to make such modifications as the Governor in Council considers appropriate.

(8) The Governor in Council may approve an amendment of a planning scheme under subsection (6) notwithstanding that certain provisions of section 2.18 have not been complied with, where the Governor in Council is satisfied that the non-compliance has not adversely affected the awareness of the public of the existence and nature of the proposal nor restricted the opportunity of the public to exercise the rights conferred by section 2.18.

(9) (a) Where the Governor in Council pursuant to subsection (6) approves an amendment of a planning scheme, an Order in Council notifying the approval is to be published in the Gazette.

(b) The Order in Council is to identify each amendment approved pursuant to subsection (6).

(c) Upon publication of the Order in Council the planning scheme as amended becomes and is the planning scheme for the area and has the force of law.

(d) Any conditions imposed pursuant to section 2.19 (3) (a) attach to the land and are binding on successors in title unless amended or superseded by a subsequent application approved pursuant to section 2.20, 4.5, 4.8 or 4.10.

**2.21 Planning scheme may include Crown land.** (1) A planning scheme may include Crown land.

(2) Notwithstanding subsection (1)—

(a) a planning scheme made or continued in force under this Act does not bind the Crown;

(b) where any premises included in a planning scheme is or becomes Crown land—

(i) the planning scheme;

(ii) any agreement made between the relevant Local Authority and any person who previously held an interest in the

premises and that is in force at the time when the premises is or becomes Crown land;

and

- (iii) any condition imposed by the Local Authority in respect of the use of those premises and that is in force at the time when those premises is or becomes Crown land,

is not to operate or, as the case may be, ceases to operate in respect of those premises for as long as those premises remain Crown land;

- (c) where any premises to which paragraph (b) applies cease to be Crown land, the matters and things specified in subparagraphs (ii) and (iii) of that paragraph together with the current planning scheme are (subject to such directions, modifications or exceptions as may be declared by the Governor in Council by Order in Council) to operate as if the premises had never been Crown land.

(3) (a) Where a road is closed or proposed to be closed and the Minister is of the opinion—

- (i) that the land comprising the closed road or the road proposed to be closed should be included in a zone or zones consistent with the zoning of adjoining lands;

and

- (ii) that the proposed zoning would not substantially affect the public in an adverse manner,

the Minister may, notwithstanding that the public notice provisions of section 2.18 have not been complied with, recommend to the Governor in Council that upon the road being closed, if not already closed, the land be so zoned.

(b) Where the Governor in Council approves the recommendation an Order in Council notifying that approval is to be published in the Gazette.

(4) Nothing in this section is to be construed to derogate from section 8.1 of the *Mineral Resources Act 1989-1990*.

**2.22 Interim development control.** (1) Where a Local Authority adopts a resolution to prepare a planning scheme under section 2.10 and no planning scheme is in force in respect of the area the subject of the resolution the Local Authority may apply to the Minister for part of the regulation in respect of interim development control to apply to its proposed planning scheme area.

(2) (a) The Minister may, upon application being made under subsection (1), recommend to the Governor in Council that approval be granted where the Minister considers that part of the regulation referred to in subsection (1) to be necessary and appropriate.

(b) The Governor in Council, in considering the recommendation of the Minister in respect of interim development control, may either—

(a) approve that part of the regulation;

or

(b) refuse to approve that part of the regulation, as interim development control provisions.

(c) The power of the Governor in Council to approve part of the regulation includes power to include other parts of the regulation or omit parts for which approval was sought as the Governor in Council considers appropriate.

(d) Where the Governor in Council approves the inclusion of part of the regulation as interim development control provisions, an Order in Council notifying that approval is to be published in the Gazette.

(3) The interim development control provisions approved in respect of that proposed planning scheme area are to have force and effect from the date of publication in the Gazette and are to continue in force until such time as a planning scheme for that area is approved by the Governor in Council.

(4) The power of the Minister to recommend an application made pursuant to this section includes the power to amend the area over which those interim development control provisions are to apply.

(5) Upon the coming into force of those interim development control provisions the Local Authority is to be responsible for the administration of those provisions.

**2.23 Offences and orders (Magistrates Court).** (1) (a) A person who—

(i) contravenes or fails to comply with a provision of a planning scheme;

or

(ii) commences a permitted or permissible use prior to the completion of works required by a planning scheme,

commits an offence against this Act.

(b) For the purposes of this section, a planning scheme includes—

(i) those interim development control provisions approved under section 2.22;

and

(ii) the conditions attached to approvals, decisions and consents given in respect of a planning scheme, an amendment thereof (including rezoning in stages) or those provisions, as the case may be,

and currently in force.

Penalty: 33 penalty units.

(2) Any person may bring proceedings on a complaint to prosecute another person for any offence defined in subsection (1), whether or not any right of the complainant has been or may be infringed by, or as a consequence of, that offence.

(2A) (a) Proceedings under this section may be brought by a person on that person's own behalf or on behalf of that person and—

(i) other persons (with their consent);

or

(ii) a body corporate or unincorporated (with the consent of its committee or other controlling or governing body),

having like or common interests in those proceedings.

(b) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(3) A person who after conviction of an offence defined in subsection (1) (in this subsection called the "previous conviction") continues to fail to comply with the requirement in respect of which the person incurred the previous conviction commits an offence against this Act.

Penalty: 5 penalty units for each day on which the person has continued to fail to comply with the requirement from the date of the last occurring previous conviction to the date of the person's conviction for the offence under this subsection last committed by that person.

(4) Any right or remedy had by a complainant in respect of any act or omission of or by another person is not to be prejudiced or affected in any way because the act or omission constitutes an offence under this section for which no person has been prosecuted.

(5) Upon the hearing of a complaint for a contravention of or failure to comply with a provision of a planning scheme, the court that hears the complaint may make an order on the defendant in addition to or in substitution for any penalty it is authorized to impose.

(6) An order made by the court under subsection (5) may—

(a) order the defendant to cease any activity that is a contravention of or a failure to comply with a provision of a planning scheme;

(b) order the defendant to do any act or thing required to comply with or to cease a contravention of a provision of a planning scheme;

or

(c) specify that the failure to comply constitutes a public nuisance,

and be in such terms as the court considers appropriate to secure compliance with the planning scheme.

(7) Where a court makes an order under subsection (5), it is to specify therein a time or period by or within which the order is to be complied with.



(8) (a) A person who fails to comply with an order made by a court pursuant to subsection (5) commits an offence against this Act.

(b) Where a body corporate commits an offence under paragraph (a), every person who is an executive officer of the body corporate is to be taken to have committed the offence and may be prosecuted and punished for the offence unless that person proves, the onus of which lies on that person, that—

(i) the offence was committed without that person's knowledge or consent;

or

(ii) having exercised a reasonable degree of diligence, that person was not able to prevent the commission of the offence.

Penalty: 165 penalty units or imprisonment for 12 months, or both.

(9) (a) Where a person fails to comply with an order made by a court pursuant to subsection (5) and that order specifies that the failure to comply constitutes a public nuisance, the Local Authority is empowered to undertake such work as may be necessary to remove the nuisance, and all expenses incurred by the Local Authority may be recovered from that person by the Local Authority as a debt due to the Local Authority.

(b) For the purposes of paragraph (a), the Brisbane City Council constituted under the City of Brisbane Act is to be taken, in respect of section 50 (7) of the Local Government Act, to be a Local Authority.

(10) In this section the term "court" means a magistrates court constituted in accordance with the *Justices Act 1886-1989*.

#### **2.24 Declarations and orders (Planning and Environment Court).**

(1) Any person may bring proceedings in the Court for a declaration in respect of matters referred to in subsection (3) or for an order to remedy or restrain the commission of an offence defined in section 2.23 (1), whether or not any right of that person has been or may be infringed by, or as a consequence of, that offence.

(2) (a) Proceedings under this section may be brought by a person on that person's own behalf or on behalf of that person and—

(i) other persons (with their consent);

or

(ii) a body, corporate or unincorporated (with the consent of its committee or other controlling or governing body),

having like or common interests in those proceedings.

(b) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(3) The Court has jurisdiction to hear and determine proceedings for a declaration in respect of—

- (a) any question of construction arising under a planning scheme;
- (b) any act, matter or thing to be undertaken in respect of the planning scheme or the use of land;
- or
- (c) any offence defined in section 2.23 (1).

(4) Where the Court is satisfied that an offence defined in section 2.23 (1) has been committed (whether prosecuted or not) or that such an offence will, unless restrained by order of the Court, be committed, it may make such order as it considers appropriate to remedy or restrain that offence.

(5) An order made by the Court under subsection (4) may—

- (a) order the defendant to cease any activity that is a contravention of or a failure to comply with a provision of a planning scheme;
- (b) order the defendant to do any act or thing required to comply with or to cease a contravention of a provision of a planning scheme;
- or
- (c) specify that the failure to comply constitutes a public nuisance,

and be in such terms as the Court considers appropriate to secure compliance with the planning scheme.

(6) Where a Court makes an order under subsection (4), it is to specify therein a time or period by or within which the order is to be complied with.

(7) (a) A person who fails to comply with an order made by a Court pursuant to subsection (4) commits an offence against this Act.

(b) Where a body corporate commits an offence under paragraph (a), every person who is an executive officer of the body corporate is to be taken to have committed the offence and may be prosecuted and punished for the offence unless that person proves, the onus of which lies on that person, that—

- (i) the offence was committed without that person's knowledge or consent;
- or
- (ii) having exercised a reasonable degree of diligence, that person was not able to prevent the commission of the offence.

Penalty: 165 penalty units or imprisonment for 12 months, or both.

(8) (a) Where a person fails to comply with an order made by the Court pursuant to subsection (4) and that order specifies that the failure

to comply constitutes a public nuisance, the Local Authority is empowered to undertake such work as may be necessary to remove the nuisance, and all expenses incurred by the Local Authority may be recovered from that person by the Local Authority as a debt due to the Local Authority.

(b) For the purposes of paragraph (a), the Brisbane City Council constituted under the City of Brisbane Act is to be taken, in respect of section 50 (7) of the *Local Government Act 1936-1989*, to be a Local Authority.

### PART 3—EXISTING USES, SUPERSEDED SCHEMES & COMPENSATION

**3.1 Existing lawful uses.** (1) (a) A lawful use made of premises, immediately prior to the day when a planning scheme or an amendment of a planning scheme commences to apply to the premises, is to continue to be a lawful use of the premises for so long as the premises are so used notwithstanding—

- (i) any provision of the planning scheme or amendment of the planning scheme to the contrary (other than a provision to which paragraph (b) applies);  
or
- (ii) that the use is a prohibited use.

(b) For the purposes of paragraph (a), a planning scheme includes those interim development control provisions approved under section 2.22.

(2) A Local Authority upon application being made to it in respect of a lawful use to which subsection (1) (a) (ii) applies, may consent—

- (a) to the use being changed to one which is, in the opinion of the Local Authority, less injurious to the amenity of the area notwithstanding that the changed use may also be a prohibited use;
- (b) to the modification, alteration or repair of the building or structure to which the use applies where those works would not increase the gross floor area for that use by more than 10% above the gross floor area for that use existing at the time when this subsection began to apply to that use;  
or
- (c) to the re-establishment of a use where the use has been discontinued (whether through the destruction of a building or structure or otherwise) and where application is made to the Local Authority within 6 months (or such longer period as may be prescribed in the planning scheme) from the day the use is discontinued.

(3) An application made under subsection (2) is to be made pursuant to section 4.12.

**3.2 Register of existing lawful non-conforming uses.** (1) Where a planning scheme provides that a Local Authority is to maintain and keep open to inspection a register of existing lawful uses (in this section called "existing lawful non-conforming uses") of a type referred to in section 3.1 (1) (a) (ii), the register (to be called "Register of Existing Lawful Non-Conforming Uses") is, notwithstanding the provisions of a planning scheme, to contain the following information in respect to those uses—

- (a) the date of the entry in the register;
- (b) the postal address of the land to which the registration applies;
- (c) the property description of the land to which the registration applies;
- (d) the zoning of the land under the planning scheme in force at the date of registration and the date upon which that zoning was notified in the Gazette;
- (e) the nature, type and classification of the use or uses being made of the land the subject of registration within the meanings of the uses or classifications as defined in the planning scheme in force at the time of registration;
- (f) the size and scale of operation of each of the existing uses on the land the subject of the registration;
- (g) the date (if available) upon which each of the uses registered was established;
- (h) details of all approvals granted pursuant to section 3.1 (2);
- (i) such other information as may be reasonably required by the Local Authority for the proper maintenance of the register.

(2) Where a register is maintained by a Local Authority pursuant to subsection (1)—

- (a) the owner or the occupier of any premises on which there is established an existing lawful non-conforming use referred to in section 3.1 (1) (a) (ii) may, (with the written authorization of the owner of the premises where the owner is not the occupier) make application to the Local Authority in the prescribed form and upon payment of the appropriate fee to have the use recorded in the register;
- or
- (b) the owner of premises, or the occupier of those premises with the authorization of the owner, may make application to remove an entry, in respect of those premises, from the register.

(3) Where an application is made under subsection (2), the Local Authority is to decide the application within 40 days of the date of the receipt of the application—

- (a) by approving the application;
- or
- (b) refusing the application.

(4) The Clerk is to notify the applicant of the decision made under subsection (3) within 10 days of the date of the decision.

(5) Where a Local Authority approves an application under subsection (3), it is to record or remove the information in respect of the use being made of the premises in or from the register, as the case may require, and advise the applicant and owner, as the case may require, of the information so recorded or removed.

(6) Where a register is maintained by a Local Authority pursuant to subsection (1), the Local Authority may take action to record or amend in the register or remove from the register details of the use referred to in section 3.1 (1) (a) (ii) being made of the premises.

(7) Where a Local Authority proposes to take action pursuant to subsection (6)—

- (a) the Clerk is to notify the owner (and where the owner is not the occupier of the premises, the occupier) of the details of the proposed entry, amendment or removal, as the case may be, and the notification is to be accompanied by a copy of this section;
- (b) the Clerk is to notify the owner (and where the owner is not the occupier of the premises, the occupier) that the owner (or occupier, as the case may be) may lodge a written objection to that action with the Clerk on or before the date (which is not to be earlier than 30 days from the date of issue of the notification) specified in the notification;
- (c) the Local Authority is to consider any objections lodged under paragraph (b) and decide within 40 days of the date specified in paragraph (b) whether it proposes to proceed to record, amend or remove the use in or from the register;
- (d) the Clerk is to notify the owner (and where the owner is not the occupier of the premises, the occupier) of the decision of the Local Authority pursuant to paragraph (c) within 10 days of the date of that decision being made and attach to that notification a copy of sections 7.1 and 7.1A and the form prescribed for the institution of an appeal;
- (e) the Clerk is, where no objection has been lodged under paragraph (b), to record, amend or remove the relevant use being made of the premises in the register and advise the owner (and where the owner is not the occupier, the occupier) of the information recorded, amended or removed.

(8) Any applicant under subsection (2) and any person objecting pursuant to subsection (7) (b), who is dissatisfied with the decision of

a Local Authority made pursuant to subsection (3) or subsection (7), (c) may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(9) Where a right of appeal is available pursuant to subsection (8), the matter is not to be further dealt with until—

- (a) the time for instituting an appeal has expired;  
or
- (b) if an appeal has been instituted—the appeal is determined by or withdrawn from the Court.

(10) A Local Authority is bound by determinations of the Court which may determine—

- (a) whether the use is a lawful use of premises;
- (b) whether any modifications should be made to the details proposed to be recorded in a register;  
and
- (c) whether such matters as it considers appropriate should be recorded in the register.

(11) Where a use of land has been recorded in the register pursuant to this section, the use is to be and remain an existing lawful non-conforming use of the premises until—

- (a) such time as action is taken pursuant to this section that removes that recording in the register;
- (b) the use becomes unlawful pursuant to section 3.1;  
or
- (c) the relevant planning scheme is amended in a manner that makes the use a permitted or permissible use.

(12) The onus of proving that an existing use of premises is unlawful rests with the relevant Local Authority.

**3.3 Town planning certificates.** (1) An application may be made by any person to a Local Authority for a limited town planning certificate, a standard town planning certificate or a full town planning certificate.

(2) An application under subsection (1) is to be accompanied by the appropriate fee.

(3) A limited town planning certificate is to set forth the following particulars in respect of the relevant premises:—

- (a) the zone or zones in which the land is included;
- (b) where the land is subject to a strategic plan or a development control plan—information to that effect;  
and
- (c) the provisions, if any, of the planning scheme relating to proposed roads or proposed road widenings which affect the premises.

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(4) A standard town planning certificate, in addition to those particulars specified in subsection (3), is to set forth the following particulars in respect of the relevant premises:—

- (a) all consents, permissions and approvals (other than those referred to in subsection (5) (a)) currently in force pursuant to a planning scheme, interim development control provision or subdivision of land by-law currently or previously in force in the area;  
and
- (b) any planning scheme amendments approved by the Local Authority but which have not yet been approved or refused by the Governor in Council.

(5) A full town planning certificate, in addition to those particulars specified in subsections (3) and (4), is to set forth the following particulars in respect of the relevant premises:—

- (a) approvals or decisions in respect of applications for consideration in principle, rezoning of land in stages, a staged subdivision plan and approval of engineering drawings for subdivision works;
- (b) details of any conditions attached to the consents, permissions or approvals referred to in subsection (4) and this subsection or current in relation to a planning scheme amendment approved by the Local Authority;
- (c) details of any modification of approval granted pursuant to section 4.15;
- (d) a statement indicating the fulfilment or non-fulfilment of each condition which relates to the carrying out of work set out in paragraph (b) at a date subsequent to the making of the application pursuant to subsection (1) and that date;
- (e) information of any uses listed in the Register of Existing Lawful Non-Conforming Uses in respect of the relevant premises;
- (f) advice of any current revocation procedures relating to any approvals granted in respect of the relevant premises;
- (g) a copy of the judgement or consent order of the Court where an appeal in respect of an approval referred to in the certificate has been heard;
- (h) advice of any prosecution made under section 2.23 in respect of the current use of the relevant premises;
- (i) details of the lodgement of any security and whether any payment required has been made.

(6) A town planning certificate is to be signed by the Clerk or by an officer of the Local Authority authorized by the Local Authority.

(7) The Local Authority is to issue a town planning certificate applied for pursuant to subsection (1) within—

- (a) in the case of a limited town planning certificate—7 days;
- (b) in the case of a standard town planning certificate—14 days;
- (c) in the case of a full town planning certificate—40 days,

of the date of the receipt by it of the application under subsection (1).

(8) A town planning certificate is admissible in evidence in any proceedings wherein proof of any of the matters certified to therein is relevant and is proof of such matters and, in the absence of evidence in rebuttal, is conclusive proof.

**3.4 Effect of new planning scheme on pre-existing applications and approvals.** (1) Where a Local Authority has not decided an application prior to the date (in this section called “the prescribed date”) of the coming into force of a planning scheme or an amendment thereof (in this section called the “new planning scheme”) the Local Authority, in deciding the application in accordance with the planning scheme in force at the time the application was lodged, is to give such weight as it considers appropriate to the new planning scheme.

(2) Where a Local Authority has given approval to an application to amend a planning scheme prior to the prescribed date and the approval of the Governor in Council has not been given prior to the prescribed date, the Local Authority may suggest and the Minister may recommend modifications to the amendment which will ensure that the amendment conforms with the new planning scheme.

(3) Where a Local Authority (and where necessary the Governor in Council) has approved an application (or an amendment to a planning scheme, as the case may be) prior to the prescribed date and the rights conferred under the approval have not been exercised prior to the prescribed date—

- (a) the rights conferred by the approval may be exercised in accordance with the approval so granted within the period specified in section 4.13 (18), 5.2 (1) or 5.3 (1), as is applicable, notwithstanding that, in the case of an approval granted by the Local Authority the use of the premises in the manner envisaged by the approval would be contrary to the new planning scheme;

and

- (b) the use of premises pursuant to those rights is to be taken to be a use in existence immediately prior to the prescribed date.

(4) Any approval of the Governor in Council which incorporates modifications recommended pursuant to subsection (2), is not in any way to affect—

- (a) the force and effect of any conditions of approval which the Local Authority may have imposed in determining the application;



or

- (b) the validity of any agreement entered into between the applicant and the Local Authority in respect of the application.

(5) Where an approval is granted pursuant to subsection (1) or approved by the Governor in Council pursuant to subsection (2), the subsequent use of the premises pursuant to the approval is to be taken, for the purposes of section 3.1, to be a use in existence immediately prior to the prescribed date.

**3.5 Compensation.** (1) Where a person—

- (a) has an interest in premises within a planning scheme area and the interest is injuriously affected—

- (i) by the coming into force of any provision contained in a planning scheme;

or

- (ii) by any prohibition or restriction imposed by the planning scheme;

or

- (b) has incurred expenditure pursuant to a town planning certificate given to that person by a Local Authority pursuant to section 3.3 which expenditure is rendered abortive (in whole or in part) by reason of any error, omission or inaccuracy in the certificate,

the person is, subject to compliance with this section, entitled to obtain from the Local Authority compensation in respect of the injurious affection or expenditure and may claim that compensation in accordance with this section.

(2) (a) Where land under a planning scheme is—

- (i) included in a zone wherein, pursuant to the planning scheme, the only permitted use of the land (other than the continuance of the use to which the land was lawfully being put at the time of the coming into force of the planning scheme and other than a permissible use of the land) is a use for public purposes;

or

- (ii) is affected by a proposed road (including a road widening),

it is to be taken to be injuriously affected pursuant to subsection (1) (a).

(b) A claim for compensation arising pursuant to paragraph (a) may be satisfied by the Local Authority, with the approval of the Governor in Council, amending the planning scheme to remove the limitations on use rights.

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- (3) For the purposes of subsection (2), “public purpose” includes—
- (a) uses conducted by a Government Department, Local Authority or any statutory corporation;
  - (b) public utility installations and emergency services;
  - (c) parks.
- (4) Compensation is not payable—
- (a) in respect of any building or other structure erected or work done upon, or contract made, or other act or thing done in respect of land in a planning scheme area, unless, where required by law, the erection of the building or other structure, or the doing of the work or the making of the contract, or the doing of such other act or thing was approved by the Local Authority;
  - (b) where an interest in premises is injuriously affected by reason of any provision contained in the planning scheme, if and in so far as the same provision or a provision of the same effect was, at the date when the provision included in the planning scheme came into operation, already in force by virtue of this or some other Act or by-law of the Local Authority;
  - (c) where an interest in premises is affected by a planning scheme which by its operation prescribes the space about buildings or other structures or limits the size of allotments or the number of buildings or other structures to be erected or prescribes the height, floor space, density, design, external appearance or character of buildings or other structures, but nothing contained in this paragraph is to limit the liability of the Local Authority to pay compensation in respect of the acquisition by it of land pursuant to its power under section 35 (9) of the Local Government Act;
  - (d) subject to subsection (2), where an interest in premises is affected by a planning scheme which by its operation prohibits or restricts the use of land or the erection or use of a building or other structure thereon for a particular purpose, unless the applicant establishes that the applicant had a legal right immediately before the provision in question of the planning scheme came into force to use the land or erect or use a building or other structure thereon for the particular purpose which is so prohibited or restricted;
  - (e) in respect of anything done in contravention of a planning scheme;
  - (f) in respect of anything done in contravention of any interim development control provisions in force in the proposed planning scheme area or approval given under those interim development control provisions, or in contravention of any building approval granted by the Local Authority, or, as the case may be, in contravention of any decision in an appeal

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under such an interim development control provision or under Part 5;

- (g) in respect of any affection of an interest in premises by or pursuant to a planning scheme or a by-law made by a Local Authority whereunder the subdivision of the land is prohibited or restricted.

(5) For the purposes of subsection (4) (d), it is not to be taken that an applicant did not have the legal right referred to in that subsection by reason only that the applicant's right depended upon an exercise of discretion by the Local Authority in the applicant's favour if the applicant shows that it is reasonable to expect that the exercise of discretion would have been in the applicant's favour had it been sought immediately before the relevant provision of the planning scheme came into force.

(6) The onus of proving that compensation is not payable in any case by virtue of subsection (4) is upon the Local Authority.

(7) (a) The time within which a claim for compensation under this section may be made is 3 years after the date on which the claim arose.

(b) A claim for compensation is to be taken to have been made on the date on which it is received by the Local Authority.

(c) Every claim for compensation is to be made on the prescribed form and the person making the claim is to duly complete and sign the form and lodge it with the Local Authority.

(8) Subject to subsections (2) (b) and (9), the following provisions are to have effect in assessing compensation in respect of a claim made under this section:—

- (a) the amount of compensation is (subject to paragraphs (b), (c) and (d)) to be an amount equal to the difference between the market value of the interest immediately after the time of the coming into operation of the provision of the planning scheme by virtue of the operation whereof the claim for compensation arose and what would have been the market value of that interest if the provision had not come into operation;
- (b) any modification of the injurious affection that may be effected in consonance with the planning scheme is to be taken into account;
- (c) any benefit which may accrue to any land adjacent to the land in respect of which compensation is claimed in which the claimant has an interest—
- (i) by reason of the coming into operation of the relevant provision or any other provision of the planning scheme;
- or
- (ii) by reason of the construction or improvement by the Local Authority at any time after the planning scheme

comes into force upon the adjacent land of any work or service in pursuance of the planning scheme,

is to be taken into account;

- (d) if the land in respect of which compensation is claimed has, since the date upon which the planning scheme came into operation, become or ceased to be separate from other land, the amount of compensation is not to be increased by reason of its having become or ceased to be separate from other land.

(9) Where compensation for injurious affection is claimed under this section the Local Authority may at its option, but with the prior approval of the Governor in Council acquire the land pursuant to its power under the *Acquisition of Land Act 1967-1988* instead of paying compensation for injurious affection.

(10) The Local Authority is to make its decision on the claim for compensation within 40 days of the date of receipt by it of a claim made pursuant to subsection (7).

(11) In deciding a claim made to it pursuant to this section a Local Authority is to—

- (a) grant the claim, in whole or in part;
- (b) reject the claim, in whole or in part;
- (c) acquire the land pursuant to subsection (9);
- (d) by resolution, propose to amend the planning scheme pursuant to subsection (2) (b);

or

- (e) effect any combination of paragraphs (a), (b), (c) or (d).

(12) Upon the Local Authority making a decision on a claim for compensation in accordance with subsection (11), the Clerk is, within 10 days of the date of the Local Authority's decision, to notify the claimant of the decision and include the matters set out in section 4.1 (4) (e).

(13) The claimant may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(14) Where a Local Authority fails to decide a claim for compensation within the period specified in subsection (10), the claimant may appeal to the Court pursuant to section 7.1 as if the Local Authority had rejected the claim.

## PART 4—REZONING AND LAND USE APPLICATIONS

**4.1 Applications.** (1) This section applies to all applications made to a Local Authority pursuant to this Act.

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- (2) An application to which this section applies—
- (a) may be lodged by the applicant personally or by post with the Clerk;
  - (b) is to be taken not to be duly made until all the particulars required by this Act and the planning scheme or interim development control provisions have been provided to the Local Authority together with the appropriate fee;
  - (c) may be decided by a Local Authority on the information submitted with the application, if the applicant, when information relevant to the application is requested but not provided within 40 days (or such longer period as the Local Authority may allow) from the date of the request, fails to supply that information;  
and
  - (d) is to be authorized in writing by the owner, where the application is made by a person other than the owner of the premises the subject of the application.

(3) Where any section of this Act requires the Governor in Council to approve a recommendation or a Local Authority to decide an application, the power to approve or decide (with or without conditions) includes the power to approve or decide in part, and in that case the balance of the recommendation or application, as the case may be, is to be taken to be refused.

(4) A notification required to be given under this Act in respect of a decision of a Local Authority on an application is to include (where relevant to the application and the decision)—

- (a) the decision of the Local Authority and the date thereof;
- (b) the grounds for refusal;
- (c) the conditions to attach to an approval;
- (d) the names and addresses of the principal objectors;  
and
- (e) except in respect of an application made under section 4.2, a copy of sections 7.1 and 7.1A and the form prescribed for the institution of an appeal.

(5) Where a Local Authority requires, pursuant to its planning scheme, an application in respect of a permitted use, it is to decide that application within 40 days of the date of—

- (a) the application having been made to it;  
or
- (b) the receipt of such further particulars as may be requested pursuant to subsection (6).

(6) Where a Local Authority requires further particulars in respect of an application referred to in subsection (5), it is, within 14 days of the receipt of the application, to request in writing such further particulars as are necessary to decide the application.

(7) Upon a Local Authority making a decision on an application in accordance with subsection (5), the Clerk is, within 10 days of the date of the decision, to notify the applicant of the decision.

(8) Where a Local Authority fails to decide an application referred to in subsection (5) within the period referred to in that subsection, the application is to be taken to have been approved without conditions, determined to comply or similarly endorsed, as the case may require.

**4.2 Applications for consideration in principle.** (1) (a) A Local Authority may at any time adopt a resolution to accept applications for consideration in principle.

(b) The resolution is to specify—

- (i) the form of those applications;
- (ii) the details to be contained in those applications;
- and
- (iii) the appropriate fee.

(2) Where a Local Authority has resolved to accept applications for consideration in principle, any person may lodge an application for consideration in principle in respect of a proposed application for—

- (a) amendment of a planning scheme pursuant to section 4.3;
- (b) town planning consent pursuant to section 4.12;
- or
- (c) subdivision of land pursuant to section 5.1.

(3) (a) The Local Authority is to consider the application for consideration in principle and is to decide whether—

- (i) it supports the application, with or without qualifications that may amend the application;
- (ii) it opposes the application;
- (iii) it cannot decide the proposal until a detailed assessment is made and those details should be the subject of an application referred to in subsection (2);
- or
- (iv) the proposal is a proposal on which the Local Authority has no established view and no indication of support or opposition can be given at that time.

(b) In deciding the application, the Local Authority is to give no weight to any possible objections that may be made or any reports that may be prepared if the application were an application under section 4.3, 4.12 or 5.1.

(c) The Local Authority is to make a decision in respect of the application within 14 days of the date of its lodgement, or such extended period as the Local Authority considers reasonable in particular circumstances.

(4) (a) The Clerk is to notify the applicant of the decision made under subsection (3) within 10 days of the date of the decision.

(b) The notification is, in addition to those matters specified in section 4.1 (4), to include details of any amendments proffered together with any other advice as the Local Authority may consider necessary for the benefit of the applicant.

(c) Where appropriate, the notification is to include a statement that in deciding the application no account was made of—

(i) the likelihood or substance of possible objections which may be lodged consequent upon making an application under section 4.3 or 4.12;

or

(ii) the likelihood of a successful objector appeal.

(5) An applicant has no right of appeal against the decision of a Local Authority in respect of any application made pursuant to this section.

(6) (a) In deciding a subsequent application under section 4.3, 4.12 or 5.1 the Local Authority is not bound by any decision made under this section.

(b) Notwithstanding paragraph (a), a decision made under this section may be tendered to the Court as evidence and the Court may give such weight to the decision as it considers appropriate having regard to the circumstances which are applicable to the matter before it.

**4.3 Amendment of a planning scheme etc. by an applicant.** (1) A person may make application to a Local Authority to amend a planning scheme or the conditions attached to an amendment.

(2) An application under subsection (1) is limited to—

(a) the zoning or rezoning of land (other than pursuant to sections 4.6 or 4.9), whether or not the zoning or rezoning is pursuant to section 4.11;

(b) the amendment of conditions attached to an approval under section 4.4, 4.7 or 4.9;

(c) the amendment of a use—

(i) however specified in respect of the particular zoning which relates to the land the subject of the application;

and

(ii) noted on the relevant zoning map;

(d) the amendment of a regulatory map;

(e) the amendment of a development control plan map in respect of the land the subject of the application where the map restricts or controls the use of the land.

- (3) An application made under subsection (1) is to—
- (a) be on a form determined by the Local Authority;
  - (b) contain the prescribed information;
  - (c) be accompanied by the appropriate fee.

(4) (a) Where an application is made to amend a planning scheme or the conditions attached to an amendment of a planning scheme, the applicant is, not less than 2 days after the date of lodging the application with the Local Authority, to give public notice of the application in the manner and form prescribed—

- (i) by advertisement published at least once in a newspaper;
- (ii) by posting a notice on the relevant land or as prescribed; and
- (iii) by serving notice on all adjoining owners and elected representatives at the same time as or before notice is given under subparagraphs (i) and (ii).

(b) The advertising, posting and serving is all to be undertaken within a period of not more than 7 days from the date of the first of those actions being undertaken.

(5) The Local Authority is to keep the application open to inspection from the date public notice is first given under subsection (4) to the date of receipt of the statutory declaration referred to in subsection (10).

(6) The applicant is to determine the last day for the receipt of objections which is to be a day not less than 20 working days after the date of compliance with subsection (4).

(7) (a) Any person may, on or before the last day for the receipt of objections, request the Local Authority to supply the person with a copy of the application or part thereof (other than any maps, photographs or drawings) upon payment of such amount as the Local Authority may determine but not exceeding the cost of printing (or otherwise reproducing) the copy and postage, where posted.

(b) Where a request is made, the Local Authority is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

(8) A person may, on or before the last day for the receipt of objections, make an objection in respect of the application.

(9) An objection made under subsection (8)—

- (a) is to be in writing and signed by each person who makes the objection;
- (b) is to be addressed to and lodged with the Clerk;
- (c) is to state—
  - (i) the name and address of each person who made the objection (and where an objection is made by more than one person, may identify a person as the principal objector);



and

- (ii) the grounds of the objection and the facts and circumstances relied on in support of those grounds.

(10) Within 21 days after the last day for the receipt of objections, or such longer period as the Clerk may in a particular case allow, the applicant is to lodge with the Local Authority a statutory declaration in the prescribed form which establishes that the applicant has undertaken the relevant procedures of this section concerning the giving of public notice.

**4.4 Assessment of proposed planning scheme amendment.** (1) Upon receipt of a statutory declaration referred to in section 4.3 (10) and being satisfied that public notice has been given in accordance with section 4.3 (4), the Local Authority is to consider the relevant application to amend a planning scheme or the conditions attached to an amendment of a planning scheme and any objections duly made in respect of the application.

(2) The Local Authority may consider an application to amend a planning scheme or the conditions attached to an amendment of a planning scheme under subsection (1), notwithstanding that certain provisions of section 4.3 (4) have not been complied with, where the Local Authority is satisfied that the non-compliance has not adversely affected the awareness of the public of the existence and nature of the application nor restricted the opportunity of the public to exercise the rights conferred by section 4.3.

(3) In considering an application to amend a planning scheme or the conditions attached to an amendment of a planning scheme a Local Authority is to assess each of the following matters to the extent they are relevant to the application:—

- (a) whether the proposal, if approved, or buildings erected in conformity with the proposal, or both the proposal, if approved, and the buildings so erected would—
  - (i) create a traffic problem, increase an existing traffic problem or detrimentally affect the efficiency of the existing road network;
  - (ii) detrimentally affect the amenity of the neighbourhood;
  - (iii) create a need for increased facilities;
- (b) the balance of zones in the planning scheme area as a whole or that part of that area within which the relevant land is situated and the need for the proposed planning scheme amendment;
- (c) whether the inclusion of the land in the zone in which the land is proposed to be included would be in accordance with, or conflict with, the implementation of the strategic plan (if any) or the intent of a development control plan (if any);
- (d) whether the land or any part thereof is so low-lying or so subject to inundation as to be unsuitable for use for all or

any of the uses permitted or permissible in the zone in which the land is proposed to be included;

- (e) whether, having regard to the permitted or permissible uses of the land and the potential for subdivision in the zone in which it is proposed to be included water, gas, electricity, sewerage and other essential services should be made available to the land and to each separate allotment thereof if the land were subsequently subdivided;
- (f) the impact of the proposal on the environment (whether or not an environmental impact statement has been prepared);
- (g) the situation, suitability and amenity of the land in relation to neighbouring localities;
- (h) the matters contained within an economic impact assessment (if any);
- (i) the advice given by it, in respect of any consideration in principle concerning the relevant land pursuant to section 4.2;
- (j) whether any plan of development attaching to the application pursuant to a requirement of the planning scheme should be altered;
- (k) where the land is land prescribed pursuant to section 8.3A, the site contamination report in respect of the land;
- (l) such other matters, having regard to the nature of the application, as are relevant.

(4) (a) The Local Authority is to make its decision on the application within 40 days of the date of receipt by it of the statutory declaration required by section 4.3 (10) or such longer period or periods as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted, notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 40 days or such longer period or periods.

(5) In deciding an application made to it pursuant to section 4.3 a Local Authority is to—

- (a) approve the application;
- (b) approve the application, subject to conditions;
- or
- (c) refuse to approve the application.

(6) (a) Where a Local Authority approves an application under subsection (5) subject to conditions, it may require as a condition the lodgement of security to its satisfaction by the applicant that the applicant will execute work to be done in relation to the application and the decision pursuant to it within such time as may be determined by the Local Authority.

(b) Where security is required to be lodged to ensure compliance with the conditions of the Local Authority or by order of the Court

and the security has not been lodged within 2 years of the date of the Local Authority's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the Local Authority, the decision in respect of the application is void.

(7) Upon the Local Authority making a decision on an application in accordance with subsection (5) the Clerk is, within 10 days of the date of the decision, to notify the applicant and every principal objector of the decision.

(8) The applicant or any person who has duly objected may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(9) For the purpose of giving notification as required by this section, each person, other than a principal objector, who duly made an objection is to be taken to have been notified by the Clerk at the same time as the relevant principal objector was notified.

(10) Where a Local Authority fails to decide an application within the period referred to in subsection (4), the applicant may appeal to the Court pursuant to section 7.1 as if the Local Authority had refused the application.

(11) Where—

(a) no objections have been duly made under section 4.3;

and

(b) the applicant notifies the Local Authority that the applicant accepts the decision of the Local Authority without dispute and will not exercise any right of appeal to the Court in respect of the decision,

the period for the institution of appeals is to be taken to have expired.

(12) (a) Where an application is made under section 4.3 (2) (b) and approved by a Local Authority it does not require the approval of the Governor in Council and subject to the preceding subsections has the force of law.

(b) The conditions imposed by the Local Authority on its approval pursuant to section 4.4 (5) attach to the land and are binding on successors in title unless amended or superseded by a subsequent application approved pursuant to section 2.20, 4.5, 4.8 or 4.10.

#### **4.5 Approval of planning scheme amendment by Governor in Council.**

(1) Where in respect of an application for an amendment of a planning scheme—

(a) which has been approved by the Local Authority, an appeal instituted in the Court pursuant to section 7.1 is withdrawn from the Court;

(b) the Court, upon the hearing of an appeal, determines that the application should be approved and referred to the Local Authority;

or

- (c) which has been approved by the Local Authority and no appeal has been instituted in the Court pursuant to section 7.1,

the Local Authority is, where that application is an application referred to in section 4.3 (2) (other than an application made under paragraph (b) of that subsection), to apply to the Minister for approval by the Governor in Council of the amendment.

(2) An application to the Minister pursuant to subsection (1) is to be made—

- (a) where the time for institution of an appeal has expired and no appeal has been instituted—

- (i) where security is required to be lodged to ensure compliance with the conditions of the Local Authority - within 14 days of the date of lodgement of that security and the fulfilment of any other pre-conditions, whichever is later;

or

- (ii) where security is not required—within 14 days of the date of the expiration of the appeal period;

- (b) where an appeal has been instituted—

- (i) within 14 days (or such longer period as may be ordered by the Court) of the date of the determination by the Court or the date of withdrawal from the Court of the appeal;

or

- (ii) where, as a result of a determination by the Court or a withdrawal of the appeal from the Court, it is necessary for the Local Authority to obtain security from the applicant to ensure compliance with the conditions of the Local Authority—within 14 days of the date of lodgement of that security and the fulfilment of any other pre-conditions, whichever is later.

(3) An application made by a Local Authority under subsection (1) is to be accompanied by—

- (a) a copy of the application which was open to inspection pursuant to section 4.3, including the relevant maps (if any);
- (b) a statement of the grounds on which the application is made and of the facts and circumstances relied on by the Local Authority in support of those grounds;
- (c) a copy of the statutory declaration lodged by the applicant pursuant to section 4.3 (10);
- (d) a copy of each objection duly made pursuant to section 4.3 (8) and (9);
- (e) the representations by the Local Authority in respect of those objections;
- (f) the assessment by the Local Authority, where applicable, of the matters set forth in section 4.4 (3) and copies of any reports submitted in respect thereof;
- (g) where the application is made as a result of and in accordance with a determination of the Court—details of the relevant

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determination of the Court and the date of the determination or, in relevant circumstances, details of the withdrawal of the appeal;

(h) other material required by the Minister.

(4) The Minister is to cause every application made pursuant to subsection (1) and all objections and representations accompanying the application to be examined by the Director who is to prepare a report to the Minister in respect of the application and any other relevant matters.

(5) The Minister is to consider the report prepared by the Director under subsection (4) and, having regard to that report, is to make such recommendation to the Governor in Council as the Minister considers appropriate.

(6) The Governor in Council, in considering the recommendation of the Minister in respect of an amendment of a planning scheme, may either—

(a) approve the amendment of the planning scheme;

or

(b) refuse to approve the amendment of the planning scheme.

(7) The power of the Governor in Council to approve an amendment of a planning scheme includes power to make such modifications as the Governor in Council considers appropriate.

(8) The Governor in Council may approve an amendment of a planning scheme under subsection (6) notwithstanding that certain provisions of section 4.3 have not been complied with, where the Governor in Council is satisfied that the non-compliance has not adversely affected the awareness of the public of the existence and nature of the application nor restricted the opportunity of the public to exercise the rights conferred by section 4.3.

(9) (a) Where the Governor in Council pursuant to subsection (6) approves an amendment of a planning scheme, an Order in Council notifying the approval is to be published in the Gazette.

(b) The Order in Council is to identify each amendment approved pursuant to subsection (6).

(10) Upon the publication of the Order in Council—

(a) the planning scheme, as amended, becomes and is the planning scheme for the area and has the force of law;

(b) the conditions imposed by a Local Authority on its approval pursuant to section 4.4 (5) attach to the land and are binding on successors in title unless amended or superseded by a subsequent application approved pursuant to section 2.20, 4.5, 4.8 or 4.10.

**4.6 Application for rezoning of land in stages.** (1) A person may make application to a Local Authority for the rezoning of land in stages.

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- (2) An application made under subsection (1) is to—
- (a) be on a form determined by the Local Authority;
  - (b) contain the prescribed information;
  - (c) be accompanied by a staged development plan which is to—
    - (i) depict in schematic form the proposed development (including any proposed road network) of the whole of the land, the subject of the application;
    - and
    - (ii) identify (in the proposed order of development) the land incorporated in each stage of the proposed development;
  - (d) be accompanied by the appropriate fee.

(3) (a) Where an application is made for the rezoning of land in stages the applicant is, not less than 2 days after the date of lodging the application with the Local Authority, to give public notice of the application in the manner and form prescribed—

- (i) by advertisement published at least once in a newspaper;
- (ii) by posting a notice on the relevant land or as prescribed; and
- (iii) by serving notice on all adjoining owners and elected representatives at the same time as or before notice is given under subparagraphs (i) and (ii).

(b) The advertising, posting and serving are all to be undertaken within a period of not more than 7 days from the date of the first of those actions being undertaken.

(4) Public notice given in respect of an application made under this section is to state that the proposal is for the rezoning of land in stages and is to indicate the whole of the land and the land which comprises the first stage of the staged development plan.

(5) The Local Authority is to keep the application open to inspection from the date public notice is first given under subsection (3) to the date of the receipt of the statutory declaration referred to in subsection (10).

(6) The applicant is to determine the last day for the receipt of objections which is to be a day not less than 20 working days after the date of compliance with subsection (3).

(7) (a) Any person may, on or before the last day for the receipt of objections, request the Local Authority to supply the person with a copy of the application or part thereof (other than any maps, photographs or drawings) upon payment of such amount as the Local Authority may determine but not exceeding the cost of printing (or otherwise reproducing) the copy and postage, where posted.

(b) Where a request is made, the Local Authority is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

(8) A person may, on or before the last day for the receipt of objections, make an objection in respect of the whole of the application for the rezoning of land in stages or in respect of the rezoning of the first stage of the proposed development.

(9) An objection made under subsection (8)—

- (a) is to be in writing and signed by each person who makes the objection;
- (b) is to be addressed to and lodged with the Clerk;
- (c) is to state—
  - (i) the name and address of each person who made the objection (and where an objection is made by more than one person, may identify a person as the principal objector); and
  - (ii) the grounds of the objection and the facts and circumstances relied on in support of those grounds.

(10) Within 21 days after the last day for the receipt of objections, or such longer period as the Clerk may in a particular case allow, the applicant is to lodge with the Local Authority a statutory declaration in the prescribed form which establishes that the applicant has undertaken the relevant procedures of this section concerning the giving of public notice.

**4.7 Assessment of rezoning of land in stages.** (1) Upon receipt of a statutory declaration referred to in section 4.6 (10) and being satisfied that public notice has been given in accordance with section 4.6 (3), the Local Authority is to consider the relevant application for the rezoning of land in stages and any objections duly made in respect of the application.

(2) The Local Authority may consider an application for the rezoning of land in stages under subsection (1), notwithstanding that certain provisions of section 4.6 (3) have not been complied with, where the Local Authority is satisfied that the non-compliance has not adversely affected the awareness of the public of the existence and nature of the application nor restricted the opportunity of the public to exercise the rights conferred by section 4.6

(3) In considering an application for the rezoning of land in stages a Local Authority is to assess each of the following matters to the extent they are relevant to the application:—

- (a) whether the proposal, if approved, or buildings erected in conformity with the proposal, or both the proposal, if approved, and the buildings so erected would—
  - (i) create a traffic problem, increase an existing traffic problem or detrimentally affect the efficiency of the existing road network;
  - (ii) detrimentally affect the amenity of the neighbourhood;
  - (iii) create a need for increased facilities;
- (b) the balance of zones in the planning scheme area as a whole

or that part of that area within which the relevant land is situated and the need for the proposed rezoning;

- (c) whether the inclusion of the land in the zone in which the land is proposed to be included would be in accordance with, or conflict with, the implementation of the strategic plan (if any) or the intent of a development control plan (if any);
- (d) whether the land or any part thereof is so low-lying or so subject to inundation as to be unsuitable for use for all or any of the uses permitted or permissible in the zone in which the land is proposed to be included;
- (e) whether, having regard to the permitted or permissible uses of the land and the potential for subdivision in the zone in which it is proposed to be included water, gas, electricity, sewerage and other essential services should be made available to the land and to each separate allotment thereof if the land were subsequently subdivided;
- (f) the impact of the proposal on the environment (whether or not an environmental impact statement has been prepared);
- (g) the situation, suitability and amenity of the land in relation to neighbouring localities;
- (h) the matters contained within an economic impact assessment (if any);
- (i) the advice given by it, in respect of any consideration in principle concerning the relevant land pursuant to section 4.2;
- (j) whether any plan of development attaching to the application pursuant to a requirement of the planning scheme should be altered;
- (k) where the land is land prescribed pursuant to section 8.3A, the site contamination report in respect of the land;
- (l) such other matters, having regard to the nature of the application, as are relevant.

(4) (a) The Local Authority is to make its decision on the application within 40 days of the date of receipt by it of the statutory declaration required by section 4.6 (10) or such longer period or periods as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted, notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 40 days or such longer period or periods.

(5) In deciding an application made to it pursuant to section 4.6 a Local Authority is to—

- (a) approve the application;
- (b) approve the application, subject to conditions in respect of the staged development plan or stage 1 (or both);



or

(c) refuse to approve the application.

(6) (a) Where a Local Authority approves an application under subsection (5) subject to conditions, it may require as a condition the lodgement of security to its satisfaction by the applicant that the applicant will execute work to be done in relation to the application and the decision pursuant to it within such time as may be determined by the Local Authority.

(b) Where security is required to be lodged to ensure compliance with the conditions of the Local Authority or by order of the Court and the security has not been lodged within 2 years of the date of the Local Authority's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the Local Authority, the decision in respect of the application is void.

(7) Upon the Local Authority making a decision on an application in accordance with subsection (5), the Clerk is, within 10 days of the date of the decision, to notify the applicant and every principal objector of the decision.

(8) The applicant or any person who has duly objected may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(9) For the purpose of giving notification as required by this section, each person, other than a principal objector, who duly made an objection is to be taken to have been notified by the Clerk at the same time as the relevant principal objector was notified.

(10) Where a Local Authority fails to decide an application within the period referred to in subsection (4), the applicant may appeal to the Court pursuant to section 7.1 as if the Local Authority had refused the application.

(11) Where—

(a) no objections have been duly made under section 4.6;  
and

(b) the applicant notifies the Local Authority that the applicant accepts the decision of the Local Authority without dispute and will not exercise any right of appeal to the Court in respect of the decision,

the period for the institution of appeals is to be taken to have expired.

#### **4.8 Approval of rezoning of land in stages by Governor in Council.**

(1) Where in respect of an application for the rezoning of land in stages—

(a) which has been approved by the Local Authority, an appeal instituted in the Court pursuant to section 7.1 is withdrawn from the Court;

(b) the Court, upon the hearing of an appeal, determines that the application should be approved and referred to the Local Authority;

or

- (c) which has been approved by the Local Authority and no appeal has been instituted in the Court pursuant to section 7.1,

the Local Authority is, in respect of the first stage of the proposed development approved under section 4.7, to apply to the Minister for approval by the Governor in Council of the rezoning of land in that stage.

(2) An application to the Minister pursuant to subsection (1) is to be made—

- (a) where the time for institution of an appeal has expired and no appeal has been instituted—

(i) where security is required to be lodged to ensure compliance with the conditions of the Local Authority - within 14 days of the date of lodgement of that security and the fulfilment of any other pre-condition, whichever is later;

or

(ii) where security is not required—within 14 days of the date of the expiration of the appeal period;

- (b) where an appeal has been instituted—

(i) within 14 days (or such longer period as may be ordered by the Court) of the date of the determination by the Court or the date of withdrawal from the Court of the appeal;

or

(ii) where, as a result of a determination by the Court or a withdrawal of the appeal from the Court, it is necessary for the Local Authority to obtain security from the applicant to ensure compliance with the conditions of the Local Authority—within 14 days of the date of lodgement of that security and the fulfilment of any other pre-condition, whichever is later.

(3) An application made by a Local Authority under subsection (1) is to be accompanied by—

(a) a copy of the application which was open to inspection pursuant to section 4.6, together with any accompanying maps including a copy of the staged development plan;

(b) a statement of the grounds on which the application is made and of the facts and circumstances relied on by the Local Authority in support of those grounds;

(c) a copy of the statutory declaration lodged by the applicant pursuant to section 4.6 (10);

(d) a copy of each objection duly made pursuant to section 4.6 (8) and (9);

(e) the representations by the Local Authority in respect of those objections;

(f) the assessment by the Local Authority, where applicable, of the matters set forth in section 4.7 (3) and copies of any reports submitted in respect thereof;

(g) where the application is made as a result of and in accordance with a determination of the Court—details of the relevant

determination of the Court and the date of the determination or, in relevant circumstances, details of the withdrawal of the appeal;

(h) other material required by the Minister.

(4) The Minister is to cause every application made pursuant to subsection (1) and all objections and representations accompanying the application to be examined by the Director who is to prepare a report to the Minister in respect of the application and any other relevant matters.

(5) The Minister is to consider the report prepared by the Director under subsection (4) and, having regard to that report is to make such recommendation to the Governor in Council as the Minister considers appropriate.

(6) The Governor in Council, in considering the recommendation of the Minister in respect of an amendment of a planning scheme, may either—

(a) approve the amendment of the planning scheme;

or

(b) refuse to approve the amendment of the planning scheme.

(7) The power of the Governor in Council to approve an amendment of a planning scheme includes power to make such modifications as the Governor in Council considers appropriate.

(8) The Governor in Council may approve an amendment of a planning scheme under subsection (6) notwithstanding that certain provisions of section 4.6 have not been complied with, where the Governor in Council is satisfied that the non-compliance has not adversely affected the awareness of the public of the existence and nature of the application nor restricted the opportunity of the public to exercise the rights conferred by section 4.6.

(9) (a) Where the Governor in Council pursuant to subsection (6) approves an amendment which is the rezoning of the first stage of the proposed development, an Order in Council notifying the approval is to be published in the Gazette.

(b) The Order in Council is to identify each amendment approved pursuant to subsection (6).

(c) The land comprising those stages approved by the Local Authority under section 4.7 (5) in respect of an application under this section is to be delineated on the planning scheme amendment map together with a notation of the date of the Governor in Council's approval of the rezoning of land in the first stage of the proposed development and of the proposed zone names and boundaries.

(10) Upon the publication of the Order in Council—

(a) the planning scheme, as amended, becomes and is the planning scheme for the area and has the force of law;

(b) the conditions imposed by a Local Authority on its approval pursuant to section 4.7 (5) attach to the land and are binding

on successors in title unless amended or superseded by a subsequent application approved pursuant to section 2.20, 4.5, 4.8 or 4.10.

**4.9 Subsequent staged rezoning approvals.** (1) A person may make application to a Local Authority to rezone land in subsequent stages of a staged development plan.

(2) An application made under section (1) is to—

- (a) be on a form determined by the Local Authority;
  - (b) contain the prescribed information;
  - (c) be accompanied by the appropriate fee;
  - (d) be lodged within 5 years from the date of the Governor in Council's approval to the rezoning of the first stage of the staged development plan;
- and
- (e) be in accordance with the staged development plan approved pursuant to section 4.8 (6) or as modified under section 4.15.

(3) (a) The Local Authority is to make its decision on the application within 40 days of the date of lodgement of the application or such longer period or periods as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted, notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 40 days or such longer period or periods.

(4) In deciding an application made to it pursuant to this section a Local Authority is to—

- (a) approve the application;
- or
- (b) approve the application, subject to conditions.

(5) (a) Where a Local Authority approves an application under subsection (4) subject to conditions, it may require as a condition the lodgement of security to its satisfaction by the applicant that the applicant will execute work to be done in relation to the application and the decision pursuant to it within such time as may be determined by the Local Authority.

(b) Where security is required to be lodged to ensure compliance with the conditions of the Local Authority or by order of the Court and the security has not been lodged within 2 years of the date of the Local Authority's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the Local Authority, the decision in respect of the application is void.

(6) Upon the Local Authority making a decision on an application in accordance with subsection (4) the Clerk is, within 10 days of the date of the decision, to notify the applicant of the decision.

(7) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(8) Where a Local Authority fails to decide an application within the period referred to in subsection (3), the applicant may appeal to the Court pursuant to section 7.1.

(9) Where the applicant notifies the Local Authority that the applicant accepts the decision of the Local Authority without dispute and will not exercise any right of appeal to the Court in respect of the decision, the period for institution of appeals is to be taken to have expired.

**4.10 Approval of subsequent staged rezonings by Governor in Council.** (1) Where in respect of an application to rezone one or more additional stages of a staged development plan—

(a) which has been approved by the Local Authority, an appeal instituted in the Court pursuant to section 7.1 is withdrawn from the Court;

(b) the Court, upon the hearing of an appeal, determines that the application should be approved and referred to the Local Authority;

or

(c) which has been approved by the Local Authority and no appeal has been instituted in the Court pursuant to section 7.1,

the Local Authority is to make application to the Minister for approval by the Governor in Council of the rezoning of land in subsequent stages.

(2) An application to the Minister pursuant to subsection (1) is to be made—

(a) where the time for institution of an appeal has expired and no appeal has been instituted—

(i) where security is required to be lodged to ensure compliance with the conditions of the Local Authority - within 14 days of the date of lodgement of that security and the fulfilment of any other pre-conditions, whichever is later;

or

(ii) where security is not required—within 14 days of the date of the expiration of the appeal period;

(b) where an appeal has been instituted—

(i) within 14 days (or such longer period as may be ordered by the Court) of the date of the determination of the appeal by the Court or the date of withdrawal from the Court of the appeal;

or

- (ii) where, as a result of a determination by the Court or a withdrawal of the appeal from the Court, it is necessary for the Local Authority to obtain security from the applicant to ensure compliance with the conditions of the Local Authority—within 14 days of the date of lodgement of that security and the fulfilment of any other pre-conditions, whichever is later.

(3) An application made by a Local Authority under subsection (1) is to be accompanied by—

- (a) a copy of the application made pursuant to section 4.9 (2), together with accompanying maps including a copy of the staged development plan;
- (b) a statement of the grounds on which the application is made and of the facts and circumstances relied on by the Local Authority in support of those grounds;
- (c) details of all previous approvals to rezone in respect of the staged development plan;
- (d) where the application is made as a result of and in accordance with a determination of the Court—details of the relevant determination of the Court and the date of the determination or, in relevant circumstances, details of the withdrawal of an appeal;
- (e) other material required by the Minister.

(4) The Minister is to cause every application made pursuant to subsection (1) to be examined by the Director who is to prepare a report to the Minister in respect of the application and any other relevant matters.

(5) The Minister is to consider the report prepared by the Director under subsection (4) and, having regard to that report is to make such recommendation to the Governor in Council as the Minister considers appropriate.

(6) The Governor in Council, in considering the recommendation of the Minister in respect of the rezoning, may either—

- (a) approve the rezoning;

or

- (b) refuse to approve the rezoning.

(7) The power of the Governor in Council to approve a rezoning includes power to make such modifications as the Governor in Council considers appropriate.

(8) (a) Where the Governor in Council pursuant to subsection (6) approves a rezoning, an Order in Council notifying the approval is to be published in the Gazette.

(b) The Order in Council is to identify each rezoning approved pursuant to subsection (6).

(c) The land comprising those stages approved by the Local Authority under section 4.7 (5) is to be delineated on the planning scheme amendment map together with a notation of the date of the Governor in Council's approval of the rezoning of land in the first stage of the proposed development and of the proposed zone names and boundaries.

(9) Upon the publication of the Order in Council—

- (a) the rezoning becomes and is part of the planning scheme for the area and has the force of law;
- (b) the conditions imposed by a Local Authority on its approval pursuant to section 4.9(4) attach to the land and are binding on successors in title unless amended or superseded by a subsequent application approved pursuant to section 2.20, 4.5, 4.8 or 4.10.

**4.11 Combined applications.** (1) Notwithstanding the provisions of a planning scheme, a person may make application (in this section called a "combined application") to a Local Authority for approval at the one time in respect of two or more of the following applications where those applications are in respect of the same land:—

- (a) for the zoning or rezoning of land pursuant to section 4.3 (2) (a);
- (b) for the amendment of a planning scheme pursuant to paragraph (c), (d) or (e) of section 4.3 (2);
- (c) for the issue of a town planning consent permit by the Local Authority pursuant to section 4.12;
- (d) for the subdivision of land pursuant to section 5.1 where a subdivision is proposed in connection with paragraph (a), (b), (c) or (e);
- (e) for any other approval or decision required pursuant to a planning scheme.

(2) An application made under subsection (1) is to—

- (a) be on the forms determined by the Local Authority in respect of the relevant applications;
- (b) contain the prescribed information in respect of the relevant applications;
- (c) be accompanied by the appropriate fee;
- (d) clearly state that the application is a combined application;
- (e) identify the whole of the lands the subject of the application and, where appropriate, the areas for which different approvals by the Local Authority and if applicable the Governor in Council are being sought.

(3) Subject to the following subsections and to any necessary modifications, where a component of a combined application would, if it were made as a separate application, be subject to any of the provisions of this Act, the combined application is also to be subject to those provisions.

(4) Any public notice given in respect of a combined application is to—

- (a) identify the whole of the land the subject of the combined application;
- (b) state that the proposal is a combined application.

(5) Where a component of a combined application would, if it were made as a separate application, be open to inspection, the whole of the combined application is to be open to inspection and the provisions of this Act which relate to obtaining copies of a separate application or part thereof apply to all components of the combined application.

(6) (a) Where a right to object or appeal in respect of any component of a combined application would be available under section 4.3 or 4.12 if the component were a separate application, an objection may be made in respect of any component or the whole of the combined application.

(b) The applicant or any person who has duly made an objection referred to in paragraph (a) may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(7) Where a combined application includes a component referred to in paragraph (a) or (b) of subsection (1) and—

- (a) a Local Authority refuses to approve that component, in whole or in part, and no appeal has been instituted by the applicant pursuant to section 7.1;
  - (b) upon the hearing of an appeal, the Court determines that that component should not be proceeded with, in whole or in part;
- or
- (c) the Governor in Council in deciding an application made to the Minister by a Local Authority for approval of an amendment to the planning scheme which is a component of the combined application determines that the amendment to the planning scheme be refused,

those other components of the combined application which were dependent upon the refused components and which cannot otherwise be lawfully established are to be taken to have been also refused and the applicant has no further rights or remedies under this Act in respect of those other components of the combined application in so far as that particular combined application is concerned.

(8) Notwithstanding the approval of a Local Authority to a combined application pursuant to this section, those approvals which are granted have no force or effect until—

- (a) any amendments to the planning scheme which are required by the combined application have been approved by the Governor in Council pursuant to section 4.5;



and

- (b) in respect of matters other than amendment to the planning scheme and rights of appeal to the Court against the decision of the Local Authority are available pursuant to this Act—
  - (i) the time for institution of an appeal pursuant to section 7.1 has expired;
  - or
  - (ii) where an appeal to the Court is instituted, such appeal is either withdrawn from the Court or is determined by that Court.

(9) Where, pursuant to this Act more than one appeal is instituted in the Court against decisions made by the Local Authority in respect of a combined application, the Court may hear and determine at the same time all appeals instituted where it considers that such action is appropriate.

(10) Where a combined application includes a component referred to in paragraph (a) or (b) of subsection (1), any provision of this Act which provides in respect of the other components of the combined application for the lapsing or revocation of approvals or the performance on the part of the applicant in certain respects within times specified from the date of the decision of the Local Authority, the operative date for the commencement of those time periods is the date upon which the approval of the Governor in Council in respect of the first-mentioned component was published in the Gazette.

**4.12 Application for town planning consent.** (1) A person may make application for the consent of a Local Authority by the issue of a town planning consent permit or interim development permit, as the case may require, where—

- (a) the erection of any building or other structure or the use of any premises is a permissible use;
  - (b) under interim development control provisions the erection of any building or other structure or the use of any premises may only be undertaken with the approval of the Local Authority;
  - or
  - (c) the application is an application to which a Local Authority could consent under section 3.1 (2).
- (2) An application made under subsection (1) is to—
- (a) be on a form determined by the Local Authority;
  - (b) contain the prescribed information;
  - and
  - (c) be accompanied by the appropriate fee.

(3) (a) Where an application is made for consent the applicant is, not less than 2 days after lodging the application with the Local

Authority, to give public notice of the application in the manner and form prescribed—

- (i) by advertisement published at least once in a newspaper;
- (ii) by posting a notice on the relevant land or as prescribed; and
- (iii) by serving notice on all adjoining owners and elected representatives at the same time as or before notice is given under subparagraphs (i) and (ii).

(b) The advertising, posting and serving are all to be undertaken within a period of not more than 7 days from the first of those actions being undertaken.

(4) The Local Authority is to keep the application open to inspection from the date public notice is first given under subsection (3) to the date of receipt of the statutory declaration referred to in subsection (9).

(5) The applicant is to determine the last day for the receipt of objections which is to be a day not less than 10 working days after the date of compliance with subsection (3).

(6) (a) Any person may, on or before the last day for the receipt of objections, request the Local Authority to supply the person with a copy of the application or part thereof (other than any maps, photographs or drawings) upon payment of such amount as the Local Authority may determine but not exceeding the cost of printing (or otherwise reproducing) the copy and postage, where posted.

(b) Where a request is made, the Local Authority is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

(7) A person may, on or before the last day for the receipt of objections, make an objection in respect of the application.

(8) An objection made under subsection (7)—

- (a) is to be in writing and signed by each person who makes the objection;
- (b) is to be addressed to and lodged with the Clerk;
- (c) is to state—
  - (i) the name and address of each person who makes the objection (and where an objection is made by more than one person, may identify a person as the principal objector); and
  - (ii) the grounds of the objection and the facts and circumstances relied on in support of those grounds.

(9) Within 21 days after the last day for the receipt of objections, or such longer period as the Clerk may in a particular case allow, the applicant is to lodge with the Local Authority a statutory declaration in the prescribed form which establishes that the applicant has undertaken

the relevant procedures of this section concerning the giving of public notice.

**4.13 Assessment of town planning consent application.** (1) Upon receipt of a statutory declaration referred to in section 4.12 (9) and being satisfied that public notice has been given in accordance with section 4.12 (3), the Local Authority is to consider the relevant application for consent and any objections duly made in respect of the application.

(2) The Local Authority may consider an application for consent under subsection (1), notwithstanding that certain provisions of section 4.12 (3) have not been complied with, where the Local Authority is satisfied that the non-compliance has not adversely affected the awareness of the public of the existence and nature of the application nor restricted the opportunity of the public to exercise the rights conferred by section 4.12.

(3) An application for consent under section 4.12 may be modified in accordance with section 4.15.

(4) (a) The Local Authority is to make its decision on the application within 40 days of the date of receipt by it of the statutory declaration required by section 4.12 (9) or such longer period or periods as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted, notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 40 days or such longer period or periods.

(5) In deciding an application made to it pursuant to section 4.12 a Local Authority is to—

(a) approve the application;

(b) approve the application, subject to conditions;

or

(c) refuse to approve the application.

(6) (a) Where a Local Authority approves an application under subsection (5) subject to conditions, it may require as a condition the lodgement of security to its satisfaction by the applicant that the applicant will execute work to be done in relation to the application and the decision pursuant to it within such time as may be determined by the Local Authority.

(b) Where security is required to be lodged to ensure compliance with the conditions of the Local Authority or by order of the Court and the security has not been lodged within 2 years of the date of the Local Authority's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the Local Authority, the decision in respect of the application is void.

(7) Upon the Local Authority making a decision on an application in accordance with subsection (5) the Clerk is, within 10 days of the

date of the decision, to notify the applicant and every principal objector of the decision.

(8) The applicant or any person who has duly objected may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(9) For the purpose of giving notification as required by this section, each person, other than a principal objector, who duly made an objection is to be taken to have been notified by the Clerk at the same time as the relevant principal objector was notified.

(10) Where a Local Authority fails to decide an application within the period referred to in subsection (4) the applicant may appeal to the Court pursuant to section 7.1 as if the Local Authority had refused the application.

(11) Where—

(a) no objections have been made under section 4.12;  
and

(b) the applicant notifies the Local Authority that the applicant accepts the decision of the Local Authority without dispute and will not exercise any right of appeal to the Court in respect of the decision,

the period for institution of appeals is to be taken to have expired.

(12) Where in respect of an application for consent—

(a) which has been approved by the Local Authority, an appeal instituted in the Court pursuant to section 7.1 is withdrawn from the Court;

(b) the Court, upon the hearing of an appeal, determines that the application should be approved and referred to the Local Authority;

or

(c) which has been approved by the Local Authority and no appeal has been instituted in the Court pursuant to section 7.1 (2),

the Clerk is to forthwith issue a town planning consent permit or interim development permit, as the case may require.

(13) A permit issued pursuant to subsection (12) is to be issued—

(a) where the time for institution of an appeal has expired and no appeal has been instituted—

(i) where security is required to be lodged to ensure compliance with the conditions of the Local Authority - within 14 days of the date of lodgement of that security and the fulfilment of any other pre-conditions, whichever is later;

or

(ii) where security is not required—within 14 days of the date of expiration of the appeal period.

(b) where an appeal has been instituted—

(i) within 14 days (or such longer period as may be ordered by the Court) of the date of the determination of the appeal by the Court or the date of withdrawal from the Court of the appeal;

or

(ii) where, as a result of the determination by the Court or a withdrawal of the appeal by the Court, it is necessary for the Local Authority to obtain security from the applicant to ensure compliance with the conditions of the Local Authority—within 14 days of the date of lodgement of security and the fulfilment of any other pre-conditions, whichever is later.

(14) A permit issued pursuant to subsection (12) is to contain such information as is required to identify the details of the approval granted and is to include—

(a) the date of issue, which date becomes the relevant date where other actions in relation to the permit may be taken pursuant to this Act;

(b) the property description, the area of land and the postal address of the land the subject of the permit;

(c) the use being made of the premises at the time application is made;

(d) the use consented to by the Local Authority;

(e) the conditions (if any) which attach to the permit.

(15) The particulars of permits issued pursuant to subsection (12) are to be recorded, maintained and kept open to inspection by the Local Authority in a register which is to be called the “Town Planning Consent Permit Register” (or where interim development control provisions apply, called the “Interim Development Permit Register”) which is also to record—

(a) any details in respect of modifications granted pursuant to section 4.15;

(b) details of any extensions of time granted pursuant to subsection (18);

and

(c) any particulars relevant to revocation procedures where action has been taken in that regard.

(16) Where a permit is issued pursuant to subsection (12), the right to use premises and to erect, re-erect, or modify any buildings or other structures for the purposes specified in the permit is, subject to the conditions contained in the permit or any modifications made thereto

pursuant to section 4.15, to attach to the land and be binding on successors in title and continues in force until—

- (a) it is revoked pursuant to section 4.14;
- (b) it lapses in accordance with subsection (18);
- (c) the use ceases to be a lawful use pursuant to section 3.1;
- or
- (d) it is superseded by the commencement of another use.

(17) An approval by the Local Authority or the Court in respect of an application made to a Local Authority pursuant to this section has no force or effect until a permit has been issued by the Clerk.

(18) A permit issued pursuant to subsection (12) lapses where—

- (a) the use of land or the use or erection of a building or other structure on land, the subject of the approval in respect of which the permit was issued, has not been commenced within 4 years of the date of issue of the permit or such extended period or periods as the Local Authority upon application being made to it therefor approves;
- or
- (b) a use of any premises established pursuant to the permit has ceased for a period of at least 12 months.

(19) Where a permit lapses, the Local Authority is to refund any security held by it in connexion with that permit.

**4.14 Revocation of town planning consent etc.** (1) A Local Authority is not to revoke, except in accordance with this section—

- (a) a permit for the use or erection of any building or other structure granted—
  - (i) under a planning scheme;
  - or
  - (ii) in accordance with interim development control provisions;
  - or
- (b) an approval for the subdivision of land pursuant to section 5.1 (6) or 5.2 (4),

(in this section called “a permit”) whether issued or approved before or after the commencement of this Act.

(2) (a) A Local Authority may, at any time after the date on which a permit referred to in subsection (1) was obtained and whether or not it has been acted upon, commence procedures to revoke that permit upon the prior request in writing by the owner of the relevant land or a person duly authorized by the owner to make that request.

(b) The Local Authority is to consider and decide the request to revoke the permit within 30 days of the date of the receipt of the request.

(c) The Clerk is to notify the person who requested the revocation within 10 days of the date of the decision by the Local Authority.

(d) Within 30 days of the date of its decision, the Local Authority is to return to the appropriate person any security lodged with it in connexion with works no longer required as a result of the revocation of the permit.

(3) The Local Authority may initiate revocation procedures in accordance with subsections (4) to (7) (both inclusive) where—

(a) in the case where the permit involves the erection of a building or other structure or the carrying out of works—commencement of erection or works has not been made in accordance with that permit;

or

(b) in any other case—the rights conferred by that permit are not exercised,

after a period of 2 years following the date on which the permit was issued.

(4) (a) A Local Authority which intends pursuant to subsection (3) to revoke a permit referred to in subsection (1) is to serve a notice (in this section called “a notice of intention to revoke”) upon the person to whom the permit was granted, the occupier and the owner of the relevant land.

(b) A notice of intention to revoke is to be in writing, be addressed to the address last known to the Local Authority of the person on whom it is to be served and state—

- (i) that the person to whom the notice is directed, on or before the date specified therein (which date is not to be earlier than 21 days after the date of the service of the notice), may make a written objection to the revocation and lodge it with the Local Authority at the address set out in the notice;
- (ii) that the objection must specify the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds;
- (iii) that an objector who indicates in the objection that the objector desires to be heard in support of the grounds of the objection may appear at the time and place specified in the notice and be heard by the Local Authority or by an officer of the Local Authority appointed by it.

(5) Where an objection is made pursuant to subsection (4), an objector who indicates in the objection a desire to be heard in support of the grounds of the objection is to appear at the time and place specified in the notice and be heard by the Local Authority or by an officer of the Local Authority appointed by it.

(6) In deciding whether or not to proceed with a revocation, the Local Authority, is to—

(a) consider all objections;  
and

(b) consider the matters heard by it at the hearing referred to in subsection (5) or consider the report of the officer appointed to hear the objection, as the case may be.

(7) Where a Local Authority decides to revoke the permit, the Clerk is to give notice, within 10 days of the date of that decision to each person who has duly made an objection to the revocation to the Local Authority.

(8) Any person who has duly made an objection may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(9) Where no objection is duly made to the Local Authority on or before the date specified in the notice of intention to revoke—

(a) the Local Authority may decide that the permit be revoked;

(b) the Clerk is to notify the person referred to in subsection (4) of the decision made pursuant to paragraph (a) within 10 days of the date of the decision and the notification is to state the grounds of the decision.

(10) Where a permit referred to in subsection (1) (a) has been revoked pursuant to this section the Local Authority is to enter the details of the revocation in the register referred to in section 4.13.

**4.15 Modification of certain applications and approvals.** (1) Subject to subsection (2), where an application for staged rezoning pursuant to section 4.6 of this Act has been made or where a consent application has been made—

(a) pursuant to section 4.12 of this Act;

(b) prior to the commencement of this Act and pursuant to section 33 (18) of the Local Government Act;

or

(c) prior to the commencement of this Act and pursuant to section 22 of the *City of Brisbane Town Planning Act 1964-1989*,

and that application has been—

(d) approved by a Local Authority, but in the case of a staged rezoning application an application has not been made to the Minister pursuant to section 4.8;

or

(e) made to but not decided by a Local Authority, the Local Authority may,

upon an application to modify being made to it, approve the application to modify the approval granted (or any condition applicable to the approval) or application made as the case may be.



(2) A Local Authority is not to approve an application to modify made under subsection (1) where—

- (a) in its opinion the modification is not of a minor nature;
- (b) in its opinion the modification would adversely affect any person to a degree which would, if the circumstances allowed, cause that person to make an objection;
- (c) the approval referred to in subsection (1) (a) was the subject of an appeal to the Court and the Court has made a determination on the appeal;
- (d) the approval referred to in subsection (1) (a) relates to the use of any premises after the use is commenced;
- (e) the application to modify is in respect of a condition of the approval referred to in subsection (1) (a) which was imposed in respect of an objection made against the granting of the application when public notice of the application was given under section 4.6 or 4.12.

(3) For the purposes of subsection (2), a proposed modification is of a minor nature if—

- (a) the proposed use to be made of the land the subject of the modification is not varied by the addition of different uses;
- (b) the gross floor area of buildings or proposed buildings on the site is to be increased by less than 5%;
- (c) the number of storeys above ground level to be contained in any building or proposed building or part thereof on the site is not to be increased;
- (d) the locations of the proposed ingress to or egress from the site are not to be substantially altered;
- (e) any altered ingress to or egress from the site is to be to or from those roads—
  - (i) in respect of subsection (1) (a)—approved by the Local Authority in relation to an application referred to in subsection (1);
  - (ii) in respect of subsection (1) (b)—specified in the application referred to in subsection (1);

or

- (f) the amenity or the likely future amenity of the locality would not, in the opinion of the Local Authority, be adversely affected by the proposed modification.

(4) An alteration referred to in subsection (3) (d) or (3) (e) is to be taken to be a modification of a minor nature if the location of the proposed ingress and egress as proposed to be altered or the road from or to which ingress or egress is to be had if the proposed modification is made is a road declared under the *Main Roads Act 1920-1985* and the approval of the Commissioner of Main Roads has been obtained to the location of the points of ingress and egress.

- 
- (5) An application to modify made under subsection (1) is—
- (a) (i) in the case of an application to modify made under subsection (1) (a)—to be made by the person in whom the benefit of the approval vests for the time being or such other person as may be duly authorized in writing to make the application by the person in whom the benefit exists;
  - (ii) in the case of an application to modify made under section (1) (b)—to be made by the person who made the application referred to in subsection (1) (b);
  - (b) be on a form determined by the Local Authority;
  - (c) set forth full particulars of the proposed modification; and
  - (d) be accompanied by the appropriate fee.
- (6) The Local Authority is to make its decision on the application to modify within 40 days of the date of receipt by it of that application.
- (7) In deciding an application to modify made to it pursuant to this section a Local Authority is to—
- (a) approve the application;
  - (b) approve the application, subject to conditions;
- or
- (c) refuse to approve the application.
- (8) Where a Local Authority approves an application to modify under subsection (7) subject to conditions, it may require as a condition the giving to it of security to its satisfaction by the applicant that the applicant will execute work to be done in relation to that application and the decision pursuant to it within such time as may be determined by the Local Authority.
- (9) Upon the Local Authority making a decision on an application to modify in accordance with subsection (7) the Clerk is, within 10 days of the date of the decision, to notify the applicant of the decision.
- (10) The applicant may apply to the Court pursuant to section 7.2 for a review of the decision of the Local Authority.
- (11) Where a Local Authority fails to decide an application to modify within the period referred to in subsection (6) the applicant may apply to the Court pursuant to section 7.2 as if the Local Authority had refused that application.
- (12) Where the applicant notifies the Local Authority that the applicant accepts the decision of the Local Authority without dispute and will not exercise any right of review by the Court in respect of the decision the period for institution of an application for review is to be taken to have expired.
- (13) Where an application to modify made pursuant to subsection (1) (b) has been approved by the Local Authority or where the Court,

upon the hearing of an application for review made to it determines that the application to modify should be approved (either in whole or in part), the application to modify (as approved) is to be taken to be part of the application which the application to modify sought to modify and which is yet to be decided by the Local Authority.

(14) Where in respect of an application for consent under section 4.12—

- (a) which has been approved by the Local Authority, a review instituted in the Court pursuant to section 7.2 is withdrawn from the Court;
- (b) the Court, upon the hearing of a review, determines that the application to modify should be approved and referred to the Local Authority;
- or
- (c) which has been approved by the Local Authority and no review has been instituted in the Court pursuant to section 7.2 (2),

the Clerk, pursuant to section 4.13 (12), is to forthwith issue an approval, a town planning consent permit or an interim development permit, as the case may require, incorporating the modifications so approved.

(15) An approval by the Local Authority or the Court in respect of an application to modify a consent referred to in subsection (1) has no force and effect until a permit has been issued in accordance with subsection (14).

**4.16 Restrictions on resubmission of applications.** (1) In this section, in respect of a planning scheme or interim development control provision, a “further application” means an application (including a combined application) made to a Local Authority for—

- (a) the amendment of a planning scheme (including the rezoning of land in stages) or the conditions attached to an amendment;
- or
- (b) a town planning consent or an interim development permit, where that application is not substantially different in its proposals from a previous application which was made to a Local Authority within the 12 months prior to the date of the first mentioned application being made to the Local Authority.

(2) Where a Local Authority has refused an application, the Local Authority is not to accept a further application.

(3) Where—

- (a) a Local Authority has not decided a previous application;
- (b) a previous application has been withdrawn;
- or
- (c) a previous application was incomplete and was not decided by the Local Authority,

an objection duly made in respect to the previous application is to be taken to be an objection duly made to the further application in addition to any objection duly made in respect of the further application and is to be dealt with as required by this Act.

**4.17 Conjoint use of lands which are not adjoining lands.** (1) Where lands—

- (a) are not adjoining lands;
- (b) are held in common ownership;
- (c) are not more than 500 metres from each other;
- and
- (d) are proposed to be used conjointly for a purpose that is either permitted or permissible under a planning scheme,

and all necessary approvals required under the planning scheme and this Act have been obtained, the Local Authority may enter into an agreement with the owner of those lands to allow for their conjoint use for that purpose conditionally upon the lands remaining in common ownership.

(2) (a) Where an agreement pursuant to subsection (1) has been entered into, the Local Authority is to apply to the relevant registering authority to register or record the agreement and a signed copy of the agreement.

(b) The registering authority is to record particulars of that agreement on the register in respect of the relevant lands and thereafter the agreement is, until it is cancelled, binding on successors in title.

(3) (a) An agreement registered pursuant to subsection (2) may be cancelled (in whole or in part) upon the application of the owner of the lands which are subject to the agreement and with the approval of the Local Authority endorsed thereon.

(b) Where an agreement has been cancelled (in whole or in part), the registering authority is to make a recording in the register in respect of the relevant lands to the effect that the agreement is cancelled (in whole or in part) as the case may be.

**4.18 Withdrawal of applications and objections.** (1) An applicant may, by notice in writing, withdraw an application made to a Local Authority pursuant to this Act where that notice is received by the Local Authority prior to its decision on the application.

(2) Where an application is withdrawn pursuant to subsection (1), the Local Authority is—

- (a) not required to decide that application;
- and
- (b) where objections have been made—to notify the principal objectors that the application has been withdrawn.

(3) Where an application is withdrawn pursuant to subsection (1), the Local Authority is not required to refund any fees paid in respect of the application.

(4) An objector may, by notice in writing, withdraw an objection made to a Local Authority pursuant to this Act where that notice is received by the Local Authority prior to its decision on the application.

(5) Where an objection is made by more than one person, the notice of withdrawal referred to in subsection (4) is to be signed by all persons who made the objection.

(6) Where an objection is withdrawn pursuant to subsection (4), it is, for the purposes of this Act, to be taken not to have been made.

## PART 5—SUBDIVISION APPLICATIONS

**5.1 Application for subdivision, etc.** (1) A person may make application to a Local Authority to subdivide land.

(2) An application made under subsection (1) is to—

(a) be on a form determined by the Local Authority;

(b) contain the prescribed information;

(c) be accompanied by a proposal plan;

and

(d) be accompanied by the appropriate fee.

(3) In considering an application to subdivide land a Local Authority is to assess each of the following matters to the extent they are relevant to the application:—

(a) the proposed use of each of the proposed allotments;

(b) whether any of the proposed allotments would be unsuitable

- 
- for use because of existing or possible inundation, subsidence, slip or erosion;
- (c) the size, shape and utility of each of the proposed allotments;
  - (d) the impact of the proposal on the environment (whether or not an environmental impact statement has been prepared);
  - (e) whether public utility services should be made available to the proposed allotments;
  - (f) the proposed method of disposal of drainage and whether this would have a detrimental effect upon neighbouring lands;
  - (g) whether drainage reserves are required and whether land for these should be surrendered free of cost to the Crown;
  - (h) any possible traffic generation and the effect of this upon the road system in the locality;
  - (i) the length of road frontage to each of the proposed allotments;
  - (j) the proposed means of access to each of the proposed allotments;
  - (k) whether the planning of road junctions and intersections of roads will facilitate the safe flow of traffic and whether truncation of land abutting thereon will be required;
  - (l) whether kerbing and channelling should be provided;
  - (m) whether in accordance with section 5.6 (1) provision should be made for parks;
  - (n) whether the applicant should be required to destroy any noxious weed or plant existing on the proposed allotments;
  - (o) whether, in accordance with a planning scheme provision, undergrounding of electricity should be required;
  - (p) whether the applicant should contribute towards the capital cost of street lighting to serve the proposed allotments;
  - (q) whether the position of water, sewerage, gas, telephone or electricity mains and kerb and channelling or road drains should be indicated on the proposal plan;
  - (r) whether provision should be made for conduits across any road as will enable water, sewerage, gas, electricity or telephone service lines to be laid to connect the mains with the proposed allotments fronting the road;
  - (s) the provisions of the planning scheme which regulate the subdivision of land;
  - (t) whether an approval is required pursuant to another Act;
  - (u) such other matters, having regard to the nature of the application, as are relevant.

(4) The Local Authority may, after considering the matters referred to in subsection (3), request that the applicant submit an amended proposal plan to supersede the plan which accompanied the application.

(5) (a) Subject to section 5.5, the Local Authority is to make its decision on the application within 40 days of the date of receipt by it of the application or any amended proposal plan, whichever is the later, or such longer period or periods as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 40 days or such longer period or periods.

(6) In deciding an application made to it pursuant to this section a Local Authority is to—

(a) approve the application;

(b) approve the application, subject to conditions;

or

(c) refuse to approve the application.

(7) (a) Where a Local Authority approves an application under subsection (6) subject to conditions, it may require as a condition the lodgement of security to its satisfaction by the applicant that the applicant will execute work to be done in relation to the application and the decision pursuant to it within such time as may be determined by the Local Authority.

(b) Where security is required to be lodged to ensure compliance with the conditions of the Local Authority or by order of the Court and the security has not been lodged within 2 years of the date of the Local Authority's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the Local Authority, the decision in respect of the application is void.

(8) The conditions imposed by a Local Authority on its approval pursuant to subsection (6) attach to the land and are binding on successors in title unless amended or superseded by a subsequent application approved pursuant to this section.

(9) Upon the Local Authority making a decision on an application in accordance with subsection (6) the Clerk is, within 10 days of the date of the decision, to notify the applicant of the decision.

(10) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(11) Where a Local Authority fails to decide an application within the period referred to in subsection (5), the applicant may appeal to the Court pursuant to section 7.1 as if the Local Authority had refused the application.

(12) This section does not apply where a subdivision is required to be effected as a condition of approval granted by a Local Authority in respect of any application made pursuant to a planning scheme.

**5.2 Subdivisions involving works.** (1) (a) Where a Local Authority under section 5.1 (6) has approved an application subject to conditions

which include the construction of works to be undertaken by the applicant, the applicant is, within a period of 2 years from the date of approval (or such longer period or periods as the Local Authority may upon application made to it in that behalf allow) and prior to the commencement of works, to make an application to the Local Authority for its approval of engineering drawings and specifications for the required works.

(b) An application made under paragraph (a) is to—

- (i) be on a form determined by the Local Authority;
- (ii) be accompanied by such documents as the Local Authority may require;
- and
- (iii) be accompanied by the appropriate fee.

(c) Nothing in paragraph (a) prevents an applicant from making an application for approval of engineering drawings and specifications concurrently with an application made under section 5.1.

(2) The Local Authority is to examine the engineering drawings and specifications and ensure that the drawings and specifications conform with the application approved under section 5.1 (6) where practicable, and that the documents comply with the Local Authority's requirements and planning policies and with responsible engineering practice.

(3) The Local Authority may, in writing, request the submission of calculations or of additional or amended engineering drawings and specifications.

(4) The Local Authority is to approve the application for approval of engineering drawings and specifications with or without conditions and notification of its approval is to be given within 50 days of the date of the receipt of the application or amended drawings and specifications referred to in subsection (3), whichever is later.

(5) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(6) Where the Local Authority fails to decide an application within the period specified in subsection (4), the applicant may appeal to the Court pursuant to section 7.1.

(7) (a) The works required by the Local Authority pursuant to the approvals referred to in subsection (4) and section 5.1 (6) may be carried out by the applicant or by the Local Authority at the request and cost of the applicant.

(b) No works are to be commenced until the application has been approved.

(8) The works are to be performed in accordance with the relevant provisions of section 6.4.

(9) Where the applicant undertakes the works, the Local Authority is to verify that the works meet the requirements of the Local Authority



and upon the completion of the works the Local Authority Engineer or other person duly authorized by the Local Authority is to issue a certificate of practical completion.

**5.3 Sealing of plans for registration.** (1) (a) An applicant is, within a period of 2 years after the date of the approval given under section 5.1 (6) or where section 5.2 applies, within 2 years following the date of the approval given under section 5.2 (4) or such extended period or periods as may be approved by the Local Authority prior to the expiration of the relevant period, to submit to the Local Authority an accurate plan of survey for the subdivision of the land.

(b) Paragraph (a) does not apply where a plan of survey is required to be submitted as a condition of approval granted by a Local Authority in respect of an application made pursuant to a planning scheme.

(2) A plan of survey submitted under subsection (1) is to—

- (a) be suitable for lodgement in the office of the relevant registering authority;
- (b) be certified by a licensed surveyor;
- (c) be accompanied by a copy of a certificate of practical completion where required;
- and
- (d) be accompanied by the appropriate fee.

(3) Prior to the submission of the plan of survey the applicant is to—

- (a) reinstate survey marks and install new survey marks in their correct position in accordance with the plan of survey and the work is to be certified in writing by a licensed surveyor;
- (b) in respect of the land the subject of the plan of survey, pay to the Local Authority any rates or charges levied by that Local Authority or any expenses being a charge over that land under any Act that will be outstanding at the time of the submission of that plan.

(4) After satisfying itself that—

- (a) the procedures and requirements of this Act, any other relevant Act and the by-laws of the Local Authority have been complied with;
- and
- (b) the plan of survey conforms with the approval granted and that all required works have been carried out,

the Local Authority is to note its approval under seal on the plan of survey in accordance with the requirements of the Registrar of Titles.

(5) The Local Authority is to seal a conforming plan of survey as soon as practicable after it is submitted and return the plan of survey to the applicant for lodgement in the office of the relevant registering authority.

(6) The plan of survey noted under the seal of the Local Authority is to be lodged for registration or recording with the relevant registering authority within 6 months after the date of the notation of approval on the plan.

(7) Where a plan lodged for registration or recording in accordance with subsection (6) is later withdrawn for a purpose specified in section 113 (1) (a) of the *Real Property Act 1861-1989* (or for a similar purpose in respect of a registering authority other than the Registrar of Titles) and is again produced for registration or recording after the expiration of 6 months after the date of notation thereon of approval of the Local Authority its production is to be taken to be a lodgement for registration or recording in accordance with subsection (6).

(8) Where the plan of survey is not lodged for registration or recording with the relevant registering authority within the specified period and where subsection (7) is not applicable, the applicant may re-submit the plan of survey to the Local Authority for re-seal and noting.

(9) Upon receipt of a plan of survey pursuant to subsection (8) a Local Authority may re-seal the plan or may refuse to re-seal the plan.

(10) An applicant may appeal to the Court pursuant to section 7.1 against the refusal of the Local Authority under subsection (9).

(11) As soon as the plan of survey containing a road has been registered or recorded, the road is to be taken to be opened as a road and thereby to be dedicated accordingly and the land is to be taken to be subdivided.

(12) A registering authority is not to register or record any instrument dealing with land in a subdivision pursuant to this Act unless the plan of survey (with all roads, if any) bears the approval of the Local Authority or unless it is lodged for or on behalf of the Crown.

(13) Where land is made available for use as a reserve, a registering authority is not to register or record the plan of survey until all necessary instruments of transfer surrendering to the Crown all land provided in the plan of survey for use as a reserve have been lodged and the registering authority is satisfied that those instruments are correct for registration or recording.

(14) Any land surrendered to the Crown is to be reserved and set apart pursuant to Part XI of the *Land Act 1962-1989* for the purpose for which it was provided in the plan of survey and placed under the control of the Local Authority as trustee.

**5.4 General provisions for subdivision.** (1) This section applies in respect to applications and submissions made pursuant to sections 5.1, 5.2 and 5.3.

(2) Notwithstanding section 4.18, an applicant may, subsequent to the determination of an application referred to in subsection (1), advise the Local Authority in writing of an intention not to proceed with the

subdivision whereupon the Local Authority is to revoke the whole or any part of the approval granted under section 5.1 which has not been acted upon, subject to such terms and conditions as are appropriate.

(3) A condition imposed by a Local Authority pursuant to an approval given under sections 5.1 and 5.2—

(a) attaches to the land the subject of the application and is binding on successors in title;

and

(b) lapses when a relevant approval lapses and is superseded by the granting of a subsequent subdivision approval over the land.

(4) (a) An approval granted pursuant to section 5.2 (4) may be revoked pursuant to section 4.14 at the expiration of 2 years after the date of approval unless there has been a commencement of the works required.

(b) Where an approval under section 5.1 (6) does not involve the undertaking of works, the approval lapses if the plan of survey has not been submitted to the Local Authority within the period specified in section 5.3 (1).

(c) Where an appeal has been instituted pursuant to section 7.1 in respect of an application made under section 5.1 or 5.2, a determination of the Court which confers an approval remains valid for 2 years from the date of that determination.

**5.5 Subdivisional applications may be concurrent.** (1) Where an application (in this section called a “dependant application”) to subdivide land is dependant upon the obtaining of approval granted in respect of a separate application (in this section called the “other application”) the dependant application is not to be decided by the Local Authority until such time as the approval upon which it depends has been obtained.

(2) Where a dependant application is made and—

(a) a Local Authority refuses to approve the other application, in whole or in part, and no appeal has been instituted by the applicant pursuant to section 7.1;

(b) upon the hearing of an appeal, the Court determines that the other application should not be proceeded with, in whole or in part;

or

(c) the Governor in Council in deciding an application made to the Minister by a Local Authority for approval of an amendment to the planning scheme determines that the amendment to the planning scheme be refused,

the dependant application is to be taken to have been also refused and the applicant has no further rights or remedies under this Act in respect of the dependant application and the Local Authority is not required to refund any fees paid in respect of the dependant application.

(3) For the purposes of subsection (1), the time of the approval means, where the approval of the Governor in Council in respect of the other application—

- (a) is required—the date of the publication of the Order in Council notifying the Governor in Council's approval;
- (b) is not required—
  - (i) where the time for institution of an appeal has expired and no appeal has been instituted—the day immediately following the last day when an appeal could have been instituted;
  - (ii) where an appeal has been instituted and withdrawn from the Court—the day immediately following the date of withdrawal;
  - (iii) where an appeal has been instituted and determined—the date of that determination.

(4) Where, pursuant to this Act more than one appeal is instituted in the Court against decisions made by the Local Authority in respect of a concurrent application, the Court may hear and determine, at the same time, all appeals instituted with it, where it considers that such action is appropriate.

**5.6 Parks.** (1) (a) Where in respect of land the subject of an application to subdivide, land has not been previously surrendered for parks or a contribution made to a Local Authority instead of a surrender, the Local Authority may require as a condition of approval of an application to subdivide land for residential, commercial or industrial use, whether or not by way of a staged subdivision, that—

- (i) an area of land be provided for use as a park;
  - (ii) a monetary contribution be paid to the Local Authority in substitution for the provision of that area of land;
  - (iii) works be provided for the improvement of land for use as a park (including the development of recreational facilities);
- or
- (iv) any combination of subparagraphs (i), (ii) and (iii) be implemented.

(b) A combination referred to in paragraph (a) is not to exceed the maximum area or monetary value provided for in this section.

(2) The area of land to be provided pursuant to subsection (1) (a) (i) is to be suitable for the type of park proposed and is to be such area as is prescribed by the planning scheme or by-law of the Local Authority but not exceeding—

- (a) where the proposal for subdivision for which approval is sought involves the construction of a canal within the meaning of the *Canals Act 1958-1989*—an area that is 7.5% of the area of the land to be subdivided;

or

(b) in any other case—an area that is 10% of the area of land to be subdivided.

(3) Land to be provided pursuant to subsection (1) (a) (i) may be part of the land to be subdivided or other land proposed by the applicant and acceptable to the Local Authority.

(4) Where a monetary contribution is required in substitution for an area of land, the amount of the contribution is to be in respect of each allotment or lot proposed in a proposal plan and the amount is to be the amount prescribed by the planning scheme or by by-law of the Local Authority.

(5) Where works are required pursuant to subsection (1) (a) (iii), the value of those works is not to exceed the amount which could be required in substitution pursuant to subsection (4).

(6) (a) Where pursuant to this section an amount of money is paid to a Local Authority, it is to expend that amount within a period of 5 years of the date of receiving it on all or any of the following works to be carried out within the land to be subdivided or outside that land:—

- (i) the acquisition or development (or both) of land for parks;
- or
- (ii) the provision of works for the improvement of existing parks or the development of recreation facilities.

(b) Each payment made to a Local Authority pursuant to this section is to be deposited in its Trust Fund and be held therein until it is expended in accordance with this section and expenditure of any part of the payment is to be recorded separately and distinctly from expenditure of any part of any other such payment.

(7) A Local Authority is, on the written request of the Minister, to produce to the Minister for examination details of the recordings referred to in subsection (6).

(8) (a) The Minister may, by notice in writing, call upon a Local Authority to show cause within the time specified in the notice why the payments referred to in subsection (6) (b) have not be applied towards the purposes for which they were paid.

(b) Where the Local Authority fails to show cause to the satisfaction of the Minister within the time so specified, the Minister may issue to the Local Authority such orders and directions in respect of the payments as the Minister considers appropriate having regard to the purposes for which the payments were obtained.

(c) A Local Authority is, to the satisfaction of the Minister, to comply in all respects with an order or direction issued to it by the Minister.

(9) Where a Local Authority fails to carry out, to the satisfaction of the Minister, the requirements of an order or direction issued to it

under this section, the Minister may cause the order or direction to be complied with and the money held by the Local Authority (which should have been expended in complying with the order or direction) is thereupon to be held to the use of the Minister who, if the money is not paid to him on demand, may recover the amount thereof from the Local Authority by action in a court of competent jurisdiction.

**5.7 Power to purchase or take land for downstream drainage.** (1) Where a Local Authority, in making an assessment under section 5.1 (3), considers that the proposed method of disposal of drainage may have a detrimental effect upon neighbouring land, it may, in addition to its powers under the *Acquisition of Land Act 1967-1988*, purchase or, with the prior approval of the Governor in Council, take under that Act any land for drainage purposes, whether the land is so required immediately or not, and for that purpose has all the powers and authorities conferred on it and be subject to all the duties imposed on it by that Act.

(2) Where a Local Authority intends to purchase or take any land pursuant to subsection (1) it may require, as a condition of approval pursuant to section 5.1 (6), all, or a contribution towards, the cost of—

(a) that purchase or taking;

and

(b) any drainage works to be performed on that land.

(3) Nothing contained in this section precludes any person from making an agreement with any owner of neighbouring land for drainage purposes.

**5.8 Special provisions for subdivision.** (1) Without limiting its powers under section 5.1 (3), a Local Authority is to refuse an application for approval of a subdivision of land unless each proposed allotment in the proposed subdivision has access.

(2) Where there is no planning scheme in force over the land to which an application made pursuant to section 5.1 relates, a Local Authority is not to approve any allotments having an area less than 400 square metres unless those allotments are to be transferred to the Local Authority or the Crown or are to be used for public utilities.

(3) (a) Subject to paragraph (b) and notwithstanding any planning scheme provision or by-law (whether made before or after the commencement of this Act) which specifies a minimum area for an allotment in a subdivision of land, it is lawful for a Local Authority to approve an application for the subdivision of land which provides for an allotment having an area less than the minimum prescribed in that planning scheme provision or by-law where—

(i) the land to be subdivided is or will be intersected by a river, creek, stream or road (whether constructed or not) or an allotment created for the provision of public utility services;

and

- (ii) the owner of the land, the subject of the application, and the Local Authority have entered into an agreement that any proposed allotment which has an area less than the minimum specified area be incapable of separate disposition but that the ownership thereof be held in common with another allotment in the proposal plan which would have been contiguous thereto if it were not separated in the manner referred to in subparagraph (i);

(b) The total area of the proposed allotments to be held in common ownership under paragraph (a) is to comply with the planning scheme provisions or by-law of the Local Authority as to the minimum area for allotments.

(c) Where a Local Authority has approved an application for subdivision of land pursuant to paragraph (a) the approval is to indicate, in respect of each allotment having an area less than the minimum area specified, the other allotment contained in the plan of survey with which the first mentioned allotment is to be held in common ownership, and that indication is to be noted on the plan lodged for registration or recording with the relevant registering authority pursuant to section 5.3 (6).

(d) The registering authority may register or record a plan of survey lodged with it and containing a notation by the Local Authority in accordance with paragraph (c), but is not to register or record the plan unless an application to register the agreement referred to in subparagraph (a) (ii) accompanied by a signed copy of the agreement is produced and the registering authority is then to record the agreement upon all grants or certificates of title to the lands concerned and thereafter the agreement is, until it is cancelled, binding upon every person who is, at the time of making thereof, or who at any time after the making thereof, has an interest in those lands.

(e) An agreement registered or recorded pursuant to paragraph (d) may be cancelled either in whole or in part, and upon the application of the present owner of the lands, the subject of the agreement, with the owner's signature duly attested in accordance with the requirements of the registering authority and with the written authorization of the Local Authority endorsed thereon the registering authority is to make a notation on the instruments of title to the relevant lands to the effect that the agreement is cancelled either in whole or in part, as the case may be.

(4) A Local Authority is not to approve an application to subdivide land where the application relates to land proposed to be used for purposes other than for a bona fide rural purpose, unless—

- (a) at the time the application is made electricity is available to the proposed allotments;
- (b) an agreement exists between the applicant and the relevant electricity authority for electricity to be made available to

the proposed allotments within 6 months from the date when the plan of survey is approved by the Local Authority under its seal (or within such longer period as is acceptable to the Local Authority);

or

- (c) the relevant electricity authority advises the Local Authority in writing that it is not reasonable to require that electricity be made available to serve the proposed allotments.

(5) A Local Authority is not to approve an application to subdivide land pursuant to section 5.1 until any rates or charges levied by that Local Authority or any expenses being a charge over that land under any Act have been paid.

(6) Notwithstanding section 5.3, a Local Authority may seal a plan of survey prior to the issue of the certificate of practical completion of works if it—

- (a) is satisfied that the outstanding works will be completed within 3 months of the date of the sealing of the plan of survey;

and

- (b) obtains sufficient security with respect to the performance of any incomplete works.

(7) Where there is no planning scheme in force in an area, a Local Authority may, notwithstanding section 31 of the Local Government Act and pursuant to that Act, make or amend a by-law to regulate the subdivision of land within that area, where that by-law or amendment would not be inconsistent with this Act.

**5.9 Staged subdivision.** (1) (a) A person may make application to a Local Authority to subdivide land in stages (in this section called a “staged subdivision”).

(b) An application referred to in subsection (1) is required where it is proposed to subdivide land in stages and is to be lodged prior to or concurrent with an application to subdivide land in the first stage pursuant to section 5.1.

(2) An application made under subsection (1) is to—

- (a) be on a form determined by the Local Authority and be accompanied by a staged subdivision plan;
- (b) contain the prescribed information;
- (c) be accompanied by the appropriate fee.

(3) In considering an application for staged subdivision, a Local



Authority is to assess each of the following matters to the extent that they are relevant to the application:—

- (a) the proposed use of the land to be subdivided in stages;
- (b) whether the proposed use would be affected by inundation, subsidence, slip or erosion;
- (c) the matters contained in an environmental impact statement where required;
- (d) the availability of public utility services;
- (e) the effect of the proposal on the external road network and the general layout of proposed internal roads;
- (f) the nature and location of proposed parks within the development;
- (g) the proposed sequence of development;
- (h) such other matters, having regard to the nature of the application, as are relevant.

(4) The Local Authority may, after considering the matters referred to in subsection (3), request the applicant to submit an amended staged subdivision plan which takes into account the requirements of the Local Authority and supersedes the plan which accompanied the application.

(5) (a) The Local Authority is to make its decision on the application within 40 days of the date of receipt by it of the application or any amended staged subdivision plan, whichever is later, or such longer period or periods as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted, notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 40 days or such longer period or periods.

(6) In deciding an application made to it pursuant to this section, a Local Authority is to—

- (a) approve the application;
  - (b) approve the application, subject to conditions;
- or
- (c) refuse to approve the application.

(7) The conditions imposed by a Local Authority on its approval pursuant to subsection (6) attach to the land and are binding on successors in title unless amended or superseded by a subsequent application approved pursuant to this Act.

(8) Upon the Local Authority making a decision on an application in accordance with subsection (6), the Clerk is, within 10 days of the date of the decision, to notify the applicant of the decision.

(9) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(10) Where a Local Authority fails to decide an application within the period referred to in subsection (5), the applicant may appeal to

the Court pursuant to section 7.1 as if the Local Authority had refused the application.

**5.10 Subdivision incorporating a lake.** (1) Where it is proposed to subdivide land in accordance with section 5.1 in a manner which provides that any of the allotments included in the proposal plan are to be used in association with a common lake area, this section applies in addition to section 5.1.

(2) A Local Authority, in considering an application to which this section applies, is to consider the following matters in addition to those required by section 5.1—

- (a) the proposed use of the lake;
- (b) the method to be used in maintaining the top water level in the lake and the source of water supply thereto;
- (c) the capacity of the outlet structure (if any) from the lake;
- (d) the measures to be taken to protect the lake from pollution;
- (e) the adequacy of measures to be taken pursuant to subparagraph (d) to prohibit on land within a distance of 4 metres from the top water level of the lake—
  - (i) the erection of a building or other structure;
  - (ii) the parking of vehicles or caravans;
  - (iii) the placing (otherwise than temporarily) thereon of materials, goods, filling or refuse of any kind;
  - (iv) any excavation thereof;
- (f) the measures to be taken for the monitoring of water quality and for the maintenance in the lake of water quality and whether those measures are adequate;
- (g) the methods to be adopted for the provision of general maintenance of the common lake area.

(3) Notwithstanding this Act or any other Act, the Local Authority is not to approve an application to which this section applies unless—

- (a) an environmental impact statement pursuant to section 8.2 setting forth those matters and things that in the opinion of the Local Authority are relevant to the proposed subdivision has been made and submitted to it;
- (b) the Local Authority is satisfied upon notice from the applicant that the level of water in the lake forming part of the common lake area will at all times be capable of being lowered at a rate considered by the Local Authority to be reasonable and in a manner that complies with the other requirements of the Local Authority and any other instrumentality having jurisdiction over the waters of Queensland;
- (c) adequate provision has been made by the applicant for storm water drainage into and out of the lake forming part of the common lake area;

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and

- (d) the applicant undertakes to maintain at all times the minimum average depth of water in the lake forming part of the common lake area at 1.5 metres or more unless the Local Authority approves a lesser depth.

(4) Notwithstanding this Act or any other Act, the Local Authority is not to approve or seal a plan of survey to which this section applies unless it is satisfied that the common lake area is held for an estate in fee-simple by a company and the memorandum of association of that company complies with subsection (5) except as provided in subsection (9).

(5) The memorandum of association of a company specified in subsection (4) is, in addition to complying with the requirements prescribed by or under the Companies (Queensland) Code to contain—

(a) provisions that clearly indicate—

- (i) the rights, obligations and entitlement of the owner with respect to the common lake area in respect of each allotment on the plan of subdivision specified in subsection (1);
- (ii) the manner in which the common lake area may be disposed of or otherwise dealt with by way of transfer or lease of the whole or any part thereof, but a provision therein in compliance with this provision does not derogate from or in any way affect the operation of section 5.1;

(b) provisions that require the company—

- (i) to establish a fund for administrative expenses sufficient in the opinion of the company for the control, management and administration of the common lake area, for the payment of premiums of insurance and the discharge of any other obligation of the company with respect to the common lake area, other than the obligation specified in subparagraph (ii);
- (ii) to establish a common lake area maintenance reserve fund for the purpose of equalising maintenance charges in respect of the common lake area against each year;
- (iii) to determine from time to time the amounts of money to be raised for the purposes of subparagraphs (i) and (ii);
- (iv) to raise those amounts of money determined pursuant to subparagraph (iii) by levying contributions on the owner of every allotment having an entitlement to the common lake area in proportion to the entitlement;

(c) provisions that—

- (i) indicate clearly how the registered proprietor of an allotment transfers to any successor in title the rights,

obligations and entitlement as a member of the company at the time of disposing of the allotment;

- (ii) stipulate the action that may be taken by the directors of the company in the event of a registered proprietor of an allotment failing to transfer to any successor in title any shares that under the memorandum of association of the company should have been transferred.

Notwithstanding any other Act, a resolution of a company referred to in subsection (4) that purports to vary any of the provisions in the memorandum of association of that company required by this subsection to be contained therein is invalid unless that resolution has been approved by the Local Authority.

(6) (a) Subject to paragraph (b), contributions levied under this subsection become due and payable upon the passing of a resolution to that effect in accordance with the terms of that resolution and may be recovered as a joint and several debt by the company in an action in a court of competent jurisdiction from the owner entitled at the time when the resolution was passed and from the owner entitled at the time the action was instituted.

(b) The company is—

- (i) on the application of an owner or a person authorized in writing by him in that behalf, to certify—
  - (A) the amount of any contribution determined as the contribution of that owner;
  - (B) the manner in which that contribution is payable;
  - (C) the extent to which that contribution is payable by that owner;
- (ii) at the request of a Local Authority, to furnish to that Local Authority details of the amount held from time to time in the common lake area maintenance reserve fund established pursuant to subsection (5) (b) (ii).

(7) A person who submits to a Local Authority an application for a subdivision of land to which this section applies—

- (a) is to satisfy the Local Authority that the applicant has complied in all respects with the *Water Resources Act 1989* with respect to referable dams or that those provisions do not apply;
- (b) is not to use a lake proposed to be constructed as part of a common lake area until—
  - (i) construction thereof has been completed to the satisfaction and in accordance with the requirements of the Local Authority and, in an appropriate case, of the Commissioner of Water Resources or other instrumentality having jurisdiction over waters of Queensland;
  - (ii) the relevant plan of survey has been registered or recorded by the relevant registering authority in accordance with section 5.3.

(8) (a) The company in whom the ownership of a common lake area is for the time being vested is, at all times, to adequately preserve, maintain and cleanse that common lake area to the satisfaction of the Local Authority and is to comply with any by-law of the Local Authority with respect thereto and with any requirement, term or condition imposed by the Local Authority pursuant to any permission, consent or approval granted for the construction or use of that common lake area.

(b) The applicant may be required to pay to the Local Authority security against the inability or failure of the company to meet the cost of preservation, maintenance or cleansing of the common lake area pursuant to paragraph (a).

(c) Notwithstanding paragraph (b)—

(i) the Local Authority may, if it considers that adequate provision exists in the common lake maintenance reserve fund established pursuant to subsection (5) (b) (ii) to meet the company's obligations pursuant to subsection (8) (a), refund to the applicant the whole or part of any moneys paid pursuant to paragraph (b);

(ii) moneys are not to be paid to or accepted by the Local Authority and an amount is not to be agreed upon under paragraph (b) unless a contract in writing has first been made between the applicant and the Local Authority setting forth—

(A) the amount that the applicant agrees to pay to the Local Authority;

(B) the terms and conditions relating to the expenditure of that amount by the Local Authority;  
and

(C) the circumstances in which the Local Authority may agree to make the refund referred to in this paragraph.

(9) (a) Notwithstanding subsection (1), an application to which this section refers may, with the approval of the Local Authority, provide for the surrender to the Crown of the allotment or allotments comprising the common lake area and the placing of that allotment or those allotments under the control of the Local Authority.

(b) Subsections (2), (3) and (8) (b) are, with all necessary adaptations, to apply and extend to applications submitted in accordance with paragraph (a).

(c) The relevant registering authority is not to register or record a plan of survey approved by a Local Authority unless and until all necessary transfers surrendering to the Crown the allotment or allotments comprising the common lake area have been lodged and the registering authority is satisfied that those transfers are correct for registration or recording.

(d) Land surrendered to the Crown for the purposes of this subsection is, pursuant to Part XI of the *Land Act 1962-1989*, to be reserved and

set apart for the purpose for which the land was provided in the plan and placed under the control of the Local Authority as trustee.

(e) The notation of approval and certificate specified in section 5.1 on the plan of survey pursuant to this subsection is subject to the conditions imposed and is to indicate that the allotment or allotments comprising a common lake area is or are to be transferred and surrendered to the Crown.

(f) The decision of the Local Authority taken pursuant to subsection (9) is not appealable to the Court.

**5.11 Application for amalgamation of land.** (1) A person may make application to a Local Authority to amalgamate separate adjoining parcels of land into one undivided parcel whether or not those adjoining parcels are less than the minimum allotment size as determined at the time of application by the Local Authority.

(2) An application made under subsection (1) is to—

- (a) be on a form determined by the Local Authority;
- (b) contain the prescribed information;
- (c) be accompanied by the appropriate fee.

(3) In determining an application referred to in subsection (1), the Local Authority is to consider—

- (a) the number and type of buildings erected on the land;  
and
- (b) whether it is proposed to resubdivide the parcel in accordance with the *Building Units and Group Titles Act 1980-1988*.

(4) (a) The Local Authority is to make its decision on the application within 40 days of the date of receipt by it of the application or such longer period or periods as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted, notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 40 days or such longer period or periods.

(5) In deciding an application made to it pursuant to this section a Local Authority is to—

- (a) approve the application;
- (b) approve the application, subject to conditions;  
or
- (c) refuse to approve the application.

(6) The conditions imposed by a Local Authority on its approval pursuant to subsection (5) attach to the land and are binding on successors in title unless amended or superseded by a subsequent application approved pursuant to this Act.

(7) Upon the Local Authority making a decision on an application in accordance with subsection (5), the Clerk is, within 10 days of the date of the decision, to notify the applicant of the decision.

(8) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(9) Where a Local Authority fails to decide an application within the period referred to in subsection (4), the applicant may appeal to the Court pursuant to section 7.1 as if the Local Authority had refused the application.

(10) Where the applicant notifies the Local Authority that the applicant accepts the decision of the Local Authority without dispute and will not exercise any right of appeal to the Court in respect of the decision the period for institution of an appeal is to be taken to have expired.

(11) Subsections (1) to (10) (both inclusive) do not apply where an amalgamation is required to be effected as a condition of approval granted by a Local Authority in respect of any application made pursuant to a planning scheme.

(12) Subsequent to the completion of any works required pursuant to an approval under this section, an applicant is, within 2 years of the approval, to lodge with the Local Authority a plan of survey in accordance with subsection 5.3 and that section applies to the registration or recording of that plan.

(13) (a) Where the land is held under separate instruments of title the relevant registering authority may, before registering or recording the new plan, require the owner to make an application under section 94 of the *Real Property Act 1861-1989* (or a corresponding section of another Act in respect of a registering authority other than the Registrar of Titles), and to comply with that section (or corresponding section) in respect of that application.

(b) To the extent necessary to apply this section, the *Real Property Act 1981-1989* (or any corresponding Act), is to be read subject hereto.

**5.12 Application for access easement.** (1) A person may make application to a Local Authority to establish an access easement to a road.

(2) An application made under subsection (1) is to—

- (a) be on a form determined by the Local Authority;
- (b) contain the prescribed information;
- (c) be accompanied by the appropriate fee.

(3) (a) The Local Authority is to make its decision on the application within 40 days of the date of receipt by it of the application or such longer period or periods as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 40 days or such longer period or periods.

(4) In deciding an application made to it pursuant to this section a Local Authority is to—

(a) approve the application;

or

(b) refuse to approve the application.

(5) Upon the Local Authority making a decision on an application in accordance with subsection (4), the Clerk is, within 10 days of the date of the decision, to notify the applicant of the decision.

(6) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the Local Authority.

(7) Where a Local Authority fails to decide an application within the period referred to in subsection (3), the applicant may appeal to the Court pursuant to section 7.1 as if the Local Authority had refused the application.

(8) Where the applicant notifies the Local Authority that the applicant accepts the decision of the Local Authority without dispute and will not exercise any right of appeal to the Court in respect of the decision, the period for institution of an appeal is to be taken to have expired.

(9) Subsections (1) to (8) (both inclusive) do not apply where an easement is required to be effected as a condition of approval granted by a Local Authority in respect of any application made pursuant to a planning scheme.

(10) Within 2 years of the date of obtaining approval pursuant to this section, an applicant is to submit the proposed instrument of agreement for inspection by the Local Authority and the Local Authority is to endorse on or attach to the instrument a certificate notifying the approval by the Local Authority of the instrument.

(11) The registering authority is not to register or record an instrument, the subject of an approval under this section, unless it is endorsed on or certified pursuant to subsection (10).

## PART 6—CONDITIONS, CONTRIBUTIONS AND WORKS

**6.1 Unlawful conditions.** (1) Where an application is made to a Local Authority—

(a) pursuant to Part 4 or Part 5;

or

(b) for any approval, consent or permission to use land or use or erect any building or other structure for any purpose as required by a planning scheme,



the Local Authority is not to—

- (c) subject its approval of that application to a condition that is not relevant or reasonably required in respect of the proposal to which the application relates, notwithstanding the provisions of a planning scheme;
- (d) restrict the duration of the approval to less than the period prescribed by those Parts (except where town planning considerations warrant a lesser period) or, in the case of a subdivision of land, require that works be commenced in a lesser time period than that which is specified in section 5.3 (1).

(2) The Local Authority and an applicant or owner of land are not to enter into an agreement and a Local Authority is not to accept any consideration in respect of a condition that, pursuant to subsection (1), is unlawful for the Local Authority to impose.

**6.2 Contributions towards water supply and sewerage works.** (1) (a)

For the purposes of this section, unless a contrary intention appears—

“prescribed application” means an application—

- (i) to amend a planning scheme or the conditions attached to an amendment of a planning scheme pursuant to section 4.3;
- (ii) to rezone land in stages pursuant to sections 4.6 and 4.9;
- (iii) for town planning and interim development consent pursuant to section 4.12;
- (iv) to subdivide land pursuant to section 5.1;
- (v) which is a combined application pursuant to section 4.11;

“relevant date” means 1 September 1985;

“relevant land” means the land which is the subject of a prescribed application whether or not a building or other structure is proposed to be erected or used on that land.

(b) A Local Authority may deem works not to be available where those services cannot reasonably be provided to the development for technical reasons.

(2) Where a prescribed application is made to a Local Authority and—

- (a) the Local Authority determines that water or sewerage (or both) should be made available to the relevant land;
- (b) the Local Authority has constructed or is constructing a water supply scheme or a sewerage scheme (or both) capable of servicing the relevant land, with or without augmentation; and
- (c) the Local Authority is prepared to provide or has already provided as a part of that scheme or, as the case may be,

those schemes, headworks that are adequate to make available water or sewerage (or both) to land that includes or comprises the relevant land,

the Local Authority may, as a condition of granting approval of a prescribed application, require the applicant to pay the Local Authority an amount, determined in accordance with a planning policy adopted by the Local Authority, towards the cost incurred or to be incurred by the Local Authority in providing the appropriate water supply headworks or sewerage headworks (or both) or the water supply works external or sewerage works external (or both) as the case may be.

(3) (a) Subject to paragraph (b), where a prescribed application is made to a Local Authority and the Local Authority is prepared to make available water or sewerage (or both) to the relevant land, the Local Authority may, as a condition of granting approval of a prescribed application, require the applicant to pay—

- (i) a contribution towards the cost incurred or to be incurred by the Local Authority in providing the appropriate water supply headworks or sewerage headworks (or both), as the case may be;
- (ii) the cost or a contribution towards the cost incurred or to be incurred by the Local Authority in providing the appropriate water supply works external or sewerage works external (or both), as the case may be;
- and
- (iii) the cost of water supply works internal or sewerage works internal (or both), as the case may be, if the relevant land is to be subdivided.

(b) The applicant may, at the applicant's absolute discretion, undertake to carry out the works internal at the applicant's cost and to the satisfaction of the Local Authority and the Local Authority may require the giving of it of security to ensure the performance of the works by the applicant.

(4) Where a prescribed application is made to a Local Authority, and—

- (a) the Local Authority decides that water or sewerage (or both) should be made available to the relevant land;
- and
- (b) the Local Authority does not operate and is not presently constructing a water supply scheme or a sewerage scheme (or both) capable of serving the relevant land;
- and
- (c) the Local Authority is prepared to construct a scheme or schemes referred to in subparagraph (b) and to provide headworks that are adequate to make available water or sewerage (or both) to the relevant land,

the Local Authority may, as a condition of granting approval of a prescribed application, require the applicant to pay—

(d) the total cost of providing any water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any two or more of them), where the relevant land is the only land that will be serviced by those works;

or

(e) a contribution towards the cost of providing the water supply headworks, sewerage headworks, water supply works external and sewerage works external, as the case may be, where the relevant land is not the only land that will be serviced by those works.

(5) Where the Local Authority, pursuant to subsections (3) and (4), requires the applicant to pay the cost or a contribution towards the cost of any water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any two or more of them) provided or to be provided in connexion with the use of the relevant land either in whole or in stages, and that requirement is satisfied, and a further prescribed application is made which relates to that land (whether by the same or by a different applicant), the Local Authority is not, in relation to that subsequent application, to require the payment of the cost or a contribution towards the cost of any of those works unless—

(a) the use then to be made of that land will, in the opinion of the Local Authority, create a greater demand on the works than that for which a contribution has already been made; and

(b) the amount of any additional cost or contribution does not exceed the cost of satisfying the greater demand.

(6) The amount of any contribution required to be paid to a Local Authority pursuant to this section is—

(a) where a prescribed application is to subdivide land and the relevant land was at the relevant date in a zone under a planning scheme which would permit its use for a purpose envisaged by the prescribed application and the water supply headworks or sewerage headworks (or both), as the case may be, are available to service the relevant land— not to exceed the cost of the works which the Local Authority could lawfully impose by way of any by-law that was in existence at the relevant date and which required the applicant to contribute towards the cost of those works;

or

(b) in any other case, notwithstanding section 2.8 (6)—to be determined in accordance with a planning policy adopted by the Local Authority which is to—

(i) specify the method adopted by the Local Authority in determining the amount of any contribution to be made

by the applicant towards the cost of water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any two or more of them);

- (ii) specify the works, structures or equipment, including those operated and maintained by another Local Authority or other body, as the case may be, and referred to in subsection (12), which the Local Authority determines to be water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any two or more of them) relevant to the locality;
- (iii) supersede any provision of a planning scheme, interim development provision or by-law made by the Local Authority in relation to a matter contained in the planning policy.

(7) In adopting a planning policy pursuant to subsection (6), the Local Authority is to have regard to the following matters:—

- (a) the estimated cost of the construction and augmentation of the water supply scheme or sewerage scheme in respect of which contributions are to be made under this section;
- (b) the need for augmentation (if any) of the water supply scheme or sewerage scheme in respect of which contributions are to be made under this section;
- (c) the estimated cost of the augmentation;
- (d) the area of land, the estimated population or the estimated number of allotments (or lots, if any, under the *Building Units and Group Titles Act 1980-1988*) to be serviced by the augmentation;
- (e) the application of the planning policy in relation to applications or classes of applications in respect of which contributions are required to be made under this section so as to secure a reasonable contribution by the applicant towards the cost of water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any two or more of them) taking into account any of the following matters applicable to the application:—
  - (i) the area of the relevant land;
  - (ii) the estimated population or equivalent population to be serviced in relation to the relevant land;
  - (iii) the estimated number of allotments (or lots, if any, under the *Building Units and Group Titles Act 1980-1988*) to be created in connexion with the relevant land;
  - (iv) the proposed use of the relevant land;
  - (v) any other matter that the Local Authority considers should be taken into account for the purpose of securing a contribution by the applicant towards the cost of water supply headworks, sewerage headworks, water supply works

external or sewerage works external (or any two or more of them), as the case may be.

(8) Where a Local Authority, in considering the requirements of subsection (7), amends a planning policy adopted pursuant to section 2.8 it is to include a statement of the reasons for the amendment.

(9) The Local Authority is, within 30 days of the date of receipt by it of an application and upon payment of the appropriate fee, to supply to the applicant details of all contributions to be made and that have been made to the Local Authority in respect of water supply or sewerage works (or both) in respect of the relevant land.

(10) Where a Local Authority decides to require an applicant to pay or contribute towards the cost of water supply headworks, sewerage headworks, water supply works external, sewerage works external (or any two or more of them) or pay the cost of water supply works internal or sewerage works internal (or both) under this section, the amount payable to the Local Authority in respect of a prescribed application is to be paid at the time as may be agreed upon between the Local Authority and the applicant, but in the absence of agreement, the amount is payable—

- (a) where it is proposed to subdivide the relevant land— within 14 days after the date of receipt by the Local Authority of notification by the applicant of the applicant's intention to commence works in connexion with the application and prior to commencing the works;
- (b) (i) where it is proposed not to subdivide the relevant land— within 14 days after the date of the granting by the Local Authority of approval under the *Building Act 1975-1988*;  
or
- (ii) where no building work is associated with the relevant land—prior to the commencement of the use.

(11) The approval of a prescribed application may include a condition requiring the applicant to lodge and maintain with the Local Authority security in a form approved by the Local Authority for the amount of any cost or contribution required to be paid by the applicant pursuant to this section or such lesser amount as may be agreed upon between the parties.

(12) A Local Authority may enter into an agreement with another Local Authority or any other statutory body, with regard to the provision of water supply or sewerage services, as the case may be, referred to in subsection (2) and where such an agreement has been entered into the Local Authority is to be taken to have constructed or to be constructing a water supply or sewerage scheme notwithstanding that the water supply scheme or sewerage scheme (or both), as the case may be, are or are to be operated and maintained by the other Local Authority or other body as the case may be.

**6.3 Agreements for specific works.** (1) Where an application referred to in section 6.2 (2) is approved by a Local Authority subject to a lawful condition that the applicant pay to the Local Authority—

- (a) the cost of or a contribution towards the cost of providing water supply headworks or sewerage headworks (or both) where those headworks, are to be provided or that work is to be performed consequent upon the approval of that application;
- (b) the cost of or a contribution towards the cost of providing the water supply works external or sewerage works external (or both) pursuant to section 6.2 (2);
- (c) the cost of water supply works internal or sewerage works internal (or both),

an agreement is to be entered into between the applicant and the Local Authority setting forth—

- (d) the nature and extent of the works for which payment is to be made (including a general specification thereof);
  - (e) all amounts that the applicant is required to pay to the Local Authority;
  - (f) the time within which the amount is to be paid;
  - (g) provisions relating to the interest accrued on amounts held in the Trust Fund of the Local Authority in accordance with this section;
  - (h) the amount and nature of any security required to be lodged and maintained by the applicant with the Local Authority, the circumstances in which security may be applied and the conditions under which it may be released;
  - (i) where appropriate, the date on or before which the Local Authority is to commence to perform the works or alternatively, the circumstances which will warrant the commencement;
- and
- (j) where appropriate, the date on or before which the works are to be completed by the Local Authority or alternatively the circumstances which will warrant their completion.

(2) No money is to be paid to or accepted by the Local Authority until the agreement has been signed by the applicant and the Local Authority.

(3) The Local Authority is to expend upon the work of construction or augmentation all amounts which are paid to it under and in accordance with an agreement entered into pursuant to subsection (1).

(4) Each payment made to a Local Authority pursuant to this section is to be deposited in its Trust Fund and be held therein until it is expended in accordance with the agreement and expenditure of any part of the payment is to be recorded separately and distinctly from expenditure of any part of any other such payment.

(5) A Local Authority is, on the written request of the Minister, to produce to the Minister for examination details of the recordings referred to in subsection (4).

(6) (a) The Minister may, by notice in writing, call upon a Local Authority to show cause, within the time specified in the notice, why the payments referred to in subsection (4) have not been applied towards the purposes for which they were paid.

(b) If the Local Authority fails to show cause to the satisfaction of the Minister within the time so specified, the Minister may issue to the Local Authority such orders and directions in respect of the moneys as the Minister considers appropriate having regard to the purposes for which the moneys were obtained.

(c) A Local Authority is, to the satisfaction of the Minister, to comply in all respects with an order or direction issued to it by the Minister.

(7) Where a Local Authority fails to carry out, to the satisfaction of the Minister, the requirements of an order or direction issued to it under this section the Minister may cause the order or direction to be complied with and the money held by the Local Authority (which should have been expended in complying with the order or direction) is thereupon to be held for the use of the Minister who, if the money is not paid to him on demand, may recover the amount thereof from the Local Authority by action in a court of competent jurisdiction.

**6.4 Works.** (1) (a) Nothing contained in section 6.2 or 6.3 precludes a Local Authority and an applicant from entering into an agreement, whereby instead of making a payment referred to in section 6.2 the applicant carries out the works at the applicant's expense to the satisfaction of the Local Authority and within the time specified in the agreement.

(b) An agreement entered into between a Local Authority and an applicant under paragraph (a) may be subject to a condition requiring the applicant to give the Local Authority security to its satisfaction that the applicant's obligations under the agreement will be fulfilled.

(2) (a) An applicant, with the approval of the Local Authority, instead of undertaking the works of constructing and draining the roads and carrying out any other necessary works associated with the development of land, the subject of the application, may either—

(i) pay to the Local Authority an amount as may be agreed upon with the Local Authority as the cost of undertaking those works, and agree with the Local Authority as to when those works are to be undertaken by the Local Authority;

or

(ii) give to the Local Authority security to the satisfaction of the Local Authority that the applicant will undertake those works within such time as may be specified by the Local Authority.

(b) No money is to be paid to or accepted by the Local Authority nor any agreement made by the Local Authority pursuant to an application to develop the relevant land, until a contract in writing is made between the applicant and the Local Authority in respect of those works.

(3) The contract referred to in subsection (2) (b) is to set forth the nature and extent of the works to be executed by the Local Authority (including a specification thereof), the amount which the applicant agrees to pay to the Local Authority, the date on or before which the Local Authority is to commence to construct the works, and the date on or before which those works are to be undertaken by the Local Authority.

(4) A Local Authority is not to seal the plan of survey pursuant to section 5.3 until a contract in accordance with subsection (2) is first made and unless it is satisfied that any incomplete works will be completed within 3 months of the date of that sealing.

(5) (a) If, at any time, the Minister is of the opinion that the Local Authority has failed to observe the contract in any respect, the Minister is to give to the Local Authority such orders and directions as are necessary to ensure observance by the Local Authority of that contract.

(b) The Local Authority is, within such time as the Minister specifies, to carry out to the satisfaction of the Minister, the requirements of those orders and directions.

(6) A Local Authority is not to require, either as a condition of approval of an application for the subdivision of land or as a requirement of any planning scheme provision or by-law, whether made before or after the commencement of this Act, that works which the Local Authority may lawfully require to be undertaken in respect of the subdivision of land, be undertaken by the Local Authority.

## PART 7—APPEALS

**7.1 Appeals to the Court.** (1) A person may appeal to the Court where—

- (a) this Act confers the right of appeal;
- (b) that person is an applicant who is dissatisfied with a decision of a Local Authority or conditions applied pursuant to the planning scheme or by-law with respect to the use of any premises or the erection of a building or other structure permitted by the planning scheme (other than where a right of objection is conferred by the *Building Act 1975-1988*);
- (c) that person is an applicant or objector who is dissatisfied with a decision of a Local Authority made pursuant to an interim development control provision.

(2) (a) An appeal against a decision of a Local Authority is to be instituted within 40 days from the date on which the decision was made or such longer period as the Court may allow, where it is established that the Clerk failed to notify persons in accordance with this Act.



(b) Where a Local Authority has failed to decide an application within the period specified by this Act, an appeal may be instituted at any time after the expiration of the period specified for the decision on the application by the Local Authority.

(c) The institution of an appeal is to be made as prescribed and in accordance with the Rules of the Court.

(3) Where an applicant has instituted an appeal pursuant to paragraph (2) (b) and the applicant was required by this Act to cause public notice of the application to be given, the applicant is to forthwith make application to the Clerk to be furnished, in respect of each objection duly made, with the name and address of every principal objector who has duly made an objection to the application in relation to which the appeal has been instituted and the Clerk is to provide the information forthwith.

(4) (a) Within 10 days of the date of the institution of an appeal (or where subsection (3) applies, within 10 days of the date of the furnishing of the information by the Clerk) or such further period as the Court may allow the appellant is to serve upon—

(i) in the case of an applicant appellant—the Local Authority and each principal objector who has duly made an objection;

(ii) in the case of an objector appellant—the Local Authority and the applicant,

notice of the appeal and the grounds thereof and where the notice is to an applicant or a principal objector it is to include a statement that the person on whom the notice is served may elect within 14 days after the date notice is served to become a respondent to the appeal.

(b) A person electing to be a respondent is to file in the Court a notice of election, as prescribed by the Rules of Court, within 14 days after the date notice is served or such longer period as the Court may allow where sufficient cause is shown for an extension.

(c) A respondent to an appeal is entitled to be heard in the appeal as a party thereto.

(d) Where an objection is made by more than one person, the right of appeal or the right to elect to become a respondent to an appeal applies to those persons in addition to the principal objector.

(e) For the purposes of this subsection and the Rules of Court, the Local Authority is a respondent to an appeal.

**7.1A Determination of appeal.** (1) Subject to subsection (3) (e), the Court is not to determine an appeal in respect of an application for which public notice is required to be given by this Act unless it is satisfied by evidence or by affidavit that the applicant has complied with the relevant provisions of this Act in respect of the giving of public notice.

(2) (a) Where an appeal is instituted by an objector (other than pursuant to section 3.2 or 4.14) it is the applicant who has to establish that the application should be approved or allowed, as the case may be, or the appeal dismissed.

(b) Where an appeal is instituted by an objector pursuant to section 3.2 or section 4.14, it is the respondent who has to establish that the approval should be revoked or the use registered, as the case may be.

(c) Where an appeal is instituted by an applicant it is the appellant who has to establish that the application should be approved or allowed, as the case may be, and the appeal upheld.

(3) (a) The Court may allow an appeal whether against a refusal or a condition of approval, absolutely or subject to any conditions the Court considers appropriate.

(b) Notwithstanding that it may dismiss an appeal instituted by an objector, the Court in doing so may impose or vary conditions attaching to the approval.

(c) In any appeal the Court may vary a condition imposed by the Local Authority in respect of the approval.

(d) Where an appeal is in relation to an application for staged rezoning or a combined application, the Court may allow or dismiss the appeal in whole or in part.

(e) The Court may determine an appeal notwithstanding that certain provisions of this Act have not been complied with, where the Court is satisfied that the non-compliance has not adversely affected the awareness of the public of the existence and nature of the application nor restricted the opportunity of the public to exercise the rights conferred by the relevant provisions.

(f) In determining an appeal, the Court may give such orders and directions as it considers appropriate.

(4) Where a determination of the Court amends or alters a decision of the Local Authority, the determination of the Court is to be the decision of the Local Authority superseding the previous decision (or part thereof, as the case may be) of the Local Authority.

**7.2 Review by the Court.** (1) An applicant who is dissatisfied with the decision of a Local Authority on an application made pursuant to section 4.15 may apply to the Court for a review of the decision and the Court is hereby vested with jurisdiction to review matters brought before it pursuant to this section and to make determinations thereon.

(2) (a) An application for review of a decision of a Local Authority is to be instituted within 40 days from the date on which the decision was made or such longer period as the Court may allow, where it is established that the Clerk failed to notify the applicant in accordance within section 4.15 (9).

(b) Where a Local Authority has failed to decide an application made pursuant to section 4.15 within the period specified by section

4.15 (6), an application for review may be instituted at any time after the expiration of the period specified for the decision on the application by the Local Authority.

(c) An application for review is to be in accordance with the Rules of Court.

(3) It is the applicant who has to establish that the application should be approved.

(4) In determining an application for review, the Court may give such orders and directions as it considers appropriate.

(5) Where a determination of the Court amends or alters a decision of the Local Authority, the determination of the Court is to be the decision of the Local Authority superseding the previous decision (or part thereof, as the case may be) of the Local Authority.

**7.3 The Planning and Environment Court.** (1) The Local Government Court established under the *City of Brisbane Town Planning Act 1964-1989* is hereby preserved, continued in existence and constituted under this Act under the name and style "The Planning and Environment Court".

(2) (a) The Governor in Council is, from time to time by notice published in the Gazette, to notify the names of Judges of District Courts who are to be the Judges who constitute the Court.

(b) The Governor in Council may notify the name of a Judge of District Courts to constitute the Court for a specified period only.

(c) Any Judge of District Courts so named to constitute the Court may do so notwithstanding that another Judge of District Courts is concurrently constituting the Court.

(3) The jurisdiction of a Judge of District Courts named to constitute the Court is not to be limited exclusively to the Court.

(4) The Governor in Council is to appoint a Registrar of the Court who is to keep minutes of the proceedings and records of the determinations of the Court and perform such other duties as the Court may direct.

(5) The Court is to be a Court of record and have a seal which is to be judicially noticed by all courts and persons acting judicially.

**7.4 Jurisdiction of the Court.** (1) The Court is to hear and determine all matters which by this Act or any other Act are required to be heard and determined by the Court, including every appeal and application for review which under this Act may be made to the Court.

(2) Subject to subsection (3), the jurisdiction of the Court under this Act is exclusive and every determination 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.

(3) Where a Local Authority or any person feels aggrieved by a determination of the Court on the ground of error or mistake in law on the part of the Court or that the Court had no jurisdiction to make the determination or exceeded its jurisdiction in making the determination, the Local Authority or the person may, in accordance with the Rules of Court, appeal from the determination to the Full Court of the Supreme Court of Queensland.

(4) In respect of any proceeding or matter under an Act other than this Act, subsections (2) and (3) apply subject to that other Act.

**7.5 Powers of the Court.** (1) (a) For the purposes of the hearing and determination of any matter within its jurisdiction under this Act or any other Act, the Court has power to summon any person as a witness and to require and compel that person to produce in evidence all documents and writings in their possession or power and to examine that person and to punish that person for not attending in pursuance of the summons or for refusing to give evidence or for neglecting or refusing to produce those documents or writings and for that purpose the Member of the Court has the like powers as a District Court Judge.

(b) Notwithstanding paragraph (a), a person is not to be compelled to give evidence incriminating himself.

(2) The Court is to take evidence on oath, affirmation, affidavit or declaration and record the evidence.

(3) Every witness summoned is entitled to be paid reasonable expenses by the party requiring his attendance.

(4) Any party may be represented by his counsel, solicitor or agent.

(5) Subject to the Rules of Court relating to the exercise in chambers of the jurisdiction of the Court every proceeding is to be heard and determined and the determination thereon is to be pronounced in open court.

(6) The Court may sit in chambers and may exercise in chambers such jurisdiction as by the Rules of Court is so exercisable.

(7) Where in respect of an appeal made to the Court against a decision of a Local Authority there exists a planning policy of the Local Authority that does not comply with the requirements of a planning policy pursuant to section 2.8, the Court is to hear and determine the appeal as if that policy did not exist.

**7.6 Costs.** (1) (a) Subject to paragraph (b), each of the parties to an appeal is to bear their own costs.

(b) The Court may, upon application made to it, order such costs (including allowances to witnesses attending for the purpose of giving evidence at the hearing) as it considers appropriate in the following cases:—

- (i) where it considers that the appeal was frivolous or vexatious;
- (ii) where a party has not been given reasonable prior notice

of intention to apply for an adjournment of an appeal or other proceedings;

- (iii) where a party has incurred costs because another party has defaulted in the procedural requirements;
- (iv) where a Local Authority does not take an active part in the proceedings where it has a responsibility to do so.

(2) An order made under subsection (1) may be made an order of the District Court and enforced accordingly.

(3) Where the Court has jurisdiction under this Act or any other Act to award costs to or in favour of or amongst any party or parties to any proceeding or matter before the Court, the Court may in its discretion order that those costs are to be ascertained and determined by the proper costs taxing officer of the Supreme Court at Brisbane, according to the scale of costs prescribed by law for the time being in respect of proceedings in the District Court and in every such case it is within the discretion of the taxing officer to decide the proper scale to be adopted by him in the taxation of those costs.

**7.7 Penalty for interrupting proceedings of the Court.** (1) Any person who wilfully interrupts the proceedings of the Court or otherwise misbehaves in the presence of the Court may be excluded from the Court by order of the Court and is, whether excluded or not, liable to a fine, to be imposed by the Court, of 2 penalty units and in default of immediate payment is liable to be imprisoned by order of the Court for 28 days.

(2) No summons need be issued against the offender, nor need any evidence be taken, but the offender may be taken into custody then and there by a member of the Police Force by order of the Court and called upon to show cause why a fine or other punishment under this section should not be imposed.

**7.8 Rules of Court.** (1) The Governor in Council, with the concurrence of any two or more Judges of the Supreme Court of whom the Chief Justice of Queensland is to be one, by Order in Council published in the Gazette, may from time to time make all such Rules of Court as may be considered necessary or convenient for regulating the procedure and practice of the Court and for the purpose of giving full effect to this Act and any other Act conferring jurisdiction, power or authority on the Court.

(2) Without limiting the generality of subsection (1), the Rules of Court may make provision for all or any of the following matters:—

- (a) prescribing the jurisdiction, powers and authorities of the Court which may be exercised by the Member of the Court in chambers and regulating the procedure and practice of the Court in chambers;
- (b) the duties of, and the administration and conduct of the Registrar and other officers and servants of the Court;
- (c) conferring on the Registrar, either generally or in any particular case and under such circumstances and on such

conditions as may be prescribed, the jurisdiction, powers and authorities in whole or in part of the Member of the Court in chambers and providing for an appeal from the Registrar in the exercise of that jurisdiction, power or authority to the Member of the Court;

(d) forms for all matters and proceedings in the Court.

(3) Notwithstanding subsection (1), a party desiring to take a step in a matter or proceeding in respect whereof the Court has jurisdiction, power or authority under this Act or any other Act may apply to the Member of the Court for directions, and any step taken in accordance with the directions given by the Member of the Court is to be taken to be regular and sufficient.

(4) Section 28A of the *Acts Interpretation Act 1954-1989* applies with respect to Orders in Council made under subsection (1) as if they were regulations.

#### PART 8—MISCELLANEOUS

**8.1 Power to purchase or take land for planning purposes.** (1) In addition to its powers under the *Acquisition of Land Act 1967-1988*, the Local Authority may purchase or, with the prior approval of the Governor in Council, take under that Act any land in a planning scheme area which is required for any purpose of the planning scheme, whether the land is so required immediately or not, and for that purpose has all the powers and authorities conferred on it and be subject to all the duties imposed on it by that Act.

(2) Without limiting the generality of subsection (1), the Local Authority may purchase or, with the prior approval of the Governor in Council, take under the *Acquisition of Land Act 1967-1988* any land in a planning scheme area—

- (a) which is required for the development or redevelopment of any part of the planning scheme area;
- or
- (b) which is required for the purpose of controlling, restricting, limiting or prohibiting access to a road in pursuance of any planning scheme provision or by-law in that behalf.

(3) Subsections (1) and (2) do not authorize or empower the Local Authority to take under the *Acquisition of Land Act 1967-1988* any land in its planning scheme area which is required for the development or redevelopment of any part of the planning scheme area until that land is included in a zone in which the use for that development or redevelopment is permitted.

(4) (a) Where land is purchased or taken by the Local Authority for the purpose of development or redevelopment under subsection (2) (a), the Local Authority, with the prior approval of the Governor in Council, may sell the whole or part of the land so purchased or taken, subject to such conditions as the Governor in Council may determine.

(b) The disposal of land is to be in accordance with section 19 of the Local Government Act.

(c) If the land or any part of it is sold before it has been developed or redeveloped by the Local Authority, the terms and conditions are to be such as ensure that the land sold will be developed or redeveloped according to plans and a design approved by the Local Authority.

(5) Until land which is required for development or redevelopment of any part of the planning scheme area is purchased or taken by the Local Authority pursuant to this section such requirement (whether noted or indicated on any document comprising part of the planning scheme or not) is not to affect the use which may be lawfully made of the premises.

**8.2 Environmental impact.** (1) Without derogating from any of its powers under this Act or any other Act, a Local Authority, when considering an application for its approval, consent, permission or authority for the implementation of a proposal under this Act or any other Act, is to take into consideration whether any deleterious effect on the environment would be occasioned by the implementation of the proposal, the subject of the application.

(2) (a) Without limiting the powers in subsection (1) and subject to paragraph (b), every applicant to a Local Authority for approval, consent, permission or authority in respect of a proposal of a type prescribed by this Act or specified in a planning policy of that Local Authority for that purpose, (in this section called a “designated development”) is to submit, as part of the application, an environmental impact statement which conforms with the terms of reference prepared pursuant to subsection (4).

(b) Only one environmental impact statement is required to be submitted in respect of each proposal for a designated development.

(3) Prior to submitting an environmental impact statement pursuant to subsection (2), an applicant is to forward, in the prescribed manner, a request for terms of reference to the Director who is, in writing, to acknowledged receipt of the request.

(4) Upon receipt of a request referred to in subsection (3), the Director is, in consultation with the Director-General of the Department of Environment and Heritage, other appropriate Departments (within the meaning of the *Public Service Management and Employment Act 1988-1990*), the relevant Local Authority and the appropriate statutory bodies (collectively in this section called “the referral agencies”), to prepare terms of reference setting out the matters and things to be assessed in the conduct of an environmental impact study and is to notify the applicant of the terms of reference within 20 working days of the date of the acknowledgement referred to in subsection (3).

(5) The Director is to forward a copy of the terms of reference to the Local Authority in whose Area the site of the proposal is situated.

(6) (a) The period referred to in subsection (4) may be extended by the Minister, as the Minister upon application being made in that behalf may allow.

(b) Where a longer period is granted, notification of the granting of the longer period is to be given to the applicant by the Director prior to the expiration of the 20 working days or such longer period or periods.

(7) Notwithstanding any other provision of this Act, where the application referred to in subsection (2) is an application which requires the giving of public notice, it is a requirement that the last day for the receipt of objections be a day not less than 30 working days after the date of compliance with the giving of public notice.

(8) When the Local Authority receives an application for a designated development, it is to forward to the Director, and any referral agency nominated in the terms of reference, a copy of the environmental impact statement together with a request for comments.

(9) A request referred to in subsection (8) is to specify a date, being not less than 20 working days from the date upon which the referral agency receives the request, by which that agency is to provide its comments in respect of the environmental impact statement to the Local Authority.

(10) A referral agency which receives a request referred to in subsection (8) may, within the period specified in subsection (9), forward its comments to the Local Authority and those comments are, for the purposes of this Act, to be taken to be objections where those comments are in respect of an application pursuant to section 4.3, 4.6 or 4.12.

(11) Notwithstanding any other provision contained in this Act—

(a) (i) the Local Authority is required to decide an application to which subsection (2) applies within 60 days of the date of receipt by it of the statutory declaration required by section 4.3 (10), 4.6 (10) or 4.12 (9), as the case may require, or 60 days of the date upon which the application was made (which ever is later) or such longer period, or periods, as the Minister, upon application being made in that behalf, may allow;

and

(ii) where a longer period is granted, notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 60 days or such longer period or periods;

(b) when deciding an application made to it pursuant to subsection (2), the Local Authority is to have regard to the environmental impact statement submitted with the application, in addition to any other matters relevant to the application.

(12) Where an application is made to a Local Authority for a proposal which is not a designated development and the Local Authority



is of the opinion that the implementation of the proposal may have a deleterious effect on the environment, it is to—

- (a) require the applicant to submit an environmental impact statement in respect of the proposal, the subject of the application;
- and
- (b) specify the matters and things which are to be dealt with in that statement.

(13) In any case where the Local Authority makes application for the approval by the Minister or the Governor in Council of any proposal not being a designated development in accordance with this Act or any other Act, the Minister may require the submission of an environmental impact statement in respect of the proposal.

(14) For the purpose of complying with a request from the Minister in accordance with subsection (13)—

- (a) the Local Authority may submit to the Minister a copy of the environmental impact statement already supplied to the Local Authority in respect of the proposal, the subject of the application referred to in subsection (13);
- (b) if no environmental impact statement has been required by and supplied to the Local Authority, the Local Authority may (and is hereby authorized) require the applicant in respect of the proposal to submit without cost to the Local Authority the environmental impact statement as required by the Minister;
- or
- (c) the Local Authority may submit to the Minister a copy of an environmental impact statement prepared by or on behalf of that Local Authority in respect of a proposal by the Local Authority.

**8.3 Major shopping developments.** (1) For the purposes of this section the term “economic impact assessment” means a study report which is an assessment of the public need and demand for a proposed major shopping development and a statement of the likely economic impact upon existing development of a similar nature in the locality which is to include—

- (a) a comprehensive statement of details of the proposed development incorporating the gross floor area of the proposed development, the types of major retailing envisaged (including pre-commitments, if any), vehicle parking provision proposed, major features (if any) and particulars of the site for the proposed development;
- (b) the geographic identification of the primary, secondary and, where appropriate, the tertiary market catchments for the

- proposed development together with reasons to support that identification;
- (c) assessment of the existing population in each of the catchment areas referred to in paragraph (b) together with the growth forecasts, demography and socio-economic profile for each population group identified;
  - (d) identification of existing and approved market competition for the proposed development in the catchment areas identified pursuant to paragraph (b) and the gross floor area and the nature of that competition;
  - (e) estimates of the value and distribution of retail sales within the total catchment area of the proposed development for the second year of trading of that proposed development;
  - (f) identification of the beneficial and adverse effects that are likely to result from implementation of the proposed development;
- and
- (g) a summary of the findings of the study results.

(2) Where an application is made to a Local Authority for its approval to establish a major shopping development and the right to use any premises for that purpose requires that the relevant land be rezoned, the planning scheme be amended, a development control plan be amended or that the town planning consent of the Local Authority be first obtained, the application is, unless an economic impact assessment in respect of a similar proposal for that land has previously been furnished to the Local Authority, to be accompanied by an economic impact assessment.

(3) An economic impact assessment referred to in subsection (2) becomes a part of the application which is open to inspection by the public at the relevant time.

(4) Where an application is made to a Local Authority pursuant to subsection (2), the Local Authority may have the economic impact assessment independently assessed by a second consultant who is engaged by the Local Authority for this purpose.

(5) Notwithstanding any other provision contained in this Act—

- (a) (i) the Local Authority is required to decide an application to which subsection (2) applies within 60 days of the date of receipt by it of the statutory declaration required by section 4.3 (10), 4.6 (10) or 4.12 (9), as the case may require, or such longer period or periods as the Minister, upon application being made in that behalf, may allow; and
- (ii) where a longer period is granted notification of the granting of the longer period is to be given to the applicant by the Local Authority prior to the expiration of the 60 days or such longer period or periods;

- (b) when deciding an application made to it pursuant to subsection (2), the Local Authority is to have regard to the economic impact assessment lodged with the application and where applicable the findings of the consultant engaged by the Local Authority pursuant to subsection (4), in addition to any other matters relevant to the application.

**8.3A Assessment of sites for contamination.** (1) Land within planning scheme areas may be prescribed for the purposes of this section.

(2) Where land the subject of a proposal under section 2.18 (3) (c) or 2.18 (3A) or an application under section 4.3 or 4.6 is land prescribed under subsection (1)—

(a) the applicant, when so requested by a Local Authority in respect of such an application;

or

(b) the proponent referred to in section 2.18 in respect of such a proposal,

as the case may be, is to apply to the Director of the Chemical Hazards and Emergency Management Unit for a site contamination report.

(3) Each site contamination report is to be prepared by the Director of the Chemical Hazards and Emergency Management Unit at the expense of the applicant or proponent, as the case may be, and may be a report on any study of contamination of the relevant land.

(4) A site contamination report prepared by the Director of the Chemical Hazards and Emergency Management Unit pursuant to this section is to be submitted for assessment pursuant to section 2.19, 4.4 or 4.7, as the case may require.

**8.4 Combined use of premises for service station and shop.** (1) Subject to subsection (2) and notwithstanding anything contained in a planning scheme, any premises in the planning scheme area are not to be used as a service station in combination with any of the following uses (each of which, in this section, is called a “specified use”):—

(a) general store;

(b) local store;

(c) shop;

(d) store;

unless that land is rezoned for the exclusive use of a service station in combination with a specified use and the gross floor area of a specified use does not exceed 100 square metres.

(2) (a) Subsection (1) does not prevent the use of any premises as a service station in combination with a specified use where—

(i) the use in question was an existing lawful use of the premises at the commencement of this Act;

or

- (ii) approval for the use in question has been granted before the commencement of this Act and the use is effected in conformity with that approval.

(b) A use of any premises that, by reason of paragraph (a), is not prevented by subsection (1) is to be taken to constitute a lawful non-conforming use of the relevant premises under the planning scheme in force in the area in which the premises are situated.

**8.5 Furnishing false or misleading information.** A person who furnishes under this Act a document that is false or misleading in a material particular, whether by way of a statement therein or omission therefrom, commits an offence against this Act.

**8.6 Proceedings for offences.** (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

Penalty: 10 penalty units.

(2) Proceedings under subsection (1) are to be taken in accordance with section 52 (14) of the Local Government Act.

**8.7 Delegation of certain powers.** (1) Where this Act empowers the Minister to allow a longer period for the making or deciding of an application, the Minister may delegate that power to the Director subject to such terms and limitations as the Minister considers appropriate.

(2) Where a Local Authority—

- (a) has resolved to accept applications for consideration in principle pursuant to section 4.2;
- (b) has, under section 5.1 (6), approved an application subject to conditions which include the construction of works,

the Local Authority may, for the purposes of deciding applications under section 4.2 or approving an application under section 5.2, as the case may be, delegate its power to decide or approve, as the case may be, subject to such terms and limitations as the Local Authority considers appropriate, to—

- (c) the Chairman;
- (d) a committee appointed from among its councillors, aldermen or members, as the case may be;
- (e) any officer of the Local Authority or a board consisting of officers of the Local Authority.

(3) The delegate, when acting in accordance with a delegation under this section, is to be taken to be the Minister or the Local Authority, as the case may require.

(4) A delegation by a Local Authority to any officer may be made—

- (a) by reference to the holder of an office in the Local Authority service without naming him, in which case the power,

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function or duty delegated may be exercised, discharged or performed by the person for the time being carrying out the duties of that office;

- (b) by reference to the name of a person who is an officer, in which case the power, function or duty delegated may be exercised, discharged or performed by that person only while he remains an officer;
- (c) by reference to the name of a person who is an officer and to the office in the Local Authority service then held by that person, in which case the power, function or duty delegated may be exercised, discharged or performed by that person only while he remains the holder of that office.

(5) A delegation under this section may be revoked or amended at any time by the Minister or the Local Authority, as the case may be, who gave that delegation and nothing in this section is to be taken as preventing the Minister or the Local Authority, as the case may be, from exercising any power, discharging any function or performing any duty, that has been delegated under this section.

(6) This section is not to affect the operation of section 39B of the City of Brisbane Act.

**8.8 Repeals.** (1) The Acts specified in the First Schedule are repealed to the extent indicated therein.

(2) An Act referred to in the first column of the Second Schedule as amended by this Act may be cited as specified in relation to that Act in the second column of that Schedule.

**8.9 Regulations.** (1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to—

- (a) regulating the giving of public notice of applications made under the Act;
- (b) the form and content of interim development control provisions;
- (c) regulating the form of registers required to be kept by Local Authorities and the particulars to be entered in those registers;
- (d) forms to be used for the purposes of this Act;
- (e) fees payable for the purposes of this Act;
- (f) all matters required or permitted by this Act to be prescribed and in respect of which no other means of prescription are provided;
- (g) all matters that in his opinion are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

(2) A regulation may impose a penalty not exceeding 10 penalty units for a breach of that regulation or any other regulation.

**8.10 Savings and transitional.** (1) In this section, unless the contrary intention appears—

“town planning scheme” includes the Town Plan for the City of Brisbane.

(2) The Rules of Court made pursuant to section 33 of the *City of Brisbane Town Planning Act 1964-1989* prior to and subsisting at the commencement of this Act are to continue to have force and effect as if they were Rules of Court made pursuant to this Act.

(3) (a) Each town planning scheme (including the Town Plan for the City of Brisbane) approved by the Governor in Council prior to the commencement of this Act, and which is in force immediately prior to the commencement of this Act, is to continue to have force and effect as if it was a planning scheme approved by the Governor in Council pursuant to this Act.

(b) Each scheme map which relates to a town planning scheme referred to in paragraph (a) is to be taken to be a zoning map or a regulatory map, as the case may require, under this Act.

(4) Each policy made by a Local Authority in respect of its town planning scheme or subdivision of land by-law prior to the commencement of this Act, and which is in force immediately prior to the commencement of this Act, is, where it conforms with this Act, to continue to have force and effect as if that policy was a planning policy made under this Act and it is, at the date of commencement of this Act, to constitute the Register of Planning Policies for that Local Authority.

(5) Each by-law regulating development pending the introduction of a planning scheme and approved by the Governor in Council prior to the commencement of this Act, and which is in force immediately prior to the commencement of this Act, is to continue to have force and effect as if it was an interim development control regulation approved by the Governor in Council pursuant to this Act.

(6) (a) Where a planning scheme is in force in an area, each town planning by-law and subdivision of land by-law approved by the Governor in Council prior to the commencement of this Act, and which is in force immediately prior to the commencement of this Act in respect of that area, is to continue to have force and effect as if it was part of a planning scheme approved by the Governor in Council pursuant to this Act.

(b) Each subdivision of land by-law approved by the Governor in Council in respect of the whole or any part of an Area which is not subject to a town planning scheme is, subject to Parts 4 and 5, to continue to have force and effect.

(7) (a) Each approval, consent or permission (together with any conditions attaching thereto) granted by a Local Authority or the Governor in Council prior to the commencement of this Act, and which is in force immediately prior to the commencement of this Act, is to

continue to have force and effect as if it were an approval, consent or permission, as the case may be, made pursuant to this Act.

(b) Subject to paragraph (c), and for the purposes of paragraph (a), where an approval, consent or permission is subject to a time constraint, the period of that time constraint is to be measured from the date of the granting of that approval, consent or permission.

(c) A consent referred to in paragraph (a) does not lapse pursuant to section 4.13 (18), until 4 years after the commencement of this Act.

(8) (a) An application of any kind to which this Act refers, and duly made to a Local Authority prior to the commencement of this Act, is to be dealt with as if this Act had not commenced.

(b) An application referred to in paragraph (a) and approved by a Local Authority or the Governor in Council, where the case may require, is to be taken, for the purposes of subsection (7) (a), to be an approval granted by a Local Authority or the Governor in Council, as the case may be, prior to the commencement of this Act and in force immediately prior to the commencement of this Act.

(9) Where, prior to the commencement of this Act, a Local Authority has adopted a resolution to prepare a town planning scheme (or an amendment of a town planning scheme) and that resolution has, where required, been approved by the Minister, but not been approved by the Governor in Council prior to the commencement of this Act, the Local Authority may seek the approval of the Governor in Council to that scheme (or amendment) as if this Act had not commenced.

(10) (a) Where prior to the commencement of this Act a Local Authority has resolved to prepare a town planning scheme or an amendment of a town planning scheme—

(i) and the Local Authority has, by advertisement published at least once in the Gazette and in a newspaper, given public notice of its intention to make application to the Minister seeking the approval of the Governor in Council to the scheme or amendment;

(ii) but the scheme or amendment has not been approved by the Governor in Council prior to the commencement of this Act,

the Local Authority may seek the approval of the Governor in Council as if this Act had not commenced or the Local Authority may suggest and the Minister may recommend modification to the scheme or amendment which will ensure that the proposed scheme or amendment conforms in all respects with this Act.

(b) A town planning scheme or an amendment of a town planning scheme referred to in paragraph (a) and approved by the Governor in Council as if this Act had not commenced is to have force and effect as if it was a planning scheme or an amendment thereof, as the case may be, approved by the Governor in Council pursuant to this Act.

(c) Each scheme map which relates to a town planning scheme or an amendment of a town planning scheme referred to in paragraph (b) is to be taken to be a zoning map or a regulatory map, as the case may require, under this Act.

(11) Where prior to the commencement of this Act a Local Authority has resolved to prepare a town planning scheme or an amendment of a town planning scheme and the Local Authority has not, by advertisement published at least once in the Gazette (if applicable) and in a newspaper, given public notice of its intention to make application to the Minister seeking the approval of the Governor in Council to the scheme or amendment, the Local Authority is to proceed with the preparation of the scheme or amendment as if it was a planning scheme or amendment, as the case may be, prepared pursuant to this Act.



**FIRST SCHEDULE**

[s. 8.8]

Year and Number of Act	Short Title	Extent of Repeal
	<i>Local Government Act 1936-1989</i>	ss. 32A, 33, 33A, 33B, 34, 34A, 34AA and 34B
No. 60 of 1964	<i>The City of Brisbane Town Planning Act of 1964</i>	The Whole
No. 43 of 1967	<i>The Local Government Acts and Another Act Amendment Act of 1967</i>	Part III
No. 48 of 1967	<i>The Acquisition of Land Act of 1967</i>	All words from and including the words "No. 60 of 1964" in the first column of Part II of the First Schedule to the end of the First Schedule
No. 47 of 1968	<i>City of Brisbane Town Planning Act Amendment Act 1968</i>	The Whole
No. 27 of 1969	<i>City of Brisbane Town Planning Act Amendment Act 1969</i>	The Whole
No. 79 of 1971	<i>City of Brisbane Town Planning Act Amendment Act 1971</i>	The Whole
No. 7 of 1972	<i>District Courts Act Amendment Act 1972</i>	s. 4
No. 83 of 1973	<i>Local Government Act and Another Act Amendment Act 1973</i>	Part III
No. 39 of 1974	<i>City of Brisbane Town Planning Act Amendment Act 1974</i>	The Whole
No. 11 of 1975	<i>Building Act 1975-1988</i>	ss. 68 (2), 73 and 74

**FIRST SCHEDULE—continued**

[s. 8.8]

Year and Number of Act	Short Title	Extent of Repeal
No. 21 of 1975	<i>City of Brisbane Town Planning Act Amendment Act 1975</i>	The Whole
No. 44 of 1976	<i>City of Brisbane Town Plan Modification Act 1976</i>	The Whole
No. 84 of 1976	<i>City of Brisbane Act and Another Act Amendment Act 1976</i>	Part III
No. 22 of 1977	<i>City of Brisbane Town Planning Act and Another Act Amendment Act 1977</i>	Part II
No. 37 of 1979	<i>City of Brisbane Town Planning Act Amendment Act 1979</i>	The Whole
No. 78 of 1979	<i>Local Government Act and Another Act Amendment Act 1979</i>	Part III
No. 18 of 1980	<i>City of Brisbane Town Planning Act and Another Act Amendment Act 1980</i>	Part II
No. 56 of 1981	<i>City of Brisbane Town Planning Act Amendment Act 1981</i>	The Whole
No. 105 of 1981	<i>Local Government Act and Another Act Amendment Act 1981</i>	Part III
No. 48 of 1982	<i>City of Brisbane Town Planning Act Amendment Act 1982</i>	The Whole
No. 21 of 1983	<i>City of Brisbane Town Planning Act Amendment Act 1983</i>	The Whole
No. 36 of 1984	<i>City of Brisbane Town Planning Act Amendment Act 1984</i>	The Whole

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**FIRST SCHEDULE—continued**

[s. 8.8]

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Year and Number of Act	Short Title	Extent of Repeal
No. 15 of 1985	<i>City of Brisbane Town Planning Act and Another Act Amendment Act 1985</i>	The Whole
No. 88 of 1985	<i>Local Government and City of Brisbane Town Planning Acts Amendment Act 1985</i>	Part III
No. 18 of 1986	<i>City of Brisbane Town Planning Act Amendment Act 1986</i>	The Whole
No. 66 of 1988	<i>Constitution (Executive Actions Validity) Act 1988</i>	All words from and including the words “ <i>City of Brisbane Town Planning Act 1964-1986</i> ” in the first column of the Schedule to but not including the words “ <i>Local Government Act 1936-1987</i> ” in that column
No. 74 of 1989	<i>Local Government Act Amendment Act 1989</i>	s. 8

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## SECOND SCHEDULE

s. 8.8

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Existing Citation	Amended Citation
<i>Acquisition of Land Act 1967-1988</i>	<i>Acquisition of Land Act 1967-1990</i>
<i>Building Act 1975-1988</i>	<i>Building Act 1975-1990</i>
<i>City of Brisbane Act 1924-1989</i>	<i>City of Brisbane Act 1924-1990</i>
<i>Constitution (Executive Actions Validity) Act 1988</i>	<i>Constitution (Executive Actions Validity) Act 1988-1990</i>
<i>District Courts Act 1967-1988</i>	<i>District Courts Act 1967-1990</i>
<i>Local Government Act 1936-1989</i>	<i>Local Government Act 1936-1990</i>

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