

Queensland



INTEGRATED PLANNING ACT 1997

Act No. 69 of 1997

Queensland



INTEGRATED PLANNING ACT 1997

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Queensland



Integrated Planning Act 1997

Act No. 69 of 1997

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

[Assented to 1 December 1997]

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Short title

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

Commencement

1.1.2. This Act commences on a day to be fixed by proclamation.

PART 2—PURPOSE AND ADVANCING THE PURPOSE

Purpose of Act

1.2.1. The purpose of this Act is to seek to achieve ecological sustainability¹ by—

- (a) coordinating and integrating planning at the local, regional and State levels; and
- (b) managing the process by which development occurs; and
- (c) managing the effects of development on the environment (including managing the use of premises).

¹ ‘Ecological sustainability’ is defined in section 1.3.3 (Meaning of “ecological sustainability”)

Advancing Act's purpose

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

- (a) unless paragraph (b) or (c) applies—perform the function or exercise the power in a way that advances this Act's purpose; or
- (b) if the entity is an assessment manager other than a local government—in assessing and deciding a matter under this Act, have regard to this Act's purpose; or
- (c) if the entity is a referral agency other than a local government (unless the local government is acting as a referral agency under devolved or delegated powers)—in assessing and deciding a matter under this Act, have regard to this Act's purpose.

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

What advancing this Act's purpose includes

1.2.3.(1) Advancing this Act's purpose includes—

- (a) ensuring decision-making processes—
 - (i) are accountable, coordinated and efficient; and
 - (ii) take account of short and long-term environmental effects of development at local, regional, State and wider levels; and
 - (iii) apply the precautionary principle; and
 - (iv) seek to provide for equity between present and future generations; and
- (b) ensuring the sustainable use of renewable natural resources and the prudent use of non-renewable natural resources; and
- (c) avoiding, if practicable, or otherwise lessening, adverse environmental effects of development; and
- (d) supplying infrastructure in a coordinated, efficient and orderly way, including encouraging urban development in areas where adequate infrastructure exists or can be provided efficiently; and
- (e) applying standards of amenity, conservation, energy, health and safety in the built environment that are cost effective and for the

public benefit; and

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

(2) For subsection (1)(a)(iii), the precautionary principle is the principle that, if there are threats of serious or irreversible environmental damage, careful evaluation must be made to avoid wherever practicable serious or irreversible environmental damage including, if appropriate, assessing risk weighted consequences of various options.

(3) In subsection (1)(b)—

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

PART 3—INTERPRETATION

Division 1—Standard definitions

Definitions—the dictionary

1.3.1. The dictionary in schedule 10 defines particular words used in this Act.²

² In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4).

Words defined elsewhere in the Act are generally signposted by entries in the dictionary. However, if a section has a definition applying only to the section, or a part of the section, it is generally not signposted by an entry in the dictionary and is generally set out in the last subsection of the section.

Signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the definitions can be found. For example, the definition ‘**“acknowledgment notice”** see section 3.2.3(1)’, tells the reader there is a definition of acknowledgment notice in the section.

Division 2—Key definitions**Meaning of “development”**

1.3.2. “Development” is any of the following—

- (a) carrying out building work;
- (b) carrying out plumbing or drainage work;
- (c) carrying out operational work;
- (d) reconfiguring a lot;
- (e) making a material change of use of premises.

Meaning of “ecological sustainability”

1.3.3. “Ecological sustainability” is a balance that integrates—

- (a) protection of ecological processes and natural systems at local, regional, State and wider levels; and
- (b) economic development; and
- (c) maintenance of the cultural, economic, physical and social wellbeing of people and communities.

Meaning of “lawful use”

1.3.4. A use of premises is a “**lawful use**” of the premises if—

- (a) the use is a natural and ordinary consequence of making a material change of use of the premises; and
- (b) the making of the material change of use was in accordance with this Act.

Division 3—Supporting definitions and explanations for key definitions**Definitions for terms used in “development”**

1.3.5. In this Act—

“building work” means—

- (a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building; or
- (b) excavating or filling—
 - (i) for, or incidental to, the activities mentioned in paragraph (a); or
 - (ii) that may adversely affect the stability of a building, whether on the land on which the building is situated or on adjoining land; or
- (c) supporting (whether vertically or laterally) land for activities mentioned in paragraph (a).

“drainage work” means installing, repairing, altering or removing—

- (a) a sanitary drain used, or intended to be used, to carry sewage from sanitary plumbing to a sewer, or on-site sewerage system; or
- (b) a property sewer; or
- (c) an on-site sewerage system, including a common effluent drain, located on premises; or
- (d) a stormwater installation on premises.

“lot” means—

- (a) a lot under the *Land Title Act 1994*;³ or
- (b) a separate, distinct parcel of land for which an interest is recorded in a register under the *Land Act 1994*; or
- (c) common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or
- (d) a lot or common property to which the *Building Units and Group*

³ *Land Title Act 1994*, schedule 2—

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

- (a) the registration of a plan of subdivision; or
 - (b) the recording of particulars of an instrument;
- and includes a lot under the *Building Units and Group Titles Act 1980*.

Titles Act 1980 continues to apply;⁴ or

- (e) a community or precinct thoroughfare under the *Mixed Use Development Act 1993*; or
- (f) a primary or secondary thoroughfare under the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*.

“material change of use”, of premises, means—

- (a) the start of a new use of the premises; or
- (b) the re-establishment on the premises of a use that has been abandoned; or
- (c) a material change in the character, intensity or scale of the use of the premises.

“operational work” means—

- (a) extracting gravel, rock, sand or soil from the place where it occurs naturally; or
- (b) planting trees or managing, felling and removing standing timber for an ongoing forestry business (whether in a native forest or a plantation); or
- (c) excavating or filling that materially affects premises or their use; or
- (d) placing an advertising device on premises; or
- (e) undertaking work (other than destroying or removing vegetation) in, on, over or under premises that materially affects premises or their use;

but does not include building, drainage or plumbing work.

“plumbing work” means installing, repairing, altering or removing any

⁴ The *Building Units and Group Titles Act 1980* may continue to apply to the following Acts—

- (a) the *Integrated Resort Development Act 1987*;
- (b) the *Mixed Use Development Act 1993*;
- (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*;
- (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*;
- (e) the *Sanctuary Cove Resort Act 1985*.

system, or components of a system, for—

- (a) supplying water within premises from the point of connection to a property service; or
- (b) conveying sewage from premises to a sanitary drain; or
- (c) a fire service within premises.

“reconfiguring a lot” means—

- (a) creating lots by subdividing another lot; or
- (b) amalgamating 2 or more lots; or
- (c) rearranging the boundaries of a lot by registering a plan of subdivision; or
- (d) dividing land into parts by agreement (other than a lease for a term, including renewal options, not exceeding 10 years) rendering different parts of a lot immediately available for separate disposition or separate occupation; or
- (e) creating an easement giving access to a lot from a constructed road.

Explanation of terms used in “ecological sustainability”

1.3.6. For section 1.3.3—

- (a) ecological processes and natural systems are protected if—
 - (i) the life supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored for present and future generations; and
 - (ii) biological diversity is protected; and
- (b) economic development occurs if there are diverse, efficient, resilient and strong economies (including local, regional and State economies) enabling communities to meet their present needs while not compromising the ability of future generations to meet their needs; and
- (c) the cultural, economic, physical and social wellbeing of people and communities is maintained if—

- (i) well-serviced communities with affordable, efficient, safe and sustainable development are created and maintained; and
- (ii) areas and places of special aesthetic, architectural, cultural, historic, scientific, social or spiritual significance are conserved or enhanced; and
- (iii) integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction are provided.

Division 4—General matters of interpretation

Words in this Act prevail over words in planning instruments

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

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

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

- (a) the applicant is a reference to the person who made the application; and
- (b) development, or the development, is a reference to development the subject of the application; and
- (c) the assessment manager is a reference to the assessment manager for the application; and
- (d) a referral agency, concurrence agency or advice agency is a reference to a referral agency, concurrence agency or advice agency for the application; and
- (e) the local government is a reference to the local government for the local government area where the development is proposed; and
- (f) an information request is a reference to an information request for assessing the application; and

- (g) the acknowledgment notice is a reference to the acknowledgment notice for the application; and
- (h) a referral agency response is a reference to a referral agency response for the application; and
- (i) the development approval is a reference to the development approval for the application; and
- (j) the land is a reference to the land that is the subject of the application; and
- (k) the planning scheme is a reference to the planning scheme for the locality where the development is to take place; and
- (l) a submitter is a reference to a submitter for the application; and
- (m) the decision notice, is a reference to the decision notice for the application.

PART 4—USES AND RIGHTS

Division 1—Uses and rights acquired after the commencement of this Act continue

Lawful uses of premises protected

1.4.1.(1) If immediately before the commencement of a planning instrument or an amendment of a planning instrument the use of premises was a lawful use of the premises and there has been no material change of the use since the commencement of the instrument or the amendment, neither the instrument nor the amendment can—

- (a) stop the use from continuing; or
- (b) further regulate the use; or
- (c) require the use to be changed.

(2) If there has been a material change of the use of premises since the commencement of a planning instrument or an amendment of a planning

instrument, any lawful use of the premises immediately before the commencement is taken to be a lawful use of the premises after the commencement—

- (a) for as long as the use continues; but
- (b) only to the extent the lawful use of the premises immediately before the commencement continues.

(3) Subsection (2) applies whether or not the material change of use was authorised under a development permit.

New planning instruments can not affect existing development permits

1.4.2.(1) This section applies if—

- (a) a development permit that has not lapsed exists for premises; and
- (b) after the permit is issued, a new planning instrument or an amendment of a planning instrument commences.

(2) Neither the planning instrument nor the amendment can stop or further regulate the development.

Implied and uncommenced right to use premises protected

1.4.3.(1) This section applies if—

- (a) a person has been granted a development permit and when the person has completed the development in accordance with the permit the person has the right to use the premises, the subject of the permit, for a particular purpose (because the change to the intended use of the premises was not a material change of use that also would have required a development permit); and
- (b) the right existed, but the intended use had not started, immediately before the commencement of a new planning instrument or an amendment of a planning instrument declaring the change to the intended use of the premises to be a material change of use requiring a development permit.

(2) Neither the planning instrument nor the amendment can stop the use from starting if—

- (a) the permitted development is completed within the time stated in—
 - (i) the permit for completion of the development; or
 - (ii) this Act for completion of the development; and
- (b) the use of the premises starts within 5 years after the completion.

Lawfully constructed buildings and works protected

1.4.4. If a building or works have been lawfully constructed or effected on or after the commencement of this section, neither a planning instrument nor an amendment of a planning instrument can require the building or works to be altered or removed.

Rights under a preliminary approval protected

1.4.5. Neither a planning instrument nor an amendment of a planning instrument can affect a preliminary approval—

- (a) before the approval lapses;⁵ or
- (b) for an aspect of development that starts within the time stated in the approval for the aspect to start—before the end of the period stated in the approval for the completion of the aspect.

Division 2—Uses and rights acquired before the commencement of this Act continue

Lawful uses of premises protected

1.4.6. If immediately before the commencement of this section the use of premises was a lawful use under the repealed Act and there has been no material change of the use since the commencement—

- (a) the use is taken to be a lawful use under this Act; and
- (b) neither a planning instrument nor an amendment of a planning

⁵ Section 3.5.21 (When approvals lapse) specifies when approvals lapse.

instrument can—

- (i) stop the use from continuing; or
- (ii) further regulate the use; or
- (iii) require the use to be changed.

(2) If there has been a material change of the use of premises since the commencement of this section, any lawful use of the premises immediately before the commencement is taken to be a lawful use of the premises after the commencement—

- (a) for as long as the use continues; but
- (b) only to the extent the lawful use of the premises immediately before the commencement continues.

(3) Subsection (2) applies whether or not the material change of use was authorised under a development permit.

Lawfully constructed buildings and works protected

1.4.7. If a building or works were lawfully constructed before the commencement of this section, neither a planning instrument nor an amendment of a planning instrument can require the building or works to be altered or removed.

PART 5—APPLICATION OF ACT

Act binds all persons

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

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

CHAPTER 2—PLANNING

PART 1—LOCAL PLANNING INSTRUMENTS

Division 1—General provisions about planning schemes

Meaning of “planning scheme”

2.1.1. A “**planning scheme**” is an instrument made by a local government under division 3.⁶

Area to which planning schemes apply

2.1.2. A local government’s planning scheme applies to the whole of the local government’s area (the “**planning scheme area**”).

Division 2—Key concepts for planning schemes

Key elements of planning schemes

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

- (a) coordinates and integrates the matters (including the core matters) dealt with by the planning scheme, including any State and regional dimensions⁷ of the matters; and
- (b) identifies the desired environmental⁸ outcomes for the planning scheme area; and
- (c) includes measures that facilitate the desired environmental outcomes to be achieved; and

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

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

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

- (d) includes performance indicators to assess the achievement of the desired environmental outcomes; and
- (e) if the local government is prescribed under a regulation—includes a benchmark development sequence.⁹

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

- (a) self-assessable development; and
- (b) assessable development requiring code or impact assessment.

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

- (a) a planning scheme may identify desired environmental outcomes for particular localities within the planning scheme area; and
- (b) a local government may include a benchmark development sequence in its planning scheme even if the local government is not prescribed under a regulation.

State, regional and local dimensions of planning scheme matters

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

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

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

- (a) about which a regional planning advisory committee report makes a recommendation; or
- (b) that can best be dealt with by the cooperation of 2 or more local governments.

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

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

Division 3—Making, amending and consolidating planning schemes**Process for making or amending planning schemes**

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

(2) The process involves 3 stages—

- preliminary consultation and preparation stage¹⁰
- consideration of State interests and consultation stage¹¹
- adoption stage.¹²

Compliance with sch 1

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

- (a) adversely affected the awareness of the public of the existence and nature of the proposed scheme; or
- (b) restricted the opportunity of the public under schedule 1 to make properly made submissions; or
- (c) restricted the opportunity of the Minister to exercise the Minister's powers under schedule 1, sections 10, 11 and 18.

Effects of planning schemes and amendments

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

- (a) becomes the planning scheme for the area; and
- (b) replaces any existing planning scheme applying to the area; and

¹⁰ See schedule 1, part 1.

¹¹ See schedule 1, part 2.

¹² See schedule 1, part 3.

(c) has effect on and from—

- (i) the day the adoption of the planning scheme is notified in the gazette; or
- (ii) if a later day for the commencement of the planning scheme is stated in the planning scheme—the later day.

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

- (a) the day the adoption of the amendment is notified in the gazette; or
- (b) if a later day for the commencement of the amendment is stated in the amendment—the later day.

Consolidating planning schemes

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

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

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

Division 4—Temporary local planning instruments

Meaning of “temporary local planning instrument”

2.1.9. A “temporary local planning instrument” is an instrument made by a local government under this division.¹³

¹³ The Minister also may make a temporary local planning instrument if the local government fails to comply with a direction under section 2.3.2.

Extent of effect of temporary local planning instrument

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

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

- (a) there is a significant risk of serious environmental harm, within the meaning of the *Environmental Protection Act 1994*, section 17,¹⁴ or serious adverse cultural, economic or social conditions occurring in the planning scheme area; and
- (b) the delay involved in using the process under schedule 1 to amend the planning scheme would increase the risk.

Area to which temporary local planning instrument applies

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

Process for making temporary local planning instruments

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

(2) The process involves 2 stages—

¹⁴ *Environmental Protection Act 1994*, section 17—

“Serious environmental harm” is environmental harm (other than environmental nuisance)—

- (a) that causes actual or potential harm to environmental values that is irreversible, of a high impact or widespread; or
- (b) that causes actual or potential harm to environmental values of an area of high conservation value or special significance; or
- (c) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount; or
- (d) that results in costs of more than the threshold amount being incurred in taking appropriate action to—
 - (i) prevent or minimise the harm; and
 - (ii) rehabilitate or restore the environment to its condition before the harm.

- proposal stage¹⁵
- adoption stage.¹⁶

Compliance with sch 2

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

When temporary local planning instruments have effect

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

- (a) on and from—
 - (i) the day the adoption of the instrument is notified in the gazette; or
 - (ii) if a later day for the commencement of the instrument is stated in the instrument—the later day; and
- (b) until the instrument expires or is repealed.

Repealing temporary local planning instruments

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

- (a) a resolution of a local government; or
- (b) the adoption of a planning scheme or an amendment of a planning scheme that specifically repeals the instrument.

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

- (a) was made by the local government under the direction of the Minister under section 2.3.2(1)(c); or
- (b) was made by the Minister under section 2.3.3 after a failure of the

¹⁵ See schedule 2, part 1.

¹⁶ See schedule 2, part 2.

local government to comply with a direction of the Minister under section 2.3.2(1)(c).

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

- (a) the name of the local government;
- (b) the name of the temporary local planning instrument being repealed;
- (c) the day the resolution was made;
- (d) the purpose and general effect of the resolution.

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

(5) The repeal takes effect—

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

Division 5—Planning scheme policies

Meaning of “planning scheme policy”

2.1.16.(1) A “**planning scheme policy**” is an instrument that supports the local dimension of a planning scheme and is made by a local government under this division.¹⁷

(2) To the extent that a planning scheme policy is inconsistent with a planning scheme, the planning scheme prevails.

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

Area to which planning scheme policy applies

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

Adopting planning scheme policies in planning schemes

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

Process for making or amending planning scheme policies

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

(2) The process involves 3 stages—

- proposal stage¹⁸
- consultation stage¹⁹
- adoption stage.²⁰

Compliance with sch 3

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

- (a) adversely affected the awareness of the public of the existence and nature of the proposed planning scheme policy or amendment; or
- (b) restricted the opportunity of the public under schedule 3 to make properly made submissions on the proposed policy or amendment.

¹⁸ See schedule 3, part 1.

¹⁹ See schedule 3, part 2.

²⁰ See schedule 3, part 3.

Effects of planning scheme policies

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

- (a) becomes a policy for the area; and
- (b) if the policy states that it replaces an existing policy—replaces the existing policy; and
- (c) has effect on and from—
 - (i) the day the adoption of the policy is first notified in a newspaper circulating generally in the local government's area; or
 - (ii) if a later day for the commencement of the policy is stated in the policy—the later day.

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

- (a) the day the adoption of the amendment is first notified in a newspaper circulating generally in the local government's area; or
- (b) if a later day for the commencement of the amendment is stated in the amendment—the later day.

Repealing planning scheme policies

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

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

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

- (a) the name of the local government;
- (b) the name of the planning scheme policy being repealed;
- (c) the day the resolution was made.

(4) On the day the notice is published (or as soon as practicable after the

notice is published), the local government must give the chief executive a copy of the notice.

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

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

Division 6—Local planning instruments generally

Local planning instruments have force of law

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

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

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

- (a) by applying to the use a code identified in the planning scheme or temporary local planning instrument; and
- (b) if—
 - (i) the use is a natural and ordinary consequence of making a material change of use of the premises happening after the code took effect; and
 - (ii) the making of the material change of use is assessable or self-assessable development.

(4) A planning scheme policy can not regulate development on, or the use of, premises.

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

Infrastructure intentions in local planning instruments not binding

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

PART 2—REVIEWING LOCAL PLANNING INSTRUMENTS***Division 1—Review of planning schemes by local government*****Local government must review planning scheme every 6 years**

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

- (a) within 6 years after the planning scheme was originally adopted; or
- (b) if a review of the planning scheme has been previously completed—within 6 years after the completion of the last review.

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

Courses of action local government may take

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

- (a) propose to prepare a new scheme; or
- (b) propose to amend the scheme; or
- (c) if the local government is satisfied that the scheme is suitable to continue without amendment—decide to take no further action.

(2) A resolution by the local government under schedule 1 not to proceed

with or adopt a proposed planning scheme is taken to be a decision under subsection (1)(c).

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

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

- (a) prepare a report stating the reasons why the local government decided to take no further action; and
- (b) give a copy of the report to the chief executive.

Notice about report to be published

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

- (a) the name of the local government;
- (b) that the local government has prepared a report stating the reasons why the local government decided to take no further action under section 2.2.2(1)(c);
- (c) that the report is available for inspection and purchase;
- (d) a contact telephone number for information about the report;
- (e) the period (the “**inspection period**”), being not less than 40 business days, during which the report is available for inspection and purchase.

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

Local government must review benchmark development sequence annually

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

preparation of the sequence.

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

Division 2—Review by independent reviewer

Request for independent review

2.2.6.(1) A person may make a written request to the chief executive seeking an independent review of part of a local government's planning scheme or all or part of a local government's planning scheme policy.

(2) The request must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

Chief executive to inform local government, assess request and set conditions

2.2.7.(1) The chief executive must give a copy of the request to the local government.

(2) If the chief executive is satisfied, after consultation with the person requesting the review and the local government, that the matters referred to in the request are unlikely to be resolved to the satisfaction of the person requesting the review, subsection (3) applies.

(3) The chief executive must consider the request to see if sufficient information has been given to allow conditions to be set for conducting the review.

(4) If the chief executive is satisfied that sufficient information has been given to allow the chief executive to set conditions for conducting the review, the chief executive must set the conditions, including the following—

- (a) whether the review is to be conducted by hearing and written

- submissions or written submissions only;
- (b) the scope of the matters to be considered by the review;
 - (c) any other local government and any State entity the chief executive is satisfied may be affected by the review and is to be notified about the review;
 - (d) the maximum cost of conducting the review, based on the assessment fees prescribed under a regulation;
 - (e) the apportionment of the maximum cost of conducting the review between—
 - (i) the person conducting the review; and
 - (ii) the local government and any other local government the chief executive is satisfied may be affected by the review; and
 - (iii) the State entities to be notified about the review.

(5) If the chief executive is satisfied that insufficient information has been given to allow the chief executive to set conditions for conducting the review, the chief executive must ask the person making the request for the information that would allow the conditions to be set.

Notice and acceptance of conditions for review

2.2.8.(1) After setting the conditions for conducting the review, the chief executive must give the person requesting the review a copy of the conditions.

(2) If the person wishes to proceed with the review on the conditions set by the chief executive, the person must, within 20 business days after being given the copy of the conditions (the “**acceptance period**”), give the chief executive written notice accepting the conditions.

(3) If the person requesting the review does not want to proceed with the review on the conditions set by the chief executive, the person may make representations about the conditions to the chief executive.

(4) The representations must be made before the end of the acceptance period.

(5) After considering any representations made under subsection (3), the

chief executive must decide whether to change the conditions.

(6) The chief executive must give the person requesting the review written notice of the chief executive's decision under subsection (5).

(7) Subsection (2) applies again to a person given a notice under subsection (6), but subsections (3) to (6) do not.

(8) The chief executive may, before the end of the acceptance period, extend the period.

(9) If the person requesting the review does not give the chief executive written notice accepting the conditions within the acceptance period, the review lapses.

Reviews may be conducted together

2.2.9. If 2 or more persons request reviews, the chief executive may, with the agreement of the persons who requested the reviews, appoint a reviewer to conduct a single review.

Appointment of reviewer

2.2.10.(1) After the person requesting the review gives the chief executive written notice accepting the conditions and pays the maximum cost of conducting the review set by the conditions for conducting the review, the chief executive must appoint a reviewer to carry out the review.

(2) The reviewer must be an appropriately qualified person.

(3) In subsection (2)—

“**appropriately qualified**” includes having the qualifications, experience or standing necessary to carry out the review.

Person with conflict of interest not to be appointed reviewer

2.2.11.(1) This section applies if—

- (a) the chief executive proposes to appoint a person as a reviewer and advises the person of the proposed appointment; and
- (b) the person has a direct or indirect personal interest in a matter to be considered by the review; and

- (c) the interest could conflict with the proper performance of the person's duties in relation to the consideration of the matter.

(2) The person must advise the chief executive of the interest, and the chief executive must not appoint the person as a reviewer.

Notice of review

2.2.12.(1) After appointing a reviewer, the chief executive must—

- (a) publish in a newspaper circulating generally in the local government's area a notice about the review; and
- (b) give the reviewer a copy of the conditions accepted for the review and a copy of the notice published in the newspaper; and
- (c) give the person requesting the review the name of the reviewer and a copy of the notice published in the newspaper; and
- (d) give the local government, any other local government the chief executive is satisfied may be affected by the review and the State entities to be notified about the review—
 - (i) the name of the reviewer; and
 - (ii) the conditions accepted for the review; and
 - (iii) a copy of the notice published in the newspaper.

(2) The notice about the review must state the following—

- (a) the name of the reviewer;
- (b) the scope of the matters to be considered by the review;
- (c) whether the review is to be conducted by hearing and written submissions or written submissions only;
- (d) if the review is to be conducted by hearing and written submissions—that any person wishing to appear at the hearing must, within 20 business days after the notice first being published (the “**consultation period**”)—
 - (i) register their interest in appearing at the hearing by giving written notice to the chief executive, or if the chief executive decides that the reviewer is to receive the written notice, the reviewer; and

- (ii) give a written statement about the matters the person wishes to raise at the hearing, including the outcomes the person desires the review to achieve;
- (e) if the review is to be conducted by written submissions only—that written submissions about any aspect of the matter the subject of the review may be given by any person during the consultation period to the chief executive, or if the chief executive decides that the reviewer is to receive the written submissions, the reviewer.

Conduct of review generally

2.2.13. The reviewer—

- (a) must carry out the review promptly and efficiently; and
- (b) must consider all submissions made during the consultation period and any hearing; and
- (c) may be informed on any matter—
 - (i) in any way the reviewer considers appropriate; and
 - (ii) without notice to any person who has made a submission; and
- (d) must comply with the conditions accepted by the person who requested the review.

State and local governments to provide assistance

2.2.14. Any State entity and any local government that was notified about the review must provide the reviewer with all reasonable assistance required by the reviewer to carry out the review.

Directions about hearings by reviewers

2.2.15.(1) Subject to any conditions about the hearing accepted by the person requesting the review, the reviewer may give directions about—

- (a) the times and places of hearings; and
- (b) matters preliminary to hearings; and

(c) the conduct of hearings.

(2) The reviewer may refuse to hear a person who fails to comply with a reasonable direction of the reviewer.

Conduct of hearings

2.2.16.(1) In conducting the hearing, the reviewer—

- (a) need not proceed in a formal way; and
- (b) must give the person requesting the review and the local government reasonable opportunity to be heard; and
- (c) must, having regard to the time available for conducting the review, give a reasonable opportunity to be heard to—
 - (i) any person who, during the consultation period, registered an interest in being heard; and
 - (ii) the other local governments and the State entities notified about the review; and
- (d) is not bound by the rules of evidence; and
- (e) may prohibit or regulate questioning in the hearing; and
- (f) may hear 2 or more submissions together if the submissions concern the same or a related matter.

(2) If, because of the time available for conducting the review, a person mentioned in subsection (1)(c)(i) or an entity mentioned in subsection (1)(c)(ii) does not have an opportunity to be heard, or fully heard, the person or entity may make a written submission about the matter to the reviewer.

(3) The reviewer may report on the review without hearing a person if the person is not present or represented at the time and place appointed for hearing the person.

(4) A person appearing at a hearing may be represented by another person if the other person is not a lawyer.

Report of reviewer

2.2.17.(1) At the end of the review the reviewer must prepare a report (the “**reviewer’s report**”) about the review and give the reviewer’s report to the chief executive.

(2) The reviewer’s report must include a recommendation that the part of the planning scheme, or the planning scheme policy, or the part of the planning scheme policy, the subject of the review be amended or repealed or remain unchanged.

(3) If the recommendation is for the amendment of the part of the planning scheme, or the planning scheme policy, or the part of the planning scheme policy, the subject of the review, the reviewer’s report must also identify the amendment that should be effected.

(4) After receiving the reviewer’s report, the chief executive must give—

- (a) a copy of the report to—
 - (i) the person who requested the review; and
 - (ii) each person who, during the consultation period, registered an interest in being heard or made a submission; and
 - (iii) the local government, and any other local government and any State entity notified about the review; and
- (b) a statement of the actual cost of the review to the person who requested the review;
- (c) to the local government the names and addresses of each person mentioned in paragraph (a)(i) or (ii), and each other local government, and each State entity mentioned in paragraph (a)(iii).

Local government’s actions after receiving reviewer’s report

2.2.18.(1) The local government must, having regard to the recommendation mentioned in section 2.2.17(2), decide to—

- (a) amend the local government’s planning scheme, or
- (b) amend a planning scheme policy; or
- (c) make a new planning scheme policy; or
- (d) repeal a planning scheme policy; or

(e) do nothing.

(2) The local government must give a copy of its decision and the reasons for its decision to—

(a) the Minister; and

(b) each person or entity the chief executive gave a copy of the reviewer's report.

(3) If the local government decides to take action under subsection (1)(a), the local government must immediately start the process for amending a planning scheme.

(4) However, for applying schedule 1, the amendment is taken to be an amendment for which schedule 1, section 2(a) applies.

(5) If the local government decides to take action under subsection (1)(b) or (c), the local government must immediately start the process for amending or making a planning scheme policy.

(6) If the local government decides to take action under subsection (1)(d), the local government must immediately start the process for repealing a planning scheme policy.

Minister's actions after receiving reviewer's report

2.2.19.(1) The Minister must consider the reviewer's report, the local government's decision and the reasons for the decision and decide to—

(a) take action under part 3; or

(b) do nothing.

(2) The Minister must give a copy of the Minister's decision and the reasons for the Minister's decision to—

(a) the local government; and

(b) each other local government and each State entity to which the chief executive gave a copy of the reviewer's report.

Withdrawing request for review

2.2.20.(1) The person who requested the review may, by written notice

to the chief executive, withdraw the request at any time up to the completion of the reviewer's report.

- (2) If the request is withdrawn, the person—
- (a) is liable for the costs of conducting the review up to the time the request is withdrawn; but
 - (b) is not liable for any costs under paragraph (a) exceeding the maximum cost of conducting the review set by the conditions for conducting the review.

Paying reviewer and others and refunding any overpaid costs

2.2.21.(1) After receiving the reviewer's report, the chief executive must pay the amount received from the person requesting the review to the reviewer, the local government and each other local government and each State entity to which the chief executive gave a copy of the reviewer's report.

(2) The amount paid under subsection (1) must be paid in the proportions the chief executive considers appropriate having regard to the apportionments of the maximum cost of conducting the review set by the conditions for conducting the review and the work actually undertaken by the entities to which the amount is to be paid.

(3) If the actual cost of conducting the review is less than the amount paid to the chief executive by the person requesting the review, the chief executive must pay the difference to the person requesting the review.

(4) To remove any doubt, it is declared that if the cost of conducting the review is more than the maximum cost of conducting the review set by the conditions for conducting the review, the person requesting the review is not liable for any additional costs.

Reviewers not liable for performing functions under review

2.2.22. The reviewer is not liable to pay an amount for an action brought against the reviewer arising from any hearing conducted, publication made or anything done or in good faith purportedly done in the performance of the reviewer's functions.

Reviews not to affect development applications

2.2.23. The following are not relevant considerations in the assessment of a development application—

- (a) that a review is about to start or has started;
- (b) if a review has been completed—the recommendations made under the review.

PART 3—STATE POWERS*Division 1—Preliminary***Procedures before exercising powers**

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

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

(3) The notice must state—

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

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

- (a) not to exercise the power; or
- (b) to exercise the power.

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

Division 2—Exercising State powers

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

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

- (a) review its planning scheme; or
- (b) make a planning scheme or amend its planning scheme; or
- (c) make or repeal a temporary local planning instrument; or
- (d) make, amend or repeal a planning scheme policy.

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

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

Power of Minister if local government fails to comply with direction

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

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

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

Process if Minister takes directed action

2.3.4. The process for the Minister to take the action the Minister directed the local government to take is the same as the process for the local

government to take the action except that—

- (a) for making or amending a planning scheme, schedule 1, sections 10 and 18 do not apply; and
- (b) for a temporary local planning instrument, schedule 2, section 2 does not apply.

References in schedules to local government etc.

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

- (a) the local government’s public office is a reference to the department’s State office; and
- (b) a decision taken by resolution of the local government is a reference to a decision of the Minister; and
- (c) a local government’s chief executive officer is a reference to the chief executive of the department.

PART 4—STATE PLANNING POLICIES

Meaning of “State planning policy”

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

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

Area to which State planning policies apply

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

Process for making or amending State planning policies

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

(2) The process involves the following 3 stages—

- preparation stage²¹
- consultation stage²²
- adoption stage.²³

Compliance with sch 4

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

- (a) adversely affected the awareness of the public of the existence and nature of the proposed policy or amendment; or
- (b) restricted the opportunity of the public under schedule 4 to make submissions on the proposed policy or amendment.

Effects of State planning policies

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

- (a) if the policy states that it replaces an existing policy—replaces the existing policy; and
- (b) has effect on and from—
 - (i) the day the adoption of the policy is notified in the gazette; or
 - (ii) if a later day for the commencement of the policy is stated in the policy—the later day.

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

²¹ See schedule 4, part 1.

²² See schedule 4, part 2.

²³ See schedule 4, part 3.

- (a) the day the adoption of the amendment is notified in the gazette; or
- (b) if a later day for the commencement of the amendment is stated in the amendment—the later day.

Repealing State planning policies

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

- (a) a newspaper circulating generally in the State; and
- (b) the gazette.

(2) The notice must state the following—

- (a) the name of the State planning policy being repealed;
- (b) if the policy applies only to a particular area of the State—the name of the area or other information necessary to adequately describe the area;
- (c) that the policy is repealed.

(3) The repeal takes effect on and from the day the notice is published in the gazette.

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

PART 5—REGIONAL PLANNING ADVISORY COMMITTEES

Division 1—General provisions about regional planning advisory committees

What are regions

2.5.1. In this Act—

- (a) there are no fixed geographical areas of the State constituting

regions;²⁴ and

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

Division 2—Regional planning advisory committees

Establishment of committees

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

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

- (a) creating a new group of persons; or
- (b) recognising an existing group of persons.

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

- (a) prepare draft terms of reference for the proposed committee; and
- (b) identify the proposed region and local governments likely to be affected by the advice of the proposed committee; and
- (c) consult with the local governments and interest groups the Minister considers appropriate about—
 - (i) the draft terms of reference (including the term of the committee); and
 - (ii) the membership of the proposed committee; and
 - (iii) the extent of their, the Commonwealth's and the State's, proposed participation in, and support for, the proposed committee.

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

Particulars about committee

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

- (a) the committee's name; and
- (b) the membership of the committee; and
- (c) the area covered by the region for which the committee is established; and
- (d) the committee's terms of reference.

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

- (a) may be identified in general or specific terms; and
- (b) without limiting the scope of possible membership, must include representatives of appropriate local governments.

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

Changing committee

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

Operation of committee

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

Reports of committee

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

PART 6—DESIGNATION OF LAND FOR COMMUNITY INFRASTRUCTURE

Division 1—Preliminary

Who may designate land

2.6.1.(1) A Minister (a “**designator**”) may, under this part, designate land for community infrastructure already existing on the land or that the State or another entity intends to supply on the land.²⁵

(2) A local government (also a “**designator**”) may, under this part, designate land for community infrastructure already existing on the land or that the local government or another entity intends to supply on the land.

Matters to be considered when designating land

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

- (a) facilitate the implementation of legislation and policies about environmental protection or ecological sustainability; or
- (b) facilitate the efficient allocation of resources; or
- (c) satisfy statutory requirements or budgetary commitments of the State or local government for the supply of community infrastructure; or
- (d) satisfy the community’s expectations for the efficient and timely supply of the infrastructure.

Designator must consider major environmental effects

2.6.3.(1) This section applies if—

- (a) an entity proposes community infrastructure; and

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

- (b) the entity is not a public sector entity; and
- (c) the designator is satisfied that the infrastructure, or the construction of the infrastructure, is likely to have major environmental effects, within the meaning of the *State Development and Public Works Organization Act 1971*.²⁶

(2) The designator must consider the proposal in the same way a department of the government or a local body would have to consider the proposal if the proposal were an application mentioned in the *State Development and Public Works Organization Act 1971*, section 29(2).²⁷

What designations may include

2.6.4. A designation may include—

- (a) requirements about works or the use of the land for the community infrastructure such as the height, shape, bulk or location of the works on the land, vehicular access to the land, vehicular and pedestrian circulation on the land, hours of operation of the use, landscaping on the land and ancillary uses of the land; and
- (b) other requirements designed to lessen the impacts of the works or the use of the land for community infrastructure, such as procedures for environmental management.

How IDAS applies to designated land

2.6.5. Development under a designation is, to the extent the development is self-assessable development or assessable development under a planning scheme, exempt development.²⁸

²⁶ The *State Development and Public Works Organization Act 1971* does not define “major environmental effects”, but defines “environmental effects” as follows—
“environmental effects” means the physical, biological, or social systems within which such development occurs.

²⁷ *State Development and Public Works Organization Act 1971*, section 29 (Supervision of environment)

²⁸ Schedule 8 is relevant for deciding whether development on designated land is assessable, self-assessable or exempt development.

How infrastructure charges apply to designated land

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

Division 2—Ministerial designation processes

Process for Minister to designate land

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

(2) The process involves 2 stages—

- consultation stage²⁹
- designation stage.³⁰

Minister may proceed straight to designation in certain circumstances

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

(a) either—

- (i) the environmental effects of the community infrastructure or the construction of the infrastructure have been assessed under the *State Development and Public Works Organization Act 1971*, section 29³¹ or as if the proposal were an application mentioned in that section and considered under section 2.6.3 of this Act; or
- (ii) the impacts of the infrastructure or the construction of the infrastructure have been assessed under chapter 3; and

²⁹ See schedule 6, part 1.

³⁰ See schedule 6, part 2.

³¹ *State Development and Public Works Organization Act 1971*, section 29 (Supervision of environment)

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

Compliance with schs 6 or 7

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

- (a) adversely affected the awareness of the public of the existence and nature of the proposed designation; or
- (b) restricted the opportunity of the public under schedule 6 to make submissions.

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

Effects of ministerial designations

2.6.10. A designation made under this division—

- (a) if the designation states that it replaces an existing designation—replaces the existing designation; and
- (b) has effect on and from—
 - (i) the day the designation is notified in the gazette; or
 - (ii) if a later day for the commencement of the designation is stated in the notice—the later day.

When local government must include designation in planning scheme

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

- (a) its planning scheme (if any); and
- (b) any new planning scheme it makes before the designation ceases to have effect.

Division 3—Local government designation process

Designation of land by local governments

2.6.12.(1) A local government may only designate land by including the designation as a substantive provision of its planning scheme.

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

Designating land the local government does not own

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

(2) Before the start of the consultation period for making or amending a planning scheme intended to include the designation, the local government must give written notice of the proposed designation to the owner of the land.

(3) The notice must state the following—

- (a) the description of the land proposed to be designated, including a plan of the land;
- (b) the type of community infrastructure for which the designation is proposed;
- (c) the reasons for the designation;
- (d) that written submissions about any aspect of the proposed designation may be given to the local government during the consultation period.

Division 4—Other matters about designations

Duration of designations

2.6.14.(1) A designation ceases to have effect—

- (a) if the designation is made by a Minister—6 years after notice of the designation was published in the gazette (the “**designation**”

cessation day”); or

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

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

- (a) the existing designation continues to have effect until its designation cessation day under subsection (1); and
- (b) section 2.6.13 does not apply to remaking the designation in the new planning scheme.

When designations do not cease

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

- (a) on the designation cessation day, an entity other than the State or the local government owns the designated land and construction of community infrastructure started before the designation cessation day; or
- (b) on the designation cessation day, the State or the local government owns the designated land; or
- (c) before the designation cessation day, the State or the local government gave a notice of intention to resume the designated land under the *Acquisition of Land Act 1967*, section 7;³² or
- (d) before the designation cessation day, the State or the local government signed an agreement to take under the *Acquisition of Land Act 1967* or to otherwise buy the designated land; or
- (e) for a designation made by the Minister—before the designation cessation day, the Minister gave the local government written notice reconfirming the designation.

(2) However, if the State or a local government discontinues proceedings

³² *Acquisition of Land Act 1967*, section 7 (Notice of intention to take land)

to resume designated land, whether before or after the designation cessation day, the designation ceases to have effect the day the proceedings are discontinued.

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

Reconfirming designation

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

- (a) the local government must display the notice in a conspicuous place in the local government's public office; and
- (b) the Minister must—
 - (i) give the owner of the land a copy of the notice; and
 - (ii) publish the notice in the gazette; and
- (c) the designation has effect for another 6 years after the notice is published in the gazette.

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

- (a) its planning scheme (if any); and
- (b) any new planning scheme it makes before the designation ceases to have effect.

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

How designations must be shown in planning schemes

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

- (a) identify the land; and

- (b) state the type of community infrastructure for which the land was designated; and
 - (c) state the day the designation was made; and
 - (d) refer to any matters included as part of the designation under section 2.6.4; and
 - (e) be shown in the planning scheme in a way that other provisions in the planning scheme applying to the land remain effective even if the designation is repealed or ceases to have effect.
- (2) To remove any doubt, it is declared that—
- (a) a designation is part of a planning scheme; and
 - (b) designation is not the only way community infrastructure may be identified in a planning scheme; and
 - (c) the provisions of a planning scheme (other than the provision that designates land) applying to designated land remain effective even if the designation is repealed or ceases to have effect.

Repealing designations

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

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

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

(4) The notice must state the following—

- (a) that the designation has been repealed;
- (b) the description of the land to which the designation applied;
- (c) the purpose of the community infrastructure for which the land was designated;
- (d) the reasons for the Minister's decision.

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

- (a) each local government to which a notice about the making of the designation was given; and
- (b) if the land is owned by an entity other than the State or the local government—the owner.

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

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

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

Request to acquire designated land under hardship

2.6.19.(1) An owner of an interest in designated land may ask the designator to buy the interest.

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

- (a) grant the request; or
- (b) take other action under section 2.6.21; or
- (c) refuse the request.

(3) In making a decision under subsection (2), the designator must consider whether the owner—

- (a) must sell the interest without delay for personal reasons, including to avoid loss of income; or
- (b) has a genuine intent to develop the interest, but development approval has been, or is likely to be, refused because of the designation; or
- (c) has been unable to sell the interest at a fair market value (disregarding the designation).

If designator grants request

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

Alternative action designator may take

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

- (a) exchange the interest for property held by the designator; or
- (b) repeal the designation or remove the designation from the interest;
or
- (c) investigate the removal of the designation from the interest.

If designator refuses request

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

- (a) the request has been refused; and
- (b) the owner may appeal against the decision.

If the designator does not act under the notice

2.6.23.(1) This section applies if the designator gave a notice under section 2.6.20 or 2.6.21 and, within 25 business days after giving the notice, the designator has not—

- (a) signed a written agreement with the owner to buy the interest; or
- (b) signed a written agreement with the owner to exchange the interest; or
- (c) repealed the designation or removed the designation from the interest.

(2) The designator must, within 5 business days after the end of the period mentioned in subsection (1), give the owner a notice of intention to resume the interest under the *Acquisition of Land Act 1967*, section 7.

How value of interest is decided

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

Ministers may delegate certain administrative powers about designations

2.6.25. A Minister may delegate all or part of the Minister's powers under sections 2.6.20 and 2.6.22, schedule 6, sections 1, 4 and 5 and schedule 7, section 2 to the chief executive or a senior executive of any department for which the Minister has responsibility.

CHAPTER 3—INTEGRATED DEVELOPMENT ASSESSMENT SYSTEM (IDAS)

PART 1—PRELIMINARY

What is IDAS

3.1.1. “**IDAS**” is the system detailed in this chapter for integrating State

and local government assessment and approval processes for development.³³

Development under this Act

3.1.2.(1) Under this Act, all development is exempt development unless it is assessable development or self-assessable development.³⁴

(2) A planning scheme can not change—

- (a) assessable development shown in schedule 8, part 1 to exempt development or self-assessable development; or
- (b) self-assessable development shown in schedule 8, part 2, division 1 to exempt development; or
- (c) self-assessable development shown in schedule 8, part 2, division 2 to exempt development or assessable development; or
- (d) exempt development shown in schedule 8, part 3, to assessable or self-assessable development.

(3) If a planning scheme purports to make a change mentioned in subsection (2), the planning scheme, to the extent it purports to make the change, is of no effect.

Code and impact assessment for assessable development

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

(2) However—

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

³³ This chapter sets out a number of ways the operation of IDAS can be adjusted to meet particular circumstances.

³⁴ “Assessable development”, “self-assessable development” and “exempt development” are defined in schedule 10 (Dictionary).

code is about; and

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

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

(4) A regulation may also identify a code as a code that can not be changed under a local planning instrument.

(5) To the extent the local planning instrument purports to change the code the local planning instrument is of no effect.

When is a development permit necessary

3.1.4.(1) A development permit is necessary for assessable development.³⁵

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

(3) However—

- (a) self-assessable development must comply with codes applying to the development;³⁶ and
- (b) exempt development need not comply with codes or planning instruments.

Approvals under this Act

3.1.5.(1) A “preliminary approval” approves assessable development (but does not authorise assessable development to occur)—

³⁵ It is an offence to carry out assessable development without a development permit. See section 4.3.1 (Carrying out assessable development without permit).

³⁶ It is an offence to carry out self-assessable development in contravention of applicable technical assessment codes. See section 4.3.2 (Self-assessable development must comply with codes).

- (a) to the extent stated in the approval; and
- (b) subject to the conditions in the approval.

(2) However, there is no requirement to get a preliminary approval for development.³⁷

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

- (a) to the extent stated in the permit; and
- (b) subject to—
 - (i) the conditions in the permit; and
 - (ii) any preliminary approval relating to the development the permit authorises, including any conditions in the preliminary approval.

Preliminary approval may override local planning instrument

3.1.6.(1) This section applies only to an application for a material change of use requiring impact assessment.

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

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

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

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

- (a) the development approved by the preliminary approval and

³⁷ Preliminary approvals assist in the staging of approvals.

authorised by a later development permit is completed;

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

(5) A preliminary approval can not change—

(a) assessable development shown in schedule 8, part 1 to exempt development or self-assessable development; or

(b) self-assessable development shown in schedule 8, part 2, division 1 to exempt development; or

(c) self-assessable development shown in schedule 8, part 2, division 2 to exempt development or assessable development; or

(d) exempt development shown in schedule 8, part 3, to assessable or self-assessable development.

(6) If a preliminary approval purports to make a change mentioned in subsection (5), the preliminary approval, to the extent it purports to make the change, is of no effect.

Assessment manager

3.1.7.(1) The “**assessment manager**”, for an application, is—

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

(b) if paragraph (a) does not apply—

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

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

(2) The assessment manager administers the application.

³⁸ Although a private certifier is not an assessment manager, the certifier can undertake certain functions of an assessment manager (see chapter 5, part 2).

Referral agencies

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

Stages of IDAS

3.1.9.(1) IDAS involves the following possible stages—

- application stage³⁹
- information and referral stage⁴⁰
- notification stage⁴¹
- decision stage.⁴²

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

³⁹ See part 2.

⁴⁰ See part 3.

⁴¹ See part 4.

⁴² See part 5.

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

PART 2—APPLICATION STAGE

Division 1—Application process

Applying for development approval

3.2.1.(1) Each application must be made to the assessment manager.⁴⁴

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

(3) The approved form—

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

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

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

(iii) the written consent of all copyright holders to reproduce and sell at cost of reproduction all material forming part of the application for any purpose under this Act; and

(b) may contain a supporting information part.

(4) Each application must be accompanied by—

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

(b) if the application is to be assessed and decided by a private certifier—the agreed certification fee; or

(c) if paragraphs (a) and (b) do not apply—the fee prescribed under a regulation.

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

⁴⁴ A single application may be made for both a preliminary approval and a development permit.

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

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

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

(9) Subsection (8) does not apply to an application unless the application contains the written consent of the owner of any land to which the application applies.

Approved material change of use required for certain developments

3.2.2. This section applies if—

- (a) development applied for could not be used unless a development permit exists for a material change of use of premises for which the development is proposed; and
- (b) there is no development permit for the change of use; and
- (c) approval for the material change of use has not been applied for in the application or a separate application.

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

Acknowledgment notices generally

3.2.3.(1) The assessment manager for an application must give the applicant a notice (the **“acknowledgment notice”**) within—

- (a) if the application is other than a transitional development application—10 business days after receiving the properly made application (the **“acknowledgment period”**); or
- (b) if the application is a transitional development application—30 business days after receiving the properly made application (also the **“acknowledgment period”**).

(2) The acknowledgment notice must state the following—

- (a) which of the following aspects of development the application

seeks a development approval for—

- (i) carrying out building work;
- (ii) carrying out plumbing or drainage work;
- (iii) carrying out operational work;
- (iv) reconfiguring a lot;
- (v) making a material change of use of premises;
- (b) the names of all referral agencies for the application;
- (c) whether an aspect of the development applied for requires code assessment, and if so, the names of all codes that appear to the assessment manager to apply for the development;
- (d) whether an aspect of the development applied for requires impact assessment, and if so, the public notification requirements;
- (e) if the assessment manager does not intend to make an information request—that the assessment manager does not intend to make an information request;
- (f) whether the application requires referral coordination.

Circumstances when immediate decision notice may be given

3.2.4.(1) This section applies if for an application—

- (a) the development only requires code assessment; and
- (b) there are no referral agencies, or all referral agencies have stated in writing that they do not require the application to be referred to them under the information and referral stage.

(2) The assessment manager may, before the end of the acknowledgment period—

- (a) assess the application against the matters in part 5, divisions 1 to 3 applying to code assessment; and
- (b) give the applicant a decision notice instead of an acknowledgment notice.

Acknowledgment notices for applications under superseded planning schemes

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

- (a) that the applicant may proceed as proposed as if the development were to be carried out under the superseded planning scheme; or
- (b) that a development permit is required for the application.

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

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

- (a) that the application will be assessed under the superseded planning scheme or;
- (b) that the application will be assessed under the existing planning scheme.

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

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

- (a) if the development is a material change in use—4 years after the applicant is given the notice under subsection (1)(a); or
- (b) if paragraph (a) does not apply—2 years after the applicant is given the notice under subsection (1)(a).

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

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

- (a) the address of each referral agency; and

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

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

- (a) a copy of the application; and
- (b) ~~a copy~~ of the acknowledgment notice; and
- (c) the fee prescribed under a regulation.⁴⁵

Division 2—General matters about applications

Additional third party advice or comment

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

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

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

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

Public scrutiny of applications

3.2.8.(1) The assessment manager must keep each application and any supporting material available for inspection and purchase from the time the assessment manager gives the acknowledgment notice to the applicant until—

- (a) the application is withdrawn or lapses; or
- (b) if paragraph (a) does not apply—the end of the last period during which an appeal may be made against a decision on the application.

⁴⁵ See section 3.3.3 (Applicant gives material to referral agency).

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

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

(3) In this section—

“supporting material” means—

- (a) the acknowledgment notice; and
- (b) any material about the application that is in the assessment manager’s possession when a request to inspect and purchase is made and has been given to the assessment manager at any time before a decision is made on the application.

Changing an application

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

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

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

- (a) from the start of the acknowledgment period, if 1 or more of the following apply—
 - (i) the acknowledgment notice for the original application has not been given; or
 - (ii) there are referral agencies for the original application, the changed application or both the original application and the changed application; or
 - (iii) the original application involved only code assessment but the changed application involves impact assessment; or

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

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

(a) the change merely corrects a mistake about—

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

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

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

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

Notification stage does not apply to some changed applications

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

(a) the original application involved impact assessment; and

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

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

Withdrawing an application

3.2.11.(1) An application may be withdrawn by the applicant, by written notice given to the assessment manager, at any time before the application is decided.

(2) If the applicant withdraws the application, the assessment manager must give all referral agencies written notice of the withdrawal.

Applications lapse in certain circumstances

3.2.12.(1) An application lapses if—

- (a) the next action to be taken for the application under the IDAS process is to be taken by the applicant; and
 - (b) the period mentioned in subsection (2) has elapsed since the applicant became entitled to take the action; and
 - (c) the applicant has not taken the action.
- (2) For subsection (1), the period mentioned is—
- (a) if the next action is complying with section 3.3.3⁴⁶—3 months; or
 - (b) if the next action is complying with section 3.3.8⁴⁷—12 months; or
 - (c) if the next action is complying with section 3.4.4⁴⁸—10 business days.

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

Refunding fees

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

Service provider notice for reconfiguring a lot

3.2.14.(1) If an application is for works associated with reconfiguring a lot, the applicant must publish a notice, in the approved form at least once in a newspaper circulating generally in the local area, advising service providers of the proposed works.

(2) The assessment manager must not decide the application until the assessment manager receives a copy of the notice from the applicant.

⁴⁶ Section 3.3.3 (Applicant gives material to referral agency)

⁴⁷ Section 3.3.8 (Applicant responds to any information request)

⁴⁸ Section 3.4.4 (Public notice of applications to be given)

Division 3—End of application stage**When does application stage end**

3.2.15. The application stage for a properly made application ends—

- (a) if an acknowledgment notice is given within 10 business days after the application is received by the assessment manager—the day the acknowledgment notice is given; or
- (b) if the assessment manager gives the applicant a development approval instead of an acknowledgment notice—the day the decision notice is given; or
- (c) if paragraphs (a) and (b) do not apply—10 business days after the application is received by the assessment manager.

PART 3—INFORMATION AND REFERRAL STAGE***Division 1—Preliminary*****Purpose of information and referral stage**

3.3.1. The information and referral stage for an application—

- (a) gives the assessment manager, and any concurrence agencies, the opportunity to ask the applicant for further information needed to assess the application; and
- (b) gives concurrence agencies the opportunity to exercise their concurrence powers; and
- (c) gives the assessment manager the opportunity to receive advice about the application from referral agencies.

Referral agency responses before application is made

3.3.2.(1) Nothing in this Act stops a referral agency from giving a referral agency response on a matter within its jurisdiction about a

development before an application for the development is made to the assessment manager.

(2) However—

- (a) a referral agency is not obliged to give a referral agency response mentioned in subsection (1) before the application is made; and
- (b) if the development is development requiring referral coordination, a statement in the referral agency response that the agency does not require a referral under section 3.3.3(3)(b)(i) is of no effect.

Division 2—Information requests

Applicant gives material to referral agency

3.3.3.(1) The applicant must give each referral agency mentioned in the acknowledgment notice—

- (a) a copy of the application (unless the referral agency already has a copy of the application); and
- (b) a copy of the acknowledgment notice (unless the referral agency was the entity that gave the notice); and
- (c) if the referral agency is a concurrence agency—the agency’s application fee prescribed under a regulation or, if the functions of the concurrence agency in relation to the application have been devolved or delegated to a local government, the fee that is, by resolution, adopted by the local government.

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

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

- (a) the applicant gave the assessment manager a copy of the referral agency’s response mentioned in section 3.3.2(1) with the application; and
- (b) the referral agency’s response states that—
 - (i) the agency does not require a referral under this section; or

- (ii) the agency does not require a referral under this section if any conditions (including a time limit within which the application must be made) stated in the response are satisfied; and
- (c) the statement is not stopped from having effect under section 3.3.2(2)(b), and any conditions mentioned in paragraph (b)(ii) are satisfied.

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

Applicant advises assessment manager

3.3.4. After complying with section 3.3.3, the applicant must give the assessment manager written notice of—

- (a) the day the applicant gave each referral agency the things mentioned in section 3.3.3(1)(a), (b) and (c); and
- (b) if the application requires referral coordination—the day the applicant complied with section 3.3.5(2).

Referral coordination

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

(2) If the application requires referral coordination, the applicant must give the chief executive—

- (a) a copy of the application; and
- (b) a copy of the acknowledgment notice; and
- (c) the fee prescribed under a regulation; and
- (d) written notice of the day the applicant complied with section 3.3.3(1) for each referral agency.

Information requests to applicant (generally)

3.3.6.(1) This section does not apply if the application requires referral coordination.

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

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

(4) A request must be made—

(a) if made by the assessment manager—within 10 business days after giving the acknowledgment notice (the **“information request period”**); and

(b) if made by a concurrence agency—within 10 business days after the agency’s referral day (also the **“information request period”**).

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

(6) Only 1 notice may be given under subsection (5) and it must be given before the information request period ends.

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

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

Information requests to applicant (referral coordination)

3.3.7.(1) This section applies if the application requires referral coordination.

(2) The chief executive may, by written request (also an **“information request”**) and after consulting the assessment manager and each referral agency, ask the applicant to give further information needed to assess the application.

(3) The information request must be made within 20 business days after the chief executive receives the notice mentioned in section 3.3.5(2)(d).

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

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

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

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

(8) If the chief executive does not give the applicant an information request under this section, the chief executive must advise the applicant, the assessment manager and each referral agency that an information request will not be made under this section.

Applicant responds to any information request

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

- (a) all of the information requested; or
- (b) part of the information requested together with a notice asking the requesting authority to proceed with the assessment of the application; or
- (c) a notice—
 - (i) stating that the applicant does not intend to supply any of the information requested; and
 - (ii) asking the requesting authority to proceed with the assessment of the application.

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

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

- (a) all of the information requested; or
- (b) part of the information requested together with a notice asking the assessment manager and each referral agency to proceed with the assessment of the application; or
- (c) a notice—
 - (i) stating that the applicant does not intend to supply any of the information requested; and
 - (ii) asking the assessment manager and each referral agency to proceed with the assessment of the application.

Referral agency advises assessment manager of response

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

Division 3—Referral assistance

When referral assistance may be requested

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

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

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

Chief executive acknowledges receipt of referral assistance request

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

- (a) the applicant; and
- (b) if the request involves the assessment manager—the assessment manager; and
- (c) if the request involves a concurrence agency—the concurrence agency.

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

Chief executive may change information request

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

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

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

Applicant may withdraw request for referral assistance

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

*Division 4—Referral agency assessment***Referral agency assessment period**

3.3.14.(1) The period a referral agency has to assess the application (the “**referral agency’s assessment period**”) is—

- (a) the number of business days, starting on the day immediately

after the agency's referral day and being less than 30 business days, prescribed under a regulation; or

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

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

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

- (a) if a regulation under subsection (1)(a) has prescribed the referral agency's assessment period—the number of business days, being less than 20 business days, prescribed under a regulation; or
- (b) if paragraph (a) does not apply—20 business days.

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

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

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

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

- (a) any extension for giving an information request; or
- (b) any period in which the agency is waiting for a response to an information request.

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

- (a) if the chief executive gave an information request—the time between the agency's referral day and the day the applicant responds under section 3.3.8(3); or
- (b) if the chief executive does not give an information request—the

time between the agency's referral day and the day the chief executive gives notice that an information request will not be made.

Referral agency assesses application

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

- (a) against the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the referral agency; and
- (b) having regard to—
 - (i) any planning scheme in force, when the application was made, for the planning scheme area; and
 - (ii) any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme;⁴⁹ and
 - (iii) if the land to which the application relates is designated land—its designation.

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

- (a) may give the weight it considers appropriate to any relevant laws, planning schemes and policies coming into effect after the application was made, but before the agency's referral day; but
- (b) must disregard any planning scheme for the planning scheme area if the referral agency's jurisdiction is limited to considering the effect of the Standard Building Law, Standard Sewerage Law and Standard Water Supply Law on building, plumbing or drainage work.

Referral agency's response

3.3.16.(1) If a concurrence agency wants the assessment manager to

⁴⁹ See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).

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

(2) If an advice agency wants the assessment manager to consider its advice or recommendations when assessing the application, the advice agency must give its response to the assessment manager, and give a copy of its response to the applicant, during the referral agency's assessment period.

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

How a concurrence agency may change its response

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

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

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

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

Concurrence agency's response powers

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

- (a) the conditions that must attach to any development approval;
- (b) that any approval must be for part only of the development;
- (c) that any approval must be a preliminary approval only.

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

- (a) it has no concurrence agency requirements; or
- (b) to refuse the application.

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

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

- (a) the development does not comply with the relevant laws and policies administered by the concurrence agency; and
- (b) compliance with the laws and policies cannot be achieved by imposing conditions.

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

- (a) subsection (4) does not apply; and
- (b) the concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency is satisfied the development would compromise the intent of the designation and the intent of the designation could not be achieved by imposing conditions on the development approval.

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

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

Advice agency's response powers

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

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

(b) recommend the application be refused.

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

Division 5—End of information and referral stage

When does information and referral stage end

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

- (a) the assessment manager states in the acknowledgment notice that it does not intend to make an information request; or
- (b) if a request has been made—the applicant has finished responding to the request; or
- (c) if neither paragraph (a) nor paragraph (b) applies—the assessment manager's information request period has ended.

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

- (a) the assessment manager has received the notice from the applicant under 3.3.4;⁵⁰ and
- (b) an action under subsection (1)(a) or (b) has happened or the assessment manager's information request period has ended; and
- (c) all referral agency responses have been received by the assessment manager or, if all the responses have not been received, all referral agency assessment periods have ended.

⁵⁰ Section 3.3.4 (Applicant advises assessment manager)

PART 4—NOTIFICATION STAGE

Division 1—Preliminary

Purpose of notification stage

3.4.1. The notification stage gives a person—

- (a) the opportunity to make submissions, including objections, that must be taken into account before an application is decided; and
- (b) the opportunity to secure the right to appeal to the court about the assessment manager's decision.

When does notification stage apply

3.4.2.(1) The notification stage applies only if an application requires impact assessment.

(2) If the application requires impact assessment, the notification stage still applies even if a concurrence agency advises the assessment manager it requires the application to be refused.

When can notification stage start

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

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

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

- (a) all information request responses to all information requests made; and
- (b) copies of the responses to the assessment manager.

Division 2—Public notification**Public notice of applications to be given**

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

- (a) publish a notice at least once in a newspaper circulating generally in the local government's area; and
- (b) place a notice on the land in the way prescribed under a regulation; and
- (c) give a notice to the owners of all land adjoining the land.

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

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

(4) In this section—

“owner”, for land adjoining the land the subject of the application, means—

- (a) if the adjoining land is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—the primary thoroughfare body corporate; or
- (b) if the adjoining land is subject to the *Mixed Use Development Act 1987*—the community body corporate; or
- (c) subject to paragraphs (a) and (b), if the adjoining land is subject to the *Building Units and Group Titles Act 1980*—the body corporate; or
- (d) if the adjoining land is, under the *Body Corporate and Community Management Act 1997* scheme land for a community titles scheme—
 - (i) the body corporate for the scheme; or
 - (ii) if the adjoining land is scheme land for more than 1 community titles scheme—the body corporate for the community titles scheme that is a principal scheme; or

- (e) if there is a time sharing scheme on the adjoining land and the name and address of a person has been notified under the *Local Government Act 1993*, section 715⁵¹—the person; or
- (f) if the adjoining land is land being bought from the State for an estate in fee simple under the *Land Act 1994*—the buyer; or
- (g) if the adjoining land is land granted in trust or reserved and set apart and placed under the control of trustees under the *Land Act 1994*—the trustees of the land; or
- (h) if paragraphs (a) to (g) do not apply—the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for it if it were let to a tenant at a rent.

Notification period for applications

3.4.5. The “notification period” for the application—

- (a) must be not less than—
 - (i) if there is no referral coordination for the application—15 business days starting on the day after the last action under section 3.4.4(1) is carried out; or
 - (ii) if there is referral coordination for the application—30 business days starting on the day after the last action under section 3.4.4(1) is carried out; and
- (b) must not include any business days between 20 December and 5 January (in the following year).

Requirements for certain notices

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

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

⁵¹ *Local Government Act 1993*, section 715 (Notice of time share scheme to local government)

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

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

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

Notice of compliance to be given to assessment manager

3.4.7. If the applicant carries out notification, the applicant must, after the notification period has ended, give the assessment manager written notice that the applicant has complied with the requirements of this division.⁵²

Circumstances when applications may be assessed and decided without certain requirements

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

- (a) adversely affected the awareness of the public of the existence and nature of the application; or
- (b) restricted the opportunity of the public to make properly made submissions.

Making submissions

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

(2) The assessment manager must accept a submission if the submission

⁵² It is an offence to give the assessment manager a notice under this section that is false or misleading (see section 4.3.7).

is a properly made submission.

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

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

- (a) during the notification period, amend the submission; or
- (b) at any time before a decision about the application is made, withdraw the submission.

Division 3—End of notification stage

When does notification stage end

3.4.10. The notification stage ends—

- (a) if notification is carried out by the applicant—when the assessment manager receives written notice under section 3.4.7; or
- (b) if notification is carried out by the assessment manager on behalf of the applicant—when the notification period ends.

PART 5—DECISION STAGE

Division 1—Preliminary

When does decision stage start

3.5.1.(1) The decision stage for an application (other than an application assessed under section 3.2.4)⁵³ starts the day after all other stages applying to the application have ended.

⁵³ Section 3.2.4 (Circumstances when immediate decision notice may be given)

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

Assessment necessary even if concurrence agency refuses application

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

Division 2—Assessment process

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

3.5.3. In this division, a reference to a code, planning instrument, law or policy is a reference to a code, planning instrument, law or policy in effect when the application was made.

Code assessment

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

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

- (a) the common material; and
- (b) applicable codes (other than codes, or parts of codes, a concurrence agency is required to assess the application against).

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

(4) If the application is a transitional development application and the applicant has been given a notice under section 3.2.5(1)(a), the assessment manager must assess and decide the application as if—

- (a) the application were an application to which the superseded

- planning scheme applied; and
- (b) the current planning scheme was not in force.

Impact assessment

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

(2) If the application is for development in a planning scheme area, the assessment manager must carry out the impact assessment having regard to the following—

- (a) the common material;
- (b) the planning scheme and any other relevant local planning instruments;
- (c) any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme;⁵⁴
- (d) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;
- (e) if the assessment manager is not a local government—the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application;
- (f) the matters prescribed under a regulation (to the extent they apply to a particular proposal).

(3) If the application is for development outside a planning scheme area, the assessment manager must carry out the impact assessment having regard to the following—

- (a) the common material;
- (b) if the development could materially affect a planning scheme area—the planning scheme and any other relevant local planning instruments;

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

- (c) any relevant State planning policies;
- (d) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;
- (e) if the assessment manager is not a local government—the laws and policies the assessment manager has responsibility for administering;
- (f) the matters prescribed under a regulation (to the extent they apply to a particular proposal).

(4) If the application is a transitional development application and the applicant has been given a notice under section 3.2.5(1)(a), subsection (2)(b) does not apply and the assessment manager must assess and decide the application as if—

- (a) the application were an application to which the superseded planning scheme applied; and
- (b) the current planning scheme was not in force.

Assessment manager may give weight to later codes, planning instruments, laws and policies

3.5.6.(1) This section does not apply if the application is a transitional development application.

(2) In assessing the application, the assessment manager may give the weight it is satisfied is appropriate to a code, planning instrument, law or policy that came into effect after the application was made, but—

- (a) before the day the decision stage for the application started; or
- (b) if the decision stage is stopped—before the day the decision stage is restarted.

Division 3—Decision

Decision making period (generally)

3.5.7.(1) The assessment manager must decide the application within 20 business days after the day the decision stage starts (the “**decision**”

making period”).

(2) The assessment manager may, by written notice given to the applicant and without the applicant’s agreement, extend the decision making period by not more than 20 business days.

(3) Only 1 notice may be given under subsection (2) and it must be given before the decision making period ends.

(4) However, the decision making period may be further extended, including for the purpose of providing further information to the assessment manager, if the applicant, at any time, gives written agreement to the extension.

(5) If there is a concurrence agency for the application, the decision must not be made before 10 business days after the day the information and referral stage ends, unless the applicant gives the assessment manager written notice that it does not intend to take action under section 3.5.9 or 3.5.10.

Decision making period (changed circumstances)

3.5.8. Despite section 3.5.7, the decision making period starts again from its beginning—

- (a) if the applicant agrees to a concurrence agency giving the assessment manager a concurrence agency response or an amended concurrence agency response⁵⁵ after the end of the referral agency’s assessment period—the day after the response or amended response is received by the assessment manager; or
- (b) if the decision making period is stopped under section 3.5.9 or 3.5.10—the day after the assessment manager receives further written notice withdrawing the notice stopping the decision making period.

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

Applicant may stop decision making period to make representations

3.5.9.(1) If the applicant wishes to make representations to a referral agency about the agency's response, the applicant may, by written notice given to the assessment manager, for not more than 3 months, stop the decision making period at any time before the decision is made.

(2) If a notice is given, the decision making period stops the day the assessment manager receives the notice.

(3) The applicant may withdraw the notice at any time.

Applicant may stop decision making period to request chief executive's assistance

3.5.10.(1) The applicant may, at any time before the application is decided—

(a) by written notice (the “**request**”) given to the chief executive, ask the chief executive to resolve conflict between 2 or more concurrence agency responses containing conditions the applicant is satisfied are inconsistent; and

(b) by written notice given to the assessment manager, for not more than 3 months, stop the decision making period.

(2) The request must identify the conditions in the concurrence agency responses the applicant is satisfied are inconsistent.

(3) After receiving the request, the chief executive must give a notice acknowledging receipt of the request to the applicant and each affected concurrence agency.

(4) In responding to the request, the chief executive may, after consulting the concurrence agencies, exercise all the powers of the concurrence agencies necessary to reissue 1 or more concurrence agency responses to address any inconsistency.

(5) If the chief executive reissues a concurrence agency response, the chief executive must give the response to the applicant and give a copy of the response to—

(a) the affected concurrence agency; and

(b) the assessment manager.

(6) The applicant may withdraw the notice given under subsection (1)(b) at any time.

Decision generally

3.5.11.(1) In deciding the application, the assessment manager must—

- (a) approve all or part of the application and include in the approval any concurrence agency conditions; or
- (b) approve all or part of the application subject to conditions decided by the assessment manager and include in the approval any concurrence agency conditions; or
- (c) refuse the application.

(2) However, the decision must be based on the assessments made under division 2.

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

- (a) a development approval includes the conditions imposed by the assessment manager and any concurrence agency; and
- (b) the assessment manager may give a preliminary approval even though the applicant applied for a development permit.

Decision if concurrence agency requires refusal

3.5.12. If a concurrence agency requires the application to be refused, the assessment manager must refuse it.

Decision if application requires code assessment

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

(2) The assessment manager's decision must not conflict with an applicable code unless there are sufficient grounds to justify the decision, having regard to the purpose of the code.

(3) The assessment manager may refuse the application only if the assessment manager is satisfied—

- (a) the development does not comply with the applicable code; and
- (b) compliance with the code cannot be achieved by imposing conditions.

Decision if application requires impact assessment

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

(2) If the application is for development in a planning scheme area, the assessment manager's decision must not—

- (a) compromise the achievement of the desired environmental outcomes for the planning scheme area; or
- (b) conflict with the planning scheme, unless there are sufficient planning grounds to justify the decision.

(3) If the application is for development outside a planning scheme area, the assessment manager's decision must not compromise the achievement of the desired environmental outcomes for any planning scheme area that would be materially affected by the development if the development were approved.

Decision notice

3.5.15.(1) The assessment manager must give written notice of the decision (the “**decision notice**”) to—

- (a) the applicant; and
- (b) each referral agency; and
- (c) if the assessment manager is not the local government and the development is in a local government area—the local government.

(2) The decision notice must be given within 5 business days after the day the decision is made and must state the following—

- (a) the day the decision was made;
- (b) the name and address of each referral agency;

- (c) whether the application is approved, approved subject to conditions or refused;
 - (d) if the application is approved subject to conditions—
 - (i) the conditions; and
 - (ii) whether each condition is a concurrence agency or assessment manager condition, and if a concurrence agency condition, the name of the concurrence agency;
 - (e) if the application is refused—
 - (i) whether the assessment manager was directed to refuse the application and, if so, the name of the concurrence agency directing refusal and whether the refusal is solely because of the concurrence agency's direction; and
 - (ii) the reasons for refusal;
 - (f) if the application is approved—whether the approval is a preliminary approval, a development permit or a combined preliminary approval and development permit;
 - (g) any other development permits necessary to allow the development to be carried out;
 - (h) the rights of appeal for the applicant and any submitters.
- (3)** The assessment manager must give a copy of the decision notice to each principal submitter within 5 business days after the day—
- (a) the applicant gives the assessment manager a written notice stating that the applicant does not intend to make representations to the assessment manager about the conditions of the development approval that were decided by the assessment manager; or
 - (b) the applicant appeals; or
 - (c) the applicant's appeal period ends.
- (4)** A copy of the relevant appeal provisions must also be given with each decision notice or copy of decision notice.

Division 4—Representations about conditions**Application of div 4**

3.5.16. This division applies only during the applicant’s appeal period.

Changing conditions during the applicant’s appeal period

3.5.17.(1) This section applies if the applicant makes representations to the assessment manager about the conditions of the development approval that were decided by the assessment manager.

(2) If the assessment manager agrees with the representations, the assessment manager must give a new decision notice (the “**negotiated decision notice**”) to—

- (a) the applicant; and
- (b) each principal submitter; and
- (c) each referral agency; and
- (d) if the assessment manager is not the local government and the development is in a local government area—the local government.

(3) Only 1 negotiated decision notice may be given.

(4) The negotiated decision notice—

- (a) must be given within 5 business days after the day the assessment manager agrees with the representations; and
- (b) must be in the same form as the decision notice previously given; and
- (c) must state the nature of the changes; and
- (d) replaces the decision notice previously given.

(5) If the assessment manager does not agree with the representations, the assessment manager must, within 5 business days after the day the assessment manager decides not to agree with the representations, give a written notice to the applicant stating that the conditions have not been changed.

Applicant may suspend applicant's appeal period

3.5.18.(1) If the applicant needs more time to make the written representations, the applicant may, by written notice given to the assessment manager, suspend the applicant's appeal period.

(2) The applicant may act under subsection (1) only once.

(3) If the written representations are not made within 20 business days after the day written notice was given to the assessment manager, the balance of the applicant's appeal period restarts.

(4) If the written representations are made within 20 business days after the day written notice was given to the assessment manager, the balance of the applicant's appeal period restarts—

- (a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the day after the assessment manager receives a further notice from the applicant withdrawing the earlier notice; or
- (b) if the assessment manager gives the applicant a negotiated decision notice—the day after the applicant receives the notice; or
- (c) if the assessment manager gives the applicant a notice stating that the conditions have not been changed—the day after the applicant receives the notice.

(5) Before the assessment manager agrees to a change under this section, the assessment manager must reconsider the matters considered when the original decision was made, to the extent the matters are relevant.

Division 5—Approvals**When approval takes effect**

3.5.19. If the application is approved, or approved subject to conditions, the decision notice, or if a negotiated decision notice is given, the negotiated decision notice, is taken to be the development approval and has effect—

- (a) if there is no submitter and the applicant does not appeal the decision—from the time the decision notice is given (or if a negotiated decision notice is given, from the time the negotiated

decision notice is given); or

- (b) if there is a submitter and the applicant does not appeal the decision—when the submitter’s appeal period ends; or
- (c) if an appeal is made—subject to the decision of the court, when the decision of the court is made.

When development may start

3.5.20. The development may start before the applicant’s appeal period ends if there are no submitters or any submitter’s appeal period has ended.

When approval lapses

3.5.21.(1) The development approval for the application lapses at the end of the currency period for the approval unless—

- (a) for development that is a material change of use—the change of use happens before the end of the currency period; or
- (b) for development other than a material change of use—development under the approval substantially starts before the end of the currency period.

(2) To the extent the approval is for development that is a material change of use, the “**currency period**” is, if the application was not a transitional development application—

- (a) the 4 years starting the day the approval takes effect; or
- (b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

(3) To the extent the approval is for development other than a material change of use, the “**currency period**” is, if the application was not a transitional development application—

- (a) the 2 years starting the day the approval takes effect; or
- (b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

(4) To the extent the approval is for development that is a material change of use, the “**currency period**” is, if the application was a transitional development application, the longest of the following—

- (a) the 4 years starting the day the approval takes effect;
- (b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.
- (c) the 5 years starting the day the planning scheme or planning scheme policy, creating the superseded planning scheme, was adopted or the amendment, creating the superseded planning scheme, was adopted.

(5) To the extent the approval is for development other than a material change of use, the “**currency period**” is, if the application was a transitional development application, the longest of the following—

- (a) the 2 years starting the day the approval takes effect;
- (b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.
- (c) the 5 years starting the day the planning scheme or planning scheme policy, creating the superseded planning scheme, was adopted or the amendment, creating the superseded planning scheme, was adopted.

(6) If a monetary security has been given in relation to the approval, the security must be released if the approval lapses.

Request to extend currency period

3.5.22.(1) If, before the development approval lapses, a person wants to extend a currency period, the person must, by written notice—

- (a) advise each entity that was a concurrence agency that the person is asking for an extension of the currency period; and
- (b) ask the assessment manager to extend the currency period.

(2) The notices must be given at about the same time, and the notice to the assessment manager must include a copy of each notice given under

subsection (1)(a).

(3) If the person asking for the extension is not the owner of the land, the subject of the application, the request must contain the owner's consent.

(4) If the assessment manager has a form for the request, the request must be in the form and be accompanied by—

- (a) the fee for the request—
 - (i) if the assessment manager is a local government—set by a resolution of the local government; or
 - (ii) if subparagraph (i) does not apply—prescribed under a regulation; and
- (b) a copy of the advice given to any concurrence agency for the application.

Deciding request to extend currency period

3.5.23.(1) If there was no concurrence agency, the assessment manager must approve or refuse the extension within 30 business days after receiving the request.

(2) If there was a concurrence agency, the assessment manager—

- (a) must not approve or refuse the extension until at least 20 business days after receiving the request; but
- (b) must approve or refuse the extension within 30 business days after receiving the request.

(3) The assessment manager and the person making the request may agree to extend the period within which the assessment manager must decide the request.

(4) A concurrence agency given a notice under section 3.5.22(1)(a) may give the assessment manager a written notice advising—

- (a) it has no objection to the extension being approved; or
- (b) it objects to the extension being approved and give reasons for the objection.

(5) If the assessment manager does not receive a written notice within 20 business days after the day the request was received by the assessment

manager, the assessment manager must decide the request as if the concurrence agency had no objection to the request.

(6) Despite subsection (5), if the development approval was subject to a concurrence agency condition about the currency period, the assessment manager must not approve the request unless the concurrence agency advises it has no objection to the extension being approved.

(7) If the assessment manager receives a written notice from a concurrence agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must have regard to the notice when deciding the request.

(8) The assessment manager may make a decision under this section even if the development approval was granted by the court.

(9) Despite section 3.5.21, the development approval does not lapse until the assessment manager decides the request.

(10) After deciding the request, the assessment manager must give written notice of the decision to the person asking for the extension and any concurrence agency that gave the assessment manager a notice under subsection (4).

Request to change development approval (other than a change of a condition)

3.5.24.(1) If a person wants a minor change to be made to a development approval, the person must, by written notice—

- (a) advise each entity that was a concurrence agency that the person is asking for the change; and
- (b) ask the assessment manager to make the change.

(2) The notices must be given at about the same time, and the notice to the assessment manager must include a copy of each notice given under subsection (1)(a).

(3) If the person asking for the change is not the owner of the land, the subject of the application, the request must contain the owner's consent.

(4) If the assessment manager has a form for the request, the request must be in the form and be accompanied by—

- (a) the fee for the request—
 - (i) if the assessment manager is a local government—set by a resolution of the local government; or
 - (ii) if subparagraph (i) does not apply—prescribed under a regulation; and
- (b) a copy of the advice given to any concurrence agency for the application.

(5) This section does not apply if the change is a change of a condition of the development approval.

Deciding request to change development approval (other than a change of a condition)

3.5.25.(1) If there was no concurrence agency, the assessment manager must approve or refuse the change within 30 business days after receiving the request.

- (2) If there was a concurrence agency, the assessment manager—
- (a) must not approve or refuse the change until the first of the following happens—
 - (i) a written notice has been received under subsection (4) from each concurrence agency;
 - (ii) the period of 20 business days after receiving the request ends; but
 - (b) must approve or refuse the change within 30 business days after receiving the request.

(3) The assessment manager and the person making the request may agree to extend the period within which the assessment manager must decide the request.

(4) A concurrence agency given a notice under section 3.5.24(1)(a) must give the assessment manager a written notice advising—

- (a) it has no objection to the change being made; or
- (b) it objects to the change being made and give reasons for the objection.

(5) If the assessment manager does not receive a written notice within 20 business days after the day the request was received by the assessment manager, the assessment manager must decide the request as if the concurrence agency had no objection to the request.

(6) If the assessment manager receives a written notice from a concurrence agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must have regard to the notice when deciding the request.

(7) The assessment manager may make a decision under this section even if the development approval was granted by the court.

(8) After deciding the request, the assessment manager must give written notice of the decision to the person asking for the change and any concurrence agency that gave the assessment manager a notice under subsection (4).

Request to cancel development approval

3.5.26.(1) The owner of the land, the subject of the application, or another person, with the owner's consent, may, by written notice ask the assessment manager to cancel the development approval.

(2) The request must be accompanied by the fee for the request—

- (a) if the assessment manager is a local government—set by a resolution of the local government; or
- (b) if paragraph (a) does not apply—prescribed under a regulation.

(3) After receiving the notice and the fee, the assessment manager must cancel the approval and give notice of the cancellation to the person who applied for the cancellation and to each concurrence agency.

(4) If a monetary security has been given in relation to the approval, the security must be released if the approval is cancelled.

Certain approvals to be recorded on planning scheme

3.5.27.(1) If the development approval was given by a local government as assessment manager and the local government is satisfied the approval is inconsistent with the planning scheme, the local government must note the

approval on its planning scheme.

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

- (a) the note on the planning scheme is not an amendment of the planning scheme; and
- (b) a contravention of subsection (1) does not affect the validity of the approval given.

Approval attaches to land

3.5.28.(1) The development approval attaches to the land, the subject of the application, and binds the owner, the owners successors in title and any occupier of the land.

(2) To remove any doubt, it is declared that subsection (1) applies even if later development (including reconfiguring a lot) is approved for the land (or the land as reconfigured).

Division 6—Conditions

Application of div 6

3.5.29. This division applies to each condition in a development approval whether the condition is a condition—

- (a) a concurrence agency directs an assessment manager to impose; or
- (b) decided by an assessment manager; or
- (c) attached to the approval under the direction of the Minister.

Conditions must be relevant or reasonable

3.5.30.(1) A condition must—

- (a) be relevant to, but not an unreasonable imposition on, the development; or
- (b) be reasonably required in respect of the development.

(2) Subsection (1) applies despite the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, an assessment manager or concurrence agency.

Conditions generally

3.5.31.(1) A condition may—

- (a) place a limit on how long a lawful use may continue or works may remain in place; or
- (b) state a development may not start until other development permits, for development on the same premises, have been given or other development on the same premises (including development not covered by the development application) has been substantially started or completed; or
- (c) require development, or an aspect of development, to be completed within a particular time and require the payment of security under an agreement under section 3.5.34⁵⁶ to support the condition.

(2) If a condition requires assessable development, or an aspect of assessable development, to be completed within a particular time and the assessable development or aspect is not completed within the time, the approval, to the extent it relates to the assessable development or aspect not completed, lapses.

Conditions that cannot be imposed

3.5.32.(1) A condition must not—

- (a) be inconsistent with a condition of an earlier development approval still in effect for the development; or
- (b) require a monetary payment for the capital, operating and maintenance costs of, or works to be carried out for, community infrastructure; or
- (c) state that works required to be carried out for a development must

⁵⁶ Section 3.5.34 (Agreements)

be undertaken by an entity other than the applicant; or

(d) require an access restriction strip.

(2) Nothing in this section stops a condition being imposed if the condition requires—

(a) a monetary payment, or works to be carried out, to protect or maintain the safety and efficiency of State owned transport infrastructure; or

(b) a monetary payment for lessening the cost impacts of supplying infrastructure under section 3.5.35.

(3) In subsection (2)—

“**State owned transport infrastructure**” means transport infrastructure under the *Transport Infrastructure Act 1994* that is owned by the State.⁵⁷

Request to change or cancel conditions

3.5.33.(1) This section applies if—

(a) a person wants to change or cancel a condition; and

(b) no assessable development would arise from the change or cancellation.

(2) The person may, by written notice to the entity that decided the condition or required the condition to be imposed on or attached to the approval, ask the entity to change or cancel the condition.

(3) If the person is not the owner of the land to which the approval attaches, the request must contain the owner’s consent.

(4) If the entity has a form for the request, the request must be in the form and be accompanied by the fee for the request—

(a) if the entity is a local government—set by a resolution of the local government; or

(b) if paragraph (a) does not apply—prescribed under a regulation.

⁵⁷ Under the *Transport Infrastructure Act 1994*, schedule 3—

“**transport infrastructure**” includes road, rail, port and miscellaneous transport

(5) The entity must decide the request within 20 business days after receiving the request.

(6) The entity and the person may agree to extend the period within which the entity must decide the request.

(7) To the extent relevant, the entity must assess and decide the request having regard to—

- (a) the matters the entity would have regard to if the request were a development application; and
- (b) if submissions were made about the application under which the condition was originally imposed—the submissions.

(8) The entity must give the person written notice of its decision.

(9) If the entity is a concurrence agency or the court, the entity must give the assessment manager written notice of any change or cancellation.

(10) The changed condition or cancellation takes effect from the day the notice is given to the person.

(11) Subsections (5) and (6) do not apply if the entity is the court.

Agreements

3.5.34. The applicant may enter into an agreement with an entity, including, for example, an assessment manager or a concurrence agency, to establish the obligations, or secure the performance, of a party to the agreement about a condition.

Limitations on conditions lessening cost impacts for infrastructure

3.5.35.(1) A condition requiring a monetary payment for lessening the cost impacts for infrastructure may be imposed only—

- (a) for development that is—
 - (i) inconsistent with the planning scheme; or
 - (ii) consistent with the planning scheme, but is urban development (including rural residential development) not in an area identified to accommodate the next 5 years (or other period approved by the Minister) of development in a

benchmark development sequence; and

- (b) to lessen the cost impacts for—
 - (i) State schools infrastructure; or
 - (ii) public transport infrastructure; or
 - (iii) State-controlled roads infrastructure; or
 - (iv) police or emergency services infrastructure; or
 - (v) a development infrastructure item; and
- (c) having regard to any guidelines approved by the chief executive about the method of calculating cost impacts.

(2) The condition complies with section 3.5.30, to the extent—

- (a) the condition is for lessening the cost impacts for a development infrastructure item identified in an infrastructure charges plan; and
- (b) the item is necessary, but not yet available, to service the land.

(3) Subsection (2) applies even if a development infrastructure item mentioned in subsection (1)(b)(v) is also intended to service other land.

(4) However, instead of imposing the condition, the applicant and an entity may enter into a written agreement to make infrastructure mentioned in subsection (1)(b) available to service the land.

(5) For infrastructure mentioned in subsection (1)(b)(i) to (iv)—

“cost impacts” means—

- (a) the difference between—
 - (i) the present value of capital, operating and maintenance costs made necessary by the development; and
 - (ii) the present value of capital, operating and maintenance costs, if the approval had not been given; and
- (b) the reasonable administrative costs for calculating the difference under paragraph (a).

(6) For a development infrastructure item (the **“item”**)—

“cost impacts” means—

- (a) the difference between—

- (i) the present value of capital costs made necessary by the development; and
- (ii) the present value of capital costs, if the approval had not been given; and
- (b) additional interest charges, other financing costs and operating and maintenance costs, made necessary by the development, for all development infrastructure items (other than the item) and payable by the entity to which the monetary payment must be paid; and
- (c) the cost, or the anticipated cost, of amending the infrastructure charges plan because of the development; and
- (d) reasonable administrative costs for calculating the difference under paragraph (a) and the charges and costs mentioned in paragraphs (b) and (c).

Matters a condition lessening cost impacts for infrastructure must deal with

3.5.36.(1) A condition permitted under section 3.5.35 must—

- (a) identify the amount of the monetary payment; and
- (b) state the entity to which the monetary payment must be paid.

(2) An amount identified under subsection (1)(a) must not be more than—

- (a) to the extent the amount relates to the capital cost of infrastructure—the full capital cost; and
- (b) to the extent the amount relates to the operating and maintenance costs of infrastructure—the additional operating and maintenance costs for 15 years.

(3) If a development approval is subject to a condition mentioned in subsection (1), the approval must also—

- (a) for infrastructure under section 3.5.35(1)(b)(i) to (iv) that is a service—state the day by which the service is to be substantially started, having regard to the basis on which the cost impact was calculated; and

- (b) for infrastructure under section 3.5.35(1)(b)(i) to (iv) that is other than a service—state the day by which construction of the infrastructure is to be substantially started, having regard to the basis on which the cost impact was calculated; and
- (c) for a development infrastructure item necessary, but not yet available, to service the land—state the day by which the item is to be available to service the land, having regard to the basis on which the cost impact was calculated; and
- (d) for a development infrastructure item not mentioned in paragraph (c)—state the day by which construction of the item is to be substantially started, having regard to the basis on which the cost impact was calculated.

(4) The monetary payment must be paid—

- (a) for infrastructure mentioned in subsection (3)(a), (b) or (d)—at least 60 business days before the day stated under the subsection; or
- (b) for infrastructure mentioned in subsection (3)(c)—the day the development starts.

(5) Despite subsection (4), the applicant and the entity requiring the monetary payment may agree in writing to another time or for the payment to be made by instalments.

(6) The entity to which the monetary payment has been paid must repay the payment to the owner of the land—

- (a) for a payment made for infrastructure mentioned in subsection (3)(a)—if the service has not substantially started on the day stated under subsection (3)(a); or
- (b) for a payment made for infrastructure mentioned in subsection (3)(b) or (d)—if the construction of the infrastructure has not substantially started on the day stated under the subsection; or
- (c) if the development approval lapses or is cancelled.

(7) For infrastructure mentioned in subsection (3)(c), if the applicant complies with subsection (4)(b), the entity to which payment was made must substantially start the infrastructure by the day stated in

subsection (3)(c) unless the applicant and the entity agree in writing to a different day.

PART 6—MINISTERIAL IDAS POWERS

Division 1—Ministerial direction

When Ministerial direction may be given

3.6.1. The Minister may give a direction under this division about an application only if—

- (a) the assessment manager has not decided the application; and
- (b) the development involves a State interest; and
- (c) the matter the subject of the direction is not within the jurisdiction of a concurrence agency for the application.

Notice of direction

3.6.2.(1) The Minister may direct the assessment manager, by written notice, to taken 1 or more of the following actions or to refuse the application—

- (a) to attach to the development approval the conditions stated in the notice; or
- (b) to approve part only of the development; or
- (c) to give a preliminary approval only.

(2) The notice must state—

- (a) the nature of the State interest giving rise to the direction; and
- (b) the reasons for the Minister's direction.

(3) The Minister must give a copy of the notice to the applicant.

Effect of direction

3.6.3.(1) If the Minister gives a direction, the assessment manager, in deciding the application, must—

- (a) if the Minister requires conditions to be attached to the approval—include the conditions in the approval; or
- (b) if the Minister requires the application to be refused—refuse the application.

(2) For an appeal under sections 4.1.27 to 4.1.29, the Minister’s direction is taken to be a concurrence agency’s response and the chief executive is taken to be a co-respondent.

Division 2—Ministerial call in powers**Definition for div 2**

3.6.4. In this division—

“**Minister**” includes the Minister administering the *State Development and Public Works Organization Act 1971*.

When development application may be called in

3.6.5. The Minister may, under this division, call in an application only if—

- (a) the development involves a State interest; and
- (b) the application is called in within 10 business days after the end of both the applicant’s appeal period and the submitter’s appeal period for the decision on the application.

Notice of call in

3.6.6.(1) The Minister may, by written notice given to the assessment manager, call in the application and—

- (a) if the application has not been decided by the assessment manager—assess and decide the application in the place of the

assessment manager; or

- (b) if the application has been decided by the assessment manager—reassess and re-decide the application in the place of the assessment manager.

(2) The notice must state—

- (a) the point in the IDAS process from which the process must restart; and
- (b) the reasons for calling in the application.

(3) The Minister must give a copy of the notice to—

- (a) the applicant; and
- (b) any concurrence agency; and
- (c) any submitter.

Effect of call in

3.6.7.(1) If the Minister calls in an application—

- (a) the Minister is the assessment manager from the time the application is called in until the Minister gives the decision notice; and
- (b) if the application is called in before the assessment manager makes a decision on the application—the Minister must continue the IDAS process from the point at which the application is called in; and
- (c) if the application is called in after the assessment manager makes a decision on the application—the IDAS process starts again from a point in the IDAS process the Minister decides, but before the start of the decision stage; and
- (d) until the Minister gives the decision notice a concurrence agency is taken to be an advice agency; and
- (e) the Minister's decision on the application is taken to be the original assessment manager's decision but a person may not appeal against the Minister's decision; and
- (f) if an appeal was made before the application was called in—the

appeal is of no further effect.

(2) The entity that was the assessment manager before the application was called in (the “**original assessment manager**”) must give the Minister all reasonable assistance the Minister requires to assess and decide the application, including giving the Minister—

- (a) all material about the application the assessment manager had before the application was called in; and
- (b) any material received by the assessment manager after the application is called in.

(3) When the Minister gives the decision notice to the applicant and each submitter and referral agency, the Minister also must give a copy of the notice to the original assessment manager.

Process if call in decision does not deal with all aspects of the application

3.6.8.(1) If the Minister’s decision notice does not decide all aspects of the application, the Minister must, by written notice, refer the aspects not decided back to the assessment manager.

(2) If the Minister gives a notice under subsection (1), the notice must state the point in the IDAS process from which the process must restart for the aspects of the application not decided by the Minister.

Report about decision

3.6.9.(1) If the Minister calls in an application, the Minister must, after deciding the application, prepare a report about the Minister’s decision.

(2) Without limiting subsection (1), the Minister must include the following in the report—

- (a) a copy of the application;
- (b) a copy of the notice given under section 3.6.6;
- (c) a copy of any referral agency’s response;
- (d) an analysis of any submissions made about the application;
- (e) a copy of the decision notice;

- (f) the Minister's reasons for the decision;
- (g) a copy of any notice given under section 3.6.8.

(3) The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after the Minister's decision is made.

PART 7—PLANS OF SUBDIVISION

Application of pt 7

3.7.1. This part applies to a plan (however called) for the reconfiguration of a lot if, under another Act, the plan requires the approval (in whatever form) of a local government before it can be registered or otherwise recorded under that Act.

Examples of plans to which this part applies—

1. A plan of subdivision that, under the *Land Title Act 1994*, section 50(g),⁵⁸ requires the approval of a local government.
2. A building units plan or group titles plan that, under the *Building Units and Group Titles Act 1980*, section 9(7),⁵⁹ must be endorsed with, or be accompanied by, a certificate of a local government.

Plan for reconfiguring under development permit

3.7.2.(1) If the reconfiguration proposed to be effected by the plan is authorised by a development permit, the plan must be given to the local government for its approval—

- (a) if the reconfiguration requires operational works—within 2 years after the development permit for the operational works takes effect; or

⁵⁸ *Land Title Act 1994*, section 50 (Requirements for registration of plan of subdivision)

⁵⁹ *Building Units and Group Titles Act 1980*, section 9 (Registration of plan)

- (b) if the reconfiguration does not require operational works—within 2 years after the development permit for the reconfiguration takes effect.

(2) The local government may, during the period mentioned in subsection (1), extend the period.

(3) The local government must approve the plan, if—

- (a) the conditions of the development permit authorising the reconfiguration have been complied with; and
- (b) if subsection (1)(a) applies—the conditions of the development permit mentioned in subsection (1)(a) have been complied with; and
- (c) there are no outstanding rates or charges levied by the local government or expenses that are a charge over the land under any Act; and
- (d) the plan is prepared in accordance with all development permit conditions about the plan.

(4) Alternatively, the local government must approve the plan, if—

- (a) satisfactory security is given to the local government to ensure compliance with the requirements of subsection (3)(a) to (c); and
- (b) the plan is prepared in accordance with all development permit conditions about the plan.

(5) If the applicant has not complied with the requirements of subsection (3) or (4), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

Plan submitted under condition of development permit

3.7.3.(1) This section applies if the plan is required to be submitted to the local government under a condition of a development permit.

(2) The plan must be given to the local government—

- (a) within the time stated in the condition; or
- (b) if a time has not been stated in the condition—within 2 years after

the decision notice containing the condition was given.

- (3) The local government must approve the plan, if—
- (a) the conditions of the development permit have been complied with; and
 - (b) there are no outstanding rates or charges levied by the local government or expenses that are a charge over the land under any Act; and
 - (c) the plan is prepared in accordance with the development permit.
- (4) Alternatively, the local government must approve the plan, if—
- (a) satisfactory security is given to the local government to ensure compliance with the requirements of subsection (3)(a) and (b); and
 - (b) the plan is prepared in accordance with the development permit.

(5) If the applicant has not complied with the requirements of subsection (3) or (4), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

Plan for reconfiguring that is not assessable development

3.7.4.(1) If the reconfiguration proposed to be effected by the plan is not assessable development, the plan may be given to the local government for its approval at any time.

(2) The plan must be consistent with any development permit and applicable code.

(3) If the applicant has not complied with the requirements of subsection (2), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

Endorsement of approval

3.7.5.(1) The local government's approval must be given for the plan within 20 business days after the applicant complies with section 3.7.2(3)

or (4), section 3.7.3(3) or (4) or section 3.7.4(2) and the local government receives the plan.

(2) The applicant may agree to an extension of the period mentioned in subsection (1).

When approved plan to be lodged for registration

3.7.6. The approved plan must be lodged for registration with the relevant registering authority within 6 months after the approval was given.

Local government approval subject to other Act

3.7.7. A requirement under this part for the local government to approve the plan has effect subject to any requirements of the Act under which the plan is to be registered or otherwise recorded.

CHAPTER 4—APPEALS, OFFENCES AND ENFORCEMENT

PART 1—PLANNING AND ENVIRONMENT COURT

Division 1—Establishment and jurisdiction of court

Continuance of Planning and Environment Court

4.1.1.(1) The Planning and Environment Court, as formerly established, is continued in existence.

(2) The court is a court of record.

(3) The court has a seal that must be judicially noticed.

Jurisdiction of court

4.1.2.(1) The court has the jurisdiction given to it under any Act, including the jurisdiction to hear and decide every appeal made under this Act for the review of a decision of a tribunal.⁶⁰

(2) Subject to section 4.2.7,⁶¹ the jurisdiction given to the court under this Act is exclusive.

(3) Subject to division 13,⁶² every decision of the court is final and conclusive and is not to be impeached for any informality or want of form or be appealed against, reviewed, quashed or in any way called in question in any court.

(4) If a proceeding comes before the court under another Act, subsection (3) applies subject to the other Act.

Jurisdiction in chambers

4.1.3. Every proceeding must be heard and decided, and the decision given, in open court unless the rules of court about exercising the court's jurisdiction in chambers state that the court may sit in chambers and exercise the jurisdiction given by the rules for a matter.

Division 2—Powers of court**Subpoenas**

4.1.4.(1) The court may summon a person as a witness and may—

- (a) require the person to produce in evidence documents in the person's possession or power; and
- (b) examine the person; and
- (c) punish the person for not attending under the summons or for refusing to give evidence or for neglecting or refusing to produce

⁶⁰ See jurisdiction of tribunals in part 2, division 1.

⁶¹ Section 4.2.7 (Jurisdiction of tribunals)

⁶² Division 13 (Appeals to Court of Appeal)

the documents.

(2) Despite subsection (1), a person is not required to give evidence that may tend to incriminate the person.

(3) For subsection (1), a judge of the court has the same powers as a District Court judge.

Contempt and contravention of orders

4.1.5.(1) A judge of the court has the same power to punish a person for contempt of the court as the judge has to punish a person for contempt of a District Court.

(2) The *District Courts Act 1967*, section 129,⁶³ applies in relation to the court in the same way as it applies in relation to a District Court.

(3) If a person, at any time, contravenes an order of the court, the person is also taken to be in contempt of the court.

(4) If a person is taken to be in contempt of the court under subsection (3), the *District Courts Act 1967*, section 129(4) applies in relation to the contravention as if the person were an offender, and as if the expression “12 months” were “2 years” and the expression “84 penalty units” were “3 000 penalty units”.

Terms of orders etc.

4.1.6. The court may make an order, give leave or do anything else it is authorised to do on the terms the court considers appropriate.

Taking and recording evidence etc.

4.1.7. The court must take evidence on oath, affirmation, affidavit or declaration and must record the evidence.

Division 3—Constituting court

⁶³ *District Courts Act 1967*, section 129 (Contempt of court)

Constituting court

4.1.8.(1) The Governor in Council must, from time to time by gazette notice, notify the names of District Court judges who are to be the judges who constitute the court.

(2) The Governor in Council may notify the name of District Court judges to constitute the court for a specified period only.

(3) A District Court judge who constitutes the court may do so even if another District Court judge is constituting the court at the same time.

Jurisdiction of judges not impaired

4.1.9. The jurisdiction of a District Court judge named to constitute the court is not limited exclusively to the court.

Division 4—Rules and directions**Rules of court**

4.1.10.(1) The Governor in Council, with the concurrence of 2 or more Supreme Court judges of whom the Chief Justice is to be 1, may make rules about anything—

- (a) required or permitted to be prescribed by the rules; or
- (b) necessary or convenient to be prescribed for the purposes of the court.

(2) Without limiting subsection (1), the rules may provide for the procedures of the court, including matters that may be dealt with in chambers or by a court official.

(3) The procedures of the court are governed by the rules.

(4) The rules are subordinate legislation.

Directions

4.1.11.(1) To the extent a matter about court procedure is not provided for by the rules, the matter may be dealt with by directions under this

section.

(2) The Chief Judge of District Courts may issue directions of general application about the procedure of the court.

(3) A judge may issue directions about a particular case before the court when constituted by the judge.

Division 5—Parties to proceedings and court sittings

Where court may sit

4.1.12. The court may sit at any place.

Appearance

4.1.13. A party to a proceeding may appear personally or by lawyer or agent.

Adjournments

4.1.14. The court may—

- (a) adjourn proceedings from time to time and from place to place; and
- (b) adjourn proceedings to a time, or a time and place, to be fixed.

What happens if judge dies or is incapacitated

4.1.15.(1) This section applies if, after starting to hear a proceeding, the judge hearing the proceeding dies or becomes incapable of continuing with the proceeding.

(2) Another judge may—

- (a) after consulting with the parties—
 - (i) adjourn the proceeding to allow the incapacitated judge to continue dealing when able; or
 - (ii) order the proceeding be reheard; or

- (b) with the consent of the parties, make an order the judge considers appropriate about deciding the proceeding, or about completing the hearing of, and deciding the proceeding.

(3) An order mentioned in subsection (2)(b) is taken to be a decision of the court.

Stating case for Court of Appeal's opinion

4.1.16.(1) This section applies if a question of law arises during a proceeding and the judge considers it desirable that the question be decided by the Court of Appeal.

(2) The judge may state the question in the form of a special case for the opinion of the Court of Appeal.

(3) The special case may be stated only during the proceeding mentioned in subsection (1).

(4) Until the Court of Appeal has decided the special case, the court must not make a decision to which the question is relevant.

(5) When the Court of Appeal has decided the special case, the court must not proceed in a way, or make a decision, that is inconsistent with the Court of Appeal's decision on the special case.

Division 6—Other court officials and registry

Registrars and other court officials

4.1.17. The registrars, deputy registrars and other court officials of District Courts are the registrars, deputy registrars and other court officials of the court.

Registries

4.1.18.(1) Each District Court registry is the registry of the court.

(2) The registry of the court at Brisbane is the principal registry of the court.

(3) Subject to the registrar of the Brisbane District Court, the principal

registry is under the control of the senior deputy registrar.

(4) The senior deputy registrar may give directions to the registrars, deputy registrars and other officers employed in the registries of the court.

Court records

4.1.19.(1) The registrar must keep minutes of the proceedings and records of the decisions of the court and perform the other duties the court directs.

(2) The records of the court held at a place must be kept in the custody of the registrar, deputy registrar or other court official at the place.

Judicial notice

4.1.20. All courts and persons acting judicially must take judicial notice of the appointment and signature of every person holding office under this part.

Division 7—Other court matters

Court may make declarations

4.1.21.(1) Any person may bring proceedings in the court for a declaration about—

- (a) a matter done, or to be done, under this Act; and
- (b) the construction of this Act and planning instruments under this Act; and
- (c) the lawfulness of land use or development; and
- (d) an infrastructure charge; and
- (e) a failure by an assessment manager to give an acknowledgment notice.

(2) The proceeding may be brought on behalf of a person.

(3) If the proceeding is brought on behalf of a person, the person must consent or if the person is an unincorporated body, its committee or other

controlling or governing body must consent.

(4) A person on whose behalf a proceeding is brought may contribute to, or pay, the legal costs incurred by the person bringing the proceeding.

(5) The court has jurisdiction to hear and decide a proceeding for a declaration about a matter mentioned in subsection (1).

Court may make orders about declarations

4.1.22.(1) The court may also make an order about a declaration made under section 4.1.21.

(2) However, if the order amends or cancels a development approval, the court may only make the order if the court is satisfied the approval was obtained by fraud by the applicant.

(3) If the owner of the land to which the approval relates is not the applicant and has not been involved in the fraud, the court must also make an order about compensation for any loss the court is satisfied the owner has suffered.

Costs

4.1.23.(1) Each party to a proceeding in the court must bear the party's own costs for the proceeding.

(2) However, the court may order costs for the proceeding (including allowances to witnesses attending for giving evidence at the proceeding) as it considers appropriate in the following circumstances—

- (a) the court considers the proceeding was instituted merely to delay or obstruct;
- (b) the court considers the proceeding (or part of the proceeding) to have been frivolous or vexatious;
- (c) a party has not been given reasonable notice of intention to apply for an adjournment of the proceeding;
- (d) a party has incurred costs because the party is required to apply for an adjournment because of the conduct of another party;
- (e) a party has incurred costs because another party has defaulted in

procedural requirements;

- (f) without limiting paragraph (d), a party has incurred costs because another party has introduced (or sought to introduce) new material;
- (g) if the proceeding is an appeal against a decision on a development application and the appellant did not, in responding to an information request, give all the information reasonably requested before the decision was made;
- (h) the court considers an assessment manager, a referral agency or a local government should have taken an active part in a proceeding and it did not do so;
- (i) an applicant, submitter, referral agency, assessment manager or local government does not properly discharge its responsibilities in the proceedings.

(3) An order made under subsection (2) may be made an order of the District Court and enforced in the District Court.

(4) If a person brings an appeal under section 4.1.35 and the appeal is not withdrawn, the court must award costs against the relevant Minister or local government—

- (a) if the appeal is upheld; and
- (b) if the appeal is against a deemed refusal—even if the appeal is not upheld.

(5) If a person brings a proceeding in the court for a declaration and order requiring a designator to give, under section 2.6.19,⁶⁴ a notice of intention to resume an interest in land under the *Acquisition of Land Act 1967* and the court makes the order, the court must award costs against the designator.

(6) If a person brings a proceeding in the court for a declaration and order requiring an assessment manager to give, under section 3.2.3,⁶⁵ an acknowledgment notice and the court makes the order, the court must award costs against the assessment manager.

⁶⁴ Section 2.6.19 (Request to acquire designated land under hardship)

⁶⁵ Section 3.2.3 (Acknowledgment notices generally)

(7) If the court allows an assessment manager to withdraw from an appeal, the court must not award costs against the assessment manager.

(8) The court may, if it considers it appropriate, order the costs to be decided by the appropriate costs taxing officer of the Supreme Court, under the scale of costs prescribed by law for proceedings in the District Court.

(9) If the court makes an order under subsection (8), the taxing officer may decide the appropriate scale to be used in taxing the costs.

Privileges, protection and immunity

4.1.24. A person who is one of the following has the same privileges, protection or immunity as the person would have if the proceeding were in the District Court—

- (a) the judge presiding over the proceeding;
- (b) a legal practitioner or agent appearing in the proceeding;
- (c) a witness attending in the proceeding.

Payment of witnesses

4.1.25. Every witness summoned is entitled to be paid reasonable expenses by the party requiring the attendance of the witness.

Evidence of planning schemes

4.1.26.(1) If a chief executive officer of a local government is satisfied a document is a true copy of a planning scheme, or a part of the planning scheme, in force for the local government at a time stated in the document, the chief executive officer may so certify the document.

(2) In a proceeding, a document certified under subsection (1) is admissible in evidence as if it were the original scheme or part.

Division 8—Appeals to court relating to development applications

Appeals by applicants

4.1.27.(1) An applicant for a development application may appeal to the court against any of the following—

- (a) the refusal, or the refusal in part, of a development application;
- (b) a matter stated in a development approval, including any condition applying to the development, and the identification of a code under section 3.1.6;⁶⁶
- (c) the decision to give a preliminary approval when a development permit was applied for;
- (d) the length of a currency period;
- (e) a deemed refusal.

(2) An appeal under subsection (1)(a) to (d) must be started within 20 business days (the “**applicant’s appeal period**”) after the day the decision notice or negotiated decision notice is given to the applicant.

(3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

Appeals by submitters

4.1.28.(1) A submitter for a development application may appeal to the court about—

- (a) the giving of a development approval, including any conditions (or lack of conditions) or other provisions of the approval; or
- (b) the length of a currency period for the approval.

(2) The appeal must be started within 20 business days (the “**submitter’s appeal period**”) after the day the decision notice or negotiated decision notice is given to the submitter.

(3) If a person withdraws a submission before the application is decided, the person may not appeal the decision.

(4) If an application involves both impact assessment and code assessment, appeal rights for submitters are available only for the part of the

⁶⁶ Section 3.1.6 (Preliminary approval may override local planning instrument)

application involving impact assessment.

Appeals by advice agency submitters

4.1.29.(1) An advice agency may, within the limits of its jurisdiction, appeal to the court about the giving of a development approval for a development application if—

- (a) the development application involves impact assessment; and
- (b) the advice agency told the applicant and the assessment manager to treat its response to the application as a submission for an appeal.

(2) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.

Appeals for matters arising after approval given (co-respondents)

4.1.30.(1) For a development approval given for a development application, a person to whom any of the following notices have been given may appeal to the court against the decision in the notice—

- (a) a notice giving a decision on a request for an extension of the currency period for an approval;
- (b) a notice giving a decision on a request to make a minor change to an approval.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

(3) Subsection (1)(a) does not apply if the approval resulted from a transitional development application that was assessed as if it were an application made under a superseded planning scheme.

Division 9—Appeals to court about other matters

Appeals for matters arising after approval given (no co-respondents)

4.1.31.(1) A person to whom any of the following notices have been given may appeal to the court against the decision in the notice—

- (a) a notice giving a decision on a request to change or cancel a condition of a development approval;
- (b) a notice under section 6.1.44⁶⁷ giving a decision to change or cancel a condition of a development approval.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

Appeals against enforcement notices

4.1.32.(1) A person who is given an enforcement notice may appeal to the court against the giving of the notice.

(2) The appeal must be started within 20 business days after the day notice is given to the person.

Stay of operation of enforcement notice

4.1.33.(1) The lodging of a notice of appeal about an enforcement notice stays the operation of the enforcement notice until—

- (a) the court, on the application of the entity issuing the notice, decides otherwise; or
- (b) the appeal is withdrawn; or
- (c) the appeal is dismissed.

(2) However, subsection (1) does not apply if the enforcement notice is about—

- (a) a work, if the enforcement notice states the entity believes the work is a danger to persons or a risk to public health; or
- (b) the demolition of a work.

⁶⁷ Section 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)

Appeals against decisions on compensation claims

4.1.34.(1) A person who is dissatisfied with a decision under section 5.4.8⁶⁸ or 5.5.3⁶⁹ for the payment of compensation may appeal to the court against—

- (a) the decision; or
- (b) a deemed refusal of the claim.

(2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.

(3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

Appeals against decisions on requests to acquire designated land under hardship

4.1.35.(1) A person who is dissatisfied with a designator's decision to refuse a request made by the person under section 2.6.19,⁷⁰ may appeal to the court against—

- (a) the decision; or
- (b) a deemed refusal of the request.

(2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.

(3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

Appeals against disqualification as a private certifier

4.1.36.(1) A person who is disqualified as a private certifier may appeal to the court against the person's disqualification.

(2) The appeal must be started within 20 business days after the day notice of the disqualification is given to the private certifier.

⁶⁸ Section 5.4.8 (Deciding claims for compensation)

⁶⁹ Section 5.5.3 (Compensation for loss or damage)

⁷⁰ Section 2.6.19 (Request to acquire designated land under hardship)

Appeals from tribunals

4.1.37.(1) A party to a proceeding decided by a tribunal may appeal to the court against the tribunal's decision, but only on the ground—

- (a) of error or mistake in law on the part of the tribunal; or
- (b) that the tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

(2) An appeal against a tribunal's decision must be started within 20 business days after the day notice of the tribunal's decision is given to the party.

Court may remit matter to tribunal

4.1.38. If an appeal includes a matter within the jurisdiction of a tribunal and the court is satisfied the matter should be dealt with by a tribunal, the court must remit the matter to the tribunal for decision.

Division 10—Making an appeal to court

How appeals to the court are started

4.1.39.(1) An appeal is started by lodging written notice of appeal with the registrar of the court.

(2) The notice of appeal must state the grounds of the appeal.

(3) The person starting the appeal must also comply with the rules of the court applying to the appeal.

(4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

Certain appellants must obtain information about submitters

4.1.40.(1) If the applicant or a submitter for a development application appeals about the part of the application involving impact assessment, the appellant must ask the assessment manager to give the appellant the name and address of each principal submitter who made a properly made submission about the application and has not withdrawn the submission.

(2) The assessment manager must give the information requested under subsection (1) as soon as practicable.

Notice of appeal to other parties (div 8)

4.1.41.(1) An appellant under division 8 must, within 10 business days after the day the appeal is started (or if information is requested under section 4.1.40, within 10 business days after the day the appellant is given the information) give written notice of the appeal to—

- (a) if the appellant is an applicant—the assessment manager, any concurrence agency, any principal submitter whose submission has not been withdrawn and any advice agency treated as a submitter whose submission has not been withdrawn; or
- (b) if the appellant is a submitter or an advice agency whose response to the development application is treated as a submission for an appeal—the assessment manager, the applicant and any concurrence agency; or
- (c) if the appellant is a person to whom a notice mentioned in section 4.1.30 has been given—the assessment manager and any entity that was a concurrence agency for the development application.

(2) The notice must state—

- (a) the grounds of the appeal; and
- (b) if the person given the notice is not the respondent or a co-respondent under section 4.1.43—that the person, within 10 business days after the day the notice is given, may elect to become a co-respondent to the appeal.

Notice of appeal to other parties (div 9)

4.1.42.(1) An appellant under division 9 must, within 10 business days after the day the appeal is started give written notice of the appeal to—

- (a) if the appellant is a person to whom a notice mentioned in

- section 4.1.31⁷¹ has been given—the entity that gave the notice; or
- (b) if the appellant is a person to whom an enforcement notice is given—the entity that gave the notice and if the entity is not the local government, the local government; or
 - (c) if the appellant is a person dissatisfied with a decision about compensation—the local government that decided the claim; or
 - (d) if the appellant is a person dissatisfied with a decision about acquiring designated land—the designator; or
 - (e) if the appellant is a person who is disqualified as a private certifier—the entity disqualifying the person and if the entity disqualifying the person is not the accrediting body, the accrediting body; or
 - (f) if the appellant is a party to a proceeding decided by a tribunal—the other party to the proceeding.
- (2) The notice must state the grounds of the appeal.

Respondent and co-respondents for appeals under div 8

4.1.43.(1) This section applies to appeals under division 8⁷² for a development application.

- (2) The assessment manager is the respondent for the appeal.
- (3) If the appeal is started by a submitter, the applicant is a co-respondent for the appeal.
- (4) If the appeal is about a concurrence agency response, the concurrence agency is a co-respondent for the appeal.
- (5) If the appeal is only about a concurrence agency response, the assessment manager may apply to the court to withdraw from the appeal.
- (6) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.

⁷¹ Section 4.1.31 (Appeals for matters arising after approval given (no co-respondents))

⁷² Division 8 (Appeals to court relating to development applications)

(7) A person to whom a notice of appeal is required to be given under section 4.1.41 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.

Respondent and co-respondents for appeals under div 9

4.1.44.(1) This section applies if an entity is required under section 4.1.42 to be given a notice of an appeal.⁷³

(2) The entity given written notice is the respondent for the appeal.

(3) However, if under a provision of the section more than 1 entity is required to be given notice, only the first entity mentioned in the provision is the respondent.

(4) The second entity mentioned in the provision may elect to be a co-respondent.

How a person may elect to be co-respondent

4.1.45.(1) An entity elects to be a co-respondent by lodging in the court, within 10 business days after the day the notice of the appeal is given to the entity, a notice of election under the rules of court.

(2) If a principal submitter is entitled to elect to become a co-respondent, any other submitter for the submission may also elect to become a co-respondent to the appeal.

Minister entitled to be represented in an appeal involving a State interest

4.1.46. If the Minister is satisfied that an appeal involves a State interest, the Minister is entitled to be represented in the appeal.

Lodging appeal stops certain actions

4.1.47.(1) If an appeal (other than an appeal under section 4.1.30) is started under division 8, the development must not be started until the

⁷³ Division 9 (Appeals to court about other matters)

appeal is decided or withdrawn.

(2) Despite subsection (1), if the court is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the court may allow the development or part of the development to start before the appeal is decided.

Division 11—Alternative dispute resolution

ADR process applies to proceedings started under this part

4.1.48.(1) The *District Courts Act 1967*, part 7⁷⁴ and the *District Court Rules 1968*, part 39⁷⁵ (together, the “**ADR provisions**”), apply to proceedings started under this part.

(2) However, to the extent there is any inconsistency between the cost provisions of the ADR provisions and the cost provisions of this Act, the cost provisions of the ADR provisions prevail.

(3) In applying the ADR provisions to a proceeding under this part—

- (a) a reference to the court or the District Court is taken to be a reference to the Planning and Environment Court; and
- (b) a reference to a District Court judge is taken to be a reference to a judge constituting the Planning and Environment Court; and
- (c) definitions and other interpretative provisions of the *District Courts Act 1967* and the *District Court Rules 1968* relevant to the ADR provisions apply.

Division 12—Court process for appeals

Hearing procedures

4.1.49. The procedure for hearing an appeal is to be in accordance with—

- (a) the rules of court; or

⁷⁴ *District Courts Act 1967*, part 7 (ADR process)

⁷⁵ *District Court Rules 1968*, part 39 (Alternative dispute resolution process)

- (b) if the rules make no provision or insufficient provision—directions of the judge constituting the court.

Who must prove case

4.1.50.(1) In an appeal by the applicant for a development application, it is for the appellant to establish that the appeal should be upheld.

(2) In an appeal by a submitter for a development application, it is for the applicant to establish that the appeal should be dismissed.

(3) In an appeal by an advice agency for a development application that told the applicant and the assessment manager to treat its response to the application as a submission for an appeal, it is for the applicant to establish that the appeal should be dismissed.

(4) In an appeal by a person who appeals under section 4.1.30 or 4.1.31,⁷⁶ it is for the appellant to establish that the appeal should be upheld.

(5) In an appeal by a person who is given an enforcement notice, it is for the entity that gave the notice to establish that the appeal should be dismissed.

(6) In an appeal by a person who is dissatisfied with a decision about compensation, it is for the local government that decided the claim to establish that the appeal should be dismissed.

(7) In an appeal by a person who is dissatisfied with a decision about acquiring designated land, it is for the designator to establish that the appeal should be dismissed.

(8) In an appeal by a person who is disqualified as a private certifier, it is for the entity disqualifying the person to establish that the appeal should be dismissed.

(9) In an appeal by a party to a proceeding decided by a tribunal, it is for the appellant to establish that the appeal should be upheld.

⁷⁶ Section 4.1.30 (Appeals for matters arising after approval given (co-respondents)) or 4.1.31 (Appeals for matters arising after approval given (no co-respondents))

Court may hear appeals together

4.1.51. The court may hear 2 or more appeals together.

Appeal by way of hearing anew

4.1.52.(1) An appeal is by way of hearing anew.

(2) However, if the appellant is the applicant or a submitter for a development application, the court—

- (a) must decide the appeal based on the laws and policies applying when the application was made, but may give weight to any new laws and policies the court considers appropriate; and
- (b) must not consider a change to the application on which the decision being appealed was made unless the change is only a minor change.

(3) To remove any doubt, it is declared that if the appellant is the applicant or a submitter for a development application—

- (a) the court is not prevented from considering and making a decision about a ground of appeal (based on a concurrence agency's response) merely because this Act required the assessment manager to refuse the application or approve the application subject to conditions; and
- (b) in an appeal against a decision about a transitional development application that was assessed as if it were an application made under a superseded planning scheme, the court also must—
 - (i) consider the appeal as if the application were made under the superseded planning scheme; and
 - (ii) disregard the planning scheme applying when the application was made.

Court must not decide appeal unless notification stage complied with

4.1.53.(1) The court must not decide an appeal about a development application the notification stage applied to unless the court is satisfied the applicant complied with the requirements of the notification stage.

(2) However, the court may decide the appeal even if some IDAS requirements have not been complied with, if the court is satisfied the noncompliance has not—

- (a) adversely affected the awareness of the public of the existence and nature of the application; or
- (b) restricted the opportunity of the public to exercise the rights conferred by the requirements.

Appeal decision

4.1.54.(1) In deciding an appeal the court may make the orders and directions it considers appropriate.

(2) Without limiting subsection (1), the court may—

- (a) confirm the decision appealed against; or
- (b) change the decision appealed against; or
- (c) set aside the decision appealed against and make a decision replacing the decision set aside.

(3) If the court acts under subsection (2)(b) or (c), the court's decision is taken, for this Act (other than this decision) to be the decision of the entity making the appealed decision.

(4) If the appeal is an appeal against the decision of a tribunal, the court may return the matter to the tribunal with a direction that the tribunal make its decision according to law.

Court may allow longer period to take an action

4.1.55. In this part, if an action must be taken within a specified time, the court may allow a longer time to take the action if the court is satisfied there are sufficient grounds for the extension.

Who may appeal to Court of Appeal

4.1.56.(1) A party to a proceeding may, under the rules of court, appeal a decision of the court on the ground—

- (a) of error or mistake in law on the part of the court; or
- (b) that the court had no jurisdiction to make the decision; or
- (c) that the court exceeded its jurisdiction in making the decision.

(2) However, the party may appeal only with the leave of the Court of Appeal or a judge of Appeal.

When leave to appeal must be sought and appeal made

4.1.57.(1) A party intending to seek leave of the Court of Appeal to appeal against a decision of the court must, within 30 business days after the court's decision is given to the party, apply to the Court of Appeal for leave to appeal against the decision.

(2) If the Court of Appeal grants the leave, the notice of appeal against the decision must be served and filed within 30 business days after the Court of Appeal grants leave to appeal.

Power of Court of Appeal

4.1.58. The Court of Appeal may do 1 or more of the following—

- (a) return the matter to the court or judge for decision in accordance with the Court of Appeal's decision;
- (b) affirm, amend, or revoke and substitute another order or decision for, the court's or judge's order or decision;
- (c) make an order the Court of Appeal considers appropriate.

Lodging appeal stops certain actions

4.1.59.(1) If a decision on an appeal under division 8 (other than an appeal under section 4.1.30) is appealed under this division, the development must not be started until the appeal under this division is decided or withdrawn.

(2) Despite subsection (1), if the Court of Appeal is satisfied the outcome of the appeal before it would not be affected if the development or part of the development is started before the appeal before it is decided, the Court of Appeal may allow the development or part of the development to start before the appeal before it is decided.

PART 2—BUILDING AND DEVELOPMENT TRIBUNALS

Division 1—Establishing, constituting and jurisdiction of tribunals

Establishing building and development tribunals

4.2.1.(1) The chief executive may at any time establish a building and development tribunal.

(2) A tribunal may be established by the appointment of not more than 5 referees⁷⁷ as the members constituting the tribunal.

(3) In establishing a tribunal, the chief executive must have regard to the matter with which the tribunal must deal.

Consultation about multiple member tribunals

4.2.2. If a tribunal is to be constituted by more than 1 member, the chief executive must—

- (a) consult with a representative of the Local Government Association of Queensland about the appointment of at least 1 of the referees as a member; and
- (b) in the writing appointing the members, appoint 1 member as chairperson of the tribunal.

⁷⁷ Referees are appointed under division 7.

Same members to continue for duration of tribunal

4.2.3.(1) A tribunal must continue to be constituted by the same members.

(2) If a tribunal cannot complete a decision on a matter, the chief executive may establish another tribunal to hear the matter again from the beginning.

Referee with conflict of interest not to be member of tribunal

4.2.4.(1) This section applies to a referee if the chief executive advises the referee that the chief executive proposes to appoint the referee as a member of a tribunal, and either or both of the following apply—

- (a) the tribunal is to hear a matter about premises—
 - (i) the referee owns; or
 - (ii) in relation to which the referee is, or is to be, an architect, builder, engineer, planner or private certifier; or
 - (iii) situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;
- (b) the referee has a direct or indirect personal interest in a matter to be considered by the tribunal, and the interest could conflict with the proper performance of the referee's duties in relation to the tribunal's consideration of the matter.

(2) The referee must advise the chief executive that this section applies to the referee, and the chief executive must not appoint the referee to the tribunal.

Referee not to act as member of tribunal in certain cases

4.2.5. If a member of a tribunal is aware, or becomes aware, that the member should not have been appointed to the tribunal, the member must not act as a member of the tribunal.

Remuneration of members of tribunal

4.2.6.(1) A member of a tribunal must be paid the remuneration the

Governor in Council decides.

(2) A member who is a public service officer must not be paid remuneration if the officer acts as a member during the officer's ordinary hours of duty as an officer but is entitled to be paid expenses necessarily incurred by the officer in so acting.

Jurisdiction of tribunals

4.2.7.(1) A tribunal has jurisdiction to decide any matter that under this or another Act may be appealed to it.

(2) An appeal to a tribunal may only relate to—

- (a) the Standard Building Law; or
- (b) a matter prescribed under a regulation.

Division 2—Other tribunal officials

Appointment of registrar and other officers

4.2.8.(1) The chief executive may at any time by gazette notice appoint a registrar of building and development tribunals, and other officers the chief executive considers appropriate to help tribunals to perform their functions.

(2) A public service officer may be appointed under subsection (1) or may be assigned by the chief executive to perform duties to help tribunals, and may hold the appointment or perform the duties concurrently with any other appointment the officer holds in the public service.

Division 3—Appeals to tribunals relating to development applications

Appeals by applicants

4.2.9.(1) An applicant for a development application may appeal to a tribunal against any of the following—

- (a) the refusal, or the refusal in part, of a development application;
- (b) a matter stated in a development approval, including any

condition applying to the development, but not including the identification of a code under section 3.1.6;⁷⁸

- (c) the decision to give a preliminary approval when a development permit was applied for;
- (d) the length of a currency period;
- (e) a deemed refusal.

(2) An appeal under subsection (1)(a) to (d) must be started within 20 business days (the “**applicant’s appeal period**”) after the day the decision notice or negotiated decision notice is given to the applicant.

(3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

Appeal by advice agency

4.2.10.(1) An advice agency may, within the limits of its jurisdiction, appeal to a tribunal about the giving of a development approval if the development application involves code assessment, and the advice agency is the Queensland Fire and Rescue Authority.

(2) The appeal must be started within 10 business days after the day the decision notice or negotiated decision notice is given to the Queensland Fire and Rescue Authority as an advice agency.

Appeals for matters arising after approval given (co-respondents)

4.2.11.(1) For a development approval given for a development application, a person to whom any of the following notices have been given may appeal to a tribunal against the decision in the notice—

- (a) a notice giving a decision on a request for an extension of the currency period for the approval;
- (b) a notice giving a decision on a request to make a minor change to the approval.

(2) The appeal must be started within 20 business days after the day the

⁷⁸ Section 3.1.6 (Preliminary approval may override local planning instrument)

notice of the decision is given to the person.

(3) Subsection (1)(a) does not apply if the approval resulted from a transitional development application that was assessed as if it were an application made under a superseded planning scheme.

Division 4—Appeals to tribunal about other matters

Appeals for matters arising after approval given (no co-respondents)

4.2.12.(1) A person to whom any of the following notices have been given may appeal to a tribunal against the decision in the notice—

- (a) a notice giving a decision on a request to change or cancel a condition of the development approval;
- (b) a notice under section 6.1.44⁷⁹ giving a decision to change or cancel a condition of the development approval.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

Appeals against enforcement notices

4.2.13.(1) A person who is given an enforcement notice may appeal to a tribunal against the giving of the notice.

(2) The appeal must be started within 20 business days after the day the notice is given to the person.

Stay of operation of enforcement notice

4.2.14.(1) The lodging of a notice of appeal about an enforcement notice stays the operation of the enforcement notice until—

- (a) the tribunal, on the application of the entity issuing the notice, decides otherwise; or
- (b) the appeal is withdrawn; or

⁷⁹ Section 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)

(c) the appeal is dismissed.

(2) However, subsection (1) does not apply if the enforcement notice is about—

- (a) a work, if the enforcement notice states the entity believes the work is a danger to persons or a risk to public health; or
- (b) the demolition of a work.

Division 5—Making an appeal to tribunal

How appeals to tribunals are started

4.2.15.(1) A person starts an appeal by lodging written notice of appeal, in the approved form, with the registrar of the tribunal.

(2) The notice of appeal must state the grounds of the appeal and be accompanied by the fee prescribed under a regulation.

Fast track appeals

4.2.16.(1) A person who is entitled to start an appeal under this part, may, by written request, ask the chief executive to appoint a tribunal to start hearing the appeal within 2 business days after starting the appeal.

(2) A request made under subsection (1) must be accompanied by the fee prescribed under a regulation.

(3) The chief executive may grant or refuse the request.

(4) The chief executive may grant the request only if all the parties to the appeal, including any person who could elect to become a co-respondent, have agreed in writing to the request.

(5) If the chief executive grants the request, the chief executive may as a condition of granting the request, require the person making the request to pay—

- (a) the reasonable costs of the respondent and any co-respondents for the appeal after the request is granted; and
- (b) an additional tribunal fee prescribed under a regulation.

(6) If the request is granted, any notice of appeal to be given and any election to be a co-respondent to the appeal under this part must be given or made before any hearing for the appeal starts.

Notice of appeal to other parties (div 3)

4.2.17.(1) For an appeal under division 3,⁸⁰ the registrar must, within 10 business days after the day the appeal is started, give written notice of the appeal to—

- (a) if the appellant is an applicant—the assessment manager, any concurrence agency for an aspect of the application the subject of the appeal, and, if the Queensland Fire and Rescue Authority is an advice agency for the application, the authority; or
- (b) if the appellant is a person to whom a notice mentioned in section 4.2.11⁸¹ has been given—the assessment manager and any entity that was a concurrence agency for an aspect of the application the subject of the appeal.

(2) The notice must state—

- (a) the grounds of the appeal; and
- (b) if the person given the notice is not the respondent or a co-respondent under section 4.2.19⁸²—that the person, within 10 business days after the day the notice is given, may elect to become a co-respondent to the appeal.

Notice of appeal to other parties (div 4)

4.2.18.(1) For an appeal under division 4, the registrar must, within 10 business days after the day the appeal is started, give written notice of the appeal to—

- (a) if the appellant is a person to whom a notice mentioned in

⁸⁰ Division 3 (Appeals to tribunals relating to development applications)

⁸¹ Section 4.2.11 (Appeals for matters arising after approval given (co-respondents))

⁸² Section 4.2.19 (Respondent and co-respondents for appeals under div 3)

section 4.2.12⁸³ has been given—the entity that gave the notice; or

- (b) if the appellant is a person to whom an enforcement notice is given—the entity that gave the notice, and, if the entity is not the local government, the local government.

- (2) The notice must state the grounds of the appeal.

Respondent and co-respondents for appeals under div 3

4.2.19.(1) This section applies to appeals under division 3 for a development application.

- (2) The assessment manager is the respondent for the appeal.

(3) If the appeal is about a concurrence agency response, the concurrence agency is a co-respondent for the appeal.

(4) If the appeal is only about a concurrence agency response, the assessment manager may apply to the tribunal to withdraw from the appeal.

(5) The respondent and any co-respondents for an appeal are each entitled to be heard in the appeal as a party to the appeal.

(6) A person to whom a notice of appeal is required to be given under section 4.2.17 and who is not the respondent or a co-respondent for the appeal under subsections (1) to (3) may elect to be a co-respondent.

Respondent and co-respondents for appeals under div 4

4.2.20.(1) This section applies if an entity is required under section 4.2.18 to be given a notice of an appeal.

- (2) The entity given written notice is the respondent for the appeal.

(3) However, if under section 4.2.18(1)(b) more than 1 entity is required to be given notice—

- (a) the first entity mentioned in the provision is the respondent; but
- (b) the second entity mentioned in the provision may elect to be a co-respondent.

⁸³ Section 4.2.12 (Appeals for matters arising after approval given (no co-respondents))

How a person may elect to be co-respondent

4.2.21. An entity elects to be a co-respondent by lodging in the tribunal, within 10 business days after the day the notice of the appeal is given to the entity, a notice of election in the approved form.

Registrar must ask assessment manager for material in certain proceedings

4.2.22.(1) If an appeal is about a deemed refusal, the registrar must ask the assessment manager to give the registrar—

- (a) all material (including plans and specifications) about the aspect of the application being appealed; and
- (b) a statement of the reasons the assessment manager had not decided the application during the decision making period or extended decision making period; and
- (c) any other information the registrar requires.

(2) The assessment manager must give the material mentioned in subsection (1) within 10 business days after the day the registrar asks for the material.

Minister entitled to be represented in an appeal involving a State interest

4.2.23. If the Minister is satisfied that an appeal involves a State interest, the Minister is entitled to be represented in the appeal.

Division 6—Tribunal process for appeals**Establishing a tribunal**

4.2.24.(1) When the registrar receives a notice of appeal, the registrar must give a copy of the notice to the chief executive.

(2) On receiving a copy of a notice of appeal from the registrar, the chief executive must, by the written appointment of a referee or referees, establish a tribunal to decide the appeal.

(3) The registrar must give each party to the appeal written notice that a tribunal has been established.

Procedures of tribunals

4.2.25.(1) A tribunal must—

- (a) conduct its business in the way prescribed under a regulation or, in so far as the way is not prescribed, as it considers appropriate; and
- (b) make its decisions in a timely way.

(2) A tribunal may—

- (a) sit at the times and places it decides; and
- (b) hear 2 or more appeals together.

Costs

4.2.26. Each party to an appeal must bear the party's own costs for the appeal.

Tribunal may allow longer period to take an action

4.2.27. In this part, if an action must be taken within a specified time, the tribunal may allow a longer time to take the action if the tribunal is satisfied there are sufficient grounds for the extension.

Appeal may be by hearing or written submission

4.2.28. The chairperson of the tribunal must decide whether the tribunal will—

- (a) conduct a hearing for the appeal; or
- (b) if all the parties to the appeal agree—decide the appeal on the basis of written submissions.

Appeals by hearing

4.2.29. If the appeal is to be by way of a hearing, the chairperson must—

- (a) fix a time and place for the hearing; and
- (b) give all the parties to the appeal written notice of the time and place of the hearing.

Right to representation at tribunal appeal hearing

4.2.30.(1) A party to an appeal may appear in person or be represented by an agent.

(2) A person must not be represented at an appeal by an agent who is a lawyer.

Conduct of hearings

4.2.31.(1) In conducting the hearing, the tribunal—

- (a) need not proceed in a formal way; and
- (b) is not bound by the rules of evidence; and
- (c) may inform itself in the way it considers appropriate; and
- (d) may seek the views of any person; and
- (e) must give all persons appearing before it reasonable opportunity to be heard; and
- (f) may prohibit or regulate questioning in the hearing.

(2) The tribunal may hear the appeal without hearing a person if the person is not present or represented at the time and place appointed for hearing the person.

(3) If, because of the time available for conducting the appeal, a person does not have an opportunity to be heard, or fully heard, the person may make a written submission about the matter to the tribunal.

Appeals by written submission

4.2.32.(1) If the tribunal is to decide the appeal on the basis of written

submissions, the chairperson must—

- (a) decide a reasonable time within which the tribunal may accept the written submissions; and
- (b) give the parties written notice that the appeal is to be decided on the basis of written submissions.

(2) The notice must ask for written submissions about the appellant's grounds of appeal to be given to the chairperson within the time decided under subsection (1).

Matters the tribunal may consider in making a decision

4.2.33. If the appeal is about a development application (including about a development approval given for a development application) the tribunal must decide the appeal based on—

- (a) the same material the assessment manager or referral agency was required to have regard to when deciding the application; and
- (b) the laws and policies applying when the application was made, but may give such weight to any new laws and policies the tribunal considers appropriate.

Appeal decision

4.2.34.(1) In deciding an appeal the tribunal may make the orders and directions it considers appropriate.

(2) Without limiting subsection (1), the tribunal may—

- (a) confirm the decision appealed against; or
- (b) change the decision appealed against; or
- (c) set aside the decision appealed against and make a decision replacing the decision set aside; or
- (d) for a deemed refusal—
 - (i) order the assessment manager to decide the application by a stated time; and
 - (ii) if the assessment manager does not comply with the order

under subparagraph (i)—decide the application.

(3) If the tribunal acts under subsection (2)(b), (c) or (d)(ii), the tribunal's decision is taken, for this Act (other than this decision) to be the decision of the assessment manager.

(4) The chairperson of the tribunal must give all parties to the appeal, written notice of the tribunal's decision.⁸⁴

When decision may be made without representation or submission

4.2.35. The tribunal may decide the appeal without the representations or submissions of a person who has been given a notice under section 4.2.29(b) or section 4.2.32(1) if—

- (a) for a hearing without written submissions—the person does not appear at the hearing; or
- (b) for a hearing on the basis of written submissions—the person's submissions are not received within the time stated in the notice given under section 4.2.32(1).

Division 7—Referees

Appointment of referees

4.2.36.(1) The Minister, by gazette notice, may appoint the number of persons the Minister considers appropriate to be referees under this Act.

(2) A public service officer may be appointed as a referee.

(3) An officer appointed under subsection (2) holds the appointment concurrently with any other appointment the officer holds in the public service.

Qualification of referees

4.2.37.(1) A referee may be appointed as a member of a tribunal to hear

⁸⁴ Any person receiving a notice may appeal the decision. See section 4.1.37 (Appeals from tribunals).

and decide a matter only if the referee has the qualifications, experience or qualifications and experience prescribed for the matter under a regulation.

Term of referee's appointment

4.2.38.(1) A person may be appointed a referee for the term, not be longer than 3 years, the Minister considers appropriate.

(2) The term of appointment must be stated in the notice of appointment.

(3) A referee may be re-appointed.

(4) A referee may at any time resign the referee's appointment by writing under the referee's hand given to the Minister.

(5) The Minister may cancel a referee's appointment at any time.

Referee to make declaration

4.2.39.(1) A person appointed as a referee must—

(a) sign a declaration in the approved form; and

(b) give the declaration to the chief executive as soon as the declaration is signed.

(2) The person must not sit as a member of a tribunal until the declaration has been given to the chief executive.

PART 3—DEVELOPMENT OFFENCES, NOTICES AND ORDERS

Division 1—Development offences

Carrying out assessable development without permit

4.3.1.(1) A person must not start assessable development without a development permit for the development.

Maximum penalty—1 665 penalty units.

(2) Subsection (1) applies subject to section 4.3.6.

(3) Despite subsection (1), if the assessable development is the demolition of a building identified in a planning scheme as a building of heritage significance the maximum penalty is 17 000 penalty units.

Self-assessable development must comply with codes

4.3.2. A person must comply with applicable codes when carrying out self-assessable development.

Maximum penalty—165 penalty units.

Compliance with development approval

4.3.3.(1) A person must not contravene a development approval, including any condition in the approval.

Maximum penalty—1 665 penalty units.

(2) Subsection (1) applies subject to section 4.3.6.

Compliance with identified codes about use of premises

4.3.4.(1) A person must not contravene a code identified, in a way provided for in this Act, as a code applying to the use of premises.

Maximum penalty—1 665 penalty units.

(2) Subsection (1) applies subject to section 4.3.6.

Carrying on unlawful use of premises

4.3.5. A person must not use premises if the use is not a lawful use.

Maximum penalty—1 665 penalty units.

(2) Subsection (1) applies subject to section 4.3.6.

Development or use carried out in emergency

4.3.6.(1) Sections 4.3.1, 4.3.3, 4.3.4 and 4.3.5 do not apply to a person if—

- (a) the person starts development or a use because of an emergency endangering—
 - (i) the life or health of a person; or
 - (ii) the structural safety of a building; and
- (b) the person gives written notice of the development or use to the local government as soon as practicable after starting the development or use.

(2) However, subsection (1) does not apply if the person is required by an enforcement notice or order to stop carrying out the development or use.

Giving a false or misleading notice

4.3.7.(1) A person must not give an assessment manager a notice under section 3.3.4⁸⁵ or 3.4.7⁸⁶ that is false or misleading.

Maximum penalty—1 665 penalty units.

(2) A person must not give the chief executive a notice under section 3.3.5⁸⁷ that is false or misleading.

Maximum penalty—1 665 penalty units.

Division 2—Show cause notices**Application of div 2**

4.3.8. This division applies if an assessing authority proposes to give a

⁸⁵ Section 3.3.4 (Applicant advises assessment manager)

⁸⁶ Section 3.4.7 (Notice of compliance to be given to assessment manager)

⁸⁷ Section 3.3.5 (Referral coordination)

person an enforcement notice other than an enforcement notice about—⁸⁸

- (a) work the authority reasonably believes is a danger to persons or a risk to public health; or
- (b) work the authority reasonably believes is of a minor nature; or
- (c) the demolition of a work.

Giving show cause notice

4.3.9. Before giving an enforcement notice, the assessing authority must give the person a notice (a “**show cause notice**”) inviting the person to show cause why the enforcement notice should not be given.

General requirements of show cause notice

4.3.10.(1) A show cause notice must—

- (a) be in writing; and
- (b) outline the facts and circumstances forming the basis for the assessing authority’s belief that an enforcement notice should be given to the person; and
- (c) state that representations may be made about the show cause notice; and
- (d) state how the representations may be made; and
- (e) state where the representations may be made or sent; and
- (f) state—
 - (i) a day and time for making the representations; or
 - (ii) a period within which the representations must be made.

(2) The day or period stated in the notice must be, or must end, at least 20 business days after the notice is given.

⁸⁸ Under section 5.3.5, a private certifier also has restricted rights under divisions 2 and 3.

Division 3—Enforcement notices

Giving enforcement notice

4.3.11.(1) If an assessing authority reasonably believes a person has committed, or is committing, a development offence, the authority may give a notice (an “**enforcement notice**”) to the person requiring the person to do either or both of the following—⁸⁹

- (a) to refrain from committing the offence; or
- (b) to remedy the commission of the offence in the way stated in the notice.

(2) If the assessing authority giving the notice reasonably believes the person has committed, or is committing, the development offence in a local government area and the assessing authority is not the local government, the assessing authority must also give the local government a copy of the notice.

Restriction affecting giving of enforcement notice

4.3.12. Subject to section 4.3.8, the assessing authority may give the enforcement notice only if, after considering all representations made by the person about the show cause notice within the time stated in the notice, the authority still believes it is appropriate to give the enforcement notice.

Specific requirements of enforcement notice

4.3.13.(1) Without limiting specific requirements an enforcement notice may impose, a notice may require a person to do any of the following—

- (a) to stop carrying out a development;
- (b) to stop a stated use of a premises;
- (c) to demolish or remove a work;
- (d) to restore, as far as practicable, premises to the condition the

⁸⁹ A person who receives an enforcement notice may appeal against the notice under section 4.1.32 (Appeals against enforcement notices).

premises were in immediately before a development was started;

- (e) to do, or not to do, another act to ensure a development complies with a development approval or a code;
- (f) to apply for a development permit;
- (g) if the assessing authority reasonably believes a work is dangerous—
 - (i) to repair or rectify the work; or
 - (ii) to secure the work (whether by a system of supports or in another way); or
 - (iii) to fence off the work to protect persons.

(2) However, a person may be required to demolish or remove a work only if the assessing authority reasonably believes it is not possible and practical to take steps—

- (a) to make the work comply with a development approval or a code; or
- (b) if the work is dangerous—to remove the danger.

General requirements of enforcement notices

4.3.14.(1) An enforcement notice must—

- (a) be in writing; and
- (b) describe the nature of the alleged offence; and
- (c) inform the person to whom the notice is given of the person's right to appeal against the giving of the notice.

(2) If an enforcement notice requires a person to do an act involving the carrying out of work, it also must give details of the work involved.

(3) If an enforcement notice requires a person to refrain from doing an act, it also must state either—

- (a) a period for which the requirement applies; or
- (b) that the requirement applies until further notice.

(4) If an enforcement notice requires a person to do an act, it also must

state a period within which the act is required to be done.

(5) If an enforcement notice requires a person to do more than 1 act, it may state different periods within which the acts are required to be done.

Compliance with enforcement notice

4.3.15. A person who is given an enforcement notice must comply with the notice.

Maximum penalty—1 665 penalty units.

Processing application required by enforcement notice

4.3.16. If a person applies for a development permit as required by an enforcement notice, the person—

- (a) must not discontinue the application, unless the person has a reasonable excuse; and
- (b) must take all necessary and reasonable steps to enable the application to be decided as quickly as possible, unless the person discontinues the application with a reasonable excuse.

Maximum penalty—1 665 penalty units.

Assessing authority may take action

4.3.17.(1) If a person to whom an enforcement notice is given contravenes the notice by not doing something, the assessing authority (if it is not a local government) may do the thing.⁹⁰

(2) Any reasonable costs or expenses incurred by an assessing authority in doing anything under subsection (1), may be recovered by the authority as a debt owing to it by the person to whom the notice was given.

⁹⁰ If the assessing authority is a local government it has similar powers under the *Local Government Act 1993*, section 661 and has powers to recover its costs under sections 662 and 663.

Division 4—Offence proceedings in magistrates court

Proceedings for offences

4.3.18.(1) A person may bring a proceeding in a magistrates court on a complaint to prosecute another person for a development offence.

(2) The person may bring the proceeding whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

(3) However, for an offence under section 4.3.1,⁹¹ 4.3.2⁹² or 4.3.3⁹³ about the Standard Building Law, proceedings may only be brought by an assessing authority.

Proceeding brought in a representative capacity

4.3.19.(1) A proceeding under section 4.3.18 may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

- (a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body; or
- (b) if the proceeding is brought on behalf of an individual—the individual.

Magistrates court may make orders

4.3.20.(1) After hearing the complaint, the magistrates court may make an order on the defendant it considers appropriate.

(2) The order may be made in addition to, or in substitution for, any penalty the court may otherwise impose.

(3) The order may require the defendant—

⁹¹ Section 4.3.1 (Carrying out assessable development without permit)

⁹² Section 4.3.2 (Compliance with development approval)

⁹³ Section 4.3.3 (Compliance with identified codes about use of premises)

- (a) to stop development or carrying on a use; or
- (b) to demolish or remove a work; or
- (c) to restore, as far as practicable, premises to the condition the premises were in immediately before development or use of the premises started; or
- (d) to do, or not to do, another act to ensure development or use of the premises complies with a development approval or a code; or
- (e) for development that has started—to apply for a development permit; or
- (h) if the court believes a work is dangerous—
 - (i) to repair or rectify the work; or
 - (ii) to secure the work.

(4) The order must state the time, or period, within which the order must be complied with.

(5) A person who contravenes the order commits an offence against this Act.

Maximum penalty—1 665 penalty units or imprisonment for 12 months.

(6) If the order states that contravention of the order is a public nuisance, an assessing authority (other than a local government) may undertake any work necessary to remove the nuisance.⁹⁴

(7) If an assessing authority carries out works under subsection (6), it may recover the reasonable cost of the works as a debt owing to the assessing authority from the person to whom the order was given.

Costs involved in bringing proceeding

4.3.21. If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

⁹⁴ If the assessing authority is a local government it has similar powers under the *Local Government Act 1993*, section 661 and has powers to recover its costs under sections 662 and 663.

Division 5—Enforcement orders of court

Proceeding for orders

4.3.22.(1) A person may bring a proceeding in the court—

- (a) for an order to remedy or restrain the commission of a development offence (an “**enforcement order**”); or
- (b) if the person has brought a proceeding under paragraph (a) and the court has not decided the proceeding—for an order under section 4.3.24 (an “**interim enforcement order**”); or
- (c) to cancel or change an enforcement order or interim enforcement order.

(2) However, if the offence under subsection (1)(a) is an offence under section 4.3.1, 4.3.2 or 4.3.3 about the Standard Building Law, the proceeding may be brought only by the assessing authority having enforcement jurisdiction for the matter.

(3) The person may bring a proceeding under subsection (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

Proceeding brought in a representative capacity

4.3.23.(1) A proceeding under section 4.3.22 may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

- (a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body; or
- (b) if the proceeding is brought on behalf of an individual—the individual.

Making interim enforcement order

4.3.24.(1) The court may make an interim enforcement order pending a decision of the proceeding if the court is satisfied it would be appropriate to

make the order.

(2) The court may make the order subject to conditions, including a condition requiring the applicant for the order to give an undertaking to pay costs resulting from damage suffered by the respondent if the proceeding is unsuccessful.

Making enforcement order

4.3.25.(1) The court may make an enforcement order if the court is satisfied the offence—

- (a) has been committed; or
- (b) will be committed unless restrained.

(2) If the court is satisfied the offence has been committed, the court may make an enforcement order whether or not there has been a prosecution for the offence under division 4.

Effect of orders

4.3.26.(1) An enforcement order or an interim enforcement order may direct the respondent—

- (a) to stop an activity that constitutes, or will constitute, a development offence; or
- (b) not to start an activity that will constitute a development offence; or
- (c) to do anything required to stop committing a development offence; or
- (d) to do anything about a development or use to comply with this Act.

(2) Without limiting the court's powers, the court may make an order requiring the repairing, demolition or removal of a building.

(3) An enforcement order or an interim enforcement order—

- (a) may be in terms the court considers appropriate to secure

compliance with this Act; and

- (b) must state the time by which the order is to be complied with.

Court's powers about orders

4.3.27.(1) The court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—

- (a) it appears to the court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of the kind; or
- (c) there is danger of substantial damage to property or injury to another person if the person engages, or continues to engage, in the activity.

(2) The court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—

- (a) it appears to the court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of the kind; or
- (c) there is danger of substantial damage to property or injury to another person if the person fails, or continues to fail, to do the thing.

(3) The court may cancel or change an enforcement order or interim enforcement order.

(4) The court's power under this section is in addition to its other powers.

Costs involved in bringing proceeding

4.3.28. If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

Division 6—Application of Acts**Application of other Acts**

4.3.29.(1) This section applies if another Act—

- (a) specifies monetary penalties for offences about development greater or less than the penalties specified in this part; or
- (b) provides that an activity specified in this part as a development offence is not an offence; or
- (c) contains provisions about the carrying out of development in an emergency; or
- (d) includes requirements about enforcement notices that are different to the requirements of this part; or
- (e) includes provisions about the issuing of other notices having the same effect as enforcement notices; or
- (f) includes requirements about proceedings for the prosecution for development offences or other offences that are different from the requirements of this part; or
- (g) includes requirements about proceedings for enforcement orders that are different from the requirements of this part.

(2) The provisions of the other Act prevail over the provisions of this part to the extent of any inconsistency.

PART 4—LEGAL PROCEEDINGS***Division 1—Proceedings*****Proceedings for offences**

4.4.1. A proceeding for an offence against this Act may be instituted in a summary way under the *Justices Act 1886*.

Limitation on time for starting proceedings

4.4.2. A proceeding for an offence against this Act must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge.

Executive officers must ensure corporation complies with Act

4.4.3.(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Division 2—Fines and costs**When fines payable to local government**

4.4.4.(1) This section applies if—

- (a) the assessing authority by which the administration and

- enforcement of a matter is carried out is a local government; and
- (b) a proceeding for an offence about the matter is taken by the local government; and
 - (c) a court imposes a fine for the offence.
- (2) The fine must be paid to the local government.

Order for compensation or remedial action

4.4.5.(1) This section applies if—

- (a) a person is convicted of a development offence; and
- (b) the court convicting the person finds that, because of the commission of the offence, another person—
 - (i) has suffered loss of income; or
 - (ii) has suffered a reduction in the value of, or damage to, property; or
 - (iii) has incurred costs or expenses in replacing or repairing property or in preventing or minimising, or attempting to prevent or minimise, a loss, reduction or damage mentioned in subparagraph (i) or (ii).

(2) The court may order the person to do either or both of the following—

- (a) pay to the other person an amount of compensation the court considers appropriate for the loss, reduction or damage suffered or costs or expenses incurred; or
- (b) take stated remedial action the court considers appropriate.

(3) An order under subsection (2) is in addition to the imposition of a penalty and any other order under this Act.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Recovery of costs of investigation

4.4.6.(1) This section applies if—

- (a) a person is convicted of an offence against this Act; and
- (b) the court convicting the person finds the assessing authority has reasonably incurred costs and expenses in taking a sample or conducting an inspection, test, measurement or analysis during the investigation of the offence; and
- (c) the assessing authority applies for an order against the person for the payment of the costs and expenses.

(2) The court may order the person to pay to the assessing authority the reasonable costs and expenses incurred by the authority if it is satisfied it would be just to make the order in the circumstances of the particular case.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Division 3—Evidence

Application of div 3

4.4.7. This division applies to a proceeding under this Act.

Appointments and authority

4.4.8. It is not necessary to prove—

- (a) the appointment of the chief executive or the chief executive officer (by whatever name called) of an assessing authority; or
- (b) the authority of the chief executive or the chief executive officer (by whatever name called) of an assessing authority to do anything under this Act.

Signatures

4.4.9. A signature purporting to be the signature of the chief executive or the chief executive officer (by whatever name called) of an assessing authority is evidence of the signature it purports to be.

Matter coming to complainant's knowledge

4.4.10. In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

Instruments, equipment and installations

4.4.11. Any instrument, equipment or installation prescribed under a regulation that is used by an appropriately qualified person in accordance with any conditions prescribed under a regulation is taken to be accurate and precise in the absence of evidence to the contrary.

Analyst's certificate or report

4.4.12. A certificate or report purporting to be signed by an appropriately qualified person and stating any of the following matters is evidence of the matter—

- (a) the person's qualifications;
- (b) the person took, or received from a stated person, a stated sample;
- (c) the person analysed the sample on a stated day, or during a stated period, and at a stated place;
- (d) the results of the analysis.

Evidentiary aids generally

4.4.13. A certificate purporting to be signed by the chief executive officer (by whatever name called) of an assessing authority stating any of the following matters is evidence of the matter—

- (a) a stated document is—
 - (i) an appointment or a copy of an appointment; or
 - (ii) a direction or decision, or a copy of a direction or decision, given or made under this Act; or
 - (iii) a notice, order or permit, or a copy of a notice, order or permit, given under this Act;

- (b) on a stated day, or during a stated period, a stated person was or was not the holder of a development permit for stated development;
- (c) on a stated day, or during a stated period, a development permit—
 - (i) was or was not in force for a stated person or development; or
 - (ii) was or was not subject to a stated condition;
- (d) on a stated day, a stated person was given a stated notice or direction under this Act;
- (e) a stated amount is payable under this Act by a stated person and has not been paid.

Responsibility for acts or omissions of representatives

4.4.14.(1) Subsections (2) and (3) apply in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

“representative” means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

“state of mind” of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

CHAPTER 5—MISCELLANEOUS

PART 1—INFRASTRUCTURE CHARGES

Division 1—Preliminary

Meaning of “development infrastructure item”

5.1.1.(1) A “**development infrastructure item**” is land, capital works or land and capital works for any of the following infrastructure—

- (a) urban water cycle management infrastructure (including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of waters and flood mitigation);
- (b) transport infrastructure (including roads, vehicle lay-bys, traffic control devices, dedicated public transport corridors, public parking facilities predominantly serving a local area, cycle ways, pathways and ferry terminals);
- (c) infrastructure for local community purposes.

(2) In subsection (1)—

“**capital works**”, for local community purposes, means works that ensure land is suitable for development for its intended purpose.

“**roads**” does not include State-controlled roads.

“**urban water cycle management infrastructure**” includes rural residential water cycle management infrastructure.

Meaning of “desired standard of service”

5.1.2. A “desired standard of service”, for a network of development infrastructure items, is the standard of performance stated in an infrastructure charges plan for the network.

Meaning of “life cycle cost”

5.1.3. The “life cycle cost”, for a network of development infrastructure items, is the amount of the capital cost of the network plus the amount representing the present value of operating and maintenance costs of the network over 30 years, or the longer period decided by the entity preparing the infrastructure charges plan.

Meaning of “infrastructure charges plan”

5.1.4.(1) An “infrastructure charges plan” is the part of a planning scheme that—

- (a) identifies development infrastructure items making up a network of development infrastructure items; and
- (b) states the desired standard of service for the network having regard to user benefits and environmental effects of the network; and
- (c) evaluates alternative ways of funding the items.

Example for subsection (1)(b)—

For water supply, the desired standard of service may be expressed as the minimum head of pressure available at each domestic or business service point.

(2) For development infrastructure items for which an infrastructure charge is intended, the plan must—

- (a) explain why an infrastructure charge is intended for the items; and
- (b) state the estimated proportion of the capital cost of the items to be funded by the charge; and
- (c) include a schedule stating the estimated timing for, and estimated capital cost of, the items; and
- (d) state the method or methods by which the charge must be

calculated; and

- (e) state each area in which the charge applies; and
- (f) identify each type of lot, work or use, in respect of which, the charge applies; and
- (g) for each type of lot, work or use in an area stated under paragraph (e)—calculate the rate at which the charge applies using a method stated under paragraph (d); and
- (h) if the charge is payable by a person other than an applicant for a development approval—state when the charge is payable.

(3) The capital cost mentioned in subsection (2)(c) must be calculated so as to minimise the life cycle cost for the desired standard of service for the network.

(4) The infrastructure charges plan must be prepared having regard to any guidelines approved by the chief executive for preparing the plan.

(5) For an infrastructure charges plan, a planning scheme may also apply to a development infrastructure item even though the item is not within or wholly within a local government's area.

Division 2—Charging for development infrastructure items

Fixing infrastructure charges

5.1.5.(1) If a local government fixes a general charge under the *Local Government Act 1993*, section 559(2)⁹⁵ for the capital cost of a development infrastructure item (an “**infrastructure charge**”) the charge must be fixed only in the way stated in this division.

(2) A local government need not, in circumstances it considers appropriate, fix an infrastructure charge in respect of a particular lot, work or use.

(3) However, a local government must not fix an infrastructure charge to

⁹⁵ *Local Government Act 1993*, section 559(2) (Power to make and levy rates and charges)

fund the capital cost of a development infrastructure item servicing a work or use of land authorised under the *Mineral Resources Act 1989*.

Infrastructure charge must be based on plan and other matters

5.1.6.(1) An infrastructure charge must not be fixed for a development infrastructure item unless the item is identified in an infrastructure charges plan.

(2) For an item identified in an infrastructure charges plan, an infrastructure charge—

- (a) must be fixed in accordance with the plan; and
- (b) must not be more than the proportion of the cost of the item that reasonably can be apportioned to the premises for which the charge is fixed, taking into account the likely share of the usage of the item for the premises; and
- (c) may take into account money already spent on supplying an existing development infrastructure item to the premises.

(3) Subsection (2)(c) applies only if the money already spent on supplying the existing item has not been recovered or is not intended to be recovered in another way.

Fixing a charge for an item not included in plan

5.1.7.(1) Despite section 5.1.6, a local government may fix, but only under this section, an infrastructure charge for a development infrastructure item not identified in the infrastructure charges plan.

(2) The infrastructure charge must only be—

- (a) payable by an applicant; and
- (b) for a development infrastructure item to service development that is—
 - (i) inconsistent with the planning scheme; or
 - (ii) consistent with the planning scheme, but is urban development (including rural residential development) not in an area identified to accommodate the next 5 years (or other

period approved by the Minister) of development in a benchmark development sequence; and

- (c) calculated—
 - (i) on the basis of the minimum life cycle cost necessary to achieve the desired standard of service for a similar network of items included in the infrastructure charges plan; and
 - (ii) having regard to any guidelines approved by the chief executive.

(3) If an infrastructure charge is fixed under this section, the local government must review and amend its infrastructure charges plan as soon as practicable after the charge is paid to reflect the approved development.

Notice of charge

5.1.8. If an infrastructure charge is fixed, the person who is to pay the charge must be given a written notice stating—

- (a) the amount of the charge; and
- (b) the land to which, for the purposes of recovery, the charge applies; and
- (c) the day by which the charge is payable; and
- (d) the development infrastructure item for which the charge has been fixed; and
- (e) the person to whom the charge must be paid.

Actions required if charge is payable by applicant

5.1.9.(1) This section applies if the person to whom a notice under section 5.1.8 is to be given is an applicant under a development application for development resulting in a lot, work or use in respect of which the charge mentioned in the notice applies.

(2) If the application was made to a local government, the local government must give the notice under section 5.1.8, within 5 business days after the local government gives the applicant the decision notice about the development, to the applicant.

(3) If the application was made to an assessment manager other than a local government, the local government must give the notice under section 5.1.8, within 10 business days after the local government receives a copy of the decision notice from the assessment manager.

(4) If the application was made to a private certifier, the local government must give the notice under section 5.1.8, within 10 business days after the day the local government receives a copy of the decision notice from the private certifier.

(5) If as a result of a decision of a court on the application, the local government fixes an infrastructure charge, the local government must give the notice under section 5.1.8 within 20 business days after the local government receives a copy of the decision about the appeal.

(6) If the assessment manager gives the applicant a negotiated decision notice and the development approved by the negotiated decision notice is different from the development approved in the decision notice in a way that affects the amount of the infrastructure charge, the local government may give the applicant a new notice under section 5.1.8 to replace the original notice.

(7) For subsection (6), the new notice must be given—

- (a) if the assessment manager is the local government—within 5 business days after the negotiated decision notice is given; or
- (b) if the assessment manager is not the local government—within 10 business days after the local government receives a copy of the negotiated decision notice from the assessment manager or private certifier.

(8) The local government may, with the written agreement of the applicant, give a new notice under section 5.1.8 to replace the original notice, if the original notice was in error.

(9) If the owner of the land the subject of the application is not the applicant, the owner must also be given a copy of any notice given to the applicant under this section.

When charge is payable by applicant

5.1.10.(1) The infrastructure charge is payable—

- (a) if the notice of charge states that the development infrastructure item for which the charge is payable is necessary to service the premises for which the approval has been given before the use of the premises starts, but is not yet available to service the premises—
 - (i) for reconfiguring a lot—before works for the reconfiguration start; and
 - (ii) for building work—before the building work starts; or
- (b) if paragraph (a) does not apply—
 - (i) for reconfiguring a lot—before the approval by the local government of the plan of subdivision; and
 - (ii) for building work—before the certificate of classification for the building work is issued.

(2) Despite subsection (1), if the infrastructure charge is payable for a material change of use, the charge must be paid before the change.

(3) For building work—

- (a) if a local government gave the notice under section 5.1.8—the local government need not issue a certificate of classification until the infrastructure charge has been paid; or
- (b) if a private certifier approved the building work—the private certifier must not issue a certificate of classification until the infrastructure charge has been paid.

When development infrastructure item must be supplied

5.1.11.(1) If the applicant complies with section 5.1.10, the development infrastructure item must be supplied—

- (a) if the development infrastructure item for which the charge has been paid is necessary to service the premises for which the approval has been given before the use of the premises starts, but is not yet available to service the premises—
 - (i) for reconfiguring a lot—before the works for the reconfiguration are complete; and
 - (ii) for building work—before the issue of the certificate of

classification for the building; and

(iii) for a material change of use—within 60 business days after the start of the use or the change of the use; or

(b) if paragraph (a) does not apply—within the time stated in the schedule to the infrastructure charges plan mentioned in section 5.1.4(2)(c).

(2) However, if it is not possible to supply the development infrastructure item within the times mentioned in subsection (1), the item must be supplied at the time agreed to in writing by the applicant and the local government.

Different times may be agreed on for paying the charge or supplying the development infrastructure item

5.1.12. Nothing in sections 5.1.10 and 5.1.11 stops the applicant and the person to whom the charge has been, or is to be, paid from agreeing in writing to—

- (a) a different time for paying a charge or paying the charge in instalments; or
- (b) a different time or times for making a development infrastructure item available to service land other than a time stated in section 5.1.11.

Charge may apply to items outside local government’s area

5.1.13. The infrastructure charge applies even if the development infrastructure item servicing the lot, work or use is not within or wholly within the local government area.⁹⁶

⁹⁶ See section 5.1.4(5) (Meaning of “infrastructure charges plan”).

Division 3—Miscellaneous**Infrastructure charges taken to be a rate**

5.1.14.(1) An infrastructure charge fixed by a local government is, for the purposes of recovery, taken to be a rate within the meaning of the *Local Government Act 1993*.

(2) However, if the local government and an applicant enter into a written agreement stating the charge is a debt owing to it by the applicant, subsection (1) does not apply.

Alternatives to paying infrastructure charges

5.1.15.(1) A person to whom a notice has been given under section 5.1.8 may, instead of paying the infrastructure charge, enter into a written agreement—

- (a) to do the work for which the charge was fixed; or
- (b) if the development infrastructure item is land owned by the applicant—to give the land in fee simple.

(2) However, if the development infrastructure item is to be located on land owned by the person, the person—

- (a) may carry out the work to the satisfaction of the entity to which the charge would have been paid; but
- (b) must first give the entity any reasonable security the entity requires, or that may be agreed in writing between the person and the entity to secure performance of the work.

(3) For land for local community purposes, the local government may give the applicant a notice, in addition to, or instead of, the notice given under section 5.1.8, requiring the applicant to give to the local government, in fee simple, part of the land the subject of the development application.

(4) If the applicant is given a notice under subsection (3), the applicant must comply with the notice as soon as practicable.

(5) If the applicant is required to give land under subsection (3), or a combination of land under subsection (3) and an infrastructure charge, the total contribution must not be more than an area of land, or an area of land

and money, representative of the amount of the charge, if only the charge had been payable.

(6) If subsection (1)(b) or (3) applies and the land is to be given to the local government for local community land, the land must be given on trust.

Public notice of proposed sale of certain land held in trust by local governments

5.1.16.(1) If a local government intends to sell land it obtained under section 5.1.15(5), the local government must advertise its intention to sell by placing a notice of the sale in a newspaper circulating in the local government's area.

(2) The notice must contain the following—

- (a) a description of the land proposed to be sold; and
- (b) the purpose for which the land was given on trust; and
- (c) the reason for proposing to sell the land; and
- (d) the reasonable time within which submissions must be made.

Local government to consider all submission

5.1.17. The local government must consider all submissions in relation to the notice before making a decision about the sale.

Sale extinguishes the trust

5.1.18. If a local government complies with sections 5.1.16 and 5.1.17 and sells the land, the land is sold free of the trust.

PART 2— INFRASTRUCTURE AGREEMENTS

Meaning of “infrastructure agreement”

5.2.1. In this part—

“infrastructure agreement” means an agreement, as amended from time to time, mentioned in any of the following sections—

- section 3.5.35;⁹⁷
- section 3.5.36;⁹⁸
- section 5.1.11(2);⁹⁹
- section 5.1.12;¹⁰⁰
- section 5.1.14(2);¹⁰¹
- section 5.1.15(1) and (2);¹⁰²
- section 5.2.2(1).¹⁰³

Agreements may be entered into about infrastructure

5.2.2.(1) A person may enter into a written agreement with a public sector entity about—

- (a) funding a development infrastructure item in an infrastructure charges plan other than by an infrastructure charge; or
- (b) supplying an item to a different standard than the standard stated for the item identified in a plan; or
- (c) supplying an item not identified in a plan; or
- (d) supplying infrastructure other than development infrastructure for a development proposal.

(2) To remove any doubt, it is declared that part 1 and chapter 3, part 5,

⁹⁷ Section 3.5.35 (Limitations on conditions lessening cost impacts for infrastructure)

⁹⁸ Section 3.5.36 (Matters a condition lessening cost impacts for infrastructure must deal with)

⁹⁹ Section 5.1.11 (When development infrastructure item must be supplied)

¹⁰⁰ Section 5.1.12 (Different times may be agreed on for paying the charge or supplying the infrastructure development item)

¹⁰¹ Section 5.1.14 (Infrastructure charges taken to be a rate)

¹⁰² Section 5.1.15 (Alternatives to paying infrastructure charges)

¹⁰³ Section 5.2.2 (Agreements may be entered into about infrastructure)

division 6¹⁰⁴ do not stop a person from entering into an agreement under subsection (1) with a public sector entity.

Matters certain infrastructure agreements must contain

5.2.3. An infrastructure agreement must—

- (a) if obligations under the agreement would be affected by a change in the ownership of the land, the subject of the agreement—include a statement about how the obligations must be fulfilled if there is a change of ownership; and
- (b) if the fulfilment of obligations under the agreement depends on development entitlements that may be affected by a change to a planning instrument—include a statement about—
 - (i) the repayment of amounts paid, and reimbursement of amounts expended, under the agreement; and
 - (ii) changing or cancelling the obligations if the development entitlements are changed without the consent of the person who has to fulfil the obligations; and
- (c) include any other matter prescribed under a regulation.

Copy of infrastructure agreements to be given to local government

5.2.4. If a public sector entity other than a local government is a party to an infrastructure agreement, and the local government for the area to which the agreement applies is not a party to the agreement, the public sector entity must give a copy of the agreement to the local government.

When infrastructure agreements bind successors in title

5.2.5.(1) If an owner of land to which an infrastructure agreement applies is a party to the agreement or consents to the development obligations being attached to the land, the development obligations attach to the land and bind the owner and the owner's successors in title of the land

¹⁰⁴ Part 1 (Infrastructure charges) and chapter 3 (Integrated development assessment systems (IDAS)), part 5 (Decision stage), division 6 (Conditions)

(2) If the owner's consent under subsection (1) is given but is not endorsed on the agreement, the owner must give a copy of the document evidencing the owner's consent to the local government for the land to which the consent applies.

(3) In this section—

“development obligations” means the obligations under the infrastructure agreement other than the obligations to be fulfilled by a public sector entity.

Exercise of discretion unaffected by infrastructure agreements

5.2.6. An infrastructure agreement is not invalid merely because its fulfilment depends on the exercise of a discretion by a public sector entity about a development application.

PART 3—PRIVATE CERTIFICATION

Application of pt 3

5.3.1. This part applies to development under a development application only if the development requires code assessment under this Act.

Definition for pt 3

5.3.2. In this part—

“assessment manager”, for the application to which this part applies, means the person who would have been the assessment manager if a private certifier had not been engaged under this part.

What is a private certifier

5.3.3.(1) A **“private certifier”** is an individual who has the qualifications, necessary experience or accreditation prescribed under a regulation for a private certifier for a stated code.

(2) A regulation for subsection (1) may—

- (a) be made under this or another Act; and
- (b) prescribe different qualifications, necessary experience or accreditation for different types of development or works.

Application must not be inconsistent with earlier approval

5.3.4. If the application the private certifier is assessing relates to an earlier development approval that has not lapsed and was given by the assessment manager, the application must be not be inconsistent with the earlier approval.

Private certifier may decide certain development applications and inspect and certify certain works

5.3.5.(1) A private certifier may, for the types of development or works for which the private certifier is qualified, has the necessary experience or is accredited, do either or both of the following—

- (a) receive, assess and decide the application as if the private certifier were the assessment manager;
- (b) inspect and certify that the work complies with the development permit authorising the work, any conditions of the permit and the code against which the work must be assessed.

(2) The private certifier must, when issuing the decision notice, include in the notice details of any other code the applicant may need to comply with in relation to the work to which the application relates.

(3) However, the private certifier must not decide the application until all other assessments for the application (other than assessments against the Standard Sewerage Law or Standard Water Supply Law) are completed.

(4) If the private certifier receives the application before all other assessments are completed—

- (a) the certifier may start processing the application; and
- (b) for timings under IDAS, the application is taken not to have been received until the day all other assessments are completed.

(5) For chapter 4, part 3, divisions 2 and 3,¹⁰⁵ a private certifier is taken to be an assessing authority in relation to the types of development or works for which the private certifier—

- (a) is qualified, has the necessary experience or is accredited; and
- (b) has been engaged to perform the functions of a private certifier under this part.

(6) If the private certifier approves the application, the private certifier must, within 5 business days after approving the application, give a copy of the decision notice or the negotiated decision notice, to the assessment manager.

(7) If the private certifier inspects and certifies the works, the private certifier must, within 5 business days after approving the application, give a copy of the certification, to the assessment manager.

(8) In this section—

“**other assessments**”, for development, means assessment functions outside the private certifier’s powers.

Local government may undertake private certification outside its area

5.3.6.(1) A local government may be a private certifier anywhere in the State outside its local government area.

(2) Subsection (1) applies only if the certification work is undertaken by an employee of the local government who is a private certifier.

Persons other than local governments may undertake private certification anywhere

5.3.7.(1) A person (other than a local government) may be a private certifier anywhere in the State.

(2) Subsection (1) applies only if the certification work is undertaken by

¹⁰⁵ Chapter 4 (Appeals, offences and enforcement), part 3 (Development offences, notices and orders), divisions 2 (Show cause notices) and 3 (Enforcement notices)

an individual who is a private certifier or an employee (who is a private certifier) of the person.

Private certifiers must act in the public interest

5.3.8.(1) A private certifier must act always in the public interest when performing the functions of a private certifier.

(2) In particular, a private certifier must not do any of the following—

- (a) seek, accept or agree to accept a benefit (whether for the private certifier's benefit or another person) as a reward or inducement to act other than under this Act; or
- (b) act in a way contrary to a duty under this Act; or
- (c) falsely claim that the private certifier has the qualifications, necessary experience or accreditation to be engaged as a private certifier; or
- (d) act outside the scope of the private certifier's powers; or
- (e) contravene a code of conduct published by an accrediting body; or
- (f) act in a way, in relation to the certifier's practice, that is grossly negligent or grossly incompetent.

Maximum penalty—1 665 penalty units.

Engaging private certifiers

5.3.9.(1) If a private certifier is engaged—

- (a) the engagement must be in writing and must state the certification fee; and
- (b) the certifier must be paid the fee agreed to, even if the certifier does not approve the application or certify works because of non-compliance with any applicable codes or other valid reason for refusing approval or certification.

(2) If an applicant engages a private certifier, the private certifier must give the assessment manager, written notice of the engagement within 5 business days after the engagement.

Private certifiers may not be engaged if there is a conflict of interest

5.3.10. A private certifier must not accept engagement as a private certifier for a development if the person has a conflict of interest prescribed under a regulation under this or another Act.

Discontinuing engagement of private certifiers

5.3.11.(1) This section applies if the engagement of a private certifier is discontinued for any reason, including the resignation, disqualification, bankruptcy or death of the private certifier.

(2) The applicant must give the assessment manager written notice of the discontinuance within 5 business days after the discontinuance.

(3) The engagement is taken not to have been discontinued until the applicant has given the notice discontinuing the engagement.

Engaging replacement private certifier for application

5.3.12.(1) If the private certifier was engaged for assessing the application and the application has not yet been decided and the applicant intends to proceed with the application, the applicant may—

- (a) engage a different private certifier (the “**replacement private certifier**”) for the development; or
- (b) make the application to the assessment manager.

(2) In assessing the application, the replacement private certifier or assessment manager may start the application process at any stage of IDAS the replacement private certifier or assessment manager considers appropriate to enable the replacement private certifier or assessment manager to make the appropriate decision on the application.

Engaging replacement private certifier to inspect work

5.3.13.(1) If the private certifier was engaged to inspect and certify work authorised by a development permit and the work has started, the work must not continue past the next notifiable inspection (if any) unless—

- (a) if a replacement private certifier is engaged to inspect and certify

the work—the replacement private certifier certifies the work; or

- (b) if a replacement private certifier has not been engaged under paragraph (a)—the local government certifies the work.

(2) In subsection (1)—

“next notifiable inspection” means the next inspection of the work authorised by a development permit for which an inspector has to be notified under a planning scheme or this or any other Act.

Minister or an accrediting body may disqualify a private certifier

5.3.14.(1) The Minister or an accrediting body, by gazette notice, may disqualify a person from being a private certifier if the Minister or the accrediting body is satisfied the person has—

- (a) sought, accepted or agreed to accept a benefit (whether for the person’s benefit or another person) as a reward or inducement to act other than under this Act; or
- (b) acted in a way contrary to a duty under this Act; or
- (c) falsely claimed that the person has the qualifications, necessary experience or accreditation to be engaged as a private certifier; or
- (d) acted outside the scope of a private certifier’s powers; or
- (e) contravened a code of conduct published by an accrediting body; or
- (f) acted in a way, in relation to the certifier’s practice, that is grossly negligent or grossly incompetent.

(2) The Minister or accrediting body must also give the person written notice of the disqualification.¹⁰⁶

¹⁰⁶ A private certifier who is given a notice of disqualification may appeal against the disqualification under section 4.1.36 (Appeals against disqualification as a private certifier).

Effect of transfer of functions to local government or replacement private certifier

5.3.15.(1) This section applies if, for work authorised by a development permit, the engagement of a private certifier is discontinued and—

- (a) a replacement private certifier is engaged to inspect and certify the work; or
- (b) if a replacement private certifier has not been engaged under paragraph (a)—the local government must inspect and certify the work.

(2) The replacement private certifier or local government is not liable for work carried out by the private certifier.

Liability insurance and performance bonds

5.3.16.(1) A regulation under this or another Act may state the type and minimum limits of liability insurance, performance bond or similar type of security a private certifier must have or give in relation to a development application or work authorised by a development permit.

(2) A person must not act as a private certifier unless the person has the insurance or has given the bond or security required under subsection (1).

Maximum penalty for subsection (2)—1 665 penalty units.

Documents to be kept by private certifiers

5.3.17. A regulation under this or another Act may prescribe the documents a private certifier must keep for audit purposes and the time for which the documents must be kept.

PART 4—COMPENSATION

Definition for pt 4

5.4.1. In this part—

“**change**”, for an interest in land, means a change to the planning scheme or any planning scheme policy affecting the land.

“**owner**”, of an interest in land, means an owner of the interest at the time a change to a planning scheme is made.

Compensation for reduced value of interest in land

5.4.2. An owner of an interest in land is entitled to be paid reasonable compensation by a local government if—

- (a) a change reduces the value of the interest; and
- (b) the owner has made a transitional development application in relation to the interest and—
 - (i) has been given an acknowledgment notice under section 3.2.5.(1)(b)¹⁰⁷ stating the applicant must apply for a development permit for the development; or
 - (ii) has been given an acknowledgment notice under section 3.2.5.(3)(b) stating the application will be assessed under the existing planning scheme; and
- (c) the application is assessed having regard to the planning scheme and planning scheme policies in effect when the application was made; and
- (d) the assessment manager, or, on appeal, the court—
 - (i) refuses the application; or
 - (ii) approves the application in part or subject to conditions or both in part and subject to conditions.

¹⁰⁷ Section 3.2.5 (Acknowledgment notices for applications under superseded planning schemes)

Compensation for interest in land being changed to public purpose

5.4.3. An owner of an interest in land is entitled to be paid reasonable compensation by a local government if because of a change, the only purpose for which the land could be used (other than the purpose for which it was lawfully being used when the change was made) is for a public purpose.

Limitations on compensation under ss 5.4.2 and 5.4.3

5.4.4.(1) Despite sections 5.4.2 and 5.4.3, compensation is not payable if the change—

- (a) has the same effect as another statutory instrument, in respect of which compensation is not payable; or
- (b) is about a type of development that, before the coming into effect of this Act, would normally have been dealt with under a local law, including, for example, the filling or drainage of land; or
- (c) is about the relationships between, the location of, or the physical characteristics of buildings, works or lots, but the yield achievable is substantially the same as it would have been before the change; or
- (d) is about a designation made under chapter 2, part 6;¹⁰⁸ or
- (e) is about the timing of development in a benchmark development sequence; or
- (f) is about the matters identified in section 5.1.4(2) for an infrastructure charges plan; or
- (g) removes or changes an item of infrastructure shown in the scheme; or
- (h) affects development that, had it happened under the superseded planning scheme—
 - (i) would have led to significant risk to persons or property from natural processes (including flooding, land slippage or erosion) and the risk could not have been reduced by

¹⁰⁸ Chapter 2 (Planning), part 6 (Designation of land for community infrastructure)

conditions attached to a development approval; or

- (ii) would have caused serious environmental harm, as defined in the *Environmental Protection Act 1994*, section 17,¹⁰⁹ and the harm could not have been reduced by conditions attached to a development approval.

(2) For subsection (1)(c), yield for residential building work is substantially the same if—

- (a) the proposed residential building has a gross floor area of not more than 2 000m²; and
- (b) the gross floor area of the proposed residential building is reduced by not more than 15%.

(3) Also, compensation is not payable—

- (a) for a matter under this part if compensation has already been paid for the matter to a previous owner of the interest in land; or
- (b) for anything done in contravention of this Act; or
- (c) if infrastructure shown in a planning scheme is not supplied, or supplied to a different standard, or supplied at a different time than the time stated in the planning scheme.

(4) If a matter for which compensation is payable under this part is also a matter for which compensation is payable under another Act, the claim for the compensation must be made under the other Act.

(5) In this section—

“gross floor area” means the sum of the floor areas (inclusive of all walls, columns and balconies, whether roofed or not) of all stories of every building located on a site, excluding the areas (if any) used for building services, a ground floor public lobby, a public mall in a shopping centre, and areas associated with the parking, loading and manoeuvring of motor vehicles.

“yield” means—

- (a) for buildings and works—the gross floor area, or density of

¹⁰⁹ *Environmental Protection Act 1994*, section 17 (Serious environmental harm)

- buildings or persons, or plot ratio, achievable for premises; and
- (b) for reconfiguration—the number of lots in a given area of land.

Compensation for erroneous planning and development certificates

5.4.5. If a person suffers financial loss because of an error or omission in a planning and development certificate, the person is entitled to be paid reasonable compensation by the local government.

Time limits for claiming compensation

5.4.6. A claim for compensation under this part must be given to the local government—

- (a) if the entitlement to claim the compensation is under section 5.4.2—within 6 months after the day the application mentioned in section 5.4.2(b) is refused or approved in part, or subject to conditions or approved both in part and subject to conditions; or
- (b) if the entitlement to claim the compensation is under section 5.4.3—within 2 years after the day the change came into effect; or
- (c) if the entitlement to claim the compensation is under section 5.4.5—at any time after the day the certificate is given.

Time limits for deciding and advising on claims

5.4.7.(1) The local government must decide each claim for compensation within 60 business days after the day the claim is made.

(2) The chief executive officer of the local government must, within 10 business days after the day the claim is decided—

- (a) give the claimant written notice of the decision; and
- (b) if the decision is to pay compensation—notify the amount of the compensation to be paid; and
- (c) advise the claimant that the decision, including any amount of compensation payable, may be appealed.

Deciding claims for compensation

5.4.8.(1) In deciding a claim for compensation under this part, the local government must—

- (a) grant all of the claim; or
- (b) grant part of the claim and reject the rest of the claim; or
- (c) refuse all of the claim.

(2) However, if the entitlement to claim the compensation is under section 5.4.3, the local government may decide the claim by—

- (a) giving a notice of intention to resume the interest in the land under the *Acquisition of Land Act 1967*, section 7;¹¹⁰ or
- (b) in addition to making a decision under subsection (1)(b) or (c)—decide to amend the planning scheme so that use of the land for the purposes the land could have been used for under the superseded planning scheme would be consistent with the new or amended planning scheme or planning scheme policy.

Calculating reasonable compensation involving changes

5.4.9.(1) For compensation payable because of a change, reasonable compensation is the difference between the market values, appropriately adjusted having regard to the following matters, to the extent they are relevant—

- (a) any limitations or conditions that may reasonably have applied to the development of the land if the land had been developed under the superseded planning scheme;
- (b) any benefit accruing to the land from the change, including but not limited to the likelihood of improved amenity in the locality of the land;
- (c) if the owner owns land adjacent to the interest in land, any benefit accruing to the adjacent land because of—
 - (i) the coming into effect of the change or any other change made before the claim for compensation was made; or

¹¹⁰ *Acquisition of Land Act 1967*, section 7 (Notice of intention to take land)

- (ii) the construction of, or improvement to, infrastructure on the adjacent land under the planning scheme or planning scheme policy (other than infrastructure funded by the owner) before the claim for compensation was made;
- (d) the effect of any other changes to the planning scheme or planning scheme policy made since the change, but before the transitional development application was made;
- (e) if the application was a transitional development application that is approved in part or subject to conditions—the effect of the approval on the value of the land.

(2) Despite subsection (1), if the land in respect of which compensation is claimed has, since the day of the change, become or ceased to be separate from other land, the amount of reasonable compensation must not be increased because the land has become, or ceased to be, separate from other land.

(3) In this section—

“difference between the market values” is the difference between the market value of the interest in land immediately before the change came into effect and the market value of the interest immediately after the change came into effect.

When compensation is payable

5.4.10. If compensation is payable under this part, the compensation must be paid within 30 business days after the last day an appeal could be made against the local government’s decision about the payment of compensation, or if an appeal is made, within 30 business days after the day the appeal is decided.

Payment of compensation to be recorded on title

5.4.11.(1) The chief executive officer of the local government must give the registrar of titles written notice of the payment of compensation under section 5.4.2.¹¹¹

¹¹¹ Section 5.4.2 (Compensation for reduced value of interest in land)

(2) The notice must be in the form approved by the registrar.

(3) The registrar must keep the information stated in the notice as information under the *Land Title Act 1994*, section 34.¹¹²

PART 5—POWER TO PURCHASE, TAKE OR ENTER LAND FOR PLANNING PURPOSES

Local government may take or purchase land

5.5.1.(1) This section applies if—

- (a) a local government is satisfied that the taking of land would help to achieve the desired environmental outcomes stated in its planning scheme; or
- (b) at any time after a decision notice has been given for a development application, the local government is satisfied—
 - (i) the development would create a need to construct infrastructure on the land or carry drainage over the land; and
 - (ii) the applicant has taken reasonable measures to obtain the agreement of the owner of the land to actions that would facilitate the construction of the infrastructure or the carriage of the drainage, but has not been able to obtain such an agreement; and
 - (iii) the action is necessary to allow the development to proceed.

(2) If the local government satisfies itself of a matter in subsection (1) and the Governor in Council approves of the taking of the land, the local government is taken to be a constructing authority under the *Acquisition of Land Act 1967* and under that Act may take land.

(3) If the local government satisfies itself of the matters in subsection (1)(b), it is immaterial that the applicant may also derive any

¹¹² *Land Title Act 1994*, section 34 (Other information not part of the freehold land register).

measurable benefit from the resumption action.

(4) To avoid any doubt, it is declared that the local government's power under this section to purchase or take land as a constructing authority under the *Acquisition of Land Act 1967* includes the ability to purchase or take an easement under section 6 of that Act.¹¹³

Assessment manager's power to enter land in certain circumstances

5.5.2. An assessment manager or its agent may enter land at all reasonable times to undertake works if the assessment manager is satisfied that—

- (a) implementing a development approval would require the undertaking of works on land other than the land the subject of the application; and
- (b) the applicant has taken reasonable steps to obtain the agreement of the owner of the land to enable the works to proceed, but has not been able to obtain such an agreement; and
- (c) the action is necessary to implement the development approval.

Compensation for loss or damage.

5.5.3.(1) Any person who incurs loss or damage because of the exercise by an assessment manager of powers under section 5.5.2 is entitled to be paid reasonable compensation by the assessment manager.

(2) A claim for the compensation must be made—

- (a) to the assessment manager in the approved form; and
- (b) within 2 years after the entitlement to compensation arose.

(3) The assessment manager must decide the claim within 40 business days after the claim is made.¹¹⁴

(4) If the assessment manager decides to pay compensation, the payment

¹¹³ *Acquisition of Land Act 1967*, section 6 (Easements)

¹¹⁴ A person may appeal the decision under section 4.1.34 (Appeals against decisions on compensation claims).

must be made within 10 business days after making the decision.

(5) The assessment manager may recover from the applicant the amount of any compensation for loss or damage paid under this part that is not attributable to the assessment manager's negligence.

PART 6—PUBLIC HOUSING

Application of pt 6

5.6.1. This part applies to development carried out—

- (a) by the commission; or
- (b) on behalf of the commission (other than when the commission is acting as a joint venturer).

Definition for pt 6

5.6.2. In this part—

“commission” means the Queensland Housing Commission.¹¹⁵

“Minister” means the Minister responsible for administering the *State Housing Act 1945*.

How IDAS applies to development by commission

5.6.3. Development to which this part applies is, to the extent the development is self-assessable development or assessable development under a planning scheme, exempt development.

Commission must publicly notify certain proposed development

5.6.4.(1) This section applies if the commission proposes development

¹¹⁵ See the *State Housing Act 1945*, section 9 (Constitution of Queensland Housing Commission).

to which the notification stage would apply if an individual made a development application for the development.

(2) Before starting the development, the commission must—

- (a) give the local government information (including the plans or specifications) about the proposed development; and
- (b) publicly notify the proposed development.

(3) The public notification must be carried out in the same way public notification of a development application mentioned in subsection (1) is carried out.

(4) However, despite subsection (2)—

- (a) a notice that, if given by an applicant, would refer to the assessment manager must, if given under this part, refer to the commission; and
- (b) the commission need not give the local government written notice stating that the commission has complied with the requirements of this section.

(5) The Minister must have regard to any submissions received following the public notification before deciding whether to approve the proposed development under the *State Housing Act 1945*, section 22.¹¹⁶

Commission must advise local government about all development

5.6.5.(1) This section applies if the commission proposes development to which section 5.6.4 does not apply.

(2) Before starting the development, the commission must give the local government information (including the plans or specifications) about the proposed development.

¹¹⁶ *State Housing Act 1945*, section 22 (Special powers of commission)

PART 7—PUBLIC ACCESS TO PLANNING AND DEVELOPMENT INFORMATION

Division 1—Preliminary

Meaning of “available for inspection and purchase”

5.7.1.(1) A document mentioned in this Act as being available for inspection and purchase is “**available for inspection and purchase**” if the document, or a certified copy of the document is—

- (a) for a document held by a local government—held in the local government’s office and any other place decided by the local government; and
- (b) for a document held by an assessment manager—held in the assessment manager’s office and any other place decided by the assessment manager; and
- (c) for a document held by a concurrence agency—held in the concurrence agency’s office and any other place decided by the concurrence agency; and
- (d) for a document held by the department—held in the department’s State office and any other place the chief executive approves; and
- (e) for a document held by the Minister—held in the department’s State office and any other place the chief executive approves.

(2) If a document is available for inspection and purchase, a person may—

- (a) inspect the document free of charge at any time the office in which the document is held is open for business; and
- (b) obtain a copy of the document, or part of the document, from the entity required to keep the document available for inspection.¹¹⁷

(3) An entity required to keep a document available for inspection and purchase may charge a person for supplying a copy of the document, or

¹¹⁷ The Commonwealth *Copyright Act 1968* overrides this Act and may limit the copying of material subject to copyright.

part of the document.

- (4) The charge must not be more than the cost to the entity of—
- (a) making the copy available to the person; and
 - (b) if the person asks for the material to be posted—the postage.

Division 2—Documents available for inspection and purchase or inspection only

Documents local government must keep available for inspection and purchase

5.7.2. A local government must keep available for inspection and purchase the original or a certified copy of each of the following—

- (a) its current planning scheme (including a consolidated planning scheme);
- (b) each amendment of the planning scheme;
- (c) any proposed amendment of the planning scheme the local government has decided to proceed with making under schedule 1, section 16,¹¹⁸ but has not been made;
- (d) any current temporary local planning instrument for its area;
- (e) each current planning scheme policy for its area;
- (f) each superseded local planning instrument for its area;
- (g) each report prepared by the local government stating the reasons why the local government decided to take no further action about its planning scheme;
- (h) each study, report or explanatory statement prepared in relation to the preparation of a local planning instrument for its area;
- (i) each current State planning policy applying to its area;
- (j) any terms of reference for a regional planning advisory

¹¹⁸ Schedule 1 (Process for preparing, adopting or amending planning schemes), section 16 (Decision on proceeding with proposed planning scheme)

- committee of which the local government is a member, or on which the local government has elected not to be represented;
- (k) each report of a regional planning advisory committee given to the local government since the planning scheme immediately preceding its current planning scheme was made;
 - (l) any written direction of the Minister given to the local government to—
 - (i) make or amend a planning scheme; and
 - (ii) make or repeal a temporary local planning instrument; and
 - (iii) make, amend or repeal a planning scheme policy;
 - (m) each report of an independent reviewer given to the local government about its planning scheme;
 - (n) each notice about the designation of land given to the local government by a Minister;
 - (o) each infrastructure agreement to which the local government is a party, or has been given to the local government under part 2;¹¹⁹
 - (p) each show cause notice and enforcement notice given by the local government;
 - (q) each enforcement order made by the court on the application of the local government.

Documents local government must keep available for inspection only

5.7.3. A local government must keep available for inspection only an official copy of this Act and every regulation made under this Act and still in force.

Documents assessment manager must keep available for inspection and purchase

5.7.4. An assessment manager must keep available for inspection and purchase the original or a certified copy of each of the following—

¹¹⁹ Part 2 (Infrastructure agreements)

- (a) each decision notice and negotiated decision notice given by the assessment manager;
- (b) each written notice given to the assessment manager by the Minister calling in a development application;
- (c) each direction given by the Minister directing the assessment manager to attach conditions to a development approval;
- (d) each agreement to which the assessment manager or a concurrence agency is a party about a condition of a development approval;
- (o) each show cause notice and enforcement notice given by the assessment manager as an assessing authority;
- (p) each enforcement order made by the court on the application of the assessment manager as an assessing authority.

Documents assessment manager must keep available for inspection only

5.7.5.(1) An assessment manager must keep available for inspection only—

- (a) an official copy of this Act and every regulation made under this Act and still in force; and
- (b) a register of all development applications made to the assessment manager.

(2) Subsection (1)(b) does not apply for a development application until the decision notice for the application has been given or the application lapses or is withdrawn.¹²⁰

(3) The register must include, for each development application—

- (a) a property description that identifies the premises or the location of the premises to which the application related; and
- (b) the type of development applied for; and

¹²⁰ However, under section 3.2.8 (Public scrutiny of applications) a copy of the application and any supporting material may be obtained or inspected from the time the assessment manager gives the acknowledgment notice to the applicant.

- (c) the names of any referral agencies; and
- (d) whether the application was withdrawn, lapsed or decided; and
- (e) if the application was decided—
 - (i) the day the decision was made; and
 - (ii) whether the application was approved, approved subject to conditions or refused; and
 - (iii) for an application approved subject to conditions—whether any of the conditions included the conditions of a concurrence agency, and if so, the name of the concurrence agency; and
 - (iv) whether a negotiated decision notice also was given for the application; and
 - (v) for an application that was approved—whether there has subsequently been a minor change to the approval.
- (f) if there was an appeal about the decision—whether the decision was changed because of the outcome of the appeal.

Documents department must keep available for inspection and purchase

5.7.6. The department must keep available for inspection and purchase the original or a certified copy of each of the following—

- (a) all current local government planning schemes (including all consolidated planning schemes);
- (b) all amendments of the planning schemes;
- (c) all current local government planning scheme policies;
- (d) any current temporary local planning instrument;
- (e) all current State planning policies;
- (f) all explanatory statements about current State planning policies;
- (g) any terms of reference for all regional planning advisory committees;
- (h) all reports of regional planning advisory committees;

- (i) any written direction of the Minister given to a local government to—
 - (i) make or amend a planning scheme; and
 - (ii) make or repeal a temporary local planning instrument; and
 - (iii) make, amend or repeal a planning scheme policy; and
- (j) all reports of independent reviewers given to the Minister about current planning schemes;
- (k) each notice given by the Minister directing the assessment manager to attach conditions to a development approval;
- (l) each notice given by the Minister calling in a development application.

Documents department must keep available for inspection only

5.7.7. The department must keep available for inspection only an official copy of this Act and every regulation made under this Act and still in force.

Division 3—Planning and development certificates

Application for planning and development certificate

5.7.8.(1) A person may apply to a local government for a limited, standard or full planning and development certificate for a premises.

(2) The application must be accompanied by the fee set by resolution of the local government for the certificate.

Limited planning and development certificates

5.7.9. A limited planning and development certificate must contain the following information for premises—

- (a) a description of any planning scheme provisions applying specifically to the premises;
- (b) a description of any designations applying to the premises;

- (c) a statement of the amount of any infrastructure charge for the premises that has not been paid.

Standard planning and development certificates

5.7.10. A standard planning and development certificate, in addition to the information contained in a limited planning and development certificate, must contain or be accompanied by the following information for premises—

- (a) a copy of every decision notice or negotiated decision notice for a development approval that has not lapsed;
- (b) details of any minor changes to the development approval;
- (c) a copy of any judgement or order of the court about the development approval;
- (d) a copy of any agreement to which the local government or a concurrence agency is a party about a condition of the development approval;
- (e) a copy of any infrastructure agreement applying to the premises to which the local government is a party;
- (f) a description of each proposed amendment of a planning scheme the local government has decided to proceed with under schedule 1, section 16,¹²¹ but has not been adopted.

Full planning and development certificates

5.7.11.(1) A full planning and development certificate, in addition to the information contained in a limited and standard planning and development certificate, must contain or be accompanied by the following information for premises—

- (a) if there is currently in force for the premises a development approval containing conditions (including conditions about the carrying out of works or the payment of money, other than under

¹²¹ Schedule 1 (Process for preparing, adopting or amending planning scheme), section 16 (Decision on proceeding with proposed planning scheme)

an infrastructure agreement)—a statement about the fulfilment or non-fulfilment of each condition, at a stated day after the day the certificate was applied for;

- (b) if there is an infrastructure agreement to which the local government is a party—
 - (i) if there are obligations under the agreement that have not been fulfilled—details of the nature and extent of the obligations not fulfilled; and
 - (ii) details of the giving of any security and whether any payment required to be made under the security has been made;
- (c) advice of—
 - (i) any prosecution for a development offence in relation to the premises of which the local government is aware; or
 - (ii) proceedings for a prosecution for a development offence in relation to the premises of which the local government is aware.

(2) However, the applicant may request that a full certificate be given without the information normally contained in a limited and standard certificate.

(3) If a condition under subsection (1)(a) relates to the ongoing operating requirements of the use of premises, the statement need not make reference to the fulfilment or non-fulfilment of the conditions other than under subsection (1)(c).

Time within which planning and development certificate must be given

5.7.12. A local government must give a planning and development certificate to an applicant within—

- (a) if the certificate is a limited certificate—5 business days after the day the certificate was applied for; or
- (b) if the certificate is a standard certificate—10 business days after the day the certificate was applied for; or

- (c) if the certificate is a full certificate—30 business days after the day the certificate was applied for.

Effect of planning and development certificate

5.7.13. In a proceeding, a planning and development certificate is evidence of the information contained in the certificate.

PART 8—GENERAL

Approved forms

5.8.1. The chief executive may approve forms for use under this Act.

Regulation making power

5.8.2.(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may—

- (a) set fees payable under this Act; and
- (b) create offences against the regulation and fix a maximum penalty of a fine of 165 penalty units for an offence against the regulation.

Application of State Development and Public Works Organization Act 1971

5.8.3. Nothing in this Act derogates from the powers and functions of the Coordinator General under the *State Development and Public Works Organization Act 1971*.

Application of Judicial Review Act 1991

5.8.4.(1) The *Judicial Review Act 1991* does not apply to the following matters under this Act—

- (a) conduct engaged in for the purpose of making a decision;

- (b) other conduct that relates to the making of a decision;
- (c) the making of a decision or the failure to make a decision;
- (d) a decision.¹²²

(2) In particular, but without limiting subsection (1), the Supreme Court does not have jurisdiction to hear and determine applications made to it under the *Judicial Review Act 1991*, part 3, 4 or 5¹²³ in relation to matters mentioned in subsection (1).

References to Planning and Environment Court etc. in other Acts

5.8.5.(1) This section applies if another Act refers to—

- (b) the Planning and Environment Court or a judge of that court; or
- (c) a building tribunal or a referee as a member of that tribunal.

(2) If the context permits, the reference may be taken to refer to the court, a judge of the court, a tribunal or a referee as a member of a tribunal.

(3) In subsection (1)—

“**building tribunal**” has the same meaning as in the *Building Act 1975*.

“**referee**” has the same meaning as in the *Building Act 1975*.

Evidence of planning instruments or notices of designation

5.8.6.(1) In a proceeding, a certified copy of a planning instrument or a notice of designation is evidence of the content of the instrument or notice.

(2) All courts, judges and persons acting judicially must take judicial notice of a certified copy of a planning instrument or a notice of designation.

(3) In a proceeding, a copy of the gazette or newspaper containing a notice about the making of a planning instrument is evidence of the matters stated in the notice.

¹²² However, under section 4.1.21, a person may bring proceedings in the Planning and Environment Court.

¹²³ *Judicial Review Act 1991*, part 3 (Statutory orders of review), 4 (Reasons for decision) or 5 (Prerogative orders and injunctions)

Planning instruments presumed to be within jurisdiction

5.8.7. In a proceeding, the following are presumed unless the issue is raised—

- (a) the competence of the Minister to make a planning instrument;
- (b) the competence of a local government to make a local planning instrument.

CHAPTER 6—SAVINGS AND TRANSITIONALS, REPEALS AND CONSEQUENTIAL AMENDMENTS

PART 1—SAVINGS AND TRANSITIONALS

Division 1—Preliminary

Definitions for pt 1

6.1.1. In this part—

“applicable codes”, for self-assessable development, means the standards or requirements under a transitional planning scheme or interim development control provision applying to self-assessable development.

“assessable development” means—

- (a) development shown in schedule 8, part 1¹²⁴ as assessable development; and
- (b) to the extent the following development is not inconsistent with paragraph (a), development that, before the commencement of this section, would have required an application to be made—

¹²⁴ Schedule 8 (Assessable, self-assessable and exempt development), part 1 (Assessable development)

- (i) for a continuing approval; or
- (ii) under section 4.3(1)¹²⁵ of the repealed Act.

“continuing approval” means a condition, certificate, permit or approval mentioned in section 6.1.23(1).

“former planning scheme” means a planning scheme under the repealed Act in force immediately before the commencement of this section.

“interim development control provision” means an interim development control provision under the repealed Act that was in force immediately before the commencement of this section.

“IPA planning scheme” means a planning scheme made under schedule 1.¹²⁶

“local planning policy” means a local planning policy under the repealed Act in force immediately before the commencement of this section.

“self-assessable development” means—

- (a) development shown in schedule 8, part 2¹²⁷ as self-assessable development; and
- (b) to the extent the development is not inconsistent with paragraph (a)—development that, before the commencement of this section, would not have required an application to be made but would have required the development to comply with applicable codes.

“transitional planning scheme” see section 6.1.3.

“transitional planning scheme policy” see section 6.1.14.

¹²⁵ Section 4.3 (Amendment of a planning scheme etc. by an applicant)

¹²⁶ Schedule 1 (Process for preparing, adopting or amending planning schemes)

¹²⁷ Schedule 8 (Assessable, self-assessable and exempt development), part 2 (Self-assessable development)

Division 2—Planning schemes

Continuing effect of former planning schemes

6.1.2.(1) Despite the repeal of the repealed Act, each former planning scheme continues to have effect in the local government area for which it was made, subject to subsections (2) and (3).

(2) If a provision of a former planning scheme is inconsistent with chapter 3,¹²⁸ to the extent the provision is inconsistent, chapter 3 prevails.

(3) A prohibited use in a former planning scheme is taken to be an expression of policy that the use is inconsistent with the intent of the zone in which the use is prohibited.

What are transitional planning schemes

6.1.3.(1) The provisions (including any maps, plans, diagrams or the like) of a former planning scheme, for a local government area, that are not inconsistent with chapter 3 comprise the transitional planning scheme for the area.

(2) If there was more than 1 former planning scheme for a local government area, all the provisions of the former planning schemes for the area that are not inconsistent with chapter 3 comprise the transitional planning scheme for the area.

Transitional planning schemes for local government areas

6.1.4. For this Act, other than this chapter, a transitional planning scheme (as amended from time to time under this part) is taken to be an IPA planning scheme until it is replaced by, or converted to, an IPA planning scheme.

Applying transitional planning schemes to local government areas

6.1.5. If a transitional planning scheme is comprised of all or parts of 2 or more former planning schemes, the part of the transitional planning

¹²⁸ Chapter 3 (Integrated development assessment system (IDAS))

scheme applying to a part of the area is the part of the former planning schemes that applied to the part of the area.

Amending transitional planning schemes

6.1.6.(1) A transitional planning scheme may be amended using the process for amending a planning scheme under schedule 1.¹²⁹

(2) If a transitional planning scheme is amended under this section, the amended transitional planning scheme is still a transitional planning scheme under this Act.

Amending transitional planning schemes for consistency with ch 3

6.1.7.(1) This section applies if—

- (a) a local government intends to amend a transitional planning scheme but does not intend to convert the transitional planning scheme to an IPA planning scheme under section 6.1.8; and
- (b) the proposed amendment does not change the policy intent of the scheme (including matters that were the intentions set out under the local government's strategic plan, any development control plan or a zone under the repealed Act); and
- (c) the local government gives the Minister a copy of the proposed amendment; and
- (d) the Minister is satisfied the proposed amendment would, in every respect, make the transitional planning scheme more consistent with chapter 3 but does not change the policy intent of the scheme; and
- (e) the Minister gives the local government written notice of the Minister's satisfaction under paragraph (d); and
- (f) after receiving notice under paragraph (e), the local government, by resolution, proposes the amendment.

(2) If this section applies—

¹²⁹ Schedule 1 (Process for preparing, adopting or amending planning schemes)

- (a) schedule 1, sections 1 to 18, do not apply for the proposed amendment; and
- (b) without further action, the local government may adopt the resolution under schedule 1, section 19.

(3) If a transitional planning scheme is amended under this section, the amended transitional planning scheme is still a transitional planning scheme under this Act.

Converting transitional planning schemes to IPA planning schemes

6.1.8.(1) If a local government intends to amend its transitional planning scheme and convert the scheme to an IPA planning scheme, the local government must—

- (a) when publishing a notice under schedule 1, section 12—include in the notice a statement indicating the local government intends the transitional planning scheme, as amended, to be its IPA planning scheme; and
- (b) have the written agreement of the Minister to the proposed conversion.

(2) If the local government complies with subsection (1)(a) and obtains the written agreement of the Minister to the proposed conversion, the transitional planning scheme is, when amended, the local government's IPA planning scheme.

Preparation of planning schemes under repealed Act may continue

6.1.9.(1) If immediately before the commencement of this section a local government was preparing a planning scheme under the repealed Act, the local government may—

- (a) continue to prepare the scheme as if the repealed Act had not been repealed; or
- (b) continue to prepare the scheme under this Act using the process, for the matters still to be addressed in the preparation of the scheme, stated in schedule 1.

(2) Despite subsection (1)(b) and regardless of the stage the local

government may have reached in the preparation of the scheme, if the local government continues the preparation of the scheme under this Act, the local government must follow the process stated in schedule 1, sections 10 to 21.

(3) A proposed planning scheme mentioned in subsection (1)(a), that is approved by the Governor in Council after the commencement of this section, is a transitional planning scheme.

(4) A proposed planning scheme mentioned in subsection (1)(b), that is adopted by the local government after the commencement of this section, is an IPA planning scheme.

(5) For subsection (1), a local government is taken to have been preparing a planning scheme if—

- (a) the local government had adopted a resolution under section 2.10(2)¹³⁰ of the repealed Act; or
- (b) the Minister had directed the local government under section 2.12¹³¹ of the repealed Act to prepare a planning scheme.

Preparation of amendments to planning schemes under repealed Act may continue

6.1.10.(1) If immediately before the commencement of this section a local government was preparing an amendment of a planning scheme under the repealed Act, the local government may—

- (a) continue to prepare the amendment as if the repealed Act had not been repealed; or
- (b) continue to prepare the amendment under this Act using the process, for the matters still to be addressed in the preparation of the scheme, stated in schedule 1.¹³²

(2) Despite subsection (1)(b) and regardless of the stage the local government may have reached in the preparation of the amendment, if the local government continues the preparation of the amendment under this

¹³⁰ Section 2.10 (Preparation of planning scheme)

¹³¹ Section 2.12 (Powers of the Minister with regard to certain matters)

¹³² Schedule 1 (Process for preparing, adopting or amending planning schemes)

Act, the local government must follow the process stated in schedule 1, sections 10 to 21.

(3) A proposed amendment mentioned in subsection (1)(a), that is approved by the Governor in Council after the commencement of this section, is an amendment of a transitional planning scheme.

(4) If a proposed amendment mentioned in subsection (1)(b), is adopted by the local government after the commencement of this section, the transitional planning scheme, as amended by the adopted amendment, is an IPA planning scheme.

(5) For subsection (1), a local government is taken to have been preparing an amendment of a planning scheme if the local government had given public notice of the proposed amendment under section 2.18(4)¹³³ of the repealed Act.

Transitional planning schemes lapse after 5 years

6.1.11.(1) All transitional planning schemes lapse 5 years after the commencement of this section.

(2) If the Minister, by gazette notice, nominates a later day for a particular transitional planning scheme to lapse, subsection (1) does not have effect until the later day.

Division 3—Interim development control provisions

Continuing effect of interim development control provisions

6.1.12.(1) Despite the repeal of the repealed Act, each interim development control provision continues to have effect in the local government area for which it was made, subject to subsection (2).

(2) If any interim development control provision is inconsistent with chapter 3,¹³⁴ to the extent the provision is inconsistent, chapter 3 prevails.

¹³³ Section 2.18 (Amendment of a planning scheme by Minister or local government)

¹³⁴ Chapter 3 (Integrated development assessment system (IDAS))

Division 4—Planning scheme policies

Continuing effect of local planning policies

6.1.13.(1) Despite the repeal of the repealed Act, each local planning policy continues to have effect in the local government area for which it was made, subject to subsection (2).

(2) If a provision of a local planning policy is inconsistent with chapter 3,¹³⁵ to the extent the provision is inconsistent, chapter 3 prevails.

What are transitional planning scheme policies

6.1.14. The provisions of local planning policies, for a local government area, that are not inconsistent with chapter 3 comprise the transitional planning scheme policies for the area.

Transitional planning scheme policies for local government areas

6.1.15. For this Act, other than this chapter, a transitional planning scheme policy for a local government area, is taken to be a planning scheme policy for the area until an IPA planning scheme is made for the area.

Amending transitional planning scheme policies

6.1.16.(1) A transitional planning scheme policy may be amended using the process for amending a planning scheme policy under schedule 3.

(2) If a transitional planning scheme policy is amended under this section, the amended transitional planning scheme policy is still a transitional planning scheme policy under this Act.

Amending transitional planning scheme policies for consistency with ch 3

6.1.17.(1) This section applies if—

- (a) a local government intends to amend a transitional planning

¹³⁵ Chapter 3 (Integrated development assessment system (IDAS))

scheme policy to make the transitional planning scheme policy more consistent with chapter 3 but does not change the intent of the policy; and

(b) the local government, by resolution, proposes the amendment.

(2) If this section applies—

(a) schedule 3, sections 1 to 4 and section 6,¹³⁶ do not apply for the proposed amendment; and

(b) without further action, the local government may adopt the resolution under schedule 3, section 5.¹³⁷

(3) If a transitional planning scheme policy is amended under this section, the amended transitional planning scheme policy is still a transitional planning scheme policy under this Act.

Repealing transitional planning scheme policies

6.1.18.(1) A local government may, by resolution, repeal a transitional planning scheme policy.

(2) The local government must publish a notice about the resolution at least once in a newspaper circulating generally in the local government's area advising that the transitional planning scheme policy has been repealed.

(3) The repeal takes effect the day the resolution is made.

Planning scheme policies may support transitional planning schemes

6.1.19. If a local government has a transitional planning scheme, the local government may make a planning scheme policy under this Act as if the transitional planning scheme were an IPA planning scheme.

¹³⁶ Schedule 3 (Process for making or amending planning scheme policies), sections 1 (Resolution proposing action), 2 (Public notice of proposed action), 3 (Public access to relevant documents), 4 (Consideration of all submissions) and 6 (Reporting to persons who made submissions about proposed action)

¹³⁷ Schedule 3 (Process for making or amending planning scheme policies), section 5 (Resolution about adopting proposed planning scheme policy or amendment)

Planning scheme policies for infrastructure

6.1.20.(1) This section applies if—

- (a) a local government has an IPA planning scheme; and
- (b) the scheme does not have an infrastructure charges plan; and
- (c) the local government prepares a planning scheme policy about infrastructure.

(2) The planning scheme policy must specify, for a development application for the reconfiguration of a lot—

- (a) the matters that were required to be specified in a local planning policy under section 6.2(6)(b)(i) and (ii)¹³⁸ of the repealed Act; and
- (b) the monetary contribution to be paid to the local government instead of supplying an area of land for use as a park.

(3) This section expires 5 years after it commences.

IPA planning schemes cancel existing planning scheme policies

6.1.21. If an IPA planning scheme is adopted or a transitional planning scheme is converted to an IPA planning scheme, all existing transitional planning scheme policies and planning scheme policies supporting the transitional planning scheme are cancelled from the day the adoption is notified in the gazette.

*Division 5—State planning policies***Continuing effect of State planning policies**

6.1.22. Each State planning policy made under the repealed Act and in force immediately before the commencement of this section continues to have effect and is taken to be a State planning policy made under this Act.

¹³⁸ Section 6.2 (Contributions towards water supply and sewerage works)

*Division 6—Existing approvals and conditions***Continuing effect of approvals issued before commencement**

6.1.23.(1) This section applies to—

- (a) conditions set by, and certificates of compliance or similarly endorsed certificates (“**continuing approvals**”) issued by, a local government in relation to an application mentioned in section 4.1(5)¹³⁹ of the repealed Act and in force immediately before the commencement of this section; and
- (b) permits (also “**continuing approvals**”) issued under section 4.13(12)¹⁴⁰ of the repealed Act, including modifications of the permits under section 4.15¹⁴¹ of the repealed Act, in force immediately before the commencement of this section; and
- (c) approvals (also “**continuing approvals**”), including modifications of the approvals under section 4.15 of the repealed Act, in force immediately before the commencement of this section and made in relation to applications made under the following sections of the repealed Act—
 - section 5.1(1);¹⁴²
 - section 5.2(1);¹⁴³
 - section 5.9(1);¹⁴⁴
 - section 5.11(1);¹⁴⁵

¹³⁹ Section 4.1 (Applications)

¹⁴⁰ Section 4.13 (Assessment of town planning consent application)

¹⁴¹ Section 4.15 (Modification of certain applications and approvals)

¹⁴² Section 5.1 (Application for subdivision etc.). Applications for the subdivision of land incorporating a lake and mentioned in section 5.10 (Subdivision incorporating a lake) are also dealt with under section 5.1.

¹⁴³ Section 5.2 (Subdivisions involving works)

¹⁴⁴ Section 5.9 (Staged subdivision)

¹⁴⁵ Section 5.11 (Application for amalgamation of land)

- section 5.12(1);¹⁴⁶ and

(d) approvals (also “**continuing approvals**”), by whatever name called, given under a former planning scheme but not included in paragraphs (a) to (c) in force immediately before the commencement of this section.

(2) Despite the repeal of the repealed Act, each continuing approval and any conditions attached to a continuing approval have effect as if the approval and the conditions were a preliminary approval or development permit, as the case may be.

Example for subsection (2)—

An application for a staged subdivision approval under section 5.9(1) of the repealed Act and a concurrent application under section 5.1(1) of the repealed Act for approval of the first stage of the staged subdivision would result in—

- (a) for the section 5.9(1) application—a preliminary approval for reconfiguration of the whole of the land; and
- (b) for the section 5.1(1) application—a development permit for reconfiguration of the land in stage 1.

(3) Subsection (2) has effect only for the period the continuing approval would have had effect if the repealed Act had not been repealed.

(4) If a continuing approval implies that a person has the right to use premises, the subject of the continuing approval, for a particular purpose (because the intended use of the premises did not also require a continuing approval) and the implied right existed, but the intended use had not started, immediately before the commencement of this section, the intended use is to be taken to be a use in existence immediately before the commencement if—

- (a) the rights (other than the implied right) under the continuing approval are exercised within the time allowed for the rights to be exercised under the repealed Act; and
- (b) the intended use is started within 5 years after the rights mentioned in paragraph (a) are exercised.

¹⁴⁶ Section 5.12 (Application for access easement)

Certain conditions attach to land

6.1.24.(1) If a local government has set conditions in relation to a continuing approval, the conditions attach to the land on and from the commencement of this section and are binding on successors in title.

(2) Also, if an application to amend a former planning scheme was, or the conditions attached to the amendment were, approved under the repealed Act and conditions in relation to the amendment were attached to the land under the repealed Act—

- (a) if the approval was given before the commencement of this section—the conditions remain attached to the land on and from the commencement of this section and are binding on successors in title; and
- (b) if the approval was given on or after the commencement of this section—the conditions remain attached to the land on and from the day the approval was given and are binding on successors in title.

Division 7—Applications in progress**Effect of commencement on certain applications in progress**

6.1.25. If an application was made before the commencement of this section for a matter mentioned in section 6.1.23(1)—

- (a) processing of the application and all matters incidental to the processing (including any appeal made in relation to a decision about the application) must proceed as if the repealed Act had not been repealed; and
- (b) any approval issued is a preliminary approval or development permit, as the case may be.

Effect of commencement on other applications in progress

6.1.26.(1) This section applies to applications made before the commencement of this section under any of the following sections of the repealed Act—

- section 4.3(1);¹⁴⁷
- section 4.6(1);¹⁴⁸
- section 4.9(1).¹⁴⁹

(2) An application mentioned in subsection (1) must be processed and all matters incidental to the processing (including any appeal made in relation to a decision about the application) must proceed as if the repealed Act had not been repealed.

Applications for compensation continue

6.1.27. If an application for compensation was made and has not been decided before the commencement of this section, the application must be decided as if the repealed Act had not been repealed.¹⁵⁰

Division 8—Applications made or development carried out after the commencement of this division

IDAS must be used for processing applications

6.1.28.(1) To remove any doubt, it is declared that all development applications for assessable development made after the commencement of this section to which a transitional planning scheme or interim development control provision applies must be made and processed under this Act.

(2) If an application mentioned in subsection (1) were an application for the same development under the repealed Act and would have required public notification under the repealed Act, the application must be processed as if it were a development application requiring impact assessment.

(3) If an application mentioned in subsection (1) were an application for the same development under the repealed Act and would not have required

¹⁴⁷ Section 4.3 (Amendment of a planning scheme etc. by an applicant)

¹⁴⁸ Section 4.6 (Application for rezoning of land in stages)

¹⁴⁹ Section 4.9 (Subsequent staged rezoning approvals)

¹⁵⁰ See the *Acts Interpretation Act 1954*, section 20 for other matters that are also saved when an Act is repealed.

public notification under the repealed Act, the application must be processed as if it were a development application requiring code assessment.

Assessing applications

6.1.29.(1) This section applies only for the assessing aspects of development applications to which a transitional planning scheme or interim development control provision applies.

(2) Sections 3.5.4 and 3.5.5¹⁵¹ do not apply for assessing the application.

(3) Instead, the following matters, to the extent the matters are relevant to the application, apply for assessing the application—

- (a) the common material for the application;
- (b) the transitional planning scheme;
- (c) the transitional planning scheme policies;
- (d) any planning scheme policy made after the commencement of this section;
- (e) all State planning policies;
- (f) the matters stated in section 8.2(1)¹⁵² of the repealed Act;
- (g) for an interim development control provision in force in a local government area—the interim development control provision;
- (h) if the application is for development that before the commencement of this section would have required an application to be made under any of the following sections of the repealed Act—
 - (i) section 4.3(1)¹⁵³—the matters stated in section 4.4(3);¹⁵⁴
 - (ii) section 5.1(1)¹⁵⁵—the matters stated in section 5.1(3);

¹⁵¹ Sections 3.5.4 (Code assessment) and 3.5.5 (Impact assessment)

¹⁵² Section 8.2 (Environmental impact)

¹⁵³ Section 4.3 (Amendment of a planning scheme etc. by an applicant)

¹⁵⁴ Section 4.4 (Assessment of proposed planning scheme amendment)

¹⁵⁵ Section 5.1 (Application for subdivision etc.)

- (iii) section 5.1(1) and section 5.10(1)¹⁵⁶ applies—the matters stated in sections 5.1(3) and 5.10(2);
- (iv) section 5.2(1)¹⁵⁷—the matters stated in sections 5.2(2);
- (v) section 5.9(1)¹⁵⁸—the matters stated in section 5.9(3);
- (vi) section 5.11(1)¹⁵⁹—the matters stated in section 5.11(3);
- (i) any other matter to which regard would have been given if the application had been made under the repealed Act.

Deciding applications

6.1.30.(1) This section applies when the assessment manager decides a development application to which a transitional planning scheme or interim development control provision applies.

(2) Sections 3.5.13¹⁶⁰ and 3.5.14¹⁶¹ do not apply for deciding the application.

(3) Instead, the assessment manager must, if the application is for development that before the commencement of this section would have required an application to be made under any of the following sections of the repealed Act—

- (a) section 4.3(1)¹⁶²—decide the application under section 4.4(5)¹⁶³ and (5A);
- (b) section 4.12(1)¹⁶⁴—decide the application under section

¹⁵⁶ Section 5.10 (Subdivision incorporating a lake)

¹⁵⁷ Section 5.2 (Subdivisions involving works)

¹⁵⁸ Section 5.9 (Staged subdivision)

¹⁵⁹ Section 5.11 (Application for amalgamated land)

¹⁶⁰ Section 3.5.13 (Decision if application requires code assessment)

¹⁶¹ Section 3.5.14 (Decision if application requires impact assessment)

¹⁶² Section 4.3 (Amendment of a planning scheme etc. by an applicant)

¹⁶³ Section 4.4 (Assessment of proposed planning scheme amendment)

¹⁶⁴ Section 4.12 (Application for town planning consent)

4.13(5)¹⁶⁵ and (5A);

- (c) section 5.1(1)¹⁶⁶ (whether or not section 5.10(1)¹⁶⁷ applies)—decide the application under section 5.1(6) and (6A);
- (d) section 5.2(1)¹⁶⁸—decide the application under section 5.2(4);
- (e) section 5.9(1)¹⁶⁹—decide the application under section 5.9(6) and (6A);
- (f) section 5.11(1)¹⁷⁰—decide the application under section 5.11(5);
- (g) section 5.12(1)¹⁷¹—decide the application under section 5.12(4).

(4) If a development application is made under a transitional planning scheme for the setting of conditions or the issue of a certificate of compliance or similarly endorsed certificate, the assessment manager may not refuse the application despite section 3.5.11(1)(c)¹⁷² but a concurrence agency may still direct the assessment manager to refuse the application.

(5) If the assessment manager does not decide the application mentioned in subsection (4) within the decision making period—

- (a) the application is taken to have been approved without conditions; or
- (b) the certificate of compliance or similarly certificate, is taken to have been issued.

Conditions about infrastructure for applications

6.1.31.(1) Subsection (2) applies if—

- (a) a local government is deciding a development application under a

¹⁶⁵ Section 4.13 (Assessment of town planning consent application)

¹⁶⁶ Section 5.1 (Application for subdivision etc.)

¹⁶⁷ Section 5.10 (Subdivision incorporating a lake)

¹⁶⁸ Section 5.2 (Subdivisions involving works)

¹⁶⁹ Section 5.9 (Staged subdivision)

¹⁷⁰ Section 5.11 (Application for amalgamated land)

¹⁷¹ Section 5.12 (Application for access easement)

¹⁷² Section 3.5.11 (Decision generally)

transitional planning scheme or an IPA planning scheme; and

(b) the local government does not have an infrastructure charges plan.

(2) For deciding the application—

(a) chapter 5, parts 1 and 2¹⁷³ do not apply; and

(b) section 3.5.32(1)(b)¹⁷⁴ does not apply; and

(c) the local government may impose a condition on the development approval requiring land, works or a contribution towards the cost of supplying infrastructure (including parks) as if the repealed Act had not been repealed.

(3) However, if the application is being decided under an IPA planning scheme, subsection (2) applies only for 5 years after the commencement of this section.

(4) Subsection (5) applies if—

(a) a local government is deciding a development application under a transitional planning scheme only; and

(b) the local government does not have a benchmark development sequence.

(5) For deciding the application—

(a) section 3.5.32(1)(b)¹⁷⁵ does not apply; and

(b) section 3.5.35¹⁷⁶ does not apply.

Conditions about infrastructure for applications under interim development control provisions or subdivision of land by-laws

6.1.32.(1) This section applies if—

(a) the local government is deciding a development application: and

¹⁷³ Chapter 5 (Miscellaneous), part 1 (Infrastructure charges) and part 2 (Infrastructure agreements)

¹⁷⁴ Section 3.5.32 (Conditions that can not be imposed)

¹⁷⁵ Section 3.5.32 (Conditions that can not be imposed)

¹⁷⁶ Section 3.5.35 (Limitations on conditions lessening cost impacts for infrastructure)

- (b) the local government does not have a transitional planning scheme but has—
 - (i) an interim development control provision; or
 - (ii) a subdivision of land by-law continued in effect under section 8.10(7)¹⁷⁷ of the repealed Act.
- (2) For deciding the application—
 - (a) section 3.5.32(1)(b)¹⁷⁸ does not apply; and
 - (b) the local government may impose a condition on a development approval requiring land, works or a contribution towards the cost of supplying infrastructure (including parks) as if the repealed Act had not been repealed.

Conditions about infrastructure for applications about reconfiguring a lot

- 6.1.33.(1)** This section applies if—
- (a) a local government is deciding a development application for reconfiguring a lot: and
 - (b) the application is made within 2 years after the commencement of this section; and
 - (c) the local government has an infrastructure charges plan.

(2) The application for reconfiguring the lot is, for calculating the amount of any contribution for water supply headworks or sewerage headworks (or both), taken to be a prescribed application to subdivide land under section 6.2¹⁷⁹ of the repealed Act.

Consequential amendment of transitional planning schemes

6.1.34.(1) If an assessment manager approves a development application for assessable development that would, under the repealed Act, have first

¹⁷⁷ Section 8.10 (Savings and transitional)

¹⁷⁸ Section 3.5.33 (Conditions that can not be imposed)

¹⁷⁹ Section 6.2 (Contributions towards water supply and sewerage works)

required the amendment of the former planning scheme, the local government must amend its transitional planning scheme to reflect the approval.

(2) The local government must make the amendment within 20 business days after the day the approval takes effect.

Self-assessable development under transitional planning schemes

6.1.35. Self-assessable development to which a transitional planning scheme or an interim development control provision applies must comply with applicable codes.

Division 9—Planning and Environment Court

Appointments of judges continue

6.1.36. Judges of District Courts notified by gazette notice as judges who constituted the Planning and Environment Court before the commencement of section 4.1.1,¹⁸⁰ are, until a further notice is gazetted under this Act, the judges who, on and from the commencement, constitute the court.

Court orders continue

6.1.37.(1) An order made by the Planning and Environment Court before the commencement of section 4.1.1 and still in force immediately before the commencement, continues to have effect on and after the commencement.

(2) The order may be discharged or amended by the court under this Act.

Rules of court continue

6.1.38.(1) The rules of court in force immediately before the commencement of section 4.1.1 continue in force on and after the

¹⁸⁰ Section 4.1.1 (Continuance of Planning and Environment Court)

commencement as if they were made under section 4.1.10.¹⁸¹

(2) The rules may be amended or repealed under this Act.

Proceedings started under repealed Act continue

6.1.39. A proceeding started before the Planning and Environment Court under the repealed Act and not finished on the commencement of section 4.1.1, may be continued and completed by the court as if the repealed Act had not been repealed.¹⁸²

Division 10—Miscellaneous

Application of ch 1, pt 5

6.1.40.(1) This section applies if the State, or an entity acting for or on behalf of the State, starts development.

(2) Despite section 1.5.1,¹⁸³ the development, to the extent the development is self-assessable development or assessable development under a planning scheme, is exempt development, and the State is not required to pay any infrastructure charge for the development.

(3) For subsection (2)—

- (a) if the local government's area where the development is to start has an IPA planning scheme—assessable development has the meaning under schedule 10; and
- (b) if the local government's area where the development is to start has a transitional planning scheme—assessable development has the meaning under this part.

(4) This section expires 2 years after its commencement.

¹⁸¹ Section 4.1.10 (Rules of Court)

¹⁸² See the *Acts Interpretation Act 1954*, section 20 for other matters that are also saved when an Act is repealed.

¹⁸³ Section 1.5.1 (Act binds all persons)

Application of ch 2, pt 2, div 2

6.1.41. Chapter 2, part 2, division 2¹⁸⁴ applies as if a transitional planning scheme were an IPA planning scheme.

Application of ch 2, pt 3

6.1.42. Chapter 2, part 3¹⁸⁵ (in so far as the Minister may direct a local government to amend a planning scheme or repeal a transitional planning scheme policy) applies to transitional planning schemes and transitional planning scheme policies.

Application of ch 2, pt 6 for Transport Infrastructure Act 1994

6.1.43.(1) For designating the following land, chapter 2, part 6¹⁸⁶ applies as if the Minister administering the *Transport Infrastructure Act 1994* were satisfied of the matters mentioned in section 2.6.8—¹⁸⁷

- (a) existing rail corridor land within the meaning of the *Transport Infrastructure Act 1994*;¹⁸⁸ or
- (b) a State-controlled road within the meaning of the *Transport Infrastructure Act 1994*;¹⁸⁹ or
- (c) a future State-controlled road within the meaning of the

¹⁸⁴ Chapter 2 (Planning), part 2 (Reviewing local planning instruments), division 2 (Review by independent reviewer)

¹⁸⁵ Chapter 2 (Planning), part 3 (State powers)

¹⁸⁶ Chapter 2 (Planning), part 6 (Designation of land for community infrastructure)

¹⁸⁷ Section 2.6.8 (Minister may proceed straight to designation in certain circumstances)

¹⁸⁸ Under the *Transport Infrastructure Act 1994*, schedule 3, (Dictionary)—**“existing rail corridor land”** means old QR land—

- (a) on or within which rail transport infrastructure is situated; and
- (b) that is not commercial corridor land.

¹⁸⁹ Under the *Transport Infrastructure Act 1994*, schedule 3, (Dictionary)—**“State-controlled road”** means a State-controlled road, and **“road”** means a road, as defined in chapter 5, part 5, division 2, subdivision 2, see section 50.

Transport Infrastructure Act 1994, section 40.¹⁹⁰

(2) This section expires 3 years after its commencement.

Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances

6.1.44.(1) This section applies if—

- (a) before the commencement of this section another Act or a local law required a licence, permit, registration or other approval for development or for an activity that is the natural and ordinary consequence of the development; and
- (b) the other Act or local law allowed for a condition of the licence, permit, registration or other approval to be changed or cancelled without the consent of any person; and
- (c) the other Act or the local law is amended to remove the requirement for the licence, permit, registration or other approval, or is repealed; and
- (d) the development is assessable development as defined for this part, and the Act generally.

(2) A condition of a development approval for the development, to the extent the condition could have been imposed by an entity under the other Act or local law before the Act or law was amended or repealed, may be changed or cancelled by the entity—

- (a) if the entity, as a concurrence agency, directed the assessment manager to impose the condition; or
- (b) if the entity, as the assessment manager, decided the condition.

(3) The change or cancellation may be made—

- (a) without the consent of the owner of the land to which the approval attaches and any occupier of the land; but

¹⁹⁰ Under the *Transport Infrastructure Act 1994*, section 40, (Impact of certain local government decisions on State-controlled roads)—
~~the future of State-controlled roads means inroads and is that which is a State-controlled road.~~

- (b) only to the extent the change or cancellation could have been made under the other Act or local law before it was amended or repealed.

(4) If the entity is satisfied it is necessary to change or cancel the condition, the entity must give a written notice to the owner of the land to which the approval attaches and any occupier of the land.

(5) The notice must state—

- (a) the proposed change or cancellation and the reasons for the change or cancellation; and
- (b) that each person to whom the notice is given may make written representations to the entity about the proposed change or cancellation; and
- (c) the time (at least 15 business days after the notice is given to the holder) within which the representations may be made.

(6) After considering any representations the entity must give to each person to whom the notice was given—

- (a) if the entity is not satisfied the change or cancellation is necessary—written notice stating it has decided not to change or cancel the condition; or
- (b) if the entity is satisfied the change or cancellation is necessary—written notice stating it has decided to change or cancel the condition, including details of the changed or cancelled condition.

(7) If the entity is a concurrence agency, the entity must give the assessment manager written notice of the change or cancellation.

(8) The changed condition or cancellation takes effect from the day the notice was given to the owner of the land to which the approval attaches.

Infrastructure agreements under repealed Act

6.1.45. An infrastructure agreement made under part 6, division 2¹⁹¹ of

¹⁹¹ Part 6 (Conditions, contributions, works and infrastructure agreements), division 2 (Infrastructure agreements)

the repealed Act and in force immediately before the commencement of this section continues, on and after the commencement, to have effect and is binding on the parties to the agreement as if the repealed Act had not been repealed.

Local Government (Robina Central Planning Agreement) Act 1992

6.1.46.(1) Despite the repeal of the repealed Act the *Local Government (Robina Central Planning Agreement) Act 1992* applies as if the repealed Act had not been repealed.

(2) This section expires on 31 December 2000.

Delegations continue until withdrawn

6.1.47. A delegation made before the commencement of this section that is necessary to give effect to this part continues to have effect on and after the commencement until specifically withdrawn by the person who gave the delegation.

Registers must be kept available for inspection and purchase

6.1.48. All registers established and kept by local governments under the repealed Act must be kept available for inspection and purchase under this Act.

Town planning certificates may be used as evidence

6.1.49. In a proceeding, a town planning certificate issued under the repealed Act is evidence of the matters contained in the certificate.

Right to compensation continued

6.1.50. To remove any doubt, it is declared that if before the commencement of this section a person had a right to compensation under

section 3.5¹⁹² of the repealed Act, the person may exercise the right within the time stated in the repealed Act for exercising the right despite the repeal of the repealed Act.

Orders in council about Crown land under repealed Act

6.1.51.(1) This section applies to—

- (a) to the extent that any orders in council made under the *Local Government Act 1936*, section 33(22A)¹⁹³ or under the *City of Brisbane Town Planning Act 1964*, section 7A(8)¹⁹⁴ are still in force immediately before the commencement of this section—the orders; and
- (b) all orders in council made under section 2.21(2)(c)¹⁹⁵ of the repealed Act.

(2) To remove any doubt, it is declared that all orders mentioned in subsection (1) and still in force immediately before the commencement of this section continue in force as if the orders were regulations made under this Act.

Transitional regulations

6.1.52.(1) A regulation may make provision of a saving or transitional nature for which—

- (a) it is necessary or convenient to make provision to allow or facilitate the doing of anything to achieve the purposes of this Act; and
- (b) this Act does not make provision or sufficient provision.

(2) A regulation under this section may have retrospective operation to a day not earlier than the commencement day.

¹⁹² Section 3.5 (Compensation)

¹⁹³ *Local Government Act 1936*, section 33 (Town Planning)

¹⁹⁴ *City of Brisbane Town Planning Act 1964*, section 7A (Plan may include Crown land)

¹⁹⁵ Section 2.21 (Planning scheme may include Crown land)

(3) Subject to subsection (4), a regulation under this section expires 5 years after it is made.

(4) This section expires 5 years after this Act commences.

PART 2—REPEALS

Act repealed

6.2.1. The *Local Government (Planning and Environment) Act 1990* is repealed.

PART 3—CONSEQUENTIAL AMENDMENTS

Acts amended—sch 9

6.3.1. Schedule 9¹⁹⁶ amends the Acts mentioned in it.

¹⁹⁶ Schedule 9 (Consequential amendments)

SCHEDULE 1

PROCESS FOR MAKING OR AMENDING PLANNING SCHEMES

section 2.1.5(2)

PART 1—PRELIMINARY CONSULTATION AND PREPARATION STAGE

Resolution to prepare planning scheme

1.(1) A local government, by resolution, may propose to prepare a planning scheme.

(2) In this schedule (other than in a provision specifically referring to an amendment of a planning scheme), a reference to a planning scheme includes a reference to an amendment of a planning scheme.

Local government may shorten process for certain amendments

2.(1) This section applies if a local government proposes to prepare an amendment of a planning scheme, and at least 1 of the following applies—

- (a) the local government is satisfied there has already been adequate public consultation about the matter, the subject of the proposed amendment;
- (b) the local government is satisfied the public interest would not be served by consulting about any proposal for preparing the amendment;
- (c) the amendment is a minor amendment of the planning scheme.

Example of paragraph (a)—

A local government may decide there has been adequate public consultation about a matter the subject of a proposed amendment if the matter arose as a result of the recommendations of a regional planning advisory committee, and the regional planning advisory committee had publicly consulted about the matter before making

SCHEDULE 1 (continued)

its recommendation.

Example of paragraph (b)—

A local government may believe it needs to change the parking standards applying to a particular form of development because parking demand has exceeded that reflected in the original planning scheme. Because of the limited options for dealing with the matter, the local government may decide that no public interest would be served by publicly consulting about any approach to preparing the amendment.

(2) If this section applies because of subsection (1)(a) or (b), the local government—

- (a) if the section applies because of section 2.2.18(4)¹⁹⁷ of the Act—must start the amending process at section 9(2); or
- (b) if paragraph (a) does not apply—need not comply with sections 3 to 8 and may also start the amending process at section 9(2).

(3) If this section applies because of subsection (1)(c), the local government need not comply with sections 3 to 8 or sections 10 to 18.

Statement of proposals for preparing planning scheme

3.(1) The local government must prepare a statement of its proposals for preparing the planning scheme.

(2) In particular, the statement must—

- (a) identify matters the local government anticipates the planning scheme will address; and
- (b) state how the local government intends to address each core matter (including its component parts) in preparing the planning scheme.

(3) The local government must give a copy of the statement to the chief executive and to each adjoining local government.

¹⁹⁷ Section 2.2.18 (Local government's actions after receiving reviewer's reports)

SCHEDULE 1 (continued)

Core matters for planning schemes

4.(1) The following are “**core matters**” for the preparation of a planning scheme—

- (a) land use and development;
- (b) infrastructure;¹⁹⁸
- (c) valuable features.

(2) In subsection (1)(a)—

“**land use and development**” includes the following—

- (a) the location of, and the relationships between, various land uses;
- (b) the effects of land use and development;
- (c) how mobility between places is facilitated;
- (d) accessibility to areas;
- (e) development constraints (including, but not limited to, population and demographic impacts).

(3) In subsection (1)(c)—

“**valuable features**” includes the following—

- (a) resources or areas that are of ecological significance (such as habitats, wildlife corridors, buffer zones, places supporting biological diversity or resilience, and features contributing to the quality of air, water (including catchments or recharge areas) and soil);
- (b) areas contributing significantly to amenity (such as areas of high scenic value, physical features that form significant visual backdrops or that frame or define places or localities, and attractive built environments);
- (c) areas or places of cultural heritage significance (such as areas or places of indigenous cultural significance, or aesthetic,

¹⁹⁸ “Infrastructure” is a term defined in the dictionary.

SCHEDULE 1 (continued)

architectural, historical, scientific, social or technological significance, to the present generation or past or future generations);

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

Public notice of proposal

5.(1) After complying with section 3, the local government must publish, at least once in a newspaper circulating generally in the local government's area, a notice stating the following—

- (a) the name of the local government;
- (b) that the local government has prepared a statement of its proposal to preparing the planning scheme and that the statement is available for inspection and purchase;
- (c) a contact telephone number for information about the statement;
- (d) that written submissions about any aspect of the proposal may be made to the local government by any person;
- (e) the period (the **“preliminary consultation period”**) during which the submissions may be made;
- (f) the requirements for making a properly made submission under this part.

(2) The preliminary consultation period must be for at least 40 business days after the notice is first published under subsection (1).

(3) For all of the preliminary consultation period, the local government must display a copy of the notice in a conspicuous place in the local government's public office.

Public access to statement of proposal

6. For all of the preliminary consultation period, the local government

SCHEDULE 1 (continued)

must have a copy of the statement of proposal available for inspection and purchase.

Consideration of all submissions

7. The local government must consider every properly made submission¹⁹⁹ about the proposal.

Minimum requirements for consultation

8. Sections 5, 6 and 7 state the minimum requirements for consultation with the public about the statement of proposal, but are not intended to prevent additional consultation.

Resolution proposing planning scheme

9.(1) If a local government has followed the process stated in section 1 and sections 3 to 8, the local government, by resolution, must—

- (a) propose a planning scheme; or
- (b) decide not to proceed with the preparation of the proposed planning scheme.²⁰⁰

(2) If section 2 applies to a proposal under this schedule, the local government, by resolution, must propose an amendment of its planning scheme.

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

¹⁹⁹ “Properly made submission” is a term defined in the dictionary.

²⁰⁰ Under chapter 2, part 2, a decision of a local government not to proceed to make a planning scheme is taken to be a decision not to review the planning scheme under the part.

SCHEDULE 1 (continued)

**PART 2—CONSIDERATION OF STATE INTERESTS
AND CONSULTATION STAGE****Minister may allow process to be shortened for certain amendments
publicly consulted**

10.(1) This section applies if—

- (a) the Minister receives, under section 9(3), a copy of a proposed amendment of a planning scheme; and
- (b) the Minister is satisfied there has already been adequate public consultation about the matter, the subject of the proposed amendment, because the proposed amendment reflects—
 - (i) the recommendation of a regional planning advisory committee on a matter; or
 - (ii) a decision previously made by an assessment manager on a development application; or
 - (iii) a standard or policy of the State; or
 - (iv) a decision taken by a local government or the Minister about a reviewer's report.

(2) The Minister may advise the local government it need not comply with sections 12 to 18.

(3) If the Minister advises the local government under subsection (2), section 11 does not apply to the proposed amendment.

**Ensuring proposed planning scheme does not adversely affect State
interests**

11.(1) On receiving a copy of a proposed planning scheme under section 9(3), the Minister must consider whether or not State interests would be adversely affected by the proposed planning scheme.

(2) The Minister must advise the local government, having regard to the Minister's consideration under subsection (1)—

SCHEDULE 1 (continued)

- (a) that it may notify the proposed planning scheme; or
- (b) that it may notify the proposed planning scheme, but subject to compliance with conditions the Minister may impose about—
 - (i) the content of the proposed planning scheme; or
 - (ii) the way the planning scheme is notified.

(3) If the proposal is for the amendment of a planning scheme, the Minister may—

- (a) as well as advising the local government under subsection (2), advise the local government that it need not comply with section 18 (other than section 18(1), (2) and (7)(b)); or
- (b) instead of advising the local government under subsection (2), advise the local government that, having regard to the Minister's consideration under subsection (1), it may not proceed further with the amendment.

(4) A condition imposed under subsection (2)(b)(ii) may only be for the purpose of providing public access to the proposed planning scheme to an extent greater than otherwise provided for in this schedule.

(5) Before notifying the proposed planning scheme, the local government must comply with any condition about the content of the proposed planning scheme imposed by the Minister under subsection (2)(b).

Public notice and access of proposed planning scheme

12.(1) If the Minister advises the local government that it may notify the proposed planning scheme, the local government must publish, at least once in a newspaper circulating generally in the local government's area, a notice stating the following—

- (a) the name of the local government;
- (b) if the notice is about an amendment of the planning scheme—the purpose and general effect of the proposed amendment;
- (c) if the notice is about an amendment of the planning scheme but

SCHEDULE 1 (continued)

the proposed amendment is intended to apply only to part of the planning scheme area—a description of the land or area to which the proposed amendment is intended to apply;

- (d) a contact telephone number for information about the proposed planning scheme;
- (e) that the proposed planning scheme is available for inspection and purchase;
- (f) that written submissions about any aspect of the proposed planning scheme may be made to the local government by any person;
- (g) the period (the “**consultation period**”) during which the submissions may be made;
- (h) the requirements for making a properly made submission under this part.

(2) The consultation period—

- (a) for a proposed planning scheme—must extend for at least 60 business days after the first publication of the notice under subsection (1); and
- (b) for a proposed amendment of a planning scheme—must extend for at least 30 business days after the first publication of the notice under subsection (1).

(3) For all of the consultation period, the local government must display a copy of the notice in a conspicuous place in the local government’s public office.

Public access to proposed planning scheme

13. For all of the consultation period, the local government must have a copy of the proposed planning scheme available for inspection and purchase.

SCHEDULE 1 (continued)

Consideration of all submissions

14. The local government must consider every properly made submission about the proposed planning scheme.

Minimum requirements for consultation

15. Sections 12, 13 and 14 state the minimum requirements for consultation with the public about the proposed planning scheme, but are not intended to prevent additional consultation.

Decision on proceeding with proposed planning scheme

16.(1) After considering every properly made submission, the local government, by resolution, must decide whether to—

- (a) proceed with the proposed planning scheme as notified; or
- (b) proceed with the proposed planning scheme with modifications;
or
- (c) not proceed with the proposed planning scheme.

(2) If the local government decides to proceed with the proposed planning scheme with modifications and is satisfied the modifications make the proposed planning scheme significantly different from the proposed planning scheme as advertised, it must recommence the process outlined in this schedule from section 12.

Reporting to persons who made submissions about proposed planning scheme

17.(1) This section applies if the local government receives any properly made submissions about the proposed planning scheme and decides to adopt the proposed planning scheme.

(2) The local government must prepare a report explaining in general terms how it has dealt with the submissions received and give to the principal submitter of each properly made submission—

SCHEDULE 1 (continued)

- (a) a copy of the report; or
- (b) a copy of the part of the report relating to the matter about which the submission was made.

Reconsidering proposed planning scheme for adverse effects on State interests

18.(1) If the local government decides to proceed with the proposed planning scheme without modifications, the local government must advise the Minister it is proceeding with the proposed planning scheme without modifications.

(2) If the local government decides to proceed with the proposed planning scheme with modifications, the local government must—

- (a) advise the Minister it is proceeding with the proposed planning scheme with modifications; and
- (b) tell the Minister what the modifications are; and
- (c) give the Minister a copy of the proposed planning scheme with the modifications included; and
- (d) give the Minister any other information the Minister requests about the proposed planning scheme including, for example, any submissions the local government has received about the proposed planning scheme.

(3) After receiving advice under subsection (1) or (2) and any information given under subsection (2)(d), the Minister must consider whether or not State interests would be adversely affected by the proposed planning scheme.

(4) The Minister must advise the local government, having regard to the Minister's consideration under subsection (3)—

- (a) that it may adopt the proposed planning scheme; or
- (b) that it may adopt the proposed planning scheme, but subject to compliance with conditions the Minister may impose about the content of the proposed planning scheme.

SCHEDULE 1 (continued)

(5) If the Minister advises the local government under subsection (4), the Minister must identify the State planning policies the Minister is satisfied are appropriately reflected in the proposed planning scheme.

(6) For a proposed amendment of a planning scheme, the Minister may, instead of advising the local government under subsection (4), advise the local government that, having regard to the Minister's consideration under subsection (3), it may not proceed further with the amendment.

(7) Before adopting the proposed planning scheme, the local government must—

- (a) comply with any condition about the content of the proposed planning scheme imposed by the Minister under subsection (4)(b); and
- (b) subject to any conditions mentioned in paragraph (a), incorporate in the proposed planning scheme the modifications mentioned in subsection (2); and
- (c) state in the proposed planning scheme the State planning policies identified by the Minister under subsection (5).

PART 3—ADOPTION STAGE**Resolution about adopting proposed planning scheme**

19. If a local government makes a resolution under section 9(1)(a) or 9(2), the local government, by resolution, must—

- (a) if the local government has complied with any of the provisions of part 2 the local government must comply with for making a proposed planning scheme—adopt the proposed planning scheme; or
- (b) decide not to proceed with the proposed planning scheme.

SCHEDULE 1 (continued)

Public notice of adoption of, and access to, planning schemes

20. As soon as practicable after the planning scheme has been adopted, the local government must publish, at least once in both a newspaper circulating generally in the local government's area and in the gazette, a notice stating the following—

- (a) the name of the local government;
- (b) when the planning scheme was adopted;
- (c) if the notice is about an amendment of the planning scheme—the purpose and general effect of the amendment;
- (d) that a copy of the planning scheme is available for inspection and purchase.

Copy of notice and planning scheme to chief executive

21. On the day the local government publishes the notice (or as soon as practicable after the day), the local government must give the chief executive—

- (a) a copy of the notice; and
- (b) 5 certified copies of the planning scheme.

SCHEDULE 2

PROCESS FOR MAKING TEMPORARY LOCAL PLANNING INSTRUMENTS

section 2.1.12

PART 1—PROPOSAL STAGE

Resolution to prepare temporary local planning instrument

1. A local government, by resolution, may propose a temporary local planning instrument.

Minister's approval required to proceed

2.(1) The local government must give the Minister a copy of the proposed temporary local planning instrument together with a statement of the reasons why the local government considers it necessary to adopt the proposed instrument.

(2) If the Minister is satisfied the proposed instrument should be made, the Minister—

- (a) must advise the local government it may adopt the proposed instrument; and
- (b) may impose conditions on the local government that the Minister considers appropriate.

(3) Before adopting the proposed instrument, the local government must—

- (a) comply with any condition about the content of the proposed instrument imposed by the Minister under subsection (2)(b); and
- (b) agree to comply with any other conditions imposed by the Minister under subsection (2)(b).

(4) If the Minister does not consider the proposed instrument should be

SCHEDULE 2 (continued)

made, the Minister must advise the local government it may not adopt the proposed instrument.

PART 2—ADOPTION STAGE**Resolution about adopting proposed temporary local planning instrument**

3.(1) If a local government makes a resolution under section 1 and is authorised under section 2 to adopt the proposed temporary local planning instrument, the local government, by resolution, must—

- (a) adopt the proposed instrument; or
- (b) if the Minister has imposed conditions for the proposed instrument under section 2—adopt the proposed instrument subject to the imposed conditions; or
- (c) decide not to adopt the proposed instrument.

(2) If the local government acts under subsection (1)(c), the local government must give the Minister a copy of the resolution and the reasons for not adopting the proposed instrument.

Public notice of adoption of, and access to, temporary local planning instruments

4. As soon as practicable after the temporary local planning instrument has been adopted, the local government must publish, at least once in both a newspaper circulating generally in the local government's area and in the gazette, a notice stating the following—

- (a) the name of the local government;
- (b) when the instrument was adopted;
- (c) the purpose and general effect of the instrument;

SCHEDULE 2 (continued)

- (d) if the instrument applies only to part of the planning scheme area—a description of the land or area to which the instrument applies; and
- (e) the date when the instrument will cease to have effect;
- (f) that a copy of the instrument is available for inspection and purchase.

Copy of notice and temporary local planning instrument to chief executive

5. On the day the notice is published in the gazette (or as soon as practicable after the day), the local government must give the chief executive—

- (a) a copy of the notice; and
- (b) 5 certified copies of the temporary local planning instrument.

SCHEDULE 3

PROCESS FOR MAKING OR AMENDING PLANNING SCHEME POLICIES

section 2.1.19

PART 1—PROPOSAL STAGE

Resolution proposing action

- 1.(1)** A local government, by resolution, may propose—
- (a) to make a planning scheme policy (whether or not the proposed policy will replace an existing policy); or
 - (b) to amend a planning scheme policy.
- (2)** The local government must prepare an explanatory statement about the action proposed under subsection (1).

PART 2—CONSULTATION STAGE

Public notice of proposed action

- 2.(1)** The local government must publish, at least once in a newspaper circulating generally in the local government's area, a notice stating the following—
- (a) the name of the local government;
 - (b) the name of the proposed planning scheme policy or policy being amended;
 - (c) the purpose and general effect of the proposed policy or amendment;

SCHEDULE 3 (continued)

- (d) a contact telephone number for information about the proposed policy or amendment;
- (e) that the proposed policy or amendment, and the explanatory statement, are available for inspection and purchase;
- (f) that written submissions about any aspect of the proposed policy or amendment may be given to the local government by any person;
- (g) the period (the “**consultation period**”) during which the submissions may be made;
- (h) the requirements for making a properly made submission under this part.

(2) The consultation period must be for at least 20 business days after the notice is first published under subsection (1).

(3) For all of the consultation period, the local government must display a copy of the notice in a conspicuous place in the local government’s public office.

Public access to relevant documents

3. For all of the consultation period, the local government must have a copy of the proposed planning scheme policy or amendment, and the explanatory statement, available for inspection and purchase.

Consideration of all submissions

4. The local government must consider every properly made submission about the proposed planning scheme policy or amendment.

SCHEDULE 3 (continued)

PART 3—ADOPTION STAGE**Resolution about adopting proposed planning scheme policy or amendment**

5.(1) After the local government has considered every properly made submission about the proposed planning scheme policy or amendment, the local government, by resolution, must—

- (a) adopt the proposed policy or amendment, as notified; or
- (b) adopt the proposed policy or amendment, as modified, having regard to any submissions made about the proposal; or
- (c) decide not to adopt the proposed policy or amendment.

(2) However, if the proposed planning scheme policy or amendment was proposed in response to a recommendation in a reviewer's report, subsection (1) does not apply and the local government must, by resolution, adopt the proposed policy or amendment.

Reporting to persons who made submissions about proposed action

6.(1) This section applies if the local government receives any properly made submissions about the proposed planning scheme policy or amendment.

(2) The local government must advise the principal submitter of each properly made submission of the decision and the reasons for the decision.

Public notice of adoption of, and access to, planning scheme policy or amendment

7.(1) As soon as practicable after the local government decides to adopt a planning scheme policy or amendment, the local government must publish, in a newspaper circulating generally in the local government's area, a notice stating the following—

- (a) the name of the local government;

SCHEDULE 3 (continued)

- (b) the name of the policy adopted or amended;
- (c) the day the resolution was made;
- (d) the purpose and general effect of the resolution.

(2) If the resolution was to adopt a planning scheme policy, the notice also must state the following—

- (a) the name of any existing policy replaced by the policy adopted; and
- (b) that a copy of the policy adopted is available for inspection and purchase.

(3) If the resolution was to adopt an amendment of a planning scheme policy, the notice also must state that a copy of the amendment is available for inspection and purchase.

Copy of notice and policy or amendment to chief executive

8. On the day the notice is published (or as soon as practicable after the day), the local government must give the chief executive—

- (a) a copy of the notice; and
- (b) 3 certified copies of the planning scheme policy or amendment.

SCHEDULE 4**PROCESS FOR MAKING OR AMENDING STATE
PLANNING POLICIES**

section 2.4.3

PART 1—PREPARATION STAGE**Minister must notify intention to prepare proposed State planning policy**

1.(1) If the Minister intends to prepare a proposed State planning policy, the Minister must publish a notice at least once in a newspaper circulating generally in the State.

(2) The notice may also be published in a regional newspaper the Minister considers appropriate.

(3) The notice must state the following—

- (a) that the Minister intends to prepare a proposed State planning policy;
- (b) the subject matter for the proposed policy;
- (c) if the proposed policy is intended to apply only to a particular area of the State—the name of the area or other information necessary to adequately describe the area;
- (d) that written submissions about the proposed policy may be given to the Minister by any person;
- (e) the period during which the submissions may be given.

(4) The period mentioned in subsection (3)(e) must be for at least 40 business days after the notice is first published under section (1).

SCHEDULE 4 (continued)

Minister may prepare proposed State planning policy or amendment

2.(1) After the Minister has considered all submissions made under section 1, the Minister may prepare—

- (a) a proposed State planning policy; or
- (b) a proposed amendment of a State planning policy.

(2) The Minister must prepare an explanatory statement about the action proposed under subsection (1).

PART 2—CONSULTATION STAGE**Public notice of proposed action**

3.(1) If the Minister acts under section 2, the Minister must publish a notice at least once in a newspaper circulating generally in the State.

(2) The notice may also be published in a regional newspaper the Minister considers appropriate.

(3) The notice must state the following—

- (a) the name of the proposed State planning policy or policy being amended;
- (b) the purpose and general effect of the proposed policy or amendment;
- (c) if the proposed policy or amendment applies only to a particular area of the State—the name of the area or other information necessary to adequately describe the area;
- (d) a contact telephone number for information about the proposed policy or amendment;
- (e) that the proposed policy or amendment, and the explanatory statement, are available for inspection and purchase;

SCHEDULE 4 (continued)

- (f) that written submissions about any aspect of the proposed policy or amendment may be given to the Minister by any person;
- (g) the period (the “**consultation period**”) during which the submissions may be given;
- (h) the requirements for a properly made submission under this part.

(4) The consultation period must be for at least 40 business days after the notice is first published under subsection (1).

Public access to relevant documents

4. For all of the consultation period, the Minister must keep a copy of the proposed State planning policy or amendment, and the explanatory statement, available for inspection and purchase.

Consideration of all submissions

5. The Minister must consider every properly made submission about the proposed State planning policy or amendment.

Consultation stage does not apply in certain circumstances

6. Sections 3 to 5 need not be complied with if—
- (a) the proposed State planning policy is to have effect for less than 1 year; or
 - (b) the amendment is a minor amendment of a State planning policy.

SCHEDULE 4 (continued)

PART 3—ADOPTION STAGE**Resolution about adopting proposed State planning policy or amendment**

7.(1) Subsection (2) applies—

- (a) if the consultation stage applies to the proposed State planning policy or amendment—after the Minister has considered every properly made submission about the proposed policy or amendment; or
- (b) if the consultation stage does not apply to the proposed State planning policy or amendment—after the completion of the preparation stage.

(2) The Minister must—

- (a) adopt the proposed policy or amendment, as notified; or
- (b) adopt the proposed policy or amendment, as modified, having regard to any submissions made about the proposal; or
- (c) decide not to adopt the proposed policy or amendment.

Reporting to persons who made submissions about proposed action

8.(1) This section applies if the consultation stage applied to the proposed State planning policy or amendment and the Minister received any properly made submissions about the proposed State planning policy or amendment.

(2) The Minister must advise each principal submitter of the Minister's decision and the reasons for the decision.

Public notice of adoption of, and access to, State planning policy or amendment

9.(1) If the Minister adopts a State planning policy or an amendment of a State planning policy, the Minister must publish a notice in the gazette and in a newspaper circulating generally in the State.

SCHEDULE 4 (continued)

(2) The notice also may be published in a regional newspaper the Minister considers appropriate.

(3) The notice must state the following—

- (a) the name of the State planning policy adopted or policy amended;
- (b) if the policy applies only to a particular area of the State—the name of the area or other information necessary to adequately describe the area;
- (c) the day the State planning policy or amendment was adopted;
- (d) the name of any existing policy replaced by the policy adopted;
- (e) the purpose and general effect of the policy or amendment; and
- (f) that a copy of the policy or amendment is available for inspection and purchase.

Copies of State planning policies to local governments

10. The Minister must give each local government a copy of the State planning policy or amendment adopted.

SCHEDULE 5

COMMUNITY INFRASTRUCTURE

section 2.6.1 and schedule 10, definition “**community infrastructure**”

1. The following are community infrastructure—

- (a) aeronautical facilities;
- (b) cemeteries and crematoriums;
- (c) communication network facilities;
- (d) community and cultural facilities, including child-care facilities, community centres, meeting halls, galleries and libraries;
- (e) correctional facilities;
- (f) educational facilities;
- (g) emergency services facilities;
- (h) hospitals and associated institutions;
- (i) jetties, wharves, port facilities and navigational facilities;
- (j) oil and gas pipelines;
- (j) operating works under the *Electricity Act 1994*;
- (l) parks and recreational facilities (other than parks and recreational facilities that are development infrastructure items);
- (m) railway lines, stations and associated facilities;
- (n) State-controlled roads;
- (o) transport infrastructure mentioned in section 5.1.1;²⁰¹
- (p) urban water cycle management infrastructure mentioned in section 5.1.1;
- (q) waste management facilities;

²⁰¹ Section 5.1.1 (Meaning of “development infrastructure item”)

SCHEDULE 5 (continued)

- (r) storage and works depots and the like including administrative facilities associated with the provision or maintenance of the community infrastructure mentioned in paragraphs (a) to (q);
- (s) any other facility not mentioned in paragraphs (a) to (r) and intended primarily to accommodate government functions.

SCHEDULE 6

PROCESS FOR MINISTERIAL DESIGNATIONS

section 2.6.7

PART 1—CONSULTATION STAGE

Notice of proposed designation

1.(1) The Minister²⁰² must give written notice of the proposed designation to—

- (a) the owner of any land to which the proposed designation applies; and
- (b) each local government the Minister is satisfied the designation affects; and
- (c) unless the local government has been notified under paragraph (b)—the local government nearest to the land proposed to be designated.

(2) The Minister must also publish, at least once in a newspaper circulating generally in the area of each local government given notice under subsection (1), a notice stating the following—

- (a) a description or plan of the land proposed to be designated;
- (b) the type of the proposed community infrastructure;
- (c) the reasons for the proposed designation;
- (d) a contact telephone number for information about the proposed designation;
- (e) that written submissions about any aspect of the proposed designation may be given to the Minister by any person;

²⁰² In this schedule, Minister includes any Minister of the Crown. See “Minister” in the dictionary.

SCHEDULE 6 (continued)

- (f) the period (the “**consultation period**”) during which the submissions may be given;
- (g) the requirements for making a properly made submission under this part.

(3) The consultation period must be for at least 20 business days after the notice is first published under subsection (2).

(4) For all of the consultation period, each local government given notice under subsection (1) must display a copy of the notice in a conspicuous place in the local government’s public office.

Consideration of all submissions and other matters

2. The Minister must consider—

- (a) every properly made submission given to the Minister; and
- (b) each relevant planning scheme; and
- (c) any relevant State planning policy.

PART 2—DESIGNATION STAGE**Deciding designation proposal**

3. After considering the matters under section 2, the Minister must—

- (a) make the proposed designation, as notified; or
- (b) make the proposed designation, with modifications, having regard to any submissions made about the proposal; or
- (c) decide not to proceed with making the proposed designation.

SCHEDULE 6 (continued)

Procedures after designation

4.(1) If the Minister designates land under section (3)(a) or (b), the Minister must give a notice to—

- (a) each local government given notice under section 1(1); and
- (b) each owner of land to which the designation applies; and
- (c) each principal submitter who made a properly made submission about the proposed designation.

(2) The notice must state the following—

- (a) that a designation has been made;
- (b) the description of the land to which the designation applies;
- (c) the type of community infrastructure for which the land has been designated;
- (d) the reasons for the designation;
- (e) any matters included as part of the designation under section 2.6.4²⁰³ of this Act.

(3) The Minister must also publish, in the gazette, a notice stating the following—

- (a) that a designation has been made;
- (b) the description of the land to which the designation applies;
- (c) the type of community infrastructure for which the land has been designated.

Procedures if designation does not proceed

5.(1) If the Minister decides not to proceed with making the proposed designation, the Minister must give a notice to the following—

- (a) each local government given notice under section 1(1);

²⁰³ Section 2.6.4 (What designations may include)

SCHEDULE 6 (continued)

- (b) each owner of land to which the proposed designation applied;
 - (c) every person who made a properly made submission about the proposed designation.
- (2) The notice must state the following—
- (a) that the Minister has decided not to proceed with the making of the proposed designation;
 - (b) the reasons for not proceeding with the making of the proposed designation.

SCHEDULE 7**PROCESS FOR MINISTERIAL DESIGNATION IF
CONSULTATION HAS PREVIOUSLY BEEN
CARRIED OUT**

section 2.6.8

Making designation

1. The Minister must make the designation.

Procedures after designation by Minister

- 2.(1) After making the designation, the Minister must give a notice to—
 - (a) each owner (other than a public sector entity) of land to which the designation applies; and
 - (b) each local government the Minister is satisfied the designation affects; and
 - (c) unless the local government has been notified under paragraph (b)—the local government nearest to the designated land.
- (2) The notice must state the following—
 - (a) that a designation has been made;
 - (b) the description of the land to which the designation applies;
 - (c) the type of community infrastructure for which the land has been designated;
 - (d) the reasons for the designation;
 - (e) any matters included as part of the designation under section 2.6.4²⁰⁴ of this Act.

²⁰⁴ Section 2.6.4 (What designations may include)

SCHEDULE 7 (continued)

(3) The Minister must also publish, in the gazette, a notice stating the following—

- (a) that a designation has been made; and
- (b) the description of the land to which the designation applies; and
- (c) the type of community infrastructure for which the land has been designated.

SCHEDULE 8

ASSESSABLE, SELF-ASSESSABLE AND EXEMPT DEVELOPMENT

section 3.1.2(2) and schedule 10, definition “**assessable development**”

PART 1—ASSESSABLE DEVELOPMENT

1. Carrying out building work that is not self-assessable development or exempt development.
2. Carrying out plumbing or drainage work that is not self-assessable or exempt development.
3. Carrying out operational work—
 - (a) (including painting or plastering) that substantially alters the appearance of a building that is a registered place under the *Queensland Heritage Act 1992*; or
 - (b) that damages, destroys or removes a protected relic under the *Queensland Heritage Act 1992*; or
 - (c) that damages, destroys or disturbs a protected area under the *Queensland Heritage Act 1992*; or
 - (d) that is excavation, disturbance or change to landscape or natural features of land that substantially alters the appearance of a registered place under the *Queensland Heritage Act 1992*; or
 - (e) for placing a pile or other structure on foreshores and in Queensland waters other than by or on behalf of a public sector entity; or
 - (f) for removing rock, stone, gravel, sand, clay, soil or similar material from foreshores and Queensland waters other than by or on behalf of a public sector entity; or
 - (g) (including reclamation of land) within foreshores and Queensland

SCHEDULE 8 (continued)

- waters other than by or on behalf of a public sector entity; or
- (h) that interferes with sand, stone, gravel, rock, clay or other earth in a control district under the *Coastal Protection and Management Act 1995*; or
 - (i) draining or allowing drainage across unallocated State land in a control district under the *Coastal Protection and Management Act 1995*; or
 - (j) constructing a canal within the meaning of the *Canals Act 1958*; or
 - (k) repairing, maintaining or renewing a structure retaining reclaimed land under the *Land Act 1994*, section 127;²⁰⁵ or
 - (l) on a State-controlled road (whether or not for road works) carried out other than by or on behalf of a public sector entity; or
 - (m) for road works in a control district under the *Coastal Protection and Management Act 1995*; or
 - (n) that are ancillary works and encroachments (not mentioned in part 3) gazetted under the *Transport Infrastructure Act 1994*, section 47(2) on a State-controlled road; or
 - (o) for an advertising device that is visible from a motorway but is beyond the boundaries of the motorway, if the assessment manager is satisfied the device is reasonably likely to create a traffic hazard for the motorway; or
 - (p) constructing a non-accredited railway (within the meaning of the *Transport Infrastructure Act 1994*, section 151) on a water course; or
 - (q) on strategic port land under the *Transport Infrastructure Act 1994*; or
 - (r) constructing miscellaneous transport infrastructure within the meaning of the *Transport Infrastructure Act 1994*; or

²⁰⁵ *Land Act 1994*, section 127 (Reclaimed land)

SCHEDULE 8 (continued)

- (s) for permitted activities in the wet tropics area under the *Wet Tropics World Heritage Protection and Management Act 1993*;
or
 - (t) that might destroy, damage, deface, excavate, expose, conceal or interfere with an item of the Queensland Estate under the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.
4. Reconfiguring a lot under the *Land Title Act 1994*, unless the plan of subdivision necessary for the reconfiguration—
- (a) is a building format plan of subdivision; or
 - (b) under the *Land Title Act 1994*, section 50(g), does not require the approval of a local government.
5. Making a material change of the use of premises (other than a material change in the character, intensity or scale of the use of the premises)—
- (a) if the premises is a registered place under the *Queensland Heritage Act 1992*; or
 - (b) within a harbour; or
 - (c) on strategic port land under the *Transport Infrastructure Act 1994*; or
 - (d) for a piggery, beef cattle lot feeding enterprise, or any noxious industry or land use within a catchment area under the *Water Resources Act 1989*; or
 - (e) prescribed under a regulation as requiring assessment in relation to contaminated land.
6. Making a material change of the use of premises in carrying out an environmentally relevant activity under the *Environmental Protection Act 1994*.

SCHEDULE 8 (continued)

PART 2—SELF-ASSESSABLE DEVELOPMENT***Division 1—Self-assessable development that may be made assessable development***

7.(1) All building work in relation to a class 10 building under the Building Code of Australia, part A3 (other than building work mentioned in part 3 of this schedule) that is—

- (a) a greenhouse, pergola, gazebo, shed or the like; or
- (b) a fence, other than swimming pool fencing required to be constructed by the *Building Act 1975*, part 4B; or
- (c) a non-load bearing aerial, antenna, flagpole, mast or tower, that is—
 - (i) if it is detached from a building—is not more than 10 m high; or
 - (ii) if it is attached to a building—is not more than 2.5 m high.

(2) Subsection (1) does not apply to building work in—

- (a) the wet tropics area under the *Wet Tropics World Heritage Protection and Management Act 1993*; or
- (b) a designated landscape area under the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*; or
- (c) a registered place under the *Queensland Heritage Act 1992*.

Division 2—Self-assessable development that may not be made assessable development or exempt development

8. Maintenance or repair of existing plumbing or drainage work (including replacement of plumbing or drainage pipes, unblocking drains and replacement of fixtures not directly connected to the water supply).

SCHEDULE 8 (continued)

9. All building work that would be assessable development if it were not carried out by or on behalf of the State, a public sector entity or a local government.

**PART 3—EXEMPT DEVELOPMENT THAT MAY
NOT BE MADE ASSESSABLE OR SELF-ASSESSABLE
DEVELOPMENT**

10. A material change of use of premises, or operational work, for an activity authorised under—

- (a) the *Mineral Resources Act 1989*, including an activity for the purpose of 1 or more of the following Acts—
- *Alcan Queensland Pty Limited Agreement Act 1965*;
 - *Aurukun Associates Agreement Act 1975*;
 - *Central Queensland Coal Associates Agreement Act 1968*;
 - *Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957*;
 - *Mount Isa Mines Agreement Act 1985*;
 - *Queensland Cement and Lime Company Agreement Act 1977*;
 - *Queensland Nickel Agreement Act 1970*;
 - *Theiss Peabody Mitsui Pty Ltd Agreements Act 1962*; or
- (b) the *Petroleum Act 1923* (other than an activity relating to the construction and operation of an oil refinery); or
- (c) the *Petroleum (Submerged Lands) Act 1982*.

11.(1) All building work in relation to a class 10 building under the

SCHEDULE 8 (continued)

Building Code of Australia, part A3 used exclusively for the purposes of a greenhouse, pergola, gazebo, shed or the like, if—

- (a) the work is to be performed on land used for agricultural, horticultural, floricultural or pastoral purposes; and
- (b) no part of the building is within 200 m of any road or within 200 m of any boundary of the land on which the building is situated.

(2) Subsection (1) does not apply to building work in—

- (a) the wet tropics area under the *Wet Tropics World Heritage Protection and Management Act 1993*; or
- (b) a designated landscape area under the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*; or
- (c) a registered place under the *Queensland Heritage Act 1992*.

12. A material change of use for a class 1 or class 2 building under the Building Code of Australia, part A3 if the use is for providing support services and short term accommodation for persons escaping domestic violence.

13. Operational work associated with—

- (a) management practices for the conduct of an agricultural use; and
- (b) weed control, pest control, fire hazard reduction and the conservation or restoration of natural areas; and
- (c) the use of premises for forestry (including the managing, felling and removal of standing timber in a native forest for a business and the planting, managing, felling and removal of standing timber in a plantation for a business and roads, drainage and other engineering works).

14. Reconfiguring a lot other than a lot within the meaning of the *Land Title Act 1994*.

15. Reconfiguring a lot under the *Land Title Act 1994*, if the plan of subdivision necessary for the reconfiguration—

SCHEDULE 8 (continued)

- (a) is a building format plan of subdivision; or
- (b) under the *Land Title Act 1994*, section 50(g), does not require the approval of a local government.

16. Development a person is directed to carry out under a notice, order or direction made under a State law.

17. Operational work or plumbing or drainage work (including maintenance or repair work) if the work is carried out by or on behalf of a public sector entity authorised under a State law to carry out the work.

18. Operational work that is digging or boring into land by an authorised person under *Coastal Protection and Management Act 1995*, section 70.

19. Operational work that is ancillary works and encroachments that are carried out in accordance with requirements specified by gazette notice by the chief executive under the *Transport Infrastructure Act 1994* or done as required by a contract entered into with the chief executive under the *Transport Infrastructure Act 1994*, section 47.

20. Operational work for the construction of a substituted railway crossing by a railway manager in response to an emergency under the *Transport Infrastructure Act 1994*, section 100.

21. Operational work performed by Queensland Rail under the *Transport Infrastructure Act 1994*, section 150.

PART 4—DEFINITIONS FOR SCHEDULE 8

22. In this schedule—

“**ancillary works and encroachments**” means the following things—

- (a) sugar tramways;
- (b) monorails;
- (c) bridges, overhead conveyors or other overhead structures;

SCHEDULE 8 (continued)

- (d) tunnels;
- (e) rest area facilities;
- (f) monuments or statues;
- (g) advertising signs or other advertising devices;
- (h) traffic and service signs;
- (i) bores, wells, pumps, windmills, pipes, channels, culverts, viaducts, tanks or dams;
- (j) cables;
- (k) means of access;
- (l) paths or bikeways;
- (m) grids or other stock facilities;
- (n) buildings, shelters, awnings or mail boxes;
- (o) poles, lighting, gates or fences.

SCHEDULE 9

CONSEQUENTIAL AMENDMENTS

section 6.3.1

LOCAL GOVERNMENT ACT 1993

1. Section 4, definition “local government Act”, ‘Local Government (Planning and Environment) Act 1990’—

omit, insert—

‘Integrated Planning Act 1997’.

2. After section 464—

insert—

‘Local laws and local law policies about development

‘464A.(1) A local law or a local law policy made on or after the commencement of the *Integrated Planning Act 1997*, chapter 3 must not establish a process about development, within the meaning of that Act, that is similar to or duplicates all or part of the processes detailed in chapter 3 of that Act.

‘(2) A local law or a local law policy, to the extent the law or policy is contrary to subsection (1), is of no effect.

‘(3) If a provision of a local law or a local law policy made before the commencement of the *Integrated Planning Act 1997*, chapter 3 deals with development, within the meaning of that Act, the provision may not be amended but may be repealed.’.

SCHEDULE 10**DICTIONARY**

section 1.3.1

“accrediting body” means a body prescribed under a regulation or specified in a planning scheme as a body that may give accreditation to private certifiers.

“acknowledgment notice” see section 3.2.3(1).

“acknowledgment period” see section 3.2.3(1).

“advice agency”, for a development application, means an entity prescribed under a regulation as an advice agency for the application, or if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

“agency’s referral day”, for a referral agency, means the day the agency receives the things mentioned in see section 3.3.3(1)(a), (b) and (c).

“appellant” means a person who appeals to the court or a tribunal under chapter 4.

“applicant”, for chapter 3, means the applicant for a development application.

“applicant”, for a development application mentioned in chapter 4, includes the person in whom the benefit of the application vests.

“applicant’s appeal period”, for an appeal—

(a) by an appellant to the court—see section 4.1.27(2); or

(b) by an appellant to a tribunal—see section 4.2.9(2).

“application”, for chapter 3, means a development application.

“approved form” see section 5.8.1.

“assessable development” means development—

(a) for all or part of the State—shown in schedule 8, part 1 as

SCHEDULE 10 (continued)

assessable development; and

- (b) for all or part of a planning scheme area—declared under the planning scheme for the area to be assessable development.

“assessing authority” means—

- (a) for development covered by a development permit—the assessment manager giving the permit; or
- (b) for assessable development not covered by a development permit—the entity that would have been the assessment manager if a development application had been made for a development permit; or
- (c) for development covered by a development permit subject to conditions imposed by a concurrence agency—the concurrence agency; or
- (d) for assessable development not covered by a development permit—an entity that would have been a concurrence agency if a development application had been made for a development permit; or
- (e) for any other matter—the local government.

“assessment manager” see section 3.1.7.

“available for inspection and purchase” see section 5.7.1.

“benchmark development sequence” means a development sequence in a planning scheme—

- (a) applying to the areas in the planning scheme where residential development is preferred over a 15 year period (or other period agreed to by the Minister); and
- (b) dividing the sequence into successive 5 year periods (or other period agreed to by the Minister); and
- (c) containing the matters prescribed under a regulation.

“building” includes—

- (a) a wall, fence or other structure; and

SCHEDULE 10 (continued)

- (b) a temporary building or temporary structure; and
- (c) any part of a building or structure; and
- (d) anything attached to or projecting from a building.

“building work” see section 1.3.5.

“capital costs”, for items of infrastructure, includes the cost of planning and designing the item.

“certified copy”, of a document, means—

- (a) for a document held by a local government—a copy of the document certified by the chief executive officer of the local government as a true copy of the document; and
- (b) for a document held by an assessment manager—a copy of the document certified by the assessment manager or the chief executive officer of the assessment manager as a true copy of the document; and
- (c) for a document held by a concurrence agency—a copy of the document certified by the chief executive officer of the concurrence agency as a true copy of the document; and
- (d) for a document held by the department—a copy of the document certified by the chief executive of the department as a true copy of the document; and
- (e) for a document held by the Minister—a copy of the document certified by the chief executive of any department the Minister has responsibility for as a true copy of the document.

“code” means a document or part of a document identified as a code in a planning instrument or identified as a code for IDAS in this Act or another Act.²⁰⁶

“code assessment” means the assessment of development by the assessment manager only against the common material and applicable

²⁰⁶ Under the *Acts Interpretation Act 1954*, section 7, “Act” includes a reference to a statutory instrument made or in force under an Act.

SCHEDULE 10 (continued)

codes (other than codes, or parts of codes, a concurrence agency is required to assess an application against).

“common material”, for a development application, means—

- (a) all the material about the application the assessment manager has received in the first 3 stages of IDAS, including any concurrence agency requirements, advice agency recommendations and contents of submissions that have been accepted by the assessment manager; and
- (b) if a development approval for the development has not lapsed—the approval

“community infrastructure” means community infrastructure stated in schedule 5.

“concurrence agency”, for a development application, means an entity prescribed under a regulation as a concurrence agency for the application, or if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

“concurrence agency condition”, for a development approval, means a condition imposed on the approval by a concurrence agency.

“consolidated planning scheme” means a document that accurately combines a local government’s planning scheme, as originally made, with all amendments made to the planning scheme since the planning scheme was originally made.

“consultation period” for—

- (a) making or amending a planning scheme—see schedule 1, section 12(2)(g); or
- (b) making or amending a planning scheme policy—see schedule 3, section 2(1)(g); or
- (c) making or amending a State planning policy—see schedule 4, section 3(3)(g); or
- (d) making a ministerial designation of land—see schedule 6, section 1(3)(f); or

SCHEDULE 10 (continued)

- (e) a review under chapter 2, part 2, division 2—see section 2.2.12(2).

“convicted” includes being found guilty, and the acceptance of a plea of guilty, by a court.

“core matter” see schedule 1, section 3.

“court” means the Planning and Environment Court continued in existence under section 4.1.1.

“currency period”, for a development approval, see section 3.5.21.

“decision making period” see section 3.5.7.

“decision notice” see section 3.5.15.

“deemed refusal” means a refusal that is taken to have happened if a decision is not made—

- (a) for a development application—by the end of the decision making period (including any extension of the decision making period); and
- (b) for a request to make a change to a development approval or for an amendment or cancellation of a condition of a development approval—within the time allowed under this Act for the decision to be made; and
- (c) for a request made by a person under section 2.6.22 or for a claim for compensation under chapter 5—by the time for making the decision has ended.

“designate” means identify for community infrastructure.

“designated land” means land designated under chapter 2, part 6.

“designation cessation day” see section 2.6.14.

“designator” means the Minister or the local government who designated land under chapter 2, part 6.

“desired standard of service” see section 5.1.2.

“development” see section 1.3.2.

SCHEDULE 10 (continued)

“development application” means an application for a development approval.

“development approval” means a decision notice or a negotiated decision notice that—

- (a) approves, wholly or partially, development applied for in a development application (whether or not the approval has conditions attached to it); and
- (b) is in the form of a preliminary approval, a development permit or an approval combining both a preliminary approval and a development permit in the one approval.²⁰⁷

“development infrastructure item” see section 5.1.1.

“development offence” means an offence against section 4.3.1, 4.3.2, 4.3.3, 4.3.4 or 4.3.5.

“development permit” see section 3.1.5(3).

“drainage work” see section 1.3.5.

“ecological sustainability” see section 1.3.3.

“enforcement notice” see section 4.3.11.

“enforcement order” see section 4.3.22(1)(a).

“entity” includes a department.

“environment” includes—

- (a) ecosystems and their constituent parts including people and communities; and
- (b) all natural and physical resources; and
- (c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony, and sense of community; and

²⁰⁷ Under section 3.5.11(3), conditions attached to a development approval are part of the approval.

SCHEDULE 10 (continued)

- (d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a), (b) and (c) or affected by those matters.

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“exempt development” is development other than assessable or self-assessable development.

“IDAS” see section 3.1.1.

“impact assessment” means the assessment (other than code assessment) of—

- (a) the environmental effects of proposed development; and
- (b) the ways of dealing with the effects.

“information request” see sections 3.3.6 and 3.3.7.

“information request period” see section 3.3.6.

“infrastructure” includes land, facilities, services and works used for supporting economic activity and meeting environmental needs.

“infrastructure agreement” see section 5.2.1.

“infrastructure charge” see section 5.1.5.

“infrastructure charges plan” see section 5.1.4.

“interim enforcement order” see section 4.3.22(1)(b).

“land” includes—

- (a) any estate in, on, over or under land; and
- (b) the airspace above the surface of land and any estate in the airspace; and
- (c) the subsoil of land and any estate in the subsoil.

“lawful use” see section 1.3.4.

SCHEDULE 10 (continued)

“**life cycle cost**” see section 5.1.3.

“**local community purpose**” means public recreation predominantly serving a local area, or other purpose prescribed under a regulation.

“**local government area**” means a part of the State established as a local government area under the *Local Government Act 1993*.

“**local planning instrument**” means a planning scheme, temporary local planning instrument or planning scheme policy.

“**lot**” see section 1.3.5.

“**material change of use**” see section 1.3.5.

“**Minister**”, in chapter 2, part 6 and in schedules 6 and 7, means any Minister of the Crown.

“**minor amendment**”, of a planning instrument, means an amendment correcting or changing—

- (a) an explanatory matter about the instrument; or
- (b) the format or presentation of the instrument; or
- (c) a grammatical error in the instrument; or
- (d) a factual matter incorrectly stated in the instrument.

“**minor change**”, for a development approval, means a change to the approval that would not, if the application for the approval were remade including the change—

- (a) require referral to additional concurrence agencies; or
- (b) cause development previously requiring only code assessment to require impact assessment; or
- (c) for a development requiring impact assessment—be likely, in the assessment manager’s opinion, to cause a person to make a properly made submission objecting to the proposal, if the circumstances allowed.

“**negotiated decision notice**” see section 3.5.17(1).

SCHEDULE 10 (continued)

“**network**”, for development infrastructure items, includes part of a network.

“**notification period**”, for a development application, see section 3.4.5.

“**operational work**” see section 1.3.5.

“**owner**”, of land, means the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for it if it were let to a tenant at a rent.

“**party**”, for an appeal to the court or a tribunal, means the appellant, the respondent, any co-respondent for the appeal and, if the Minister is represented in the appeal, the Minister.

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

“**planning instrument**” means a State planning policy, planning scheme, temporary local planning instrument or planning scheme policy.

“**planning scheme**” see section 2.1.1.

“**planning scheme area**” see section 2.1.2.

“**planning scheme policy**” see section 2.1.16.

“**plumbing work**” see section 1.3.5.

“**preliminary approval**” see section 3.1.5(1).

“**premises**” means—

- (a) a building; or
- (b) land (whether or not a building is situated on the land).

“**principal submitter**”, for a properly made submission about a development application, means—

- (a) if a submission is made by 1 person—the person; or
- (b) if a submission is made by more than 1 person—the person identified as the principal submitter or if no person is identified as the principal submitter the submitter whose name first appears on the submission.

SCHEDULE 10 (continued)

“private certifier” see section 5.3.3.

“properly made application” see section 3.2.1(6).

“properly made submission” means a submission that—

- (a) is in writing and is signed by each person who made the submission; and
- (b) is received on or before the last day of—
 - (i) if the submission is about a development application—the notification period; or
 - (ii) in any other case—the consultation period or preliminary consultation period; and
- (c) states the name and address of each person who made the submission; and
- (d) states the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (e) is made—
 - (i) if the submission is about a development application—to the assessment manager; or
 - (ii) if the submission is about a proposed planning scheme, a proposed planning scheme policy or a proposed amendment of a planning scheme or a proposed amendment of a planning scheme policy—to the local government; or
 - (iii) if the submission is about a proposed planning scheme or a proposed amendment of a planning scheme being carried out by the Minister—to the Minister; or
 - (iv) if the submission is about a review under chapter 2, part 2, division 2—to the chief executive; or
 - (v) if the submission is about a proposed State planning policy or a proposed amendment of a State planning policy—to the Minister; or

SCHEDULE 10 (continued)

- (vi) if the submission is about a ministerial designation—to the Minister.

“public office”, of a local government, means the premises kept as its public office under the *Local Government Act 1993*, section 37.²⁰⁸

“public sector entity” means—

- (a) a department or part of a department; or
- (b) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.

“reconfiguring a lot” see section 1.3.5.

“referral agency” means a concurrence agency or advice agency.

“referral agency’s assessment period” see section 3.3.14.

“referral agency’s response” see section 3.3.16.

“referral assistance” see section 3.3.10.

“referral coordination” see section 3.3.5.

“regional planning advisory committee” means a regional planning advisory committee established under section 2.5.2.

“repealed Act” means the *Local Government (Planning and Environment) Act 1990*.

“replacement private certifier” see section 5.3.12(1).

“requesting authority” see section 3.3.8(1).

“reviewer’s report” means a report prepared by a reviewer under section 2.2.17(1).

²⁰⁸ *Local Government Act 1993*, section 37 (Site of public office)

SCHEDULE 10 (continued)

“**road**” has the same meaning as in the *Transport Infrastructure Act 1994*.²⁰⁹

“**self-assessable development**” means development—

- (a) for all or part of the State—shown in under schedule 8, part 2 as self-assessable development; and
- (b) for all or part of a planning scheme area—declared under the planning scheme for the area to be self-assessable development.

“**show cause notice**” see section 4.3.9.

“**stage**” of IDAS, means a stage of the IDAS process mentioned in section 3.1.9.

“**State-controlled road**” has the same meaning as in the *Transport Infrastructure Act 1994*.²¹⁰

“**State interest**” means—

- (a) an interest that, in the Minister’s opinion, affects an economic or environmental interest of the State or a region; or
- (b) an interest in ensuring there is an efficient, effective and accountable planning and development assessment system.

“**State planning policy**” see section 2.4.1.

“**submitter**”, for a development application, means a person who makes a properly made submission about the application.

²⁰⁹ Under the *Transport Infrastructure Act 1994*—

‘**“road”** means—

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d).’

²¹⁰ Under the *Transport Infrastructure Act 1994*—

‘**State-controlled road**’ means a road controlled by a road authority under chapter 5, part 5, division 2, subdivision 2, see section 50.’

SCHEDULE 10 (continued)

“submitter’s appeal period” see section 4.1.28(2).

“superseded planning scheme”, for a planning scheme area, means the planning scheme, or any related planning scheme policies, in force immediately before the planning scheme or policies, under which a development application is made, were adopted or the amendment, creating the superseded planning scheme, was adopted.

“temporary local planning instrument” see section 2.1.9.

“transitional development application” means—

- (a) for development that would not have required a development permit under a superseded planning scheme but requires a development permit under the planning scheme in force at the time the application is made, a development application—
 - (i) in which the applicant advises that the applicant intends to carry out development under the superseded planning scheme; and
 - (ii) made only to a local government as assessment manager; and
 - (iii) made within 2 years after the day the planning scheme or planning scheme policy creating the superseded planning scheme was adopted or the amendment creating the superseded planning scheme was adopted.
- (b) for any other development, a development application—
 - (i) in which the applicant requests the assessment manager to assess the application under a superseded planning scheme; and
 - (ii) made only to a local government as assessment manager; and
 - (iii) made within 2 years after the day the planning scheme or planning scheme policy creating the superseded planning scheme was adopted or the amendment creating the superseded planning scheme was adopted.

SCHEDULE 10 (continued)

“tribunal” means a building and development tribunal established under section 4.2.1.

“use”, in relation to premises, includes any use incidental to and necessarily associated with the use of the premises.