Queensland

LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1990

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Information about this reprint

This Act is reprinted as at 6 January 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland

LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1990

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LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1990

[as amended by all amendments that commenced on or before 6 January 1998]

An Act to provide for town planning and related environmental matters in local government areas, including the City of Brisbane, and for related purposes

PART 1—PRELIMINARY

Short title

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

Objectives

1.3 The objectives of the Act are—

(a) to provide a code by which a local government or the Minister may undertake the planning of an area to facilitate orderly development and the protection of the environment; and

(b) to provide an adequate framework for a person to apply for approval in respect of a development proposal and to provide for appropriate appeal rights in respect thereof.

Interpretation

1.4 In this Act—

"access", for an allotment, means the practical means of entry for persons and vehicles onto the allotment—

(a) from a constructed road abutting the allotment; or

(b) by an easement permitted by a local government under section 5.12; or

(c) if the allotment is a lot included in a community titles scheme (**"scheme A"**)—in either or both of the ways mentioned in paragraphs (a) and (b), or in either or both of the ways mentioned in paragraphs (a) and (b) together with either or both of the following ways—

(i) from common property for scheme A;

(ii) from common property for a community titles scheme for which scheme A is a subsidiary scheme.

"adjoining allotment", for a particular allotment (**"allotment A"**), means—

(a) an allotment that has a common boundary with allotment A, (whether or not the boundary is measurable); or

(b) if allotment A has a common boundary with common property for a community titles scheme and is not itself included in the scheme land for the scheme—the scheme land.

"adjoining owner", in relation to a particular allotment, means—

(a) where an adjoining allotment is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—the primary thoroughfare body corporate within the meaning of the relevant Act;

(aa) if an adjoining allotment is scheme land for a community titles scheme—the body corporate for the scheme;

(b) where an adjoining allotment is an allotment in respect of which a time sharing scheme has been implemented and the name and address of a person has been notified pursuant to the Local Government Act, section 698 (Notice of time share scheme to local government)—that person;

(c) where an adjoining allotment is land granted in trust or reserved and set apart and placed under the control of trustees pursuant to the *Land Act 1994*—the trustees of that land;

(d) in all other cases—the owner of an adjoining allotment.

"allotment"—

(a) means a single parcel of land—

(i) the current boundaries of which are defined on a plan of survey deposited in the Department of Geographic Information or registered under the *Land Title Act 1994*;

(ii) leased or intended to be leased as a miner's homestead lease under the *Miners' Homestead Leases Act 1913*;

(aa) includes a leased part of the common property for a community titles scheme, except if the part is leased for a term of 5 years or less without a right of renewal;

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

"amend", in relation to a planning scheme, includes to add to, to omit, to alter or to modify.

"application" means an application in writing.

"appropriate fee" means the fee—

(a) determined by resolution by a local government in respect of applications and requests of a particular type; and

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

"approval" means—

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

(b) in respect of the local government's approval—approval, with or without conditions, in writing.

"BCCM Act" means the Body Corporate and Community Management Act 1997.

"body corporate", for a community titles scheme, means the body corporate under the BCCM Act for the scheme.

"building"—

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

(b) includes a part of a building.

"City of Brisbane Act" means the *City of Brisbane Act 1924*.

"common property", for a community titles scheme, means common property under the BCCM Act for the scheme.

"community titles scheme" means a community titles scheme under the BCCM Act

"consolidated planning scheme" means a planning scheme approved by the Governor in Council pursuant to section 2.17.

"council" means local government.

"Court" means the Planning and Environment Court.

"Crown" means the Crown in right of the State.

"Crown land" means—

(a) land that is not alienated by the Crown as to any estate or interest therein;

(b) land for which a permit to occupy has issued under the *Land Act 1994* and land for which a lease has issued under the *Irrigation Areas (Land Settlement) Act 1962*;

(c) land that is held by any person representing the Crown or by a trustee in trust for the Crown;

(d) a road or land that is reserved and set apart or held in trust under the *Land Act 1962* for a public purpose;

(e) any other land, or any building or other structure or part thereof, that is occupied by the Crown or by any person representing the Crown;

(f) harbour lands or industrial lands within the meaning of the *Harbours Act 1955*, section 62A (other than land that is the subject of a sale or is leased for purposes other than harbour purposes);

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

"designated development" has the meaning given by section 8.2(15).

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

"elected representatives", in relation to an allotment, means the member of the Legislative Assembly who represents the district in which the allotment is situated and—

(a) if the area in which the allotment is situated is divided into divisions or electoral wards—the member who is, or the members who are, elected to the council to represent the division or ward in which the allotment is situated; or

(b) if the area in which the allotment is situated is not divided into divisions or electoral wards—all council members, other than a member who, for the purposes of the application of this definition to a provision of this Act in which the term is used—

(i) has given the council written notice to the effect that the member does not wish to be treated as an elected representative for the purposes of the provision; and

(ii) has not withdrawn the notice.

"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, which contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony, and sense of community; and

(d) the social, economic, aesthetic and cultural conditions which affect the matters referred to in paragraphs (a), (b) and (c) or which are affected by those matters.

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

(a) a description of the proposal; and

(b) the terms of reference which set out the matters and things to be assessed in the conduct of the environmental impact study; and

(c) a statement of the potential environmental impacts of the proposal; and

(d) such information collected and assessed in an environmental impact study which substantiates the findings referred to in paragraph (c).

"erect" includes—

(a) erect or commence or continue to erect; or

(b) do, or commence or continue to do any work in the course of or for the purpose of erecting; or

(c) perform any structural work or make or do any alteration, addition or rebuilding that increases the gross floor area of a building; or

(d) move from one position on an allotment to another position on or partly on the same allotment or another allotment; or

(e) re-erect, with or without alteration, on or partly on the same or another allotment; or

(f) where a building or structure is located on more than 1 allotment—

(i) move to another position on the same allotments or any of them or to another allotment or allotments; or

(ii) re-erect with or without alteration on another position on the same allotments or any of them or on another allotment or allotments.

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

"gross floor area" means the sum of the floor areas (inclusive of all walls, columns and balconies, whether roofed or not) of all stories of every building located on a site, excluding the areas (if any) used for building services, a ground floor public lobby, a public mall in a shopping centre, and areas associated with the parking, loading and manoeuvring of motor vehicles.

"harbour purposes" means a use—

(a) directly in connection with the management and operation of a harbour for the purposes of, or in connection with, the transport of people, freight or commodities; or

(b) for industry or other undertakings which require close geographical proximity to that harbour.

"interim development control provisions" means—

(a) those regulations approved pursuant to section 2.22; and

(b) those local laws continued in force and effect pursuant to section 8.10(5);

for the purpose of regulating development in a proposed planning scheme area in a particular local government area pending the introduction of a planning scheme.

"Local Government Act" means the *Local Government Act 1993*.

"local planning policy" means a planning policy made under section 1A.4.

"member of the Court" means the person who, for the time being, constitutes the Court.

"newspaper" means a newspaper circulating in the relevant area or that part of that area to which a proposal relates.

"notify" means to notify in writing and where applicable, in accordance with section 4.1(4).

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

(a) at the office of the local government; and

(b) where approved by the chief executive of the department—at a

place within 1 km of that office; and

(c) for the purposes of section 2.18(6), also at the office of the chief executive.

"owner", in relation to an allotment—

(a) means—

(i) where an allotment is subdivided under the *Building Units and Group Titles Act 1980*—the body corporate;

(ii) where an allotment is being purchased from the Crown for an estate in fee simple pursuant to the *Land Act 1994*—the purchaser;

(iii) in all other cases—the person for the time being entitled to receive the rent of the allotment in respect of which the word is used or would be entitled to receive the rent thereof if the allotment were let to a tenant at a rent;

(b) includes the Crown.

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

"permissible use" means a use of premises which may only be undertaken pursuant to a planning scheme with the approval of the local government granted pursuant to section 4.13.

"permitted use" means a use of premises which may be undertaken pursuant to a planning scheme without the approval of the local government notwithstanding that the local government may require an application for the setting of conditions or the issue of a certificate of compliance or in respect of any other matter.

"person" includes a body of persons, whether incorporated or unincorporated.

"planning scheme" means a scheme for town planning which conforms with section 2.1 and is approved by the Governor in Council.

"planning scheme area" means the area included within a planning scheme.

"premises" includes land, buildings and other structures and any part thereof.

"principal objector" means—

(a) where an objection is duly lodged by 1 person—that person;

(b) where an objection (whether in the form of a letter or petition) is duly lodged by more than 1 person—the objector identified as the principal objector on the objection or, where no person is so identified, each objector whose name first appears on each page of the objection.

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

"property description" means the usual form a relevant registering authority uses to describe land within its register.

"public utility" means an installation or undertaking for—

(a) the public supply of water, hydraulic power, electricity or gas; or

(b) the provision to the public of telephone services or sewerage or drainage works; or

(c) transport services operated by a statutory corporation.

"referral agency" has the meaning given by section 8.2(15).

"registering authority" means—

(a) the registrar of titles; or

(c) the Queensland Housing Commission constituted under the *State Housing Act 1945*; or

(d) the Harbours Corporation constituted under the *Harbours Act 1955*; or

(e) the relevant port authority constituted or deemed to have been constituted under the *Transport Infrastructure Act 1994* or other relevant statutory body which has the powers, authorities, functions and duties of a port authority conferred or imposed on it by any Act; or

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

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

"relevant study" has the meaning given by section 8.2(15).

"road" means—

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

(b) a bridge or ferry and the approaches thereto.

"scheme land", for a community titles scheme, means scheme land under the BCCM Act for the scheme.

"sewerage headworks" means those works, structures or equipment determined by a local government pursuant to section 6.2(6)(b)(ii) to be sewerage headworks.

"sewerage works external"—

(a) means those works, structures or equipment necessary for the purpose of connecting sewerage works internal to a local government sewerage scheme;

(b) does not include sewerage headworks or sewerage works internal.

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

"site contamination report" means a written report given pursuant to section 8.3A on the suitability of land for a proposed use.

"specified use" has the meaning given by section 8.4(3).

"State planning policy" means a planning policy made under section 1A.1.

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

"structure" includes any building, wall, fence or other structure or anything affixed to or projecting from any building, wall, fence or other structure and any part of a structure.

"subdivision" means the division of land into parts by means of—

(a) sale, transfer or partition; or

(b) any agreement, dealing or instrument inter vivos (other than a lease for any term not exceeding 5 years without the right of renewal) rendering different parts thereof immediately available for separate disposition or separate occupation; or

(c) the creation of an indefeasible title under the *Land Title Act 1994* for a part of the land; or

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

"subsidiary scheme" means a subsidiary scheme under the BCCM Act.

"town planning" includes all matters necessary or expedient for securing the improvement, orderly development, healthfulness, amenity, embellishment, convenience, conservation or commercial advancement of an area or a part of an area.

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

"void", in relation to the approval of an application, means the approval ceases to have effect.

"water supply headworks" means those works, structures or equipment determined by a local government pursuant to section 6.2(6)(b)(ii) to be water supply headworks.

"water supply works external"—

(a) means those works, structures or equipment necessary for the purpose of connecting water supply works internal to a local government water supply scheme;

(b) does not include water supply headworks or water supply works internal.

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

"working day" means a day when the office of the relevant local government (or where applicable, the chief executive of the department) is scheduled to be open for the conduct of business.

"zone" means 1 of the divisions into which a planning scheme area may be divided by the planning scheme for the purposes thereof.

Special provision relating to certain orders in council made under this Act

1.5(1) This section applies to an order in council made under—

(a) section 2.15 (Approval of planning scheme by Governor in Council); or

(b) section 2.17 (Consolidated planning scheme); or

(c) section 2.18 (Amendment of a planning scheme by Minister or local government); or

(d) section 2.20 (Approval of planning scheme amendment by Governor in Council); or

(e) section 2.21 (Planning scheme may include Crown land); or

(f) section 2.22 (Interim development control); or

(g) section 4.5 (Approval of planning scheme amendment by Governor in Council); or

(h) section 4.8 (Approval of rezoning of land in stages by Governor in Council); or

(i) section 4.10 (Approval of subsequent staged rezonings by Governor in Council).

(2) An order in council to which this section applies is not subordinate legislation.

(3) However, the order in council must be notified in the gazette.

(4) Subsection (3) is sufficiently complied with if there is published in the gazette a notice of—

(a) the making of the order in council; and

(b) a place or places where a copy of the order in council is open to inspection; and

(c) a place or places where a copy of the order in council can be obtained (by purchase or otherwise).

(5) Publication in the gazette of the order in council is also sufficient compliance with subsection (3).

(6) This section has effect despite the *Statutory Instruments Act 1992*, section 10(b).

PART 1A—PLANNING POLICIES

State planning policies

1A.1(1) The Governor in Council may, by order in council, make planning policies in relation to town planning and related environmental matters that are, in the Governor in Council's opinion, of State significance.

(2) A State planning policy applies to the whole of the State except so far as it otherwise provides.

Notification, tabling, disallowance etc. of State planning policies

1A.2 Orders in council making State planning policies are declared to be—

(a) subordinate legislation; and

(b) exempt instruments for the purposes of the *Legislative Standards Act 1992.*

Numbering of State planning policies etc.

1A.3(1) State planning policies, and other statutory instruments prescribed by regulation for the purposes of this section, must be numbered in accordance with subsection (2).

(2) The instruments must be numbered—

(a) in a regular arithmetical series for each calendar year, beginning with the number 1; and

(b) in the order in the year in which they are made.

(3) A State planning policy may be cited by reference to the year in which it was made and its number.

Local planning policies

1A.4(1) A local government may, by resolution, make planning policies that are not inconsistent with this Act.

(2) As soon as practicable after a local planning policy is made, full details of the policy, and the date it was made, are to be recorded in a register called the **"register of local planning policies"** to be kept by the local government.

(3) The chief executive officer is to give public notice in a newspaper of the title of the local planning policy and—

(a) if the policy is new—its purport; and

(b) in any other case—the purport of the amendment or repeal.

(4) On the day of commencement of a new planning scheme (other than a consolidated scheme under section 2.17), all local planning policies existing immediately before the commencement of the new planning scheme cease to have effect.

(5) Each local planning policy (other than a local planning policy mentioned in section 6.2 or 8.2(15)) is to have application throughout the planning scheme area.

(6) If a local government had, before the commencement of this section—

(a) adopted a planning policy; or

(b) recorded details about the adoption of a planning policy in a register called the **"register of planning policies"**;

then—

(c) the planning policy is taken to have been made by the local government under this section as a local planning policy; and

(d) the register forms part of the register mentioned in subsection (2) that is to be kept by the local government.

PART 2—PLANNING SCHEMES

Composition of planning scheme

2.1 A planning scheme is to consist of—

(a) planning scheme provisions for the regulation, implementation and administration of the planning scheme;

(b) zoning maps and any regulatory maps;

(c) a strategic plan;

(d) a development control plan (if any);

(e) any amendment approved by the Governor in Council in respect of the planning scheme.

Planning scheme provisions

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

(a) the designation of each zone;

(b) a statement of the intent of each of the zones;

(c) requirements for—

(i) the use of premises; and

(ii) the erection of structures; and

(iii) the subdivision of land;

(d) administrative requirements for—

(i) the form of making of applications; and

(ii) matters for consideration in deciding applications; and

(iii) the keeping of records and registers in respect of the planning scheme; and

(iv) matters relating to offences; and

(v) other matters necessary for the proper and orderly administration of the planning scheme.

Zoning and regulatory maps

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

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

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

Strategic plan

2.4 A strategic plan is to include—

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

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

(c) criteria for the implementation of the plan.

Development control plan

2.5 A development control plan is to include—

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

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

(c) criteria for the implementation of the plan.

Supporting documents to a planning scheme

2.6(1) Each planning scheme is to be supported by—

(a) planning studies; and

(b) local planning policies (if any).

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

Planning studies

2.7(1) A planning study is to be prepared in connection with the formulation of each—

(a) planning scheme; and

(b) strategic plan; and

(c) development control plan.

(1A) In preparing the planning study, the local government concerned must have regard to relevant State planning policies.

(1B) The planning study must include a statement about the extent to which the local government had regard to State planning policies.

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

(a) topography;

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

(c) regional land use patterns;

(d) public utility infrastructure systems and transport systems;

(e) regional or local economic and employment factors;

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

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

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

Inspection of planning documents

2.9(1) If a planning scheme is in force in relation to a local government area, the local government must keep open to inspection a copy of—

(a) each State planning policy that is in force; and

(b) each planning scheme that is in force in relation to the area; and

(c) its register of local planning policies (if any); and

(d) the planning study prepared in relation to each planning scheme that is in force in relation to the area.

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

(3) The chief executive must keep open to inspection at an office of the department at all times during which the office is open for the transaction of public business a copy of—

(a) each State planning policy that is in force; and

(b) each planning scheme that is in force in the State; and

(c) the planning study prepared in relation to each planning scheme that is in force in the State.

(4) Each local government is to retain all its superseded planning

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

Preparation of planning scheme

2.10(1) A local government may prepare a planning scheme for its area or a part of its area.

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

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

Preparation of strategic plan or development control plan

2.10A Before a local government prepares—

(a) a strategic plan; or

(b) a development control plan; or

(c) an amendment of a strategic plan; or

(d) an amendment of a development control plan;

it must—

(e) adopt a resolution to do so and, in the case of the proposed preparation of a development control plan, define in the resolution the area that it is proposed to include in the development control plan; and

(f) send a copy of the resolution to the chief executive; and

(g) if the resolution concerns a development control plan or an

amendment of a development control plan—send to the chief executive a map delineating the area to be covered by the development control plan or amended development control plan.

Strategic plan—exemption

2.11(1) A local government may apply to the Minister for an exemption from the requirement that it must prepare a strategic plan as part of a planning scheme.

(2) If the Minister grants the application, section 2.1(c) does not apply to the planning scheme.

Powers of the Minister with regard to certain matters

2.12(1) The Minister may direct a local government to prepare a planning scheme for all or part of its area.

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

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

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

(5) The power of the Minister to have a planning scheme prepared pursuant to subsection (4) includes the power to recommend the introduction of interim development control provisions for the proposed planning scheme area pursuant to section 2.22; and a request made under subsection (4) is to be taken to be an application made by the local government in accordance with section 2.22.

(6) Preparation of a planning scheme pursuant to subsection (4) is to be limited to the preparation of documentation which is acceptable to the local government as a statement of its planning proposals for the area and upon completion of the documentation that planning scheme is to be taken to be a

planning scheme prepared by the local government for the purposes of giving public notice pursuant to section 2.14.

Certain town planning work to be undertaken by certificated town planner

2.13(1) Subject to subsection (2), each local government is to ensure that the person who is responsible to it for—

(a) the preparation of its planning scheme;

(b) the preparation of amendments to its planning scheme pursuant to section 2.18(2);

(c) the performance of work required to be performed by the local government's town planner pursuant to a planning scheme;

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

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

Public notice of planning schemes

2.14(1) Before application is made for approval of a planning scheme by the Governor in Council, a local government is, by advertisement published at least once in the gazette and in a newspaper, to give public notice in the prescribed manner of its intention to make the application.

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

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

(4) Any person may, on or before the last day for the receipt of

submissions, request the local government to supply the person with a copy of the proposed planning scheme and supporting documents or part thereof (other than any relevant maps of the planning scheme) upon payment of such amount as the local government may determine but not exceeding the cost of printing, reproducing or otherwise obtaining the copy and, if the copy is posted, of posting the copy.

(4A) Where a request is made, the local government is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

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

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

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

(b) is to be addressed to and lodged with the chief executive officer;

(c) is to state—

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

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

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

Approval of planning scheme by Governor in Council

2.15(1) An application by a local government for the approval of the Governor in Council of a planning scheme is to be made to the chief executive within 90 days after the last day for the receipt of submissions referred to in section 2.14.

(1A) The local government may, by resolution, extend or further extend the period mentioned in subsection (1).

(1B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

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

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

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

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

(d) the representations by the local government in respect of those submissions.

(5) The Governor in Council may either—

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

(b) refuse to approve the planning scheme.

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

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

(8) The approval of a planning scheme is to be given by order in council.

(9) The planning scheme becomes the planning scheme for the area concerned, and has the force of law, on notification in the gazette of the making of the order in council.

(10) The chief executive is to record the date of approval on any supporting documents mentioned in subsection (2)(a).

Local government to administer planning scheme

2.16(1) A local government is to implement, administer and enforce every planning scheme approved for its area or part of its area and is bound thereby.

(2) A local government is, within 7 years following the date of publication or notification of each order in council last notifying approval of a planning scheme (other than an amendment of that planning scheme) within its area, to review that planning scheme (including all the amendments thereto) to determine the suitability of that planning scheme for the area to which it applies.

(3) Where a local government, by resolution, determines pursuant to subsection (2) that a planning scheme is suitable for continued operation, it is to report to the chief executive accordingly.

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

(a) prepare a new planning scheme; or

(b) prepare a consolidated planning scheme; or

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

(5) A local government is, by resolution, to determine to prepare a new planning scheme to supersede the existing planning scheme within 10 years following the date of publication or notification of each order in council last notifying approval of a planning scheme (other than an amendment of that planning scheme) within its area.

(6) The local government may, by resolution, extend or further extend the period mentioned in subsection (5).

(7) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

Consolidated planning scheme

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

(2) A consolidated planning scheme prepared by a local government under subsection (1) is to be submitted to the chief executive together with a certificate by the chief executive officer stating that the consolidated planning scheme accurately reproduces the existing planning scheme.

(3) Upon receipt of a consolidated planning scheme under subsection (2), the chief executive of the department is to examine the consolidated planning scheme submitted by the local government to check its accuracy and to correct it if it is inaccurate.

(4) The Governor in Council may approve the consolidated planning scheme by order in council.

(5) The consolidated planning scheme becomes the planning scheme for the area concerned, and supersedes the existing planning scheme for the area without any change to the rights and obligations of any person under the existing planning scheme, on notification in the gazette of the making of the order in council.

Amendment of a planning scheme by Minister or local government

2.18(1) If the Minister has proposed under this section that a planning scheme be amended, the planning scheme may be amended by the Governor in Council by order in council.

(2) A local government may propose to amend a planning scheme—

(a) by including an additional area in the planning scheme area and by applying land use controls to that area consistent with the planning scheme; or

(b) by including a strategic plan or amending an existing strategic plan; or

(c) by including a development control plan or extending the

designated area of application of an existing development control plan; or

(ca) by including a regulatory map; or

(d) by amending the provisions referred to in section 2.2 where those amendments are required pursuant to a review under section 2.16; or

(e) in respect of 3 or more allotments, by—

(i) zoning or rezoning land other than for the purposes of a development control plan; or

(ii) amending a regulatory map; or

(iii) amending a development control plan map; or

(f) in respect of any number of allotments, by zoning or rezoning land for the purposes of a development control plan.

(3) A local government may propose to amend a planning scheme—

(a) by excluding areas from the planning scheme area;

(b) by amending the provisions referred to in section 2.2 where those amendments are not required pursuant to a review under section 2.16;

(c) in respect of 1 or 2 allotments, by—

(i) zoning or rezoning land other than for the purposes of a development control plan; or

(ii) amending a regulatory map;

having first considered the matters specified in section 2.19(2);

(d) by amending a development control plan other than by extension of its designated area of application (having first considered the matters specified in section 2.19(2)).

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

(4) Where the Minister or a local government (in this section and sections 2.19 and 2.20 called the **"proponent"**) proposes to amend a

planning scheme, the proponent is, by advertisement published at least once in a newspaper, to give public notice of the proposal in the manner and form prescribed.

(4A) If the proponent is a local government, it must give to the chief executive a written notice setting out the details of, and the reasons for, the proposal before it gives public notice of the proposal under subsection (4).

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

(a) by posting a notice on the relevant land or as prescribed; and

(b) by serving notice on the owner of the relevant land, on all adjoining owners, and on elected representatives.

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

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

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

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

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

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

(8A) Where a request is made, the proponent is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

(9) A person may on or before the last day for the receipt of submissions

make a submission in respect of the proposal.

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

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

(b) is to be addressed to and lodged with the chief executive officer (or where the Minister is the proponent with the chief executive of the department);

(c) is to state—

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

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

Assessment of proposed planning scheme amendment

2.19(1) A proponent is to forthwith consider every submission made in accordance with section 2.18(9) and (10).

(1A) If the proposal is a proposal to which section 2.18(2), (3) or (3A) applies, the proponent must have regard to relevant State planning policies.

(2) Where the proposal is a proposal in respect of section 2.18(3)(d) (and applies to a particular allotment), or (3)(c) or (3A), the proponent is to assess each of the following matters to the extent they are relevant to the proposal—

(a) whether the proposal, if approved, or buildings erected in conformity with the proposal, or both the proposal, if approved, and the buildings so erected would—

(i) create a traffic problem, increase an existing traffic problem or detrimentally affect the efficiency of the existing road network;

(ii) detrimentally affect the amenity of the neighbourhood;

(iii) create a need for increased facilities;

(b) the balance of zones in the planning scheme area as a whole or

that part of that area within which the relevant land is situated and the need for the proposed planning scheme amendment;

(d) whether the land or any part thereof is so low-lying or so subject to inundation as to be unsuitable for use for all or any of the permitted or permissible uses in the zone in which the land is proposed to be included;

(e) whether, having regard to the permitted or permissible uses of the land and the potential for subdivision in the zone in which it is proposed to be included, water, gas, electricity, sewerage and other essential services should be made available to the land and to each separate allotment thereof if the land were subsequently subdivided;

(f) the impact of the proposal on the environment (whether or not an environmental impact statement has been prepared);

(g) the situation, suitability and amenity of the land in relation to neighbouring localities;

(i) where the land is land prescribed pursuant to section 8.3A, the site contamination report in respect of the land;

(j) such other matters, having regard to the nature of the application, as are relevant.

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

(a) should be proceeded with (with or without conditions); or

(b) with certain modifications resulting from submissions made, should be proceeded with; or

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

(4) The proponent must decide that the proposal should not be proceeded with if—

(a) the proposal, even with all appropriate conditions or modifications, conflicts with any relevant strategic plan or

development control plan; and

(b) there are not sufficient planning grounds to justify proceeding with the proposal despite the conflict.

Approval of planning scheme amendment by Governor in Council

2.20(1) An application by a local government, as proponent, for the approval of the Governor in Council of a proposal to amend a planning scheme is to be made to the chief executive within 60 days after the last day for the receipt of submissions referred to in section 2.18.

(1A) The local government may, by resolution, extend or further extend the period mentioned in subsection (1).

(1B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

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

(a) a copy of the proposal which was open to inspection pursuant to section 2.18, including the relevant maps (if any);

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

(c) copies of all public notices given by the local government pursuant to section 2.18(4) and a copy of the notice served pursuant to section 2.18(5)(b) in respect of the proposal with sufficient information to establish the manner in which the notices were given;

(d) where relevant, a statement (certified as to its accuracy by the chief executive officer) setting out the information contained in the public notice of the proposal posted on land pursuant to section 2.18(5);

(e) a certificate by the chief executive officer that the public notice

procedures referred to in section 2.18 have been complied with;

(f) a copy of each submission duly made pursuant to section 2.18(9) and (10);

(g) the representations by the local government in respect of those submissions;

(h) the assessment by the local government (where applicable) of the matters set forth in section 2.19(2) and copies of any reports submitted in respect thereof;

(i) details of any modifications made pursuant to section 2.19(3)(b).

(6) The Governor in Council may either—

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

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

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

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

(9) The approval of an amendment of a planning scheme is to be given by order in council.

(10) The order in council is to identify each amendment that is approved.

(11) The planning scheme as amended becomes the planning scheme for the area concerned, and has the force of law, on notification in the gazette of the making of the order in council.

(12) Any conditions imposed under section 2.19(3) (as subsequently amended under this Act) attach to the land and are binding on successors in title.

Planning scheme may include Crown land

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

(2) Notwithstanding subsection (1)—

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

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

(i) the planning scheme; and

(ii) any agreement made between the relevant local government and any person who previously held an interest in the premises and that is in force at the time when the premises is or becomes Crown land; and

(iii) any condition imposed by the local government in respect of the use of those premises and that is in force at the time when those premises is or becomes Crown land;

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

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

(3) If—

(a) a road is closed or proposed to be closed; and

(b) the Governor in Council is of the opinion that—

(i) the land comprising the closed road, or the road proposed to be closed, should be included in zones consistent with the zoning of adjoining lands; and

(ii) the proposed zoning would not substantially affect the public in an adverse way;

the Governor in Council may, despite the fact that the public notice provisions of section 2.18 have not been complied with, determine, by order in council, that the land be zoned in the way specified in the determination.

(3A) If the road has not been closed, the order in council takes effect on the closing of the road.

(4) Nothing in this section is to be construed to derogate from the *Mineral Resources Act 1989*, section 319.

Interim development control

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

(2) The Governor in Council may, by order in council, approve—

(a) the whole of the part of the regulation mentioned in subsection (1) if the Governor in Council considers that the whole of the part is necessary and appropriate; or

(b) that part of the part of the regulation mentioned in subsection (1) if the Governor in Council considers that that part is necessary and appropriate.

(2A) The approval may be limited to a specified part of the area mentioned in subsection (1).

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

(4) Upon the coming into force of those interim development control provisions the local government is to be responsible for the administration of those provisions.

Offences and orders (Magistrates Court)

2.23(1) A person who—

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

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

commits an offence against this Act.

Maximum penalty—33 penalty units.

(1A) For the purposes of this section, a planning scheme includes—

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

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

and currently in force.

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

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

(a) other persons (with their consent); or

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

having like or common interests in those proceedings.

(2B) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(3) A person who after conviction of an offence defined in subsection (1) (the **"previous conviction"**) continues to fail to comply with the

requirement in respect of which the person incurred the previous conviction commits an offence against this Act.

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

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

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

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

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

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

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

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

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

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

Maximum penalty—165 penalty units or imprisonment for 12 months.

(8A) Where a body corporate commits an offence under subsection (8), every person who is an executive officer of the body corporate is to be taken to have committed the offence and may be prosecuted and punished for the offence unless that person proves, the onus of which lies on that person, that—

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

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

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

(9A) For the purpose of subsection (9), the Local Government Act, section 663 (Cost of work a charge over land) applies to a local government as if—

(a) the Brisbane City Council were a local government under that section; and

(b) the reference in that section to section 661 (Performing work for owner or occupier) were a reference to this section.

(10) In this section—

"court" means a Magistrates Court constituted in accordance with the *Justices Act 1886.*

Declarations and orders (Planning and Environment Court)

2.24(1) Any person may bring proceedings in the Court for a declaration in respect of matters referred to in subsection (3) or for an order to remedy or restrain the commission of an offence defined in section 2.23(1), whether or not any right of that person has been or may be infringed by, or as a consequence of, that offence.

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

(a) other persons (with their consent); or

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

having like or common interests in those proceedings.

(2A) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

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

(a) any question of construction arising under a planning scheme; or

(b) any act, matter or thing to be undertaken in respect of the planning scheme or the use of land; or

(c) any offence defined in section 2.23(1).

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

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

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

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

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

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

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

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

Maximum penalty—165 penalty units or imprisonment for 12 months.

(7A) Where a body corporate commits an offence under subsection (7), every person who is an executive officer of the body corporate is to be taken to have committed the offence and may be prosecuted and punished for the

offence unless that person proves, the onus of which lies on that person, that—

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

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

(8) Where a person fails to comply with an order made by the Court pursuant to subsection (4) and that order specifies that the failure to comply constitutes a public nuisance, the local government is empowered to undertake such work as may be necessary to remove the nuisance, and all expenses incurred by the local government may be recovered from that person by the local government as a debt due to the local government.

(9) For the purposes of subsection (8), the Local Government Act, section 663 (Cost of work a charge over land) applies to a local government as if—

(a) the Brisbane City Council were a local government under that section; and

(b) the reference in that section to section 661 (Performing work for owner or occupier) were a reference to this section.

Power of Court to grant order pending determination of proceeding

2.25(1) This section applies if a person (the **"applicant"**) has brought a proceeding in the Court under section 2.24 and the Court has not determined the proceeding.

(2) If the Court is satisfied that it would be proper to do so, the Court may, on the application of the applicant, make an order of a kind mentioned in section 2.24(4) pending determination of the proceeding.

(3) The Court may grant the order subject to conditions, including a condition requiring the applicant to give an undertaking as to damages.

(4) The Court's power to make an order to cease an activity may be exercised whether or not—

(a) it appears to the Court that 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 that kind; or

(c) there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the activity.

(5) The Court's power to make an order to do an act or thing may be exercised whether or not—

(a) it appears to the Court that the person against whom the order is made intends to fail, or to continue to fail, to do the act or thing; or

(b) the person has previously failed to do an act or thing of that kind; or

(c) there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.

(6) The Court may discharge or vary an order under this section.

(7) Section 2.24(6), (7), (7A) and (8) apply to an order under this section as if it were an order under section 2.24(4).

(8) The Court's power under this section is in addition to its other powers.

PART 3—EXISTING USES, SUPERSEDED SCHEMES AND COMPENSATION

Existing lawful uses

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

(a) any provision of the planning scheme or amendment of the

planning scheme to the contrary (other than a provision to which subsection (1A) applies); or

(b) that the use is a prohibited use.

(1A) For the purposes of subsection (1), a planning scheme includes those interim development control provisions approved under section 2.22.

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

(a) to the use being changed to one which is, in the opinion of the local government, less injurious to the amenity of the area notwithstanding that the changed use may also be a prohibited use; or

(b) to the modification, alteration or repair of the building or structure to which the use applies where those works would not increase the gross floor area for that use by more than 10% above the gross floor area for that use existing at the time when this subsection began to apply to that use; or

(c) to the re-establishment of a use where the use has been discontinued (whether through the destruction of a building or structure or otherwise) and where application is made to the local government within 6 months (or such longer period as may be prescribed in the planning scheme) from the day the use is discontinued.

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

Register of existing lawful nonconforming uses

3.2(1) Where a planning scheme provides that a local government is to maintain and keep open to inspection a register of existing lawful uses (**"existing lawful nonconforming uses"**) of a type referred to in section 3.1(1)(b), the register (to be called **"register of existing lawful nonconforming uses"**) is, notwithstanding the provisions of a planning scheme, to contain the following information in respect to those uses—

(a) the date of the entry in the register;

(b) the postal address of the land to which the registration applies;

(c) the property description of the land to which the registration applies;

(d) the zoning of the land under the planning scheme in force at the date of registration and the date upon which that zoning was notified in the gazette;

(e) the nature, type and classification of the use or uses being made of the land the subject of registration within the meanings of the uses or classifications as defined in the planning scheme in force at the time of registration;

(f) the size and scale of operation of each of the existing uses on the land the subject of the registration;

(g) the date (if available) upon which each of the uses registered was established;

(h) details of all approvals granted pursuant to section 3.1(2);

(i) such other information as may be reasonably required by the local government for the proper maintenance of the register.

(2) Where a register is maintained by a local government pursuant to subsection (1)—

(a) the owner or the occupier of any premises on which there is established an existing lawful nonconforming use referred to in section 3.1(1)(b) may, (with the written authorisation of the owner of the premises where the owner is not the occupier) make application to the local government in the prescribed form and upon payment of the appropriate fee to have the use recorded in the register; or

(b) the owner of premises, or the occupier of those premises with the authorisation of the owner, may make application to remove an entry, in respect of those premises, from the register.

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

(a) by approving the application; or

(b) by refusing the application.

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

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

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

(7) Where a local government proposes to take action pursuant to subsection (6)—

(a) the chief executive officer is to notify the owner (and where the owner is not the occupier of the premises, the occupier) of the details of the proposed entry, amendment or removal, as the case may be, and the notification is to be accompanied by a copy of this section;

(b) the chief executive officer is to notify the owner (and where the owner is not the occupier of the premises, the occupier) that the owner (or occupier, as the case may be) may lodge a written objection to that action with the chief executive officer on or before the date (which is not to be earlier than 30 days from the date of issue of the notification) specified in the notification;

(c) the local government is to consider any objections lodged under paragraph (b) and decide within 40 days of the date specified in paragraph (b) whether it proposes to proceed to record, amend or remove the use in or from the register;

(d) the chief executive officer is to notify the owner (and where the owner is not the occupier of the premises, the occupier) of the decision of the local government pursuant to paragraph (c) within 10 days of the date of that decision being made and attach to that notification a copy of sections 7.1 and 7.1A and the form prescribed for the institution of an appeal;

(e) the chief executive officer is, where no objection has been lodged under paragraph (b), to record, amend or remove the relevant use being made of the premises in the register and advise the owner (and where the owner is not the occupier, the occupier) of the information recorded, amended or removed.

(8) Any applicant under subsection (2) and any person objecting pursuant to subsection (7)(b), who is dissatisfied with the decision of a local government made pursuant to subsection (3) or subsection (7)(c) may appeal to the Court pursuant to section 7.1 against the decision of the local government.

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

(a) the time for instituting an appeal has expired; or

(b) if an appeal has been instituted—the appeal is determined by or withdrawn from the Court.

(10) A local government is bound by determinations of the Court which may determine—

(a) whether the use is a lawful use of premises; and

(b) whether any modifications should be made to the details proposed to be recorded in a register; and

(c) whether such matters as it considers appropriate should be recorded in the register.

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

(a) such time as action is taken pursuant to this section that removes that recording in the register; or

(b) the use becomes unlawful pursuant to section 3.1; or

(c) the relevant planning scheme is amended in a manner that makes the use a permitted or permissible use.

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

Town planning certificates

3.3(1) An application may be made by any person to a local government for a limited town planning certificate, a standard town planning certificate or a full town planning certificate.

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

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

(a) the zone or zones in which the land is included; and

(b) where the land is subject to a strategic plan or a development control plan—information to that effect; and

(c) the provisions (if any) of the planning scheme relating to proposed roads or proposed road widenings which affect the premises; and

(d) whether or not an infrastructure agreement under part 6, division 2 applies to the premises, and, if so, whether there are obligations under the agreement that have not been fulfilled; and

(e) if there are obligations under the agreement that have not been fulfilled—that the obligations may attach to the premises.

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

(a) all consents, permissions and approvals (other than those referred to in subsection (5)(a)) currently in force pursuant to a planning scheme, interim development control provision or subdivision of land by-law currently or previously in force in the area; and

(b) any planning scheme amendments approved by the local government but which have not yet been approved or refused by the Governor in Council.

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

(a) approvals or decisions in respect of applications for consideration in principle, rezoning of land in stages, a staged subdivision plan and approval of engineering drawings for subdivision works;

(b) details of any conditions attached to the consents, permissions or approvals referred to in subsection (4) and this subsection or current in relation to a planning scheme amendment approved by the local government;

(c) details of any modification of approval granted pursuant to section 4.15;

(d) a statement indicating the fulfilment or non-fulfilment of each condition which relates to the carrying out of work set out in paragraph (b) at a date subsequent to the making of the application pursuant to subsection (1) and that date;

(e) information of any uses listed in the register of existing lawful nonconforming uses in respect of the relevant premises;

(f) advice of any current revocation procedures relating to any approvals granted in respect of the relevant premises;

(g) a copy of the judgment or consent order of the Court where an appeal in respect of an approval referred to in the certificate has been heard;

(h) advice of any prosecution made under section 2.23 in respect of the current use of the relevant premises;

(i) details of the lodgment of any security and whether any payment required has been made;

(j) details of any infrastructure agreement under part 6, division 2 applying to the premises and of obligations under the agreement that have not been fulfilled.

(5A) If all the obligations under an infrastructure agreement under part 6, division 2 have been fulfilled for the land for which a planning certificate is to be given, the certificate need not set out the matters mentioned in subsection (3)(d) or (5)(j).

(6) A town planning certificate is to be signed by the chief executive

officer or by an officer of the local government authorised by the local government.

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

(a) in the case of a limited town planning certificate—7 days;

(b) in the case of a standard town planning certificate—14 days;

(c) in the case of a full town planning certificate—40 days;

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

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

Effect of new planning scheme on pre-existing applications and approvals

3.4(1) Where a local government has not decided an application prior to the date (the **"prescribed date"**) of the coming into force of a planning scheme or an amendment thereof (the **"new planning scheme"**) the local government, in deciding the application in accordance with the planning scheme in force at the time the application was lodged, is to give such weight as it considers appropriate to the new planning scheme.

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

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

(a) the rights conferred by the approval may be exercised in accordance with the approval so granted within the period

specified in section 4.13(18), 5.2(1) or 5.3(1), as is applicable, notwithstanding that, in the case of an approval granted by the local government the use of the premises in the manner envisaged by the approval would be contrary to the new planning scheme; and

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

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

(a) the force and effect of any conditions of approval which the local government may have imposed in determining the application; or

(b) the validity of any agreement entered into between the applicant and the local government in respect of the application.

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

Compensation

3.5(1) Where a person—

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

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

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

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

the person is, subject to compliance with this section, entitled to obtain from the local government compensation in respect of the injurious affection or

expenditure and may claim that compensation in accordance with this section.

(2) Where land under a planning scheme is—

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

(b) is affected by a proposed road (including a road widening);

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

(2A) A claim for compensation arising pursuant to subsection (2) may be satisfied by the local government, with the approval of the Governor in Council, amending the planning scheme to remove the limitations on use rights.

(3) For the purposes of subsection (2)—

"public purpose" includes—

(a) uses conducted by a government department, local government or any statutory corporation;

(b) public utility installations and emergency services;

(c) parks.

(4) Compensation is not payable—

(a) in respect of any building or other structure erected or work done upon, or contract made, or other act or thing done in respect of land in a planning scheme area, unless, where required by law, the erection of the building or other structure, or the doing of the work or the making of the contract, or the doing of such other act or thing was approved by the local government;

(b) where an interest in premises is injuriously affected by reason of any provision contained in the planning scheme, if and in so far as the same provision or a provision of the same effect was, at the date when the provision included in the planning scheme came

into operation, already in force by virtue of this or some other Act or local law of the local government;

(c) where an interest in premises is affected by a planning scheme which by its operation prescribes the space about buildings or other structures or limits the size of allotments or the number of buildings or other structures to be erected or prescribes the height, floor space, density, design, external appearance or character of buildings or other structures, but nothing contained in this paragraph is to limit the liability of the local government to pay compensation in respect of the acquisition by it of land under the Local Government Act;

(d) subject to subsection (2), where an interest in premises is affected by a planning scheme which by its operation prohibits or restricts the use of land or the erection or use of a building or other structure thereon for a particular purpose, unless the applicant establishes that the applicant had a legal right immediately before the provision in question of the planning scheme came into force to use the land or erect or use a building or other structure thereon for the particular purpose which is so prohibited or restricted;

(e) in respect of anything done in contravention of a planning scheme;

(f) in respect of anything done in contravention of any interim development control provisions in force in the proposed planning scheme area or approval given under those interim development control provisions, or in contravention of any building approval granted by the local government, or, as the case may be, in contravention of any decision in an appeal under such an interim development control provision or under part 5;

(g) in respect of any affection of an interest in premises by or pursuant to a planning scheme or a local law made by a local government under which the subdivision of the land is prohibited or restricted.

(5) For the purposes of subsection (4)(d), it is not to be taken that an applicant did not have the legal right referred to in that subsection by reason only that the applicant's right depended upon an exercise of discretion by

the local government in the applicant's favour if the applicant shows that it is reasonable to expect that the exercise of discretion would have been in the applicant's favour had it been sought immediately before the relevant provision of the planning scheme came into force.

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

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

(7A) A claim for compensation is to be taken to have been made on the date on which it is received by the local government.

(7B) Every claim for compensation is to be made on the prescribed form and the person making the claim is to duly complete and sign the form and lodge it with the local government.

(8) Subject to subsections (2A) and (9), the following provisions are to have effect in assessing compensation in respect of a claim made under subsection (1)(a)—

(a) the amount of compensation is (subject to paragraphs (b), (c) and (d)) to be an amount equal to the difference between the market value of the interest immediately after the time of the coming into operation of the provision of the planning scheme by virtue of the operation whereof the claim for compensation arose and what would have been the market value of that interest if the provision had not come into operation;

(b) any modification of the injurious affection that may be effected in consonance with the planning scheme is to be taken into account;

(c) any benefit which may accrue to any land adjacent to the land in respect of which compensation is claimed in which the claimant has an interest—

(i) by reason of the coming into operation of the relevant provision or any other provision of the planning scheme; or

(ii) by reason of the construction or improvement by the local government at any time after the planning scheme comes into force upon the adjacent land of any work or service in pursuance of the planning scheme;

is to be taken into account;

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

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

(10) The local government is to make its decision on the claim for compensation within 40 days of the date of receipt by it of a claim made pursuant to subsections (7) to (7B).

(11) In deciding a claim made to it pursuant to this section a local government is to—

(a) grant the claim, in whole or in part; or

(b) reject the claim, in whole or in part; or

(c) acquire the land pursuant to subsection (9); or

(d) by resolution, propose to amend the planning scheme pursuant to subsection (2A); or

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

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

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

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

PART 4—REZONING AND LAND USE APPLICATIONS

Applications

4.1(1) This section applies to all applications made to a local government pursuant to this Act.

(2) An application to which this section applies—

(a) may be lodged by the applicant personally or by post with the chief executive officer; and

(b) is to be taken not to be duly made until all the particulars required by this Act and the planning scheme or interim development control provisions have been provided to the local government together with the appropriate fee; and

(c) may be decided by a local government on the information submitted with the application, if the applicant, when information relevant to the application is requested but not provided within 40 days (or such longer period as the local government may allow) from the date of the request, fails to supply that information; and

(d) is to be authorised in writing by the owner, where the application is made by a person other than the owner of the premises the subject of the application.

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

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

(a) the decision of the local government and the date thereof; and

(b) the grounds for refusal; and

(c) the conditions to attach to an approval; and

(d) the names and addresses of the principal objectors; and

(e) except in respect of an application made under section 4.2—a copy of sections 7.1 and 7.1A and the form prescribed for the institution of an appeal.

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

(a) the application having been made to it; or

(b) the receipt of such further particulars as may be requested pursuant to subsection (6).

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

(7) Upon a local government making a decision on an application in accordance with subsection (5), the chief executive officer is, within 10 days of the date of the decision, to notify the applicant of the decision.

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

Applications for consideration in principle

4.2(1) A local government may at any time adopt a resolution to accept applications for consideration in principle.

(1A) The resolution is to specify—

(a) the form of those applications; and

(b) the details to be contained in those applications; and

(c) the appropriate fee.

(2) Where a local government has resolved to accept applications for

consideration in principle, any person may lodge an application for consideration in principle in respect of a proposed application for—

(a) amendment of a planning scheme pursuant to section 4.3; or

(b) town planning consent pursuant to section 4.12; or

(c) subdivision of land pursuant to section 5.1.

(3) The local government is to consider the application for consideration in principle and is to decide whether—

(a) it supports the application, with or without qualifications that may amend the application; or

(b) it opposes the application; or

(c) it cannot decide the proposal until a detailed assessment is made and those details should be the subject of an application referred to in subsection (2); or

(d) the proposal is a proposal on which the local government has no established view and no indication of support or opposition can be given at that time.

(3A) In deciding the application, the local government is to give no weight to any possible objections that may be made or any reports that may be prepared if the application were an application under section 4.3, 4.12 or 5.1.

(3B) The local government is to make a decision in respect of the application within 14 days of the date of its lodgment, or such extended period as the local government considers reasonable in particular circumstances.

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

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

(4B) Where appropriate, the notification is to include a statement that in deciding the application no account was made of—

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

(b) the likelihood of a successful objector appeal.

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

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

(7) Notwithstanding subsection (6), a decision made under this section may be tendered to the Court as evidence and the Court may give such weight to the decision as it considers appropriate having regard to the circumstances which are applicable to the matter before it.

Amendment of a planning scheme etc. by an applicant

4.3(1) A person may make application to a local government to amend a planning scheme or the conditions attached to an amendment.

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

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

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

(c) the amendment of a use—

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

(ii) noted on the relevant zoning map;

(d) the amendment of a regulatory map;

(e) the amendment of a development control plan map in respect of the land the subject of the application where the map confers use rights.

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

(a) be on a form determined by the local government;

(b) contain the prescribed information;

(c) be accompanied by the appropriate fee.

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

(a) by advertisement published at least once in a newspaper; and

(b) by posting a notice on the relevant land or as prescribed; and

(c) by serving notice on all adjoining owners and elected representatives at the same time as or before notice is given under paragraphs (a) and (b).

(4A) The advertising, posting and serving is all to be undertaken within a period of not more than 7 days from the date of the first of those actions being undertaken.

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

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

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

(7A) Where a request is made, the local government is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

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

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

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

(b) is to be addressed to and lodged with the chief executive officer;

(c) is to state—

(i) the name and address of each person who made the objection (and where an objection is made by more than 1 person, may identify a person as the principal objector); and

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

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

Assessment of proposed planning scheme amendment

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

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

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

(a) whether the proposal, if approved, or buildings erected in conformity with the proposal, or both the proposal, if approved, and the buildings so erected would—

(i) create a traffic problem, increase an existing traffic problem or detrimentally affect the efficiency of the existing road network;

(ii) detrimentally affect the amenity of the neighbourhood;

(iii) create a need for increased facilities;

(b) the balance of zones in the planning scheme area as a whole or that part of that area within which the relevant land is situated and the need for the proposed planning scheme amendment;

(d) whether the land or any part thereof is so low-lying or so subject to inundation as to be unsuitable for use for all or any of the uses permitted or permissible in the zone in which the land is proposed to be included;

(e) whether, having regard to the permitted or permissible uses of the land and the potential for subdivision in the zone in which it is proposed to be included water, gas, electricity, sewerage and other essential services should be made available to the land and to each separate allotment thereof if the land were subsequently subdivided;

(f) the impact of the proposal on the environment (whether or not an environmental impact statement has been prepared);

(g) the situation, suitability and amenity of the land in relation to neighbouring localities;

(i) the advice given by it, in respect of any consideration in principle concerning the relevant land pursuant to section 4.2;

(j) whether any plan of development attaching to the application

pursuant to a requirement of the planning scheme should be altered;

(k) where the land is land prescribed pursuant to section 8.3A, the site contamination report in respect of the land;

(l) such other matters, having regard to the nature of the application, as are relevant.

(3A) The local government must have regard to relevant State planning policies in making its decision on the application.

(4) The local government must decide the application within 40 days of its receipt of the statutory declaration required by section 4.3(10).

(4A) The local government may, by resolution, extend or further extend the period mentioned in subsection (4).

(4B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(4C) If the local government extends or further extends the period mentioned in subsection (4), it must notify the applicant of the extension before the extension starts.

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

(a) approve the application; or

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

(c) refuse to approve the application.

(5A) The local government must refuse to approve the application if—

(a) the application conflicts with any relevant strategic plan or development control plan; and

(b) there are not sufficient planning grounds to justify approving the application despite the conflict.

(6) Where a local government approves an application under

subsection (5) subject to conditions, it may require as a condition the lodgment of security to its satisfaction by the applicant that the applicant will execute work to be done in relation to the application and the decision pursuant to it within such time as may be determined by the local government.

(6A) Where security is required to be lodged to ensure compliance with the conditions of the local government or by order of the Court and the security has not been lodged within 2 years of the date of the local government's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the local government, the decision in respect of the application is void.

(7) Upon the local government making a decision on an application in accordance with subsection (5) the chief executive officer is, within 10 days of the date of the decision, to notify the applicant and every principal objector of the decision.

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

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

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

(11) Where—

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

(b) the applicant notifies the local government that the applicant accepts the decision of the local government without dispute and will not exercise any right of appeal to the Court in respect of the decision;

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

(12) Where an application is made under section 4.3(2)(b) and approved by a local government it does not require the approval of the Governor in

Council and subject to the preceding subsections has the force of law.

(13) The conditions imposed by the local government on its approval under subsection (5) (as subsequently amended under this Act) attach to the land and are binding on successors in title.

Approval of planning scheme amendment by Governor in Council

4.5(1) Where in respect of an application for an amendment of a planning scheme—

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

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

(c) which has been approved by the local government and no appeal has been instituted in the Court pursuant to section 7.1;

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

(2) An application is to be made—

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

(i) where security is required to be lodged to ensure compliance with the conditions of the local government—within 14 days of the date of lodgment of that security and the fulfilment of any other preconditions, whichever is later; or

(ii) where security is not required—within 14 days of the date of the expiration of the appeal period and the fulfilment of any other preconditions, whichever is later;

(b) where an appeal has been instituted—

(i) within 14 days (or such longer period as may be ordered by

the Court) of the date of the determination by the Court or the date of withdrawal from the Court of the appeal; or

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

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

(a) a copy of the application which was open to inspection pursuant to section 4.3, including the relevant maps (if any);

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

(c) a copy of the statutory declaration lodged by the applicant pursuant to section 4.3(10);

(d) a copy of each objection duly made pursuant to section 4.3(8) and (9);

(e) the representations by the local government in respect of those objections;

(f) the assessment by the local government, where applicable, of the matters set forth in section 4.4(3) and copies of any reports submitted in respect thereof;

(g) where the application is made as a result of and in accordance with a determination of the Court—details of the relevant determination of the Court and the date of the determination or, in relevant circumstances, details of the withdrawal of the appeal;

(h) other material required by the chief executive.

(6) The Governor in Council may either—

(a) approve the amendment of the planning scheme; or

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

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

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

(9) The approval of an amendment of a planning scheme is to be given by order in council.

(10) The order in council is to identify each amendment that is approved.

(11) The planning scheme as amended becomes the planning scheme for the area concerned, and has the force of law, on notification in the gazette of the making of the order in council.

(12) Any conditions imposed under section 4.4(5) (as subsequently amended under this Act) attach to the land and are binding on successors in title.

Application for rezoning of land in stages

4.6(1) A person may make application to a local government for the rezoning of land in stages.

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

(a) be on a form determined by the local government;

(b) contain the prescribed information;

(c) be accompanied by a staged development plan which is to—

(i) depict in schematic form the proposed development (including any proposed road network) of the whole of the land, the subject of the application; and

(ii) identify (in the proposed order of development) the land incorporated in each stage of the proposed development;

(d) be accompanied by the appropriate fee.

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

(a) by advertisement published at least once in a newspaper; and

(b) by posting a notice on the relevant land or as prescribed; and

(c) by serving notice on all adjoining owners and elected representatives at the same time as or before notice is given under paragraphs (a) and (b).

(3A) The advertising, posting and serving are all to be undertaken within a period of not more than 7 days from the date of the first of those actions being undertaken.

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

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

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

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

(7A) Where a request is made, the local government is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

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

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

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

(b) is to be addressed to and lodged with the chief executive officer;

(c) is to state—

(i) the name and address of each person who made the objection (and where an objection is made by more than 1 person, may identify a person as the principal objector); and

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

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

Assessment of rezoning of land in stages

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

(2) The local government may consider an application for the rezoning of land in stages under subsection (1), notwithstanding that certain provisions of section 4.6(3) and (3A) have not been complied with, where the local government is satisfied that the noncompliance has not adversely affected the awareness of the public of the existence and nature of the application nor

restricted the opportunity of the public to exercise the rights conferred by section 4.6.

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

(a) whether the proposal, if approved, or buildings erected in conformity with the proposal, or both the proposal, if approved, and the buildings so erected would—

(i) create a traffic problem, increase an existing traffic problem or detrimentally affect the efficiency of the existing road network;

(ii) detrimentally affect the amenity of the neighbourhood;

(iii) create a need for increased facilities;

(b) the balance of zones in the planning scheme area as a whole or that part of that area within which the relevant land is situated and the need for the proposed rezoning;

(d) whether the land or any part thereof is so low-lying or so subject to inundation as to be unsuitable for use for all or any of the uses permitted or permissible in the zone in which the land is proposed to be included;

(e) whether, having regard to the permitted or permissible uses of the land and the potential for subdivision in the zone in which it is proposed to be included water, gas, electricity, sewerage and other essential services should be made available to the land and to each separate allotment thereof if the land were subsequently subdivided;

(f) the impact of the proposal on the environment (whether or not an environmental impact statement has been prepared);

(g) the situation, suitability and amenity of the land in relation to neighbouring localities;

(i) the advice given by it, in respect of any consideration in principle concerning the relevant land pursuant to section 4.2;

(j) whether any plan of development attaching to the application

pursuant to a requirement of the planning scheme should be altered;

(k) where the land is land prescribed pursuant to section 8.3A, the site contamination report in respect of the land;

(l) such other matters, having regard to the nature of the application, as are relevant.

(3A) The local government must have regard to relevant State planning policies in making its decision on the application.

(4) The local government must decide the application within 40 days of its receipt of the statutory declaration required by section 4.6(10).

(4A) The local government may, by resolution, extend or further extend the period mentioned in subsection (4).

(4B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(4C) If the local government extends or further extends the period mentioned in subsection (4), it must notify the applicant of the extension before the extension starts.

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

(a) approve the application; or

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

(c) refuse to approve the application.

(5A) The local government must refuse to approve the application if—

(a) the application conflicts with any relevant strategic plan or development control plan; and

(b) there are not sufficient planning grounds to justify approving the application despite the conflict.

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

(6A) Where security is required to be lodged to ensure compliance with the conditions of the local government or by order of the Court and the security has not been lodged within 2 years of the date of the local government's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the local government, the decision in respect of the application is void.

(7) Upon the local government making a decision on an application in accordance with subsection (5), the chief executive officer is, within 10 days of the date of the decision, to notify the applicant and every principal objector of the decision.

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

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

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

(11) Where—

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

(b) the applicant notifies the local government that the applicant accepts the decision of the local government without dispute and will not exercise any right of appeal to the Court in respect of the decision;

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

Approval of rezoning of land in stages by Governor in Council

4.8(1) Where in respect of an application for the rezoning of land in stages—

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

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

(c) which has been approved by the local government and no appeal has been instituted in the Court pursuant to section 7.1;

the local government is, in respect of the first stage of the proposed development approved under section 4.7, to apply to the chief executive for approval by the Governor in Council of the rezoning of land in that stage.

(2) An application is to be made—

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

(i) where security is required to be lodged to ensure compliance with the conditions of the local government—within 14 days of the date of lodgment of that security and the fulfilment of any other precondition, whichever is later; or

(ii) where security is not required—within 14 days of the date of the expiration of the appeal period and the fulfilment of any other precondition, whichever is later;

(b) where an appeal has been instituted—

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

(ii) where, as a result of a determination by the Court or a withdrawal of the appeal from the Court, it is necessary for the local government to obtain security from the applicant to ensure compliance with the conditions of the local government—within 14 days of the date of lodgment of that

security and the fulfilment of any other precondition, whichever is later.

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

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

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

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

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

(e) the representations by the local government in respect of those objections;

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

(g) where the application is made as a result of and in accordance with a determination of the Court—details of the relevant determination of the Court and the date of the determination or, in relevant circumstances, details of the withdrawal of the appeal;

(h) other material required by the chief executive.

(6) The Governor in Council may either—

(a) approve the amendment of the planning scheme; or

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

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

(8) The Governor in Council may approve an amendment of a planning scheme under subsection (6) notwithstanding that certain provisions of

section 4.6 have not been complied with, where the Governor in Council is satisfied that the noncompliance has not adversely affected the awareness of the public of the existence and nature of the application nor restricted the opportunity of the public to exercise the rights conferred by section 4.6.

(9) The approval of an amendment that is the rezoning of the first stage of the proposed development is to be given by order in council.

(10) The order in council is to identify each amendment that is approved.

(11) The planning scheme amendment map is to—

(a) be noted with the date of the notification in the gazette of the making of the order in council; and

(b) show the land comprising the stages approved by the local government under section 4.7(5); and

(c) show the proposed zone names and boundaries.

(12) The planning scheme as amended becomes the planning scheme for the area concerned, and has the force of law, on notification in the gazette of the making of the order in council.

(13) Any conditions imposed under section 4.7(5) (as subsequently amended under this Act) attach to the land and are binding on successors in title.

Subsequent staged rezoning approvals

4.9(1) A person may make application to a local government to rezone land in subsequent stages of a staged development plan.

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

(a) be on a form determined by the local government; and

(b) contain the prescribed information; and

(c) be accompanied by the appropriate fee; and

(d) be lodged within 5 years from the date of the Governor in Council's approval to the rezoning of the first stage of the staged development plan; and

(e) be in accordance with the staged development plan approved

pursuant to section 4.8(6) or as modified under section 4.15.

(3) The local government must decide the application within 40 days of the lodgment of the application.

(3A) The local government may, by resolution, extend or further extend the period mentioned in subsection (3).

(3B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(3C) If the local government extends or further extends the period mentioned in subsection (3), it must notify the applicant of the extension before the extension starts.

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

(a) approve the application; or

(b) approve the application, subject to conditions.

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

(5A) Where security is required to be lodged to ensure compliance with the conditions of the local government or by order of the Court and the security has not been lodged within 2 years of the date of the local government's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the local government, the decision in respect of the application is void.

(6) Upon the local government making a decision on an application in accordance with subsection (4) the chief executive officer is, within 10 days of the date of the decision, to notify the applicant of the decision.

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

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

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

Approval of subsequent staged rezonings by Governor in Council

4.10(1) Where in respect of an application to rezone 1 or more subsequent stages of a staged development plan—

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

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

(c) which has been approved by the local government and no appeal has been instituted in the Court pursuant to section 7.1;

the local government is to make application to the chief executive for approval by the Governor in Council of the rezoning of land in subsequent stages.

(2) An application is to be made—

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

(i) where security is required to be lodged to ensure compliance with the conditions of the local government—within 14 days of the date of lodgment of that security and the fulfilment of any other preconditions, whichever is later; or

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

other preconditions, whichever is later;

(b) where an appeal has been instituted—

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

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

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

(a) a copy of the application made pursuant to section 4.9(2), together with accompanying maps including a copy of the staged development plan;

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

(c) details of all previous approvals to rezone in respect of the staged development plan;

(d) where the application is made as a result of and in accordance with a determination of the Court—details of the relevant determination of the Court and the date of the determination or, in relevant circumstances, details of the withdrawal of an appeal;

(e) other material required by the chief executive.

(6) The Governor in Council may either—

(a) approve the rezoning; or

(b) refuse to approve the rezoning.

(7) The power of the Governor in Council to approve a rezoning includes

power to make such modifications as the Governor in Council considers appropriate.

(8) The approval of a rezoning is to be given by order in council.

(9) The order in council is to identify each rezoning approved.

(10) The planning scheme amendment map is to—

(a) be noted with the date of the notification in the gazette of the making of the order in council approving of the rezoning of land in the first stage of the proposed development; and

(b) show the land comprising the stages approved by the local government under section 4.7(5); and

(c) show the proposed zone names and boundaries.

(11) The rezoning becomes part of the planning scheme for the area concerned, and has the force of law, on notification in the gazette of the making of the order in council.

(12) Any conditions imposed under section 4.9(4) (as subsequently amended under this Act) attach to the land and are binding on successors in title.

Combined applications

4.11(1) Notwithstanding the provisions of a planning scheme, a person may make application (a **"combined application"**) to a local government for approval at the one time in respect of 2 or more of the following applications where those applications are in respect of the same land—

(a) for the zoning or rezoning of land pursuant to section 4.3(2)(a);

(b) for the amendment of a planning scheme pursuant to section 4.3(2)(c), (d) or (e);

(c) for the issue of a town planning consent permit by the local government pursuant to section 4.12;

(d) for the subdivision of land pursuant to section 5.1 where a subdivision is proposed in connection with paragraph (a), (b), (c) or (e);

(e) for any other approval or decision required pursuant to a planning scheme.

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

(a) be on the forms determined by the local government in respect of the relevant applications;

(b) contain the prescribed information in respect of the relevant applications;

(c) be accompanied by the appropriate fee;

(d) clearly state that the application is a combined application and identify the component parts of the combined application;

(e) identify the whole of the lands the subject of the application and, where appropriate, the areas for which different approvals by the local government and if applicable the Governor in Council are being sought.

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

(3A) If 1 or more of the components of a combined application would, if it were made as a separate application, require the local government to decide it before the end of a period, the local government must decide the combined application—

(a) if there is only 1 such component—before the end of the period applicable to that component; or

(b) in any other case—before the end of the latest of the periods applicable to those components.

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

(a) identify the whole of the land the subject of the combined application;

(b) state that the proposal is a combined application and identify the component parts of the combined application.

(5) Where a component of a combined application would, if it were

made as a separate application, be open to inspection, the whole of the combined application is to be open to inspection and the provisions of this Act which relate to obtaining copies of a separate application or part of a separate application apply to all components of the combined application.

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

(6A) The applicant or any person who has duly made an objection referred to in subsection (6) may appeal to the Court pursuant to section 7.1 against the decision of the local government.

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

(a) a local government refuses to approve that component, in whole or in part, and no appeal has been instituted by the applicant pursuant to section 7.1; or

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

(c) the Governor in Council in deciding an application made by a local government for approval of an amendment to the planning scheme which is a component of the combined application determines that the amendment to the planning scheme be refused;

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

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

(a) any amendments to the planning scheme which are required by the combined application have been approved by the Governor in

Council pursuant to section 4.5; and

(b) in respect of matters other than amendment to the planning scheme and rights of appeal to the Court against the decision of the local government are available pursuant to this Act—

(i) the time for institution of an appeal pursuant to section 7.1 has expired; or

(ii) where an appeal to the Court is instituted, such appeal is either withdrawn from the Court or is determined by that Court.

(9) Where, pursuant to this Act more than 1 appeal is instituted in the Court against decisions made by the local government in respect of a combined application, the Court may hear and determine at the same time all appeals instituted where it considers that such action is appropriate.

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

Application for town planning consent

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

(a) the erection of any building or other structure or the use of any premises is a permissible use; or

(b) under interim development control provisions the erection of any building or other structure or the use of any premises may only be undertaken with the approval of the local government; or

(c) the application is an application to which a local government

could consent under section 3.1(2).

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

(a) be on a form determined by the local government; and

(b) contain the prescribed information; and

(c) be accompanied by the appropriate fee.

(3) Where an application is made for consent the applicant is, not less than 2 days after lodging the application with the local government, to give public notice of the application in the manner and form prescribed—

(a) by advertisement published at least once in a newspaper; and

(b) by posting a notice on the relevant land or as prescribed; and

(c) by serving notice on all adjoining owners and elected representatives at the same time as or before notice is given under paragraphs (a) and (b).

(3A) The advertising, posting and serving are all to be undertaken within a period of not more than 7 days from the first of those actions being undertaken.

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

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

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

(6A) Where a request is made, the local government is to forthwith cause a copy of the documents requested to be supplied to the person or sent by post to the person.

(7) A person may, on or before the last day for the receipt of objections,

make an objection in respect of the application.

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

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

(b) is to be addressed to and lodged with the chief executive officer;

(c) is to state—

(i) the name and address of each person who makes the objection (and where an objection is made by more than 1 person, may identify a person as the principal objector); and

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

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

Assessment of town planning consent application

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

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

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

(3A) The local government must have regard to relevant State planning

policies in making its decision on the application.

(4) The local government must decide the application within 40 days of its receipt of the statutory declaration required by section 4.12(9).

(4A) The local government may, by resolution, extend or further extend the period mentioned in subsection (4).

(4B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(4C) If the local government extends or further extends the period mentioned in subsection (4), it must notify the applicant of the extension before the extension starts.

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

(a) approve the application; or

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

(c) refuse to approve the application.

(5A) The local government must refuse to approve the application if—

(a) the application conflicts with any relevant strategic plan or development control plan; and

(b) there are not sufficient planning grounds to justify approving the application despite the conflict.

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

(6A) Where security is required to be lodged to ensure compliance with the conditions of the local government or by order of the Court and the security has not been lodged within 2 years of the date of the local

government's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the local government, the decision in respect of the application is void.

(7) Upon the local government making a decision on an application in accordance with subsection (5) the chief executive officer is, within 10 days of the date of the decision, to notify the applicant and every principal objector of the decision.

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

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

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

(11) Where—

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

(b) the applicant notifies the local government that the applicant accepts the decision of the local government without dispute and will not exercise any right of appeal to the Court in respect of the decision;

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

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

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

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

(c) which has been approved by the local government and no appeal has been instituted in the Court pursuant to section 7.1(2) to (2B);

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

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

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

(i) where security is required to be lodged to ensure compliance with the conditions of the local government—within 14 days of the date of lodgment of that security and the fulfilment of any other preconditions, whichever is later; or

(ii) where security is not required—within 14 days of the date of expiration of the appeal period and the fulfilment of any other preconditions, whichever is later;

(b) where an appeal has been instituted—

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

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

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

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

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

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

(d) the use consented to by the local government;

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

(15) The particulars of permits issued pursuant to subsection (12) are to be recorded, maintained and kept open to inspection by the local government in a register which is to be called the **"town planning consent permit register"** (or where interim development control provisions apply, called the 'Interim Development Permit Register') which is also to record—

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

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

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

(16) Where a permit is issued pursuant to subsection (12), the right to use premises and to erect, re-erect, or modify any buildings or other structures for the purposes specified in the permit is, subject to the conditions contained in the permit or any modifications made thereto pursuant to section 4.15, to attach to the land and be binding on successors in title and continues in force until—

(a) it is revoked pursuant to section 4.14; or

(b) it lapses in accordance with subsection (18); or

(c) the use ceases to be a lawful use pursuant to section 3.1; or

(d) it is superseded by the commencement of another use.

(17) An approval by the local government or the Court in respect of an application made to a local government pursuant to this section has no force or effect until a permit has been issued by the chief executive officer.

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

(a) the use of land or the use or erection of a building or other structure on land, the subject of the approval in respect of which the permit was issued, has not been commenced within 4 years of

the date of issue of the permit or such extended period or periods as the local government upon application being made to it therefor approves; or

(b) a use of any premises established pursuant to the permit has ceased for a period of at least 12 months.

(19) Where a permit lapses, the local government is to refund any security held by it in connection with that permit.

Revocation of town planning consent etc.

4.14(1) A local government is not to revoke, except in accordance with this section—

(a) a permit for the use or erection of any building or other structure granted—

(i) under a planning scheme; or

(ii) in accordance with interim development control provisions; or

(b) an approval for the subdivision of land pursuant to section 5.1(6) or 5.2(4);

(a **"permit"**) whether issued or approved before or after the commencement of this Act.

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

(2A) The local government is to consider and decide the request to revoke the permit within 30 days of the date of the receipt of the request.

(2B) The chief executive officer is to notify the person who requested the revocation within 10 days of the date of the decision by the local government.

(2C) Within 30 days of the date of its decision, the local government is to return to the appropriate person any security lodged with it in connection

with works no longer required as a result of the revocation of the permit.

(3) The local government may initiate revocation procedures in accordance with subsections (4) to (7) where—

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

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

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

(4) A local government which intends pursuant to subsection (3) to revoke a permit referred to in subsection (1) is to serve a notice (a **"notice of intention to revoke"**) upon the person to whom the permit was granted, the occupier and the owner of the relevant land.

(4A) A notice of intention to revoke is to be in writing, be addressed to the address last known to the local government of the person on whom it is to be served and state—

(a) that the person to whom the notice is directed, on or before the date specified therein (which date is not to be earlier than 21 days after the date of the service of the notice), may make a written objection to the revocation and lodge it with the local government at the address set out in the notice;

(b) that the objection must specify the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds;

(c) that an objector who indicates in the objection that the objector desires to be heard in support of the grounds of the objection may appear at the time and place specified in the notice and be heard by the local government or by an officer of the local government appointed by it.

(5) Where an objection is made pursuant to subsections (4) and (4A), an objector who indicates in the objection a desire to be heard in support of the grounds of the objection is to appear at the time and place specified in the notice and be heard by the local government or by an officer of the local

government appointed by it.

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

(a) consider all objections; and

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

(7) Where a local government decides to revoke the permit, the chief executive officer is to give notice, within 10 days of the date of that decision to each person who has duly made an objection to the revocation to the local government.

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

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

(a) the local government may decide that the permit be revoked;

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

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

Modification of certain applications and approvals

4.15(1) An application may be made to a local government seeking the modification of—

(a) an application to which this section applies; or

(b) an approval to which this section applies; or

(c) a condition to which this section applies.

(1A) This section applies to any application made under—

(a) section 4.3(1) (Amendment of a planning scheme etc. by an applicant); or

(b) section 4.6(1) (Application for rezoning of land in stages); or

(c) section 4.9(1) (Subsequent staged rezoning approvals); or

(d) section 4.12(1) (Application for town planning consent); or

(e) section 5.1(1) (Application for subdivision etc.); or

(f) section 5.2(1) (Subdivisions involving works); or

(g) section 5.9(1) (Staged subdivision); or

(h) section 5.11(1) (Application for amalgamation of land); or

(i) section 5.12(1) (Application for access easement);

and any equivalent application made under the Local Government Act or the *City of Brisbane Town Planning Act 1964*.

(1B) This section applies to—

(a) any approval given following the making of an application to which this section applies; and

(b) any equivalent approval given under the Local Government Act or the *City of Brisbane Town Planning Act 1964*.

(1C) This section applies to any condition—

(a) attaching to an approval to which this section applies; and

(b) imposed under section 2.19(3)(a) following a proposal under section 2.18(3)(c) or (d) or section 2.18(3A).

(1D) An application to modify cannot be made to a local government seeking the modification of—

(a) an application made under section 4.3(1), 4.6(1) or 4.9(1); or

(b) an approval given following the making of an application mentioned in paragraph (a); or

(c) a condition attaching to an approval mentioned in paragraph (b);

once the local government has made application under section 4.5(1), 4.8(1) or 4.10(1) for approval by the Governor in Council of the relevant

amendment or rezoning.

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

(a) in its opinion the modification is not of a minor nature;

(b) in its opinion the modification would adversely affect any person to a degree which would, if the circumstances allowed, cause that person to make an objection;

(c) if the application to modify seeks the modification of an approval—the approval was the subject of an appeal to the Court and the Court has made a determination on the appeal;

(e) the application to modify seeks the modification of a condition that was imposed because of an objection made when public notice of an application was given.

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

(a) the proposed use to be made of the land the subject of the modification is not varied by the addition of different uses;

(b) the gross floor area of buildings or proposed buildings on the site is to be increased by less than 5%;

(c) the number of storeys above ground level to be contained in any building or proposed building or part thereof on the site is not to be increased;

(d) the locations of the proposed ingress to or egress from the site are not to be substantially altered;

(e) any altered ingress to or egress from the site is to be to or from the roads—

(i) approved by the local government in dealing with the relevant application; or

(ii) specified in the relevant application;

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

(4) An alteration referred to in subsection (3)(d) or (3)(e) is to be taken to be a modification of a minor nature if the location of the proposed ingress and egress as proposed to be altered or the road from or to which ingress or egress is to be had if the proposed modification is made is a State-controlled road under the *Transport Infrastructure Act 1994* and the approval of the chief executive (of the department in which the *Transport Infrastructure Act 1994* is administered) has been obtained to the location of the points of ingress and egress.

(5) An application to modify made under subsection (1) is to—

(a)(i)if it seeks the modification of an approval or a condition attaching to an approval—be made by the person in whom the benefit of the approval vests for the time being or such other person as may be duly authorised in writing to make the application by the person in whom the benefit exists;

(ii) if it seeks the modification of an application—be made by the person who made the application;

(iii) if it seeks the modification of a condition imposed under section 2.19(3)(a)—be made by the owner of the land that the condition relates to or a person authorised by the owner in writing to make the application to modify; and

(b) be on a form determined by the local government; and

(c) set forth full particulars of the proposed modification; and

(d) be accompanied by the appropriate fee.

(6) The local government is to make its decision on the application to modify within 40 days of the date of receipt by it of that application.

(7) In deciding an application to modify made to it pursuant to this section a local government is to—

(a) approve the application; or

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

(c) refuse to approve the application.

(8) Where a local government approves an application to modify under subsection (7) subject to conditions, it may require as a condition the giving

to it of security to its satisfaction by the applicant that the applicant will execute work to be done in relation to that application and the decision pursuant to it within such time as may be determined by the local government.

(9) Upon the local government making a decision on an application to modify in accordance with subsection (7) the chief executive officer is, within 10 days of the date of the decision, to notify the applicant of the decision.

(10) The applicant may apply to the Court pursuant to section 7.2 for a review of the decision of the local government.

(11) Where a local government fails to decide an application to modify within the period referred to in subsection (6) the applicant may apply to the Court pursuant to section 7.2 as if the local government had refused that application.

(12) Where the applicant notifies the local government that the applicant accepts the decision of the local government without dispute and will not exercise any right of review by the Court in respect of the decision the period for institution of an application for review is to be taken to have expired.

(13) Where an application to modify has been approved by the local government or where the Court, upon the hearing of an application for review made to it determines that the application to modify should be approved (either in whole or in part), the application to modify (as approved) is to be taken to be part of the application which the application to modify sought to modify and which is yet to be decided by the local government.

(14) Where in respect of an application to modify—

(a) which has been approved by the local government, a review instituted in the Court pursuant to section 7.2 is withdrawn from the Court; or

(b) the Court, upon the hearing of a review, determines that the application to modify should be approved and referred to the local government; or

(c) which has been approved by the local government and no review

has been instituted in the Court pursuant to section 7.2(2) or (2A);

the chief executive officer must issue an approval or permit, as the case may require, incorporating the modifications so approved.

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

Restrictions on resubmission of applications

4.16(1) In this section, in respect of a planning scheme or interim development control provision, a **"further application"** means an application (including a combined application) made to a local government for—

(a) the amendment of a planning scheme (including the rezoning of land in stages) or the conditions attached to an amendment; or

(b) a town planning consent or an interim development permit;

where that application is not substantially different in its proposals from a previous application which was made to a local government within the 12 months prior to the date of the first mentioned application being made to the local government.

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

(3) Where—

(a) a local government has not decided a previous application; or

(b) a previous application has been withdrawn; or

(c) a previous application was incomplete and was not decided by the local government;

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

Conjoint use of lands which are not adjoining lands

4.17(1) Where lands—

(a) are not adjoining lands; and

(b) are held in common ownership; and

(c) are not more than 500 m from each other; and

(d) are proposed to be used conjointly for a purpose that is either permitted or permissible under a planning scheme;

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

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

(2A) The registering authority is to record particulars of that agreement on the register in respect of the relevant lands and thereafter the agreement is, until it is cancelled, binding on successors in title.

(3) An agreement registered pursuant to subsections (2) and (2A) may be cancelled (in whole or in part) upon the application of the owner of the lands which are subject to the agreement and with the approval of the local government endorsed thereon.

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

Withdrawal of applications and objections

4.18(1) An applicant may, by notice in writing, withdraw an application made to a local government pursuant to this Act where that notice is received by the local government prior to its decision on the application.

(2) Where an application is withdrawn pursuant to subsection (1), the local government is—

(a) not required to decide that application; and

(b) where objections have been made—to notify the principal objectors that the application has been withdrawn.

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

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

(5) Where an objection is made by more than 1 person, the notice of withdrawal referred to in subsection (4) is to be signed by all persons who made the objection.

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

PART 5—SUBDIVISION APPLICATIONS

Application for subdivision etc.

5.1(1) A person may make application to a local government to subdivide land.

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

(a) be on a form determined by the local government; and

(b) contain the prescribed information; and

(c) be accompanied by a proposal plan; and

(d) be accompanied by the appropriate fee.

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

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

(b) whether any of the proposed allotments would be unsuitable for use because of existing or possible inundation, subsidence, slip or erosion;

(c) the size, shape and utility of each of the proposed allotments;

(d) the impact of the proposal on the environment (whether or not an environmental impact statement has been prepared);

(e) whether public utility services should be made available to the proposed allotments;

(f) the proposed method of disposal of drainage and whether this would have a detrimental effect upon neighbouring lands;

(g) whether drainage reserves are required and whether land for these should be surrendered free of cost to the Crown;

(h) any possible traffic generation and the effect of this upon the road system in the locality;

(i) the length of road frontage to each of the proposed allotments or, if the allotments are to be lots included in a community titles scheme (**"scheme A"**), the length of road frontage to either or both of the following—

(i) the scheme land for scheme A;

(ii) the scheme land for a community titles scheme for which scheme A is a subsidiary scheme;

(j) the proposed means of access to each of the proposed allotments;

(k) whether the planning of road junctions and intersections of roads will facilitate the safe flow of traffic and whether truncation of land abutting road junctions and intersections will be required;

(l) whether kerbing and channelling should be provided;

(m) whether in accordance with section 5.6(1) provision should be made for parks;

(n) whether the applicant should be required to destroy any noxious weed or plant existing on the proposed allotments;

(o) whether, in accordance with a planning scheme provision, underground electricity should be required;

(p) whether the applicant should contribute towards the capital cost of street lighting to serve the proposed allotments;

(q) whether the position of water, sewerage, gas, telephone or electricity mains and kerb and channelling or road drains should be indicated on the proposal plan;

(r) whether provision should be made for conduits across any road as will enable water, sewerage, gas, electricity or telephone service lines to be laid to connect the mains with the proposed allotments fronting the road;

(s) the provisions of the planning scheme which regulate the subdivision of land;

(t) whether an approval is required pursuant to another Act;

(u) such other matters, having regard to the nature of the application, as are relevant.

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

(4A) The local government must have regard to relevant State planning policies in making its decision on the application.

(5) Subject to section 5.5, the local government must decide the application within 40 days of its receipt of the application, or its receipt of any amended proposal plan, whichever happens later.

(5A) The local government may, by resolution, extend or further extend the period mentioned in subsection (5).

(5B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(5C) If the local government extends or further extends the period mentioned in subsection (5), it must notify the applicant of the extension before the extension starts.

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

(a) approve the application; or

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

(c) refuse to approve the application.

(6A) The local government must refuse to approve the application if—

(a) the application conflicts with any relevant strategic plan or development control plan; and

(b) there are not sufficient planning grounds to justify approving the application despite the conflict.

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

(7A) Where security is required to be lodged to ensure compliance with the conditions of the local government or by order of the Court and the security has not been lodged within 2 years of the date of the local government's decision or the Court's order, as the case may be, or such longer period as may be agreed to by the local government, the decision in respect of the application is void.

(8) The conditions imposed by a local government on its approval under subsection (6) (as subsequently amended under this Act) attach to the land and are binding on successors in title.

(9) Upon the local government making a decision on an application in accordance with subsection (6) the chief executive officer is, within 10 days of the date of the decision, to notify the applicant of the decision.

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

(11) Where a local government fails to decide an application within the period referred to in subsection (5), the applicant may appeal to the Court

pursuant to section 7.1 as if the local government had refused the application.

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

Subdivisions involving works

5.2(1) Where a local government under section 5.1(6) has approved an application subject to conditions which include the construction of works to be undertaken by the applicant, the applicant is, within a period of 2 years from the date of approval (or such longer period or periods as the local government may upon application made to it in that behalf allow) and prior to the commencement of works, to make an application to the local government for its approval of engineering drawings and specifications for the required works.

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

(a) be on a form determined by the local government; and

(b) be accompanied by such documents as the local government may require; and

(c) be accompanied by the appropriate fee.

(1B) Nothing in subsection (1) prevents an applicant from making an application for approval of engineering drawings and specifications concurrently with an application made under section 5.1.

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

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

(4) The local government is to approve the application for approval of engineering drawings and specifications with or without conditions and

notification of its approval is to be given within 50 days of the date of the receipt of the application or amended drawings and specifications referred to in subsection (3), whichever is later.

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

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

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

(7A) No works are to be commenced until the application has been approved.

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

(9) Where the applicant undertakes the works, the local government is to verify that the works meet the requirements of the local government and upon the completion of the works the local government engineer or other person duly authorised by the local government is to issue a certificate of practical completion.

Sealing of plans for registration

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

(1A) Subsection (1) does not apply where a plan of survey is required to be submitted as a condition of approval granted by a local government in respect of an application made under any provision of this Act other than section 5.1.

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

(a) be suitable for lodgment in the office of the relevant registering authority; and

(b) be certified by a licensed surveyor; and

(c) be accompanied by a copy of a certificate of practical completion where required; and

(d) be accompanied by the appropriate fee.

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

(a) reinstate survey marks and install new survey marks in their correct position in accordance with the plan of survey and the work is to be certified in writing by a licensed surveyor;

(b) in respect of the land the subject of the plan of survey, pay to the local government any rates or charges levied by that local government or any expenses being a charge over that land under any Act that will be outstanding at the time of the submission of that plan.

(4) After satisfying itself that—

(a) the procedures and requirements of this Act, any other relevant Act and the local laws of the local government have been complied with; and

(b) the plan of survey conforms with the approval granted and that all required works have been carried out; and

(c) the obligations under any infrastructure agreement under part 6, division 2, applying to the land contained in the plan of survey have either—

(i) been fulfilled; or

(ii) been fulfilled to the extent the local government considers necessary, having regard to the development control plan and the agreement;

the local government is to note its approval under seal on the plan of survey in accordance with the requirements of the registrar of titles.

(5) The local government is to seal a conforming plan of survey as soon

as practicable after it is submitted and return the plan of survey to the applicant for lodgment in the office of the relevant registering authority.

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

(7) Where a plan lodged for registration or recording in accordance with subsection (6) is later withdrawn so that it can be lodged in a different order in relation to other instruments and is again produced for registration or recording after the expiration of 6 months after the date of notation on the plan of approval of the local government its production is to be taken to be a lodgment for registration or recording in accordance with subsection (6).

(8) Where the plan of survey is not lodged for registration or recording with the relevant registering authority within the specified period and where subsection (7) is not applicable, the applicant may resubmit the plan of survey to the local government for reseal and noting.

(9) Upon receipt of a plan of survey pursuant to subsection (8) a local government may reseal the plan or may refuse to reseal the plan.

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

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

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

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

(14) Any land surrendered to the Crown is to be reserved and set apart pursuant to the *Land Act 1994*, chapter 3, part 1 for the purpose for which it

was provided in the plan of survey and placed under the control of the local government as trustee.

General provisions for subdivision

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

(2) Notwithstanding section 4.18, an applicant may, subsequent to the determination of an application referred to in subsection (1), advise the local government in writing of an intention not to proceed with the subdivision whereupon the local government is to revoke the whole or any part of the approval granted under section 5.1 which has not been acted upon, subject to such terms and conditions as are appropriate.

(3) A condition imposed by a local government pursuant to an approval given under sections 5.1 and 5.2 (as subsequently amended under this Act)—

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

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

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

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

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

Subdivisional applications may be concurrent

5.5(1) Where an application (a **"dependant application"**) to subdivide land is dependant upon the obtaining of approval granted in respect of a separate application (the **"other application"**) the dependant application is not to be decided by the local government until such time as the approval upon which it depends has been obtained.

(2) Where a dependant application is made and—

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

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

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

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

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

(a) is required—the date of the publication or notification of the order in council notifying the Governor in Council's approval;

(b) is not required—

(i) where the time for institution of an appeal has expired and no appeal has been instituted—the day immediately following the last day when an appeal could have been instituted;

(ii) where an appeal has been instituted and withdrawn from the Court—the day immediately following the date of withdrawal;

(iii) where an appeal has been instituted and determined—the date of that determination.

(4) Where, pursuant to this Act more than 1 appeal is instituted in the Court against decisions made by the local government in respect of a concurrent application, the Court may hear and determine, at the same time, all appeals instituted with it, where it considers that such action is appropriate.

Parks

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

(a) an area of land be provided for use as a park; or

(b) a monetary contribution be paid to the local government in substitution for the provision of that area of land; or

(c) works be provided for the improvement of land for use as a park (including the development of recreational facilities); or

(d) any combination of paragraphs (a) to (c) be implemented.

(1A) A combination referred to in subsection (1) is not to exceed the maximum area or monetary value provided for in this section.

(2) The area of land to be provided pursuant to subsection (1)(a) is to be suitable for the type of park proposed and is to be the area provided for in a local planning policy but not exceeding—

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

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

(3) Land to be provided pursuant to subsection (1)(a) may be part of the

land to be subdivided or other land proposed by the applicant and acceptable to the local government.

(4) Where a monetary contribution is required in substitution for an area of land, the amount of the contribution is to be in respect of each allotment or lot proposed in a proposal plan and the amount is to be the amount provided for in a local planning policy.

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

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

(a) the acquisition or development (or both) of land for parks; or

(b) the provision of works for the improvement of existing parks or the development of recreation facilities.

(6A) Each payment made to a local government pursuant to this section is to be deposited in its trust fund and be held in the trust fund until it is expended in accordance with this section and expenditure of any part of the payment is to be recorded separately and distinctly from expenditure of any part of any other such payment.

(7) If a local government does not have a local planning policy for the purposes of subsection (2) or (4), the area for the purposes of subsection (2) or the amount for the purposes of subsection (4) is that provided for in—

(a) the local government's planning scheme; or

(b) if the local government does not have a planning scheme—a subdivision of land local law.

Power to purchase or take land for downstream drainage

5.7(1) Where a local government, in making an assessment under section 5.1(3), considers that the proposed method of disposal of drainage may have a detrimental effect upon neighbouring land, it may, in addition to

its powers under the *Acquisition of Land Act 1967*, purchase or, with the prior approval of the Governor in Council, take under that Act any land for drainage purposes, whether the land is so required immediately or not, and for that purpose has all the powers and authorities conferred on it and be subject to all the duties imposed on it by that Act.

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

(a) that purchase or taking; and

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

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

Special provisions for subdivision

5.8(2) If there is no planning scheme in force over the land to which an application under section 5.1 relates, a local government must not approve an allotment with an area less than 400 m^2 unless—

(a) the allotments are to be lots included in a community titles scheme; or

(b) the allotments are to be transferred to the local government or Crown or are to be used for public utilities.

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

(a) the land to be subdivided is or will be intersected by a river, creek, stream or road (whether constructed or not) or an allotment created for the provision of public utility services; and

(b) the owner of the land, the subject of the application, and the local government have entered into an agreement that any proposed

allotment which has an area less than the minimum specified area be incapable of separate disposition but that the ownership of the proposed allotment be held in common with another allotment in the proposal plan which would have been contiguous to the proposed allotment if it were not separated in the manner referred to in paragraph (a).

(3A) The total area of the proposed allotments to be held in common ownership under subsection (3) is to comply with the planning scheme provisions or local law of the local government as to the minimum area for allotments.

(3B) Where a local government has approved an application for subdivision of land pursuant to subsection (3) the approval is to indicate, in respect of each allotment having an area less than the minimum area specified, the other allotment contained in the plan of survey with which the first mentioned allotment is to be held in common ownership, and that indication is to be noted on the plan lodged for registration or recording with the relevant registering authority pursuant to section 5.3(6).

(3C) The registering authority may register or record a plan of survey lodged with it and containing a notation by the local government in accordance with subsection (3B), but is not to register or record the plan unless an application to register the agreement referred to in subsection (3)(b) accompanied by a signed copy of the agreement is produced and the registering authority is to record the agreement upon all grants or certificates of title to the lands concerned and then the agreement is, until it is cancelled, binding upon every person who is, at the time of making of the agreement, or who at any time after the making of the agreement, has an interest in those lands.

(3D) An agreement registered or recorded pursuant to subsection (3C) may be cancelled either in whole or in part, and upon the application of the present owner of the lands, the subject of the agreement, with the owner's signature duly attested in accordance with the requirements of the registering authority and with the written authorisation of the local government endorsed on the application the registering authority is to make a notation on the instruments of title to the relevant lands to the effect that the agreement is cancelled either in whole or in part, as the case may be.

(4) A local government is not to approve an application to subdivide land

where the application relates to land proposed to be used for purposes other than for a bona fide rural purpose, unless—

(a) at the time the application is made electricity is available to the proposed allotments; or

(b) an agreement exists between the applicant and the relevant electricity authority for electricity to be made available to the proposed allotments within 6 months from the date when the plan of survey is approved by the local government under its seal (or within such longer period as is acceptable to the local government); or

(c) the relevant electricity authority advises the local government in writing that it is not reasonable to require that electricity be made available to serve the proposed allotments.

(5) A local government is not to approve an application to subdivide land pursuant to section 5.1 until any recoverable but unpaid rates or charges levied by that local government or any expenses being a charge over that land under any Act have been paid.

(6) Notwithstanding section 5.3, a local government may seal a plan of survey prior to the issue of the certificate of practical completion of works if it—

(a) is satisfied that the outstanding works will be completed within 3 months of the date of the sealing of the plan of survey; and

(b) obtains sufficient security with respect to the performance of any incomplete works.

(7) If there is no planning scheme in force for a local government area, the local government for the area may make a local law, under the Local Government Act, regulating the subdivision of land in the area.

(8) The local law must be consistent with this Act.

Staged subdivision

5.9(1) A person may make application to a local government to subdivide land in stages (a **"staged subdivision"**).

(1A) An application referred to in subsection (1) is required where it is

proposed to subdivide land in stages and is to be lodged prior to or concurrent with an application to subdivide land in the first stage pursuant to section 5.1.

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

(a) be on a form determined by the local government and be accompanied by a staged subdivision plan;

(b) contain the prescribed information;

(c) be accompanied by the appropriate fee.

(3) In considering an application for staged subdivision, a local government is to assess each of the following matters to the extent that they are relevant to the application—

(a) the proposed use of the land to be subdivided in stages;

(b) whether the proposed use would be affected by inundation, subsidence, slip or erosion;

(c) the matters contained in an environmental impact statement where required;

(d) the availability of public utility services;

(e) the effect of the proposal on the external road network and the general layout of proposed internal roads;

(f) the nature and location of proposed parks within the development;

(g) the proposed sequence of development;

(h) such other matters, having regard to the nature of the application, as are relevant.

(4) The local government may, after considering the matters referred to in subsection (3), request the applicant to submit an amended staged subdivision plan which takes into account the requirements of the local government and supersedes the plan which accompanied the application.

(4A) The local government must have regard to relevant State planning policies in making its decision on the application.

(5) The local government must decide the application within 40 days of its receipt of the application, or its receipt of any amended staged

subdivision plan, whichever happens later.

(5A) The local government may, by resolution, extend or further extend the period mentioned in subsection (5).

(5B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(5C) If the local government extends or further extends the period mentioned in subsection (5), it must notify the applicant of the extension before the extension starts.

(6) In deciding an application made to it pursuant to this section, a local government is to—

(a) approve the application; or

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

(c) refuse to approve the application.

(6A) The local government must refuse to approve the application if—

(a) the application conflicts with any relevant strategic plan or development control plan; and

(b) there are not sufficient planning grounds to justify approving the application despite the conflict.

(7) The conditions imposed by a local government on its approval under subsection (6) (as subsequently amended under this Act) attach to the land and are binding on successors in title.

(8) Upon the local government making a decision on an application in accordance with subsection (6), the chief executive officer is, within 10 days of the date of the decision, to notify the applicant of the decision.

(9) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the local government.

(10) Where a local government fails to decide an application within the period referred to in subsection (5), the applicant may appeal to the Court

pursuant to section 7.1 as if the local government had refused the application.

Subdivision incorporating a lake

5.10(1) Where it is proposed to subdivide land in accordance with section 5.1 in a manner which provides that any of the allotments included in the proposal plan are to be used in association with a common lake area, this section applies in addition to section 5.1.

(2) A local government, in considering an application to which this section applies, is to consider the following matters in addition to those required by section 5.1—

(a) the proposed use of the lake;

(b) the method to be used in maintaining the top water level in the lake and the source of water supply to the lake;

(c) the capacity of the outlet structure (if any) from the lake;

(d) the measures to be taken to protect the lake from pollution;

(e) the adequacy of measures to be taken pursuant to paragraph (d) to prohibit on land within a distance of 4 m from the top water level of the lake—

(i) the erection of a building or other structure;

(ii) the parking of vehicles or caravans;

(iii) the placing (otherwise than temporarily) on the land of materials, goods, filling or refuse of any kind;

(iv) any excavation of the land;

(f) the measures to be taken for the monitoring of water quality and for the maintenance in the lake of water quality and whether those measures are adequate;

(g) the methods to be adopted for the provision of general maintenance of the common lake area.

(3) Notwithstanding this Act or any other Act, the local government is not to approve an application to which this section applies unless—

(a) an environmental impact statement pursuant to section 8.2 setting forth those matters and things that in the opinion of the local government are relevant to the proposed subdivision has been made and submitted to it; and

(b) the local government is satisfied upon notice from the applicant that the level of water in the lake forming part of the common lake area will at all times be capable of being lowered at a rate considered by the local government to be reasonable and in a manner that complies with the other requirements of the local government and any other instrumentality having jurisdiction over the waters of Queensland; and

(c) adequate provision has been made by the applicant for storm water drainage into and out of the lake forming part of the common lake area; and

(d) the applicant undertakes to maintain at all times the minimum average depth of water in the lake forming part of the common lake area at 1.5 m or more unless the local government approves a lesser depth.

(4) Notwithstanding this Act or any other Act, the local government is not to approve or seal a plan of survey to which this section applies unless it is satisfied that the common lake area is held for an estate in fee simple by a company and the memorandum of association of that company complies with subsection (5) except as provided in subsections (9) to (14).

(5) The memorandum of association of a company specified in subsection (4) is, in addition to complying with the requirements prescribed by or under the Companies (Queensland) Code to contain—

(a) provisions that clearly indicate—

(i) the rights, obligations and entitlement of the owner with respect to the common lake area in respect of each allotment on the plan of subdivision specified in subsection (1);

(ii) the manner in which the common lake area may be disposed of or otherwise dealt with by way of transfer or lease of the whole or any part of the common lake area, but a provision in the memorandum of association in compliance with this provision does not derogate from or in any way affect the

operation of section 5.1;

(b) provisions that require the company—

(i) to establish a fund for administrative expenses sufficient in the opinion of the company for the control, management and administration of the common lake area, for the payment of premiums of insurance and the discharge of any other obligation of the company with respect to the common lake area, other than the obligation specified in subparagraph (ii);

(ii) to establish a common lake area maintenance reserve fund for the purpose of equalising maintenance charges in respect of the common lake area against each year;

(iii) to determine from time to time the amounts of money to be raised for the purposes of subparagraphs (i) and (ii);

(iv) to raise those amounts of money determined pursuant to subparagraph (iii) by levying contributions on the owner of every allotment having an entitlement to the common lake area in proportion to the entitlement;

(c) provisions that—

(i) indicate clearly how the registered proprietor of an allotment transfers to any successor in title the rights, obligations and entitlement as a member of the company at the time of disposing of the allotment;

(ii) stipulate the action that may be taken by the directors of the company in the event of a registered proprietor of an allotment failing to transfer to any successor in title any shares that under the memorandum of association of the company should have been transferred.

(5A) Notwithstanding any other Act, a resolution of a company referred to in subsection (4) that purports to vary any of the provisions in the memorandum of association of that company required by subsection (5) to be contained in the memorandum of association is invalid unless that resolution has been approved by the local government.

(6) Subject to subsection (6A), contributions levied under this subsection become due and payable upon the passing of a resolution to that effect in

accordance with the terms of that resolution and may be recovered as a joint and several debt by the company in an action in a court of competent jurisdiction from the owner entitled at the time when the resolution was passed and from the owner entitled at the time the action was instituted.

(6A) The company is—

(a) on the application of an owner or a person authorised in writing by the owner in that behalf, to certify—

(i) the amount of any contribution determined as the contribution of that owner;

(ii) the manner in which that contribution is payable;

(iii) the extent to which that contribution is payable by that owner;

(b) at the request of a local government, to furnish to that local government details of the amount held from time to time in the common lake area maintenance reserve fund established pursuant to subsection (5)(b)(ii).

(7) A person who submits to a local government an application for a subdivision of land to which this section applies—

(a) is to satisfy the local government that the applicant has complied in all respects with the *Water Resources Act 1989* with respect to referable dams or that those provisions do not apply;

(b) is not to use a lake proposed to be constructed as part of a common lake area until—

(i) construction of the lake has been completed to the satisfaction and in accordance with the requirements of the local government and, in an appropriate case, of the chief executive of the department that deals with matters arising under the *Water Resources Act 1989* or other instrumentality having jurisdiction over waters of Queensland;

(ii) the relevant plan of survey has been registered or recorded by the relevant registering authority in accordance with section 5.3.

(8) The company in whom the ownership of a common lake area is for

the time being vested is, at all times, to adequately preserve, maintain and cleanse that common lake area to the satisfaction of the local government and is to comply with any local law of the local government with respect to the common lake area and with any requirement, term or condition imposed by the local government pursuant to any permission, consent or approval granted for the construction or use of that common lake area.

(8A) The applicant may be required to pay to the local government security against the inability or failure of the company to meet the cost of preservation, maintenance or cleansing of the common lake area pursuant to subsection (8).

(8B) Notwithstanding subsection (8A)—

(a) the local government may, if it considers that adequate provision exists in the common lake maintenance reserve fund established pursuant to subsection (5)(b)(ii) to meet the company's obligations pursuant to subsection (8), refund to the applicant the whole or part of any moneys paid pursuant to subsection (8A);

(b) moneys are not to be paid to or accepted by the local government and an amount is not to be agreed upon under subsection (8A) unless a contract in writing has first been made between the applicant and the local government setting forth—

(i) the amount that the applicant agrees to pay to the local government; and

(ii) the terms and conditions relating to the expenditure of that amount by the local government; and

(iii) the circumstances in which the local government may agree to make the refund referred to in this paragraph.

(9) Notwithstanding subsection (1), an application to which this section refers may, with the approval of the local government, provide for the surrender to the Crown of the allotment or allotments comprising the common lake area and the placing of that allotment or those allotments under the control of the local government.

(10) Subsections (2), (3) and (8A) are, with all necessary adaptations, to apply and extend to applications submitted in accordance with subsection (9).

(11) The relevant registering authority is not to register or record a plan of survey approved by a local government unless and until all necessary transfers surrendering to the Crown the allotment or allotments comprising the common lake area have been lodged and the registering authority is satisfied that those transfers are correct for registration or recording.

(12) Land surrendered to the Crown for the purposes of subsection (9) is, pursuant to *Land Act 1994*, chapter 3, part 1, to be reserved and set apart for the purpose for which the land was provided in the plan and placed under the control of the local government as trustee.

(13) The notation of approval and certificate specified in section 5.1 on the plan of survey pursuant to this subsection is subject to the conditions imposed and is to indicate that the allotment or allotments comprising a common lake area is or are to be transferred and surrendered to the Crown.

(14) The decision of the local government taken pursuant to subsections (9) and (10) is not appealable to the Court.

Application for amalgamation of land

5.11(1) A person may make application to a local government to amalgamate separate adjoining parcels of land into 1 undivided parcel whether or not those adjoining parcels are less than the minimum allotment size as determined at the time of application by the local government.

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

(a) be on a form determined by the local government;

(b) contain the prescribed information;

(c) be accompanied by the appropriate fee.

(3) The local government must have regard to applicable State planning policies in making its decision on the application and must have regard to—

(a) the number and type of buildings erected on the land; and

(b) whether it is proposed to resubdivide the parcel under the *Building Units and Group Titles Act 1980*.

(4) The local government must decide the application within 40 days of its receipt of the application

(4A) The local government may, by resolution, extend or further extend the period mentioned in subsection (4).

(4B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(4C) If the local government extends or further extends the period mentioned in subsection (4), it must notify the applicant of the extension before the extension starts.

(5) In deciding an application made to it pursuant to this section a local government is to—

(a) approve the application; or

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

(c) refuse to approve the application.

(6) The conditions imposed by a local government on its approval under subsection (5) (as subsequently amended under this Act) attach to the land and are binding on successors in title.

(7) Upon the local government making a decision on an application in accordance with subsection (5), the chief executive officer is, within 10 days of the date of the decision, to notify the applicant of the decision.

(8) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the local government.

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

(10) Where the applicant notifies the local government that the applicant accepts the decision of the local government without dispute and will not exercise any right of appeal to the Court in respect of the decision the period for institution of an appeal is to be taken to have expired.

(11) This section does not apply if an amalgamation is required to be

effected as a condition of an approval granted by a local government following an application made under any other section of this Act.

(12) Subsequent to the completion of any works required pursuant to an approval under this section, an applicant is, within 2 years of the approval, to lodge with the local government a plan of survey in accordance with subsection 5.3 and that section applies to the registration or recording of that plan.

Application for access easement

5.12(1) A person may make application to a local government to establish an access easement to a road.

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

(a) be on a form determined by the local government;

(b) contain the prescribed information;

(c) be accompanied by the appropriate fee.

(2A) The local government must have regard to relevant State planning policies in making its decision on the application.

(3) The local government must decide the application within 40 days of its receipt of the application.

(3A) The local government may, by resolution, extend or further extend the period mentioned in subsection (3).

(3B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(3C) If the local government extends or further extends the period mentioned in subsection (3), it must notify the applicant of the extension before the extension starts.

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

(a) approve the application; or

(b) refuse to approve the application.

(5) Upon the local government making a decision on an application in accordance with subsection (4), the chief executive officer is, within 10 days of the date of the decision, to notify the applicant of the decision.

(6) The applicant may appeal to the Court pursuant to section 7.1 against the decision of the local government.

(7) Where a local government fails to decide an application within the period referred to in subsection (3), the applicant may appeal to the Court pursuant to section 7.1 as if the local government had refused the application.

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

(9) This section does not apply if an easement is required to be effected as a condition of an approval granted by a local government in respect of an application made under any other section of this Act.

(10) Within 2 years of the date of obtaining approval pursuant to this section, an applicant is to submit the proposed instrument of agreement for inspection by the local government and the local government is to endorse on or attach to the instrument a certificate notifying the approval by the local government of the instrument.

(11) The registering authority is not to register or record an instrument, the subject of an approval under this section, unless it is endorsed on or certified pursuant to subsection (10).

Special provisions about subdivision of scheme building

5.13(1) The local government's approval is not required under this part for the subdivision of land for—

(a) the establishment or amendment of a community titles scheme

requiring—

(i) registration of a building format plan of subdivision; or

(ii) amendment of a building format plan of subdivision, if the amendment does not affect the external boundaries of the scheme land for the scheme; or

(b) the termination of a community titles scheme, requiring the registration of a plan of subdivision amalgamating the scheme land for the scheme into 1 allotment.

(2) However, a person proposing the subdivision of land for a purpose mentioned in subsection (1) must submit the plan of subdivision to the local government for the endorsement of a certificate of approval.

(3) The endorsement of a certificate of approval under subsection (2) is an approval for the *Land Title Act 1994*, section 50(g).[1]

(4) The local government may refuse to endorse a certificate of approval under subsection (2) only if there is an inconsistency between the plan of subdivision and—

(a) a lawful requirement of, or an approval given by, the local government under this Act; or

(b) if the local government has a planning scheme—the planning scheme, or a lawful requirement of, or an approval given by, the local government under the planning scheme; or

(c) if the local government does not have a planning scheme—another instrument having effect under this Act in the local government's area, or a lawful requirement of, or an approval given by, the local government under the instrument.

(5) However, if the plan of subdivision is for a termination mentioned in subsection (1)(b), and the termination has been ordered by the District Court under the BCCM Act, the local government may refuse to endorse its certificate of approval only if there is an inconsistency between the plan of subdivision and the order of the District Court.

(6) If the local government does not endorse its certificate within 40 days

1 Section 50 (Requirement for registration of plan of subdivision)

after the plan of subdivision is submitted for endorsement, the person submitting the proposal may appeal to the court as if the local government had refused to endorse the plan.

PART 6—CONDITIONS, CONTRIBUTIONS, WORKS AND INFRASTRUCTURE AGREEMENTS

Division 1—Conditions, contributions and works

Unlawful conditions

6.1(1) Where an application is made to a local government—

(a) pursuant to part 4 or part 5; or

(b) for any approval, consent or permission to use land or use or erect any building or other structure for any purpose as required by a planning scheme;

the local government is not to—

(c) subject its approval of that application to a condition that is not relevant or reasonably required in respect of the proposal to which the application relates, notwithstanding the provisions of a planning scheme;

(d) restrict the duration of the approval to less than the period prescribed by those parts (except where town planning considerations warrant a lesser period) or, in the case of a subdivision of land, require that works be commenced in a lesser time period than that which is specified in section 5.3(1).

(2) The local government and an applicant or owner of land are not to enter into an agreement and a local government is not to accept any consideration in respect of a condition that, pursuant to subsection (1), is unlawful for the local government to impose.

(3) Subsections (1) and (2) do not apply to an infrastructure agreement under division 2.

Contributions towards water supply and sewerage works

6.2(1) For the purposes of this section—

"prescribed application" means an application—

(a) to amend a planning scheme or the conditions attached to an amendment of a planning scheme pursuant to section 4.3;

(b) to rezone land in stages pursuant to sections 4.6 and 4.9;

(c) for town planning and interim development consent pursuant to section 4.12;

(d) to subdivide land pursuant to section 5.1;

(e) which is a combined application pursuant to section 4.11.

"relevant date" means 1 September 1985.

"relevant land" means the land which is the subject of a prescribed application whether or not a building or other structure is proposed to be erected or used on that land.

(1A) A local government may deem works not to be available where those services cannot reasonably be provided to the development for technical reasons.

(2) Where a prescribed application is made to a local government and—

(a) the local government determines that water or sewerage (or both) should be made available to the relevant land; and

(b) the local government has constructed or is constructing a water supply scheme or a sewerage scheme (or both) capable of servicing the relevant land, with or without augmentation; and

(c) the local government is prepared to provide or has already provided as a part of that scheme or, as the case may be, those schemes, headworks that are adequate to make available water or sewerage (or both) to land that includes or comprises the relevant land;

the local government may, as a condition of granting approval of a prescribed application, require the applicant to pay the local government an amount, determined in accordance with a local planning policy adopted by the local government, towards the cost incurred or to be incurred by the

local government in providing the appropriate water supply headworks or sewerage headworks (or both) or the water supply works external or sewerage works external (or both) as the case may be.

(3) Subject to subsection (3A), where a prescribed application is made to a local government and the local government is prepared to make available water or sewerage (or both) to the relevant land, the local government may, as a condition of granting approval of a prescribed application, require the applicant to pay—

(a) a contribution towards the cost incurred or to be incurred by the local government in providing the appropriate water supply headworks or sewerage headworks (or both), as the case may be; and

(b) the cost or a contribution towards the cost incurred or to be incurred by the local government in providing the appropriate water supply works external or sewerage works external (or both), as the case may be; and

(c) the cost of water supply works internal or sewerage works internal (or both), as the case may be, if the relevant land is to be subdivided.

(3A) The applicant may, at the applicant's absolute discretion, undertake to carry out the works internal at the applicant's cost and to the satisfaction of the local government and the local government may require the giving to it of security to ensure the performance of the works by the applicant.

(4) Where a prescribed application is made to a local government, and—

(a) the local government decides that water or sewerage (or both) should be made available to the relevant land; and

(b) the local government does not operate and is not presently constructing a water supply scheme or a sewerage scheme (or both) capable of serving the relevant land; and

(c) the local government is prepared to construct a scheme or schemes referred to in paragraph (b) and to provide headworks that are adequate to make available water or sewerage (or both) to the relevant land;

the local government may, as a condition of granting approval of a

prescribed application, require the applicant to pay—

(d) the total cost of providing any water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any 2 or more of them), where the relevant land is the only land that will be serviced by those works; or

(e) a contribution towards the cost of providing the water supply headworks, sewerage headworks, water supply works external and sewerage works external, as the case may be, where the relevant land is not the only land that will be serviced by those works.

(5) Where the local government, pursuant to subsections (3) to (4), requires the applicant to pay the cost or a contribution towards the cost of any water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any 2 or more of them) provided or to be provided in connection with the use of the relevant land either in whole or in stages, and that requirement is satisfied, and a further prescribed application is made which relates to that land (whether by the same or by a different applicant), the local government is not, in relation to that subsequent application, to require the payment of the cost or a contribution towards the cost of any of those works unless—

(a) the use then to be made of that land will, in the opinion of the local government, create a greater demand on the works than that for which a contribution has already been made; and

(b) the amount of any additional cost or contribution does not exceed the cost of satisfying the greater demand.

(6) The amount of any contribution required to be paid to a local government pursuant to this section is—

(a) where a prescribed application is to subdivide land and the relevant land was at the relevant date in a zone under a planning scheme which would permit its use for a purpose envisaged by the prescribed application and the water supply headworks or sewerage headworks (or both), as the case may be, are available to service the relevant land—not to exceed the cost (calculated at the approval date determined by the local government under section 5.1(5), 5.2(4) or 5.3(4) to be appropriate) of the works

which the local government could lawfully impose by way of any local law that was in existence at the relevant date and which required or may have required the applicant to contribute towards the cost of those works; or

(b) in any other case to be determined under a local planning policy which is to—

(i) specify the method adopted by the local government in determining the amount of any contribution to be made by the applicant towards the cost of water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any 2 or more of them);

(ii) specify the works, structures or equipment, including those operated and maintained by another local government or other body, as the case may be, and referred to in subsection (12), which the local government determines to be water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any 2 or more of them) relevant to the locality;

(iii) supersede any provision of a planning scheme, interim development provision or local law made by the local government in relation to a matter contained in the planning policy.

(7) In adopting a local planning policy pursuant to subsection (6), the local government is to have regard to the following matters—

(a) the estimated cost of the construction and augmentation of the water supply scheme or sewerage scheme in respect of which contributions are to be made under this section;

(b) the need for augmentation (if any) of the water supply scheme or sewerage scheme in respect of which contributions are to be made under this section;

(c) the estimated cost of the augmentation;

(d) the area of land, the estimated population or the estimated number of allotments (or lots (if any) under the *Building Units and Group Titles Act 1980*) to be serviced by the augmentation;

(e) the application of the local planning policy in relation to applications or classes of applications in respect of which contributions are required to be made under this section so as to secure a reasonable contribution by the applicant towards the cost of water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any 2 or more of them) taking into account any of the following matters applicable to the application—

(i) the area of the relevant land;

(ii) the estimated population or equivalent population to be serviced in relation to the relevant land;

(iii) the estimated number of allotments (or lots (if any) under the *Building Units and Group Titles Act 1980*) to be created in connection with the relevant land;

(iv) the proposed use of the relevant land;

(v) any other matter that the local government considers should be taken into account for the purpose of securing a contribution by the applicant towards the cost of water supply headworks, sewerage headworks, water supply works external or sewerage works external (or any 2 or more of them), as the case may be.

(8) Where a local government, in considering the requirements of subsection (7), amends a local planning policy adopted pursuant to section 2.8 it is to include a statement of the reasons for the amendment.

(9) The local government is, within 30 days of the date of receipt by it of an application and upon payment of the appropriate fee, to supply to the applicant details of all contributions to be made and that have been made to the local government in respect of water supply or sewerage works (or both) in respect of the relevant land.

(10) Where a local government decides to require an applicant to pay or contribute towards the cost of water supply headworks, sewerage headworks, water supply works external, sewerage works external (or any 2 or more of them) or pay the cost of water supply works internal or sewerage works internal (or both) under this section, the amount payable to the local government in respect of a prescribed application is to be paid at

the time as may be agreed upon between the local government and the applicant, but in the absence of agreement, the amount is payable—

(a) where it is proposed to subdivide the relevant land—within 14 days after the date of receipt by the local government of notification by the applicant of the applicant's intention to commence works in connection with the application and prior to commencing the works; or

(b) where it is proposed not to subdivide the relevant land—within 14 days after the date of the granting by the local government of approval under the *Building Act 1975*; or

(c) where no building work is associated with the relevant land—prior to the commencement of the use.

(11) The approval of a prescribed application may include a condition requiring the applicant to lodge and maintain with the local government security in a form approved by the local government for the amount of any cost or contribution required to be paid by the applicant pursuant to this section or such lesser amount as may be agreed upon between the parties.

(12) A local government may enter into an agreement with another local government or any other statutory body, with regard to the provision of water supply or sewerage services, as the case may be, referred to in subsection (2) and where such an agreement has been entered into the local government is to be taken to have constructed or to be constructing a water supply or sewerage scheme notwithstanding that the water supply scheme or sewerage scheme (or both), as the case may be, are or are to be operated and maintained by the other local government or other body as the case may be.

Agreements for specific works

6.3(1) Where an application referred to in section 6.2(2) is approved by a local government subject to a lawful condition that the applicant pay to the local government—

(a) the cost of or a contribution towards the cost of providing water supply headworks or sewerage headworks (or both) where those headworks, are to be provided or that work is to be performed

consequent upon the approval of that application;

(b) the cost of or a contribution towards the cost of providing the water supply works external or sewerage works external (or both) pursuant to section 6.2(2);

(c) the cost of water supply works internal or sewerage works internal (or both);

an agreement is to be entered into between the applicant and the local government setting forth—

(d) the nature and extent of the works for which payment is to be made (including a general specification of the works); and

(e) all amounts that the applicant is required to pay to the local government; and

(f) the time within which the amount is to be paid; and

(g) provisions relating to the interest accrued on amounts held in the trust fund of the local government in accordance with this section; and

(h) the amount and nature of any security required to be lodged and maintained by the applicant with the local government, the circumstances in which security may be applied and the conditions under which it may be released; and

(i) where appropriate, the date on or before which the local government is to commence to perform the works or alternatively, the circumstances which will warrant the commencement; and

(j) where appropriate, the date on or before which the works are to be completed by the local government or alternatively the circumstances which will warrant their completion.

(2) No money is to be paid to or accepted by the local government until the agreement has been signed by the applicant and the local government.

(3) The local government is to expend upon the work of construction or augmentation all amounts which are paid to it under and in accordance with an agreement entered into pursuant to subsection (1).

(4) Each payment made to a local government pursuant to this section is to be deposited in its trust fund and be held in the trust fund until it is expended in accordance with the agreement and expenditure of any part of the payment is to be recorded separately and distinctly from expenditure of any part of any other such payment.

Works

6.4(1) Nothing contained in section 6.2 or 6.3 precludes a local government and an applicant from entering into an agreement, whereby instead of making a payment referred to in section 6.2 the applicant carries out the works at the applicant's expense to the satisfaction of the local government and within the time specified in the agreement.

(1A) An agreement entered into between a local government and an applicant under subsection (1) may be subject to a condition requiring the applicant to give the local government security to its satisfaction that the applicant's obligations under the agreement will be fulfilled.

(2) An applicant, with the approval of the local government, instead of undertaking the works of constructing and draining the roads and carrying out any other necessary works associated with the development of land, the subject of the application, may either—

(a) pay to the local government an amount as may be agreed upon with the local government as the cost of undertaking those works, and agree with the local government as to when those works are to be undertaken by the local government; or

(b) give to the local government security to the satisfaction of the local government that the applicant will undertake those works within such time as may be specified by the local government.

(2A) No money is to be paid to or accepted by the local government nor any agreement made by the local government pursuant to an application to develop the relevant land, until a contract in writing is made between the applicant and the local government in respect of those works.

(3) The contract referred to in subsection (2A) is to set forth the nature and extent of the works to be executed by the local government (including a specification of the works), the amount which the applicant agrees to pay to

the local government, the date on or before which the local government is to commence to construct the works, and the date on or before which those works are to be undertaken by the local government.

(4) A local government is not to seal the plan of survey pursuant to section 5.3 until a contract in accordance with subsection (2A) is first made and unless it is satisfied that any incomplete works will be completed within 3 months of the date of that sealing.

(6) A local government is not to require, either as a condition of approval of an application for the subdivision of land or as a requirement of any planning scheme provision or local law, whether made before or after the commencement of this Act, that works which the local government may lawfully require to be undertaken in respect of the subdivision of land, be undertaken by the local government.

Division 2—Infrastructure agreements

Definitions for div 2

6.5 In this division—

"consent document" see section 6.10.

"infrastructure" includes facilities, services, land and works used in connection with economic activity or the environment.

"infrastructure agreement" see section 6.6.

"State" includes an entity representing the State.

Meaning of "infrastructure agreement"

6.6(1) For this division, an **"infrastructure agreement"** is an agreement containing all the elements mentioned in subsections (2) to (4).

(2) The agreement must be about infrastructure for the development of land included in a development control plan.

(3) The State, a government owned corporation or a local government must be a party to the agreement.

(4) The agreement must provide for the following matters—

(a) repayment of amounts paid, and reimbursement of amounts expended, under the agreement, and amendment or cancellation of the obligations under the agreement, if the development entitlements on which the obligations are based are changed without the consent of the person who has to fulfil the obligations;

(b) how the obligations must be fulfilled if there is 1 or more changes of ownership of land, the subject of the agreement;

(c) matters prescribed under a regulation.

(5) An **"infrastructure agreement"** includes the agreement as originally made, and as amended from time to time since it was originally made.

Power to make infrastructure agreement

6.7 To remove any doubt, it is declared that the State, a government owned corporation or a local government has, and always did have, the power to make or amend an infrastructure agreement.

Infrastructure agreement may bind future local government decisions

6.8 An infrastructure agreement to which a local government is a party is not invalid merely because it has the effect of limiting the exercise of a discretion of the local government, and the limitation of the discretion is to be given effect.

Copy of infrastructure agreement to be given to local government

6.9 If the State or a government owned corporation is a party to an infrastructure agreement applying to land, the State or government owned corporation must give a copy of the agreement to the local government for the area in which the land is situated as soon as practicable after the agreement is made.

When infrastructure agreement binds successors in title

6.10(1) If the owner of land, to which an infrastructure agreement applies, is a party to the agreement or consents to the development obligations being attached to the land, the development obligations attach to the land and bind the owner and the owner's successors in title of the land.

(2) If the owner's consent under subsection (1) is not endorsed on the agreement, the owner must give a copy of the document evidencing the owner's consent (the **"consent document"**) to the local government as soon as practicable after the owner consents.

(3) In this section—

"development obligations" means the obligations under the infrastructure agreement other than the obligations to be fulfilled by the State, a government owned corporation or a local government.

Existing agreements

6.11(1) To remove any doubt, sections 6.5 to 6.10 do not apply to an infrastructure agreement made before the commencement of this division.

(2) However, those sections, other than section 6.6(4), apply to the Springfield agreements.

(3) In this section—

"Springfield agreements" means—

(a) the agreement made on 29 November 1994 between the State and Springfield Land Corporation Pty Ltd (ACN 055 714 531) and Springfield Land Corporation (No. 2) Pty Ltd (ACN 056 462 205); and

(b) the agreement titled 'The Springfield Project Agreement' and made, or to be made in 1995, between those parties about infrastructure for the development of the land to which the agreement mentioned in paragraph (a) applies.

Copies of infrastructure agreement available for inspection

6.12(1) This section applies if a local government is a party to an infrastructure agreement or has been given a copy of an infrastructure agreement under section 6.9 or a consent document under section 6.10.

(2) The local government must—

(a) keep the infrastructure agreement or consent document open to inspection; and

(b) make copies available for purchase at its public office at a price not more than the cost to the local government of producing the copy and, if a copy is supplied by post, the cost of postage.

Effect on other agreements

6.13 Section 6.7 must not be taken to imply that an agreement is unlawful merely because it—

(a) is about infrastructure for land not included in a development control plan; or

(b) was made before the commencement of the section.

PART 7—APPEALS

Appeals to the Court

7.1(1) A person may appeal to the Court where—

(a) this Act confers the right of appeal;

(b) that person is an applicant who is dissatisfied with a decision of a local government or conditions applied pursuant to the planning scheme or local law with respect to the use of any premises or the erection of a building or other structure permitted by the planning scheme (other than where a right of objection is conferred by the *Building Act 1975*);

(c) that person is an applicant or objector who is dissatisfied with a decision of a local government made pursuant to an interim development control provision.

(1A) The Wet Tropics Management Authority has standing to appeal against a decision of a local government mentioned in section 8.2A(2).

(2) An appeal against a decision of a local government is to be instituted within 40 days from the date on which the decision was made or such longer period as the Court may allow, where it is established that the chief executive officer failed to notify persons in accordance with this Act.

(2A) Where a local government has failed to decide an application within the period specified by this Act, an appeal may be instituted at any time after the expiration of the period specified for the decision on the application by the local government.

(2B) The institution of an appeal is to be made as prescribed and in accordance with the rules of court.

(3) Where an applicant has instituted an appeal pursuant to subsection (2A) and the applicant was required by this Act to cause public notice of the application to be given, the applicant is to forthwith make application to the chief executive officer to be furnished, in respect of each objection duly made, with the name and address of every principal objector who has duly made an objection to the application in relation to which the appeal has been instituted and the chief executive officer is to provide the information forthwith.

(4) Within 10 days of the date of the institution of an appeal (or where subsection (3) applies, within 10 days of the date of the furnishing of the information by the chief executive officer) or such further period as the Court may allow the appellant is to serve upon—

(a) in the case of an applicant appellant—the local government and each principal objector who has duly made an objection;

(b) in the case of an objector appellant—the local government and the applicant;

notice of the appeal and the grounds of the appeal and where the notice is to an applicant or a principal objector it is to include a statement that the person on whom the notice is served may elect within 14 days after the date notice

is served to become a respondent to the appeal.

(5) If—

(a) an appeal relates to a decision mentioned in section 8.2A(2)(a); and

(b) the decision is made, and states that it is made, merely because of the *Wet Tropics World Heritage Protection and Management Act 1993*, section 50;

the appellant must, within—

(c) 10 days of institution of the appeal; or

(d) if subsection (3) applies—10 days of giving the information; or

(e) such longer period as the Court may allow;

give written notice of the appeal, and the grounds of the appeal, to the Wet Tropics Management Authority.

(6) A person electing to be a respondent is to file in the Court a notice of election, as prescribed by the rules of court, within 14 days after the date notice is served or such longer period as the Court may allow where sufficient cause is shown for an extension.

(7) A respondent to an appeal is entitled to be heard in the appeal as a party to the appeal.

(8) Where an objection is made by more than 1 person, the right of appeal or the right to elect to become a respondent to an appeal applies to those persons in addition to the principal objector.

(9) For the purposes of this subsection and the rules of court—

(a) the local government is a respondent to every appeal; and

(b) if subsection (5) applies to an appeal—the Wet Tropics Management Authority is a respondent to the appeal.

Determination of appeal

7.1A(1) Subject to subsection (3D), the Court is not to determine an appeal in respect of an application for which public notice is required to be given by this Act unless it is satisfied by evidence or by affidavit that the

applicant has complied with the relevant provisions of this Act in respect of the giving of public notice.

(2) Where an appeal is instituted by an objector (other than pursuant to section 3.2 or 4.14) it is the applicant who has to establish that the application should be approved or allowed, as the case may be, or the appeal dismissed.

(2A) Where an appeal is instituted by an objector pursuant to section 3.2 or section 4.14, it is the respondent who has to establish that the approval should be revoked or the use registered, as the case may be.

(2B) Where an appeal is instituted by an applicant it is the appellant who has to establish that the application should be approved or allowed, as the case may be, and the appeal upheld.

(3) The Court may allow an appeal whether against a refusal or a condition of approval, absolutely or subject to any conditions the Court considers appropriate.

(3A) Notwithstanding that it may dismiss an appeal instituted by an objector, the Court in doing so may impose or vary conditions attaching to the approval.

(3B) In any appeal the Court may vary a condition imposed by the local government in respect of the approval.

(3C) Where an appeal is in relation to an application for staged rezoning or a combined application, the Court may allow or dismiss the appeal in whole or in part.

(3D) The Court may determine an appeal notwithstanding that certain provisions of this Act have not been complied with, where the Court is satisfied that the noncompliance has not adversely affected the awareness of the public of the existence and nature of the application nor restricted the opportunity of the public to exercise the rights conferred by the relevant provisions.

(3E) In determining an appeal, the Court may give such orders and directions as it considers appropriate.

(4) Where a determination of the Court amends or alters a decision of the local government, the determination of the Court is to be the decision of the local government superseding the previous decision (or part of the previous

decision, as the case may be) of the local government.

Review by the Court

7.2(1) An applicant who is dissatisfied with the decision of a local government on an application made pursuant to section 4.15 may apply to the Court for a review of the decision and the Court is hereby vested with jurisdiction to review matters brought before it pursuant to this section and to make determinations on the matters.

(2) An application for review of a decision of a local government is to be instituted within 40 days from the date on which the decision was made or such longer period as the Court may allow, where it is established that the chief executive officer failed to notify the applicant in accordance with section 4.15(9).

(2A) Where a local government has failed to decide an application made pursuant to section 4.15 within the period specified by section 4.15(6), an application for review may be instituted at any time after the expiration of the period specified for the decision on the application by the local government.

(2B) An application for review is to be in accordance with the rules of court.

(3) It is the applicant who has to establish that the application should be approved.

(4) In determining an application for review, the Court may give such orders and directions as it considers appropriate.

(5) Where a determination of the Court amends or alters a decision of the local government, the determination of the Court is to be the decision of the local government superseding the previous decision (or part of the previous decision, as the case may be) of the local government.

The Planning and Environment Court

7.3(1) The Local Government Court established under the *City of Brisbane Town Planning Act 1964* is hereby preserved, continued in existence and constituted under this Act under the name and style the

Planning and Environment Court.

(2) The Governor in Council is, from time to time by notice published in the gazette, to notify the names of judges of District Courts who are to be the judges who constitute the Court.

(2A) The Governor in Council may notify the name of a judge of District Courts to constitute the Court for a specified period only.

(2B) Any judge of District Courts so named to constitute the Court may do so notwithstanding that another judge of District Courts is concurrently constituting the Court.

(3) The jurisdiction of a judge of District Courts named to constitute the Court is not to be limited exclusively to the Court.

(4) The Governor in Council is to appoint a registrar of the Court who is to keep minutes of the proceedings and records of the determinations of the Court and perform such other duties as the Court may direct.

(5) The Court is to be a court of record and have a seal which is to be judicially noticed by all courts and persons acting judicially.

Jurisdiction of the Court

7.4(1) The Court is to hear and determine all matters which by this Act or any other Act are required to be heard and determined by the Court, including every appeal and application for review which under this Act may be made to the Court.

(2) Subject to subsection (3), the jurisdiction of the Court under this Act is exclusive and every determination of the Court is final and conclusive and is not to be impeached for any informality or want of form or be appealed against, reviewed, quashed or in any way called in question in any court.

(3) Where a local government or any person feels aggrieved by a determination of the Court on the ground of error or mistake in law on the part of the Court or that the Court had no jurisdiction to make the determination or exceeded its jurisdiction in making the determination, the local government or the person may, in accordance with the rules of court, appeal from the determination to the Court of Appeal.

(4) In respect of any proceeding or matter under an Act other than this

Act, subsections (2) and (3) apply subject to that other Act.

Powers of the Court

7.5(1) For the purposes of the hearing and determination of any matter within its jurisdiction under this Act or any other Act, the Court has power to summon any person as a witness and to require and compel that person to produce in evidence all documents and writings in their possession or power and to examine that person and to punish that person for not attending in pursuance of the summons or for refusing to give evidence or for neglecting or refusing to produce those documents or writings and for that purpose the member of the Court has the like powers as a District Court judge.

(1A) Notwithstanding subsection (1), a person is not to be compelled to give evidence incriminating himself or herself.

(2) The Court is to take evidence on oath, affirmation, affidavit or declaration and record the evidence.

(3) Every witness summoned is entitled to be paid reasonable expenses by the party requiring his or her attendance.

(4) Any party may be represented by counsel, solicitor or agent.

(5) Subject to the rules of court relating to the exercise in chambers of the jurisdiction of the Court every proceeding is to be heard and determined and the determination of the proceeding is to be pronounced in open court.

(6) The Court may sit in chambers and may exercise in chambers such jurisdiction as by the rules of court is so exercisable.

(7) Where in respect of an appeal made to the Court against a decision of a local government there exists a local planning policy of the local government that does not comply with the requirements of a local planning policy under section 1A.4, the Court is to hear and determine the appeal as if that policy did not exist.

Costs

7.6(1) Subject to subsection (1A), each of the parties to an appeal or other proceedings is to bear their own costs.

(1A) The Court may, upon application made to it, order such costs (including allowances to witnesses attending for the purpose of giving evidence at the hearing) as it considers appropriate in the following cases—

(a) where it considers the appeal or other proceedings to have been frivolous or vexatious;

(b) where a party has not been given reasonable prior notice of intention to apply for an adjournment of an appeal or other proceedings;

(c) where a party has incurred costs because another party has defaulted in the procedural requirements;

(d) without limiting the generality of paragraph (c), where a party has incurred costs because another party has introduced (or sought to introduce) new material without first giving the party reasonable time to consider the material;

(e) where a local government does not take an active part in the proceedings where it has a responsibility to do so.

(2) An order made under subsection (1A) may be made an order of the District Court and enforced accordingly.

(3) Where the Court has jurisdiction under this Act or any other Act to award costs to or in favour of or amongst any party or parties to any proceeding or matter before the Court, the Court may in its discretion order that those costs are to be ascertained and determined by the proper costs taxing officer of the Supreme Court, according to the scale of costs prescribed by law for the time being in respect of proceedings in the District Court and in every such case it is within the discretion of the taxing officer to decide the proper scale to be adopted by the taxing officer in the taxation of those costs.

Penalty for interrupting proceedings of the Court

7.7(1) Any person who wilfully interrupts the proceedings of the Court or otherwise misbehaves in the presence of the Court may be excluded from the Court by order of the Court and is, whether excluded or not, liable to a fine, to be imposed by the Court, of 2 penalty units and in default of immediate payment is liable to be imprisoned by order of the Court for

28 days.

(2) No summons need be issued against the offender, nor need any evidence be taken, but the offender may be taken into custody then and there by a police officer by order of the Court and called upon to show cause why a fine or other punishment under this section should not be imposed.

Rules of court

7.8(1) The Governor in Council, with the concurrence of any 2 or more judges of the Supreme Court of whom the Chief Justice is to be one, by order in council, may from time to time make all such rules of court as may be considered necessary or convenient for regulating the procedure and practice of the Court and for the purpose of giving full effect to this Act and any other Act conferring jurisdiction, power or authority on the Court.

(2) Without limiting the generality of subsection (1), the rules of court may make provision for all or any of the following matters—

(a) prescribing the jurisdiction, powers and authorities of the Court which may be exercised by the member of the Court in chambers and regulating the procedure and practice of the Court in chambers;

(b) the duties of, and the administration and conduct of the registrar and other officers and servants of the Court;

(c) conferring on the registrar, either generally or in any particular case and under such circumstances and on such conditions as may be prescribed, the jurisdiction, powers and authorities in whole or in part of the member of the Court in chambers and providing for an appeal from the registrar in the exercise of that jurisdiction, power or authority to the member of the Court;

(d) forms for all matters and proceedings in the Court.

(3) Notwithstanding subsection (1), a party desiring to take a step in a matter or proceeding in respect of which the Court has jurisdiction, power or authority under this Act or any other Act may apply to the member of the Court for directions, and any step taken in accordance with the directions given by the member of the Court is to be taken to be regular and sufficient.

(4) The *Acts Interpretation Act 1954*, section 28A applies with respect to orders in council made under subsection (1) as if they were regulations.

Clerk may certify copy of planning scheme etc.

7.9(1) If a chief executive officer of a local government is satisfied that a document is a true copy of the planning scheme, or a part of the planning scheme, in force for the local government at a time specified in the document, the chief executive officer may so certify the document.

(2) In any legal proceeding, a document certified under subsection (1) is admissible in evidence as if it were the original scheme or part.

PART 8—MISCELLANEOUS

Power to purchase or take land for planning purposes

8.1(1) In addition to its powers under the *Acquisition of Land Act 1967*, the local government may purchase or, with the prior approval of the Governor in Council, take under that Act any land in a planning scheme area which is required for any purpose of the planning scheme, whether the land is so required immediately or not, and for that purpose has all the powers and authorities conferred on it and be subject to all the duties imposed on it by that Act.

(2) Without limiting the generality of subsection (1), the local government may purchase or, with the prior approval of the Governor in Council, take under the *Acquisition of Land Act 1967* any land in a planning scheme area—

(a) which is required for the development or redevelopment of any part of the planning scheme area; or

(b) which is required for the purpose of controlling, restricting, limiting or prohibiting access to a road in pursuance of any planning scheme provision or local law in that behalf.

(3) Subsections (1) and (2) do not authorise or empower the local

government to take under the *Acquisition of Land Act 1967* any land in its planning scheme area which is required for the development or redevelopment of any part of the planning scheme area until that land is included in a zone in which the use for that development or redevelopment is permitted.

(4) Where land is purchased or taken by the local government for the purpose of development or redevelopment under subsection (2)(a), the local government, with the prior approval of the Governor in Council, may sell the whole or part of the land so purchased or taken, subject to such conditions as the Governor in Council may determine.

(4A) The disposal of land is to be in accordance with the Local Government Act, chapter 6 (General operation of local governments), part 3 (Contracts and Tendering), division 3 (Disposal of land or goods).

(4B) If the land or any part of it is sold before it has been developed or redeveloped by the local government, the terms and conditions are to be such as ensure that the land sold will be developed or redeveloped according to plans and a design approved by the local government.

(5) Until land which is required for development or redevelopment of any part of the planning scheme area is purchased or taken by the local government pursuant to this section such requirement (whether noted or indicated on any document comprising part of the planning scheme or not) is not to affect the use which may be lawfully made of the premises.

Environmental impact

8.2(1) Without derogating from any of its powers under this Act or any other Act, a local government, when considering an application for its approval, consent, permission or authority for the implementation of a proposal under this Act or any other Act, is to take into consideration whether any deleterious effect on the environment would be occasioned by the implementation of the proposal, the subject of the application.

(2) If a person intends to apply to a local government for—

(a) an approval, consent, permission or authority in relation to a planning scheme for a designated development; or

(b) an approval, consent, permission or authority in relation to an

interim development control provision for a designated development;

the person must, in accordance with the regulations, request the chief executive of the department to tell the person if an environmental impact statement is necessary and, if it is necessary, its terms of reference.

(3) The chief executive must, as soon as possible after receiving the request—

(a) give a written acknowledgment to the applicant of its receipt; and

(b) decide if an environmental impact statement is necessary; and

(c) if the chief executive decides that an environmental impact statement is necessary—decide its terms of reference.

(4) The chief executive may decide that an environmental impact statement in relation to a designated development is not necessary if—

(a) a relevant study, that is not outdated, was prepared and, in the chief executive's opinion, there are no significant environmental issues that were not covered in the relevant study; or

(b) the chief executive is satisfied that a referral agency has made a study that included environmental issues for the area the subject of the development and it is not outdated; or

(c) in the chief executive's opinion, the consequence of the approval, consent, permission or authority in relation to the designated development is minor.

(5) The chief executive must consult with all the referral agencies in relation to—

(a) whether an environmental impact statement is necessary; and

(b) if a statement is necessary—its terms of reference.

(5A) Subject to subsection (5B), when the chief executive has decided whether or not a statement is necessary and, if it is necessary, the terms of reference, the chief executive must give written notice of the decision and the terms (if any)—

(a) to the applicant; and

(b) to the local government.

(5B) The chief executive must make a decision under subsection (5A) before the end of 20 working days after the written acknowledgment of the receipt of the request was given to the applicant.

(5C) The applicant must prepare an environmental impact statement in accordance with the terms of reference and include it with the application if the applicant still intends to apply to the local government for—

(a) an approval, consent, permission or authority in relation to a planning scheme for the designated development; or

(b) an approval, consent, permission or authority in relation to an interim development control provision for the designated development.

(6) The chief executive may extend or further extend the period mentioned in subsection (5B).

(6A) If the chief executive extends or further extends the period mentioned in subsection (5B), the chief executive must notify the applicant of the extension before the extension starts.

(7) Notwithstanding any other provision of this Act, where the application referred to in subsection (2) is an application which requires the giving of public notice, it is a requirement that the last day for the receipt of objections be a day not less than 30 working days after the date of compliance with the giving of public notice.

(8) When the local government receives an application for a designated development, it is to forward to the chief executive, and any referral agency nominated in the terms of reference, a copy of the environmental impact statement together with a request for comments.

(9) A request referred to in subsection (8) is to specify a date, being not less than 20 working days from the date upon which the referral agency receives the request, by which that agency is to provide its comments in respect of the environmental impact statement to the local government.

(10) A referral agency which receives a request referred to in subsection (8) may, within the period specified in subsection (9), forward its comments to the local government and those comments are, for the purposes of this Act, to be taken to be objections where those comments are in respect of an application pursuant to section 4.3, 4.6 or 4.12.

(11) The local government must decide an application to which subsection (2) applies within 60 days of—

(a) its receipt of the statutory declaration required by section 4.3(10), 4.6(10) or 4.12(9); or

(b) the making of the application;

whichever happens later.

(11A) The local government may, by resolution, extend or further extend the period mentioned in subsection (11).

(11B) The resolution has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension or further extension; or

(b) directing that the extension or further extension ceases to have effect on the giving of the direction.

(11C) If the local government extends or further extends the period mentioned in subsection (11), it must notify the applicant of the extension before the extension starts.

(11D) When it decides an application to which subsection (2) applies, the local government must have regard to the environmental impact statement submitted with the application as well as any other matters relevant to the application.

(11E) Subsections (11) to (11D) have effect despite any other provision of this Act which is inconsistent.

(12) Where an application is made to a local government for a proposal which is not a designated development and the local government is of the opinion that the implementation of the proposal may have a deleterious effect on the environment, it is to—

(a) require the applicant to submit an environmental impact statement in respect of the proposal, the subject of the application; and

(b) specify the matters and things which are to be dealt with in that statement.

(13) In any case where the local government makes application for the approval by the Governor in Council of any proposal not being a designated

development in accordance with this Act or any other Act, the chief executive may require the submission of an environmental impact statement in respect of the proposal.

(14) For the purpose of complying with a request from the chief executive in accordance with subsection (13)—

(a) the local government may submit to the chief executive a copy of the environmental impact statement already supplied to the local government in respect of the proposal, the subject of the application referred to in subsection (13); or

(b) if no environmental impact statement has been required by and supplied to the local government, the local government may (and is hereby authorised) require the applicant in respect of the proposal to submit without cost to the local government the environmental impact statement as required by the chief executive; or

(c) the local government may submit to the chief executive a copy of an environmental impact statement prepared by or on behalf of that local government in respect of a proposal by the local government.

(15) In this section—

"designated development" means—

(a) a proposal prescribed by regulation for the purposes of this section; or

(b) a proposal specified in a local government's local planning policy as a designated development for the purposes of this section.

"referral agency", in relation to an environmental impact statement for a designated development, includes—

(a) the chief executive of the department that is responsible for the administration of Acts for the protection of the environment; and

(b) any local government in whose area the development is proposed; and

(c) the chief executive of any other department or statutory body that the chief executive of the department considers must be

consulted.

"relevant study", in relation to a designated development, means a study that—

(a) considered a designated development of the same type; and

(b) involved the same land; and

(c) included environmental issues; and

(d) was prepared under this Act or another Act or at the direction of a referral agency.

Environmental impact—wet tropics area

8.2A(1) When considering a proposal for a relevant development on land within or neighbouring the wet tropics area, a local government must consult with, and have regard to the advice of, the Wet Tropics Management Authority.

(2) If a local government makes a decision—

(a) in relation to a designated or relevant development on land within the wet tropics area; or

(b) in relation to a proposal for a relevant development on land neighbouring the wet tropics area;

the local government must, within 10 days of the decision being made, give written notice of the decision, and the reasons for the decision, to the Wet Tropics Management Authority.

(3) In this section—

"relevant development" means a development that has been declared by regulation under the *Wet Tropics World Heritage Protection and Management Act 1993* to be a development to which this section applies.

"Wet Tropics Area" means the wet tropics area within the meaning of the *Wet Tropics World Heritage Protection and Management Act 1993*.

Assessment of sites for contamination

8.3A(1) Land within planning scheme areas may be prescribed for the purposes of this section.

(2) If land that is the subject of a proposal under section 2.18(3)(c) or 2.18(3A), or an application under section 4.3, 4.6, 4.12, 5.1 or 5.9, is land prescribed under subsection (1), and the proposal or application involves a change from a prescribed purpose to a purpose that is not prescribed—

(a) the applicant, when so requested by a local government in respect of such an application; or

(b) the proponent referred to in section 2.18 in respect of such a proposal;

as the case may be, is to apply to the chief executive of the department that is responsible for the administration of Acts for the protection of the environment for a site contamination report.

(3) Each site contamination report is to be prepared by the that chief executive at the expense of the applicant or proponent, as the case may be, and may be a report on any study of contamination of the relevant land.

(4) A site contamination report prepared by the that chief executive pursuant to this section is to be submitted for assessment pursuant to section 2.19, 4.4, 4.7, 4.13, 5.1 or 5.9, as the case may require.

Combined use of premises for service station and shop

8.4(1) Subject to this section and despite anything in a planning scheme, premises in the planning scheme area are not to be used as a service station in combination with a specified use unless those premises are zoned for the exclusive use of—

(a) a service station and a specified use; or

(b) a service station, a specified use and a use associated with the service station or specified use in relation to the premises.

(1A) The gross floor area used for the specified use must not be more than 100 square metres.

(2) Subsection (1) does not prevent the use of any premises as a service

station in combination with a specified use where—

(a) the use in question was an existing lawful use of the premises at the commencement of this Act; or

(b) approval for the use in question has been granted before the commencement of this Act and the use is effected in conformity with that approval.

(2A) A use of any premises that, by reason of subsection (2), is not prevented by subsection (1) is to be taken to constitute a lawful nonconforming use of the relevant premises under the planning scheme in force in the area in which the premises are situated.

(3) In this section—

"specified use" means any 1 of the following uses—

(a) general store;

(b) local store;

(c) shop;

(d) store.

Furnishing false or misleading information

8.5 A person who furnishes under this Act a document that is false or misleading in a material particular, whether by way of a statement in or omission from the document, commits an offence against this Act.

Proceedings for offences

8.6(1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

Maximum penalty—10 penalty units.

(2) Proceedings under subsection (1) are to be taken in accordance with the Local Government Act, section 672 (Proceedings for offences).

Delegation

8.7 A local government may, by resolution, delegate its powers under this Act (other than a power that is required to be exercised by resolution) to—

(a) the person who ordinarily presides at meetings of the council; or

(b) an officer or employee of the local government; or

(c) a board or committee consisting of some or all of the following—

(i) councillors;

(ii) officers of the local government;

(iii) employees of the local government.

Delegation by chief executive of department

8.7A The chief executive of the department may delegate all or any of the chief executive's powers under this Act to an officer of the department.

Regulations

8.9(1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to—

(a) regulating the giving of public notice of applications made under the Act;

(b) the form and content of interim development control provisions;

(c) regulating the form of registers required to be kept by local governments and the particulars to be entered in those registers;

(d) forms to be used for the purposes of this Act;

(e) fees payable for the purposes of this Act;

(f) all matters required or permitted by this Act to be prescribed and in respect of which no other means of prescription are provided;

(g) all matters that in the Governor in Council's opinion are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

(2) A regulation may impose a penalty not exceeding 10 penalty units for a breach of that regulation or any other regulation.

Savings and transitional

8.10(1) In this section—

"town planning scheme" includes the town plan for the City of Brisbane.

(2) The rules of court made pursuant to the *City of Brisbane Town Planning Act 1964*, section 33 prior to and subsisting at the commencement of this Act are to continue to have force and effect as if they were rules of court made pursuant to this Act.

(3) Each town planning scheme approved by the Governor in Council prior to the commencement of this Act, and which is in force immediately prior to the commencement of this Act, is, to the extent it conforms with this Act, to continue to have force and effect as if it were a planning scheme that had force and effect under this Act.

(4) Each policy of a local authority in respect of—

(a) its town planning scheme; and

(b) its subdivision of land by-law; and

(c) environmental impact;

in force immediately prior to the commencement of this Act, is, to the extent it is not contrary to this Act, to continue to have force and effect as if that policy were a planning policy made under this Act; and the local authority is to include each such policy in the register of planning policies for that local government.

(5) Each by-law regulating development pending the introduction of a town planning scheme and in force immediately prior to the commencement of this Act, is to continue to have force and effect as if it were an interim development control regulation that had force and effect under section 2.22.

(6) Where a town planning scheme is in force in an area, each town planning by-law and subdivision of land by-law which is in force immediately prior to the commencement of this Act in respect of that area, is, to the extent it conforms with this Act, to continue to have force and

effect as if it were part of a planning scheme that had force and effect under this Act.

(6A) Where a town planning scheme is in force in an area and the local authority has duly given public notice of its intention to amend a town planning by-law or a subdivision of land by-law (but the approval of the Governor in Council was not granted prior to the commencement of this Act), the Minister is to recommend to the Governor in Council modifications to the amendment which will ensure that the amendment conforms in all respects with this Act and the amendment is then to be dealt with as if this Act had not commenced.

(7) Each subdivision of land by-law in force immediately prior to the commencement of this Act in respect of any area which is not subject to a town planning scheme is, to the extent it is not contrary to this Act, to continue to have force and effect.

(8) Each approval, consent or permission (but not any conditions attaching to the approval, consent or permission) granted by a local authority or the Governor in Council prior to the commencement of this Act, is to continue to have force and effect as if it were an approval, consent or permission, as the case may be, made pursuant to this Act (but any conditions attaching to the approval, consent or permission are still to apply as if this Act had not commenced).

(8A) Subject to subsection (8B) and for the purposes of subsection (8), where an approval, consent or permission is subject to a time constraint, the period of that time constraint is to be measured from the date of the granting of that approval, consent or permission.

(8B) A consent referred to in subsection (8) does not lapse pursuant to section 4.13(18), until 4 years after the commencement of this Act.

(9) Where, prior to the commencement of this Act, an application of any kind to which this Act refers was duly made to a local authority (but was not finally approved by the local authority or the Governor in Council, as the case may be, prior to the commencement of this Act), the application is to be dealt with as if this Act had not commenced.

(9A) If that application is subsequently approved it is to have force and effect as if it were approved pursuant to this Act (but any conditions attaching thereto are still to apply as if this Act had not commenced).

(10) Where, prior to the commencement of this Act, a proposal (other than an application referred to in subsection (9)) to obtain an approval to amend a town planning scheme was instituted (but was not approved by the Governor in Council prior to the commencement of this Act), the Minister is to recommend to the Governor in Council modifications to the proposal which will ensure that the proposal conforms in all respects with this Act and the proposal is to be dealt with as if this Act had not commenced (and any conditions attaching to the proposal are still to apply as if this Act had not commenced).

(11) Where prior to the commencement of this Act a local authority has resolved—

(a) to prepare a town planning scheme; or

(b) to amend a town planning scheme following a statutory review of the provisions of the scheme;

and the local authority has duly given public notice of its intention to make application to the Minister seeking the approval of the Governor in Council to the scheme or amendment (but the scheme or amendment was not approved by the Governor in Council prior to the commencement of this Act), the local authority may seek the approval of the Governor in Council as if this Act had not commenced or the local authority may suggest and the Minister may recommend to the Governor in Council modifications to the scheme or amendment which will ensure that the proposed scheme or amendment conforms in all respects with this Act.

(11A) A town planning scheme or an amendment of a town planning scheme referred to in subsection (11) and approved by the Governor in Council as if this Act had not commenced, is, to the extent it conforms with this Act, to have force and effect as if it was a planning scheme or an amendment of a planning scheme, as the case may be, approved by the Governor in Council pursuant to this Act.

(12) Where prior to the commencement of this Act a local authority has resolved—

(a) to prepare a town planning scheme; or

(b) to amend a town planning scheme following a statutory review of the provisions of the scheme;

and the local authority has not duly given public notice of its intention to make application to the Minister seeking the approval of the Governor in Council to the scheme or amendment, the local authority is to proceed with the preparation of the scheme or amendment, as the case may be, pursuant to this Act.

(13) A reference in any other Act to—

(a) the Local Government Court is to be taken to be a reference to the Planning and Environment Court; and

(b) a town planning scheme is to be taken to be a reference to a planning scheme under this Act.

Special provision relating to parks

8.11(1) Section 5.6(7) of this Act is taken to have had effect from the enactment of the *Local Government (Planning and Environment) Amendment Act 1992*.

(2) Subsection (1) does not apply to the conditions of approval of a subdivision determined by a local authority or by the Court before the commencement of this section if the conditions did not require—

(a) an area of land to be provided for use as a park; or

(b) a monetary contribution to be paid to the local authority in substitution for the provision of that area of land.

Special provisions relating to Danpork Australia Pty Ltd

8.12.(1) The rezoning approval given by the Warwick Shire Council on 22 August 1995 to Danpork Australia Pty Ltd (A.C.N. 052 815 924) is amended by omitting condition 13A and inserting the following condition—

13A. The applicant be required to construct, or cause to be constructed, a weir of not more than 315 ML capacity on the Condamine River at a location and of a design to the satisfaction of the State.

(2) In a proceeding about the condition inserted by subsection (1), a court must not decide the condition is void for uncertainty.

ENDNOTES

1 Index to endnotes

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 January 1998. Future amendments of the Local Government (Planning and Environment) Act 1990 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	**Acts Interpretation Act 1954**	**prev**	=	**previous**
amd	=	**amended**	**(prev)**	=	**previously**
amdt	=	**amendment**	**proc**	=	**proclamation**
ch	=	**chapter**	**prov**	=	**provision**
def	=	**definition**	**pt**	=	**part**
div	=	**division**	**pubd**	=	**published**
exp	=	**expires/expired**	**R[X]**	=	**Reprint No.[X]**
gaz	=	**gazette**	**RA**	=	**Reprints Act 1992**
hdg	=	**heading**	**reloc**	=	**relocated**
ins	=	**inserted**	**renum**	=	**renumbered**
lap	=	**lapsed**	**rep**	=	**repealed**
notfd	=	**notified**	**s**	=	**section**
om	=	**omitted**	**sch**	=	**schedule**
o in c	=	**order in council**	**sdiv**	=	**subdivision**
p	=	**page**	**SIA**	=	**Statutory Instruments Act 1992**
para	=	**paragraph**	**SL**	=	**subordinate legislation**
prec	=	**preceding**	**sub**	=	**substituted**
pres	=	**present**	**unnum**	=	**unnumbered**

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 11 of 1994	31 October 1994
2	to Act No. 49 of 1995	12 April 1996

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1, 2
Changed names and titles	1, 2
Corrected minor errors	1, 2
Obsolete and redundant provisions	1, 2
Renumbered provisions	1

6 List of legislation

Local Government (Planning and Environment) Act 1990 No. 61
date of assent 18 September 1990
ss 1.1–1.2 commenced on date of assent
remaining provisions commenced 15 April 1991 (proc pubd gaz 6 April 1991 p 2009)

as amended by—

Local Government (Planning and Environment) Act Amendment Act 1991 No. 8
date of assent 27 March 1991
ss 1, 3 commenced on date of assent
remaining provisions commenced 15 April 1991 (see s 3 of Act and proc pubd gaz 6 April 1991 p 2009)

Local Government (Planning and Environment) Amendment Act (No. 2) 1991 No. 95 (as amd 1995 No. 57 ss 1–2, 4 sch 2) (as from 11 December 1991) (see s 2(1) sch 2))
date of assent 11 December 1991
commenced on date of assent

Primary Industries Corporation Act 1992 No. 15 ss 1–2, 13 sch
date of assent 13 May 1992
ss 1–2 commenced on date of assent
remaining provisions commenced 30 September 1992 (1992 SL No. 271)

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 2 (as amd 1993 No. 32 s 3 sch 2 (as from 7 December 1992))
date of assent 2 July 1992
amdt 43 commenced 1 July 1992 (see s 2 sch 2)
remaining provisions commenced on date of assent

Local Government (Planning and Environment) Amendment Act 1992 No. 37 (as amd 1995 No. 57 ss 1–2, 5(1) sch 3 pt 2) (as from 29 November 1995 (see s 2(2) as amd 1995 No. 58 ss 1–2, 4 sch 1) (as from 28 November 1995 (see s 2(1) sch 1))
date of assent 23 July 1992
s 3 sch amdt 9 never proclaimed into force and om 1995 No. 57 s 5(1) sch 3 pt 2
remaining provisions commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–2, 3 sch 2 as amd 1995 No. 57 ss 1–2, 4 sch (as from 7 December 1992) (see s 2(1) sch 2))
date of assent 7 December 1992
commenced on date of assent

Local Government Legislation Amendment Act (No. 2) 1993 No. 22 pts 1, 4, sch
date of assent 2 June 1993
s 9 never proclaimed into force and om 1993 No. 70 s 802
remaining provisions commenced on date of assent

Wet Tropics World Heritage Protection and Management Act 1993 No. 50 ss 1–2, 86 sch 3
date of assent 30 September 1993
commenced 1 November 1993 (1993 SL No. 396)

Local Government Act 1993 No. 70 ss 1–2, 804 sch
date of assent 7 December 1993
commenced 26 March 1994 (see s 2(5))

Land Title Act 1994 No. 11 ss 1–2, 194 sch 2
date of assent 7 March 1994
commenced 24 April 1994 (1994 SL No. 132)

Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2
date of assent 1 December 1994
ss 1–2 commenced on date of assent
remaining provisions never proclaimed into force and om 1995 No. 58 s 5(1) sch 7

Local Government (Planning and Environment) Amendment Act 1995 No. 49
date of assent 22 November 1995
commenced on date of assent

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3
date of assent 22 May 1997
ss 1–2 commenced on date of assent
remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Local Government Legislation Amendment Act (No. 3) 1997 No. 76 pts 1, 5
date of assent 1 December 1997
commenced on date of assent

7 List of annotations

Commencement
s 1.2 om R2 (see RA s 37)

Interpretation
s 1.4 amd 1992 No. 36 s 2 sch 2
def **"access"** sub 1992 No. 37 s 3 sch
amd 1993 No. 22 s 7 sch
sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7); 1997 No. 28 s 295 sch 3

def **"adjoining allotment"** sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7); 1997 No. 28 s 295 sch 3
def **"adjoining owner"** amd 1993 No. 70 s 804 sch; 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7); 1997 No. 28 s 295 sch 3
def **"allotment"** amd 1994 No. 11 s 194 sch 2; 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7); 1997 No. 28 s 295 sch 3
def **"Area"** om 1993 No. 70 s 804 sch
def **"BCCM Act"** ins 1997 No. 28 s 295 sch 3
def **"body corporate"** ins 1997 No. 28 s 295 sch 3
def **"by-law"** om 1993 No. 70 s 804 sch
def **"Chairman"** om 1993 No. 70 s 804 sch
def **"chief executive"** ins 1991 No. 95 s 3(2)
om R1 (see RA s 39)
def **"Clerk"** om 1993 No. 70 s 804 sch
def **"common property**" ins 1997 No. 28 s 295 sch 3
def **"community titles scheme"** ins 1997 No. 28 s 295 sch 3
def **"council"** ins 1991 No. 95 s 3(2)
sub 1993 No. 70 s 804 sch
def **"designated development"** ins 1991 No. 95 s 3(2)
def **"Director"** om 1991 No. 95 s 3(1)
def **"economic impact assessment"** om 1992 No. 37 s 3 sch
def **"elected representatives"** sub 1991 No. 95 s 3
amd 1993 No. 22 s 7 sch
def **"Joint Board"** om 1993 No. 70 s 804 sch
def **"Local Authority"** om 1993 No. 70 s 804 sch
def **"Local Government Act"** sub 1993 No. 70 s 804 sch
def **"local planning policy**" ins 1992 No. 37 s 3 sch
def **"major shopping development"** om 1992 No. 37 s 3 sch
def **"Minister"** om 1991 No. 95 s 3(1)
def **"open to inspection"** amd 1991 No. 95 s 2 sch; 1992 No. 36 s 2 sch 2
def **"owner"** sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
def **"parcel"** ins 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
def **"plan of survey"** ins 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
def **"Real Property Acts"** om 1994 No. 11 s 194 sch 2
def **"referral agency"** ins 1991 No. 95 s 3(2)
def **"registering authority"** amd 1994 No. 11 s 194 sch 2
def **"relevant study"** ins 1991 No. 95 s 3(2)
def **"scheme land**" ins 1997 No. 28 s 295 sch 3
def **"site contamination report"** amd 1993 No. 22 s 7 sch
def **"specified use"** ins 1991 No. 95 s 3(2)
def **"State planning policy"** ins 1992 No. 37 s 3 sch
def **"subdivision"** amd 1994 No. 11 s 194 sch 2

sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
def **"subsidiary scheme"** ins 1997 No. 28 s 295 sch 3
def **"void"** ins 1991 No. 95 s 3(2)
def **"working day"** amd 1991 No. 95 s 2 sch

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PART 1A—PLANNING POLICIES
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s 2.7 amd 1992 No. 37 s 5

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s 2.8 amd 1991 No. 95 s 4
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prov hdg sub 1992 No. 37 s 6(1)
s 2.9 amd 1992 No. 37 ss 6(2)–(3), 3 sch

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Preparation of strategic plan or development control plan
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Certain town planning work to be undertaken by certificated town planner
s 2.13 amd 1992 No. 37 s 3 sch (amdts 8, 10)
amd 1992 No. 37 s 3 sch (amdt 9 (never proclaimed into force and om 1995 No. 57 s 5(1) sch 3 pt 2))

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Amendment of a planning scheme etc. by an applicant
s 4.3 amd 1992 No. 37 s 3 sch

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s 4.8 amd 1991 No. 95 s 2 sch; 1992 No. 37 s 3 sch; 1993 No. 22 s 7 sch

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PART 6—CONDITIONS, CONTRIBUTIONS, WORKS AND INFRASTRUCTURE AGREEMENTS
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(4) AIA s 20A applies (see 1993 No. 32 s 4(3) sch 5)
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FIRST SCHEDULE
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SECOND SCHEDULE
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