



# Planning Act 2016

Current as at 1 July 2019

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Queensland

# Planning Act 2016

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# Planning Act 2016

**An Act providing for an efficient, effective, transparent, integrated, coordinated and accountable system of land use planning and development assessment to facilitate the achievement of ecological sustainability**

## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Planning Act 2016*.

### 2 Commencement

This Act, other than section 324, commences on a day to be fixed by proclamation.

### 3 Purpose of Act

- (1) The purpose of this Act is to establish an efficient, effective, transparent, integrated, coordinated, and accountable system of land use planning (*planning*), development assessment and related matters that facilitates the achievement of ecological sustainability.
- (2) *Ecological sustainability* is a balance that integrates—
  - (a) the protection of ecological processes and natural systems at local, regional, State, and wider levels; and
  - (b) economic development; and
  - (c) the maintenance of the cultural, economic, physical and social wellbeing of people and communities.

- (3) For subsection (2)—
- (a) protecting ecological processes and natural systems includes—
    - (i) conserving, enhancing or restoring the life-supporting capacities of air, ecosystems, soil and water for present and future generations; and
    - (ii) protecting biological diversity; and
  - (b) achieving economic development includes achieving diverse, efficient, resilient and strong economies, including local, regional and State economies, that allow communities to meet their needs but do not compromise the ability of future generations to meet their needs; and
  - (c) maintaining the cultural, economic, physical and social wellbeing of people and communities includes—
    - (i) creating and maintaining well-serviced, healthy, prosperous, liveable and resilient communities with affordable, efficient, safe and sustainable development; and
    - (ii) conserving or enhancing places of special aesthetic, architectural, cultural, historic, scientific, social or spiritual significance; and
    - (iii) providing for integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction; and
    - (iv) accounting for potential adverse impacts of development on climate change, and seeking to address the impacts through sustainable development (sustainable settlement patterns or sustainable urban design, for example).

#### **4 System for achieving ecological sustainability**

The system to facilitate the achievement of ecological sustainability includes—

- (a) **State planning policies** (including temporary ones) setting out planning and development assessment policies about matters of State interest; and
- (b) **regional plans** setting out integrated planning and development assessment policies about matters of State interest for particular regions of the State; and
- (c) **planning schemes** setting out integrated State, regional and local planning and development assessment policies for all of a local government area; and
- (d) **temporary local planning instruments (TLPIs)** setting out planning and development assessment policies to protect all or part of a local government area from adverse impacts in urgent or emergent circumstances; and
- (e) **planning scheme policies** setting out policies, for all or part of a local government area, that support—
  - (i) planning and development assessment policies under planning schemes; and
  - (ii) action by a local government in making or amending local planning instruments; and
  - (iii) action by a local government under the development assessment system; and
- (f) a **development assessment system**, including SARA, for implementing planning instruments and other policies and requirements about development by—
  - (i) categorising development; and
  - (ii) categorising types of assessment for particular development; and
  - (iii) stating the processes for making, receiving, assessing and deciding development applications; and
  - (iv) establishing rights and responsibilities in relation to development approvals; and

- (g) arrangements to expeditiously identify and authorise development of key infrastructure; and
- (h) planning, development assessment, charging and other arrangements for infrastructure, to promote—
  - (i) integrated land use and infrastructure planning; and
  - (ii) the cost-effective provision of infrastructure to service development; and
- (i) a variety of offences and enforcement arrangements; and
- (j) Ministerial powers to protect, or give effect to, the State's interests relating to planning and development assessment; and
- (k) dispute resolution (including appeals and declarations) for administrative decisions.

## **5 Advancing purpose of Act**

- (1) An entity that performs a function under this Act must perform the function in a way that advances the purpose of this Act.
- (2) Advancing the purpose of this Act includes—
  - (a) following ethical decision-making processes that—
    - (i) take account of short and long-term environmental effects of development at local, regional, State and wider levels; and
    - (ii) apply the precautionary principle, namely that the lack of full scientific certainty is not a reason for delaying taking a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage; and
    - (iii) seek to provide for equity between present and future generations; and

- (b) providing opportunities for the community to be involved in making decisions; and
- (c) promoting the sustainable use of renewable and non-renewable natural resources, including biological, energy, extractive, land and water resources that contribute to economic development through employment creation and wealth generation; and
- (d) valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition; and
- (e) conserving places of cultural heritage significance; and
- (f) providing for housing choice, diversity and affordability; and
- (g) encouraging investment, economic resilience and economic diversity; and
- (h) supplying infrastructure in a coordinated, efficient and orderly way; and
- (i) applying amenity, conservation, energy use, health and safety in the built environment in ways that are cost-effective and of public benefit; and
- (j) avoiding, if practicable, or otherwise minimising the adverse environmental effects of development (climate change, urban congestion or declining human health, for example).

## 6 Definitions

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

*Note—*

For the meanings of some defined words used in particular contexts, see section 280.

## **7 Act binds all persons**

- (1) This Act binds all persons, including—
  - (a) the State, other than the Coordinator-General when performing functions under the State Development Act; and
  - (b) the Commonwealth and the other States, to the extent Parliament’s legislative power allows.
- (2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

# **Chapter 2 Planning**

## **Part 1 Introduction**

### **8 What are planning instruments**

- (1) A *planning instrument* is an instrument that sets out policies for planning or development assessment, and is either—
  - (a) a State planning instrument; or
  - (b) a local planning instrument.
- (2) A *State planning instrument* is a planning instrument made by the Minister to protect or give effect to State interests, and is either—
  - (a) a State planning policy (including a temporary State planning policy); or
  - (b) a regional plan.
- (3) A *local planning instrument* is a planning instrument made by a local government, and is either—
  - (a) a planning scheme; or
  - (b) a TLPI; or



- 
- (c) a planning scheme policy.
  - (4) To the extent of any inconsistency—
    - (a) a State planning policy applies instead of a regional plan or local planning instrument; and
    - (b) a regional plan applies instead of a local planning instrument; and
    - (c) a planning scheme applies instead of a planning scheme policy; and
    - (d) a TLPI applies instead of a planning scheme or planning scheme policy.

*Note—*

A TLPI may also suspend, or otherwise affect, the operation of a planning scheme or planning scheme policy—see section 23(3).

- (5) A local planning instrument must not include a provision about building work, to the extent the building work is regulated under the building assessment provisions, unless allowed under the Building Act.
- (6) To the extent a local planning instrument does not comply with subsection (5), the local planning instrument is of no effect.

## **9 When planning instruments and designations have effect**

- (1) This section explains when certain instruments made under this chapter start to have effect.
- (2) The *effective day* is the day when the following instruments start to have effect—
  - (a) a planning instrument or designation;
  - (b) an amendment or repeal of a planning instrument or designation.
- (3) If this chapter requires public notice of the instrument to be published, the effective day is—
  - (a) the day on which the notice is published in the gazette; or

- (b) a later day stated in—
  - (i) the notice; or
  - (ii) the instrument.
- (4) However, with the Minister's agreement in writing, the effective day for the making or amendment of a TLPI is the day when the local government, at a public meeting, resolved to give the TLPI or amendment, and the request for an earlier effective day, to the Minister for approval.
- (5) Also, if under this chapter a planning instrument may be repealed by a later planning instrument, the repeal starts to have effect when the later planning instrument starts to have effect.

## Part 2 State planning instruments

### 10 Making or amending State planning instruments

- (1) This section applies if the Minister proposes to make or amend a State planning instrument.
- (2) The Minister must publish a public notice that states—
  - (a) where copies of the proposed State planning instrument, or proposed amendment, (the *instrument*) may be inspected or purchased; and
  - (b) a phone number or email address to contact for information about the instrument; and
  - (c) any person may make a written submission about the instrument to the Minister; and
  - (d) the requirements for properly making a submission; and
  - (e) the period, after the public notice is gazetted, within which a submission may be made.
- (3) The period for subsection (2)(e) must be at least—
  - (a) for making a State planning policy—40 business days; or

- (b) for amending a State planning policy—20 business days; or
  - (c) for making a regional plan—60 business days; or
  - (d) for amending a regional plan—30 business days.
- (4) The Minister must give a copy of the public notice and instrument to each affected local government.
- (5) After the Minister considers all submissions that are made as required under the public notice, the Minister must decide—
- (a) to make the instrument; or
  - (b) to make the instrument with the changes that the Minister considers appropriate; or
  - (c) not to make the instrument.
- (6) If the Minister decides to make the instrument (with or without changes), the Minister must—
- (a) publish the decision by a public notice that states—
    - (i) the day when the instrument was made; and
    - (ii) where a copy of the instrument may be inspected or purchased; and
  - (b) give a copy of the notice, and the instrument, to each affected local government.
- (7) A State planning instrument that is made or amended substantially in compliance with this section is valid, as long as any noncompliance does not—
- (a) restrict the public’s opportunity to properly make submissions about the instrument; or
  - (b) adversely affect public awareness of the existence and nature of the instrument.
- (8) If the Minister decides not to make the instrument, the Minister must publish the decision by a gazette notice.

## 11 Minor amendments to State planning instruments

- (1) The Minister may make a minor amendment to a State planning instrument without complying with section 10.
- (2) Instead, the Minister may make a minor amendment by publishing a public notice that states—
  - (a) the day when the amendment was made; and
  - (b) where a copy of the amended State planning instrument may be inspected or purchased.
- (3) A *minor amendment*, of a State planning instrument, is an amendment that—
  - (a) corrects or otherwise changes—
    - (i) a spelling, grammatical or mapping error; or
    - (ii) an explanatory matter about the instrument; or
    - (iii) the format or presentation of the instrument; or
    - (iv) a factual matter incorrectly stated; or
    - (v) a redundant or outdated term; or
    - (vi) inconsistent numbering of provisions; or
    - (vii) a cross-reference in the instrument; or
  - (b) the Minister considers only reflects—
    - (i) a part of another State planning instrument, if the Minister considers adequate public consultation was carried out in relation to the making of that part of the other State planning instrument; or
    - (ii) this Act or another Act; or
  - (c) is prescribed by regulation.
- (4) The Minister must give a copy of the public notice, and the amendment, to each affected local government.

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## 12 Making temporary State planning policies

- (1) This section applies if the Minister considers a State planning policy is urgently required to protect or give effect to a State interest.
- (2) The Minister may make a State planning policy (a *temporary State planning policy*) that has only temporary effect.
- (3) A temporary State planning policy may suspend or otherwise affect the operation of, but does not amend or repeal, a State planning instrument.
- (4) Instead of complying with section 10, the Minister may make a temporary State planning policy by publishing a public notice that states—
  - (a) the name of the temporary State planning policy; and
  - (b) if the temporary State planning policy suspends or otherwise affects the operation of another State planning instrument—the name of the other State planning instrument; and
  - (c) if the temporary State planning policy has effect only in a part of the State—the name, or a description, of the part of the State; and
  - (d) where a copy of the temporary State planning policy may be inspected or purchased.
- (5) The Minister must give a copy of the notice, and the temporary State planning policy, to each affected local government.
- (6) The temporary State planning policy has effect for 2 years from the effective day, or a shorter period stated in the policy, unless repealed sooner.

## 13 Repealing State planning instruments

- (1) The Minister may repeal a State planning instrument by—
  - (a) making another State planning instrument that specifically repeals the instrument; or

- (b) publishing a public notice that states—
  - (i) the name of the State planning instrument; and
  - (ii) if the State planning instrument has effect only in a part of the State—the name, or a description, of the part of the State; and
  - (iii) that the State planning instrument is repealed.
- (2) The Minister must give a copy of the public notice to each affected local government.

#### **14 Advice to Minister about regional plans**

- (1) The Minister may establish a regional planning committee for a region by a gazette notice that states the committee's name and membership.
- (2) When developing and implementing a regional plan, the Minister must consider the advice of any regional planning committee for the region.

## **Part 3 Local planning instruments**

### **Division 1 Introduction**

#### **15 What part is about**

- (1) This part sets out—
  - (a) the process for making, amending or repealing a local planning instrument; and
  - (b) the State's powers in relation to local planning instruments.
- (2) A local planning instrument, or amendment of a local planning instrument, (the *instrument*) that is made substantially in compliance with the process in division 2 is valid, as long as any noncompliance does not—

- 
- (a) for the making or amending of a planning scheme or TLPI—restrict the Minister’s opportunity to consider whether the instrument would adversely affect State interests; or
  - (b) if the process provides for public consultation about the instrument—
    - (i) restrict the public’s opportunity to properly make submissions about the instrument under that process; or
    - (ii) adversely affect public awareness of the existence and nature of the instrument.

## 16 Contents of local planning instruments

- (1) A planning scheme must—
  - (a) identify strategic outcomes for the local government area to which the planning scheme applies; and
  - (b) include measures that facilitate the achievement of the strategic outcomes; and
  - (c) coordinate and integrate the matters dealt with by the planning scheme, including State and regional aspects of the matters.
- (2) A regulation may prescribe requirements (the *regulated requirements*) for the contents of a local planning instrument.
- (3) The contents prescribed by regulation apply instead of a local planning instrument, to the extent of any inconsistency.

*Note—*

For the application of this section to a planning instrument change under the *Economic Development Act 2012*, see also sections 40L(3), 41(4) and 42K(2) of that Act.

## 17 Minister’s guidelines and rules

- (1) The Minister must make an instrument that contains—

- (a) guidelines setting out the matters that the chief executive must consider when preparing a notice about making or amending planning schemes; and
- (b) rules about—
  - (i) making amendments including amendments to LGIPs, of a type stated in the rules, to planning schemes; and
  - (ii) making LGIPs, whether as part of a proposed planning scheme or as an amendment of a planning scheme; and
  - (iii) reviewing LGIPs; and
  - (iv) making or amending planning scheme policies; and
  - (v) making or amending TLPIs; and
  - (vi) making a planning change of a type mentioned in section 30(4)(e)(i), whether as part of a planning scheme or as an amendment of a planning scheme.
- (2) Sections 10 and 11 apply to making or amending the guidelines or rules as if the guidelines or rules were a State planning policy.
- (3) The guidelines and rules start to have effect when a regulation prescribes the guidelines and rules.

## **Division 2                    Making, amending or repealing    local planning instruments**

### **18            Making or amending planning schemes**

- (1) This section applies if a local government proposes to make or amend a planning scheme.
- (2) The local government must give notice of the proposed planning scheme, or proposed amendment, (the *instrument*) to the chief executive.



- (3) After consulting with the local government, the chief executive—
  - (a) must give a notice about the process for making or amending the planning scheme to the local government; and
  - (b) may give an amended notice about the process for making or amending the planning scheme to the local government.
- (4) The chief executive must consider the Minister’s guidelines when preparing the notice or an amended notice.
- (5) The notice, or amended notice, must state at least—
  - (a) the local government must publish at least 1 public notice about the proposal to make or amend the planning scheme; and
  - (b) the local government must keep the instrument available for inspection and purchase for a period (the *consultation period*) stated in the public notice of at least—
    - (i) for a proposed planning scheme—40 business days after the day the public notice is published in a newspaper circulating in the local government area; or
    - (ii) for a proposed amendment—20 business days after the day the public notice is published in a newspaper circulating in the local government area; and
  - (c) the public notice must state that any person may make a submission about the instrument to the local government within the consultation period; and
  - (d) a communications strategy that the local government must implement about the instrument; and
  - (e) the local government must consider all properly made submissions about the planning scheme or amendment; and

- (f) the local government must notify persons who made properly made submissions about how the local government dealt with the submissions; and
  - (g) the local government must give the Minister a notice containing a summary of the matters raised in the properly made submissions and stating how the local government dealt with the matters; and
  - (h) after the planning scheme is made or amended, the local government must publish a public notice about making or amending the planning scheme.
- (6) The local government must make or amend the planning scheme by following the process in the notice or amended notice.
- (7) If the notice requires the Minister to approve the instrument, the Minister may approve the instrument if the Minister considers the instrument appropriately integrates State, regional and local planning and development assessment policies, including policies under an applicable State planning instrument.
- (8) A planning scheme replaces any other planning scheme that the local government administers.

## **19 Applying planning scheme in tidal areas**

- (1) A local government may apply a planning scheme as a categorising instrument in relation to prescribed tidal works in the tidal area for its local government area—
- (a) even if the tidal area is outside its local government area; and
  - (b) to the extent prescribed under the Coastal Act, section 167(5)(c).
- (2) However, subsection (1) does not apply to the extent the tidal area for the local government's local government area is also the tidal area for strategic port land.
- (3) In this section—

*strategic port land* see the Transport Infrastructure Act, section 286(5).

*tidal area*, for a local government area or strategic port land, means—

- (a) the part or parts of a river, stream or artificial waterway that are—
  - (i) tidal water in or next to the area or land; and
  - (ii) between the high water mark and the middle of the river, stream or artificial waterway; and
- (b) to the extent the boundary of the area or land is, or is seaward of, the high water mark and outside a river, stream or artificial waterway—tidal water that is seaward and within 50m of the high water mark.

*tidal water* see the Coastal Act, schedule.

## **20 Amending planning schemes under Minister's rules**

- (1) This section applies to an amendment of a planning scheme that the Minister's rules apply to.
- (2) Instead of complying with section 18, a local government may amend a planning scheme by following the process in the Minister's rules.
- (3) The Minister's rules must provide for the local government to publish a public notice about the planning scheme being amended.

## **21 Making or amending LGIPs**

Despite sections 18 and 20, a local government must follow the process in the Minister's rules for making or amending an LGIP, if the local government—

- (a) proposes to include an LGIP in a planning scheme; or
- (b) amends a planning scheme to include an LGIP; or
- (c) amends an LGIP.

## **22 Making or amending planning scheme policies**

- (1) A local government may make or amend a planning scheme policy by following the process in the Minister's rules.
- (2) The Minister's rules must provide for the local government to publish a public notice about the making or amendment of a planning scheme policy.

## **23 Making or amending TLPIs**

- (1) A local government may make a TLPI if the local government and Minister decide—
  - (a) there is significant risk of serious adverse cultural, economic, environmental or social conditions happening in the local government area; and
  - (b) the delay involved in using the process in sections 18 to 22 to make or amend another local planning instrument would increase the risk; and
  - (c) the making of the TLPI would not adversely affect State interests.
- (2) A local government may amend a TLPI if the Minister decides the amendment of the TLPI would not adversely affect State interests.
- (3) A TLPI may suspend or otherwise affect the operation of another local planning instrument, but does not amend or repeal the instrument.
- (4) The local government may make or amend a TLPI by following the process in the Minister's rules.
- (5) The Minister's rules must provide for—
  - (a) the Minister to approve a TLPI or amendment before the TLPI or amendment is made; and
  - (b) the local government to publish a public notice about the making of a TLPI or amendment.

- 
- (6) The TLPI, with or without an amendment, has effect for 2 years after the effective day, or a shorter period stated in the TLPI, unless repealed sooner.
  - (7) A TLPI—
    - (a) does not create a superseded planning scheme; and
    - (b) is not an adverse planning change.

## **24 Repealing TLPIs or planning scheme policies**

- (1) A local government may repeal a TLPI, or planning scheme policy, (the *instrument*) by resolution.
- (2) However, if the instrument was made by, or at the direction of, the Minister, the local government must get the Minister's written approval before making the resolution.
- (3) As soon as practicable after the local government makes the resolution, the local government must publish a public notice that states—
  - (a) the name of the local government; and
  - (b) the name of the instrument being repealed; and
  - (c) the day when the resolution was made.
- (4) The local government must give a copy of the public notice to the chief executive.
- (5) A local government may repeal a TLPI by making, or amending, a planning scheme to specifically repeal the TLPI.
- (6) The planning scheme policies for a local government area are repealed by making (but not amending) a planning scheme for the local government area.

## **25 Reviewing planning schemes**

- (1) A local government must—
  - (a) review its planning scheme within 10 years after—
    - (i) the planning scheme was made; or

- (ii) if the planning scheme has been reviewed—the planning scheme was last reviewed; and
  - (b) decide, based on that review, whether to amend or replace the planning scheme.
- (2) If the local government decides not to amend or replace the planning scheme, the local government must—
  - (a) give written reasons for the decision to the chief executive; and
  - (b) publish a public notice, in the approved form, about the decision; and
  - (c) keep a copy of the public notice in a conspicuous place in the local government’s public office, for a period of at least 40 business days after the notice is published.
- (3) Despite subsection (1), a local government must review any LGIP (an *LGIP review*) in its planning scheme within 5 years after—
  - (a) the LGIP was included in the planning scheme; and
  - (b) if the LGIP has been reviewed—the LGIP was last reviewed.
- (4) When conducting an LGIP review, the local government must follow the process in the Minister’s rules.
- (5) An LGIP review is not a review for subsection (1).

## **Division 3                      State powers for local planning instruments**

### **26            Power of Minister to direct action be taken**

- (1) This section applies to the following made by a local government—
  - (a) an existing local planning instrument or designation;
  - (b) a proposed local planning instrument or designation;

- (c) a proposed amendment of a local planning instrument or designation.
- (2) If the Minister considers the local government should take action—
- (a) to ensure an instrument is consistent with the regulated requirements; or
  - (b) to protect, or give effect to, a State interest;
- the Minister may give the local government a notice that complies with subsection (3).
- (3) The notice must state—
- (a) the action that the Minister considers the local government should take; and
  - (b) the reasons for taking the action; and
  - (c) that the local government may, within the reasonable period stated in the notice, make a submission to the Minister about the local government taking the action.
- (4) After the Minister considers all submissions made as required under the notice, the Minister must decide—
- (a) to direct the local government to take the action stated in the notice; or
  - (b) to direct the local government to take other action; or
  - (c) not to direct the local government to take any action.
- (5) Without limiting subsection (4), the Minister may direct the local government—
- (a) to review a planning scheme, as required under section 25, and report the results of the review to the Minister; or
  - (b) to review a designation, and report the results of the review to the Minister; or
  - (c) to make, amend or repeal a local planning instrument as required under sections 18 to 24; or

- (d) to amend a designation as required under the process in the designation process rules or to repeal a designation under section 40.
- (6) If the Minister decides to direct the local government to take action, the Minister must give the local government a notice that states—
  - (a) the nature of the action; and
  - (b) a reasonable period within which the local government must take the action.
- (7) If the local government does not take the action, the Minister may—
  - (a) take the action; and
  - (b) recover any expense the Minister reasonably incurs in taking the action from the local government as a debt.
- (8) The action taken by the Minister has the same effect as if the local government had taken the action.

## **27 Power of Minister to take urgent action**

- (1) This section applies if the Minister considers—
  - (a) action should be taken under section 26(2)(b) to protect, or give effect to, a State interest; and
  - (b) the action must be taken urgently.
- (2) The Minister may give the local government a notice that states—
  - (a) the action that the Minister intends to take; and
  - (b) the reasons for taking the action.
- (3) After giving the notice, the Minister may take the action as required under the process in the Minister's rules without—
  - (a) giving a direction to the local government under section 26; or
  - (b) consulting with any person before taking the action.



- 
- (4) The action taken by the Minister has the same effect as if the local government had taken the action.
  - (5) Any expense the Minister reasonably incurs in taking the action may be recovered from the local government as a debt.

## 28 Limitation of liability

A local government does not incur liability for anything the local government does or does not do in complying with a direction of the Minister, or any action taken by the Minister, under this division in relation to—

- (a) an existing local planning instrument or designation; or
- (b) a proposed local planning instrument or designation; or
- (c) a proposed amendment of a local planning instrument or designation.

# Part 4 Superseded planning schemes

## Division 1 Applying superseded planning scheme

### 29 Request to apply superseded planning scheme

- (1) This section applies if a person wants a superseded planning scheme to apply to a proposed development application or proposed development.
- (2) A *superseded planning scheme* is a planning scheme, together with related planning scheme policies, that was in effect immediately before any of the following events (a *planning change*) happens—
  - (a) the planning scheme was amended or replaced;
  - (b) any of the planning scheme policies were amended, replaced or repealed;

- (c) a new planning scheme policy was made for the planning scheme.

*Note—*

For a planning instrument change under the *Economic Development Act 2012*, see also sections 40L(3), 41(4) and 42K(2) of that Act.

- (3) A person may, within 1 year after the planning scheme and related policies become a superseded planning scheme, make a superseded planning scheme request in relation to the superseded planning scheme.
- (4) A ***superseded planning scheme request*** is a written request to a local government—
  - (a) to accept, assess and decide a development application (a ***superseded planning scheme application***) under a superseded planning scheme; or
  - (b) to apply a superseded planning scheme to the carrying out of development that was accepted development under the superseded planning scheme.
- (5) A regulation may prescribe the following in relation to a superseded planning scheme request—
  - (a) that the request must be made in an approved form;
  - (b) the information that must be given with the request;
  - (c) how the local government may set a fee for considering the request;
  - (d) the period for deciding the request, and how the period may be extended;
  - (e) when and how a local government must notify the person making the request of the local government's decision;
  - (f) another matter related to deciding the request.
- (6) The local government must decide whether or not to agree to a superseded planning scheme request within the period prescribed by, or extended as required under, the regulation.

- 
- (7) The local government must, within 5 business days after making the decision, give a decision notice to the person who made the superseded planning scheme request.
  - (8) If, within 5 business days after the end of the period or of the period extended under subsection (6), the local government does not give a decision notice to the person, the local government is taken to have agreed to the superseded planning scheme request.
  - (9) If the local government decides to agree, or is taken to have agreed, to a request under subsection (4)(a)—
    - (a) the superseded planning scheme application must be made within 6 months after the local government—
      - (i) gives a decision notice to the person who made the request; or
      - (ii) is taken to have agreed to the request; and
    - (b) despite section 45(6) to (8), the assessment manager for the superseded planning scheme application must assess the application as if the superseded planning scheme to which the application relates was in effect instead of—
      - (i) the planning scheme; and
      - (ii) a planning scheme policy for the local government area.
  - (10) If the local government decides to agree, or is taken to have agreed, to a request under subsection (4)(b)—
    - (a) the development may be carried out under the superseded planning scheme; and
    - (b) the following apply to the decision as if the decision were a development approval, given by the local government as the assessment manager, that took effect on the day when the decision notice was given or the local government is taken to have agreed to the request—
      - (i) chapter 3, part 5, division 4;
      - (ii) schedule 1, table 1, item 3.

## **29A When superseded planning scheme application for prohibited development may be made**

- (1) This section applies if—
  - (a) a local government agrees, or is taken to have agreed, to a request under section 29(4)(a) to accept, assess and decide a superseded planning scheme application under a superseded planning scheme; and
  - (b) the superseded planning scheme application is for development that is categorised as prohibited development under the planning scheme.
- (2) Despite section 50(2), the superseded planning scheme application may be made if it does not include development categorised as prohibited development under—
  - (a) the superseded planning scheme; or
  - (b) a categorising instrument other than the planning scheme.

## **Division 2 Compensation**

### **30 When this division applies**

- (1) This division applies in relation to an adverse planning change.
- (2) An *adverse planning change* is a planning change that reduces the value of an interest in premises.

*Note—*

For a planning instrument change under the *Economic Development Act 2012*, see also sections 40L(3), 41(4) and 42K(2) of that Act.

- (3) An adverse planning change includes a planning change (a *public purpose change*) that limits the use of premises to—
  - (a) the purpose for which the premises were lawfully being used when the change was made; or
  - (b) a public purpose.

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- (4) However, an adverse planning change does not include a planning change that—
- (a) has the same effect as another statutory instrument, other than a TLPI, for which compensation is not payable; or
  - (b) is made to comply with the regulated requirements; or
  - (c) includes infrastructure in a planning scheme, or removes or changes the infrastructure shown in a planning scheme, including under a designation; or
  - (d) is about matters included in a LGIP; or
  - (e) is made—
    - (i) to reduce a material risk of serious harm to persons or property on the premises from natural events or processes (bush fires, coastal erosion, flooding or landslides, for example); and
    - (ii) under a provision of the Minister’s rules that applies specifically to the making of a planning change to reduce the risk; or
  - (f) is about the relationships between, the location of, or the physical characteristics of, buildings, works or lots, if the yield achievable is not substantially different from the yield achievable before the change; or
  - (g) is made under section 276(1)(c) to identify all or part of a local government area as a party house restriction area.
- (5) For subsection (4)(e), the Minister’s rules must require a local government to prepare a report assessing feasible alternatives for reducing the risk stated in subsection (4)(e), including imposing development conditions on development approvals.
- (6) For subsection (4)(f), the yield achievable is not substantially different from the yield achievable before the change, in relation to building work for a residential building, if the gross floor area of the residential building—
- (a) is not more than 2,000m<sup>2</sup>; and
  - (b) is reduced by not more than 15%.

(7) In this section—

**gross floor area** means the sum of the floor areas, including all walls, columns and balconies, whether roofed or not, of all stories of every building located on premises, other than—

- (a) the areas used for building services, a ground floor public lobby or a public mall in a shopping centre; or
- (b) the areas associated with the parking, loading and manoeuvring of motor vehicles.

**yield** means—

- (a) for buildings and works—the gross floor area, the density of buildings or persons, or the plot ratio, achievable for premises; or
- (b) for reconfiguring a lot—the number of lots in a particular area of land.

### 31 Claiming compensation

- (1) This section is about when a person (an **affected owner**) with an interest in premises, at the time an adverse planning change starts to have effect for the premises, may claim compensation because of the adverse planning change.
- (2) An affected owner may claim compensation if the adverse planning change is a public purpose change.
- (3) An affected owner may claim compensation in relation to development that becomes assessable development after the adverse planning change has effect, if—
  - (a) the local government refuses a superseded planning scheme request in relation to the development; and
  - (b) a development application has been made for the development; and
  - (c) the development application is—
    - (i) refused; or
    - (ii) approved with development conditions; or

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- (iii) approved in part, with or without development conditions.
  - (4) An affected owner may claim compensation in relation to development that becomes prohibited development after the adverse planning change has effect, if the local government refuses a superseded planning scheme request in relation to the development.
  - (5) However, an affected owner may not claim compensation because of an adverse planning change—
    - (a) to the extent that compensation—
      - (i) is payable under another Act; or
      - (ii) has been paid to a previous owner of the interest; or
    - (b) for anything done in contravention of this Act.
  - (6) An affected owner must make a claim for compensation to a local government within—
    - (a) for subsection (2)—2 years after the adverse planning change has effect; or
    - (b) for subsection (3) or (4)—6 months after notice of the decision under subsection (3)(c) or (4) is given to the affected owner.

## **32 Deciding compensation claim**

- (1) If an affected owner makes a compensation claim to a local government, the local government must decide—
  - (a) to approve all or part of the claim; or
  - (b) to refuse the claim; or
  - (c) if the claim relates to a public purpose change—to give a notice of intention to resume the affected owner's interest in premises under the Acquisition Act, section 7.
- (2) If the claim relates to a public purpose change, the local government may also decide to amend the planning scheme to

allow premises to be used for the purposes that the premises could be used for under the superseded planning scheme.

- (3) The local government's chief executive officer must, within 70 business days after the claim is made, give the affected owner—
  - (a) if subsection (1)(c) applies—the notice of intention to resume; or
  - (b) otherwise—a notice that states—
    - (i) the local government's decision; and
    - (ii) if the local government decides to approve all or part of the claim—the amount of compensation to be paid; and
    - (iii) the affected owner's appeal rights.
- (4) If a notice of intention to resume is withdrawn or lapses, the local government's chief executive officer must comply with subsection (3)(b), within 20 business days after the notice of intention to resume is withdrawn or lapses.
- (5) If the local government approves all or part of the claim, the local government must pay the compensation within 30 business days after—
  - (a) if the decision is not appealed—the appeal period ends; or
  - (b) if the decision is appealed—the appeal ends.

### **33 Amount of compensation payable**

- (1) The amount of compensation payable to the affected owner is the difference between the market value of the owner's interest in premises immediately before, and immediately after, the adverse planning change.
- (2) When deciding the market value immediately after the adverse planning change, the local government must consider—



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- (a) any benefit to the owner's interest in the premises, or in neighbouring premises, because of the adverse planning change; and
- Example—*  
the likelihood of improved amenity in the locality of the premises
- (b) any benefit to the owner's interest in neighbouring premises because, after the adverse planning change but before the compensation claim was made—
- (i) another planning change started to have effect; or
- (ii) infrastructure, other than infrastructure that the owner funds, was constructed or improved on the neighbouring premises; and
- (c) any conditions or other limitations that might reasonably have applied to development of the premises under the superseded planning scheme; and
- (d) for an adverse planning change that was the subject of a superseded planning scheme request—
- (i) the effect of any other planning change that started to have effect after the adverse planning change but before the superseded planning scheme request was made; and
- (ii) the effect of any development approval mentioned in section 31(3)(c)(ii) or (iii).
- (3) However, the local government must not consider the effect of—
- (a) any TLPI; or
- (b) the land being joined with, or separated from, other land.

### **34 Recording payment of compensation on title**

- (1) This section applies if the local government pays compensation to the affected owner of an interest in premises.

- (2) The chief executive officer of the local government must give notice of the payment of the compensation to the following person (the *recorder*)—
  - (a) to the extent the interest in the premises is recorded on the freehold land register under the Land Title Act—the registrar of titles under that Act;
  - (b) to the extent the interest in the premises is recorded on a register under the Land Act—the chief executive under that Act.
- (3) The notice must be in the form approved by the recorder.
- (4) The recorder must keep the information in the notice under—
  - (a) to the extent the interest in the premises is recorded on the freehold land register under the Land Title Act—section 34 of that Act; or
  - (b) to the extent the interest in the premises is recorded on a register under the Land Act—section 281 of that Act.

## Part 5 Designation of premises for development of infrastructure

### 35 What is a designation

- (1) A *designation* is a decision of the Minister, or a local government, (a *designator*) that identifies premises for the development of 1 or more types of infrastructure that are prescribed by regulation.
- (2) A designation may include requirements about any or all of the following—
  - (a) works for the infrastructure (the height, shape, bulk, landscaping, or location of works, for example);
  - (b) the use of premises, for example—
    - (i) vehicular and pedestrian access to, and circulation on, premises; and

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- (ii) operating times for the use; and
  - (iii) ancillary uses;
  - (c) lessening the impact of the works or use (environmental management procedures, for example).
- (3) The chief executive may, by notice, require a local government to include a matter in subsection (2) in a designation made by the local government.

*Note—*

For the effect of a designation on the categorisation of development, see section 44(6)(b).

### **36 Criteria for making or amending designations**

- (1) To make a designation, a designator must be satisfied that—
- (a) the infrastructure will satisfy statutory requirements, or budgetary commitments, for the supply of the infrastructure; or
  - (b) there is or will be a need for the efficient and timely supply of the infrastructure.
- (2) To make or amend a designation, if the designator is the Minister, the Minister must also be satisfied that adequate environmental assessment, including adequate consultation, has been carried out in relation to the development that is the subject of the designation or amendment.
- (3) The Minister may, in guidelines prescribed by regulation, set out the process for the environmental assessment and consultation.
- (4) The Minister is taken to be satisfied of the matters in subsection (2) if the process in the guidelines is followed.
- (5) However, the Minister may be satisfied of the matters in another way.
- (6) Sections 10 and 11 apply to the making or amendment of the guidelines as if the guidelines were a State planning policy.

- (7) To make or amend a designation, a designator must have regard to—
- (a) all planning instruments that relate to the premises; and
  - (b) any assessment benchmarks, other than in planning instruments, that relate to the development that is the subject of the designation or amendment; and
  - (c) if the premises are in a State development area under the State Development Act—any approved development scheme for the premises under that Act; and
  - (ca) if the premises are in a priority development area under the *Economic Development Act 2012*—any development scheme for the priority development area under that Act; and
  - (d) any properly made submissions made as part of the consultation carried out under section 37; and
  - (e) the written submissions of any local government.

### **37 Process for making or amending designation**

- (1) This section is about the process for—
- (a) making a designation for premises; or
  - (b) amending a designation for premises, including by amending—
    - (i) the area of the premises; or
    - (ii) the type of infrastructure for which the premises were designated; or
    - (iii) a requirement included in the designation under section 35(2).
- (2) If the Minister proposes to make or amend a designation, the Minister must give notice of the proposal to the affected parties.
- (3) However, the Minister need not give the notice to an owner of premises if—

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- (a) a notice has already been given to the owner as part of the consultation for an assessment under section 36(2);  
or
  - (b) the Minister can not notify the owner after making reasonable efforts.
- (4) A notice under subsection (2) must state the following—
- (a) that a submission about the proposal may be given by an affected party to the Minister;
  - (b) the period, of at least 15 business days after the notice is given, in which the submission may be made;
  - (c) the requirements for a properly made submission.
- (5) If, after considering any properly made submissions, the Minister decides not to proceed with the proposal, the Minister must give a decision notice to the affected parties.
- (6) If a local government proposes to make or amend a designation, the local government must follow the process in the designation process rules, before the local government makes or amends the designation.
- (7) Sections 10 and 11 apply to the making or amendment of the designation process rules as if the designation process rules were a State planning policy.
- (8) In this section—
- designation process rules* means rules made by the Minister and prescribed by regulation.

### **38 Process after making or amending designation**

- (1) If, after considering any properly made submissions, the designator decides to make or amend a designation, the designator must publish a gazette notice that states—
- (a) that the designation has been made or amended; and
  - (b) a description of the designated premises; and
  - (c) the type of infrastructure for which the premises were designated; and

- (d) for an amendment—the nature of the amendment.
- (2) The designator must give the following things to each affected party and the chief executive—
  - (a) a copy of the gazette notice;
  - (b) a notice of any requirements included in the designation under section 35(2);
  - (c) a notice of how the designator dealt with any properly made submissions.

### **39 Duration of designation**

- (1) A designation stops having effect on the day (the *end day*) that is 6 years after the designation starts to have effect, unless—
  - (a) on the end day—
    - (i) a public sector entity owns, or has an easement for the same purpose as the designation over, the designated premises; or
    - (ii) another entity owns, or has an easement over, the designated premises and construction of the infrastructure for which the premises were designated started before the end day; or
  - (b) before the end day—
    - (i) a public sector entity gave a notice of intention to resume the designated premises under the Acquisition Act, section 7; or
    - (ii) a public sector entity signed an agreement to take designated premises under the Acquisition Act or to otherwise buy the premises; or
    - (iii) the designator complies with subsection (3).
- (2) The designator may extend the duration of a designation, for up to 6 years, by publishing a gazette notice about the extension before the designation stops having effect.

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- (3) The designator must give notice of the extension of the designation to—
    - (a) if the Minister is the designator—each of the affected parties and the chief executive; or
    - (b) if a local government is the designator—the owner of the premises and the chief executive.
  - (4) If a public sector entity discontinues proceedings to resume designated premises, either before or after the end day, the designation stops having effect on the day when the proceedings are discontinued.

#### **40 Repealing designation—designator**

- (1) A designator may repeal a designation made by the designator by publishing a gazette notice that states—
  - (a) that the designation is repealed; and
  - (b) a description of the designated premises; and
  - (c) the type of infrastructure for which the premises were designated; and
  - (d) the reasons for the repeal.
- (2) The designator must give a copy of the notice to—
  - (a) if the Minister is the designator—each of the affected parties and the chief executive; or
  - (b) if a local government is the designator—the owner of the premises and the chief executive.
- (3) Any development started under the designation may be completed as if the designation had not been repealed.
- (4) Subject to any requirements under section 35(2), a use of the premises that is the natural and ordinary consequence of the development is taken to be a lawful use.

#### **41 Repealing designation—owner’s request**

- (1) An owner of an interest in designated premises may request a designator to repeal a designation made by the designator on the basis that the designation is causing the owner hardship.
- (2) Subsection (1) does not apply if—
  - (a) the premises are subject to an easement for the infrastructure for which the premises are designated; or
  - (b) the designation also applies to other premises and relates to a land corridor for the infrastructure; or
  - (c) the premises are a road.
- (3) The request must be in writing, and contain any information that the guidelines made under section 36(3) require.
- (4) The designator must, within 40 business days after receiving the request—
  - (a) repeal the designation, using the process under section 40; or
  - (b) decide to refuse the request; or
  - (c) decide to take other action that the designator considers appropriate in the circumstances.
- (5) The designator must, within 5 business days after making a decision under subsection (4)(b) or (c), give a decision notice to the owner.

#### **42 Noting designation in planning scheme**

- (1) This section applies if a local government—
  - (a) makes, amends, extends or repeals a designation; or
  - (b) receives a notice about the Minister making, amending, extending or repealing a designation.
- (2) The local government must include a note about the making, amendment, extension or repeal in—
  - (a) the local government’s planning scheme; and



- (b) any planning scheme that the local government makes before the designation stops having effect.
- (3) The note must—
  - (a) identify the premises that were designated; and
  - (b) describe the type of infrastructure for which the premises were designated; and
  - (c) state the day when the designation, amendment, extension or repeal started to have effect.
- (4) The local government must include the note in the planning scheme in a way that ensures the other provisions of the scheme that apply to the designated premises remain effective.
- (5) To remove any doubt, it is declared that—
  - (a) the note is not an amendment of a planning scheme; and
  - (b) a designation is taken to be part of a planning scheme; and
  - (c) a designation is not the only way that a planning scheme may identify infrastructure; and
  - (d) a designation does not affect the provisions of a planning scheme that apply to designated premises, even after the designation stops having effect.

#### **42A Amending and repealing designations under old Act**

To remove any doubt, it is declared that the Minister may, under this part, amend or repeal a designation of land under the old Act made by another Minister.

## Chapter 3 Development assessment

### Part 1 Types of development and assessment

#### 43 Categorising instruments

- (1) A *categorising instrument* is a regulation or local categorising instrument that does any or all of the following—
  - (a) categorises development as prohibited, assessable or accepted development;
  - (b) specifies the categories of assessment required for different types of assessable development;
  - (c) sets out the matters (the *assessment benchmarks*) that an assessment manager must assess assessable development against.
- (2) An assessment benchmark does not include—
  - (a) a matter of a person's opinion; or
  - (b) a person's circumstances, financial or otherwise; or
  - (c) for code assessment—a strategic outcome under section 16(1)(a); or
  - (d) a matter prescribed by regulation.

*Examples of assessment benchmarks—*

a code, a standard, or an expression of the intent for a zone or precinct

- (3) A *local categorising instrument* is—
  - (a) a planning scheme; or
  - (b) a TLPI; or
  - (c) a variation approval, to the extent the variation approval does any of the things mentioned in subsection (1).

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- (4) A regulation made under subsection (1) applies instead of a local categorising instrument, to the extent of any inconsistency.
  - (5) A local categorising instrument—
    - (a) may state that development is prohibited development only if a regulation allows the local categorising instrument to do so; and
    - (b) may not state that development is assessable development if a regulation prohibits the local categorising instrument from doing so; and
    - (c) may not, in its effect, be inconsistent with the effect of a specified assessment benchmark, or a specified part of an assessment benchmark, identified in a regulation made for this paragraph.

*Note—*

Assessment benchmarks are given effect through the rules for assessing and deciding development applications under section 45, 59 or 60.

- (6) To the extent a local categorising instrument does not comply with subsection (5), the instrument has no effect.
- (7) A variation approval may do something mentioned in subsection (1) only in relation to—
  - (a) development that is the subject of the variation approval; or
  - (b) development that is the natural and ordinary consequence of the development that is the subject of the variation approval.
- (8) Subsections (4) and (6) apply no matter when the regulation and local categorising instrument commenced in relation to each other.

#### **44 Categories of development**

- (1) There are 3 categories of development, namely prohibited, assessable or accepted development.

- (2) ***Prohibited development*** is development for which a development application may not be made.
- (3) ***Assessable development*** is development for which a development approval is required.
- (4) ***Accepted development*** is development for which a development approval is not required.
- (5) A categorising instrument may categorise development.
- (6) However—
  - (a) if no categorising instrument categorises particular development—the development is accepted development; and
  - (b) development in relation to infrastructure under a designation is—
    - (i) to the extent the development is building work under the Building Act—the category of development stated for the building work under a regulation; or
    - (ii) otherwise—accepted development.

## 45 Categories of assessment

- (1) There are 2 categories of assessment for assessable development, namely code and impact assessment.
- (2) A categorising instrument states the category of assessment that must be carried out for the development.
- (3) A ***code assessment*** is an assessment that must be carried out only—
  - (a) against the assessment benchmarks in a categorising instrument for the development; and
  - (b) having regard to any matters prescribed by regulation for this paragraph.
- (4) When carrying out code assessment, section 5(1) does not apply to the assessment manager.

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- (5) An *impact assessment* is an assessment that—
- (a) must be carried out—
    - (i) against the assessment benchmarks in a categorising instrument for the development; and
    - (ii) having regard to any matters prescribed by regulation for this subparagraph; and
  - (b) may be carried out against, or having regard to, any other relevant matter, other than a person's personal circumstances, financial or otherwise.

*Examples of another relevant matter—*

- a planning need
- the current relevance of the assessment benchmarks in the light of changed circumstances
- whether assessment benchmarks or other prescribed matters were based on material errors

*Note—*

See section 277 for the matters the chief executive must have regard to when the chief executive, acting as an assessment manager, carries out a code assessment or impact assessment in relation to a State heritage place.

- (6) Subsections (7) and (8) apply if an assessment manager is, under subsection (3) or (5), assessing a development application against or having regard to—
  - (a) a statutory instrument; or
  - (b) another document applied, adopted or incorporated (with or without changes) in a statutory instrument.
- (7) The assessment manager must assess the development application against or having regard to the statutory instrument, or other document, as in effect when the development application was properly made.
- (8) However, the assessment manager may give the weight the assessment manager considers is appropriate, in the circumstances, to—
  - (a) if the statutory instrument or other document is amended or replaced after the development application

is properly made but before it is decided by the assessment manager—the amended or replacement instrument or document; or

- (b) another statutory instrument—
  - (i) that comes into effect after the development application is properly made but before it is decided by the assessment manager; and
  - (ii) that the assessment manager would have been required to assess, or could have assessed, the development application against, or having regard to, if the instrument had been in effect when the application was properly made.

#### **46 Exemption certificate for some assessable development**

- (1) A development approval is not required for assessable development on premises if there is an exemption certificate for the development.
- (2) The following persons may give an exemption certificate—
  - (a) for development for which a local government would be the prescribed assessment manager if the development, and no other development, were the subject of a development application—the local government;
  - (b) otherwise—the chief executive.
- (3) The person may give an exemption certificate if—
  - (a) for development for which there is a referral agency—each referral agency has agreed in writing to the exemption certificate being given; and
  - (b) any of the following apply—
    - (i) the effects of the development would be minor or inconsequential, considering the circumstances under which the development was categorised as assessable development;

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- (ii) the development was categorised as assessable development only because of particular circumstances that no longer apply;
    - (iii) the development was categorised as assessable development because of an error.
  - (4) The person must give a copy of the exemption certificate to—
    - (a) each owner of the premises; and
    - (b) each referral agency for the development; and
    - (c) if the person is the chief executive—the local government for the premises.
  - (5) The person must publish a notice about the person’s decision to give the exemption certificate on the person’s website.
  - (6) The notice must state—
    - (a) a description of the premises for which the exemption certificate was given; and
    - (b) a description of the development to which the exemption certificate relates; and
    - (c) the reasons for giving the exemption certificate; and
    - (d) any matter prescribed by regulation.
  - (7) The exemption certificate attaches to the premises and benefits each of the owners, the owners’ successors in title and any occupiers of the premises.
  - (8) The exemption certificate has effect for 2 years after the day the certificate was given, or a later day stated in the certificate.
  - (9) However, the exemption certificate may state a period, or periods, within which—
    - (a) stated development must be completed; or
    - (b) a use that is the natural and ordinary consequence of the development must start; or
    - (c) a plan for reconfiguring a lot that is required under a regulation to be given to the local government for its approval must be given.

- (10) To the extent development does not comply with a requirement stated under subsection (9), the exemption certificate has no effect.
- (11) Subject to a requirement stated under subsection (9)—
- (a) any development substantially started under the exemption certificate may be completed as if the certificate had not expired; and
  - (b) a use that is the natural and ordinary consequence of the development is taken to be a lawful use; and
  - (c) a development approval is not required for reconfiguring a lot that is the subject of the exemption certificate if works for the reconfiguration substantially started before the certificate expires.

## Part 2 Development applications

### Division 1 Introduction

#### 47 What part is about

This part explains how a person makes a development application to an assessment manager for a development approval to carry out assessable development.

#### 48 Who is the *assessment manager*

- (1) The *assessment manager* for a development application is the person prescribed by regulation as the assessment manager for the application.
- (2) Subject to part 6, division 3, the assessment manager for a properly made application is responsible for—
- (a) administering and deciding the application; and
  - (b) assessing all or part of the application.



- (2A) Without limiting subsection (1), a regulation may prescribe that a person is the assessment manager for a development application that is for part of a particular type of development.

*Example—*

For building work that must be assessed against the building assessment provisions and is assessable development under a local government's planning scheme, a regulation may prescribe that—

- (a) a private certifier is the assessment manager for a development application for the part of the building work that must be assessed against the building assessment provisions; and
- (b) the local government is the assessment manager for a development application for the part of the building work that is assessable development under the planning scheme.

- (2B) Subsection (3) applies to a development application that—

- (a) is for development that requires code assessment only; and
- (b) does not include a variation request.

- (3) If—

- (a) a regulation prescribes a local government or the chief executive (each *the entity*) to be the assessment manager for the development application; and
- (b) the entity keeps a list of persons who are appropriately qualified to be an assessment manager in relation to the development the subject of the application; and
- (c) the entity has made or amended its code of conduct under the *Public Sector Ethics Act 1994* to apply the code of conduct, including provisions about conflicts of interest, to persons on the entity's list; and
- (d) the entity has entered into an agreement with each person on the entity's list about the person's functions as an assessment manager that—
  - (i) requires the person to comply with the code of conduct; and

- (ii) provides for the entity to remove the person from the entity's list if the person fails to comply with the code of conduct; and
- (e) a person on the entity's list enters into an agreement with another person to accept the development application;  
the person on the entity's list is the assessment manager for the development application instead of the prescribed assessment manager for the application.
- (4) As soon as practicable after the person accepts the application, the person must give a copy of the application to the prescribed assessment manager.
- (5) If a person on an entity's list of persons kept under subsection (3) is removed from the list because the person has not complied with an agreement under that subsection—
  - (a) the entity immediately becomes the assessment manager, instead of the person, for any development application for which the person was the assessment manager; and
  - (b) no extra fee is payable for the application; and
  - (c) the development assessment process for the application continues from whichever of the following points in the process is the earlier—
    - (i) the point the application had reached immediately before the person was replaced as the assessment manager;
    - (ii) 10 business days before the day on which the assessment manager is required, under the development assessment rules, to decide the application.
- (6) If a regulation does not prescribe who is the assessment manager for a particular development application, the Minister may—
  - (a) decide who is the assessment manager; or

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- (b) require the application to be split into 2 or more applications.
- (7) If the Minister decides who is the assessment manager, the Minister may—
- (a) decide that a person who could also have been the assessment manager is instead to be a referral agency for the application; and
  - (b) impose limits on the referral agency's powers (to the power to only give advice, for example).
- (8) The Minister must give notice of the Minister's decisions under this section to—
- (a) the applicant; and
  - (b) a person that the Minister decides is the assessment manager; and
  - (c) a person that the Minister decides is a referral agency.
- (9) For an application for development that is prescribed tidal works, a local government may exercise an assessment manager's functions despite any limits on the local government's powers under—
- (a) the City of Brisbane Act, section 11; or
  - (b) the Local Government Act, section 9.

**49 What is a *development approval*, *preliminary approval* or *development permit***

- (1) A *development approval* is—
- (a) a preliminary approval; or
  - (b) a development permit; or
  - (c) a combination of a preliminary approval and development permit.
- (2) A *preliminary approval* is the part of a decision notice for a development application that—

- (a) approves the development to the extent stated in the decision notice; but
  - (b) does not authorise the carrying out of assessable development.
- (3) A ***development permit*** is the part of a decision notice for a development application that authorises the carrying out of the assessable development to the extent stated in the decision notice.
- (4) Subject to section 66(2), a preliminary approval that is still in effect applies instead of a later development permit for the development, to the extent of any inconsistency, unless—
- (a) the development application for the development permit states the way the development permit is to be inconsistent with the preliminary approval; or
  - (b) after the application for the development permit is made, the applicant and, if the applicant is not the owner of the premises, the owner agree in writing to the inconsistency.
- (5) In this Act, a reference to a development approval—
- (a) means the development approval as changed from time to time; and
  - (b) includes the development conditions imposed on the approval.
- (6) In this section—
- decision notice*** means—
- (a) a decision notice under section 63(1); or
  - (b) a decision notice under section 64(6); or
  - (c) a negotiated decision notice, other than a negotiated decision notice for a change application.

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## **Division 2                    Making or changing applications**

### **50        Right to make development applications**

- (1) A person may make a development application, including for a preliminary approval.
- (2) However, a development application may not be made for prohibited development.
- (3) A development application for a preliminary approval may also include a variation request.

### **51        Making development applications**

- (1) A development application must be—
  - (a) made in the approved form to the assessment manager; and
  - (b) accompanied by—
    - (i) the documents required under the form to be attached to, or given with, the application; and
    - (ii) the required fee.
- (2) The application must be accompanied by the written consent of the owner of the premises to the application, to the extent—
  - (a) the applicant is not the owner; and
  - (b) the application is for—
    - (i) a material change of use of premises or reconfiguring a lot; or
    - (ii) works on premises that are below high-water mark and are outside a canal; and
  - (c) the premises are not excluded premises.
- (3) If, under the Environmental Protection Act, section 115, a development application is taken to be an application for an environmental authority, the development application must comply with section 125(1)(c) to (3) of that Act as if—

- (a) a reference to the application were a reference to a development application; and
  - (b) a reference to the applicant were a reference to an applicant for a development application.
- (4) An assessment manager—
- (a) must accept an application that the assessment manager is satisfied complies with subsections (1) to (3); and
  - (b) must not accept an application unless the assessment manager is satisfied the application complies with subsections (2) and (3); and
  - (c) may accept an application that does not comply with subsection (1)(a) or (b)(i); and
  - (d) may accept an application that does not comply with subsection (1)(b)(ii) to the extent the required fee has been waived under section 109(b).
- (5) An application that complies with subsections (1) to (3), or that the assessment manager accepts under subsection (4)(c) or (d), is a *properly made application*.

## **52 Changing or withdrawing development applications**

- (1) An applicant may change or withdraw a development application, before the application is decided, by a notice given to the assessment manager and, for a withdrawn application, any referral agency.
- (2) However—
- (a) if the change is, or includes, a change of applicant, the notice may be given by the person who proposes to become the applicant if the notice is accompanied by the consent of the current applicant; and
  - (b) section 51(2) applies for making the change as though the change were an application if—

- (i) the applicant no longer owns the premises or the change is to include premises that the applicant does not own; and
  - (ii) were the application to be remade with the change, section 51(2) would apply to the application; and
  - (c) the change may not include prohibited development.
- (3) If the change is a minor change, the change does not affect the development assessment process.

### **53 Publicly notifying certain development applications**

- (1) An applicant must give notice of a development application if—
- (a) any part of the application requires impact assessment; or
  - (b) the application includes a variation request.
- (2) The notice must be given in the way or ways stated in the development assessment rules.
- (3) However, the assessment manager may assess and decide a development application even if some of the requirements of the development assessment rules about the notice have not been complied with, if the assessment manager considers any noncompliance has not—
- (a) adversely affected the public's awareness of the existence and nature of the application; or
  - (b) restricted the public's opportunity to make properly made submissions about the application.
- (4) The notice must state that—
- (a) a person may make a submission about the application to the assessment manager; and
  - (b) any submission must be made by a stated day that is at least—

- (i) for an application that includes a variation request—30 business days after the notice is given; or
  - (ii) for an application of a type prescribed by regulation—the period, of more than 15 business days after the notice is given, prescribed for the application; or
  - (iii) for any other application—15 business days after the notice is given.
- (5) However, if the development assessment rules require the notice to be given in more than 1 way, the period mentioned in subsection (4)(b) starts on the day after the day when the last notice is given.
- (6) Any person, other than the applicant or a referral agency, may make a submission about the application.

*Notes—*

- 1 In order for a submitter to have appeal rights under schedule 1, the submitter's submission must be a properly made submission.
  - 2 An advice agency, in its referral agency's response, may tell the assessment manager to treat the response as a properly made submission. See schedule 2, definition *eligible advice agency*, paragraph (a).
- (7) Submissions made about the application remain effective even if the notice is given again under the development assessment rules.
- (8) If, within 1 year after a development application (the **original application**) lapses or is withdrawn, another development application that is not substantially different from the original application (the **later application**) is made, any properly made submission for the original application is taken to be a properly made submission for the later application.
- (9) This section applies even if a referral agency has directed refusal of all or part of the development application.
- (10) The assessment manager may, at the applicant's request, give the notice for the applicant, for a fee of no more than the reasonable costs of doing so.



- (11) However, subsection (1)(b) does not apply if—
- (a) a variation approval has been given for the premises; and
  - (b) the variation request does not seek to change the category of development or category of assessment for the development stated in the earlier variation approval or, if the request does, the request seeks to change only 1 or more of the following—
    - (i) accepted development to assessable development;
    - (ii) assessable development requiring code assessment to accepted development, if the accepted development is substantially consistent with the assessment benchmarks for the development under the earlier variation approval;
    - (iii) assessable development requiring code assessment to assessable development requiring impact assessment; and
  - (c) for a variation request that proposes assessment benchmarks—the proposed assessment benchmarks are substantially consistent with assessment benchmarks in the earlier variation approval.
- (12) In this section—
- business day* does not include a day between 20 December of a year and 5 January of the next year.

## **Part 3    Assessing and deciding development applications**

### **Division 1                                        Referral agency's assessment**

#### **54        Copy of application to referral agency**

- (1) An applicant for a development application must, within the period required under the development assessment rules, give a copy of the application and, subject to section 109(b), the required fee, to each referral agency.
- (2) A *referral agency*, for a development application, is—
  - (a) the person prescribed by regulation as a referral agency for applications of that type; or
  - (b) if that person's functions have been devolved or delegated to another person—the other person; or
  - (c) if the Minister has decided that a person is a referral agency under section 48(7)—that person.

*Note—*

For additional referral agencies for change applications, other than change applications for a minor change to a development approval, see also section 82A.

- (3) However, if a person is the assessment manager for a development application, and would be a referral agency for the application because of subsection (2)—
  - (a) the person is not a referral agency for the application, but the person's functions and powers as assessment manager include those the person would have had as a referral agency; and
  - (b) the person's fee for the development application includes the fee under subsection (1).
- (4) Despite subsection (1), the applicant need not give a copy of the application to a referral agency if—

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- (a) the applicant gave the assessment manager the referral agency's response stated in section 57(3) with the application; and
  - (b) the referral agency's response states that—
    - (i) the referral agency does not require the applicant to give a copy to the agency; or
    - (ii) the referral agency does not require the applicant to give a copy to the agency if stated conditions, including a time limit within which the application must be made, are satisfied; and
  - (c) any conditions stated in paragraph (b)(ii) are satisfied.
- (5) The assessment manager may, if asked by the applicant, give a copy of the application to a referral agency for the applicant, for a fee of no more than the reasonable costs of doing so.

## 55 Referral agency's assessment

- (1) A referral agency decided by the Minister under section 48(7) must assess a development application as required under section 45, as if the agency were the assessment manager.
- (2) For any other referral agency, a regulation may prescribe the matters the referral agency—
  - (a) may, must, or must only assess a development application against; and
  - (b) may, must, or must only have regard to for the assessment.

*Note—*

See also sections 82A and 277.

- (3) Subsections (4) and (5) apply if a referral agency is, under subsection (2), assessing a development application against or having regard to—
  - (a) a statutory instrument; or
  - (b) another document applied, adopted or incorporated (with or without changes) in a statutory instrument.

- (4) The referral agency must assess the development application against or having regard to the statutory instrument, or other document, as in effect when the development application was properly made.
- (5) However, the referral agency may give the weight the referral agency considers is appropriate, in the circumstances, to—
  - (a) if the statutory instrument or other document is amended or replaced after the development application is properly made— the amended or replacement instrument or document; or
  - (b) another statutory instrument—
    - (i) that comes into effect after the development application is properly made; and
    - (ii) that the referral agency would have been required to assess, or could have assessed, the development application against, or having regard to, if the instrument had been in effect when the application was properly made.

## **56 Referral agency's response**

- (1) After assessing the development application, the referral agency must decide—
  - (a) to tell the assessment manager that the agency has no requirements for the application; or
  - (b) to direct the assessment manager to do any or all of the following—
    - (i) to give any development approval subject to stated development conditions;
    - (ii) to give any development approval for only a stated part of the application;
    - (iii) to give any development approval only as a preliminary approval;

- (iv) to impose a stated currency period for a development approval given; or
  - (c) to direct the assessment manager to refuse the application for stated reasons.
- (2) However, to the extent the application is a variation request, the referral agency must, instead of a decision under subsection (1), decide—
  - (a) to tell the assessment manager that the agency has no requirements for the variation request; or
  - (b) to direct the assessment manager to do any or all of the following—
    - (i) to approve only some of the variations sought;
    - (ii) subject to section 61(3)—to approve different variations from those sought; or
  - (c) to direct the assessment manager to refuse the variation request.
- (3) The referral agency may give advice about the application to the assessment manager.
- (4) The referral agency must give a notice (a *referral agency's response*) about the referral agency's decision to—
  - (a) the applicant; and
  - (b) the assessment manager.
- (5) A regulation may limit the powers of a referral agency (to the power to only give advice, for example).
- (6) If—
  - (a) the referral agency is—
    - (i) the chief executive; or
    - (ii) an entity prescribed by regulation; and
  - (b) to the extent the referral agency's assessment involves development other than development prescribed by regulation;

the referral agency must publish a notice about the referral agency's decision on the referral agency's website.

- (7) The notice must state—
- (a) a description of the development to which the referral agency's assessment relates; and
  - (b) a description of the matters under section 55(2) that the referral agency assessed the development against, and had regard to; and
  - (c) the reasons for the referral agency's decision; and
  - (d) any matter prescribed by regulation.

## **57 Response before application**

- (1) Sections 55 and 56 apply to the extent a response is given before a proposed development application is made, by a person who would, if the application were made, be a referral agency.
- (2) However, a reference in section 55 to when the application was properly made is a reference to the day the proposed applicant first gave the person documents in relation to the proposed development application.
- (3) If the application—
- (a) is the same or is not substantially different from the proposed application; and
  - (b) is made within the time, if any, stated in the response;
- the response is, or is part of, the person's referral agency's response for the application.
- (4) The proposed applicant must, if asked, and subject to section 109(b), pay the person the required fee for the referral, even if there is no application.
- (5) A fee under section 54(1) for the part of the application relating to a response under this section does not have to be paid again for the application.

## **58 Effect of no response**

- (1) If a referral agency does not comply with section 56(4) before the end of the period stated in the development assessment rules for complying with that section (the *stated period*), the agency is taken to have given a response that the agency has no requirements for, or advice about, the application.
- (2) However, subsection (1) is subject to—
  - (a) any other provision of the development assessment rules, to the extent the other provision affects when the stated period would otherwise end; and

*Examples of what other provisions may provide for—*

- extending the period for giving a referral agency's response
  - giving a late referral agency's response
  - changing a referral agency's response before the application is decided
  - reviving a development application after a contravention of the development assessment rules
- (b) section 99; and
  - (c) another effect of not giving a referral agency's response prescribed under a regulation for a matter.

## **Division 2 Assessment manager's decision**

### **59 What this division is about**

- (1) This division is about deciding properly made applications, including variation requests.
- (2) An assessment manager must follow the development assessment process for the application even if a referral agency's response directs the assessment manager to refuse the application.
- (3) Subject to section 62, the assessment manager's decision must be based on the assessment of the development carried out by the assessment manager.

## **60 Deciding development applications**

- (1) This section applies to a properly made application, other than a part of a development application that is a variation request.
- (2) To the extent the application involves development that requires code assessment, and subject to section 62, the assessment manager, after carrying out the assessment—
  - (a) must decide to approve the application to the extent the development complies with all of the assessment benchmarks for the development; and
  - (b) may decide to approve the application even if the development does not comply with some of the assessment benchmarks; and

*Examples—*

- 1 An assessment manager may approve an application for development that does not comply with some of the benchmarks if the decision resolves a conflict between the benchmarks.
  - 2 An assessment manager may approve an application for development that does not comply with some of the benchmarks if the decision resolves a conflict between the benchmarks and a referral agency's response.
- (c) may impose development conditions on an approval; and
  - (d) may, to the extent the development does not comply with some or all the assessment benchmarks, decide to refuse the application only if compliance can not be achieved by imposing development conditions.

*Example of a development condition—*

a development condition that affects the way the development is carried out, or the management of uses or works that are the natural and ordinary consequence of the development, but does not have the effect of changing the type of development applied for

- (3) To the extent the application involves development that requires impact assessment, and subject to section 62, the assessment manager, after carrying out the assessment, must decide—



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- (a) to approve all or part of the application; or
  - (b) to approve all or part of the application, but impose development conditions on the approval; or
  - (c) to refuse the application.
- (4) The assessment manager must approve any part of the application for which, were that part of the application the subject of a separate development application, there would be a different assessment manager—
- (a) other than to the extent a referral agency for the development application directs the refusal of the part under section 56(1)(c); and
  - (b) subject to any requirements of the referral agency under 56(1)(b).
- (5) The assessment manager may give a preliminary approval for all or part of the development application, even though the development application sought a development permit.
- (6) If an assessment manager approves only part of a development application, the rest is taken to be refused.

## **61 Assessing and deciding variation requests**

- (1) This section applies to a part of a properly made application that is a variation request.
- (2) When assessing the variation request, the assessment manager must consider—
  - (a) the result of the assessment of that part of the development application that is not the variation request; and
  - (b) the consistency of the variations sought with the rest of the local planning instrument that is sought to be varied; and
  - (c) the effect the variations would have on submission rights for later development applications, particularly considering the amount and detail of information

included in, attached to, or given with the application and available to submitters; and

- (d) any other matter prescribed by regulation.
- (3) The assessment manager must decide—
- (a) to approve—
    - (i) all or some of the variations sought; or
    - (ii) different variations from those sought; or
  - (b) to refuse the variations sought.

*Note—*

The part of a variation approval that approves variations is a local categorising instrument. Section 43(7) states limits on the variation approval as a categorising instrument.

## **62 Complying with referral agency's responses**

Other than to the extent a referral agency's response provides advice, an assessment manager's decision must—

- (a) comply with all referral agency's responses; and
- (b) if a referral agency's response requires conditions to be imposed on a development approval—include the conditions exactly as stated in the response.

## **63 Notice of decision**

- (1) The assessment manager must give a decision notice about the assessment manager's decision to—
- (a) the applicant; and
  - (b) each referral agency; and
  - (c) if the development is in a local government area and the assessment manager is not the local government—the local government; and
  - (d) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and

- (e) if a negotiated decision notice is not given in relation to the decision—each principal submitter; and
- (f) any other person prescribed by regulation.

*Notes—*

- 1 The development assessment rules may, under section 68, state the period within which a decision notice must be given.
  - 2 See also the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 77 for when an assessment manager for a development application for building work, drainage work, plumbing work or operational work must not give a development permit for the work.
- (2) The notice must be in the approved form and state—
- (a) whether the application is approved, approved in part or refused; and
  - (b) if the application is approved in part—the extent to which the application is approved; and
  - (c) if the application is approved or approved in part—whether the approval is a preliminary approval, a development permit, or both; and
  - (d) if section 64(5) applies—that the assessment manager is taken to have approved the application under that subsection; and
  - (e) if development conditions are imposed—
    - (i) the conditions; and
    - (ii) for each condition—whether the condition was imposed directly by the assessment manager or required to be imposed under a referral agency’s response; and
    - (iii) for each condition imposed under a referral agency’s response—the referral agency’s name; and
    - (iv) for each condition about infrastructure under chapter 4—the provision of this Act under which the condition was imposed; and

- (f) if the application is refused—
    - (i) whether the assessment manager was directed to refuse the application and, if so, the referral agency directing refusal and whether the refusal was solely because of the direction; and
    - (ii) for a refusal for a reason other than because of a referral agency's direction—the reasons for the refusal; and
  - (g) for a variation approval—the variations; and
  - (h) the name, residential or business address, and electronic address of each principal submitter; and
  - (i) the day the decision was made.
- (3) The notice must also state, or be accompanied by, the documents prescribed by regulation.
- (4) If—
- (a) the assessment manager in relation to a development application is—
    - (i) a local government; or
    - (ii) the chief executive; or
    - (iii) an entity prescribed by regulation; and
  - (b) the development application involved—
    - (i) a material change of use; or
    - (ii) reconfiguring a lot; or
    - (iii) building work, other than to the extent the building work is assessable against the building assessment provisions; or
    - (iv) development prescribed by regulation;
- the assessment manager must publish a notice about the decision on the assessment manager's website.
- (5) The notice must state—
- (a) a description of the development; and

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- (b) a description of the assessment benchmarks applying for the development; and
  - (c) to the extent the development required impact assessment—
    - (i) any relevant matters under section 45(5)(b) that the development was assessed against, or to which regard was had, in the assessment; and
    - (ii) a description of the matters raised in any submissions; and
    - (iii) how the assessment manager dealt with the matters described under subparagraph (ii) in reaching a decision; and
  - (d) the reasons for the assessment manager’s decision; and
  - (e) if the development application was approved, or approved subject to conditions, and the development did not comply with any of the benchmarks—the reasons why the application was approved despite the development not complying with any of the benchmarks; and
  - (f) any matter prescribed by a regulation.

## **64 Deemed approval of applications**

- (1) This section applies to a development application if—
  - (a) the application requires only code assessment; and
  - (b) the assessment manager does not decide the application within the period, or extended period, allowed under the development assessment rules.
- (2) However, this section does not apply to a development application—
  - (a) that includes a variation request; or
  - (b) if a referral agency directs the assessment manager—
    - (i) to give any development approval for only a stated part of the application; or

- (ii) to refuse the application; or
  - (c) that includes development for which the building assessment provisions are an assessment benchmark; or
  - (d) that is subject to a direction under section 95(1)(b), if the stated period for the application under that section has not ended.
- (3) The applicant may, before the application is decided, give a notice (a *deemed approval notice*), in the approved form, that states the application should be approved, to the assessment manager.
- (4) The applicant must give a copy of the deemed approval notice to each person stated in section 63(1)(b) to (d) for the application.
- (5) On the day the assessment manager receives the deemed approval notice, the assessment manager is taken to have given an approval (a *deemed approval*) to the applicant.
- (6) The assessment manager may, within 10 business days after receiving the deemed approval notice, give the applicant a decision notice, in the approved form, in which the decision—
  - (a) approves the application; or
  - (b) approves the application subject to development conditions.
- (7) The deemed approval is taken to be—
  - (a) to the extent a referral agency or the Minister has directed the approval be a preliminary approval—a preliminary approval; or
  - (b) otherwise—the type or types of approval applied for.
- (8) The deemed approval is taken to include—
  - (a) any conditions that a referral agency’s response directed the assessment manager to impose; and
  - (b) any conditions that the Minister directed the assessment manager to impose under section 95(1)(d); and

- 
- (c) if the assessment manager does not give a decision notice to the applicant under this section—the conditions (the *standard conditions*) stated in an instrument made by the Minister for this section.
  - (9) Before making or amending the instrument mentioned in subsection (8)(c), the Minister must consult with the persons the Minister considers appropriate.
  - (10) The Minister must notify the making or amendment of the instrument mentioned in subsection (8)(c) in the gazette.

## **Division 3                      Development conditions**

### **65            Permitted development conditions**

- (1) A development condition imposed on a development approval must—
  - (a) be relevant to, but not be an unreasonable imposition on, the development or the use of premises as a consequence of the development; or
  - (b) be reasonably required in relation to the development or the use of premises as a consequence of the development.
- (2) A development condition may—
  - (a) limit how long—
    - (i) a lawful use may continue; or
    - (ii) works may remain in place; or
  - (b) state that development must not start until—
    - (i) other development permits for development on the same premises have been given; or
    - (ii) other development on the same premises, including development that the development application does not cover, has been substantially started or completed; or

*Note—*

For when development can otherwise start, see section 72.

- (c) require compliance with an infrastructure agreement for the premises, but only to the extent the responsibilities under the agreement attach to, and bind the owner of, the premises under section 155(3); or
- (d) require development, or a part of development, to be completed within a stated period; or
- (e) require the payment of security under an agreement under section 67 to support a requirement under paragraph (d).

*Notes—*

- 1 See chapter 4, parts 2 and 3 for other permitted development conditions.
- 2 In addition to development conditions under this Act, a land surrender requirement under the Coastal Act may be made in relation to particular land that is the subject of a development approval for reconfiguring a lot in a coastal management district under the Coastal Act. However, a land surrender requirement is not a development condition under this Act.

## **66 Prohibited development conditions**

- (1) A development condition must not—
  - (a) require a person other than the applicant to carry out works for the development; or
  - (b) require a person to enter into an infrastructure agreement; or
  - (c) other than under chapter 4, part 2 or 3, require a monetary payment for the establishment, operating or maintenance costs of, works to be carried out for, or land to be given for—
    - (i) infrastructure; or
    - (ii) for the imposition of a condition by a State infrastructure provider—infrastructure or works to protect the operation of the infrastructure; or



- 
- (d) require an access restriction strip; or
  - (e) limit the period a development approval has effect for a use or works forming part of a network of infrastructure, other than State-owned or State-controlled transport infrastructure; or
  - (f) relate to water infrastructure about a matter for which the SEQ Water Act requires a water approval.

*Examples for paragraph (f)—*

A development condition that requires—

- works to be carried out
- a monetary payment
- land in fee simple to be given.

- (2) A development condition must not be inconsistent with a development condition of an earlier development approval in effect for the development, unless—
  - (a) both conditions are imposed by the same person; and
  - (b) the applicant agrees in writing to the later condition applying; and
  - (c) if the development application for the later development approval was required to be accompanied by the consent of the owner of the premises—the owner of the premises agrees in writing to the later condition applying.
- (3) A development condition that complies with subsection (2) applies instead of the earlier condition.

*Note—*

For other limits on development conditions about environmental offsets, see the *Environmental Offsets Act 2014*, section 14.

## **67 Agreements about development conditions**

An applicant for a development application may make an agreement with an assessment manager, referral agency or other person to establish the responsibilities, or secure the performance, of a party to the agreement about a development condition.

## Part 4 Development assessment rules

### 68 Development assessment rules

- (1) The Minister must make rules (the *development assessment rules*) for the development assessment process, including rules about—
  - (a) how and when notification is to be carried out under section 53, including re-notifying the application if—
    - (i) the applicant changes the application under section 52; and
    - (ii) the notice under section 53(1) has been given; and
    - (iii) the change is not a minor change; and
    - (iv) the assessment manager is not satisfied that the change would be unlikely to attract a submission about the matter that is the subject of the change; and
    - (v) the assessment manager is not satisfied the change only addresses a matter raised in a properly made submission; and
  - (b) the consideration of properly made submissions.
- (2) Also, the development assessment rules may provide for—
  - (a) when a development application may be taken to be properly made for section 51(5); or
  - (b) the effect on a development application of the expiry of a time limit under, or of a contravention of, the rules (the lapsing of the application, for example); or
  - (c) the revival of lapsed applications; or
  - (d) how and when a referral agency may change its response before a development application or change application is decided; or
  - (e) any matter in relation to part 5, divisions 2 to 4; or

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- (f) the effect on a process under this chapter of taking action under the *Native Title Act 1993* (Cwlth), part 2, division 3.

*Examples—*

- the effect, for section 52, of different types of change on a development application
  - the period for making referral agency's responses, including when the responses may be made late
  - matters to be considered when deciding whether a change to a development application or development approval would result in substantially different development
  - matters to be considered when deciding if an action is a material change of use
  - the periods for taking actions under the process
  - the effect of not taking the actions within the periods
  - provisions for information requests, and when and how the information can be sought
- (3) Section 10 applies to making the development assessment rules as if the rules were a State planning policy.
- (4) The development assessment rules do not have effect unless prescribed by regulation.
- (5) However, the development assessment rules are not subordinate legislation.

## **69 Amending the development assessment rules**

- (1) The Minister may amend the development assessment rules.
- (2) However, the amendment does not have effect until—
- (a) the chief executive publishes both the amendment, and the rules as amended, on the department's website; and
  - (b) the rules as amended are prescribed by regulation.
- (3) Sections 10 and 11 apply to amending the development assessment rules as if the rules were a State planning policy.
- (4) The regulation must state the day the amendment was published.

## **70 Access to and evidence of the development assessment rules**

- (1) The chief executive must keep the following on the department's website—
  - (a) the development assessment rules, as in effect from time to time;
  - (b) endnotes to the development assessment rules that state—
    - (i) when all amendments made to the rules took effect; and
    - (ii) details of each regulation that prescribes the rules;
  - (c) any superseded versions of the development assessment rules.
- (2) The following provisions apply to the development assessment rules as if the rules were subordinate legislation and as if a reference in the provisions to the parliamentary counsel were a reference to the chief executive—
  - (a) the *Legislative Standards Act 1992*, section 10A;
  - (b) the *Evidence Act 1977*, sections 43(h) and 46A.
- (3) A failure to comply with subsection (1) does not invalidate or otherwise affect the development assessment rules.

## **Part 5 Development approvals**

### **Division 1 Effect of development approval**

#### **71 When development approval has effect**

- (1) Generally, a development approval starts to have effect when the approval is given, or taken to have been given, to the applicant.
- (2) However—

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- (a) if an appeal about the approval is started, and subject to the outcome of the appeal—the approval starts to have effect when the appeal ends; or
  - (b) if no appeal about the approval is started, but there was a submitter for the development application who had not given the assessment manager a notice withdrawing the submitter’s submission before the application was decided—the approval starts to have effect on the day after the first of the following happens—
    - (i) the last submitter gives the assessment manager notice that the submitter will not be appealing the decision;
    - (ii) the last appeal period for the development approval ends.
- (3) If a submitter for the development application gives the assessment manager notice that the submitter will not be appealing the decision on the application, the assessment manager must give the applicant a copy of the notice.
- (4) Despite subsections (1) and (2), if land that is the subject of an acquisition approval is taken or acquired under the Acquisition Act or the State Development Act after the approval would otherwise take effect under subsection (1) or (2), the approval starts to have effect when the land is taken or acquired.
- (5) The part of a variation approval that is a categorising instrument applies instead of a local planning instrument, to the extent of any inconsistency, until—
- (a) the development is completed; or
  - (b) the variation approval lapses under section 88(2).
- (6) In this section—
- acquisition approval***, for acquisition land, means a development approval that relates to the purpose for which the land is to be taken or acquired.

*submitter* includes an advice agency that, in its referral agency's response, has told the assessment manager to treat the response as a properly made submission.

## **72 When development may start**

- (1) Development under a development approval may start when—
  - (a) all development permits for the development have started to have effect; and
  - (b) all development conditions of the permits that are required to be complied with before development starts have been complied with.
- (2) However, if an appeal is started in relation to a development approval, other than an appeal about a change application or extension application, development must not start until—
  - (a) the appeal ends; or
  - (b) the tribunal or court hearing the appeal allows all or part of the development to start, because the tribunal or court considers the outcome of the appeal would not be affected.

## **73 Attachment to the premises**

While a development approval is in effect, the approval—

- (a) attaches to the premises, even if—
  - (i) a later development (including reconfiguring a lot) is approved for the premises; or
  - (ii) the premises are reconfigured; and
- (b) binds the owner, the owner's successors in title, and any occupier of the premises.

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**73A Development permits for building work given by private certifiers**

- (1) This section applies to a development application for a development permit that—
  - (a) is for building work; and
  - (b) is made to a private certifier as assessment manager.
- (2) Subsection (3) applies to the development application if any part of the building work requires impact assessment.
- (3) A development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring impact assessment, unless a relevant preliminary approval is in effect for the part.
- (4) Subsection (5) applies to the development application if—
  - (a) any part of the building work must be assessed against, or having regard to, a matter that is not a building assessment provision; and
  - (b) none of the referral agencies are required to assess the application against, or having regard to, the matter.
- (5) A development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring assessment against, or having regard to, the matter, unless a relevant preliminary approval is in effect for the part.
- (6) In this section—

*relevant preliminary approval* means a preliminary approval given under the old Act by an entity other than a private certifier.

## **Division 2                    Changing development approvals**

### **Subdivision 1            Changes during appeal period**

#### **74            What this subdivision is about**

- (1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.
- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
  - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
  - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and
  - (c) as if a reference in section 76 to a development application were a reference to a change application; and
  - (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
  - (e) with any other necessary changes.

#### **75            Making change representations**

- (1) The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
  - (a) a matter in the development approval, other than—
    - (i) a matter stated because of a referral agency's response; or



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- (ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or
  - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- (2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the appeal period is suspended—
- (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
  - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—
    - (i) the applicant withdraws the notice, by giving another notice to the assessment manager; or
    - (ii) the applicant receives notice that the assessment manager does not agree with the change representations; or
    - (iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- (5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

## **76 Deciding change representations**

- (1) The assessment manager must assess the change representations against and having regard to the matters that

must be considered when assessing a development application, to the extent those matters are relevant.

- (2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
  - (a) the applicant; and
  - (b) if the assessment manager agrees with any of the change representations—
    - (i) each principal submitter; and
    - (ii) each referral agency; and
    - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
    - (iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
    - (v) another person prescribed by regulation.
- (3) A decision notice (a *negotiated decision notice*) that states the assessment manager agrees with a change representation must—
  - (a) state the nature of the change agreed to; and
  - (b) comply with section 63(2) and (3).
- (4) A negotiated decision notice replaces the decision notice for the development application.
- (5) Only 1 negotiated decision notice may be given.
- (6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

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## Subdivision 2 Changes after appeal period

### 77 What this subdivision is about

This subdivision is about changing a development approval, other than the currency period, after all appeal periods in relation to the approval end.

### 78 Making change application

- (1) A person may make an application (a *change application*) to change a development approval.

*Note—*

For the making of a change application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, sections 51AM, 51AN and 51AO.

- (2) A change application must be made to the responsible entity for the application.

### 78A Responsible entity for change applications

- (1) The *responsible entity* for a change application is—
  - (a) if the change application is for a minor change to a development condition of a development approval stated in a referral agency's response for the development application or another change application for the approval—the referral agency; or
  - (b) otherwise—the assessment manager.

*Note—*

For the responsible entity for a change application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, section 51AN.

- (2) However, the P&E Court is the responsible entity for the change application instead of the person under subsection (1) if—

- (a) the change application is for a minor change to a development approval; and
  - (b) the development approval was given or changed by the P&E Court; and
  - (c) a properly made submission was made about—
    - (i) the development application for the development approval; or
    - (ii) another change application for the development approval.
- (3) Also, the Minister is the responsible entity for the change application instead of the person under subsection (1) if—
- (a) the change application is for a change to—
    - (i) a condition of a development approval that the Minister directed be imposed or amended under section 95; or
    - (ii) a condition of a development approval that the Minister directed be imposed under the old Act, section 419 or the repealed *Integrated Planning Act 1997*, section 3.6.1; or
    - (iii) a development approval given or changed by the Minister for an application that was called in under a call in provision; and
  - (b) the P&E Court is not the responsible entity for the change application.
- (4) If the P&E Court is the responsible entity for the change application, the court—
- (a) must assess and decide the change application under this subdivision; but
  - (b) is not otherwise bound by the requirements of this subdivision for administering the change application.
- (5) If the change application is made to the Minister as the responsible entity under subsection (3) and the Minister is satisfied the change does not affect a State interest, the

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Minister may refer the change application to the assessment manager.

- (6) If the Minister refers the change application to the assessment manager, the assessment manager is the responsible entity for the application instead of the Minister.

## **79 Requirements for change applications**

- (1) A change application must be—
- (a) made in the approved form; and
  - (b) accompanied by—
    - (i) the required fee; and
    - (ii) for an application for a minor change—a copy of any pre-request response notice for the application.
- (1A) Also, a change application must be accompanied by the written consent of the owner of the premises the subject of the application to the extent—
- (a) the applicant is not the owner; and
  - (b) the application is in relation to—
    - (i) a material change of use of premises or reconfiguring a lot; or
    - (ii) works on premises that are below high-water mark and outside a canal; and
  - (c) the premises are not excluded premises.
- (2) The responsible entity—
- (a) must accept an application that the responsible entity is satisfied complies with subsections (1) and (1A); and
  - (b) must not accept an application unless the responsible entity is satisfied the application complies with subsection (1A); and
  - (c) may accept an application that does not comply with subsection (1)(a) or (b)(ii); and

- (d) may accept an application that does not comply with subsection (1)(b)(i) to the extent the required fee has been waived under section 109(b).

## **80 Notifying affected entities of change applications for minor changes**

- (1) A person who proposes to make a change application for a minor change to a development approval must give notice of the proposal, and the details of the change, to the following entities (each an *affected entity*)—
  - (a) if the assessment manager would be the responsible entity for the change application if it were made—a referral agency for the development approval other than the chief executive;
  - (b) if a referral agency would be the responsible entity for the change application if it were made—
    - (i) the assessment manager; and
    - (ii) another referral agency for the development approval other than the chief executive;
  - (c) if the P&E Court would be the responsible entity for the change application if it were made—
    - (i) the assessment manager; and
    - (ii) a referral agency for the development approval;
  - (d) if the Minister would be the responsible entity for the change application if it were made—
    - (i) the assessment manager; and
    - (ii) a referral agency for the development approval other than the chief executive;
  - (e) another person prescribed by regulation.
- (2) An affected entity for the change application may give the person a notice (a *pre-request response notice*) that states—
  - (a) whether the affected entity objects to the change; and

- (b) the reasons for any objection.
- (3) If the applicant for a change application for a minor change has not received a pre-request response notice from an affected entity for the application, the applicant must give a copy of the application to the affected entity as soon as practicable after the applicant gives the application to the responsible entity.
- (4) An affected entity must, within 15 business days after receiving a copy of a change application for a minor change, give the responsible entity and the applicant a notice (a *response notice*) that states—
  - (a) the affected entity has no objection to the change; or
  - (b) the affected entity objects to the change and the reasons for the objection.
- (5) If the affected entity does not do so, the responsible entity must decide the application as if the affected entity had given a response notice stating the affected entity had no objection to the change.

## **81 Assessing change applications for minor changes**

- (1) This section applies to a change application for a minor change to a development approval.
- (2) In assessing the change application, the responsible entity must consider—
  - (a) the information the applicant included with the application; and
  - (b) if the responsible entity is the assessment manager—any properly made submissions about the development application or another change application that was approved; and
  - (c) any pre-request response notice or response notice given in relation to the change application; and
  - (d) if the responsible entity is, under section 78A(3), the Minister—all matters the Minister would or may assess

- against or have regard to, if the change application were a development application called in by the Minister; and
- (da) if paragraph (d) does not apply—all matters the responsible entity would or may assess against or have regard to, if the change application were a development application; and
  - (e) another matter that the responsible entity considers relevant.
- (3) Subsections (4) and (5) apply if the responsible entity must, in assessing the change application under subsection (2)(d) or (da), consider—
- (a) a statutory instrument; or
  - (b) another document applied, adopted or incorporated (with or without changes) in a statutory instrument.
- (4) The responsible entity must consider the statutory instrument, or other document, as in effect when the development application for the development approval was properly made.
- (5) However, the responsible entity may give the weight the responsible entity considers is appropriate, in the circumstances, to—
- (a) the statutory instrument or other document as in effect when the change application was made; or
  - (b) if the statutory instrument or other document is amended or replaced after the change application is made but before it is decided—the amended or replacement instrument or document; or
  - (c) another statutory instrument—
    - (i) that comes into effect after the change application is made but before it is decided; and
    - (ii) that the responsible entity would have been required to consider if the instrument had been in effect when the development application for the development approval was properly made.



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## **81A Deciding change applications for minor changes**

- (1) This section applies in relation to a change application for a minor change to a development approval.
- (2) After assessing the change application under section 81, the responsible entity must decide to—
  - (a) make the change, with or without imposing or amending development conditions in relation to the change; or
  - (b) refuse to make the change.
- (3) If there is no affected entity for the change application, the responsible entity must decide the application within 20 business days after receiving the application.
- (4) If there is an affected entity for the change application, the responsible entity—
  - (a) must not decide the application until—
    - (i) the responsible entity receives a pre-request response notice, or response notice, from the affected entity; or
    - (ii) the end of 20 business days after receiving the application; but
  - (b) must decide the application within 25 business days after receiving the application.
- (5) However, the applicant and the responsible entity may, within the period stated in subsection (3) or (4)(b), agree to extend the period for deciding the change application.

## **81B Withdrawing change applications for minor changes**

- (1) This section applies in relation to a change application for a minor change to a development approval.
- (2) At any time before the change application is decided, the applicant may withdraw the application by giving notice of the withdrawal to—
  - (a) the responsible entity; and

- (b) each affected entity for the change application.

## **82 Assessing and deciding change applications for other changes**

- (1) This section applies to a change application, other than for a minor change to a development approval.
- (2) For administering the change application, and assessing and deciding the change application in the context of the development approval, the relevant provisions apply—
  - (a) as if—
    - (i) the responsible entity were the assessment manager; and
    - (ii) the change application were the original development application, with the changes included, but was made when the change application was made; and
  - (b) with necessary changes.
- (3) However—
  - (a) section 53 does not apply to the change application if the change is not a minor change only because the change may cause—
    - (i) a referral to a referral agency if there were no referral agencies for the development application; or
    - (ii) a referral to extra referral agencies; or
    - (iii) a referral agency to assess the change application against extra matters; and
  - (b) the power—
    - (i) to direct that a development condition be imposed under section 56(1)(b)(i) includes a power to direct that a development condition be amended; and

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- (ii) to impose a development condition under section 60(2)(c) or (3)(b) or 64(6)(b) includes a power to amend a development condition; and
  - (c) if the responsible entity is, under section 78A(3), the Minister—
    - (i) the relevant provisions apply to the change application only if, and to the extent, those provisions would apply to a development application called in by the Minister; and
    - (ii) section 105(5) and (6) applies for assessing and deciding the change application.
  - (4) To remove any doubt, it is declared that the following matters apply, only to the extent the matters are relevant to assessing and deciding the change application in the context of the development approval—
    - (a) the assessment benchmarks;
    - (b) any matters a referral agency must, may, or may only assess the application against or have regard to under section 55(2);
    - (c) if the development to which the change application relates requires code assessment—any matters the assessment must be carried out having regard to under section 45(3)(b);
    - (d) if the development to which the change application relates requires impact assessment—any matters the assessment must or may be carried out against or having regard to under section 45(5)(a)(ii) or (b).
  - (5) If a change application is made within 1 year after the development approval was given, any properly made submission for the application for the development approval is taken to be a properly made submission for the change application.
  - (6) In this section—

***relevant provisions*** means—

- (a) section 45(6) to (8); and
- (b) part 2, division 2, other than section 51; and
- (c) part 3, other than sections 63 and 64(8)(c); and
- (d) the development assessment rules.

**82A Additional referral agencies for change applications other than for minor changes**

- (1) This section applies in relation to a change application, other than a change application for a minor change to a development approval.
- (2) A regulation may state the following for the change application—
  - (a) that a person is a referral agency (an *additional referral agency*) for the change application;
  - (b) the matters the additional referral agency—
    - (i) may, must, or must only assess the change application against; or
    - (ii) may, must, or must only have regard to in assessing the change application;
  - (c) that the powers of the additional referral agency for the change application are limited in a particular way.
- (3) To remove any doubt, it is declared that the additional referral agency is a referral agency for the change application in addition to a referral agency for the application under section 54(2), as applied under section 82(2).
- (4) For assessing and deciding the change application under the relevant provisions, as applied under section 82(2)—
  - (a) a reference in the relevant provisions, other than in section 54(2), to a referral agency includes a reference to the additional referral agency; and
  - (b) despite section 55(2), the additional referral agency—

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- (i) may, must, or must only assess the change application against the matters stated under subsection (2)(b)(i); and
  - (ii) may, must, or must only have regard to the matters stated under subsection (2)(b)(ii) in assessing the change application; and
  - (c) a reference in section 55(3) to section 55(2) includes a reference to paragraph (b); and
  - (d) a reference in section 56(7)(b) to the matters under section 55(2) includes a reference to the matters mentioned in subsection (2)(b).
- (5) In this section—  
*relevant provisions* see section 82(6).

## **Subdivision 3      Notice of decision**

### **83      Notice of decision**

- (1) The responsible entity, other than the P&E Court, must give a decision notice about the entity's decision on a change application, within 5 business days after deciding the application, to—
  - (a) the applicant; and
  - (b) if the responsible entity is not the assessment manager—the assessment manager; and
  - (c) if the responsible entity is a chosen assessment manager—the prescribed assessment manager; and
  - (d) any referral agency for the application; and
  - (e) if the responsible entity is not a local government and the premises are in a local government area—the local government whose local government area includes the premises; and

- (f) if the application relates to a development approval given after the application for the development approval was called in under a call in provision—the Minister who called in the application; and
  - (g) if the approval was given under a court order and the court was not the responsible entity—the court; and
  - (h) another person prescribed by regulation.
- (2) Also, if a negotiated decision notice is not given in relation to the decision, the responsible entity, other than the P&E Court, must give a decision notice about the decision to each principal submitter within 5 business days after the first of the following events happens—
- (a) the applicant gives the responsible entity a written notice stating that the applicant does not intend to make change representations under section 75;
  - (b) the applicant gives the responsible entity notice of the applicant’s appeal;
  - (c) the applicant’s appeal period for the change application ends.
- (3) The decision notice must state the day when—
- (a) the change application was made; and
  - (b) the development approval for the development application was decided.
- (4) If the decision is to make the change, the decision notice must be accompanied by a copy of the following showing the change, including any extra development conditions—
- (a) if the responsible entity is a referral agency—the referral agency’s response for the original development application;
  - (b) otherwise—the development approval.
- (5) If a decision notice is given to a court, the court must attach the notice to the court’s file for the court order.

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- (6) If the decision notice is given by the court, the decision starts to have effect when the notice is given.
- (7) If subsection (6) does not apply, section 71(1) to (6) applies to the decision notice as if—
- (a) the decision were a development approval; and
  - (b) a submitter for the change application were a submitter for a development application; and
  - (c) an affected entity, or an advice agency in relation to the change application, were an advice agency mentioned in section 71; and
  - (d) the applicant for the change application were an applicant for a development approval; and
  - (e) the responsible entity were an assessment manager.
- (8) If—
- (a) the responsible entity for a change application, other than for a minor change, is—
    - (i) a local government; or
    - (ii) the chief executive; or
    - (iii) an entity prescribed by regulation; and
  - (b) the change application involved—
    - (i) a material change of use; or
    - (ii) reconfiguring a lot; or
    - (iii) building work, other than to the extent the building work is assessable against the building assessment provisions; or
    - (iv) development prescribed by regulation;
- the responsible entity must publish a notice about the decision on the responsible entity's website.
- (9) The notice must state—
- (a) a description of the development; and

- (b) a description of any assessment benchmarks, or matters under section 55(2), applying for assessing the change application; and
- (c) to the extent the change application required impact assessment—
  - (i) any relevant matters under section 45(5)(b) that the development was assessed against, or to which regard was had, in the assessment; and
  - (ii) a description of the matters raised in any submissions; and
  - (iii) how the assessment manager dealt with the matters described under subparagraph (ii) in reaching a decision; and
- (d) the reasons for the responsible entity's decision; and
- (e) the reasons why the change application was approved despite the development not complying with any or all of the benchmarks, if—
  - (i) the responsible entity was the assessment manager; and
  - (ii) the development did not comply with any or all of the benchmarks; and
  - (iii) the responsible entity approved the change application, or approved the change application subject to conditions; and
- (f) any matter prescribed by a regulation.

## **Division 3                      C cancelling development approvals**

### **84                      Cancellation applications**

- (1) A person may make an application (a *cancellation application*) to cancel a development approval, unless—
  - (a) the development has started; and



- 
- (b) there are unfulfilled or ongoing obligations under the approval relating to—
- (i) the development already carried out; or
  - (ii) the conduct or management of uses started, or works carried out, under the approval; and

*Examples of paragraph (b)—*

An obligation under a development condition about—

- operating hours, traffic management or waste management
- restoring or rehabilitating the land or a building

- (c) the obligations have not been superseded under another development approval, or authority, under this or another Act.

- (2) A cancellation application must be made to—

- (a) for a development application that was called in—the original assessment manager; or
- (b) otherwise—the assessment manager.

*Note—*

For the making of a cancellation application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, section 51AP.

- (3) The application must be accompanied by—

- (a) the required fee, subject to section 109(b); and
- (b) the written consent of—
  - (i) if the applicant is not the owner of the premises—the owner of the premises; and
  - (ii) if there is an agreement for a person to buy the premises from the owner of the premises—the other person; and
  - (iii) if the premises are subject to an easement in favour of a public utility—the public utility.

- (4) On receiving an application that complies with this section, the assessment manager must—

- (a) cancel the development approval; and
- (b) give notice of the cancellation to—
  - (i) the applicant; and
  - (ii) each referral agency; and
  - (iii) if the assessment manager was a chosen assessment manager—the prescribed assessment manager; and
  - (iv) for an approval given under an order of the P&E Court—the court; and
  - (v) for an approval given under a call in—the Minister.
- (5) The assessment manager and any referral agency must release any monetary security for the development approval held by the assessment manager or referral agency.

## **Division 4                      Lapsing of and extending development approvals**

### **85            Lapsing of approval at end of currency period**

- (1) A part of a development approval lapses at the end of the following period (the *currency period*)—
  - (a) for any part of the development approval relating to a material change of use—if the first change of use does not happen within—
    - (i) the period stated for that part of the approval; or
    - (ii) if no period is stated—6 years after the approval starts to have effect;
  - (b) for any part of the development approval relating to reconfiguring a lot—if a plan for the reconfiguration that, under the Land Title Act, is required to be given to a local government for approval is not given to the local government within—
    - (i) the period stated for that part of the approval; or

- (ii) if no period is stated—4 years after the approval starts to have effect;
- (c) for any other part of the development approval—if the development does not substantially start within—
  - (i) the period stated for that part of the approval; or
  - (ii) if no period is stated—2 years after the approval starts to take effect.

*Note—*

For the lapsing of a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, section 51AK.

- (2) If part of a development approval lapses, any monetary security given for that part of the approval must be released.

## 86 Extension applications

- (1) A person may make an application (an *extension application*) to the assessment manager to extend a currency period of a development approval before the approval lapses.

*Note—*

For the making of an extension application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, section 51AL.

- (2) The extension application must be—
  - (a) made—
    - (i) if the assessment manager has a form for the application—in the form; or
    - (ii) by notice; and
  - (b) accompanied by the required fee.
- (2A) Also, the extension application must be accompanied by the written consent of the owner of the premises the subject of the development approval to the extent—
  - (a) the applicant is not the owner; and
  - (b) the development approval is for—

- (i) a material change of use of premises or reconfiguring a lot; or
    - (ii) works on premises that are below high-water mark and outside a canal; and
  - (c) the premises are not excluded premises.
- (3) An assessment manager—
- (a) must accept an application that the assessment manager is satisfied complies with subsections (2) and (2A); and
  - (b) must not accept an application unless the assessment manager is satisfied the application complies with subsection (2A); and
  - (c) may accept an application that does not comply with subsection (2)(a); and
  - (d) may accept an application that does not comply with subsection (2)(b) to the extent the required fee has been waived under section 109(b).

## **87 Assessing and deciding extension applications**

- (1) When assessing an extension application, the assessment manager may consider any matter that the assessment manager considers relevant, even if the matter was not relevant to assessing the development application.

*Note—*

For the assessment and deciding of an extension application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, section 51AL.

- (2) The assessment manager must, within 20 business days after receiving the extension application, decide whether to—
- (a) give or refuse the extension sought; or
  - (b) extend the currency period for a period that is different from the extension sought.
- (3) The assessment manager and the applicant may agree to extend the 20 business day period.

- 
- (4) The assessment manager may decide the extension application even if the development approval was given because of an order of the P&E Court.
  - (5) The assessment manager must, within 5 business days after deciding the extension application, give a decision notice to—
    - (a) the applicant; and
    - (b) any referral agency; and
    - (c) if the assessment manager was a chosen assessment manager—the prescribed assessment manager; and
    - (d) if the assessment manager is not a local government and the premises are in a local government area—the local government whose local government area includes the premises; and
    - (e) if the development approval was given because of an order of the P&E Court—the P&E Court; and
    - (f) if the development application for the development approval was called in—the Minister.
  - (6) If a decision notice is given to the P&E Court, the P&E Court must attach the notice to the court’s file for the court’s order.
  - (7) Despite section 85, the development approval lapses—
    - (a) if the extension application is approved—at the end of the extended period; or
    - (b) if the extension application is refused and the applicant does not appeal—when the last of the following happens—
      - (i) the day notice is given under subsection (5);
      - (ii) the end of the currency period; or
    - (c) if the extension application is refused, the applicant does appeal and the appeal is dismissed or withdrawn—when the last of the following happens—
      - (i) the day the appeal is dismissed or withdrawn;
      - (ii) the end of the currency period; or

- (d) if the extension application is refused, the applicant does appeal, and the appeal is allowed—at the end of the extended period decided by the court.
- (8) If the applicant does appeal, the applicant may not start or carry on development until the appeal is decided, unless allowed by an order of the P&E Court.

## **88 Lapsing of approval for failing to complete development**

- (1) A development approval, other than a variation approval, for development lapses to the extent the development is not completed within any period or periods required under a development condition.
- (2) A variation approval for development lapses to the extent the development is not completed within—
  - (a) if a development condition required the development to be completed within a stated period or periods—the stated period or periods; or
  - (b) if paragraph (a) does not apply—the period or periods the applicant nominated in the development application; or
  - (c) otherwise—5 years after the approval starts to have effect.
- (3) However, despite the lapsing of the development approval, any security paid under a condition stated in section 65(2)(e) may be used as stated in the approval or agreement under section 67 (to finish the development, for example).

## **Division 5 Noting development approvals on planning scheme**

### **89 Particular approvals to be noted**

- (1) This section applies if a local government—

- 
- (a) considers a development approval is substantially inconsistent with its planning scheme; or
  - (b) gives a variation approval; or
  - (c) agrees to a superseded planning scheme request for a superseded planning scheme to apply to the carrying out of particular development.
- (2) The local government must—
- (a) note the approval or decision on the local government’s planning scheme; and
  - (b) give notice of the notation, and the premises to which the note relates, to the chief executive.
- (3) The note does not amend the planning scheme.
- (4) Failure to comply with subsection (2) does not affect the validity of the approval or decision.

## Part 6 Minister’s powers

### Division 1 Introduction

#### 90 What part applies to

- (1) This part applies to the following (an *application*)—
  - (a) a development application;
  - (b) change representations;
  - (c) a change application;
  - (d) an extension application;
  - (e) a cancellation application.
- (2) In this part, the *decision-maker* for an application is—
  - (a) for a change application—the responsible entity; or
  - (b) otherwise—the assessment manager.

## **91 Limit on Minister's powers**

The Minister may exercise a power under this part in relation to a matter only if the matter involves, or is likely to involve, a State interest.

## **Division 2 Minister's directions**

### **Subdivision 1 Directions generally**

#### **92 Minister not required to notify, consult or consider particular material**

When exercising a power under this division, the Minister need not—

- (a) give notice to anyone other than under subdivision 2 or 3; or
- (b) consult with anyone; or
- (c) consider any material given to the Minister by or for a person in relation to the exercise or proposed exercise of the power.

#### **93 Directions generally**

- (1) A direction given by the Minister must state—
  - (a) the Minister's reasons for the direction; and
  - (b) the State interest for which the direction is given.
- (2) The recipient of the direction must comply with the direction.
- (3) The Minister may consider any failure to comply with the direction when exercising another power under this part.



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## **Subdivision 2      Directions to decision-makers**

### **94      Directions to decision-makers—future applications**

- (1) The Minister may, by gazette notice, direct a decision-maker to give copies of all future applications of a specified type to the Minister at a stated time.
- (2) The Minister must give a copy of the direction to—
  - (a) the decision-maker; and
  - (b) each person, other than the chief executive, that the Minister considers is likely to be—
    - (i) a referral agency in relation to that type of application; and
    - (ii) if the decision-maker is not the assessment manager in relation to that type of application—the assessment manager.

### **95      Directions to decision-makers—current applications**

- (1) The Minister may, by gazette notice, direct a decision-maker to do any of the following in relation to an undecided application—
  - (a) to exercise one of the decision-maker's functions, within a stated reasonable period;
  - (b) not to decide the application, within a stated period of at least 20 business days;
  - (c) to decide the application, within a stated period of at least 20 business days;
  - (d) for a development application for which a deemed approval has not taken effect under section 64—
    - (i) to impose stated development conditions on any development approval given; or
    - (ii) to give a preliminary approval for all or part of the application;

- (e) for change representations or a change application—to impose, or amend, stated development conditions on the development approval.
- (2) For subsection (1)(b)—
  - (a) a direction not to decide an application must state that the Minister may, within the stated period, call in the application or give a further direction; and
  - (b) the Minister may not call in the application after the stated period ends.
- (3) The Minister must give a copy of the direction to—
  - (a) the decision-maker; and
  - (b) the applicant; and
  - (c) for an application other than change representations—each referral agency other than the chief executive.
- (4) If a direction not to decide an application is given—
  - (a) the process for administering the application stops when the direction is given; and
  - (b) the balance of the process restarts on the day after—
    - (i) the stated period ends; or
    - (ii) if the Minister calls in the application or gives another direction before the stated period ends—the Minister calls in the application or gives the other direction.

## **96 Directions about alternative assessment managers**

- (1) The Minister may, by gazette notice, direct an entity mentioned in section 48(3)(a)—
  - (a) not to keep a list under that subsection for development of a type stated in the direction; or
  - (b) to remove a person from a list under that subsection.
- (2) The Minister must give a copy of the notice to—

- (a) the entity; and
- (b) if the direction is to remove a person from the list—the person.

## **97 Report about directions**

- (1) If the Minister gives a direction, the Minister must prepare a report that—
  - (a) explains the nature of the direction and the matters the Minister considered in making the direction; and
  - (b) includes a copy of the direction.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after giving the direction.

## **Subdivision 3 Directions to referral agencies**

### **98 What this subdivision is about**

This subdivision is about directions that the Minister may give to a referral agency for the following applications—

- (a) a development application;
- (b) a change application other than for a minor change.

### **99 Directions to referral agency**

- (1) The Minister may, before or after the end of the period for a referral agency to assess an application, direct the referral agency—
  - (a) to reissue the referral agency’s response—
    - (i) if the Minister considers the response directs the imposition of a condition that does not comply with section 65 or 66—without the condition or with another condition; or

- (ii) if the Minister considers the response is not within the referral agency's functions—in a stated way to ensure the response is within the referral agency's functions; or
    - (iii) if the Minister considers the referral agency has not adequately assessed the application—in a stated way that the Minister considers reflects an adequate assessment of the application; or
  - (b) if the Minister considers the referral agency has contravened a period for taking an action under the process for administering the application—to take the action within a stated reasonable period.
- (2) At the same time as the Minister gives the direction to the referral agency, the Minister must give a copy of the direction to—
- (a) the applicant; and
  - (b) any other referral agency; and
  - (c) the decision-maker.

## **100 Effect of direction**

If the Minister gives a direction to a referral agency, the decision-maker must not decide the application until the referral agency complies with the direction.

## **Division 3 Minister's call in**

### **101 What this division is about**

This division is about the Minister's power to call in an application.

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## 102 Seeking representations about proposed call in

- (1) This section applies if the Minister proposes to call in an application.
- (2) The Minister must give a notice (the *proposed call in notice*) seeking representations about the proposed call in to—
  - (a) the decision-maker; and
  - (b) the applicant; and
  - (c) each referral agency, other than the chief executive; and
  - (d) if the application is a development application or change application other than for a minor change—any submitters for the application who the Minister is aware of when the notice is given.
- (3) A regulation may prescribe matters in relation to the giving of the notice, including—
  - (a) the contents of the notice; and
  - (b) when the notice must be given; and
  - (c) the effect of giving the notice on—
    - (i) the process for assessing and deciding the application; or
    - (ii) any appeal period in relation to the application; and
  - (d) the period (the *representation period*) within which a person may make representations about the proposed call in; and
  - (e) procedures for notifying persons of the Minister's decision in relation to any representation.
- (4) The Minister must consider any representations made during the representation period before deciding whether to call in the application.
- (5) Any approval or deemed approval for the application is taken not to be in effect from the day the applicant receives the proposed call in notice until—

- (a) if the Minister decides not to call in the application—the day the applicant receives notice of the Minister’s decision; or
  - (b) if the Minister decides to call in the application—the day the applicant receives a call in notice for the approval or deemed approval.
- (6) The decision-maker must not cancel a development approval after the decision-maker receives the proposed call in notice, unless the Minister decides not to call in the application.

### **103 Call in notice**

- (1) The Minister may call in an application by giving a notice (*a call in notice*) to—
- (a) the decision-maker; and
  - (b) the applicant; and
  - (c) any referral agency in relation to the application, other than the chief executive; and
  - (d) for a development application or change application—any principal submitter; and
  - (e) if there are proceedings relating to the application in the P&E Court—the court.
- (2) The notice must be given within 20 business days after the end of the representation period for the proposed call in notice.
- (3) The notice must state—
- (a) the reasons for the call in, including the State interest giving rise to the call in; and
  - (b) for an application that is not a cancellation application—
    - (i) whether the Minister intends to assess and decide, or reassess and re-decide, the application, or direct the decision-maker to assess all or part of the application; and

- (ii) the point (the *restarting point*) in the process for administering the application, that the Minister decides, from which the process must restart.
- (4) When deciding the restarting point, the Minister may consider anything the Minister considers relevant.

#### **104 Effect of call in notice**

- (1) When the Minister gives a call in notice to the decision-maker—
  - (a) any decision by the decision-maker for the application is of no effect; and
  - (b) any appeal against a decision by the decision-maker for the application is discontinued; and
  - (c) the process for assessing the application starts again from the restarting point.
- (2) The giving of a call in notice does not stop a local government giving or amending an infrastructure charges notice.

#### **105 Deciding called in application**

- (1) If the Minister gives a call in notice to the decision-maker, other than for a cancellation application, the Minister may—
  - (a) assess and decide, or reassess and re-decide, all or part of the application; or
  - (b) if the call in notice is given before the decision-maker decides the application—
    - (i) direct the decision-maker to assess all or part of the application; and
    - (ii) decide the application, or part of the application, based on the decision-maker's assessment.
- (2) If the Minister gives a call in notice to the decision-maker for a cancellation application, and the application complies with section 84(1), the Minister must cancel the development approval.

- (3) The decision-maker must give all reasonable help that the Minister requires to assess or decide the application.

*Examples—*

- giving all material about the application that the original assessment manager had before the call in or receives after the call in
  - giving any other material relevant to assessing the application
- (4) The following provisions do not apply to the application—
- (a) for a development application—sections 45(3) to (8), 60 to 62, to the extent those sections impose obligations on the assessment manager, and section 64;
  - (b) for change representations—section 76(1);
  - (c) for a change application for a minor change—sections 81 and 81A;
  - (d) for a change application for a change that is not a minor change—section 82;
  - (e) for an extension application—section 87(1) to (4).
- (5) For an application that is not a cancellation application, the Minister may consider anything the Minister considers relevant.
- (6) The Minister need not consider any referral agency's response.
- (7) The period under this chapter or the development assessment rules between the day the last procedural event for the application ends, and the day before the application must be decided, is replaced by—
- (a) 30 business days; or
  - (b) if, before the 30 business days end, the Minister gives a notice extending the period to the entities in section 103(1)—50 business days.
- (8) The requirements for the content of notices under sections 63, 83(3) and (4) and 87(5) apply only to the extent the Minister considers relevant.



- (9) The notice that the Minister gives about the Minister's decision must state—
- (a) the matters the Minister considered in making the decision; and
  - (b) if the Minister decided only part of the application—
    - (i) that the assessment manager must assess and decide, or reassess and re-decide, the other part; and
    - (ii) the point in the process for assessing the application, and the day from which the assessment must restart, for the other part.
- (10) The Minister must give the notice to each person who was required to be given the call in notice.
- (11) If the notice is about change representations, the notice does not replace the decision notice for the development application or change application.
- (12) However, any development conditions decided by the Minister are part of the development approval and apply instead of any other development conditions, to the extent of any inconsistency.
- (13) In this section—
- procedural event*** means any action that must be completed, for the application under the process for administering the application, after the application is called in but before a decision about the application must be made, including—
- (a) responding to a request for further information made under the process; and
  - (b) giving a referral agency response; and
  - (c) giving a response notice under section 80; and
  - (d) making properly made submissions.

## **106 Report about call ins**

- (1) If the Minister decides a called in application, the Minister must prepare a report that—
  - (a) explains the nature of the decision and the matters the Minister considered in making the decision; and
  - (b) includes a copy of the notice of the decision.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after giving the notice of the decision.

## **Part 7 Miscellaneous**

### **107 Valid use or preservation covenants**

- (1) A use or preservation covenant entered into in connection with a development application is of no effect unless the covenant is required under—
  - (a) a development condition; or
  - (b) an infrastructure agreement.
- (2) If—
  - (a) the requirement for a use or preservation covenant under a development condition or infrastructure agreement is removed; or
  - (b) the development approval or infrastructure agreement lapses;the covenantee must register an instrument releasing the covenant.
- (3) If a development condition or infrastructure agreement is changed in a way that affects rights or responsibilities under a use or preservation covenant—
  - (a) the covenantee and the covenantor must execute a valid instrument that amends the covenant to reflect the change; and

(b) the covenantor must register the instrument.

(4) In this section—

*register*, an instrument, means register the instrument under the Land Act or Land Title Act.

*use or preservation covenant* means a covenant under the Land Act, section 373A(5)(a) or (b) or the Land Title Act, section 97A(3)(a) or (b).

## **108 Limitation of liability**

An assessment manager or responsible entity does not incur liability for making a decision that is consistent with a direction of the Minister, or action taken by the Minister, under chapter 2, part 3, division 3.

## **109 Refunding or waiving fees**

An assessment manager, referral agency or responsible entity may, but need not—

- (a) refund all or part of a required fee; or
- (b) waive all or part of a required fee, in the circumstances prescribed by regulation.

# **Chapter 4 Infrastructure**

## **Part 1 Introduction**

### **110 What chapter is about**

(1) Part 2—

- (a) authorises local governments to do either or both of the following for development approvals in relation to trunk infrastructure—
    - (i) adopt, by resolution, charges for development infrastructure and levy the charges;
    - (ii) impose particular conditions about development infrastructure; and
  - (b) authorises local governments, for non-trunk infrastructure, to impose particular conditions about development infrastructure; and
  - (c) provides for a regulation to govern local government adopted charges and charges by distributor-retailers under the SEQ Water Act for trunk infrastructure.
- (2) Part 3 authorises State infrastructure providers to impose particular conditions on development approvals about infrastructure.
  - (3) Part 4 provides for agreements between public sector entities and others about infrastructure.
  - (4) Part 5 contains a miscellaneous provision.

## **Part 2                      Provisions for local governments**

### **Division 1                Preliminary**

#### **111      Application of part**

This part, other than section 112 and division 5, applies to a local government only if the local government's planning scheme includes a LGIP.

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## Division 2 Charges for trunk infrastructure

### Subdivision 1 Adopting charges

#### 112 Regulation prescribing charges

- (1) A regulation may prescribe a maximum amount (the *prescribed amount*) for each adopted charge—
  - (a) under this chapter for providing trunk infrastructure in relation to development; or
  - (b) under the SEQ Water Act in relation to providing trunk infrastructure.
- (2) A *maximum adopted charge*, for a financial year, for trunk infrastructure, is—
  - (a) for the 2017–2018 financial year—the prescribed amount for an adopted charge for the infrastructure; or
  - (b) otherwise—the sum of—
    - (i) the prescribed amount for an adopted charge for the infrastructure in force at the start of the financial year; and
    - (ii) an amount equal to the amount mentioned in subparagraph (i) multiplied by the sum of the percentage increases for each financial quarter since the amount was last prescribed or amended.
- (3) The regulation may also prescribe—
  - (a) the charges breakup; and
  - (b) development for which there may be an adopted charge under this chapter or land uses for which there may be an adopted charge under the SEQ Water Act for trunk infrastructure.
- (4) In this section—

*percentage increase* means the 3-yearly moving average quarterly percentage increase in the PPI.

### **113 Adopting charges by resolution**

- (1) A local government may, by resolution (a *charges resolution*), adopt charges (each an *adopted charge*) for providing trunk infrastructure for development.
- (2) However, a charges resolution does not, of itself, levy an adopted charge.
- (3) An adopted charge must not be for—
  - (a) works or use of premises authorised under the *Greenhouse Gas Storage Act 2009*, the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; or
  - (b) development in a priority development area under the *Economic Development Act 2012*; or
  - (c) development by a department, or part of a department, under a designation; or
  - (d) development for a non-State school under a designation.
- (4) A charges resolution must state the day when an adopted charge under the resolution is to have effect.
- (5) The making of a charges resolution is subject to this subdivision and subdivision 2.
- (6) In this section—  
*non-State school* see the *Education (Accreditation of Non-State Schools) Act 2017*, section 6.

## **Subdivision 2 Charges resolutions**

### **114 Contents—general**

- (1) An adopted charge may be made for development if the charge is—
  - (a) prescribed by regulation for the development; and
  - (b) no more than the maximum adopted charge for providing trunk infrastructure for the development.

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- (2) There may be different adopted charges for development in different parts of the local government's area.
  - (3) Also, a charges resolution may—
    - (a) declare there is no adopted charge for all or part of the local government's area; or
    - (b) include a provision (an *automatic increase provision*) that provides for automatic increases in levied charges from when they are levied to when they are paid.
  - (4) An automatic increase provision must state how increases under the provision are to be worked out.
  - (5) However, an automatic increase must not be more than the lesser of the following—
    - (a) the difference between—
      - (i) the levied charge; and
      - (ii) the maximum adopted charge that the local government could have levied for the development when the charge is paid;
    - (b) the increase worked out using the PPI, adjusted according to the 3-yearly PPI average, for the period—
      - (i) starting on the day the levied charge is levied; and
      - (ii) ending on the day the charge is paid.
  - (6) In this section—

*3-yearly PPI average* means the PPI adjusted according to the 3-year moving average quarterly percentage change between financial quarters.

## **115 Provisions for participating local governments and distributor-retailers**

- (1) This section applies to each of the following entities (the *parties*)—
  - (a) a local government that is a participating local government for a distributor-retailer;

- (b) the distributor-retailer.
- (2) The parties may enter into an agreement (a *breakup agreement*) about the charges breakup.
- (3) A breakup agreement applies instead of a charges breakup prescribed by regulation.
- (4) A charges resolution of the local government must state the charges breakup for all adopted charges under the resolution.
- (5) However, the adopted charges must not be more than the proportion of the maximum adopted charges—
  - (a) the local government may have under a breakup agreement to which the local government is a party; or
  - (b) if the local government is not a party to a breakup agreement—prescribed by regulation.
- (6) Subsection (7) applies if there is a charges resolution of the local government and the parties later enter into a breakup agreement with a different charges breakup from the resolution.
- (7) The breakup agreement does not have effect until the later of the following—
  - (a) the local government makes a new charges resolution that reflects the agreement;
  - (b) the distributor-retailer adopts a new infrastructure charges schedule that reflects the agreement.
- (8) Each party to a breakup agreement must publish a copy of the agreement on the party's website.

## **116 Working out cost of infrastructure for offset or refund**

- (1) For working out an offset or refund under this part, a charges resolution must include a method for working out the cost of the infrastructure that is the subject of the offset or refund.
- (2) The method must be consistent with the parameters for the purpose provided for under a guideline made by the Minister and prescribed by regulation.



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## **117 Criteria for deciding conversion application**

- (1) A charges resolution must include criteria for deciding a conversion application.
- (2) The criteria must be consistent with parameters for the criteria provided for under a guideline made by the Minister and prescribed by regulation.

## **118 Steps after making charges resolution**

- (1) After making a charges resolution, a local government must—
  - (a) upload and keep the resolution on the local government's website; and
  - (b) attach the resolution to each copy of the planning scheme that the local government gives to, or publishes for, others.

*Note—*

A charges resolution is not part of a planning scheme even if the resolution is attached to the scheme.

- (2) The charges under the charges resolution have effect—
  - (a) if the charges resolution is uploaded on the relevant local government website before the beginning of the day stated in the resolution as the day for the charges to have effect—on the day stated in the resolution; or
  - (b) otherwise—on the day the charges resolution is uploaded on the website.

## **Subdivision 3 Levying charges**

### **119 When charge may be levied and recovered**

- (1) This section applies if—
  - (a) a development approval has been given; and
  - (b) an adopted charge applies to providing trunk infrastructure for the development.

- (2) The local government must give a notice (an *infrastructure charges notice*) to the applicant.

*Notes—*

- 1 For when a local government may give a replacement infrastructure charges notice for a negotiated decision notice, see section 76(6).
  - 2 For the giving of an infrastructure charges notice for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, section 51AQ.
- (3) The local government must give the infrastructure charges notice—
- (a) if the local government is the assessment manager—at the same time as, or as soon as practicable after, the development approval is given; or
  - (b) if the local government is a referral agency—within 10 business days after the local government receives a copy of the development approval; or
  - (c) if the development approval is a deemed approval for which a decision notice has not been given—within 20 business days after the local government receives a copy of the deemed approval notice; or
  - (d) if paragraphs (a) to (c) do not apply—within 20 business days after the local government receives a copy of the development approval.
- (4) Subsection (3) is subject to subsection (8), and any other provision under which an infrastructure charges notice may be amended or replaced.
- (5) The local government must give an infrastructure charges notice to the applicant for a change application or extension application if—
- (a) an approval is given for the application; and
  - (b) subsection (1)(b) did not apply for the development approval to which the application relates, but applies because of the change or extension.

- (6) If an approval is given for a change application or extension application related to a development approval for which an infrastructure charges notice has been given, the local government may give an amended infrastructure charges notice to the applicant.
- (7) However, an infrastructure charges notice may be given or amended under subsection (5) or (6) only if the notice or amendment relates to the change to, or extension of, the development approval.
- (8) The local government must give the infrastructure charges notice or amended infrastructure charges notice under subsection (5) or (6)—
  - (a) if the local government is the assessment manager or responsible entity—at the same time as, or as soon as practicable after, the approval is given; or
  - (b) otherwise—within 20 business days after the local government receives a copy of the approval.
- (9) The amended infrastructure charges notice replaces the infrastructure charges notice.
- (10) A reference in this Act to an infrastructure charges notice includes a reference to an amended infrastructure charges notice.
- (11) An infrastructure charges notice stops having effect to the extent the development approval stops having effect.
- (12) A charge (a *levied charge*) under an infrastructure charges notice—
  - (a) is subject to sections 120 and 129; and
  - (b) is payable by the applicant; and
  - (c) attaches to the premises; and
  - (d) becomes payable as provided for under subdivision 4; and
  - (e) is subject to an agreement under section 123(1).

## 120 Limitation of levied charge

- (1) A levied charge may be only for extra demand placed on trunk infrastructure that the development will generate.
- (2) When working out extra demand, the demand on trunk infrastructure generated by the following must not be included—
  - (a) an existing use on the premises if the use is lawful and already taking place on the premises;
  - (b) a previous use that is no longer taking place on the premises if the use was lawful at the time the use was carried out;
  - (c) other development on the premises if the development may be lawfully carried out without the need for a further development permit.
- (3) However—
  - (a) the demand generated by a use or development stated in subsection (2) may be included if an infrastructure requirement that applies, or applied to the use or development, has not been complied with; and
  - (b) the demand generated by development stated in subsection (2)(c) may be included if—
    - (i) an infrastructure requirement applies to the premises on which the development will be carried out; and
    - (ii) the infrastructure requirement was imposed on the basis of development of a lower scale or intensity being carried out on the premises.
- (4) In this section—

**charges notice** means—

  - (a) an infrastructure charges notice; or
  - (b) a notice stated in section 125(3).

**infrastructure requirement** means a charges notice, or a condition of a development approval, that requires

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infrastructure or a payment in relation to demand on trunk infrastructure.

## **121 Requirements for infrastructure charges notice**

- (1) An infrastructure charges notice must state all of the following for the levied charge—
  - (a) the current amount of the charge;
  - (b) how the charge has been worked out;
  - (c) the premises;
  - (d) when the charge will be payable under section 122;
  - (e) if an automatic increase provision applies—
    - (i) that the charge is subject to automatic increases;  
and
    - (ii) how the increases are worked out under the provision;
  - (f) whether an offset or refund under this part applies and, if so, information about the offset or refund, including when the refund will be given.
- (2) However, the infrastructure charges notice need not include the information stated in subsection (1)(f) if the person who is to receive the notice has advised, in writing (including in any approved form), that the information need not be included in the notice.
- (3) The infrastructure charges notice must—
  - (a) state the date of the notice; and
  - (b) state any appeal rights the recipient of the notice has in relation to the notice; and
  - (c) include or be accompanied by any other information prescribed by regulation.

## **Subdivision 4      Payment**

### **122      Payment triggers generally**

- (1) A levied charge becomes payable—
  - (a) if the charge applies for reconfiguring a lot—when the local government that levied the charge approves a plan for the reconfiguration that, under the Land Title Act, is required to be given to the local government for approval; or
  - (b) if the charge applies for building work—when the final inspection certificate for the building work, or the certificate of classification for the building, is given under the Building Act; or
  - (c) if the charge applies for a material change of use—when the change happens; or
  - (d) if the charge applies for other development—on the day stated in the infrastructure charges notice under which the charge is levied.
- (2) This section is subject to section 123.

### **123      Agreements about payment or provision instead of payment**

- (1) The recipient of an infrastructure charges notice and the local government that gave the notice may agree about either or both of the following—
  - (a) whether the levied charge under the notice may be paid other than as required under section 122 including whether the charge may be paid by instalments;
  - (b) whether infrastructure may be provided instead of paying all or part of the levied charge.
- (2) If the levied charge is subject to an automatic increase provision, the agreement must state how increases in the charge are payable under the agreement.

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## **Subdivision 5      Changing charges during relevant appeal period**

### **124      Application of this subdivision**

This subdivision applies to the recipient of an infrastructure charges notice given by a local government.

### **125      Representations about infrastructure charges notice**

- (1) During the appeal period for the infrastructure charges notice, the recipient may make representations to the local government about the infrastructure charges notice.
- (2) The local government must consider the representations.
- (3) If the local government—
  - (a) agrees with a representation; and
  - (b) decides to change the infrastructure charges notice;the local government must, within 10 business days after making the decision, give a new infrastructure charges notice (a *negotiated notice*) to the recipient.
- (4) The local government may give only 1 negotiated notice.
- (5) A negotiated notice—
  - (a) must be in the same form as the infrastructure charges notice; and
  - (b) must state the nature of the changes; and
  - (c) replaces the infrastructure charges notice.
- (6) If the local government does not agree with any of the representations, the local government must, within 10 business days after making the decision, give a decision notice about the decision to the recipient.
- (7) The appeal period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.

## **126 Suspending relevant appeal period**

- (1) If the recipient needs more time to make representations, the recipient may give a notice suspending the relevant appeal period to the local government.
- (2) The recipient may give only 1 notice.
- (3) If the representations are not made within 20 business days after the notice is given, the balance of the relevant appeal period restarts.
- (4) If representations are made within the 20 business days and the recipient gives the local government a notice withdrawing the notice of suspension, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

## **Division 3 Development approval conditions about trunk infrastructure**

### **Subdivision 1 Conditions for necessary trunk infrastructure**

#### **127 Application and operation of subdivision**

- (1) This subdivision applies if—
  - (a) trunk infrastructure—
    - (i) has not been provided; or
    - (ii) has been provided but is not adequate; and
  - (b) the trunk infrastructure is or will be located on—
    - (i) premises (the *subject premises*) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
    - (ii) other premises, but is necessary to service the subject premises.



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- (2) Section 128 provides for the local government to be able to impose particular development conditions (each a *necessary infrastructure condition*) on the development approval.

*Note—*

For imposing or amending development conditions in relation to an approval of a change application, see sections 81A(2)(a) and 82(3)(b).

## **128 Necessary infrastructure conditions**

- (1) If the LGIP identifies adequate trunk infrastructure to service the subject premises, the local government may impose a development condition requiring either or both of the following to be provided at a stated time—
- (a) the identified infrastructure;
  - (b) different trunk infrastructure delivering the same desired standard of service.
- (2) If the LGIP does not identify adequate trunk infrastructure to service the subject premises, the local government may impose a development condition requiring development infrastructure necessary to service the premises to be provided at a stated time.
- (3) However, a local government may impose a condition under subsection (2) only if the development infrastructure services development consistent with the assumptions in the LGIP about type, scale, location or timing of development.
- (4) A necessary infrastructure condition is taken to comply with section 65(1) if—
- (a) generally, the infrastructure required is the most efficient and cost-effective solution for servicing other premises in the general area of the subject premises; and
  - (b) for a necessary infrastructure condition that requires the provision of the infrastructure located on the subject premises—
    - (i) the provision is not an unreasonable imposition on the development; or

- (ii) the provision is not an unreasonable imposition on the use of the subject premises as a consequence of the development.
- (5) To remove any doubt, it is declared that a necessary infrastructure condition may be imposed for infrastructure even if the infrastructure will service premises other than the subject premises.

## **129 Offset or refund requirements**

- (1) This section applies if—
- (a) trunk infrastructure that is the subject of a necessary infrastructure condition services, or is planned to service, premises other than the subject premises; and
  - (b) an adopted charge applies to the development.
- (2) If the cost of the infrastructure required to be provided under the condition is equal to or less than the amount worked out by applying the adopted charge to the development, the cost must be offset against that amount.

*Note—*

For how the cost is worked out, see sections 116 and 137.

*Example—*

A necessary infrastructure condition of a development approval requires transport infrastructure to be provided. The cost of the transport infrastructure is \$500,000. Adopted charges apply to the development at a total amount of \$600,000. The cost of the infrastructure under the necessary infrastructure condition (\$500,000) must be offset against the total amount worked out by applying the adopted charge to the development (\$600,000), rather than offsetting it only against the part of the charge relating to transport infrastructure.

- (3) If the cost of the infrastructure required to be provided under the condition is more than the amount worked out by applying the adopted charge to the development—
- (a) no amount is payable for the development approval; and
  - (b) the local government must refund to the applicant the difference between the establishment cost of the trunk

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infrastructure and the amount worked out by applying the adopted charge to the development.

## **Subdivision 2      Conditions for extra trunk infrastructure costs**

### **130      Imposing development conditions**

- (1) A local government may impose a development condition (an *extra payment condition*) requiring the payment of extra trunk infrastructure costs if—
  - (a) the development—
    - (i) will generate infrastructure demand of more than that required to service the type or scale of future development that the LGIP assumes; or
    - (ii) will require new trunk infrastructure earlier than when identified in the LGIP; or
    - (iii) is for premises completely or partly outside the PIA; and
  - (b) the development would impose extra trunk infrastructure costs on the local government after taking into account either or both of the following—
    - (i) levied charges for the development;
    - (ii) trunk infrastructure provided, or to be provided, by the applicant under this part.
- (2) However, an extra payment condition must not be imposed for a State infrastructure provider.
- (3) An extra payment condition is taken to comply with section 65(1) to the extent the infrastructure is necessary, but not yet available, to service the development.
- (4) Subsection (3) applies even if the infrastructure is also intended to service other development.

- (5) The power to impose an extra payment condition is subject to sections 131 to 136.

### **131 Content of extra payment condition**

- (1) An extra payment condition must state—
- (a) the reason why the condition was imposed; and
  - (b) the amount of the payment to be made under the condition; and
  - (c) details of the trunk infrastructure for which the payment is required; and
  - (d) the time (the *payment time*) when the amount becomes payable; and
  - (e) the applicant may, instead of making the payment, elect to provide all or part of the trunk infrastructure; and
  - (f) if the applicant so elects—
    - (i) any requirements for providing the trunk infrastructure; and
    - (ii) when the trunk infrastructure must be provided.
- (2) Unless the applicant and the local government otherwise agree, the payment time is—
- (a) if the trunk infrastructure is necessary to service the premises—by the day the development, or works associated with the development, starts; or
  - (b) otherwise—
    - (i) if the extra payment condition applies for reconfiguring a lot—when the local government approves a plan for the reconfiguration that, under the Land Title Act, is required to be given to the local government for approval; or
    - (ii) if the extra payment condition applies for building work—when the final inspection certificate for the building work, or the certificate of classification for the building, is given under the Building Act; or

- (iii) if the extra payment condition applies for a material change of use—when the change happens.

### **132 Restriction if development completely in PIA**

- (1) This section applies to an extra payment condition that a local government imposes for development completely inside the PIA.
- (2) The extra payment condition may require a payment only as follows—
  - (a) for trunk infrastructure to be provided earlier than planned in the LGIP—the extra establishment cost that the local government incurs to provide the infrastructure earlier than planned;
  - (b) for infrastructure associated with a different type or scale of development from that assumed in the LGIP—the establishment cost of any extra trunk infrastructure made necessary by the development.

### **133 Extra payment conditions for development outside PIA**

An extra payment condition that a local government imposes for development completely or partly outside the PIA may require the payment of—

- (a) the establishment cost of trunk infrastructure that is—
  - (i) made necessary by the development; and
  - (ii) if the local government’s planning scheme indicates the premises are part of an area intended for future development for purposes other than rural or rural residential purposes—necessary to service the rest of the area; and
- (b) either or both of the following establishment costs of any temporary trunk infrastructure—
  - (i) costs required to ensure the safe or efficient operation of infrastructure needed to service the development;

- (ii) costs made necessary by the development; and
- (c) any decommissioning, removal and rehabilitation costs of the temporary infrastructure; and
- (d) the maintenance and operating costs for up to 5 years of the infrastructure and temporary infrastructure as stated in paragraphs (a) and (b).

### **134 Refund if development in PIA**

- (1) This section applies to an extra payment condition that a local government imposes for development completely inside the PIA.
- (2) The local government must refund the payer the proportion of the establishment cost of the infrastructure that—
  - (a) may be apportioned reasonably to other users of the infrastructure; and
  - (b) has been, is, or is to be, the subject of a levied charge by the local government.

### **135 Refund if development approval stops**

- (1) This section applies if—
  - (a) a development approval subject to an extra payment condition no longer has effect; and
  - (b) a payment has been made under the condition; and
  - (c) construction of the infrastructure that is the subject of the condition has not substantially started before the development approval no longer has effect.
- (2) The local government must refund to the payer any part of the payment the local government has not spent, or contracted to spend, on designing and constructing the infrastructure.
- (3) The timing of the refund is subject to terms agreed between the payer and local government.

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**136 Extra payment condition does not affect other powers**

To remove any doubt, it is declared that the imposition of an extra payment condition does not prevent a local government from—

- (a) adopting charges for trunk infrastructure and levying charges; or
- (b) imposing a condition for non-trunk infrastructure; or
- (c) imposing a necessary infrastructure condition.

**Subdivision 3 Working out cost for required offset or refund**

**137 Process**

- (1) This section applies if—
  - (a) a development approval requires the applicant to provide trunk infrastructure; and
  - (b) the local government has given the applicant an infrastructure charges notice that includes information about an offset or refund under this part relating to the establishment cost of the trunk infrastructure; and
  - (c) the applicant does not agree with the amount of the establishment cost.
- (2) The applicant may, by notice given to the local government, require the local government to use the method under the relevant charges resolution to recalculate the establishment cost.
- (3) A notice under subsection (2) must be given to the local government before the levied charge under the infrastructure charges notice becomes payable under section 122.
- (4) By notice given to the applicant, the local government must amend the infrastructure charges notice.

- (5) The amended infrastructure charges notice must adopt the method to work out the establishment cost.

## **Division 4                      Miscellaneous provisions about trunk infrastructure**

### **Subdivision 1                Conversion of particular non-trunk infrastructure before construction starts**

#### **138      Application of this subdivision**

This subdivision applies if—

- (a) a particular development condition under section 145 requires non-trunk infrastructure to be provided; and
- (b) the construction of the non-trunk infrastructure has not started.

#### **139      Application to convert infrastructure to trunk infrastructure**

- (1) The applicant for the development approval may apply (a *conversion application*) to convert non-trunk infrastructure to trunk infrastructure.

*Note—*

In this Act, *applicant*, in relation to a development approval, includes any person in whom the benefit of the approval vests—see section 280.

- (2) The application must be made—
- (a) to the local government in writing; and
  - (b) within 1 year after the development approval starts to have effect.



*Note—*

For the making of a conversion application for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, section 51AQ(3).

## **140 Deciding conversion application**

- (1) The local government must consider and decide the conversion application within 30 business days after—
  - (a) the application is made; or
  - (b) if an information request is made—the applicant complies with the request.
- (2) When deciding the conversion application, the local government must consider the criteria for deciding the application in its charges resolution.
- (3) However, at any time before making the decision, the local government may give the applicant a notice requiring the applicant to give information that the local government reasonably needs to make the decision.
- (4) The notice must state—
  - (a) the information the local government requires; and
  - (b) the period of at least 10 business days for giving the information; and
  - (c) the effect of subsection (5).
- (5) The application lapses if the applicant does not comply with the notice within the later of the following—
  - (a) the period stated in the notice for giving the information;
  - (b) if, within the period stated in the notice for giving the information, the local government and the applicant agree to a later period for giving the information—the later period.

## **141 Notice of decision**

- (1) As soon as practicable after deciding the conversion application, the local government must give a decision notice about the decision to the applicant.
- (2) If the decision is to convert non-trunk infrastructure to trunk infrastructure, the notice must state whether an offset or refund under this part applies and, if it does, information about the offset or refund.

## **142 Effect of and action after conversion**

- (1) This section applies if the decision on a conversion application is to convert non-trunk infrastructure to trunk infrastructure.
- (2) The condition of the relevant development approval requiring the non-trunk infrastructure to be provided no longer has effect.
- (3) Within 20 business days after making the decision, the local government may amend the development approval by imposing a necessary infrastructure condition for the trunk infrastructure.
- (4) If a necessary infrastructure condition is imposed, the local government must also do either of the following within 10 business days after the imposition for the purposes of section 129(2) or (3)(b)—
  - (a) give an infrastructure charges notice;
  - (b) amend an infrastructure charges notice, by notice given to the applicant.
- (5) For taking action under subsections (3) and (4), divisions 2 and 3 and schedule 1, table 1, item 4 apply as if—
  - (a) a development approval were a reference to the conversion; and
  - (b) a levied charge were a reference to the amendment of a levied charge.

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## **Subdivision 2      Other provisions**

### **143      Financial provisions**

- (1) A levied charge paid to a local government must be used to provide trunk infrastructure.
- (2) To remove any doubt, it is declared that the amount paid need not be held in trust by the local government.

### **144      Levied charge taken to be rates**

- (1) A levied charge is, for the purpose of its recovery, taken to be rates of the local government that levied the charge.
- (2) However, subsection (1) is subject to any agreement between the local government and the applicant.

## **Division 5              Non-trunk infrastructure**

### **145      Conditions local governments may impose**

A development condition about non-trunk infrastructure that a local government imposes—

- (a) must state—
  - (i) the infrastructure to be provided; and
  - (ii) when the infrastructure must be provided.
- (b) may be about providing development infrastructure for 1 or more of the following—
  - (i) a network, or part of a network, internal to the premises;
  - (ii) connecting the premises to external infrastructure networks;
  - (iii) protecting or maintaining the safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component.

*Example of a condition for subparagraph (iii)—*

A condition that works near transport infrastructure must not adversely affect the infrastructure's integrity.

## **Part 3**

# **Provisions for State infrastructure providers**

### **146 Imposing conditions about infrastructure**

- (1) A State infrastructure provider may impose a development condition (a *State-related condition*) on a development approval about—
  - (a) infrastructure; and
  - (b) works to protect or maintain infrastructure operation.
- (2) However, a State-related condition may only be about protecting or maintaining the safety or efficiency of—
  - (a) existing or proposed State-owned or State-controlled transport infrastructure; or
  - (b) public passenger transport or public passenger transport infrastructure (whether or not State-owned or State-controlled); or
  - (c) the safety or efficiency of railways, ports or airports under the Transport Infrastructure Act; or
  - (d) if the State infrastructure provider is the chief executive—a matter stated in paragraph (a), (b) or (c) for another State infrastructure provider.

*Examples of infrastructure that might be required under a State-related condition—*

- turning lanes or traffic signals at a site access or nearby intersection that are to ensure road links and intersections continue to perform at an acceptable level
- upgraded traffic control devices at a level crossing in response to increased traffic

- drainage or retaining structures that are to protect transport infrastructure from changed hydraulics or excavation next to State-owned or State-controlled transport infrastructure

(3) In this section—

***public passenger transport*** means the carriage of passengers by a public passenger service as defined under the *Transport Operations (Passenger Transport) Act 1994* using a public passenger vehicle as defined under that Act.

***public passenger transport infrastructure*** means infrastructure for, or associated with, the provision of public passenger transport.

***safety or efficiency***, of infrastructure, means—

- (a) the safety of the users of the infrastructure and of other persons affected by the infrastructure; or
- (b) the efficiency of the use of the infrastructure.

## **147 Content of State-related condition**

A State-related condition must state—

- (a) the infrastructure or works to be provided, or the contribution to be made, under the condition; and
- (b) when the provision or contribution must take place.

## **148 Refund if State-related condition stops**

(1) This section applies if—

- (a) a State infrastructure provider imposed a State-related condition on a development approval; and
- (b) a payment has been made under the condition; and
- (c) construction of the infrastructure that is the subject of the condition had not substantially started; and
- (d) the development approval stops having effect.

(2) The public sector entity responsible for providing the infrastructure must refund to the payer any part of the

payment not spent, or contracted to spend, on designing or constructing the infrastructure before being told the development approval no longer has effect.

#### **149 Reimbursement by local government for replacement infrastructure**

- (1) This section applies if infrastructure provided under a State-related condition—
  - (a) has replaced, or is to replace, infrastructure for which there has been, is, or is to be, a levied charge by a local government; and
  - (b) provides the same desired standard of service as the replaced infrastructure.
- (2) The local government must—
  - (a) pay the amount of the levied charge, when paid to local government, to the State infrastructure provider that imposed the condition to—
    - (i) provide the replacement infrastructure; or
    - (ii) reimburse a person who provided the replacement infrastructure; and
  - (b) agree with the State infrastructure provider and the person who provided the replacement infrastructure about when the amount of the levied charge will be paid.

## **Part 4 Infrastructure agreements**

### **150 Infrastructure agreement**

An *infrastructure agreement* is an agreement, as amended from time to time, stated in—

- (a) section 67, to the extent the agreement is about a condition for paying for, or providing, infrastructure; or
- (b) section 123; or

- (c) section 131(2); or
- (d) section 135(3); or
- (e) section 144(2); or
- (f) section 149(2); or
- (g) section 158.

## 151 Obligation to negotiate in good faith

- (1) This section applies if—
  - (a) a public sector entity proposes to another entity that they enter into an infrastructure agreement; or
  - (b) another entity proposes to a public sector entity that they enter into an infrastructure agreement.
- (2) The entity (the *recipient*) to whom the proposal is made must, in writing, tell the entity making the proposal if the recipient agrees to entering into negotiations for an infrastructure agreement.
- (3) When negotiating an infrastructure agreement, the entities must act in good faith.

*Examples of actions that subsection (3) requires—*

- disclosing to the other party to the negotiations in a timely way information relevant to entering into the proposed agreement
- considering and responding in a timely way to the other party's proposals about the proposed agreement
- giving reasons for each response

## 152 Content of infrastructure agreement

- (1) An infrastructure agreement must—
  - (a) if responsibilities under the agreement would be affected by a change in the ownership of premises that are the subject of the agreement—include a statement about how the responsibilities must be fulfilled in that event; and

- (b) if the fulfilment of responsibilities under the agreement depends on development entitlements that may be affected by a planning change—include a statement about—
    - (i) refunding or reimbursing amounts paid under the agreement; and
    - (ii) changing or cancelling the responsibilities if the development entitlements are changed without the consent of the person required to fulfil the responsibilities; and
  - (c) include any other matter prescribed by regulation.
- (2) To remove any doubt, it is declared that an infrastructure agreement may include matters that are not within the jurisdiction of a public sector entity that is a party to the agreement.

### **153 Copy of infrastructure agreement for local government**

- (1) This section applies if—
- (a) a distributor-retailer or a public sector entity other than a local government is a party to an infrastructure agreement; and
  - (b) the local government for the area to which the agreement applies is not a party to the agreement.
- (2) The distributor-retailer or public sector entity must give a copy of the agreement to the local government.

### **154 Copy of particular infrastructure agreements for distributor-retailers**

- (1) This section applies if—
- (a) a participating local government for a distributor-retailer is a party to an infrastructure agreement; and
  - (b) the distributor-retailer is not a party to the infrastructure agreement; and



- (c) the infrastructure agreement relates to a water approval or an application for a water approval under the SEQ Water Act, chapter 4C, part 2.
- (2) The local government must give a copy of the agreement to the distributor-retailer.

### **155 When infrastructure agreement binds successors in title**

- (1) This section applies if the owner of premises to which an infrastructure agreement applies—
  - (a) is a party to the agreement; or
  - (b) consents to the responsibilities under the agreement being attached to the premises.
- (2) However, subsection (1) does not apply to any responsibilities that a public sector entity is to fulfil.
- (3) The responsibilities under the infrastructure agreement attach to the premises and bind the owner of the premises and the owner's successors in title.
- (4) If the owner's consent under subsection (1) is given but not endorsed on the agreement, the owner must give a copy of the document evidencing the owner's consent to the local government for the premises to which the consent applies.
- (5) Despite subsection (3), subsections (6) and (7) apply if—
  - (a) the infrastructure agreement states that if the premises are subdivided, part of the premises is to be released from the responsibilities; and
  - (b) the premises are subdivided.
- (6) The part is released from the responsibilities.
- (7) The responsibilities are no longer binding on the owner of the part.

**156 Exercise of discretion unaffected by infrastructure agreement**

An infrastructure agreement is not invalid merely because its fulfilment depends on the exercise of a discretion by a public sector entity about an existing or future development application.

**157 Infrastructure agreement applies instead of approval and charges notice**

- (1) To the extent of any inconsistency, an infrastructure agreement applies instead of—
  - (a) a development approval; or
  - (b) an infrastructure charges notice; or
  - (c) a notice stated in section 301(1).
- (2) However, if a State infrastructure provider, other than the chief executive, is a party to the infrastructure agreement, subsection (1) applies only if the chief executive approves the agreement either before or after the development approval or notice is given.
- (3) The approval of the agreement must be given by notice to all parties to the agreement.
- (4) The approval may be given before or after the agreement is entered into.
- (5) This section is subject to the *Economic Development Act 2012*, section 120(4).

**158 Agreement for infrastructure partnerships**

- (1) A person may enter into an agreement with a public sector entity about—
  - (a) providing or funding infrastructure; or
  - (b) refunding payments made towards the cost of providing or funding infrastructure.

- (2) Subsection (1) has effect despite parts 2 and 3 and chapter 3, part 3, division 3.

## **Part 5                      Miscellaneous**

### **159      Particular local government land held on trust**

- (1) Land given to, or taken by, a local government for public parks infrastructure or local community facilities under this chapter must be given or taken in fee simple on trust.
- (2) If the local government later sells the land—
- (a) the land is sold free of the trust; and
  - (b) the net proceeds of the sale must be used to provide trunk infrastructure.

## **Chapter 5              Offences and enforcement**

### **Part 1                      Introduction**

#### **160      What this chapter is about**

- (1) This chapter is about offences against this Act, including development offences, and ways to prevent or remedy the effect of those offences.
- (2) Part 2 creates development offences.
- (3) Part 3 is about notices from an enforcement authority requiring a person to refrain from committing a development offence, or to remedy the effect of a development offence.
- (4) Part 4 is about proceedings in a Magistrates Court for development offences and other offences against this Act.

- (5) Part 5 is about orders made by the P&E Court requiring a person not to commit a development offence, or to remedy the effect of a development offence.
- (6) Parts 6 to 8 are about inspectors, their powers for enforcement, and related matters.
- (7) Part 9 contains miscellaneous provisions about offences and enforcement.

## **Part 2                      Development offences**

### **161      What part is about**

This part creates offences (each a *development offence*), subject to any exemption under this part or to chapter 7, part 1.

### **162      Carrying out prohibited development**

A person must not carry out prohibited development, unless—

- (a) the development is carried out under a development approval given for a superseded planning scheme application; or
- (b) the local government for the area in which the development is carried out has agreed, or is taken to have agreed, to a request under section 29(4)(b) for the development.

Maximum penalty—4,500 penalty units.

### **163      Carrying out assessable development without permit**

- (1) A person must not carry out assessable development, unless all necessary development permits are in effect for the development.

Maximum penalty—

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- (a) if the assessable development is on a Queensland heritage place or local heritage place—17,000 penalty units; or
  - (b) otherwise—4,500 penalty units.
- (2) However, subsection (1) does not apply to development carried out—
- (a) under section 29(10)(a); or
  - (b) in accordance with an exemption certificate under section 46; or
  - (c) under section 88(3).

#### **164 Compliance with development approval**

A person must not contravene a development approval.

Maximum penalty—4,500 penalty units.

#### **165 Unlawful use of premises**

A person must not use premises unless the use—

- (a) is a lawful use; or
- (b) for designated premises—complies with any requirements about the use of the premises in the designation.

Maximum penalty—4,500 penalty units.

#### **166 Exemptions if emergency causing safety concern**

- (1) This section applies to works, development or a use (an *activity*) carried out because an emergency endangers—
- (a) a person's life or health; or
  - (b) a building's structural safety; or
  - (c) the operation or safety of infrastructure, other than a building; or

- (d) for tidal works—the structural safety of a structure for which there is a development permit for operational work that is tidal works.
- (2) A person who, in an emergency, is carrying out necessary operational work that is tidal works does not commit a development offence, other than an offence against section 162, if the person—
- (a) has made a safety management plan for the works, after considering—
    - (i) the long-term safety of members of the public who have access to the works or a structure to which the works relate; and
    - (ii) if practicable, the advice of a registered professional engineer who has audited the works or structure; and
  - (b) complies with the plan; and
  - (c) gives a copy of the plan to the enforcement authority as soon as reasonably practicable after starting the works; and
  - (d) takes reasonable precautions and exercises proper diligence to ensure the works or a structure to which the works relate are in a safe condition, including by engaging a registered professional engineer to audit the works or structure.
- (3) A person who, in an emergency, is carrying out necessary building work on a Queensland heritage place, or local heritage place, does not commit a development offence, other than an offence against section 162, if the person—
- (a) gets the advice of a registered professional engineer about the works before starting the works, unless it is not practicable to do so; and
  - (b) takes all reasonable steps—
    - (i) to ensure the works are reversible; or

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- (ii) if the works are not reversible—to minimise the impact of the works on the place’s cultural heritage significance.
- (4) A person who, in an emergency, is carrying out any other necessary activity does not commit a development offence if the person gives notice that the person has been carrying out the activity, as soon as reasonably practicable after starting the activity, to—
- (a) the enforcement authority; and
  - (b) a person who must be given notice of the activity under another Act.
- (5) Subsections (2), (3) and (4) stop applying to a person carrying out an activity if an enforcement notice or order requires the activity to stop.
- (6) Subsections (2) and (3) stop applying to a person carrying out the activity if—
- (a) the person does not, as soon as reasonably practicable after starting the activity—
    - (i) make a development application that, but for the exemption, would be required for the activity; and
    - (ii) give a notice of a type mentioned in subsection (4);  
or
  - (b) the person complies with paragraph (a), but the person’s development application is refused.
- (7) If the person’s development application is refused, the person must restore, as far as practicable, premises to the condition the premises were in immediately before the activity was carried out.

Maximum penalty—4,500 penalty units.

- (8) In this section—

***emergency*** means an event or situation that involves an imminent and definite threat requiring immediate action (whether before, during or after the event or situation), other than routine maintenance due to wear and tear.

*Example of an action not done because of an emergency—*

the carrying out, in winter, of a use or of building or operational work in anticipation of the next cyclone season

**necessary**, in relation to an activity, means the activity is necessary to ensure the emergency does not, or is not likely to, endanger someone or something stated in subsection (1)(a) to (d).

**registered professional engineer** means—

- (a) a registered professional engineer under the *Professional Engineers Act 2002*; or
- (b) a person registered as a professional engineer under an Act of another State.

## Part 3                      Enforcement notices

### 167    Show cause notices

- (1) This section applies if an enforcement authority—
  - (a) reasonably believes a person has committed, or is committing, a development offence; and
  - (b) is considering giving an enforcement notice for the offence to the person.
- (2) The enforcement authority must give the person a notice (a **show cause notice**) that—
  - (a) states the enforcement authority is considering giving an enforcement notice to the person; and
  - (b) outlines the facts and circumstances that form the basis for the enforcement authority's reason for giving an enforcement notice; and
  - (c) states the person may make representations about the notice to the enforcement authority; and
  - (d) states how the representations may be made; and
  - (e) states—



- (i) a day and time for making the representations; or
  - (ii) a period within which the representations must be made.
- (3) The day or period stated in the show cause notice must be, or must end, at least 20 business days after the notice is given.
- (4) After considering any representations made by the person as required under the show cause notice, the enforcement authority may give the enforcement notice if the enforcement authority still considers it appropriate to do so.
- (5) An enforcement authority need not give a show cause notice to the person, before giving the person an enforcement notice, if—
  - (a) the development offence relates to—
    - (i) a Queensland heritage place or a local heritage place; or
    - (ii) works that the enforcement authority reasonably believes are a danger to persons or a risk to public health; or
    - (iii) the demolition of works; or
    - (iv) the clearing of vegetation; or
    - (v) the removal of quarry material allocated under the *Water Act 2000*; or
    - (vi) extracting clay, gravel, rock, sand or soil, not stated in subparagraph (v), from Queensland waters; or
    - (vii) development that the enforcement authority reasonably believes is causing erosion, sedimentation or an environmental nuisance (as defined in the Environmental Protection Act, section 15); or
  - (b) the enforcement authority reasonably believes it is not appropriate in the circumstances to give the show cause notice (because the notice is likely to adversely affect the effectiveness of the enforcement notice, for example).

## 168 Enforcement notices

- (1) If an enforcement authority reasonably believes a person has committed, or is committing, a development offence, the authority may give an enforcement notice to—
  - (a) the person; and
  - (b) if the offence involves premises and the person is not the owner of the premises—the owner of the premises.
- (2) An *enforcement notice* is a notice that requires a person to do either or both of the following—
  - (a) to refrain from committing a development offence;
  - (b) to remedy the effect of a development offence in a stated way.

*Examples of what an enforcement notice may require—*

The notice may require a person do any or all of the following on or before a stated time or within a stated period—

- to stop carrying out development
  - to demolish or remove development
  - to restore, as far as practicable, premises to the condition the premises were in immediately before development was started
  - to do, or not to do, another act to ensure development complies with a development permit
  - if the enforcement authority reasonably believes works are dangerous, to repair or rectify the works, to secure the works, or to fence the works off to protect people
  - to stop a stated use of premises
  - to apply for a development permit
  - to give the enforcement authority a compliance program that shows how compliance with the enforcement notice will be achieved.
- (3) The notice must state—
    - (a) the nature of the alleged offence; and
    - (b) if the notice requires the person not to do an act—
      - (i) the period for which the requirement applies; or

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- (ii) that the requirement applies until further notice;  
and
  - (c) if the notice requires the person to do an act—
    - (i) the details of the act; and
    - (ii) the period within which the act must be done; and
  - (d) that the person has an appeal right against the giving of the notice.
- (4) The notice may require demolition or removal of all or part of works if the enforcement authority reasonably believes it is not possible or practical to take steps—
- (a) to make the development accepted development; or
  - (b) to make the works comply with a development approval;  
or
  - (c) if the works are dangerous—to remove the danger.
- (5) A person must not contravene an enforcement notice.  
Maximum penalty—4,500 penalty units.
- (6) An enforcement notice that requires development on premises to stop being carried out may be given by fixing the notice to the premises in a way that a person entering the premises would normally see the notice.
- (7) A person must not deal with an enforcement notice stated in subsection (6) in a way that is reasonably likely to prevent the recipient seeing the notice.  
Maximum penalty—4,500 penalty units.

## **169 Consulting private certifier about enforcement notice**

- (1) This section applies if a private certifier is engaged in relation to development.
- (2) The enforcement authority must not give an enforcement notice for that part of the development for which the private certifier is engaged until the authority has consulted about the giving of the notice with—

- (a) the private certifier; or
  - (b) if the enforcement authority is the private certifier—the local government.
- (3) However, subsection (2) does not apply if the enforcement authority reasonably believes the works for which the enforcement notice is to be given are dangerous.
- (4) If the enforcement authority is the private certifier, the authority may not delegate power to give an enforcement notice that orders the demolition of a building.
- (5) The enforcement authority may carry out consultation under this section in the way the enforcement authority considers appropriate.

## **170 Notifying about show cause and enforcement notices**

- (1) This section applies if the enforcement authority gives a show cause notice or enforcement notice to a person.
- (2) If—
- (a) the notice relates to development in relation to which a local government could have been the assessment manager, but was not the assessment manager; and
  - (b) the enforcement authority is not the local government;
- the enforcement authority must give a copy of the notice to the local government.
- (3) If—
- (a) the notice relates to development in relation to which the chief executive could have been the assessment manager, but was not the assessment manager; and
  - (b) the enforcement authority is not the chief executive;
- the enforcement authority must give a copy of the notice to the chief executive.
- (4) If the enforcement authority withdraws the show cause notice or enforcement notice, the enforcement authority must give notice of the withdrawal to—

- (a) for a notice given under subsection (2)—the local government; or
  - (b) for a notice given under subsection (3)—the chief executive.
- (5) A failure to comply with subsection (2) or (3) does not invalidate or otherwise affect the show cause notice or enforcement notice.

### **171 Stay of enforcement notice**

- (1) An appeal against an enforcement notice stays the operation of the notice until—
- (a) the tribunal or court hearing the appeal decides otherwise; or
  - (b) the appeal ends.
- (2) However, the notice is not stayed to the extent the notice is about a matter stated in section 167(5)(a).

### **172 Application in response to show cause or enforcement notice**

If a person applies for a development permit in response to a show cause notice, or as required by an enforcement notice, the person—

- (a) must not withdraw the application, unless the person has a reasonable excuse; and
- (b) must take all necessary and reasonable steps to enable the application to be decided as soon as practicable, unless the person has a reasonable excuse; and
- (c) if the person appeals the decision on the application—must take all necessary and reasonable steps to enable the appeal to be decided as soon as practicable, unless the person has a reasonable excuse.

Maximum penalty—4,500 penalty units.

### **173 Enforcement authority may remedy contravention**

- (1) This section applies if an enforcement notice is contravened and the enforcement authority is not a local government.

*Note—*

If the enforcement authority is a local government, see the Local Government Act, section 142 or the City of Brisbane Act, section 132.

- (2) The enforcement authority may—
- (a) do anything reasonably necessary to ensure the notice is complied with; and
  - (b) recover any reasonable costs and expenses incurred in doing so as a debt owing by the recipient to the authority.

## **Part 4 Proceedings for offences in Magistrates Court**

### **173A Limitation on time for starting proceedings**

- (1) A proceeding for an offence against this Act must start—
- (a) within 1 year after the offence is committed; or
  - (b) within 1 year after the offence comes to the complainant's knowledge.
- (2) In a complaint starting a proceeding for an offence, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

### **174 Proceedings for offences**

- (1) A person may bring proceedings (*offence proceedings*) in a Magistrates Court on a complaint to prosecute another person for an offence against parts 2 to 5 or section 226.

- (2) The person may bring the offence proceedings whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.
- (3) However, only the enforcement authority may bring offence proceedings for an offence under—
  - (a) if the offence is about the building assessment provisions—sections 163 or 164; or
  - (b) otherwise—sections 168, 172 or 226.

### 175 Proceedings brought in a representative capacity

- (1) A person may bring offence proceedings in a representative capacity, if the person has the consent of—
  - (a) for proceedings brought on behalf of a body of persons or a corporation—the members of its controlling or governing body; or
  - (b) for proceedings brought on behalf of an individual—the individual.

*Note—*

For proceedings by a local government, see the Local Government Act, section 237 or the City of Brisbane Act, section 218.

- (2) The person on whose behalf the offence proceedings are brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceedings.

### 176 Enforcement orders

- (1) After hearing offence proceedings, a Magistrates Court may make an order (an *enforcement order*) for the defendant to take stated action within a stated period.

*Examples of action that an order may require—*

- to stop carrying out development
- to demolish or remove development
- to restore, as far as practicable, premises to the condition the premises were in immediately before development was started

- to do, or not to do, another act to ensure development complies with a development permit
  - if the court reasonably believes works are dangerous, to repair or rectify the works, to secure the works, or to fence the works off to protect people
  - to stop a stated use of premises
  - to apply for a development permit
- (2) The enforcement order may be in terms the court considers appropriate to secure compliance with this Act.

*Example—*

The order may require the defendant to provide security for the reasonable cost of taking the stated action.

- (3) An enforcement order must state the period within which the defendant must comply with the order.
- (4) An enforcement order may be made under this section in addition to the imposition of a penalty or any other order under this Act.
- (5) A person must not contravene an enforcement order.  
Maximum penalty—4,500 penalty units or 2 years imprisonment.
- (6) Unless a court orders otherwise, an enforcement order, other than an order to apply for a development permit—
- (a) attaches to the premises; and
  - (b) binds the owner, the owner’s successors in title and any occupier of the premises.
- (7) If the enforcement order does attach to the premises, the defendant must ask the registrar of titles, by notice given within 10 business days after the order is made, to record the making of the order on the register for the premises.  
Maximum penalty—200 penalty units.
- (8) A person may apply to the court for an order (a ***compliance order***) that states the enforcement order has been complied with.



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- (9) If a person gives a notice that a compliance order has been made, and a copy of the compliance order, to the registrar of titles, the registrar must remove the record of the making of the enforcement order from the appropriate register.
  - (10) If the enforcement order is not complied with within the period stated in the order, the enforcement authority may—
    - (a) take the action required under the order; and
    - (b) recover the reasonable cost of taking the action as a debt owing to the authority from the defendant.
  - (11) A notice given to the registrar of titles under this section must be in the form, and accompanied by the fee, required under the Land Title Act.

## **177 Order for compensation**

- (1) This section applies if a Magistrates Court—
  - (a) finds a defendant guilty of an offence under this Act; and
  - (b) finds that, because of the offence, another person has—
    - (i) suffered loss of income; or
    - (ii) suffered a reduction in the value of, or damage to, property; or
    - (iii) incurred expenses to replace or repair property or prevent or minimise, or attempt to prevent or minimise, the loss, reduction or damage.
- (2) The court may order the defendant to pay the other person compensation for the loss, reduction or damage suffered or the expenses incurred.
- (3) An order may be made under this section in addition to the imposition of a penalty and any other order under this Act.

## **178 Order for investigation expenses**

- (1) This section applies if—

- (a) a Magistrates Court finds—
    - (i) a defendant guilty of a development offence; and
    - (ii) an enforcement authority has reasonably incurred expenses in taking a sample or conducting an inspection, test, measurement or analysis to investigate the offence; and
  - (b) the enforcement authority applies for an order for the payment of the expenses.
- (2) The court may order the defendant to pay a reasonable amount for the expenses to the enforcement authority if the court considers it would be just to do so in the circumstances.

### **179 When fine is payable to local government**

If a local government is—

- (a) the complainant in offence proceedings; and
- (b) the enforcement authority for the matter that is the subject of the proceedings;

any fine ordered in the proceedings must be paid to the local government.

## **Part 5 Enforcement orders in P&E Court**

### **180 Enforcement orders**

- (1) Any person may start proceedings in the P&E Court for an enforcement order.
- (2) An *enforcement order* is an order that requires a person to do either or both of the following—
  - (a) refrain from committing a development offence;
  - (b) remedy the effect of a development offence in a stated way.

*Example—*

An enforcement order may require a person to pay compensation to someone who, because of the offence, has—

- (a) suffered loss of income; or
  - (b) suffered a reduction in the value of, or damage to, property; or
  - (c) incurred expenses to replace or repair property or prevent or minimise, or attempt to prevent or minimise, the loss, reduction or damage.
- (3) The P&E Court may make an enforcement order if the court considers the development offence—
- (a) has been committed; or
  - (b) will be committed unless the order is made.
- (4) The P&E Court may make an enforcement order (an *interim enforcement order*) pending a decision in proceedings for the enforcement order.
- (5) An enforcement order or interim enforcement order may direct the respondent—
- (a) to stop an activity that constitutes a development offence; or
  - (b) not to start an activity that constitutes a development offence; or
  - (c) to do anything required to stop committing a development offence; or
  - (d) to return anything to a condition as close as practicable to the condition the thing was in immediately before a development offence was committed; or
  - (e) to do anything to comply with this Act.

*Examples of what the respondent may be directed to do—*

- to repair, demolish or remove a building
  - to rehabilitate or restore vegetation cleared from land
- (6) An enforcement order or interim enforcement order may be in terms the P&E Court considers appropriate to secure compliance with this Act.

*Example—*

An enforcement order may require the respondent to provide security for the reasonable cost of taking the stated action.

- (7) An enforcement order or interim enforcement order must state the period within which the respondent must comply with the order.
- (8) A person must not contravene an enforcement order or interim enforcement order.  
Maximum penalty—4,500 penalty units or 2 years imprisonment.
- (9) Unless the P&E Court orders otherwise, an enforcement order, or interim enforcement order, other than an order to apply for a development permit—
  - (a) attaches to the premises; and
  - (b) binds the owner, the owner's successors in title and any occupier of the premises.
- (10) If the enforcement order, or interim enforcement order, does attach to the premises, the respondent must ask the registrar of titles, by a notice given within 10 business days after the order is made, to record the making of the order on the appropriate register for the premises.  
Maximum penalty—200 penalty units.
- (11) A person may apply to the P&E Court for an order (a ***compliance order***) that states the enforcement order, or interim enforcement order, has been complied with.
- (12) If a person gives a notice that a compliance order has been made, and a copy of the compliance order, to the registrar of titles, the registrar must remove the record of the making of the enforcement order, or interim enforcement order, from the appropriate register.
- (13) If the enforcement order, or interim enforcement order, is not complied with within the period stated in the order, the enforcement authority may—
  - (a) take the action required under the order; and

- (b) recover the reasonable cost of taking the action as a debt owing to the authority from the respondent.
- (14) A notice given to the registrar of titles under this section must be in the form, and accompanied by the fee, required under the Land Title Act.

### **181 P&E Court's powers about enforcement orders**

- (1) The P&E Court's power to make an enforcement order or interim enforcement order may be exercised whether or not the development offence has been prosecuted.
- (2) The power to order a person to stop, or not to start, an activity may be exercised whether or not—
  - (a) the P&E Court considers the person intends to engage, or to continue to engage, in the activity; or
  - (b) the person has previously engaged in an activity of the same type; or
  - (c) there is danger of substantial damage to property or injury to another person if the person engages, or continues to engage, in the activity.
- (3) The power to order a person to do anything may be exercised whether or not—
  - (a) the P&E Court considers the person intends to fail, or to continue to fail, to do the thing; or
  - (b) the person has previously failed to do a thing of the same type; or
  - (c) there is danger of substantial damage to property or injury to another person if the person fails, or continues to fail, to do the thing.
- (4) A person may apply to the P&E Court to cancel or change an enforcement order or interim enforcement order.
- (5) The P&E Court's powers under this section are in addition to the court's other powers.

## **Part 6                      Inspectors**

### **Division 1                Appointment**

#### **182      Appointment and qualifications**

- (1) The chief executive may, by a written document, appoint the following persons as inspectors—
  - (a) an officer of the department;
  - (b) another person prescribed by regulation.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.
- (3) An inspector holds office on any conditions, and subject to any limit on the inspector's powers, stated in—
  - (a) the inspector's instrument of appointment; or
  - (b) a notice signed by the chief executive and given to the inspector; or
  - (c) a regulation.

#### **183      When appointment ends**

- (1) The appointment of a person as an inspector ends if—
  - (a) the term of office stated in a condition of office ends; or
  - (b) under another condition of office, the office ends; or
  - (c) the inspector resigns, by a notice signed by the inspector and given to the chief executive.
- (2) However, this section does not limit the ways the office of a person as an inspector ends.
- (3) In this section—

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*condition of office* means a condition under which the inspector holds office.

## Division 2                      Identity cards

### 184      Issuing and returning identity card

- (1) The chief executive must issue an identity card to each inspector.
- (2) The identity card must—
  - (a) contain a recent photo of the inspector; and
  - (b) contain a copy of the inspector's signature; and
  - (c) identify the person as an inspector under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and for other purposes.
- (4) If the office of a person as an inspector ends, the person must return the person's identity card to the chief executive within 21 days after the office ends, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### 185      Producing or displaying identity card

- (1) When exercising a power in relation to a person in the person's presence, an inspector must—
  - (a) produce the inspector's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so the identity card is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place under section 186(1)(b).

## **Part 7                      Entry of places by inspectors**

### **Division 1                Power to enter**

#### **186      General power to enter places**

- (1) An inspector may enter a place if—
- (a) an occupier at the place consents under division 2 to the entry and section 189 has been complied with for the occupier; or
  - (b) the place is a public place and the entry is made when the place is open to the public; or
  - (c) a warrant authorises the entry and, if there is an occupier of the place, the inspector has complied with section 196; or
  - (d) the place is mentioned in a development approval as a place of business and is—
    - (i) open for carrying on the business; or
    - (ii) otherwise open for entry; or
    - (iii) required to be open for inspection under the development approval.
- (2) If the power to enter arises only because an occupier of the place consents to the entry, the power is subject to any conditions of the consent and stops if the consent is withdrawn.
- (3) The consent may provide consent for re-entry and is subject to the conditions of consent.
- (4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.



- (5) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

## **Division 2                      Entry with consent**

### **187      Application of this division**

This division applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place.

### **188      Incidental entry to ask for access**

In order to ask the occupier for consent to enter a place, an inspector may, without the occupier's consent or a warrant, enter a part of the place that the inspector reasonably considers the public may enter if wanting to speak to the occupier.

### **189      Matters inspector must tell occupier**

The inspector must give a reasonable explanation of the following matters to the occupier before asking for the consent—

- (a) the purpose of the entry, including the powers intended to be exercised;
- (b) that the occupier is not required to consent;
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

### **190      Consent acknowledgement**

- (1) If the occupier gives the consent, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—

- (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
  - (d) any conditions of the consent; and
  - (e) the time and day the consent was given.
- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy of the acknowledgement to the occupier.
- (4) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Division 3                    Entry with warrant**

### **Subdivision 1            Issue of warrant**

#### **191    Application for warrant**

- (1) An inspector may apply to a magistrate for a warrant for a place.

- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require extra information supporting the written application to be given by statutory declaration.

## **192 Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if satisfied there are reasonable grounds for suspecting that a particular thing or activity that may provide evidence of an offence against this Act is, or will be, at the place within the next 7 days.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the inspector's powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and
  - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and

- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

### 193 Electronic application

- (1) An application (an *electronic application*) for a warrant may be made by phone, fax, email, radio, video conferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
  - (a) may not be made before the inspector prepares the written application under section 191(2); but
  - (b) may be made before the written application is sworn.

### 194 Additional procedure for electronic application

- (1) If the magistrate receives an electronic application, the magistrate may issue the warrant (the *original warrant*) only if satisfied—
  - (a) it was necessary in the circumstances for the application to be made as an electronic application; and
  - (b) the electronic application was made as required under section 193(2).
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector (by emailing or faxing the copy, for example), the magistrate must immediately give a copy of the warrant (a *duplicate warrant*) to the inspector; or

- (b) otherwise—
  - (i) the magistrate must tell the inspector the information stated in section 192(2); and
  - (ii) the inspector must complete a form of warrant (also a *duplicate warrant*), including by writing on the form the information stated in section 192(2) provided by the magistrate.
- (3) The duplicate warrant is a duplicate of, and as effective as, the original warrant.
- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 191(2) and (3); and
  - (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
  - (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
  - (a) an issue arises in a proceeding about whether a warrant issued under this section authorised an exercise of a power; and
  - (b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 191.
- (8) In this section—

*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## 195 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
  - (a) the warrant; or
  - (b) complying with this subdivision;unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—

*warrant* includes a duplicate warrant.

## Subdivision 2 Entry procedure

### 196 Entry procedure

- (1) This section applies if an inspector intends to enter a place under a warrant issued under this Act.
- (2) The inspector must do or make a reasonable attempt to do the following things before entering the place—
  - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the inspector's identity card or another document evidencing the inspector's appointment;
  - (b) give a copy of the warrant to the person;
  - (c) tell the person that the warrant authorises the inspector to enter the place;
  - (d) give the person an opportunity to allow the inspector to immediately enter the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes that entry to the place

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without compliance is required to ensure the execution of the warrant is not frustrated.

(4) In this section—

*warrant* includes a duplicate warrant under section 194(3).

## **Division 4                    General powers of inspectors after entering places**

### **197    Application of this division**

- (1) This division applies if an inspector enters a place under section 186(1)(a) or (c).
- (2) However, the powers in this division are subject to any conditions of the consent, or terms of the warrant, that allowed the entry.

### **198    General powers**

- (1) The inspector may do any of the following—
  - (a) search any part of the place;
  - (b) inspect, examine or film—
    - (i) any part of the place; or
    - (ii) anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

- (g) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this division;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may take a necessary step to allow the exercise of a power stated in subsection (1).
  - (3) If the inspector takes a document from the place to copy it, the inspector must copy the document and return it to the place as soon as practicable.
  - (4) If the inspector takes from the place a device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the device to the place as soon as practicable.
  - (5) In this section—  
*film* includes photograph, videotape and record an image in another way.  
*inspect*, a thing, includes open the thing and examine its contents.

## **199 Requiring reasonable help**

- (1) The inspector may require an occupier of the place, or a person at the place, to give the inspector reasonable help to exercise a power stated in section 198(1).
- (2) When making the requirement, the inspector must give the person an offence warning for the requirement.
- (3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.



- (4) It is a reasonable excuse for an individual not to comply with the requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (5) However, subsection (4) does not apply if a document or information that is the subject of the requirement is required to be held or kept by the individual under this Act.

*Note—*

However, see section 224 (which is about evidential immunity).

## **Part 8                      Other inspectors' powers and related matters**

### **Division 1                      Stopping or moving vehicles**

#### **200      Application of division**

This division applies if an inspector reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against this Act.

#### **201      Power to stop or move**

- (1) If the vehicle is moving, the inspector may, to exercise the inspector's powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the inspector to exercise the powers.
- (2) If the vehicle is stopped, the inspector may direct the person in control of the vehicle—
  - (a) not to move it until the inspector has exercised the inspector's powers; or
  - (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the inspector to exercise the powers.

- (3) When giving the direction under subsection (2), the inspector must give the person in control an offence warning for the direction.

## **202 Identification requirements if vehicle moving**

- (1) This section applies if the inspector proposes to give a direction under section 201(1) and the vehicle is moving.
- (2) The inspector must clearly identify himself or herself as an inspector exercising the inspector's powers (by using a sign or loud hailer, for example).
- (3) When the vehicle stops, the inspector must immediately produce the inspector's identity card for the inspection of the person in control of the vehicle.
- (4) Subsection (3) applies despite section 185.

## **203 Failure to comply with direction**

- (1) The person in control of the vehicle must comply with a direction under section 201 unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

- (2) It is a reasonable excuse for the person not to comply with a direction if—
  - (a) the vehicle was moving and the inspector did not comply with section 202; or
  - (b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.
- (3) Subsection (2) does not limit subsection (1).
- (4) A person does not commit an offence against subsection (1) if—
  - (a) the direction the person fails to comply with is given under section 201(2); and

- 
- (b) the person is not given an offence warning for the direction.

## **Division 2            Seizure by inspectors and forfeiture**

### **Subdivision 1        Power to seize**

#### **204    Seizing evidence at a place that may be entered without consent or warrant**

- (1) This section applies if an inspector enters a place that the inspector may enter under this Act without the consent of an occupier of the place or a warrant.
- (2) The inspector may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

#### **205    Seizing evidence at a place entered with consent**

- (1) This section applies if—
- (a) an inspector may enter a place under this Act only with the consent of an occupier of the place or under a warrant; and
- (b) the inspector enters the place after getting the consent.
- (2) The inspector may seize a thing at the place only if—
- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizing the thing is consistent with the purpose of entry, as explained to the occupier when asking for the occupier's consent.

#### **206    Seizing evidence at a place entered with warrant**

- (1) This section applies if—

- (a) an inspector may enter a place under this Act only with the consent of an occupier of the place or under a warrant; and
  - (b) the inspector enters the place under a warrant.
- (2) The inspector may seize the evidence for which the warrant was issued.
- (3) The inspector may also seize anything else at the place if the inspector reasonably believes—
- (a) the thing is evidence of an offence against this Act; and
  - (b) seizing the thing is necessary to prevent the thing being destroyed, hidden or lost.
- (4) The inspector may also seize a thing at the place if the inspector reasonably believes the thing has immediately been used in committing an offence against this Act.

## **207 Seizing property subject to security**

- (1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person, other than the inspector or a person acting for the inspector.

## **208 Securing seized thing**

- (1) After seizing a thing under this division, an inspector may—
- (a) move the thing from the place (the *place of seizure*) where the thing was seized; or
  - (b) leave the thing at the place of seizure and take reasonable action to restrict access to the thing.
- (2) For subsection (1)(b), the inspector may, for example—

- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
- (b) for equipment—make the thing inoperable; or

*Examples of making equipment inoperable—*

dismantling the equipment or removing a component without which the equipment can not be used

- (c) require a person who the inspector reasonably believes is in control of the place or thing to do—
    - (i) an act stated in paragraph (a) or (b); or
    - (ii) anything else an inspector could do under subsection (1)(a).
- (3) The person must comply with a requirement made of the person under subsection (2)(c), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) If an inspector restricts access to a seized thing, a person must not tamper with the thing, or with anything used to restrict access to the thing, without—
- (a) an inspector's approval; or
  - (b) a reasonable excuse.

Maximum penalty—100 penalty units.

- (5) If an inspector restricts access to a place, a person must not enter the place in contravention of the restriction, or tamper with anything used to restrict access to the place, without—
- (a) an inspector's approval; or
  - (b) a reasonable excuse.

Maximum penalty—100 penalty units.

## **Subdivision 2      Safeguards for seized things**

### **209      Receipt and decision notice for seized thing**

- (1) This section applies if an inspector seizes anything under this division unless—
  - (a) the inspector reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
  - (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.
- (2) The inspector must, as soon as practicable after seizing the thing, give the following to an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition;
  - (b) a decision notice about the decision to seize the thing.
- (3) However, if an owner or person from whom the thing is seized is not present when the thing is seized, the receipt and decision notice may be given by leaving them in a conspicuous position, and in a reasonably secure way, at the place at which the thing is seized.
- (4) The receipt and decision notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The inspector may delay giving the receipt and decision notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this Act.
- (6) However, the delay may be only for as long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep the thing under observation.

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## **210 Access to seized thing**

- (1) This section applies until a seized thing is forfeited or returned.
- (2) The inspector who seized the thing must allow an owner of the thing, free of charge—
  - (a) to inspect the thing at any reasonable time, and from time to time; and
  - (b) if the thing is a document—to copy the document.
- (3) However, subsection (2) does not apply if it is impracticable or would be unreasonable to allow the owner to inspect or copy the thing.

## **211 Returning seized thing**

- (1) This section applies if a seized thing is not—
  - (a) forfeited under subdivision 3; or
  - (b) subject to a disposal order under division 3.
- (2) As soon as the chief executive stops being satisfied there are reasonable grounds for keeping the thing, the chief executive must return the thing to its owner.
- (3) If the thing is not returned to its owner within 3 months after the thing was seized, the owner may apply to the chief executive for its return.
- (4) Within 30 days after receiving the application, the chief executive must—
  - (a) if the chief executive is satisfied there are reasonable grounds for keeping the thing and decides to keep the thing—give a decision notice to the owner; or
  - (b) otherwise—return the thing to the owner.
- (5) For this section, there are reasonable grounds for keeping the thing if—
  - (a) the thing is being, or is likely to be, examined; or
  - (b) the thing is needed, or may be needed, for—

- (i) a proceeding for an offence against this Act that is likely to be started or that has been started but not completed; or
- (ii) an appeal from a decision in a proceeding for an offence against this Act; or
- (c) it is not lawful for the owner to possess the thing.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for keeping the thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.
- (8) In this section—  
*owner*, of a seized thing, includes a person who would be entitled to possession of the thing if it had not been seized.

### **Subdivision 3      Forfeiting seized things**

#### **212      Forfeiture by chief executive decision**

- (1) The chief executive may decide a seized thing is forfeited to the State if an inspector—
  - (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner; or
  - (c) reasonably believes it is necessary to keep the thing to prevent the thing being used to commit the offence for which the thing was seized.
- (2) However, the inspector is not required to—
  - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.



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*Example for paragraph (b)—*

the owner of the thing has migrated to another country

- (3) The inspector must consider the thing's condition, nature and value when deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) If the chief executive decides to forfeit a thing, the chief executive must as soon as practicable give a decision notice about the decision to a person (the *former owner*) who owned the thing immediately before the thing was forfeited.
- (5) If the decision was made under subsection (1)(a) or (b), the decision notice may be given by leaving the notice at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (6) The decision notice must state that the former owner may apply for a stay of the decision if the former owner appeals against the decision.
- (7) However, subsections (4) to (6) do not apply if—
  - (a) the decision was made under subsection (1)(a) or (b); and
  - (b) the place where the thing was seized is—
    - (i) a public place; or
    - (ii) a place where the notice is unlikely to be read by the former owner.

## **213 Dealing with things forfeited or transferred to State**

- (1) A thing becomes the property of the State if—
  - (a) the thing is forfeited to the State under section 212(1); or

- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.
- (2) The chief executive may deal with the thing as the chief executive considers appropriate (by destroying the thing or giving it away, for example).
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture.
- (4) If the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.
- (5) This section is subject to a disposal order made for the thing.

## Division 3                      Disposal orders

### 214      Disposal order

- (1) This section applies if a court convicts a person of an offence against this Act.
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
  - (a) anything that was the subject of, or used to commit, the offence;
  - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
  - (a) whether or not it has been seized under this Act; and
  - (b) if the thing has been seized—whether or not it has been returned to the former owner.
- (4) When deciding whether to make a disposal order for a thing, the court—

- (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have property in the thing; and
  - (b) must hear any submission that a person claiming to have property in the thing may wish to make.
- (5) The court may make any order to enforce the disposal order that it considers appropriate.
- (6) This section does not limit the court's powers under another law.

## **Division 4                    Other information-obtaining powers     of inspectors**

### **215    Requiring name and address**

- (1) This section applies if an inspector—
- (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) Also, the inspector may require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
- (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.

- (4) When making a requirement, the inspector must give an offence warning to the person.
- (5) The person must comply with the requirement, unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (6) The person may not be convicted of an offence under subsection (5) unless the person is found guilty of the offence in relation to which the requirement was made.

## **216 Requiring documents to be produced**

- (1) This section applies to—
  - (a) a document issued to a person under this Act; and
  - (b) a document required to be kept by a person under this Act.
- (2) An inspector may require the person to produce the document to an inspector for inspection, at a reasonable time and place that the inspector nominates.
- (3) The person must comply with the requirement, unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (4) It is not a reasonable excuse for the person to fail to comply with the requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

However, see section 224 (which is about evidential immunity).

- (5) The inspector must inform the person, in a way that is reasonable in the circumstances—
  - (a) that the person must comply with the requirement even though complying might tend to incriminate the person or expose the person to a penalty; and

- 
- (b) that, under section 224, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (6) If the inspector fails to comply with subsection (5), the person can not be convicted of the offence against subsection (3).
- (7) If a court convicts a person of an offence against subsection (3), the court may, as well as imposing a penalty for the offence, order the person to comply with the requirement.
- (8) In this section—  
*produce*, a document that is an electronic document, means produce a clear written reproduction of the document.

## **217 Requiring documents to be certified**

- (1) This section applies to a document produced under section 216 to an inspector.
- (2) The inspector may keep the document to copy the document.
- (3) If the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The inspector must return the document to the person as soon as practicable after copying the document.
- (5) However, if the inspector makes a requirement of the person under subsection (3), the inspector may keep the document until the person complies with the requirement.
- (6) The person must comply with the requirement, unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (7) It is not a reasonable excuse for the person to fail to comply with the requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

However, see section 224 (which is about evidential immunity).

- (8) The inspector must inform the person, in a way that is reasonable in the circumstances—
  - (a) that the person must comply with the requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 224, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (9) If the person fails to comply with subsection (6), but the inspector fails to comply with subsection (8), the person can not be convicted of the offence against subsection (6).

## **218 Requiring information**

- (1) This section applies if an inspector reasonably believes—
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The inspector may, by notice given to the person, require the person to give information about the offence to the inspector, at a stated reasonable time and place.
- (3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (4) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.
- (5) In this section—

*give*, information that is stored as an electronic document, means produce a clear written reproduction of the information.

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## Division 5                      Damage

### 219      Duty to avoid inconvenience and minimise damage

When exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

Also, see section 221 (which is about compensation).

### 220      Notice of damage

- (1) This section applies if—
  - (a) an inspector damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an inspector damages something.
- (2) However, this section does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The inspector must give notice of the damage to a person who appears to the inspector to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the

subsection may frustrate or otherwise hinder an investigation by the inspector.

- (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.
- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 221.

## **Division 6                      Compensation for loss**

### **221      Compensation for loss**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector, including a loss arising from compliance with a requirement made of the person under division 2, 3 or 4.
- (2) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act, the investigation of which gave rise to the claim for compensation.
- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances.
- (4) When considering whether it is just to order compensation, the court must consider—



- (a) any relevant offence committed by the claimant; and
  - (b) whether the loss arose from a lawful seizure or lawful forfeiture.
- (5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (6) Section 219 does not provide for a statutory right of compensation other than is provided by this section.
- (7) In this section—  
*loss* includes costs and damage.

## Division 7                      Other offences relating to inspectors

### 222      Obstructing inspector

- (1) A person must not obstruct an inspector exercising a power, or someone helping an inspector exercising a power, unless the person has a reasonable excuse.  
Maximum penalty—60 penalty units.
- (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
- (a) it is an offence to cause an obstruction, unless the person has a reasonable excuse; and
  - (b) the inspector considers the person's conduct an obstruction.
- (3) In this section—  
*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

### **223 Impersonating inspector**

A person must not impersonate an inspector.

Maximum penalty—60 penalty units.

## **Division 8 Other provisions**

### **224 Evidential immunity**

- (1) This section applies if an individual gives or produces information or a document to an inspector under section 199 or 216.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in a proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) However, this section does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

## **Part 9 Miscellaneous**

### **225 Application of other Acts**

- (1) If another Act—
  - (a) specifies monetary penalties for offences about development greater or less than the penalties specified in this Act; or
  - (b) provides that an activity specified in this Act as a development offence is not an offence; or
  - (c) contains provisions about the carrying out of development in an emergency; or

- 
- (d) includes requirements about show cause notices or enforcement notices that are different from the requirements of this Act; or
  - (e) includes provisions about the issuing of other notices having the same effect as show cause notices or enforcement notices; or
  - (f) includes requirements about proceedings for the prosecution for development offences or other offences that are different from the requirements of this Act; or
  - (g) includes requirements about proceedings for enforcement orders that are different to the requirements of this Act;

the provisions of the other Act apply instead of the provisions of this Act to the extent of any inconsistency.

- (2) The chief executive's nomination of a person as an inspector or enforcement authority does not prevent the person performing functions of an investigative or enforcement nature that the person has under another Act.
- (3) This chapter does not limit a court's powers under the *Penalties and Sentences Act 1992* or another law.

## **226 False or misleading information**

- (1) A person must not, for this Act, give an official information that the person knows is false or misleading in a material particular.

Maximum penalty—4,500 penalty units.

- (2) Subsection (1) does not apply if the person, when giving the information to the official—
  - (a) informs the official, to the best of the person's ability, how the information is false or misleading; and
  - (b) if the person has, or can reasonably get, the correct information—gives the correct information.
- (3) In this section—

*official* means—

- (a) an assessment manager; or
- (b) a referral agency; or
- (c) a responsible entity for a change application; or
- (d) an enforcement authority; or
- (e) the Minister; or
- (f) the chief executive; or
- (g) a local government; or
- (h) an inspector; or
- (i) another person prescribed by regulation.

**227 Executive officer must ensure corporation complies with Act**

- (1) An executive officer of a corporation commits an offence if—
  - (a) the corporation commits an offence against an executive liability provision; and
  - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provisions by an individual.

- (2) When deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must consider—
  - (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
  - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
  - (c) any other matter that the court considers relevant.

- 
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
- (a) the corporation's liability for the offence against the executive liability provision; or
  - (b) the liability, under the Criminal Code, chapter 2, of any person for the offence, whether or not the person is an executive officer of the corporation.
- (5) In this section—
- executive liability provision* means—
- (a) section 162; or
  - (b) section 163; or
  - (c) section 164; or
  - (d) section 165; or
  - (e) section 166(7); or
  - (f) section 168(5); or
  - (g) section 172; or
  - (h) section 176(5); or
  - (i) section 180(8).

## **228 Responsibility for representative**

- (1) If it is relevant to prove, in a proceeding for an offence against this Act, a person's state of mind about particular conduct, it is enough to show—
- (a) the person's representative was engaged in the conduct for the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

(2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.

(3) In this section—

**conduct** means an act or omission.

**representative** means—

(a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

**state of mind**, of a person, includes the person's—

(a) knowledge, intention, opinion, belief or purpose; and

(b) reasons for the intention, opinion, belief or purpose.

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

(1) Schedule 1 states—

(a) matters that may be appealed to—

(i) either a tribunal or the P&E Court; or

(ii) only a tribunal; or

(iii) only the P&E Court; and

(b) the person—

(i) who may appeal a matter (the **appellant**); and

(ii) who is a respondent in an appeal of the matter; and

- (iii) who is a co-respondent in an appeal of the matter;  
and
  - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The ***appeal period*** is—
- (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
  - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - (f) for an appeal relating to the *Plumbing and Drainage Act 2018*—
    - (i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or
    - (ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

- (iii) otherwise—20 business days after the day the notice is given; or
- (g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note—*

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
  - (a) the adopted charge itself; or
  - (b) for a decision about an offset or refund—
    - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
    - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

## **230 Notice of appeal**

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—



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- (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and
  - (d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and
  - (e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and
  - (f) for an appeal to the P&E Court—the chief executive; and
  - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—
- (a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or
  - (b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

## 231 Non-appealable decisions and matters

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—
- decision** includes—
- (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision; and
  - (d) a purported decision; and
  - (e) a deemed refusal.

**non-appealable**, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise,

whether by the Supreme Court, another court, any tribunal or another entity; and

- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

## **232 Rules of the P&E Court**

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

# **Part 2 Development tribunal**

## **Division 1 General**

### **233 Appointment of referees**

- (1) The Minister, or chief executive, (the *appointer*) may appoint a person to be a referee, by an appointment notice, if the appointer considers the person—
- (a) has the qualifications or experience prescribed by regulation; and
- (b) has demonstrated an ability—
- (i) to negotiate and mediate outcomes between parties to a proceeding; and
- (ii) to apply the principles of natural justice; and
- (iii) to analyse complex technical issues; and
- (iv) to communicate effectively, including, for example, to write informed succinct and well-organised decisions, reports, submissions or other documents.

- (2) The appointer may—
  - (a) appoint a referee for the term, of not more than 3 years, stated in the appointment notice; and
  - (b) reappoint a referee, by notice, for further terms of not more than 3 years.
- (3) If an appointer appoints a public service officer as a referee, the officer holds the appointment concurrently with any other appointment that the officer holds in the public service.
- (4) A referee must not sit on a tribunal unless the referee has given a declaration, in the approved form and signed by the referee, to the chief executive.
- (5) The appointer may cancel a referee's appointment at any time by giving a notice, signed by the appointer, to the referee.
- (6) A referee may resign the referee's appointment at any time by giving a notice, signed by the referee, to the appointer.
- (7) In this section—

*appointment notice* means—

  - (a) if the Minister gives the notice—a gazette notice; or
  - (b) if the chief executive gives the notice—a notice given to the person appointed as a referee.

## **234 Referee with conflict of interest**

- (1) This section applies if the chief executive informs a referee that the chief executive proposes to appoint the referee as a tribunal member, and either or both of the following apply—
  - (a) the tribunal is to hear a matter about premises—
    - (i) the referee owns; or
    - (ii) for which the referee was, is, or is to be, an architect, builder, drainer, engineer, planner, plumber, plumbing inspector, certifier, site evaluator or soil assessor; or

- (iii) for which the referee has been, is, or will be, engaged by any party in the referee's capacity as an accountant, lawyer or other professional; or
    - (iv) situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;
  - (b) the referee has a direct or indirect personal interest in a matter to be considered by the tribunal, and the interest could conflict with the proper performance of the referee's functions for the tribunal's consideration of the matter.
- (2) However, this section does not apply to a referee only because the referee previously acted in relation to the preparation of a relevant local planning instrument.
  - (3) The referee must notify the chief executive that this section applies to the referee, and on doing so, the chief executive must not appoint the referee to the tribunal.
  - (4) If a tribunal member is, or becomes, aware the member should not have been appointed to the tribunal, the member must not act, or continue to act, as a member of the tribunal.

## **235 Establishing development tribunal**

- (1) The chief executive may at any time establish a tribunal, consisting of up to 5 referees, for tribunal proceedings.
- (2) The chief executive may appoint a referee for tribunal proceedings if the chief executive considers the referee has the qualifications or experience for the proceedings.
- (3) The chief executive must appoint a referee as the chairperson for each tribunal.
- (4) A regulation may specify the qualifications or experience required for particular proceedings.
- (5) After a tribunal is established, the tribunal's membership must not be changed.

## **236 Remuneration**

A tribunal member must be paid the remuneration the Governor in Council decides.

## **237 Tribunal proceedings**

- (1) A tribunal must ensure all persons before the tribunal are afforded natural justice.
- (2) A tribunal must make its decisions in a timely way.
- (3) A tribunal may—
  - (a) conduct its business as the tribunal considers appropriate, subject to a regulation made for this section; and
  - (b) sit at the times and places the tribunal decides; and
  - (c) hear an appeal and application for a declaration together; and
  - (d) hear 2 or more appeals or applications for a declaration together.
- (4) A regulation may provide for—
  - (a) the way in which a tribunal is to operate, including the qualifications of the chairperson of the tribunal for particular proceedings; or
  - (b) the required fee for tribunal proceedings.

## **238 Registrar and other officers**

- (1) The chief executive may, by gazette notice, appoint—
  - (a) a registrar; and
  - (b) other officers (including persons who are public service officers) as the chief executive considers appropriate to help a tribunal perform its functions.

- (2) A person may hold the appointment or assist concurrently with any other public service appointment that the person holds.

## **Division 2                    Applications for declarations**

### **239     Starting proceedings for declarations**

- (1) A person may start proceedings for a declaration by a tribunal by filing an application, in the approved form, with the registrar.
- (2) The application must be accompanied by the required fee.

### **240     Application for declaration about making of development application**

- (1) The following persons may start proceedings for a declaration about whether a development application is properly made—
  - (a) the applicant;
  - (b) the assessment manager.
- (2) However, a person may not seek a declaration under this section about whether a development application is accompanied by the written consent of the owner of the premises to the application.
- (3) The proceedings must be started by—
  - (a) the applicant within 20 business days after receiving notice from the assessment manager, under the development assessment rules, that the development application is not properly made; or
  - (b) the assessment manager within 10 business days after receiving the development application.
- (4) The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings.

(5) In this section—

*respondent* means—

- (a) if the applicant started the proceedings—the assessment manager; or
- (b) if the assessment manager started the proceedings—the applicant.

## **241 Application for declaration about change to development approval**

(1) This section applies to a change application for a development approval if—

- (a) the approval is for a material change of use of premises that involves the use of a classified building; and
- (b) the responsible entity for the change application is not the P&E Court.

(2) The applicant, or responsible entity, for the change application may start proceedings for a declaration about whether the proposed change to the approval is a minor change.

(3) The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings.

(4) In this section—

*respondent* means—

- (a) if the applicant started the proceedings—the responsible entity; or
- (b) if the responsible entity started the proceedings—the applicant.



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## **Division 3                      Tribunal proceedings for appeals and declarations**

### **242      Action when proceedings start**

If a document starting tribunal proceedings is filed with the registrar within the period required under this Act, and is accompanied by the required fee, the chief executive must—

- (a) establish a tribunal for the proceedings; and
- (b) appoint 1 of the referees for the tribunal as the tribunal's chairperson, in the way required under a regulation; and
- (c) give notice of the establishment of the tribunal to each party to the proceedings.

### **243      Chief executive excusing noncompliance**

- (1) This section applies if—
  - (a) the registrar receives a document purporting to start tribunal proceedings, accompanied by the required fee; and
  - (b) the document does not comply with any requirement under this Act for validly starting the proceedings.
- (2) The chief executive must consider the document and decide whether or not it is reasonable in the circumstances to excuse the noncompliance (because it would not cause substantial injustice in the proceedings, for example).
- (3) If the chief executive decides not to excuse the noncompliance, the chief executive must give a notice stating that the document is of no effect, because of the noncompliance, to the person who filed the document.
- (4) The chief executive must give the notice within 10 business days after the document is given to the chief executive.
- (5) If the chief executive does excuse the noncompliance, the chief executive may act under section 242 as if the noncompliance had not happened.

## **244 Ending tribunal proceedings or establishing new tribunal**

- (1) The chief executive may decide not to establish a tribunal when a document starting tribunal proceedings is filed, if the chief executive considers it is not reasonably practicable to establish a tribunal.

*Examples of when it is not reasonably practicable to establish a tribunal—*

- there are no qualified referees or insufficient qualified referees because of a conflict of interest
  - the referees who are available will not be able to decide the proceedings in a timely way
- (2) If the chief executive considers a tribunal established for tribunal proceedings—
- (a) does not have the expertise to hear or decide the proceedings; or
- (b) is not able to make a decision for proceedings (because of a tribunal member's conflict of interest, for example);
- the chief executive may decide to suspend the proceedings and establish another tribunal, complying with section 242(c), to hear or re-hear the proceedings.
- (3) However, the chief executive may instead decide to end the proceedings if the chief executive considers it is not reasonably practicable to establish another tribunal to hear or re-hear the proceedings.
- (4) If the chief executive makes a decision under subsection (1) or (3), the chief executive must give a decision notice about the decision to the parties to the proceedings.
- (5) Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the chief executive gives the decision notice to the party who started the proceedings.
- (6) The decision notice must state the effect of subsection (5).

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## 245 Refunding fees

The chief executive may, but need not, refund all or part of the fee paid to start proceedings if the chief executive decides under section 244—

- (a) not to establish a tribunal; or
- (b) to end the proceedings.

## 246 Further material for tribunal proceedings

- (1) The registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings.

*Examples of information that the registrar may require—*

- material about the proceedings (plans, for example)
  - information to help the chief executive decide whether to excuse noncompliance under section 243
  - for a deemed refusal—a statement of the reasons why the entity responsible for deciding the application had not decided the application during the period for deciding the application.
- (2) The person must give the information to the registrar within 10 business days after the registrar asks for the information.

## 247 Representation of Minister if State interest involved

If, before tribunal proceedings are decided, the Minister decides the proceedings involve a State interest, the Minister may be represented in the proceedings.

## 248 Representation of parties at hearing

A party to tribunal proceedings may appear—

- (a) in person; or
- (b) by an agent who is not a lawyer.

## **249 Conduct of tribunal proceedings**

- (1) Subject to section 237, the chairperson of a tribunal must decide how tribunal proceedings are to be conducted.
- (2) The tribunal may decide the proceedings on submissions.
- (3) If the proceedings are to be decided on submissions, the tribunal must give all parties a notice asking for the submissions to be made to the tribunal within a stated reasonable period.
- (4) Otherwise, the tribunal must give notice of the time and place of the hearing to all parties.
- (5) The tribunal may decide the proceedings without a party's submission (written or oral) if—
  - (a) for proceedings to be decided on submissions—the party's submission is not received within the time stated in the notice given under subsection (3); or
  - (b) for proceedings to be decided by hearing—the person, or the person's agent, does not appear at the hearing.
- (6) When hearing proceedings, the tribunal—
  - (a) need not proceed in a formal way; and
  - (b) is not bound by the rules of evidence; and
  - (c) may inform itself in the way it considers appropriate; and
  - (d) may seek the views of any person; and
  - (e) must ensure all persons appearing before the tribunal have a reasonable opportunity to be heard; and
  - (f) may prohibit or regulate questioning in the hearing.
- (7) If, because of the time available for the proceedings, a person does not have an opportunity to be heard, or fully heard, the person may make a submission to the tribunal.

## 250 Tribunal directions or orders

A tribunal may, at any time during tribunal proceedings, make any direction or order that the tribunal considers appropriate.

*Examples of directions—*

- a direction to an applicant about how to make their development application comply with this Act
- a direction to an assessment manager to assess a development application, even though the referral agency's response to the assessment manager was to refuse the application

## 251 Matters tribunal may consider

- (1) This section applies to tribunal proceedings about—
  - (a) a development application or change application; or
  - (b) an application or request (however called) under an applicable Act if—
    - (i) the application or request relates to a decision made under that Act, other than a decision made by the Queensland Building and Construction Commission; and
    - (ii) an information notice about the decision was given or was required to be given under that Act.
- (2) The tribunal must decide the proceedings based on the laws in effect when—
  - (a) the application or request was properly made; or
  - (b) if the application or request was not required to be properly made—the application or request was made.
- (3) However, the tribunal may give the weight that the tribunal considers appropriate, in the circumstances, to any new laws.
- (4) In this section—

*applicable Act* means—

  - (a) the Building Act; or
  - (b) the *Plumbing and Drainage Act 2018*.

## **252 Deciding no jurisdiction for tribunal proceedings**

- (1) A tribunal may decide that the tribunal has no jurisdiction for tribunal proceedings, at any time before the proceedings are decided—
  - (a) on the tribunal's initiative; or
  - (b) on the application of a party.
- (2) If the tribunal decides that the tribunal has no jurisdiction, the tribunal must give a decision notice about the decision to all parties to the proceedings.
- (3) Any period for starting proceedings in the P&E Court, for the matter that is the subject of the tribunal proceedings, starts again when the tribunal gives the decision notice to the party who started the proceedings.
- (4) The decision notice must state the effect of subsection (3).
- (5) If the tribunal decides to end the proceedings, the fee paid to start the proceedings is not refundable.

## **253 Conduct of appeals**

- (1) This section applies to an appeal to a tribunal.
- (2) Generally, the appellant must establish the appeal should be upheld.
- (3) However, for an appeal by the recipient of an enforcement notice, the enforcement authority that gave the notice must establish the appeal should be dismissed.
- (4) The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.
- (5) However, the tribunal may, but need not, consider—
  - (a) other evidence presented by a party to the appeal with leave of the tribunal; or
  - (b) any information provided under section 246.

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## **254 Deciding appeals to tribunal**

- (1) This section applies to an appeal to a tribunal against a decision.
- (2) The tribunal must decide the appeal by—
  - (a) confirming the decision; or
  - (b) changing the decision; or
  - (c) replacing the decision with another decision; or
  - (d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or
  - (e) for a deemed refusal of an application—
    - (i) ordering the entity responsible for deciding the application to decide the application by a stated time and, if the entity does not comply with the order, deciding the application; or
    - (ii) deciding the application.
- (3) However, the tribunal must not make a change, other than a minor change, to a development application.
- (4) The tribunal's decision takes the place of the decision appealed against.
- (5) The tribunal's decision starts to have effect—
  - (a) if a party does not appeal the decision—at the end of the appeal period for the decision; or
  - (b) if a party appeals against the decision to the P&E Court—subject to the decision of the court, when the appeal ends.

## **255 Notice of tribunal's decision**

A tribunal must give a decision notice about the tribunal's decision for tribunal proceedings, other than for any directions or interim orders given by the tribunal, to all parties to proceedings.

**256 No costs orders**

A tribunal must not make any order as to costs.

**257 Recipient's notice of compliance with direction or order**

If a tribunal directs or orders a party to do something, the party must notify the registrar when the thing is done.

**258 Tribunal may extend period to take action**

- (1) This section applies if, under this chapter, an action for tribunal proceedings must be taken within a stated period or before a stated time, even if the period has ended or the time has passed.
- (2) The tribunal may allow a longer period or a different time to take the action if the tribunal considers there are sufficient grounds for the extension.

**259 Publication of tribunal decisions**

The registrar must publish tribunal decisions under the arrangements, and in the way, that the chief executive decides.

## **Chapter 7 Miscellaneous**

### **Part 1 Existing uses and rights protected**

**260 Existing lawful uses, works and approvals**

- (1) If, immediately before a planning instrument change, a use of premises was a lawful use of premises, the change does not—
  - (a) stop the use from continuing; or



- (b) further regulate the use; or
  - (c) require the use to be changed.
- (2) If a planning instrument change happens after building or other works have been lawfully constructed or effected, the change does not require the building or works to be altered or removed.
- (3) If a planning instrument change happens after a development approval is given, the change does not—
- (a) stop or further regulate the development; or
  - (b) otherwise affect the approval to any extent to which the approval remains in effect.

## **261 Implied and uncommenced right to use**

- (1) This section applies if—
- (a) a development approval comes into effect; and
  - (b) when the development application was properly made, a material change of use for a use that the application implies was accepted development; and
  - (c) after the application was properly made, but before the use started, a planning instrument change provided for the material change of use to be assessable development or prohibited development.
- (2) The use is taken to be a lawful use in existence immediately before the change if—
- (a) the development approval has not lapsed; and
  - (b) the use starts within 5 years after the completion of the development.

## **262 Prospective categorising regulations unaffected**

To remove any doubt, it is declared that this part does not affect the regulation-making power under section 43 or 44 for development starting on or after the regulation is notified.

## **Part 2                      Taking or purchasing land for    planning purposes**

### **263     Taking or purchasing land for planning purposes**

- (1) This section applies if—
  - (a) a local government considers that taking or purchasing land would help to achieve the outcomes stated in a local planning instrument; or
  - (b) after a development approval starts to have effect, the local government is satisfied—
    - (i) the development would create a need to construct infrastructure on land or to carry drainage over land; and
    - (ii) a person with the benefit of the approval has taken reasonable steps to get the agreement of the owner of the land to actions that would facilitate the construction or carriage, but has not been able to get the agreement; and
    - (iii) the action is necessary for the development.
- (2) For subsection (1)(b), it does not matter that the person with the benefit of the approval may derive a measurable benefit from the action.
- (3) If the Governor in Council, by order in council, approves the taking or purchasing, the local government is taken to be a constructing authority under the Acquisition Act and may take or purchase the land under that Act, including by taking an easement.

*Note—*

For the ways of taking land, see the Acquisition Act, part 2. For compensation for land taken under that Act, see part 4 of that Act.

- (4) An order in council made under subsection (3) is subordinate legislation.

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## Part 3 Public access to documents

### 264 Public access to documents

- (1) A regulation may prescribe, for a person who has, or has had, powers or functions in relation to this Act—
  - (a) the documents, including a register, relating to the person's functions, that the person must or may keep publicly available; and
  - (b) where, and in what form the documents must or may be kept; and
  - (c) whether the documents, or a certified copy of the documents must, or may be kept; and
  - (d) whether the documents must or may be kept available for inspection and purchase, or for inspection only; and
  - (e) the period or periods during which the documents must or may be kept.
- (2) For a person who gives an exemption certificate, the regulation must require the person to keep the following available for inspection and purchase—
  - (a) a copy of each exemption certificate given by the person;
  - (b) a register of exemption certificates given by the person.
- (3) Unless the regulation states otherwise—
  - (a) the person may keep the documents in electronic form; and
  - (b) different registers may be kept for different types of documents.
- (4) Subject to subsections (5) to (7), the person must comply with the regulation.  
Maximum penalty—50 penalty units.
- (5) If a document is kept available—

- (a) for inspection or purchase, the person must allow another person—
  - (i) to inspect the document free of charge at the place where the document is held, whenever the place is open for business; and
  - (ii) to get a copy of all or part of the document from the person, for the reasonable cost, but for no more than the cost, of supplying the copy; and
- (b) for inspection only, the person must allow another person to inspect the document free of charge at the place where the document is held, whenever the place is open for business, but need not give a copy to the person; and
- (c) on the person's website, the person must allow another person to do the following free of charge—
  - (i) to view the document on the website; and
  - (ii) to download the document in the form that the person decides.

Maximum penalty—50 penalty units.

- (6) For a document of a type prescribed by regulation, this section does not apply to the person to the extent the person reasonably considers the document contains—
  - (a) information of a purely private nature about an individual (the individual's residential or email address or phone number, for example); or
  - (b) sensitive security information (the location of a safe, for example).
- (7) The person need not disclose a submitter's name, contact details or signature.

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## 265 Planning and development certificates

- (1) A person may apply to a local government for a limited, standard or full planning and development certificate for premises.
- (2) The application must be accompanied by the required fee.
- (3) The local government must give the certificate to the applicant within the following period after the application is made—
  - (a) for a limited certificate—5 business days;
  - (b) for a standard certificate—10 business days;
  - (c) for a full certificate—30 business days.
- (4) The certificate must include the information prescribed by regulation.
- (5) A person who suffers financial loss because of an error or omission in a planning and development certificate may claim reasonable compensation from the local government if the claim is made within 6 years after the loss is first suffered.
- (6) Section 32 applies to the claim as if—
  - (a) the claim were a compensation claim; or
  - (b) a reference to the affected owner were a reference to the person.

## Part 4 Urban encroachment

### 266 Purpose of part

The purpose of this part is to protect existing uses of particular premises from certain effects of encroachment by newer uses in the vicinity of the premises by—

- (a) providing for the registration of the premises; and
- (b) establishing the responsibilities of particular persons in the area (the *affected area*) to which the registration relates; and

- (c) restricting particular proceedings in connection with emissions coming from registered premises.

## **267 Making or renewing registrations**

- (1) This section applies to premises if—
  - (a) an activity that involves emissions is carried out on the premises; and
  - (b) the levels of emissions from the premises comply with—
    - (i) any development approval for the premises; and
    - (ii) any authority under the Environmental Protection Act (an *environmental authority*) applying to the activity.
- (2) The owner of the premises may apply to the Minister to register the premises.
- (3) The Minister must consider the application and decide to—
  - (a) register the premises, with or without conditions; or
  - (b) refuse to register the premises.
- (4) The owner of registered premises may apply to the Minister to renew the registration of premises, before the registration expires.
- (5) The Minister must consider the application and decide to—
  - (a) renew the registration, with or without conditions; or
  - (b) refuse to renew the registration.
- (6) If an application to renew the registration of premises is made before the registration expires, the registration continues until the application—
  - (a) is decided; or
  - (b) is withdrawn, or taken to have been withdrawn, by the applicant.

*Note—*

A regulation made under section 275 may prescribe the circumstances in which an application is taken to have been withdrawn.

- (7) The Minister may register premises, or renew the registration of premises, if the Minister is satisfied—
  - (a) the levels of emissions from the premises comply with—
    - (i) any development approval for the premises; and
    - (ii) an environmental authority applying to the activity; and
  - (b) about any matters prescribed by regulation.
- (8) The Minister must, as soon as practicable after deciding an application under subsection (3) or (5), give a decision notice to the applicant.
- (9) The decision notice must identify the affected area for the premises.
- (10) The registration of premises starts to have effect on—
  - (a) for a decision to register premises—
    - (i) the day the decision notice is given to the applicant; or
    - (ii) a later day stated in the decision notice; or
  - (b) for a decision to renew the registration of premises—the day after the registration would have ended if the registration had not been renewed.
- (11) A registration, including a renewed registration, that is not cancelled, continues to have effect for—
  - (a) the period of between 10 years and 25 years stated in the decision notice; or
  - (b) if the decision notice does not state a period—10 years.
- (12) As soon as practicable after premises are registered, or a registration is renewed, the Minister must give notice of the registration or renewal to each local government in whose

local government area the affected area for the registered premises is situated.

- (13) As soon as practicable after receiving the notice, the local government must note the registration on—
- (a) the local government's planning scheme; and
  - (b) any planning scheme that the local government makes before the registration expires.

## **268 Amending or cancelling registrations**

- (1) The Minister, after considering any representations from the owner of registered premises, may decide to—
- (a) amend the conditions of the registration; or
  - (b) cancel the registration if—
    - (i) the levels of emissions from the premises no longer comply with section 267(7)(a); or
    - (ii) a condition of the registration is contravened.
- (2) The Minister must give a decision notice to the owner.
- (3) If the Minister decides to amend or cancel a registration, the amendment or cancellation starts to have effect on—
- (a) the day the notice is given to the owner; or
  - (b) a later day stated in the notice.
- (4) The owner of registered premises may, by notice given to the Minister, cancel the registration.
- (5) The registration ends on—
- (a) the day the Minister receives the owner's notice; or
  - (b) a later day stated in the owner's notice.

## **269 Responsibilities of owners of registered premises**

- (1) This section applies to the owner of registered premises.



- (2) Within 20 business days after the premises are registered, the owner must ask the registrar of titles, by notice, to keep a record that this part applies to all lots within the affected area stated in the registration.

Maximum penalty—200 penalty units.

- (3) Within 20 business days after the premises are registered, the owner must—
- (a) publish a notice about the registration in a newspaper circulating generally in the affected area; and
  - (b) if the owner has a website for the premises—publish details about the registration, and the levels of emissions allowed under the registration, on the website.

Maximum penalty—50 penalty units.

- (4) Within 20 business days after the registration of premises is renewed, the owner must publish a notice about the renewal in a newspaper circulating generally in the affected area.

Maximum penalty—50 penalty units.

- (5) As soon as practicable after complying with subsection (3) or (4), the owner must give notice of the compliance to the Minister.

Maximum penalty—20 penalty units.

- (6) While the premises are registered, the owner must keep information about the registration, and the levels of emissions allowed under the registration, reasonably available for inspection, free of charge, by members of the public.

Maximum penalty—50 penalty units.

- (7) As soon as practicable after a registration is cancelled or ends, the owner must give the registrar of titles a notice asking the registrar to remove the record made under subsection (2).

Maximum penalty—20 penalty units.

- (8) A notice given to the registrar of titles under this section must be in the form, and accompanied by any fee, required under the Land Title Act.

## **270 Responsibilities of owners of affected premises**

- (1) This section applies to the owner of premises, other than registered premises, in an affected area.
- (2) The owner or the owner's agent must, before entering into a lease of the premises with a person, give the person a notice that states—
  - (a) the premises are in an affected area; and
  - (b) that restrictions may apply to the person in taking proceedings about emissions from registered premises in the affected area.

Maximum penalty—50 penalty units.

- (3) In this section—

*lease* means an agreement under which the owner gives a person the right to occupy the premises in exchange for money or other valuable consideration.

## **271 Responsibilities on development applicants**

- (1) This section applies to a person who makes an affected area development application for premises.
- (2) Within 20 business days after making the application, the person must give the registrar of titles a notice asking the registrar to keep a record that this part applies to the premises.

Maximum penalty—200 penalty units.

- (3) Within 20 business days after the application lapses, is refused or is withdrawn, the person must give the registrar of titles a notice asking the registrar to remove the record.

Maximum penalty—20 penalty units.

- (4) A notice given to the registrar of titles under this section must be in the form, and accompanied by any fee, required under the Land Title Act.

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## **272 Rights of buyers in Milton rail precinct**

- (1) This section applies if—
  - (a) the applicant for an affected area development application, for premises in the Milton rail precinct, enters into a contract with another person for the person (the *buyer*) to buy all or part of the premises; and
  - (b) when the contract is entered into, the record stated in section 271(2) is not shown on the appropriate register because the applicant failed to comply with that subsection.
- (2) The buyer may, before the contract is completed, end the contract by giving the applicant or the applicant's agent a signed and dated notice that states the contract is ended under this section.
- (3) Within 10 business days after the buyer ends the contract, the applicant must refund any deposit paid under the contract.  
Maximum penalty—200 penalty units.
- (4) This section applies despite anything to the contrary in the contract.

## **273 Responsibilities of registrar of titles**

- (1) The registrar of titles must, on receiving a notice under section 269(2) or 271(2), keep the record stated in the notice in a way that a search of the appropriate register will show the record.
- (2) The registrar of titles must, on receiving a notice under section 269(7) or 271(3), remove the record from the register.
- (3) The registrar of titles may remove a record under this part from a register if the registrar is satisfied, on reasonable grounds, that—
  - (a) the registration of the premises has expired or been cancelled; or
  - (b) for an affected area development application—the application has lapsed, or been refused or withdrawn.

## 274 Restriction on legal proceedings

- (1) This section applies to an affected person's claim that another person's act or omission in carrying out an activity of a type stated in section 267(1)(a) at registered premises is, was or will be an unreasonable interference, or likely interference, with an environmental value.
- (2) Despite any other Act, the affected person may not take civil proceedings for nuisance, or criminal proceedings relating to a local law, against a person in relation to the claim if the following have been complied with for the act or omission—
  - (a) the development approval for the registered premises;
  - (b) an environmental authority applying to the act or omission.
- (3) However, this section does not apply if—
  - (a) a new or amended authority starts to apply for the registered premises; and
  - (b) the new or amended authority authorises greater emissions than the original authority of the same type for the premises.
- (4) In this section—

*affected person* means the owner, occupier or lessee of premises that are, or were, the subject of an affected area development application—

  - (a) made after the commencement; or
  - (b) made before the commencement for which a decision notice had not been given before the commencement; or
  - (c) for premises for which—
    - (i) a development approval has been given for the application before the commencement; and
    - (ii) a certificate of classification had not been given under the Building Act, before the commencement.

*environmental value* means an environmental value under the Environmental Protection Act.

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*new or amended authority*, for registered premises, means—

- (a) a new development approval or a new environmental authority authorising the carrying out of an environmentally relevant activity under the Environmental Protection Act on the premises; or
- (b) an amendment to the development approval for, or new environmental authority applying to, the premises; or
- (c) a new environmental authority applying to the premises; or
- (d) an amendment to an environmental authority applying to the premises.

*original authority*, for registered premises, means the following in effect when the premises were first registered—

- (a) the registration;
- (b) the development approval for the premises;
- (c) an environmental authority applying to the activity on the premises.

## **275 Regulation may prescribe matters**

A regulation may prescribe matters for this part, including—

- (a) requirements for an application to register premises; and
- (b) processes for dealing with applications; and
- (c) circumstances in which an application—
  - (i) lapses; or
  - (ii) is taken to have been withdrawn; or
  - (iii) may be cancelled; and
- (d) matters the Minister must assess an application against, or have regard to; and
- (e) the content of, and procedure for giving, notices; and
- (f) procedures for cancelling registrations or amending the conditions of a registration; and

- (g) the form in which information must be kept.

## Part 4A Service of documents

### 275A Application of part

This part applies if a person is required or permitted under this Act to serve a document (the *relevant document*) on another person (the *receiver*).

### 275B Service of documents

- (1) The person may serve the relevant document on the receiver by giving the receiver another document (a *communication*) stating that—
- (a) the relevant document can be viewed on a stated website or other electronic medium; and
  - (b) the receiver may ask the person for a copy of the relevant document in hard copy or electronic form.
- (2) Also, if the receiver has given the person a notice stating an electronic address for service, the person may serve the relevant document on the receiver by sending to the electronic address—
- (a) the relevant document; or
  - (b) a notice (also a *communication*) stating the relevant document can be viewed by opening a stated hyperlink.

*Examples of an electronic address—*

an email address, internet protocol address or digital mailbox address

- (3) For subsections (1) and (2)(b), the receiver is taken to have been served with the relevant document only if, by accessing the website or other electronic medium or opening the hyperlink, the receiver would have been able to view the relevant document—

- (a) at the time the communication was given or sent (the *sending time*); and
- (b) for a period after the sending time that, in the circumstances and having regard to the receiver's functions for the document, was reasonable to allow the receiver to—
  - (i) access the website or other electronic medium, or open the hyperlink; and
  - (ii) read or copy the relevant document.
- (4) Subsection (3) applies whether or not the receiver viewed the website or other electronic medium, or opened the hyperlink.
- (5) Subsection (6) applies if the receiver is given a communication under subsection (1) and asks the person for a copy of the relevant document in hard copy or electronic form.
- (6) The person must, as soon as practicable after the request is made, give the receiver a copy of the relevant document in the requested form.
- (7) This section does not limit the Interpretation Act, section 39 or the *Electronic Transactions (Queensland) Act 2001*.

## **275C Certificate of service**

- (1) In a civil or criminal proceeding, a certificate of service in relation to a communication that states the following matters is evidence of those matters—
  - (a) the sending time for the communication;
  - (b) that, by accessing the website or other electronic medium, or opening the hyperlink, stated in the communication, the receiver would have been able to view the relevant document—
    - (i) at the sending time; and
    - (ii) for a stated period after that time.
- (2) In this section—

*certificate of service*, in relation to a communication, means a certificate that—

- (a) is signed by the person who gave or sent the communication; and
- (b) attaches a copy of the communication.

## **Part 5                      Other provisions**

### **276      Party houses**

- (1) A planning scheme or TLPI for the local government area may do all or any of the following—
  - (a) state that a material change of use for a party house is assessable development in all or part of the local government area;
  - (b) include assessment benchmarks for a material change of use for a party house;
  - (c) identify all or part of the local government area as a party house restriction area.
- (2) The use of a residence as a party house, in a party house restriction area, is not, and has never been, a natural and ordinary consequence of a residential development.
- (3) Neither of the following authorises, or has ever authorised, a material change of use for a party house to take place as part of a residential development in a party house restriction area—
  - (a) a development permit for the residential development;
  - (b) a planning scheme or TLPI that states residential development in the party house restriction area is accepted development.
- (4) Subsection (3) applies whether the development permit was given, or planning scheme or TLPI was made, before or after the commencement.



(5) In this section—

**party house** means premises containing a dwelling that is used to provide, for a fee, accommodation or facilities for guests if—

- (a) guests regularly use all or part of the premises for parties (bucks parties, hens parties, raves, or wedding receptions, for example); and
- (b) the accommodation or facilities are provided for a period of less than 10 days; and
- (c) the owner of the premises does not occupy the premises during that period.

**residence** means premises used for a self-contained residence that is—

- (a) a dual occupancy; or
- (b) a dwelling house; or
- (c) a dwelling unit; or
- (d) a multiple dwelling.

**residential development** means a material change of use for a residence.

## **277 Assessment and decision rules for particular State heritage places**

(1) This section applies if—

- (a) the chief executive is—
  - (i) an assessment manager, or a referral agency, for a development application; or
  - (ii) a responsible entity for a change application; and
- (b) the development involves a State heritage place; and
- (c) the chief executive is satisfied the development would destroy or substantially reduce the cultural heritage significance of the State heritage place, including—

- (i) by demolishing all elements or features of the place that contribute to the place's cultural heritage significance described in the place's entry in the Queensland heritage register; and
  - (ii) by changing the place so that the place no longer satisfies any of the criteria for entry in the Queensland heritage register.
- (2) The chief executive must do the following before deciding the application or giving a referral agency's response about the application—
  - (a) refer the application to the Queensland Heritage Council;
  - (b) have regard to any advice the Queensland Heritage Council gives the chief executive, within the time allowed under this Act for the chief executive to decide the application or give the response.
- (3) Unless the State heritage place is an archaeological State heritage place, the chief executive must also have regard to whether there is a prudent and feasible alternative to carrying out the development, when deciding the application or giving the referral response.
- (4) For subsection (3), an alternative is not a prudent and feasible alternative if the alternative involves—
  - (a) an extraordinary economic cost to the State, all or part of a community, or an individual; or
  - (b) an extraordinary environmental or social disadvantage; or
  - (c) a risk to public health or safety; or
  - (d) another extraordinary or unique circumstance.
- (5) In this section—

***archaeological State heritage place*** see the Heritage Act, schedule.

***Queensland Heritage Council*** means the Queensland Heritage Council established under the Heritage Act.

*Queensland heritage register* see the Heritage Act, schedule.

## 278 Application of P&E Court Act evidentiary provisions

The P&E Court Act, part 5, division 2 also applies to—

- (a) proceedings relating to this Act started in a court other than the P&E Court or in a tribunal; and
- (b) a person acting judicially in relation to proceedings relating to this Act.

## 280 References in Act to particular terms

In this Act, a reference to a person or thing stated in column 1 of the following table is, unless the contrary intention appears, a reference to the person or thing stated in column 2—

Column 1	Column 2
For a development application—	
the applicant	the applicant for the application
the development	the development that is the subject of the application
the assessment manager	the assessment manager for the application
the referral agency	the referral agency for the application
the local government	each local government for the local government area where the development is proposed
a referral agency's response	a referral agency's response for the application
the development approval	the development approval for the application

[s 280]

<b>Column 1</b>	<b>Column 2</b>
the land	the land that is the subject of the application
the premises	the premises that are the subject of the application
the planning scheme	the planning scheme for the local government area where the development is proposed
a submitter	a submitter for the application
the decision notice	the decision notice for the application
For a development approval—	
the development application	the development application for the approval
the applicant	the person who applied for the approval or a person in whom the benefit of the approval vests
the development	the development that is the subject of the approval
the assessment manager	the assessment manager for the development application for the approval
a referral agency	(a) a referral agency for the development application; and (b) if a change application for the development approval, other than a change application for a minor change, has been approved—a referral agency for the change application
the land	the land that is the subject of the approval

<b>Column 1</b>	<b>Column 2</b>
the premises	the premises that are the subject of the approval
the local government	the local government for the local government area where the development is located
a development condition	a development condition imposed on the development approval
For a development condition—	
the development approval	the development approval in which the condition is included
the development	the development that is the subject of the development approval in which the condition is included
the land	the land that is the subject of the development approval in which the condition is included
the premises	the premises that are the subject of the development approval in which the condition is included
For a call in, or proposed call in—	
the application	the application that is the subject of the call in or proposed call in
For change representations or a change application, cancellation application or extension application—	
the applicant	the person who made the application

[s 280]

Column 1	Column 2
the assessment manager	(a) if the assessment manager for the development application was a chosen assessment manager, and the applicant is unable to make the application to the chosen assessment manager—the prescribed assessment manager; or (b) otherwise—the assessment manager for the development application to which the application relates.
the development approval	the development approval that is the subject of the application
a referral agency	(a) a referral agency for the development approval the subject of the application; or (b) for a change application for a change to a development approval, other than a minor change—a referral agency for the change application
For an enforcement notice or proposed enforcement notice—	
the enforcement authority	the enforcement authority giving or proposing to give the notice
For an infrastructure charge, adopted charge, infrastructure charges notice or levied charge (a <i>charge matter</i> )—	
the applicant	the applicant for the development approval, approval for the extension application, or approval for the change application, to which the charge matter relates

Column 1	Column 2
the development	the development that is the subject of the development approval to which the charge matter relates
the premises	the premises to which the charge attaches
the local government	the local government for the local government area where the development is located
For a PIA—	
a PIA	a local government's PIA
a PIA in relation to a development application or a condition of a development approval	the local government's PIA
For a LGIP—	
a LGIP	a local government's LGIP
a LGIP in relation to a development application or a condition of a development approval	the local government's LGIP

## 281 Delegation

A Minister may delegate the Minister's functions under this Act to—

- (a) an appropriately qualified public service officer; or
- (b) another Minister.

## 282 Approved forms

The chief executive may approve forms for use under this Act.

### **283 Guideline-making power**

- (1) The Minister or chief executive may make guidelines about—
  - (a) the matters a person must consider when performing a function under this Act; and
  - (b) another matter the Minister or chief executive considers appropriate for the administration of this Act.
- (2) The Minister or chief executive must consult with the persons the Minister or chief executive considers appropriate, before making a guideline.
- (3) The Minister or chief executive must notify the making of a guideline by a notice published in the gazette.
- (4) The guideline starts to have effect on the day after the notice is published.

### **284 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) For example, a regulation may—
  - (a) prescribe a minor change of use that is not a material change of use; or
  - (b) provide for how local governments must approve plans for reconfiguring a lot (plans of subdivision under the Land Title Act, for example); or
  - (c) prescribe fees payable under this Act; or
  - (d) impose a penalty for contravention of a provision of a regulation of no more than 20 penalty units.



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## Chapter 8      Repeal, transitional and validation provisions

### Part 1              Repeal provision

#### 284A    Act repealed

The Sustainable Planning Act 2009, No. 36 is repealed.

### Part 2              Transitional provisions for repeal of Sustainable Planning Act 2009

#### Division 1          Introduction

#### 285      What this part is about

- (1) This part is about the transition from the repealed *Sustainable Planning Act 2009* (the ***old Act***) to this Act.
- (2) If this part applies a provision (the ***applied provision***) of the old Act to a thing, the following provisions also apply to the thing—
  - (a) any other provision of the old Act, to the extent the applied provision refers to the other provision;
  - (b) any definition in the old Act that is relevant to the applied provision or a provision stated in paragraph (a).
- (3) Division 2 applies subject to the other divisions of this part.

## Division 2                      General provisions

### 286      Documents

- (1) This section applies to a document under the old Act that is in effect when the old Act is repealed.
- (2) Subject to this part, the document continues to have effect according to the terms and conditions of the document, even if the terms and conditions could not be imposed under this Act.
- (3) This Act applies to the document as if the document had been made under this Act.
- (4) To remove any doubt, it is declared that the document took effect or was made, given or received when the document took effect or was made, given or received under the old Act.
- (5) The name of the document does not change unless subsection (6) applies to the document.
- (6) If a document stated in column 1 of the following table is in effect when the old Act is repealed, the document is taken to be the document stated in column 2 of the table.

<b>Column 1 Old name</b>	<b>Column 2 New name</b>
a compliance certificate for a subdivision plan given under the repealed <i>Sustainable Planning Regulation 2009</i> , schedule 19	an approval made under a regulation for section 284(2)(b)
a compliance permit	a development permit
a designation of land for community infrastructure	a designation
a notice under the old Act, section 97, about a request to apply a superseded planning scheme	a decision notice under section 29(7)
a preliminary approval to which the old Act, section 242 applied	a variation approval

<b>Column 1 Old name</b>	<b>Column 2 New name</b>
a statement by the Minister under the old Act, section 255	a decision of the Minister under section 48(7)

(7) In this section—

*document*—

(a) includes—

- (i) an agreement (an infrastructure agreement or breakup agreement, for example); and
- (ii) an instrument of appointment (the appointment of a referee, the registrar or a committee, for example); and
- (iii) an approval (a development permit or preliminary approval, for example), including a deemed approval and a decision taken to have been made under the old Act, section 96(5); and
- (iv) a certificate (a planning and development certificate, for example); and
- (v) a delegation; and
- (vi) a direction; and
- (vii) a notice (a notice under the old Act, section 255D(4), call in notice, decision notice, enforcement notice, infrastructure charges notice or show cause notice, for example); and
- (viii) a notation; and
- (ix) a notification (a public notification, for example); and
- (x) an order (an enforcement order, for example); and
- (xi) a planning instrument (a State planning policy, regional plan, planning scheme, planning scheme policy, or temporary local planning instrument, for example); and

- (xii) a superseded planning scheme; and
- (xiii) a resolution (a charges resolution, for example);  
but
- (b) does not include—
  - (i) an approved form; or
  - (ii) a guideline made by the Minister or chief executive; or
  - (iii) a regulation.

## **287 Statutory instruments**

- (1) This section applies if a process for making or amending a statutory instrument had started under the old Act but had not ended before that Act was repealed.
- (2) The old Act continues to apply to the making or amending of the statutory instrument.
- (3) However, the statutory instrument may be made or amended to include matters, or in a form, that the Minister is satisfied is consistent with this Act if the Minister is also satisfied the matters or the form does not substantially change the effect of the instrument.
- (4) This Act applies to the statutory instrument as made or amended when the process has ended, as if the statutory instrument had been made or amended under this Act.
- (5) The statutory instrument has effect according to the terms and conditions of the statutory instrument, even if the terms and conditions could not be imposed on the statutory instrument under this Act.
- (6) To remove any doubt, it is declared that the statutory instrument takes effect or is made or amended when the statutory instrument takes effect or is made or amended under the old Act.
- (7) In this section—

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*statutory instrument* includes a designation of land for community infrastructure within the meaning of the old Act.

## 288 Applications generally

- (1) This section applies to an application (however described) that was made under the old Act but was not decided before that Act was repealed.
- (2) The old Act continues to apply to the application instead of this Act.
- (3) In particular—
  - (a) chapter 6, part 8, division 1 of the old Act applies for dealing with the decision notices and deemed approvals related to the application; and
  - (b) chapter 6, part 11 of the old Act applies for Ministerial powers related to the application.
- (4) However, chapter 7, part 4A of this Act applies instead of the old Act, section 259.
- (5) To remove any doubt, it is declared that a document that results from the application—
  - (a) takes effect or is made when the application takes effect or is made under the old Act; but
  - (b) is taken to have been made under this Act, even if that type of document can not be made under this Act.
- (6) If the resulting document is a document of a type mentioned in the table for section 286(6), that subsection applies to the document as if the document had been in effect when the old Act was repealed.
- (7) In this section—

*application* includes—

  - (a) a claim for compensation; and
  - (b) a request; and

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- (c) a submission for an infrastructure charges notice under the old Act, section 641.

## **289 References to the old Act and the repealed Integrated Planning Act 1997**

- (1) This section applies to a reference in another Act or a document.
- (2) Unless the contrary intention appears—
- (a) a reference to the old Act or the repealed *Integrated Planning Act 1997* is a reference to this Act; and
- (b) a reference to a provision of the old Act or the repealed *Integrated Planning Act 1997* is a reference to the provision of this Act that corresponds, or most closely corresponds, to the provision of the old Act or the repealed *Integrated Planning Act 1997*; and
- (c) a reference to a person or thing in column 1 of the following table is a reference to the person or thing in column 2 of the table.

<b>Column 1</b> <b>Old name</b>	<b>Column 2</b> <b>New name</b>
an assessing authority	an enforcement authority
a designation of land for community infrastructure	a designation
a preliminary approval to which the old Act, section 242 applies	a variation approval
a compliance permit	a development permit
a compliance certificate for a subdivision plan given under the repealed <i>Sustainable Planning Regulation 2009</i> , schedule 19	an approval given under section 284(2)(b)

<b>Column 1</b> <b>Old name</b>	<b>Column 2</b> <b>New name</b>
a notice about a request under the old Act, section 95	a notice of a local government's decision about a request given under section 29(7) or taken to have been given under section 29(8)
exempt development	accepted development
self-assessable development	to the extent the development complies with all applicable codes for the self-assessable development—accepted development
self-assessable development	to the extent the development does not comply with all applicable codes for the self-assessable development—assessable development
a code, or other matter, against which assessable development, or development requiring compliance assessment, must be assessed	an assessment benchmark
compliance assessment	code assessment

## **290 Lawful uses of premises**

To the extent an existing use of premises is lawful when the old Act is repealed, the use is taken to be a lawful use on the commencement.

## **291 State planning regulatory and standard planning scheme provisions**

The following instruments made under the old Act stop having effect on the commencement—

- (a) the State planning regulatory provisions;
- (b) the standard planning scheme provisions.

## **292 Declaration for certain continued provisions**

It is declared that the Interpretation Act, section 20A applies to the following provisions of the old Act—

- (a) section 850 (which is about conditions attaching to land);
- (b) section 859 (which is about the *Local Government (Robina Central Planning Agreement) Act 1992*);
- (c) section 861 (which is about orders in council relating to particular land);
- (d) section 888 (which is about relevant development applications under the repealed *Planning (Urban Encroachment—Milton Brewery) Act 2009*);
- (e) section 958 (which is about enforcement by new local governments);
- (f) section 959I (which is about existing land transfer agreements or requirements);
- (g) section 970 (which is about making a payment under an environmental offset condition).

*Note—*

This section removes any doubt that the effect of those provisions does not end just because the old Act is repealed.

## **Division 3 Planning**

### **293 Rules about amending local planning instrument consistent with Act**

- (1) The Minister may make rules about making amendments to a local planning instrument that are of a type the Minister is satisfied—



- (a) are consistent with this Act; and
- (b) do not substantially change the effect of the instrument.
- (2) Section 17(2) and (3) does not apply to the rules.
- (3) The rules start to have effect when the Minister publishes a gazette notice about the making of the rules.
- (4) The rules must state that, if a local government makes an amendment under the rules, the local government must—
  - (a) give a copy of the amendment to the chief executive; and
  - (b) publish a public notice about the amendment as if the amendment had been made under chapter 2, part 3.
- (5) A local government may make an amendment of a type mentioned in subsection (1) by following the process set out in the rules.
- (6) Section 9 applies to an amendment made under the rules as if the amendment had been made under chapter 2, part 3.

#### **294 Amending State planning instrument consistent with Act**

- (1) This section applies to a proposed amendment to a State planning instrument, if the Minister is satisfied the amendment—
  - (a) is consistent with this Act; and
  - (b) does not substantially change the effect of the instrument.
- (2) The Minister may make the amendment under section 11 as if the amendment were a minor amendment.
- (3) Section 9(3) applies to the amendment.

#### **295 Request for application of superseded planning scheme**

- (1) This section applies if—

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- (a) a request for the application of a superseded planning scheme under the old Act has been made but not decided before the commencement; and
- (b) after the commencement—
  - (i) the local government is taken to have agreed to the request under the old Act, section 96(5); or
  - (ii) the local government gives a written notice under the old Act, section 97, agreeing to the request.
- (2) Section 29(9) and (10) applies to the agreement made, or taken to have been made, by the local government.

*Note—*

For dealing with applications, including requests, that are made but not decided before the commencement, see section 288.

- (3) However, if the agreement relates to a request to accept a request for compliance assessment for development, section 29(9) and (10) applies as if the agreement were an agreement to accept a development application for the development.

## **296 Compensation claims**

- (1) This section applies if—
  - (a) a person, immediately before the commencement, had a right to make a claim for compensation under the old Act, sections 704 to 707, but had not made a claim; or
  - (b) after the commencement, a local government gives a person a notice under the old Act, section 97, refusing the person's request to apply a superseded planning scheme; or
  - (c) a person had made a development application mentioned in the old Act, section 704(1)(d), before the commencement and, after the commencement, the application is refused or approved in part.
- (2) The person may make a claim for compensation under the old Act and, for that purpose, the old Act continues to apply to—

- (a) a development application, or a request for compliance assessment made for the development for which the request was made; and
- (b) the claim.

*Note—*

See section 312 for appeal rights in relation to claims under this section.

## **Division 4                      Development assessment**

### **297      Categorising development under designations**

- (1) This section applies if—
  - (a) either—
    - (i) a designation of land for community infrastructure under the old Act is in force when the old Act is repealed; or
    - (ii) a designation of land for community infrastructure is made under the old Act after the commencement; and
  - (b) development under the designation is to be carried out after the commencement.
- (2) The development is categorised as follows, instead of the way stated in section 44(6)—
  - (a) for development that was categorised as assessable development by a planning scheme, or temporary local planning instrument, made under the old Act—accepted development;
  - (b) to the extent the development involves reconfiguring a lot—accepted development;
  - (c) otherwise—the category of development stated in a categorising instrument that is a regulation made under section 44.

## **298 Water infrastructure applications**

- (1) This section applies if—
  - (a) a development approval was given before 1 July 2014; and
  - (b) one or more of the following applications (a *new application*) is made, after the commencement, in relation to the development approval—
    - (i) a development application;
    - (ii) a change application;
    - (iii) an extension application.
- (2) To the extent the new application relates to a distributor-retailer's water infrastructure, the distributor-retailer is—
  - (a) for a change application for a minor change—an affected entity; or
  - (b) otherwise—a referral agency.
- (3) However, if, before 1 July 2014, the distributor-retailer delegated its functions as concurrence agency under the old Act to a participating local government, the local government is—
  - (a) for a change application for a minor change—an affected entity; or
  - (b) otherwise—a referral agency.
- (4) The old Act, section 755D, as in force immediately before 1 July 2014, applies to the new application as if—
  - (a) for a change application—that section referred to the responsible entity instead of to the 'assessment manager'; and
  - (b) a reference in that section to sections 313(2) and 314(2) were a reference to—
    - (i) for a change application for a minor change—section 81(2) of this Act; or

- (ii) for any other change application or a development application—section 45(3)(a) and (5)(a)(i) of this Act; or
  - (iii) for an extension application—a matter the assessment manager may consider under section 87(1) of this Act.
- (5) The old Act, section 755U, as in force immediately before 1 July 2014, applies to the new application as if that section referred to—
  - (a) the new application, instead of to ‘a development application (distributor-retailer)’; and
  - (b) a notice of appeal under the P&E Court Act, instead of to ‘a notice of appeal under section 482’.

## **299 Development approvals and compliance permits**

- (1) Section 85 of this Act does not apply to a development approval or compliance permit given under the old Act.
- (2) Instead—
  - (a) the old Act, section 341 applies to the development approval, and the relevant period mentioned in the section is taken to be the currency period; and

*Note—*

See also section 342.

  - (b) the old Act, section 409(2) applies to the compliance permit, and the relevant period mentioned in the section is taken to be the currency period.
- (3) For a development approval to which the old Act, section 944A, applied—
  - (a) for a change application or extension application—the chief executive becomes—
    - (i) if the relevant entity stated in that section was the assessment manager—the assessment manager; or

- (ii) if the relevant entity stated in that section was a concurrence agency—a referral agency; and
  - (b) if the relevant entity stated in that section, as a concurrence agency, imposed a condition of the approval—the chief executive is taken to have imposed the condition.
- (4) For any other development approval, the person who was the assessment manager or a referral agency for the development application for the approval continues as the assessment manager or referral agency for this Act.
- (5) For subsection (4), a compliance assessor under the old Act is taken to be an assessment manager in relation to a change application, extension application or cancellation application.

### **300 Change applications for designated infrastructure**

For a development approval for infrastructure on land designated for the infrastructure before the commencement, only the person who intends to supply, or is supplying, the infrastructure may make a change application in relation to the approval.

## **Division 5 Infrastructure**

### **301 Infrastructure charges notices**

- (1) The old Act applies to the following notices given by a local government or distributor-retailer that are in force when the old Act is repealed—
- (a) an infrastructure charges notice given before 4 July 2014;
  - (b) a negotiated infrastructure charges notice;
  - (c) an adopted infrastructure charges notice;
  - (d) a negotiated adopted infrastructure charges notice;
  - (e) a regulated infrastructure charges notice;

- (f) a negotiated regulated infrastructure charges notice.
- (2) However, if the notice relates to a development approval that is changed or extended before or after the old Act is repealed, this Act, other than section 137, applies to amending the notice.
- (3) Subsection (2) does not apply to a notice given by a distributor-retailer.

### **302 Levied charges**

- (1) The old Act continues to apply to the following charges, including any offset, refund or repayment that applied to the charge—
  - (a) an infrastructure charge payable before 4 July 2014;
  - (b) a regulated infrastructure charge;
  - (c) an adopted infrastructure charge.
- (2) This Act applies to a levied charge that was levied under the old Act after 3 July 2014, as if the charge had been levied under this Act.
- (3) To remove any doubt, it is declared that the levied charge was levied when the levied charge was levied under the old Act.

### **303 Infrastructure charges**

- (1) This Act applies to an infrastructure charge adopted under a charges resolution made under the old Act, as if the charge had been adopted under this Act.
- (2) To remove any doubt, it is declared that the infrastructure charge was adopted when the charges resolution was made under the old Act.

### **304 Infrastructure charges resolutions**

- (1) This section applies in relation to a local government's planning scheme that—

- (a) did not include a PIP (as defined under the old Act) before 4 July 2014; and
  - (b) does not include a LGIP on the commencement.
- (2) A regulation may identify a PIA for a local government area.
- (3) A charges resolution, whether made before or after the commencement, may do either or both of the following despite sections 113 and 114—
- (a) identify development infrastructure as trunk infrastructure for the local government area;
  - (b) state the required standard of service, and establishment costs, for the trunk infrastructure identified.
- (4) The local government may do the following as if the matters under subsection (3) were part of a LGIP, despite section 111—
- (a) adopt charges under section 113;
  - (b) give an infrastructure charges notice under section 119;
  - (c) impose conditions about trunk infrastructure under section 128 or 130.
- (5) This section stops having effect on the earlier of the following days—
- (a) the day the local government—
    - (i) amends the planning scheme to include a LGIP; or
    - (ii) adopts a new planning scheme that includes a LGIP;
  - (b) if the local government's cut-off date under the old Act, section 975A, is after the commencement—the cut-off date.

### **305 Infrastructure charges in declared master plan area**

- (1) A local government's charges resolution may state whether an infrastructure charge may be levied for development in a declared master planned area of the local government.



- (2) If the local government's charges resolution does not do so, the local government must not levy an infrastructure charge for development in the declared master planned area.
- (3) In this section—  
*declared master planned area* has the meaning given in the old Act, as in force on 21 November 2012.

### **306 Infrastructure conditions**

- (1) This section applies to a development approval, in force when the old Act is repealed, that is subject to a condition imposed under the old Act, section 848(2)(c).
- (2) The old Act, section 848(3) to (5), other than subsection (3)(b), continues to apply to the development approval.

### **307 Infrastructure conditions—change or extension approval**

- (1) This section applies to a development approval, in force when the old Act is repealed, that is subject to a condition imposed under the old Act, section 848(2)(c).
- (2) This Act, other than section 120(3)(a) and (b), applies to the giving of an infrastructure charges notice in relation to—
  - (a) a change approval given in relation to the development approval; or
  - (b) an extension approval given in relation to the development approval.
- (3) A distributor-retailer may give an infrastructure charges notice under the SEQ Water Act, chapter 4C, in relation to the change approval or extension approval as if the development approval were a water approval under that Act.
- (4) Chapter 4C of the SEQ Water Act, other than sections 99BRCJ(3) and (3A), applies to the infrastructure charges notice—

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- (a) as if that chapter referred to a change to, or extension of, the development approval instead of to an amendment of a condition of a water approval; and
  - (b) with any other necessary changes.
- (5) This section applies whether the change approval or extension approval (however described) is given before or after the commencement.
- (6) In this section—
- change approval* means an approval to change a development approval.
- extension approval* means an approval to extend a development approval.

### **307A Application to convert infrastructure to trunk infrastructure**

- (1) This section applies in relation to a development approval that is in force when the old Act is repealed.
- (2) Section 139(2)(b) does not apply to a conversion application made by the applicant for the development approval.

### **308 Infrastructure agreements**

Section 157(2) does not apply to an infrastructure agreement entered into before 4 July 2014.

## **Division 6 Enforcement and dispute resolution**

### **309 Committee**

On the commencement, a building and development dispute resolution committee under the old Act becomes a tribunal under this Act.

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### **310 Show cause notices and enforcement notices**

An enforcement authority may give a show cause notice under section 167, or an enforcement notice under section 168, as if a reference to a development offence in the section included a reference to a development offence under the old Act.

### **311 Proceedings generally**

- (1) Subject to section 312, this section applies to a matter under the old Act, if a person—
  - (a) had started proceedings before the commencement but the proceedings had not ended before the commencement; or
  - (b) had, immediately before the commencement, a right to start proceedings; or
  - (c) has a right to start proceedings that arises after the commencement in relation to—
    - (i) a statutory instrument mentioned in section 287; or
    - (ii) an application mentioned in section 288.

*Note—*

See also sections 346 and 347.

- (2) For proceedings that were started in the Planning and Environment Court, Magistrates Court or the Court of Appeal—
  - (a) the old Act continues to apply to the proceedings; and
  - (b) this Act applies to any appeal in relation to the proceedings as if the matter giving rise to the appeal happened under this Act.
- (3) For proceedings that were started in a building and development committee—
  - (a) if the committee had been established before the old Act was repealed—

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- (i) the old Act continues to apply to the proceedings; and
  - (ii) this Act applies to any appeal in relation to the proceedings; and
  - (iii) the committee must continue to hear the proceedings despite the repeal of the old Act; or
- (b) if the committee had not been established before the old Act was repealed—this Act applies to the proceedings, and any appeal in relation to the proceedings.
- (4) For proceedings mentioned in subsection (1)(b) or (c), proceedings may be brought only under this Act.

### 312 Particular proceedings

- (1) Despite section 311, for a matter under the old Act stated in column 1 of the table, a person may bring a proceeding under the section of the old Act stated in column 2, after the commencement, whether the matter happened before or after the commencement.

<b>Column 1 Matter under the old Act</b>	<b>Column 2 Section of the old Act</b>
A decision under the old Act, section 98, about extending a period for starting development under a superseded planning scheme	Section 472
A decision under the old Act, chapter 5, part 6, about a request for acquisition of premises under hardship	Section 477
An action notice given under the old Act, section 405	Section 468
A decision to impose a condition on a compliance certificate under the old Act, section 407	Section 469

<b>Column 1 Matter under the old Act</b>	<b>Column 2 Section of the old Act</b>
A decision under the old Act, section 412, about a request to change or withdraw an action notice	Section 470(1)(a)
A decision under the old Act, section 413, about changing a compliance certificate	Section 470(1)(b)
A decision under the old Act, section 710 or 716, about a claim for compensation	Section 476
A declaratory matter in relation to an application to which section 288 of this Act applies	Sections 510 to 513

- (2) The old Act applies to the proceedings and any appeal in relation to the proceedings.
- (3) However, the P&E Court Act, section 76(6) and (7), applies to the proceedings.
- (4) Subsection (1), as amended by the *Economic Development and Other Legislation Amendment Act 2019*, is taken to have applied from 3 July 2017.

## **Division 7                      Miscellaneous**

### **313      Keeping documents**

- (1) A document required to be kept for inspection and purchase under the old Act must be kept for inspection and purchase under this Act.
- (2) A document required to be kept for inspection only under the old Act must be kept for inspection only under this Act.
- (3) The old Act, section 736, continues to apply to a document to which the section applied immediately before the commencement.

### 314 Structure plans

- (1) To remove any doubt, it is declared that each structure plan made by the Sunshine Coast Regional Council stopped having effect on 21 May 2014.
- (2) A structure plan made by the Gold Coast City Council or Redland City Council stops having effect when a planning scheme stated in subsection (3) is made.
- (3) The Gold Coast City Council or Redland City Council may make a planning scheme in relation to a declared master planned area under the old Act after the Minister notifies the council that the Minister considers the planning scheme—
  - (a) is consistent with the strategic intent of the structure plan for the declared master planned area; and
  - (b) does not affect the development entitlements or development responsibilities, in the structure plan, in an adverse and material way.
- (4) The Cairns Regional Council or Moreton Bay Regional Council may make a planning scheme in relation to a declared master planned area under the old Act after the Minister notifies the council that the Minister considers the planning scheme addresses the matters in the old Act, section 761A(4).
- (5) An agreement (a *funding agreement*) to fund the preparation of a structure plan under the unamended old Act, section 143, is not cancelled just because of the repeal of the old Act.
- (6) A local government may apply funds received under a funding agreement to fulfil the local government's responsibilities under subsections (3) or (4), as required by the local government's policy under the unamended old Act, section 143(2).
- (7) In this section—

*structure plan* means a structure plan made under the old Act, chapter 4, as in force on 21 November 2012.

*unamended old Act* means the old Act as in force on 21 November 2012.

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**315 Master plans**

- (1) This section applies to a master plan that is in force when the old Act is repealed.
- (2) The master plan continues to have effect until the time stated in the old Act, section 907(a) or (b).
- (3) The following provisions of this Act apply to the master plan as if the master plan were a local planning instrument—
  - (a) section 8(4)(a) and (b);
  - (b) section 36(7)(a);
  - (c) section 263(1)(a);
  - (d) section 264.
- (4) A provision of this Act that relates to a categorising instrument applies to the master plan as if the master plan were a local categorising instrument.
- (5) The following provisions of this Act apply to the master plan as if the master plan were a development approval for the land in the master planning unit—
  - (a) section 73;
  - (b) section 89;
  - (c) section 157(1)(a);
  - (d) section 164;
  - (e) section 168(4)(b);
  - (f) section 263(1)(b).
- (6) To the extent of any inconsistency, the master plan applies instead of—
  - (a) a local planning instrument; or
  - (b) a condition decided under the repealed LGP&E Act, section 2.19(3)(a); or
  - (c) a condition of an approval given under the repealed LGP&E Act, section 4.4(5).

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- (7) An agreement about the master plan under the unamended old Act, section 193, is not cancelled just because of the repeal of the old Act.
- (8) A certified copy of the master plan is evidence of the content of the master plan.
- (9) After the commencement, the master plan may be amended or cancelled as required under the unamended old Act, chapter 4, part 3, divisions 3 and 4.
- (10) In this section—  
*master plan* means a master plan under the unamended old Act.  
*master planning unit* means a master planning unit under the unamended old Act.  
*unamended old Act* means the old Act as in force on 21 November 2012.

### **316 Development control plans**

- (1) The old Act, section 86(4), continues to apply to—
  - (a) the Ipswich City Council’s Springfield Structure Plan; and
  - (b) the Moreton Bay Regional Council’s Mango Hill Infrastructure Development Control Plan; and
  - (c) the Sunshine Coast Regional Council’s Development Control Plan 1 Kawana Waters.
- (2) The old Act, section 857—
  - (a) continues to apply to a development control plan stated in the old Act, section 857(1), until the plan is applied or adopted under the old Act, section 86(4); and
  - (b) applies to a development control plan applied or adopted under the old Act, section 86(4), whether before or after the commencement.
- (3) However, the old Act, section 857, applies as if—



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- (a) section 857(6) referred to this Act as well as to the ‘repealed IPA and this Act’; and
  - (b) section 857(7) referred to chapter 3 of this Act, or an instrument made under section 16 of this Act, instead of to ‘chapter 6 or a guideline made under section 117(1)’; and
  - (c) section 857(8) and (9) referred to a planning scheme under this Act as well as to a ‘transitional planning scheme’; and
  - (d) section 857(10) referred to a planning scheme policy under this Act as well as to a ‘transitional planning scheme policy’.
- (4) The Minister’s powers under chapter 3, part 7 of this Act apply to a plan or an amendment to a plan under the old Act, section 857(5), as if—
- (a) the process for making the plan were the development assessment process for a development application; and
  - (b) the plan or amendment were a development approval; and
  - (c) the local government were the assessment manager for the development application for the approval.

### **317 Rezoning approval conditions**

- (1) This section applies to the following conditions (a *rezoning condition*)—
  - (a) a condition decided under the repealed LGP&E Act, section 2.19(3)(a);
  - (b) a condition of an approval given under the repealed LGP&E Act, section 4.4(5).
- (2) If a person wants to change a rezoning condition, the person must make a change application under this Act as if the rezoning condition had been imposed by the local government as assessment manager.

- (3) A development approval applies instead of a rezoning condition, to the extent of any inconsistency.

### **318 Rezoning approval agreements**

- (1) This section applies to an agreement made, before the commencement, for securing the conditions of a rezoning approval if the conditions did not attach to the land that is the subject of the approval and bind successors in title.
- (2) Nothing in this Act, or the repealed planning legislation, affects the agreement, to the extent the agreement—
- (a) was validly made; and
  - (b) was in force when the old Act was repealed; and
  - (c) is not inconsistent with a development condition.
- (3) Any amount that was paid, or is payable, in relation to infrastructure under the agreement must be taken into account by—
- (a) an assessment manager in imposing a condition under this Act about infrastructure; and
  - (b) a local government in levying an infrastructure charge under chapter 4, part 2.
- (4) In this section—
- repealed planning legislation*** means—
- (a) the repealed *Local Government Act 1936*; or
  - (b) the repealed *City of Brisbane Town Planning Act 1964*; or
  - (c) the repealed LGP&E Act; or
  - (d) the repealed *Integrated Planning Act 1997*; or
  - (e) the old Act.
- rezoning approval*** means an approval decided or given under—

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- (a) the repealed *Local Government Act 1936*, section 33(6A); or
  - (b) the repealed *City of Brisbane Town Planning Act 1964*; or
  - (c) the repealed *Integrated Planning Act 1997*, section 6.1.26.

### **319 Compliance assessment of documents or works**

- (1) This section applies to—
  - (a) a document or works if, when the old Act was repealed, a development approval or local planning instrument required compliance assessment for the document or works; and
  - (b) a compliance certificate given, before or after the commencement, under the old Act for a document or works, other than a subdivision plan.
- (2) The old Act, chapter 6, part 10, continues to apply in relation to the document, works or certificate.

### **320 Public housing development**

The old Act, chapter 9, part 5, continues to apply to development for public housing if, before the commencement, the chief executive under the *Housing Act 2003* has complied with the old Act, section 721(2)(a), for the development.

### **321 LGP&E Act approvals**

For section 164, a development approval includes an approval under the repealed LGP&E Act, section 4.4(5) or 4.7(5).

### **322 Milton XXXX Brewery**

- (1) The brewery on lot 35 on plan SL805565 is taken to be registered under section 267 from 27 April 2009 until 26 April 2019.

[s 323]

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- (2) The Milton rail precinct is the affected area to which the registration relates.
- (3) Section 269(3) to (8) applies to the brewery only for a renewal of the registration.
- (4) Section 274(2) applies to a claim relating to an emission of light only if the intensity of the light is more than the intensity of light emitted before 27 April 2009.
- (5) Section 269(2), and schedule 1, table 2, item 5, do not apply in relation to the brewery.

### **323 Transitional regulation-making power**

- (1) The Governor in Council may make a regulation (a *transitional regulation*) providing for anything that is necessary to enable or facilitate the transition from the old Act to this Act and the P&E Court Act.
- (2) A transitional regulation may have retrospective operation to a time that is no earlier than when the old Act was repealed.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation stop having effect 5 years after the old Act was repealed.

## **Part 3 Transitional and saving provisions for Waste Reduction and Recycling Amendment Act 2017**

### **324 Definitions for part**

In this part—

*amending Act* means the *Waste Reduction and Recycling Amendment Act 2017*.

*existing change application* means a change application made before the commencement.

*former*, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

### **325 Responsible entity for particular existing change applications**

- (1) This section applies to an existing change application made to the Minister to change a development approval given for an application that was called in under—
  - (a) the old Act, chapter 6, part 11, division 2; or
  - (b) the repealed *Integrated Planning Act 1997*, chapter 3, part 6, division 2.
- (2) Despite former section 78(3), the Minister is taken to be, and is taken to always have been, the responsible entity for the change application.

### **326 Requirement for owner's consent for particular existing change applications**

- (1) This section applies to an existing change application to which former section 79(1)(b)(iii) applied if, under section 79(1A), the application would not be required to be accompanied by the written consent of the owner of the premises the subject of the application.
- (2) The existing change application is not invalid merely because it did not comply with former section 79(1)(b)(iii).
- (3) A decision of the responsible entity for the existing change application to accept the application under former section 79(2) is not invalid merely because the application did not comply with former section 79(1)(b)(iii).
- (4) Subsection (5) applies if, on the commencement, the responsible entity for the existing change application had not decided to accept the application under former section 79(2).

- (5) Section 79(2), as in force on the commencement, applies for making a decision about accepting the existing change application.

### **327 Requirement for owner's consent for particular existing extension applications**

- (1) This section applies to an existing extension application to which former section 86(2)(b)(ii) applied if, under section 86(2A), the application would not be required to be accompanied by the written consent of the owner of the premises the subject of the development approval.
- (2) The existing extension application is not invalid merely because it did not comply with former section 86(2)(b)(ii).
- (3) A decision of the assessment manager for the existing extension application to accept the application under former section 86(3) is not invalid merely because the application did not comply with former section 86(2)(b)(ii).
- (4) Subsection (5) applies if, on the commencement, the assessment manager for the existing extension application had not decided to accept the application under former section 86(3).
- (5) Section 86(3), as in force on the commencement, applies for making a decision about accepting the existing extension application.
- (6) In this section—  
*existing extension application* means an extension application made before the commencement.

### **328 Existing appeals—excluded applications**

- (1) This section applies if—
- (a) a person appealed to the P&E Court or a tribunal before the commencement; and
- (b) the appeal is in relation to an excluded application and is about a matter mentioned in—

- (i) former schedule 1, section 1, table 1, item 1 or 2;  
or
  - (ii) former schedule 1, section 1, table 2, item 2 or 3;  
and
  - (c) the appeal had not been decided before the commencement.
- (2) On and from the commencement, the appeal is of no further effect.

## Part 4

# Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2018

### 329 Definitions for part

In this part—

***amending Act*** means the *Vegetation Management and Other Legislation Amendment Act 2018*.

***date of assent*** means the date of assent of the amending Act.

***essential habitat*** see the *Vegetation Management Act 1999*, section 20AC(2).

***high value agriculture clearing*** means high value agriculture clearing within the meaning of the *Vegetation Management Act 1999* immediately before 8 March 2018.

***interim period*** means the period starting on 8 March 2018 and ending immediately before the date of assent.

***irrigated high value agriculture clearing*** means irrigated high value agriculture clearing within the meaning of the *Vegetation Management Act 1999* immediately before 8 March 2018.

***near threatened wildlife*** see the *Nature Conservation Act 1992*, schedule.

***protected wildlife*** see the *Vegetation Management Act 1999*, schedule.

***unlawful clearing*** means clearing of vegetation that, because of the amendment of this Act or the *Vegetation Management Act 1999* by the amending Act, constitutes a development offence.

### **330 Development applications made but not decided before commencement**

- (1) This section applies if—
  - (a) before 8 March 2018, a development application was made for development that, on 8 March 2018—
    - (i) is prohibited development under the *Planning Regulation 2017*, schedule 10, part 3, division 1; or
    - (ii) is assessable development prescribed under section 43(1)(a) for the clearing of vegetation that includes essential habitat for protected wildlife and near threatened wildlife; and
  - (b) the application was a properly made application; and
  - (c) immediately before 8 March 2018, the development application had not been decided.
- (2) The application must continue to be dealt with and decided under this Act as in force before 8 March 2018.

### **331 Certain development approvals not affected**

- (1) This section applies to a development approval in effect immediately before 8 March 2018.
- (2) The amending Act does not stop or further regulate development under the development approval or otherwise affect the approval.



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**332 Unlawful clearing not an offence during interim period**

Sections 162 and 163, to the extent the provisions relate to unlawful clearing, do not apply to a person carrying out unlawful clearing during the interim period.

*Note—*

See the *Vegetation Management Act 1999*, part 3, division 1, subdivision 7 for provisions relating to a restoration notice under that Act.

**333 Development application for certain operational works during interim period**

- (1) This section applies to a development application made during the interim period for operational work that is the clearing of vegetation that—
  - (a) is assessable development prescribed under section 43(1)(a); and
  - (b) is high value agriculture clearing or irrigated high value agriculture clearing; and
  - (c) is not for a relevant purpose mentioned in the *Vegetation Management Act 1999*, section 22A(2)(a) to (j) or (2AA).
- (2) The application is taken not to have been made and any decision on the application is of no effect.

**334 Development application for certain material change of use during interim period**

- (1) This section applies to a development application made during the interim period for a material change of use that is assessable development if—
  - (a) the material change of use involves the clearing of vegetation that is high value agriculture clearing or irrigated high value agriculture clearing; and
  - (b) because of the clearing, the chief executive would be a referral agency for the material change of use if a

development application were made for the material change of use.

- (2) The application is taken not to have been made and any decision on the application is of no effect.

## **Part 5**

# **Transitional and validation provisions for Economic Development and Other Legislation Amendment Act 2019**

### **335 Definitions for part**

In this part—

*amending Act* means the *Economic Development and Other Legislation Amendment Act 2019*.

*former*, in relation to a provision, means as in force immediately before the provision was amended or repealed under the amending Act.

### **336 Particular existing decisions about superseded planning scheme requests**

- (1) This section applies if—
- (a) before the commencement, a decision was made, or taken to have been made, under former section 29 to accept, assess and decide a superseded planning scheme application; and
  - (b) immediately before the commencement, the superseded planning scheme application had not been made.
- (2) Former section 29, other than former section 29(9)(b) and (11), continues to apply in relation to the decision, including the making of the superseded planning scheme application, as if the amending Act had not been enacted.

- (3) Section 29(9)(b) applies for assessing the superseded planning scheme application.
- (4) If the superseded planning scheme application is for development that is categorised as prohibited development under the planning scheme, section 29A applies in relation to the making of the application.

### **337 Existing superseded planning scheme applications**

- (1) Former chapter 2, part 4, division 1 continues to apply in relation to a superseded planning scheme application made under former section 29, but not decided, before the commencement as if the amending Act had not been enacted.
- (2) Subsections (3) to (5) apply if the superseded planning scheme application includes development that is categorised as prohibited development under—
  - (a) the superseded planning scheme to which the application relates; or
  - (b) a categorising instrument other than the planning scheme.
- (3) Despite subsection (1), the superseded planning scheme application is taken never to have been made.
- (4) Despite section 29(9)(a), the applicant may, within 6 months after the commencement, make a new superseded planning scheme application for development that is substantially similar to development the subject of the original application.
- (5) Chapter 2, part 4, division 1 applies in relation to the new superseded planning scheme application.

### **338 Particular planning changes**

- (1) This section applies to a planning change that happened before the commencement if—
  - (a) the planning change is, under former section 30(4)(e), not an adverse planning change; and

- (b) the planning change would be an adverse planning change under section 30 if it happened after the commencement.
- (2) The planning change is taken to be, and to have always been, an adverse planning change.

### **339 Particular existing applications**

- (1) For a development application made, but not decided, before the commencement, former section 48 continues to apply as if the amending Act had not been enacted.
- (2) For a change application made, but not decided, before the commencement—
- (a) sections 78A and 81A do not apply; and
  - (b) former sections 78, 80, 81 and 82 continue to apply as if the amending Act had not been enacted.

### **340 Particular representations dealt with before commencement**

- (1) This section applies if—
- (a) before 3 July 2017, an assessment manager for a development application under the old Act gave the applicant a decision notice for the application under the old Act, section 334; and
  - (b) on or after 3 July 2017, the applicant made representations to the assessment manager about the decision notice under the old Act, section 361 or section 75 of this Act; and
  - (c) before the commencement, the assessment manager gave the applicant a notice, under the old Act, section 363(1) or (5) or section 76(2) of this Act, in relation to the representations.
- (2) If the notice was given under the old Act, section 363(1) or (5), the notice—

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- (a) is not invalid merely because it was given under that section instead of under section 76(2) of this Act; and
  - (b) is not invalid merely because, before giving the notice, the assessment manager complied with the old Act, section 363(2) instead of section 76(1) of this Act; and
  - (c) is taken to be and to have always been—
    - (i) for a notice given under the old Act, section 363(1)—a negotiated decision notice under this Act; or
    - (ii) for a notice given under the old Act, section 363(5)—a decision notice given under section 76(2) of this Act that states the assessment manager does not agree with the representations.
- (3) If the notice was given under section 76(2) of this Act, the notice—
- (a) is not invalid merely because it was given under that section instead of under the old Act, section 363(1) or (5); and
  - (b) is not invalid merely because, before giving the notice, the assessment manager complied with section 76(1) of this Act instead of the old Act, section 363(2).

### **341 Conditions of existing development approvals**

- (1) This section applies to a development approval that is in effect immediately before the commencement.
- (2) Former section 65(2)(c) continues to apply in relation to a development condition of the development approval that requires compliance with an infrastructure agreement for the premises.
- (3) Former section 66(2) and (3) continues to apply in relation to a development condition of the development approval that is inconsistent with a condition of an earlier development approval.

### **342 Lapsing of particular development approvals under old Act**

- (1) This section applies to a development approval under the old Act, whether given before or after 3 July 2017, that is in effect immediately before the commencement.
- (2) If the development approval is a preliminary approval to which the old Act, section 242 applies, other than a preliminary approval mentioned in the old Act, section 808—
  - (a) section 88(2) and (3) does not apply to the development approval; and
  - (b) the old Act, section 343 applies to the development approval.
- (3) If the development approval is a preliminary approval mentioned in the old Act, section 808—
  - (a) section 88(2) and (3) does not apply to the development approval; and
  - (b) the old Act, section 342(1) to (3) applies to the development approval.
- (4) For applying the old Act, section 341 under section 299 of this Act, or the old Act, section 343 under subsection (2), a reference in the old Act, section 341(7), definitions *related approval*, paragraph (a), (b) or (c) to—
  - (a) a development approval or development permit includes a reference to a development approval or development permit given under this Act; and
  - (b) a development application includes a development application made under this Act.

### **343 Validation provision for particular development approvals**

- (1) This section applies to a development approval in effect immediately before the commencement if—
  - (a) the development application, or a change application that was approved for the development approval, was assessed under section 45(3) or (5); and

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- (b) in carrying out the assessment, the assessment manager or responsible entity gave weight to a statutory instrument that came into effect after the development application was properly made, or the change application was made, but before the application was decided; and
  - (c) the assessment manager would have been required to assess, or could have assessed, the development application or change application against, or having regard to, the statutory instrument if the instrument had been in effect when the development application was properly made or the change application was made; and
  - (d) the statutory instrument is not an amended or replacement statutory instrument to which the assessment manager or responsible entity may give weight under former section 45(7).
- (2) The development approval is not invalid merely because the assessment manager or responsible entity gave weight to the statutory instrument.

#### **344 Validation provision for particular infrastructure charges notices under old Act**

- (1) This section applies to an infrastructure charges notice given under the old Act on or after 4 July 2014 but before the commencement if—
- (a) under the old Act, section 637(2), the infrastructure charges notice must include, or be accompanied by, an information notice about the decision to give the infrastructure charges notice that states the reasons for the decision; and
  - (b) the infrastructure charges notice does not comply with the requirement.
- (2) It is declared that the infrastructure charges notice is taken to be, and to always have been, as valid as it would have been if it had included, or been accompanied by, an information

notice about the decision to give the infrastructure charges notice that states the reasons for the decision.

- (3) It is also declared that anything done, or to be done, in relation to the recovery of the levied charge under the infrastructure charges notice by the local government that gave the notice is as valid as it would have been or would be if the notice had included, or been accompanied by, an information notice about the decision to give the infrastructure charges notice that states the reasons for the decision.
- (4) Subsection (5) applies if the levied charge under the infrastructure charges notice has, before the commencement, been paid to the local government that gave the notice.
- (5) It is declared that the payment is taken to be, and to always have been, as validly made as it would have been if the infrastructure charges notice had included, or been accompanied by, an information notice about the decision to give the infrastructure charges notice that states the reasons for the decision.

### **345 Particular existing appeals**

- (1) Subsection (2) applies in relation to an appeal to the P&E Court, or a tribunal, started, but not decided, before the commencement.
- (2) Former section 230(6) continues to apply in relation to the appeal as if the amending Act had not been enacted.
- (3) Subsection (4) applies if—
  - (a) before the commencement, a person who is an eligible submitter for a development application or change application started an appeal under section 229 against the decision on the application; and
  - (b) the person was required, under former section 230(3)(e), to give a copy of the notice of appeal to another eligible submitter; and
  - (c) immediately before the commencement—



- (i) the person has not complied with the requirement; and
  - (ii) the P&E Court has not dealt with the noncompliance under the P&E Court Act, section 37; and
  - (iii) the P&E Court has not, under the P&E Court Act, section 32, decided to allow or not allow a longer period for complying with the requirement.
- (4) The requirement is taken to never have applied to the person.

**346 Declaratory proceedings in P&E Court for particular matters under old Act**

- (1) This section applies if—
- (a) before the old Act was repealed, a proceeding could have been brought under the old Act, section 456 about a matter under the old Act that arose before the repeal; and
  - (b) immediately before the repeal, the proceeding had not been started.
- (2) This section also applies in relation to a matter that arose after the old Act was repealed, if the matter is in relation to—
- (a) a statutory instrument to which section 287 applies; or
  - (b) an application mentioned in section 288(1).
- (3) It is declared that, despite section 311(4), a person has a right, and has always had a right, to bring a proceeding about the matter under the P&E Court Act, part 2, division 3.

*Note—*

See also the P&E Court Act, section 76 and part 10, division 2.

- (4) However, if the proceeding is brought under the P&E Court Act, section 12 in relation to a development application under the old Act, the proceeding may be brought only by the assessment manager for the development application under the old Act.

### **347 Appeals about particular decisions under old Act**

- (1) This section applies if—
  - (a) immediately before the old Act was repealed, a person had a right to appeal under the old Act, chapter 7, part 1 or 2 against a decision made under the old Act; and
  - (b) before the commencement, the person started the appeal, during the person's appeal period for the decision—
    - (i) for an appeal to the Court of Appeal—under the P&E Court Act; or
    - (ii) otherwise—under this Act.
- (2) The person is taken to have always had a right to start the appeal.

## **Part 6 Validation and transitional provisions for particular matters**

### **348 Validation of particular development approvals**

- (1) This section applies in relation to a development approval, whether or not the approval is still in force, that—
  - (a) was granted or amended on or after 15 September 2000 but before the commencement; and
  - (b) relates, or related, to the clearing of native vegetation.
- (2) The grant or amendment of the development approval is, and is taken to have always been, as valid as it would have been if a reference to infrastructure in a relevant provision always included a reference to a building, or other structure, built or used for any purpose.
- (3) Anything done under the development approval is, and is taken to have always been, as valid and lawful as it would have been if a reference to infrastructure in a relevant

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provision always included a reference to a building, or other structure, built or used for any purpose.

(4) To remove any doubt it is declared that a reference in this section to the grant or amendment of the development approval includes the imposition of conditions on the approval.

(5) In this section—

***relevant provision***, in relation to the grant or amendment of a development approval, means—

(a) if the repealed *Integrated Planning Act 1997*, as in force before 4 October 2004, applied to the grant or amendment—the repealed *Integrated Planning Act 1997*, schedule 8, section 22, definitions *essential management* and *routine management*; or

(b) if the repealed *Integrated Planning Act 1997*, as in force on or after 4 October 2004, applied to the grant or amendment—the repealed *Integrated Planning Act 1997*, schedule 10, definitions *essential management* and *routine management*; or

(c) if the repealed *Sustainable Planning Act 2009* applied to the grant or amendment—the repealed *Sustainable Planning Regulation 2009*, schedule 26, definitions *essential management* and *routine management*; or

(d) if this Act applied to the grant or amendment—the *Planning Regulation 2017*, schedule 24, definitions *essential management* and *routine management*.

### **349 Particular existing applications**

(1) This section applies in relation to an application for the grant or amendment of a development approval—

(a) made on or after 15 September 2000 under this Act, the repealed *Sustainable Planning Act 2009* or the repealed *Integrated Planning Act 1997*; but

(b) not decided before the commencement.

(2) For the purpose of deciding the application, a reference to infrastructure in a relevant provision includes, and is taken to have always included, a reference to a building, or other structure, built or used for any purpose.

(3) In this section—

*deciding*, an application, includes dealing with the application.

*relevant provision*, in relation to an application for the grant or amendment of a development approval, means—

(a) if the repealed *Integrated Planning Act 1997*, as in force before 4 October 2004, applies to deciding the application—the repealed *Integrated Planning Act 1997*, schedule 8, section 22, definitions *essential management* and *routine management*; or

(b) if the repealed *Integrated Planning Act 1997*, as in force on or after 4 October 2004, applies to deciding the application—the repealed *Integrated Planning Act 1997*, schedule 10, definitions *essential management* and *routine management*; or

(c) if the repealed *Sustainable Planning Act 2009* applies to deciding the application—the repealed *Sustainable Planning Regulation 2009*, schedule 26, definitions *essential management* and *routine management*; or

(d) if this Act applies to deciding the application—the *Planning Regulation 2017*, schedule 24, definitions *essential management* and *routine management*.

### **350 Validation of particular operational work**

(1) This section applies in relation to operational work, that is the clearing of native vegetation, if the work was carried out—

(a) on or after 15 September 2000 but before the commencement; and

(b) without a development approval.

(2) The carrying out of the work without a development approval is, and is taken to have always been, as valid and lawful as it would have been if, at the time the work was carried out, a reference to infrastructure in a relevant provision included a reference to a building, or other structure, built or used for any purpose.

(3) In this section—

*relevant provision* means—

- (a) in relation to operational work carried out before 4 October 2004—the repealed *Integrated Planning Act 1997*, schedule 8, section 22, definitions *essential management* and *routine management*; or
- (b) in relation to operational work carried out on or after 4 October 2004 but before 18 December 2009—the repealed *Integrated Planning Act 1997*, schedule 10, definitions *essential management* and *routine management*; or
- (c) in relation to operational work carried out on or after 18 December 2009 but before 3 July 2017—the repealed *Sustainable Planning Regulation 2009*, schedule 26, definitions *essential management* and *routine management*; or
- (d) in relation to operational work carried out on or after 3 July 2017—the *Planning Regulation 2017*, schedule 24, definitions *essential management* and *routine management*.

## **Schedule 1      Appeals**

section 229

### **1      Appeal rights and parties to appeals**

- (1) Table 1 states the matters that may be appealed to—
  - (a) the P&E court; or
  - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
  - (a) the refusal, or deemed refusal of a development application, for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (b) a provision of a development approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (c) if a development permit was applied for—the decision to give a preliminary approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (d) a development condition if—
    - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and

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- (ii) the building is, or is proposed to be, not more than 3 storeys; and
    - (iii) the proposed development is for not more than 60 sole-occupancy units; or
  - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
  - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
  - (g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
  - (h) a decision to give an enforcement notice—
    - (i) in relation to a matter under paragraphs (a) to (g); or
    - (ii) under the *Plumbing and Drainage Act 2018*; or
  - (i) an infrastructure charges notice; or
  - (j) the refusal, or deemed refusal, of a conversion application; or
  - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
    - (i) a development approval for which the development application required impact assessment; and
    - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
  - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.

- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
  - (a) column 1 states the appellant in the appeal; and
  - (b) column 2 states the respondent in the appeal; and
  - (c) column 3 states the co-respondent (if any) in the appeal; and
  - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.
- (8) In this section—
 

*storey* see the Building Code, part A1.1.

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>
<p>1. Development applications</p> <p>For a development application other than an excluded application, an appeal may be made against—</p> <ul style="list-style-type: none"> <li>(a) the refusal of all or part of the development application; or</li> <li>(b) the deemed refusal of the development application; or</li> <li>(c) a provision of the development approval; or</li> <li>(d) if a development permit was applied for—the decision to give a preliminary approval.</li> </ul>



<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	<p>1 A concurrence agency that is not a co-respondent</p> <p>2 If a chosen assessment manager is the respondent—the prescribed assessment manager</p> <p>3 Any eligible advice agency for the application</p> <p>4 Any eligible submitter for the application</p>
<p><b>2. Change applications</b></p> <p>For a change application other than an excluded application, an appeal may be made against—</p> <p>(a) the responsible entity's decision on the change application; or</p> <p>(b) a deemed refusal of the change application.</p>			

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 The applicant</p> <p>2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice</p>	<p>The responsible entity</p>	<p>If an affected entity starts the appeal—the applicant</p>	<p>1 A concurrence agency for the development application</p> <p>2 If a chosen assessment manager is the respondent—the prescribed assessment manager</p> <p>3 A private certifier for the development application</p> <p>4 Any eligible advice agency for the change application</p> <p>5 Any eligible submitter for the change application</p>
<p><b>3. Extension applications</b></p> <p>For an extension application other than an extension application called in by the Minister, an appeal may be made against—</p> <p>(a) the assessment manager’s decision on the extension application; or</p> <p>(b) a deemed refusal of the extension application.</p>			

<b>Table 1</b> <b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 For a matter other than a deemed refusal of an extension application—a concurrence agency, other than the chief executive, for the application	The assessment manager	If a concurrence agency starts the appeal—the applicant	If a chosen assessment manager is the respondent—the prescribed assessment manager
<p><b>4. Infrastructure charges notices</b></p> <p>An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds—</p> <p>(a) the notice involved an error relating to—</p> <p style="padding-left: 20px;">(i) the application of the relevant adopted charge; or</p> <p><i>Examples of errors in applying an adopted charge—</i></p> <ul style="list-style-type: none"> <li>• the incorrect application of gross floor area for a non-residential development</li> <li>• applying an incorrect ‘use category’, under a regulation, to the development</li> </ul> <p style="padding-left: 20px;">(ii) the working out of extra demand, for section 120; or</p> <p style="padding-left: 20px;">(iii) an offset or refund; or</p> <p>(b) there was no decision about an offset or refund; or</p> <p>(c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund; or</p> <p>(d) for an appeal to the P&amp;E Court—the amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.</p>			

<b>Table 1</b>			
<b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the infrastructure charges notice	The local government that gave the infrastructure charges notice	—	—
<p><b>5. Conversion applications</b></p> <p>An appeal may be made against—</p> <p>(a) the refusal of a conversion application; or</p> <p>(b) a deemed refusal of a conversion application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The local government to which the conversion application was made	—	—
<p><b>6. Enforcement notices</b></p> <p>An appeal may be made against the decision to give an enforcement notice.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The enforcement authority	—	If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government

**Table 2  
Appeals to the P&E Court only**

<p>1. Appeals from tribunal</p> <p>An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of—</p> <p>(a) an error or mistake in law on the part of the tribunal; or</p> <p>(b) jurisdictional error.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A party to the proceedings for the decision	The other party to the proceedings for the decision	—	—
<p>2. Eligible submitter appeals</p> <p>For a development application or change application other than an excluded application, an appeal may be made against the decision to approve the application, to the extent the decision relates to—</p> <p>(a) any part of the development application or change application that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency’s referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>

<b>Table 2 Appeals to the P&amp;E Court only</b>			
<p>3. Eligible submitter and eligible advice agency appeals</p> <p>For a development application or change application other than an excluded application, an appeal may be made against a provision of the development approval, or a failure to include a provision in the development approval, to the extent the matter relates to—</p> <p>(a) any part of the development application or change application that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p> <p>3 An eligible advice agency for the development application or change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency’s referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>
<p>4. Compensation claims</p> <p>An appeal may be made against—</p> <p>(a) a decision under section 32 about a compensation claim; or</p> <p>(b) a decision under section 265 about a claim for compensation; or</p> <p>(c) a deemed refusal of a claim under paragraph (a) or (b).</p>			

<b>Table 2 Appeals to the P&amp;E Court only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	—	—
<p><b>5. Registered premises</b> An appeal may be made against a decision of the Minister under chapter 7, part 4.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 A person given a decision notice about the decision</p> <p>2 If the decision is to register premises or renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision</p>	The Minister	—	If an owner or occupier starts the appeal—the owner of the registered premises
<p><b>6. Local laws</b> An appeal may be made against a decision of a local government, or conditions applied, under a local law about—</p> <p>(a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or</p> <p>(b) the erection of a building or other structure.</p>			

<b>Table 2 Appeals to the P&amp;E Court only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions.	The local government	—	—

<b>Table 3 Appeals to a tribunal only</b>			
<p><b>1. Building advisory agency appeals</b></p> <p>An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	<p>1 A concurrence agency for the development application related to the approval</p> <p>2 A private certifier for the development application related to the approval</p>



<b>Table 3 Appeals to a tribunal only</b>			
<p>2. Inspection of building work</p> <p>An appeal may be made against a decision of a building certifier or referral agency about the inspection of building work that is the subject of a building development approval under the Building Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant for the development approval	The person who made the decision	—	—
<p>3. Certain decisions under the Building Act and the <i>Plumbing and Drainage Act 2018</i></p> <p>An appeal may be made against—</p> <p>(a) a decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act; or</p> <p>(b) a decision under the <i>Plumbing and Drainage Act 2018</i>, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, an information notice about the decision	The entity that made the decision	—	—
<p>4. Local government failure to decide application under the Building Act</p> <p>An appeal may be made against a local government’s failure to decide an application under the Building Act within the period required under that Act.</p>			

<b>Table 3 Appeals to a tribunal only</b>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive notice of the decision	The local government to which the application was made	—	—
<p>5. Failure to make a decision about an application or other matter under the <i>Plumbing and Drainage Act 2018</i></p> <p>An appeal may be made against a failure to make a decision under the <i>Plumbing and Drainage Act 2018</i>, other than a failure by the Queensland Building and Construction Commission to make a decision, within the period required under that Act, if an information notice about the decision was required to be given under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive an information notice about the decision	The entity that failed to make the decision	—	—

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## Schedule 2 Dictionary

## section 6

*accepted development* see section 44(4).

*Acquisition Act* means the *Acquisition of Land Act 1967*.

*acquisition land* means land, or an interest in land—

- (a) proposed to be taken or acquired under the Acquisition Act or the State Development Act; and
- (b) for which a notice of intention to resume under the Acquisition Act has been served, and the proposed taking or acquisition has not been discontinued; and
- (c) that has not been taken or acquired.

*adopted charge* see section 113(1).

*adverse planning change* see section 30(2) to (4).

*advice agency* means a referral agency that only has power to give advice.

*affected area* see section 266(b).

*affected area development application* is a development application for a material change of use of premises or reconfiguring a lot in an affected area, other than an application prescribed by regulation.

*affected entity*, for a change application, see section 80(1).

*affected local government* means a local government with a local government area that the Minister considers is, or will be, affected by a State planning instrument.

*affected owner* see section 31(1).

*affected parties*, in relation to a designation, means—

- (a) each owner of premises to which the designation applies or will apply; and

- (b) if the designator is the Minister—each local government with a local government area that the Minister considers is, or will be, affected by the designation.

**agreement** means a written agreement.

**appeal period** see section 229(3).

**appeal rights** means the appeal rights under chapter 6, part 1 and schedule 1.

**appellant** see section 229(1).

**applicant**, for an appeal in relation to an application, includes the person in whom the benefit of the application vests.

*Note—*

For the meanings of *applicant* used in particular contexts, see section 280.

**application**, for chapter 3, part 6, see section 90(1).

**approved form** means a form that—

- (a) for a form for use in the P&E Court—is an approved form under the P&E Court Act; or
- (b) otherwise—the chief executive approves under section 282.

**assessable development** see section 44(3).

**assessment benchmarks** see section 43(1)(c).

**assessment manager**, for a development application, see section 48.

**automatic increase provision** see section 114(3)(b).

**breakup agreement** see section 115(2).

**building** means—

- (a) a fixed structure that is wholly or partly enclosed by walls and is roofed; or
- (b) a floating building; or
- (c) any part of a building.

**Building Act** means the *Building Act 1975*.

**building advisory agency**, for a development application, means an advice agency for the application whose functions relate to the assessment of building work against the building assessment provisions.

**building assessment provisions** see the Building Act, section 30.

**building certifier** means—

- (a) an individual who, under the Building Act, is licensed as a building certifier; and
- (b) a private certifier.

**Building Code** means the parts of the National Construction Code that form the Building Code of Australia (including the Queensland Appendix), published by the Australian Building Codes Board, as amended from time to time by amendments published by the board.

**building work**—

- (a) means—
  - (i) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or  
*Example—*  
building a retaining wall
  - (ii) works regulated under the building assessment provisions; or
  - (iii) excavating or filling for, or incidental to, the activities stated in subparagraph (i); or
  - (iv) excavating or filling that may adversely affect the stability of a building or other structure, whether on the premises on which the building or other structure is situated or on adjacent premises; or
  - (v) supporting (vertically or laterally) premises for activities stated in subparagraph (i); and
- (b) for a Queensland heritage place, includes—

- (i) altering, repairing, maintaining or moving a built, natural or landscape feature on the place; and
  - (ii) excavating, filling or other disturbances to premises that damage, expose or move archaeological artefacts, as defined under the Heritage Act, on the place; and
  - (iii) altering, repairing or removing artefacts that contribute to the place's cultural heritage significance (furniture or fittings, for example); and
  - (iv) altering, repairing or removing building finishes that contribute to the place's cultural heritage significance (paint, wallpaper or plaster, for example); and
- (c) does not include undertaking—
- (i) operations of any type and all things constructed or installed that allow taking or interfering with water under the *Water Act 2000*; or
  - (ii) tidal works; or
  - (iii) works for reconfiguring a lot.

***business day*** does not include a day between 26 December of a year and 1 January of the next year.

***call in***, an application, means call the application in under chapter 3, part 6, division 3.

***call in notice*** see section 103(1).

***call in provision*** means—

- (a) chapter 3, part 6, division 3; or
- (b) the old Act, chapter 6, part 11, division 2; or
- (c) the repealed *Integrated Planning Act 1997*, chapter 3, part 6, division 2.

***canal*** see the Coastal Act, section 9.

***cancellation application*** see section 84(1).

***categorising instrument*** see section 43(1).

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***certificate of classification*** see the Building Act.

***certified copy***, of a document, means a copy of the document certified as being an unaltered copy of the document by—

- (a) for a document required to be kept by the Minister—the chief executive of any department for which the Minister has responsibility; or
- (b) for a document required to be kept by the chief executive—an appropriately qualified public service officer; or
- (c) for a document required to be kept by a local government—the local government’s chief executive officer; or
- (d) for a document required to be kept by an individual—the individual; or
- (e) for a document required to be kept by a department—the department’s chief executive; or
- (f) for a document required to be kept by a body corporate—the body corporate’s chief executive officer.

***change application*** see section 78(1).

***change representations*** see section 75(1).

***charges breakup*** means the proportion of the maximum adopted charges under chapter 4 and under the SEQ Water Act as between—

- (a) the local government; and
- (b) a distributor-retailer of the local government.

***charges resolution*** see section 113(1).

***chosen assessment manager***, for a development application, means the assessment manager for the application under section 48(3).

***City of Brisbane Act*** means the *City of Brisbane Act 2010*.

***classified building*** means a building classified under the Building Code as—

- (a) a class 1 building; or

- (b) a class 10 building, other than a building that is incidental or subordinate to the use, or proposed use, of a building classified under the Building Code as a class 2, 3, 4, 5, 6, 7, 8 or 9 building.

**clear**, in relation to vegetation, see the *Vegetation Management Act 1999*.

**Coastal Act** means the *Coastal Protection and Management Act 1995*.

**code assessment** see section 45(3).

**communication**, for chapter 7, part 4A, see section 275B(1) and (2)(b).

**compensation claim** means a claim for compensation under section 31(6).

**concurrency agency** means a referral agency that is not an advice agency.

**consent** means written consent.

**conversion application** see section 139(1).

**co-respondent by election** means a person who may elect to be a co-respondent in an appeal.

**cultural heritage significance** see the Heritage Act, schedule.

**currency period** see section 85(1).

**decision-maker** see section 90(2).

**decision notice**, about a decision, means a notice that states—

- (a) the decision; and
- (b) the reasons for the decision if the decision is—
  - (i) to refuse an application or request wholly or partly; or
  - (ii) a decision of a tribunal; or
  - (iii) a decision of the chief executive under section 244(1) or (3); and
- (c) the day on which the decision was made; and



- 
- (d) any appeal rights that the recipient of the notice has in relation to the decision.

***deemed approval*** see section 64(5).

***deemed approval notice*** see section 64(3).

***deemed refusal*** means a refusal that is taken to have happened if a decision has not been made when the following ends—

- (a) for a development application, other than an application to which section 64 applies—the period, under the development assessment rules, for making a decision;
- (b) for a matter as follows—the period allowed under this Act for the matter to be decided—
- (i) a change application;
  - (ii) an extension application;
  - (iii) a conversion application;
  - (iv) a compensation claim under section 31(6);
  - (v) a claim for compensation under section 265.

***designated premises*** means premises that are the subject of a designation.

***designation*** see section 35(1).

***designator*** see section 35(1).

***development*** means—

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

***development application*** means an application for a development approval.

***development approval*** see section 49(1).

***development assessment process*** means the process for administering applications under chapter 3.

***development assessment rules*** see section 68(1).

***development assessment system*** means a system described in section 4(f).

***development condition*** means a condition that a development approval is subject to, including a condition—

- (a) the assessment manager imposes under section 60; or
- (b) directed to be imposed under section 56 or 95(1)(d); or
- (c) taken to have been imposed under section 64.

*Note—*

Also see the *Environmental Offsets Act 2014*, section 16 which provides for deemed conditions on development approvals.

***development infrastructure*** means—

- (a) land or works, or both land and works, for—
  - (i) water cycle management infrastructure, including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of waters and flood mitigation, but not water cycle management infrastructure that is State infrastructure; or
  - (ii) transport infrastructure, including roads, vehicle lay-bys, traffic control devices, dedicated public transport corridors, public parking facilities predominantly serving a local area, cycleways, pathways and ferry terminals; or
  - (iii) public parks infrastructure, including playground equipment, playing fields, courts and picnic facilities; or
- (b) land, and works that ensure the land is suitable for development, for local community facilities, like—
  - (i) community halls or centres; or
  - (ii) public recreation centres; or

(iii) public libraries.

***development offence*** see section 161.

***development permit*** see section 49(3).

***development tribunal*** means a tribunal established under section 235.

***direction*** means a written direction.

***disposal order*** see section 214(2).

***distributor-retailer*** see the SEQ Water Act, section 8.

***document*** includes information.

***drainage work*** see the *Plumbing and Drainage Act 2018*, schedule 1.

***duplicate warrant*** see section 194(2).

***effective day*** see section 9(2).

***electronic application*** see section 193.

***electronic document*** means a document stated in the Interpretation Act, schedule 1, definition *document*, paragraph (c).

***eligible advice agency***, for a development application or change application, means an advice agency that—

- (a) has told the assessment manager in the advice agency's referral agency's response to treat the response as a properly made submission; and
- (b) has not given the assessment manager a notice stating the agency will not be appealing before the appeal period ends for the application.

***eligible submitter***, for a development application or change application, means a submitter—

- (a) whose submission was not withdrawn before the application was decided; and
- (b) who has not given the assessment manager a notice stating the submitter will not be appealing before the appeal period ends for the application.

***emissions*** means emissions of aerosols, fumes, light, noise, odour, particles or smoke.

***enforcement authority*** means—

- (a) for assessable development that is the subject of a development approval—
  - (i) the prescribed assessment manager or the chosen assessment manager; or
  - (ii) a referral agency for matters within the agency's functions for the development application; or
  - (iii) if the chief executive is the prescribed assessment manager or a referral agency—a person that the chief executive nominates by written notice to the person; or
  - (iv) if a private certifier (class A) performed private certifying functions for the development application, under the Building Act—the certifier or the local government; or

*Note—*

For the enforcement authority for development under a development approval that was a PDA development approval, see the *Economic Development Act 2012*, section 51AI.

- (b) for assessable development that is not the subject of a development approval—the person who would have been the enforcement authority under paragraph (a) had a development approval been given; or
- (c) for building or plumbing work carried out by or for a public sector entity—the chief executive, however described, of the entity; or
- (d) for any other matter—the local government.

***enforcement notice*** see section 168(2).

***enforcement order***—

- (a) for an enforcement order made by the Magistrates Court—see section 176(1); or

- 
- (b) for an enforcement order made by the P&E Court—see section 180(2).

***environment*** see the Environmental Protection Act, section 8.

***Environmental Protection Act*** means the *Environmental Protection Act 1994*.

***establishment cost***, for trunk infrastructure, means—

- (a) for existing infrastructure—
- (i) the current replacement cost of the infrastructure as reflected in the relevant local government’s asset register; and
  - (ii) the current value of the land acquired for the infrastructure; or
- (b) for future infrastructure—all costs of land acquisition, financing, and design and construction, for the infrastructure.

***examine*** includes analyse, test, account, measure, weigh, grade, gauge and identify.

***excluded application*** means—

- (a) a change application, or development application, called in under a call in provision; or
- (b) a change application, or development application, decided by the P&E Court; or
- (c) a change application—
- (i) to change a development approval given or changed by the Minister for an application that was called in under a call in provision; and
  - (ii) that is made to the Minister as the responsible entity.

***excluded premises*** means—

- (a) generally—
- (i) premises that are a servient tenement for an easement, if the development is consistent with the easement’s terms; or

- (ii) premises that are acquisition land, if the application or development approval relates to the purpose for which the land is to be taken or acquired; or
- (b) for a change application or extension application—premises in relation to which 1 or more of the following apply for the application—
  - (i) the development approval to which the approval relates is for building work for supplying infrastructure on designated premises; or
  - (ii) the responsible entity or assessment manager considers the application does not materially affect the premises and that, given the nature of the change, the owner of the premises has unreasonably withheld consent; or
  - (iii) the responsible entity or assessment manager considers the application does not materially affect the premises and that because of the number of owners, it is impracticable to get their consent.

*Example of when owners' consent may be impracticable—*

Since the development approval was given, the premises have been subdivided and now has many owners.

***executive officer***, of a corporation, means a person who is concerned with or takes part in the management of the corporation, whether or not the person is a director or the person's position is given the title of executive officer.

***extension application*** see section 86(1).

***extra payment condition*** see section 130(1).

***final inspection certificate*** see the Building Act.

***finds a defendant guilty*** includes accept a plea of guilty, whether or not a conviction is recorded.

***former owner*** see section 212(4).

***function*** includes a power.

***Heritage Act*** means the *Queensland Heritage Act 1992*.

**impact assessment** see section 45(5).

**identity card** means an identity card issued under section 184(1).

**information** includes information contained in a document.

**information request**, in relation to an application, means a notice that asks the applicant for further information in relation to the application.

**infrastructure** does not include land, facilities, services or works for an environmental offset.

**infrastructure agreement** see section 150.

**infrastructure charges notice** means—

- (a) if an infrastructure charges notice is replaced by a replacement infrastructure charges notice under section 76(6)—the replacement infrastructure charges notice; or
- (b) if an infrastructure charges notice is replaced by a negotiated notice under section 125(3)—the negotiated notice; or
- (c) if an infrastructure charges notice is amended under section 119(6), 137(4) or 142(4)(b)—the notice as amended; or
- (d) otherwise—an infrastructure charges notice given under section 119(2) or (5) or 142(4)(a).

**inspector** means a person who holds office as an inspector under chapter 5, part 6.

**interim enforcement order** see section 180(4).

**Interpretation Act** means the *Acts Interpretation Act 1954*.

**land** includes—

- (a) an estate in, on, over or under land; and
- (b) the airspace above the land and any estate in the airspace; and
- (c) the subsoil of land and any estate in the subsoil.

***Land Act*** means the *Land Act 1994*.

***Land Title Act*** means the *Land Title Act 1994*.

***lawful use***, of premises, means a use of premises that is a natural and ordinary consequence of making a material change of use of the premises in compliance with this Act.

***levied charge*** see section 119(12).

***LGIP (local government infrastructure plan)*** means the part of a local government's planning scheme that—

- (a) has been prepared under the Minister's rules; and
- (b) does any or all of the following—
  - (i) identifies a PIA;
  - (ii) states assumptions about population and employment growth;
  - (iii) states assumptions about the type, scale, location and timing of future development;
  - (iv) includes plans for trunk infrastructure;
  - (v) states the desired standard of service for development infrastructure.

***local categorising instrument*** see section 43(3).

***Local Government Act*** means the *Local Government Act 2009*.

***local heritage place*** see the Heritage Act, schedule.

***local planning instrument*** see section 8(3).

***lot*** means—

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



- (d) a lot or common property to which the *Building Units and Group Titles Act 1980* continues to apply; or
- (e) a community or precinct thoroughfare under the *Mixed Use Development Act 1993*; or
- (f) a primary or secondary thoroughfare under the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*.

*Note—*

The *Building Units and Group Titles Act 1980* may continue to apply to the Acts stated in paragraphs (e) and (f), the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980* and the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*.

***material change of use***, of premises, means any of the following that a regulation made under section 284(2)(a) does not prescribe to be minor change of use—

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

***maximum adopted charge*** see section 112(2).

***Milton rail precinct*** means the area called Milton rail precinct shown on the map in schedule 1 of the repealed *Planning (Urban Encroachment—Milton Brewery) Act 2009*.

***Minister***, for chapter 3, part 6, includes the Minister responsible for administering the State Development Act.

***Minister's guidelines*** means the guidelines made by the Minister under section 17.

***Minister's rules*** means the rules made by the Minister under section 17.

***minor change*** means a change that—

- (a) for a development application—

- (i) does not result in substantially different development; and
- (ii) if the application, including the change, were made when the change is made—would not cause—
  - (A) the inclusion of prohibited development in the application; or
  - (B) referral to a referral agency if there were no referral agencies for the development application; or
  - (C) referral to extra referral agencies; or
  - (D) a referral agency, in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other than a matter the referral agency must have assessed the application against, or had regard to, when the application was made; or
  - (E) public notification if public notification was not required for the development application; or
- (b) for a development approval—
  - (i) would not result in substantially different development; and
  - (ii) if a development application for the development, including the change, were made when the change application is made would not cause—
    - (A) the inclusion of prohibited development in the application; or
    - (B) referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or
    - (C) referral to extra referral agencies, other than to the chief executive; or
    - (D) a referral agency, in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other

than a matter the referral agency must have assessed the application against, or had regard to, when the application was made; or

- (E) public notification if public notification was not required for the development application.

*Note—*

For when a change to a development approval that was a PDA development approval is a minor change, see also the *Economic Development Act 2012*, section 51AM.

***necessary infrastructure condition*** see section 127(2).

***negotiated decision notice*** see section 76(3).

***negotiated notice*** see section 125(3).

***non-trunk infrastructure*** means development infrastructure that is not trunk infrastructure.

***notice*** means a written notice.

***occupier***, of a place, for chapter 5, part 7, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) a person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—an owner of the place.

***of***, a place, includes at or on the place.

***offence proceedings*** see section 174(1).

***offence warning***, for a requirement made by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the requirement is made not to comply with the requirement.

***old Act*** see section 285(1).

***operational work*** means work, other than building work or plumbing or drainage work, in, on, over or under premises that materially affects premises or the use of premises.

**owner**, of a thing that has been seized, includes a person who would be entitled to possession of the thing if the thing had not been seized.

**owner**, of land, premises or a place, means the person who—

- (a) is entitled to receive rent for the land, premises or place; or
- (b) would be entitled to receive rent for the land, premises or place if the land, premises or place were rented to a tenant.

*Note—*

See the Transport Infrastructure Act, section 247, for when the chief executive of the department in which that Act is administered is taken to be the owner of particular rail corridor land or non-rail corridor land under that Act.

**PDA development approval** means a PDA development approval under the *Economic Development Act 2012*.

**P&E Court** means the Planning and Environment Court.

**P&E Court Act** means the *Planning and Environment Court Act 2015*.

**participating local government** see the SEQ Water Act, section 5(1).

**party**, in relation to tribunal proceedings or proceedings in the P&E Court, means any or all of the following—

- (a) the applicant or appellant;
- (b) the respondent;
- (c) any co-respondent;
- (d) if the Minister is represented—the Minister.

**payer**, for a levied charge or for a payment, means a person who pays all or part of the charge or payment.

**payment** includes a contribution by way of a payment.

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

**person in control**—

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- (a) of a vehicle, includes—
    - (i) the vehicle's driver or rider; and
    - (ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle's driver or rider or the person in control of the vehicle; or
  - (b) of another thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

**PIA** (*priority infrastructure area*) means an area—

- (a) serviced, or intended to be serviced, with development infrastructure networks; and
- (b) used, or approved for use, for—
  - (i) residential purposes, other than rural residential purposes; or
  - (ii) industrial, retail or commercial purposes; or
  - (iii) community or government purposes related to a purpose stated in subparagraph (i) or (ii); and
- (c) that will accommodate at least 10, but no more than 15, years of growth for any of those purposes.

**place** includes—

- (a) premises; and
- (b) a place in Queensland waters; and
- (c) a place held—
  - (i) by more than 1 owner; or
  - (ii) under more than 1 title.

**planning** see section 3(1).

**planning change** see section 29(2).

**planning instrument** see section 8(1).

**planning instrument change** means—

- (a) the commencement of a planning instrument or the amendment of a planning instrument; or

- (b) the start of the application of a planning instrument to premises.

***planning scheme*** means a planning instrument that sets out the matters stated in section 4(c).

***planning scheme policy*** means a planning instrument that sets out the matters stated in section 4(e).

***plumbing work*** see the *Plumbing and Drainage Act 2018*, schedule 1.

***PPI*** means—

- (a) the producer price index for construction 6427.0 (ABS PPI) index number 3101—Road and Bridge construction index for Queensland published by the Australian Bureau of Statistics; or
- (b) if that index stops being published—another similar index prescribed by regulation.

***preliminary approval*** see section 49(2).

***premises*** means—

- (a) a building or other structure; or
- (b) land, whether or not a building or other structure is on the land.

***pre-request response notice*** see section 80(2).

***prescribed assessment manager***, for a development application, means the assessment manager for the application under section 48(1).

***prescribed tidal works*** means tidal works of a type prescribed under the Coastal Act, section 167(5)(d).

***principal submitter***, for a properly made submission, means—

- (a) if the submission is by 1 person—the person; or
- (b) otherwise—
  - (i) the submitter that the submission identifies as the principal submitter; or

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- (ii) if the submission does not identify a submitter as the principal submitter—the submitter whose name first appears in the submission.

***private certifier*** means a building certifier whose licence under the Building Act has private certification endorsement under that Act.

***prohibited development*** see section 44(2).

***properly made application*** see section 51(5).

***properly made submission*** means a submission that—

- (a) is signed by each person (the ***submission-makers***) who made the submission; and
- (b) is received—
- (i) for a submission about an instrument under section 18, a State planning instrument, or a designation—on or before the last day for making the submission; or
- (ii) otherwise—during the period fixed under this Act for making the submission; and
- (c) states the name and residential or business address of all submission-makers; and
- (d) states its grounds, and the facts and circumstances relied on to support the grounds; and
- (e) states 1 postal or electronic address for service relating to the submission for all submission-makers; and
- (f) is made to—
- (i) for a submission made under chapter 2—the person to whom the submission is required to be made under that chapter; or
- (ii) for a submission about a development application—the assessment manager; or
- (iii) for a submission about a change application—the responsible entity.

***proposed call in notice*** see section 102(2).

**provision**, of a development approval, means all words or other matters forming, or forming part of, the approval.

*Examples—*

- a development condition
- a currency period
- the identification or inclusion under a variation approval of a matter for the development

**public notice** means a notice that is published—

- (a) for a public notice mentioned in chapter 2, part 2—
  - (i) in the gazette; and
  - (ii) if the notice is about a State planning instrument or amendment that has, is to have, or had effect in a part of the State only—in a newspaper circulating generally in the part of the State; and
  - (iii) if the notice is about a State planning instrument that has, is to have, or had effect throughout the State—in a newspaper circulating generally in the State; and
  - (iv) on the department’s website; or
- (b) for a public notice mentioned in chapter 2, part 3 that is about a proposed local planning instrument or a proposed amendment of a local planning instrument—
  - (i) in a newspaper circulating in the local government area; and
  - (ii) on the local government’s website; or
- (c) for a public notice mentioned in chapter 2, part 3 that is about a local planning instrument, or an amendment of a local planning instrument, that is not a proposed local planning instrument or amendment—
  - (i) in the gazette; and
  - (ii) in a newspaper circulating in the local government area; and
  - (iii) on the local government’s website.



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**public place** means a place or part of a place—

- (a) that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money (a beach, park or road, for example); or
- (b) if the occupier of the place allows members of the public to enter the place, whether or not on payment of money (a sale yard or showground, for example).

**public purpose change** see section 30(3).

**public sector entity** means—

- (a) a department or part of a department; or
- (b) other than in chapter 4—a distributor-retailer; or
- (c) an agency, authority, commission, committee, corporation (including a government owned corporation), instrumentality, office, or other entity, established under an Act for a public or State purpose.

*Examples for paragraph (c)—*

a local government, a government owned corporation or a rail government entity under the Transport Infrastructure Act

**qualifications or experience** includes qualifications and experience.

**Queensland Building and Construction Commission** means the Queensland Building and Construction Commission established under the *Queensland Building and Construction Commission Act 1991*, section 5.

**Queensland heritage place** see the Heritage Act, schedule.

**rates** means rates within the meaning of the City of Brisbane Act or the Local Government Act.

**reasonably believes** means believes on grounds that are reasonable in the circumstances.

**reasonably suspects** means suspects on grounds that are reasonable in the circumstances.

**receiver**, for chapter 7, part 4A, see section 275A.

**recipient**, for a direction, notice or order, means a person who is given the direction, notice or order.

**reconfiguring a lot** means—

- (a) creating lots by subdividing another lot; or
- (b) amalgamating 2 or more lots; or
- (c) rearranging the boundaries of a lot by registering a plan of subdivision under the Land Act or Land Title Act; or
- (d) dividing land into parts by agreement rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—
  - (i) a lease for a term, including renewal options, not exceeding 10 years; or
  - (ii) an agreement for the exclusive use of part of the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or
- (e) creating an easement giving access to a lot from a constructed road.

**referee** means a referee who holds an appointment under section 233(1) or (2).

**referral agency** see section 54(2).

**referral agency's response** see section 56(4).

**region** means—

- (a) the local government areas, or parts of local government areas, prescribed by regulation as a region; and
- (b) Queensland waters next to the local government areas or parts of local government areas.

**regional plan** means a planning instrument that sets out the matters stated in section 4(b).

**registered premises** means premises registered under section 267.

**registrar** means the person who holds an appointment under section 238(1)(a).

**registrar of titles** means—

- (a) the registrar of titles under the Land Title Act; or
- (b) another person who is responsible for keeping, under another Act, a register of interests in land.

**regulated requirements** see section 16(2).

**relevant document**, for chapter 7, part 4A, see section 275A.

**repealed LGP&E Act** means the repealed *Local Government (Planning and Environment) Act 1990*.

**representation** means written representation.

**representation period** see section 102(3)(d).

**required fee** means—

- (a) for an application or referral to a local government—the fee fixed by resolution of the local government for the application or referral; or
- (b) for an application or appeal to the P&E Court—the fee prescribed under the *Supreme Court of Queensland Act 1991*, section 92(2)(a) for the application or appeal; or
- (c) for an application or appeal to a tribunal—the fee prescribed by regulation for the application or appeal; or
- (d) for an application or referral to another public sector entity or the Minister—the fee prescribed by regulation for the application or referral; or
- (e) for an application to a chosen assessment manager—the fee negotiated between the applicant and the chosen assessment manager for the application.

**response notice** see section 80(4).

**responsible entity**, for a change application, see section 78A.

**road** has the meaning given in the Transport Infrastructure Act, schedule 6, definition road, paragraphs (c) and (d).

**SARA** means that part of the department known as the State Assessment and Referral Agency.

**sending time**, for chapter 7, part 4A, see section 275B(3)(a).

**SEQ Water Act** means the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

**show cause notice** see section 167(2).

**standard conditions**, of a deemed approval, see section 64(8)(c).

**State-controlled road** see the Transport Infrastructure Act, schedule 6.

**State Development Act** means the *State Development and Public Works Organisation Act 1971*.

**State heritage place** see the Heritage Act, schedule.

**State infrastructure** means—

- (a) State schools infrastructure; or
- (b) public transport infrastructure; or
- (c) State-controlled roads infrastructure; or
- (d) emergency services infrastructure; or
- (e) health infrastructure, including hospitals and associated institutions infrastructure; or
- (f) freight rail infrastructure; or
- (g) State urban and rural residential water cycle management infrastructure, including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of water and flood mitigation; or
- (h) justice administration facilities, including court or police facilities.

**State infrastructure provider** means—

- (a) the chief executive; or
- (b) a public sector entity, other than a local government, that provides State infrastructure.

**State interest** means an interest that the Minister considers—

- (a) affects an economic or environmental interest of the State or a part of the State; or
- (b) affects the interest of ensuring this Act's purpose is achieved.

**State-owned or State-controlled transport infrastructure** means transport infrastructure under the Transport Infrastructure Act that the State owns or controls.

**State planning instrument** see section 8(2).

**State planning policy** means a planning instrument that sets out the matters stated in section 4(a).

**State-related condition** see section 146(1).

**subject premises** see section 127(1).

**submission** means a written submission.

**submitter** means—

- (a) for a development application or change application—a person who makes a properly made submission about the application; or
- (b) for a particular submission—the person who made the submission.

**superseded planning scheme** see section 29(2).

**superseded planning scheme application** see section 29(4)(a).

**superseded planning scheme request** see section 29(4).

**temporary State planning policy** see section 12(2).

**tidal works** see the Coastal Act, schedule.

**TLPI (temporary local planning instrument)** means a planning instrument that sets out the matters stated in section 4(d).

**Transport Infrastructure Act** means the *Transport Infrastructure Act 1994*.

**tribunal** means a development tribunal.

***tribunal proceedings*** means proceedings in a tribunal to hear an appeal or an application for a declaration.

***trunk infrastructure***, for a local government, means—

- (a) development infrastructure identified in a LGIP as trunk infrastructure; or
- (b) development infrastructure that, because of a conversion application, becomes trunk infrastructure; or
- (c) development infrastructure that is required to be provided under a condition under section 128(3).

***use***, for premises, includes an ancillary use of the premises.

***variation approval*** means the part of a preliminary approval for premises that varies the effect of any local planning instrument in effect for the premises.

***variation request*** means part of a development application for a preliminary approval for premises that seeks to vary the effect of any local planning instrument in effect for the premises.

***vehicle*** means a vehicle or vessel under the *Transport Operations (Road Use Management) Act 1995*.

***water infrastructure*** see the SEQ Water Act, section 53BB(1).

***works*** includes building work, operational work, plumbing work and drainage work.