Queensland

INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2001

Act No. 100 of 2001

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TABLE OF PROVISIONS

PART 7— AMENDMENT OF WATER ACT 2000

Queensland

Integrated Planning and Other Legislation Amendment Act 2001

Act No. 100 of 2001

An Act to amend legislation about integrated planning, and for other purposes

[Assented to 19 December 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Integrated Planning and Other Legislation Amendment Act 2001*.

2 Commencement

(1) Sections 3 (other than to the extent it relates to the schedule), 4, 19, 62, 86, 88 and part 5 commence on assent.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

(3) The *Acts Interpretation Act 1954*, section 15DA,[1] does not apply to this Act.

PART 2—AMENDMENT OF INTEGRATED PLANNING ACT 1997

3 Act amended in pt 2

This part and the schedule amend the *Integrated Planning Act 1997*.

4 Amendment of s 1.1.2 (Commencement)

Section 1.1.2(2)—

omit.

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1 *Acts Interpretation Act 1954*, section 15DA (Automatic commencement of postponed law)

5 Amendment of s 1.2.3 (What advancing this Act's purpose includes)

Section 1.2.3(2)—

omit, insert—

'**(2)** For subsection (1)(a)(iii), the precautionary principle is the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage.'.

6 Replacement of s 1.3.2 (Meaning of "development")

Section 1.3.2—

omit, insert—

'1.3.2 Meaning of "development"

' **"Development"** is any of the following—

(a) carrying out work;

(b) reconfiguring a lot;

(c) making a material change of use of premises.'.

7 Amendment of s 1.3.4 (Meaning of "lawful use")

(1) Section 1.3.4, heading, at the end—

insert—

'**and "use"** '.

(2) Section 1.3.4—

insert—

'**(2) "Use"**, of premises, includes any ancillary use of the premises.'.

8 Replacement of s 1.3.5 (Definitions for terms used in "development")

Section 1.3.5—

omit, insert—

'1.3.5 Definitions for terms used in "development"

'In this Act—

"lot" means—

(a) a lot under the *Land Title Act 1994*;[2] or

(b) a separate, distinct parcel of land for which an interest is recorded in a register under the *Land Act 1994*; or

(c) common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or

(d) a lot or common property to which the *Building Units and Group Titles Act 1980* continues to apply;[3] or

(e) a community or precinct thoroughfare under the *Mixed Use Development Act 1993*; or

(f) a primary or secondary thoroughfare under the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*.

"material change of use", of premises, means—

(a) the start of a new use of the premises; or

(b) the re-establishment on the premises of a use that has been abandoned; or

(c) a material increase in the intensity or scale of the use of the premises.

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2 *Land Title Act 1994*, schedule 2—

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

(a) the registration of a plan of subdivision; or

(b) the recording of particulars of an instrument;

and includes a lot under the *Building Units and Group Titles Act 1980*.

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

(a) the *Integrated Resort Development Act 1987*;

(b) the *Mixed Use Development Act 1993*;

(c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*;

(d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*;

(e) the *Sanctuary Cove Resort Act 1985*.

"reconfiguring a lot" means—

(a) creating lots by subdividing another lot; or

(b) amalgamating 2 or more lots; or

(c) rearranging the boundaries of a lot by registering a plan of subdivision; or

(d) dividing land into parts by agreement (other than a lease for a term, including renewal options, not exceeding 10 years) rendering different parts of a lot immediately available for separate disposition or separate occupation; or

(e) creating an easement giving access to a lot from a constructed road.

"work"—

1. "Work" includes each of the following—

   (a) building work;

   (b) plumbing work;

   (c) drainage work;

   (d) excavating or filling premises;

   (e) extracting clay, gravel, rock, sand, soil or other material from the place where it occurs naturally or from other premises;

   (f) operations of any kind and all things constructed or installed that allow taking, or interfering with, water (other than using a water truck to pump water) under the *Water Act 2000*;

   (g) subject to item 2(b), placing an advertising device on premises;

   (h) conducting a forest practice;

   (i) clearing vegetation on freehold land.

2. The term does not include—

   (a) clearing vegetation, other than on freehold land; or

   (b) placing a temporary advertising device on premises.'.

9 Replacement of ch 1, pt 4 (Uses and rights)

Chapter 1, part 4—

omit, insert—

‘PART 4—EXISTING USES AND RIGHTS PROTECTED

‘1.4.1 Lawful uses of premises on 30 March 1998

‘To the extent an existing use of premises was lawful immediately before 30 March 1998, the use is taken to be a lawful use under this Act on 30 March 1998.

‘1.4.2 Lawful uses of premises protected

‘**(1)** Subsection (2) applies if immediately before the commencement of a planning instrument or an amendment of a planning instrument the use of premises was a lawful use of the premises.

‘**(2)** Neither the instrument nor the amendment can—

(a) stop the use from continuing; or

(b) further regulate the use; or

(c) require the use to be changed.

‘1.4.3 Lawfully constructed buildings and works protected

‘To the extent a building or other work has been lawfully constructed or effected, neither a planning instrument nor an amendment of a planning instrument can require the building or work to be altered or removed.

‘1.4.4 New planning instruments can not affect existing development approvals

‘**(1)** This section applies if—

(a) a development approval exists for premises; and

(b) after the approval is given, a new planning instrument or an amendment of a planning instrument commences.

'**(2)** To the extent the approval has not lapsed,[4] neither the planning instrument nor the amendment can stop or further regulate the development, or otherwise affect the approval.

'1.4.5 Implied and uncommenced right to use premises protected

'**(1)** Subsection (2) applies if—

(a) a development approval comes into effect for a development application or an approval is given under section 3.7.5; and

(b) when the application was properly made, or the approval was requested, a material change of use, for a use implied by the application, was self-assessable development or exempt development; and

(c) after the application was properly made, or the approval was requested, but before the use started, a new planning instrument, or an amendment of a planning instrument—

(i) declared the material change of use to be assessable development; or

(ii) changed an applicable code for the material change of use.

'**(2)** The use is taken to be a lawful use in existence immediately before the commencement of the new planning instrument or amendment if—

(a) the development, the subject of the approval, is completed within the time stated for completion of the development in—

(i) a permit; or

(ii) this Act; and

(b) the use of the premises starts within 5 years after the completion.

'1.4.6 Strategic port land

'Sections 1.4.1 and 1.4.3 apply to lawful uses of, and buildings and other works lawfully constructed on, strategic port land as if a reference to 30 March 1998 were a reference to 1 December 2000.

4 For when approvals lapse, see section 3.5.25 (When approval lapses).

‘1.4.7 State forests

‘For this Act, each of the following are lawful uses of a State forest—

(a) conservation;

(b) conducting a forest practice;

(c) grazing;

(d) recreation.

‘1.4.8 Sch 8 may still apply to certain development

‘Nothing in this part stops development in relation to a lawful use being assessable or self-assessable development under schedule 8 if the development starts after schedule 8 starts to apply to it.’.

10 Amendment of s 2.1.3 (Key elements of planning schemes)

Section 2.1.3(1)(d) and (e)—

omit, insert—

‘(d) includes a priority infrastructure plan.[5]’.

11 Insertion of new s 2.1.3A

After section 2.1.3—

insert—

‘2.1.3A Core matters for planning schemes

‘**(1)** Each of the following are **“core matters”** for the preparation of a planning scheme—

(a) land use and development;

(b) infrastructure;[6]

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5 For the contents of a priority infrastructure plan, see schedule 10, definition “priority infrastructure plan”.

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

6 The term “infrastructure” is defined in schedule 10 (Dictionary).

(c) valuable features.

'**(2)** In subsection (1)(a)—

"land use and development" includes each of the following—

(a) the location of, and the relationships between, various land uses;

(b) the effects of land use and development;

(c) how mobility between places is facilitated;

(d) accessibility to areas;

(e) development constraints (including, but not limited to, population and demographic impacts).

'**(3)** In subsection (1)(b)—

"infrastructure" includes the extent and location of proposed infrastructure, having regard to existing infrastructure networks, their capacities and thresholds for augmentation.

'**(4)** In subsection (1)(c)—

"valuable features" includes each of the following, whether terrestrial or aquatic—

(a) resources or areas that are of ecological significance (such as habitats, wildlife corridors, buffer zones, places supporting biological diversity or resilience, and features contributing to the quality of air, water (including catchments or recharge areas) and soil);

(b) areas contributing significantly to amenity (such as areas of high scenic value, physical features that form significant visual backdrops or that frame or define places or localities, and attractive built environments);

(c) areas or places of cultural heritage significance (such as areas or places of indigenous cultural significance, or aesthetic, architectural, historical, scientific, social or technological significance, to the present generation or past or future generations);

(d) resources or areas of economic value (such as extractive deposits, fishery resources, forestry resources, water resources, sources of renewable and non-renewable energy and good quality agricultural land).'.

12 Insertion of new s 2.1.7A

After section 2.1.7—

insert—

'2.1.7A When superseded planning scheme may apply

'**(1)** Despite section 2.1.7, a person may ask a local government to apply a superseded planning scheme to premises for—

(a) carrying out particular assessable development that was exempt or self-assessable under the superseded planning scheme; or

(b) assessing and deciding a proposed development application (superseded planning scheme) for particular assessable development.

'**(2)** Subsection (1) applies only if the request is—

(a) in the approved form; and

(b) accompanied by the fee fixed by resolution of the local government; and

(c) made within 2 years after—

(i) the planning scheme, or planning scheme policy, creating the superseded planning scheme was adopted; or

(ii) the amendment creating the superseded planning scheme was adopted.

'**(3)** The local government must keep the request available for inspection and purchase from the time the local government receives the request until the request is decided or subsection (9) applies.

'**(4)** The local government must decide the request within 20 business days after the local government receives the request.

'**(5)** The local government may, by written notice given to the person making the request and without the person's agreement, extend the period mentioned in subsection (4) by not more than 10 business days.

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

'**(7)** In deciding the request, the local government must decide to—

(a) agree to the request; or

(b) refuse the request.

'**(8)** The local government must, within 5 business days after making its decision, give the person written notice of the decision.

'**(9)** If the local government does not decide the request within the period mentioned in subsection (4) or the extended period mentioned in subsection (5), the local government is taken to have agreed to the request.

'**(10)** If a request made under subsection (1)(a) is agreed to, or is taken to have been agreed to,[7] the superseded planning scheme applies for carrying out the development if the development is substantially started within—

(a) if the development is a material change of use—4 years after the person is given, or should have been given, notice of the local government's decision; or

(b) if paragraph (a) does not apply—2 years after the person is given, or should have been given, notice of the local government's decision.'.

13 Replacement of s 2.1.16 (Meaning of "planning scheme policy")

Section 2.1.16—

omit, insert—

'2.1.16 Meaning of "planning scheme policy"

'A **"planning scheme policy"** is an instrument that—

(a) supports the local dimension of a planning scheme by providing guidance about the exercise of discretion under the dimension; and

(b) is made by a local government under this division.[8]'.

14 Amendment of s 2.1.18 (Adopting planning scheme policies in planning schemes)

Section 2.1.18—

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7 If subsection (10) does not apply to a decision about a request, a development application (superseded planning scheme) may be made.

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

insert—

'**(2)** A planning scheme policy must not apply, adopt or incorporate another document prepared by the local government.'.

15 Amendment of s 2.1.23 (Local planning instruments have force of law)

Section 2.1.23(4)—

omit, insert—

'**(4)** A planning scheme policy can not—

(a) declare development to be self-assessable or assessable; or

(b) declare development to be impact or code assessable; or

(c) regulate development on, or the use of, premises by, for example—

(i) including a process about development or use; or

(ii) imposing mandatory rules about development or use; or

(d) regulate an activity not mentioned in paragraph (c).'.

16 Replacement of s 2.1.25 (Covenants not to be inconsistent with planning schemes)

Section 2.1.25—

omit, insert—

'2.1.25 Covenants not to conflict with planning schemes

'Subject to section 3.5.33, a covenant under the *Land Act 1994*, section 373A(4) or the *Land Title Act 1994*, section 97A(3)(a) or (b) is of no effect to the extent it conflicts with a planning scheme—

(a) for the land subject to the covenant; and

(b) in effect when the document creating the covenant is registered.'.

17 Amendment of s 2.2.1 (Local government must review planning scheme every 6 years)

(1) Section 2.2.1, heading, '**6**'—

omit, insert—

'**8**'.

(2) Section 2.2.1(1)(a) and (b), '6'—

omit, insert—

'8'.

18 Replacement of s 2.2.5 (Local government must review benchmark development sequence annually)

Section 2.2.5—

omit, insert—

'2.2.5 Local government must review its priority infrastructure plan every 4 years

'**(1)** Each local government prescribed under a regulation must review its priority infrastructure plan at least once every 4 years.

'**(2)** The review must be conducted in consultation with the State agencies that participated in the preparation of the plan.

'**(3)** However, before consulting with the State agencies, the local government must assess the factors affecting the plan since the last review and advise the agencies of any proposed amendments to the plan.'.

19 Omission of ch 2, pt 2, div 2 (Review by independent reviewer)

Chapter 2, part 2, division 2—

omit.

20 Replacement of s 2.6.1 (Who may designate land)

Section 2.6.1—

omit, insert—

'2.6.1 Who may designate land

'A Minister or a local government (a **"designator"**) may, under this part, designate land for community infrastructure.[9]'.

21 Replacement of s 2.6.5 (How IDAS applies to designated land)

Section 2.6.5—

omit, insert—

‘2.6.5 How IDAS applies to designated land

‘Development under a designation is exempt development, to the extent the development is either, or both, of the following—

(a) self-assessable development or assessable development under a planning scheme;

(b) the reconfiguration of a lot.’.

22 Replacement of ss 2.6.7–2.6.9

Sections 2.6.7 to 2.6.9—

omit, insert—

‘2.6.7 Matters the Minister must consider before designating land

‘**(1)** Before designating land, the Minister must be satisfied that, for the development, the subject of the proposed designation—

(a) adequate environmental assessment has been carried out under section 1.2.3;[10] and

(b) in carrying out environmental assessment under paragraph (a), there was adequate public consultation; and

(c) adequate account has been taken of issues raised during the public consultation.

‘**(2)** The Minister must also consider every properly made submission under subsection (4).

‘**(3)** For subsection (1)(b), adequate consultation has been carried out if—

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

10 See also section 1.2.2 (Advancing Act’s purpose).

(a) the consultation has been carried out in accordance with guidelines made by the chief executive under section 5.8.8 for assessing the impacts of the development; or

(b) the process under chapter 3, part 4, has been completed for a development application for the community infrastructure to which the designation relates; or

(c) the process under chapter 5, part 7A, division 2, has been completed for an EIS for development for the community infrastructure; or

(d) the process under schedule 1, section 12, has been carried out for a planning scheme, or an amendment of a planning scheme, that includes the community infrastructure; or

(e) the coordinator-general has, under the *State Development and Public Works Organisation Act 1971*, section 35,[11] prepared a report evaluating an EIS for development for the community infrastructure; or

(f) the process under the *Environmental Protection Act 1994*, chapter 3, part 1[12] has been completed for an EIS for development for the community infrastructure.

'**(4)** However, if written notice of the proposed designation has not been given to each of the following entities about an action mentioned in subsection (3), the Minister must give written notice of the proposed designation to the entities inviting submissions about the proposed designation—

(a) the owner of any land to which the proposed designation applies;

(b) each local government the Minister is satisfied the designation affects.

'**(5)** A notice given under subsection (4) must give the entities not less than 15 business days to make a submission.

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11 *State Development and Public Works Organisation Act 1971*, section 35 (Coordinator-General evaluates EIS, submissions, other material and prepares report)

12 *Environmental Protection Act 1994*, chapter 3 (Environmental impact statements), part 1 (EIS process)

'2.6.8 Procedures after designation

'**(1)** If the Minister designates land, the Minister must give a notice to—

(a) each owner of the land; and

(b) each local government given a notice under section 2.6.7(4)(b).

'**(2)** The notice must state each of the following—

(a) the designation has been made;

(b) the description of the land;

(c) the type of community infrastructure for which the land has been designated;

(d) any matters mentioned in section 2.6.4 and included as part of the designation.

'**(3)** The Minister must also publish a gazette notice stating the matters mentioned in subsection (2)(a) to (c).

'2.6.9 Procedures if designation does not proceed

'If the Minister decides not to proceed with a proposed designation, the Minister must give a notice, stating that the designation will not proceed, to any person given a notice under section 2.6.8(1).'.

23 Amendment of s 2.6.12 (Designation of land by local governments)

Section 2.6.12(1), 'including'—

omit, insert—

'using the process stated in schedule 1 to include'.

24 Amendment of s 2.6.15 (When designations do not cease)

(1) Section 2.6.15(1)(a), after 'owns'—

insert—

', or has a public utility easement over,'.

(2) Section 2.6.15(1)(b), after 'owns'—

insert—

', or has a public utility easement, for the same purpose as the designation, over,'.

25 Replacement of s 2.6.19 (Request to acquire designated land under hardship)

Section 2.6.19—

omit, insert—

'2.6.19 Request to acquire designated land under hardship

'**(1)** Subsection (3) applies if the owner of an interest in designated land (the **"designated interest"**) is suffering hardship because of the designation.

'**(2)** However, subsection (3) does not apply if—

(a) the designated land is land—

(i) over which there is an existing public utility easement; or

(ii) for which a process has started under the *Acquisition of Land Act 1967* to acquire a public utility easement; and

(b) the designation is for community infrastructure for which the easement exists or is being acquired.

'**(3)** The owner may ask the designator to buy—

(a) the designated interest; or

(b) if the owner has an interest in adjoining land and retaining the interest without the designated interest would also cause the owner hardship—the designated interest and the interest in the adjoining land.

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

(a) grant the request; or

(b) take other action under section 2.6.21; or

(c) refuse the request.

'**(5)** In deciding whether or not the owner is suffering hardship, the designator must consider each of the following—

(a) whether the owner must sell an interest mentioned in subsection (3)(a) or (b) without delay for personal reasons, including to avoid loss of income, and has tried unsuccessfully to sell the interest at a fair market value (disregarding the designation);

(b) whether the owner has a genuine intent to develop the interest, but development approval has been, or is likely to be, refused because of the designation;

(c) the extent to which development would be viable because of the designation if the owner exercised rights conferred under any development approval.

'**(6)** In this section—

"adjoining land" means land—

(a) adjoining designated land; and

(b) in which the owner of the designated land has an interest.'.

26 Replacement of s 2.6.25 (Ministers may delegate certain administrative powers about designations)

Section 2.6.25—

omit, insert—

'2.6.25 Ministers may delegate certain administrative powers about designations

'A Minister may delegate the Minister's powers under sections 2.6.8, 2.6.9 and 2.6.20 to 2.6.23 to—

(a) the chief executive or a senior executive of any department for which the Minister has responsibility; or

(b) the chief executive officer of a public sector entity.'.

27 Replacement of ch 3 (Integrated development assessment system (IDAS))

Chapter 3—

omit, insert—

‘CHAPTER 3—INTEGRATED DEVELOPMENT ASSESSMENT SYSTEM (IDAS)

‘PART 1—PRELIMINARY

‘3.1.1 What is IDAS

‘ **“IDAS”** is the system detailed in this chapter for integrating assessment and approval processes for development.

‘3.1.2 Development under this Act

‘**(1)** Under this Act, all development is exempt development unless it is assessable development or self-assessable development.[13]

‘**(2)** Development may also be compliant development requiring compliance assessment.

‘**(3)** Schedule 9 identifies development that is exempt development for a planning scheme or a temporary local planning instrument.

‘**(4)** To the extent a planning scheme or temporary local planning instrument is inconsistent with schedule 8 or 9, the scheme or instrument is of no effect.

‘3.1.3 Code and impact assessment for assessable development

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

‘**(2)** However—

(a) if the regulation requires code assessment for development, a planning scheme or temporary local planning instrument can not require impact assessment for the development; and

(b) to the extent the scheme or instrument is inconsistent with the regulation, the scheme or instrument is of no effect.

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

'**(3)** Subsection (2) applies whether the regulation was made before or after the commencement of the scheme or instrument.

'3.1.4 When is a development permit necessary

'A development permit is necessary only for assessable development.[14]

'3.1.5 Approvals under this Act

'**(1)** A **"preliminary approval"** approves development—

(a) to the extent stated in the approval; and

(b) subject to the conditions in the approval.

'**(2)** However—

(a) a preliminary approval does not authorise assessable development to be carried out; and

(b) there is no requirement to get a preliminary approval for development.[15]

'**(3)** A **"development permit"** authorises assessable development to be carried out to the extent stated in the permit, subject to—

(a) the conditions of the permit; and

(b) any preliminary approval relating to the development the permit authorises, including any conditions of the preliminary approval; and

(c) any requirements, stated under a regulation or a condition of the permit, for assessment under part 7.

'**(4)** A **"compliance permit"** authorises compliant development to be carried out—

(a) to the extent stated in the permit; and

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

15 Preliminary approvals assist in the assessment of conceptual development proposals and in the staging of approvals.

(b) subject to any conditions for achieving compliance that are noted on, or attached to, the documents or plans the subject of the compliance assessment.

'**(5)** A **"compliance certificate"** approves documents, plans or works to the extent stated in the certificate, subject to—

(a) for documents or plans—any conditions for achieving compliance that are noted on, or attached to, the documents or plans; or

(b) for works—any written instructions given by the compliance assessor for achieving compliance.

'3.1.6 Preliminary approval may override a local planning instrument

'**(1)** This section applies if—

(a) an applicant applies for a preliminary approval; and

(b) part of the application states the way in which the applicant seeks the approval to vary the effect of any local planning instrument for the land.

'**(2)** Subsection (3) applies to the extent the application is for—

(a) development that is a material change of use; and

(b) the part mentioned in subsection (1)(b).

'**(3)** If the preliminary approval approves the material change of use, the preliminary approval may, in addition to the things an approval may do under chapter 3, part 5, do either or both of the following for development relating to the material change of use—

(a) state that the development is—

(i) assessable development (requiring code or impact assessment); or

(ii) self-assessable development; or

(iii) exempt development; or

(iv) compliant development;

(b) identify any codes for the development.

'**(4)** Subsection (5) applies to the extent the application is for—

(a) development other than a material change of use; and

(b) the part mentioned in subsection (1)(b).

'**(5)** If the preliminary approval approves the development, the preliminary approval may, in addition to the things an approval may do under chapter 3, part 5, do either or both of the following for the development—

(a) state that the development is—

(i) assessable development (requiring code or impact assessment); or

(ii) self-assessable development; or

(iii) exempt development; or

(iv) development requiring assessment for compliance with a code identified in the application;

(b) identify codes for the development.

'**(6)** To the extent the preliminary approval, by doing either or both of the things mentioned in subsection (3) or (5), is contrary to the local planning instrument, the approval prevails.

'**(7)** However, subsection (3) or (5) no longer applies to development mentioned in subsection (3)(a) or (5)(a) when the first of the following happens—

(a) the development approved by the preliminary approval and authorised by a later development permit is completed;

(b) any time limit for completing the development ends.[16]

'**(8)** To the extent the preliminary approval is inconsistent with schedule 8 or 9, the preliminary approval is of no effect.

'3.1.7 Assessment manager for development applications

'**(1)** The **"assessment manager"**, for a development application, is—

(a) subject to subsections (4) to (7), if the development is wholly within a local government's area—the local government, unless a different entity is prescribed under a regulation; or

16 See section 3.5.30(1)(c) (Conditions generally).

(b) if paragraph (a) does not apply—

(i) the entity prescribed under a regulation; or

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

'**(2)** However, instead of making a decision under subsection (1)(b)(ii), the Minister may decide that the application, for which a decision under subsection (1)(b)(ii) would normally be made, be split into 2 or more applications.

'**(3)** If the entity prescribed or decided under subsection (1)(b) is a local government, the local government, in addition to its jurisdiction under the *Local Government Act 1993*, section 25, has the jurisdiction to assess and decide the application.

'**(4)** Subsection (5) applies instead of subsection (1)(a) if—

(a) the development is not assessable development under a planning scheme; and

(b) no alternative assessment manager is prescribed under a regulation for the development; and

(c) there is only 1 concurrence agency.

'**(5)** The person who would have been the concurrence agency is the **"assessment manager"** and there is taken to be no concurrence agency.

'**(6)** Subsection (7) applies instead of subsection (1)(a) if—

(a) for an aspect of development, a concurrence agency, under section 3.3.20(1), tells an assessment manager that approval for the aspect must be a preliminary approval only; and

(b) the preliminary approval does not state that the assessment manager wishes to be the assessment manager for a development permit for the aspect; and

(c) the application for the development permit is only for the aspect of development for which the preliminary approval was given.

'**(7)** There is no concurrence agency for the development permit and the person who would have been the concurrence agency is the **"assessment manager"**.

'**(8)** The assessment manager administers applications.

‘3.1.8 Referral agencies for development applications

‘A referral agency has, for assessing and responding to the part of a development application giving rise to the referral, the jurisdiction prescribed under a regulation.

‘3.1.9 Compliance assessor for requests for compliance assessment

‘**(1)** The **“compliance assessor”**, for a request for compliance assessment, is the entity prescribed under a regulation.

‘**(2)** The compliance assessor administers the compliance assessment process under part 7.

‘3.1.10 Codes under legislation

‘**(1)** A regulation under this or another Act, or a State planning policy, may identify a code, or a part of a code, as a code, or a part of a code that, for a stated effect—

(a) can not be added to or changed by a local planning instrument (a **“complete code”**); or

(b) can be added to but not otherwise changed by a local planning instrument (a **“partial code”**); or

(c) can be changed by a local planning instrument (a **“variable code”**).

‘**(2)** A code, or part of a code, not identified in a way stated in subsection (1) is taken to be a code, or part of a code, to which subsection (1)(c) applies.

‘**(3)** To the extent a local planning instrument is inconsistent with a complete code, the local planning instrument is of no effect.

‘**(4)** To the extent a local planning instrument is inconsistent with a partial code because it has purported to change the code other than by adding to the code for its stated effect, the local planning instrument is of no effect.

‘**(5)** Also, the regulation may identify a code, or part of a code, as a code or part of a code, that has no effect until a planning scheme is amended to apply the code (an **“adoptable code”**).

‘3.1.11 Self-assessable development and codes

‘Self-assessable development must comply with applicable codes.[17]

‘3.1.12 Exempt development and codes or planning instruments

‘Subject to part 7, exempt development need not comply with applicable codes or planning instruments.

‘3.1.13 Stages of IDAS

‘**(1)** IDAS involves the following possible stages—

- application stage[18]
- information and referral stage[19]
- notification stage[20]
- decision stage[21]
- compliance stage.[22]

‘**(2)** For assessable development—

(a) not all stages or all parts of a stage apply to all applications; but

(b) the application and decision stages always apply.

‘**(3)** For compliant development, the compliance stage applies.

‘3.1.14 Native Title Act (Cwlth)

‘**(1)** Subsections (2) and (3) apply if an assessment manager takes action under the *Native Title Act 1993* (Cwlth), section 24HA or 24KA.

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

18 See part 2.

19 See part 3.

20 See part 4.

21 See part 5.

22 See part 7.

'**(2)** If the assessment manager takes the action before the decision stage starts, the decision stage does not start until the action is completed.

'**(3)** If the assessment manager takes the action after the decision stage has started, the decision stage stops the day after the action is taken and starts again the day after the action is completed.

'PART 2—APPLICATION STAGE

'Division 1—Application process

'3.2.1 Applying for development approval

'**(1)** Each application must be made to the assessment manager.[23]

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

'**(3)** The approved form—

(a) must contain a mandatory requirements part including a requirement for an accurate description of the land; and

(b) must contain, or be supported by, the written consent of the owner of the land to the making of the application if the application is for—

(i) a material change of use of premises or a reconfiguration of a lot; or

(ii) works on land below high water mark and outside a canal as defined under the *Coastal Protection and Management Act 1995*; or

(iii) works on rail corridor land as defined under the *Transport Infrastructure Act 1994*; and

(c) may contain a supporting information part.

'**(4)** Each application must be accompanied by the fee—

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

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

(b) if the assessment manager is another public sector entity—prescribed under a regulation under this or another Act.

'**(5)** To the extent the development involves taking, or interfering with, a State resource prescribed under a regulation, the regulation may require the application to be supported by 1 or more of the following prescribed under the regulation for the development—

(a) evidence of an allocation of, or an entitlement to, the resource;

(b) evidence the chief executive of the department administering the resource is satisfied the development is consistent with an allocation of, or an entitlement to, the resource;

(c) evidence the chief executive of the department administering the resource is satisfied the development application may proceed in the absence of an allocation of, or an entitlement to, the resource.

'**(6)** Subsection (3)(b) does not apply for an application to the extent—

(a) subsection (5) applies; or

(b) another Act requires the application to be supported by 1 or more of the things mentioned in subsection (5)(a) to (c).

'**(7)** An application is a **"properly made application"** if—

(a) the application is made to the assessment manager; and

(b) the application is made in the approved form; and

(c) the mandatory requirements part of the approved form is correctly completed; and

(d) the application is accompanied by the fee for administering the application; and

(e) if subsection (6) applies—the application is supported by the evidence required under subsection (5).

'**(8)** Subject to the requirements of the approved form, the application may describe the development to any degree of specificity.

'**(9)** For subsection (5), interfering with a State resource includes carrying out development on land other than freehold land.

'3.2.2 Applications for works involving material change of use

'**(1)** Subsection (2) applies if—

(a) at the time an application is made a work, the subject of an application, may not be used unless a development permit exists for the material change of use of premises for which the work is proposed; and

(b) there is no development permit for the material change of use; and

(c) approval for the material change of use has not been applied for in the application or in a separate application.

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

'3.2.3 Non-acceptance notices

'**(1)** If an application is not properly made, the assessment manager must give the applicant a notice (a **"non-acceptance notice"**) stating—

(a) the application is not properly made; and

(b) the reasons why the application is not properly made.

'**(2)** The notice must be given within 10 business days after the assessment manager receives the application.

'**(3)** If the applicant does not, within 20 business days after receiving the notice or any extended period the assessment manager may allow under section 3.2.7(5), change the application in response to the notice—

(a) the application lapses; and

(b) the assessment manager must return the application and refund any application fee paid, less a reasonable fee for processing the application.

'**(4)** However, subsection (1) does not apply if—

(a) the development involves taking or interfering with, including carrying out development on land other than freehold land and freeholding lease under the *Land Act 1994,* a resource of the State; and

(b) the assessment manager is the same entity that administers the resource; and

(c) the only reason the application is not a properly made application is that it is not supported by—

(i) the written consent of the entity administering the resource; or

(ii) the evidence mentioned in section 3.2.1(5).

'3.2.4 When applications must be endorsed as accepted

'The assessment manager must, within 10 business days after an application is properly made, give the applicant a copy of the application, endorsed as being accepted, if—

(a) there are 1 or more referral agencies; or

(b) the application requires referral coordination; or

(c) at the time the application is made, the applicant asks the assessment manager for a copy of the application endorsed as being accepted.

'Division 2—General matters about applications

'3.2.5 Additional third party advice or comment

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

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

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

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

'3.2.6 Public scrutiny of applications and related material

'**(1)** The assessment manager must keep, for each application, the following documents available for inspection and purchase—

(a) the application, including any supporting material;

(b) any information request;

(c) any properly made submission;

(d) any referral agency response.

'**(2)** The documents mentioned in subsection (1) must be kept available for inspection and purchase from the time the assessment manager receives the application until—

(a) the application is withdrawn or lapses; or

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

'**(3)** Subsection (1) does not apply to supporting material to the extent the assessment manager is satisfied the material contains sensitive security information.

'**(4)** Also, the assessment manager may remove the name, address and signature of each person who made a submission before making the submission available for inspection and purchase.

'3.2.7 Changing an application (generally)

'**(1)** The applicant may, by giving written notice to the assessment manager, change the application before it is decided.

'**(2)** For subsection (1), a change—

(a) includes the giving of a response under section 3.3.10(1)(a) or 3.3.10(3)(a); but

(b) for a properly made application—does not include a change that, if the application were remade including the change, would cause the application to be not properly made.

'**(3)** Subject to section 3.2.3, the notice must be accompanied by the fee—

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

(b) if the assessment manager is another public sector entity—prescribed under a regulation under this or another Act.

'**(4)** No additional fee is payable for changing an application if the change is—

(a) only in response to a non-acceptance notice; and

(b) made within 20 business days after receiving the non-acceptance notice.

'**(5)** The assessment manager may extend the period mentioned in subsection (4)(b).

'3.2.8 Changing an application (that does not stop IDAS)

'**(1)** The IDAS process does not stop, merely because 1 or more of the following happens—

(a) the notice about the change under section 3.2.7(1) is given before the end of the application stage;

(b) the change is for giving more or better particulars about the application;[24]

(c) the change only reduces the scale or intensity of an aspect of the development;

(d) the change only removes an aspect of the development;

(e) the assessment manager and any concurrence agency gives the applicant a written notice stating that the entity is satisfied the change is insignificant;

(f) the change corrects a mistake in, or omission from, the application about the name or address of the applicant or owner;

(g) the change corrects a mistake or omission about the property details of the land.

'**(2)** However—

(a) subsection (1) does not apply if—

(i) the change has the effect of adding referral agencies; or

(ii) the original application involved only code assessment but the changed application involves impact assessment; and

24 However, see section 3.4.5(1) (When the notification stage must be restarted).

(b) subsection (1)(g) does not apply unless the assessment manager and any concurrence agency give the applicant a written notice stating the entity is satisfied the change would not adversely affect the ability of a person to assess the changed application.

'**(3)** If subsection (1)(b) to (g) applies, the applicant must give written notice of the change to any referral agency.

'3.2.9 Changing an application (that restarts IDAS for part of the application)

'**(1)** Subsections (2) and (3) apply if—

(a) a change under section 3.2.7 only corrects an omission from an application about a referral to a referral agency; and

(b) the omission is not discovered until after the application stage would have ended if the application had been properly made; and

(c) the application, but for the omission, would have been a properly made application.

'**(2)** For the aspect of the application about the omitted referral agency, the IDAS process starts again from the beginning of the information and referral stage.

'**(3)** Despite section 3.2.1(7), for all other purposes, the application is taken to be a properly made application.

'3.2.10 Changing an application (that restarts IDAS completely)

'**(1)** This section applies for a change to which sections 3.2.8 and 3.2.9 do not apply.

'**(2)** The applicant must—

(a) give the assessment manager details of the change; and

(b) advise any referral agency of the change; and

(c) if the application requires referral coordination—advise the chief executive of the change.

'**(3)** For the application, the IDAS process—

(a) stops the day the notice of the change is received by the assessment manager; and

(b) starts again from the start of the information and referral stage.[25]

'**(4)** Section 3.2.1(5) and (9) apply to the notice as if the notice were a development application.

'3.2.11 Withdrawing an application

'**(1)** An applicant may withdraw an application by giving written notice of the withdrawal to—

(a) the assessment manager; and

(b) any referral agency; and

(c) if the application requires referral coordination—the chief executive.

'**(2)** If within 1 year of withdrawing the application, the applicant makes a later application that is not substantially different from the withdrawn application, any properly made submission about the withdrawn application is taken to be a properly made submission about the later application.

'3.2.12 Refunding fees

'**(1)** Subject to section 3.2.3, an assessment manager may refund all or part of the fee paid under section 3.2.1(4).

'**(2)** A concurrence agency may refund all or part of the fee paid under section 3.3.5(1).

'Division 3—End of application stage

'3.2.13 When does application stage end

'**(1)** The application stage ends when the application is properly made.

'**(2)** An application that is not properly made stays in the application stage until it is properly made or lapses under section 3.2.3(3).

25 However, see section 3.4.5 (When the notification stage must be restarted).

‘PART 3—INFORMATION AND REFERRAL STAGE

‘Division 1—Preliminary

‘3.3.1 Purpose of information and referral stage

‘**(1)** The information and referral stage, for an application, gives—

(a) if the application does not require referral coordination—the assessment manager and any concurrence agency the opportunity to ask the applicant for further information needed to assess the application; or

(b) if the application requires referral coordination—the chief executive the opportunity to—

(i) ask the applicant for further information needed to assess the application; and

(ii) nominate additional advice agencies.

‘**(2)** The information and referral stage, for an application, also gives—

(a) any concurrence agency the opportunity to exercise its concurrence powers; and

(b) the assessment manager the opportunity to receive advice about the application from referral agencies.

‘3.3.2 When information and referral stage applies

‘The information and referral stage applies to an application if—

(a) the assessment manager gives the applicant an information request under section 3.3.8; or

(b) there are 1 or more referral agencies; or

(c) referral coordination is required.

‘3.3.3 When can information and referral stage start

‘If the information and referral stage applies to an application, the stage starts immediately the application stage ends.

'3.3.4 Referral agency responses before application is made

'**(1)** Nothing in this Act stops a referral agency from giving a referral agency response on a matter within its jurisdiction about a development before an application for the development is made to the assessment manager.

'**(2)** However—

(a) a referral agency is not obliged to give a referral agency response mentioned in subsection (1) before the application is made; and

(b) if the development is development requiring referral coordination, a statement in the referral agency response that the agency does not require a referral under section 3.3.5(4)(b)(i) is of no effect.

'Division 2—Information requests

'3.3.5 Applicant gives material to referral agency

'**(1)** The applicant must give each referral agency—

(a) a copy of the application, endorsed as accepted, unless the referral agency was the entity that endorsed the application; and

(b) if the referral agency is a concurrence agency—

(i) whose functions have not been devolved or delegated to a local government—the fee prescribed under a regulation under this or another Act; or

(ii) whose functions have been devolved or delegated to a local government—the fee that is, by resolution, fixed by the local government.

'**(2)** The things mentioned in subsection (1)(a) and (b) must be given to all referral agencies—

(a) at about the same time; and

(b) within 3 months after the applicant is given a copy of the application endorsed by the assessment manager as being accepted under section 3.2.4.

'**(3)** If the applicant does not comply with subsection (2)(b), the application lapses.

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

(a) the applicant gave the assessment manager a copy of the referral agency's response mentioned in section 3.3.4(1) with the application; and

(b) the referral agency's response states that—

(i) the agency does not require a referral under this section; or

(ii) the agency does not require a referral under this section if any conditions (including a time limit within which the application must be made) stated in the response are satisfied; and

(c) the statement is not stopped from having effect under section 3.3.4(2)(b), and any conditions mentioned in paragraph (b)(ii) are satisfied.

'**(5)** The assessment manager may, on behalf of the applicant and with the applicant's agreement, comply with subsection (1) for a fee.

'**(6)** To the extent the functions of a referral agency in relation to the application have been lawfully devolved or delegated to the assessment manager, subsections (1) to (5) (other than subsection (1)(b)) do not apply.

'**(7)** In this section—

"referral agency" does not include a referral agency nominated by the chief executive in an information request.

'3.3.6 Applicant advises assessment manager

'**(1)** After complying with section 3.3.5, the applicant must give the assessment manager written notice of—

(a) the day the applicant gave each referral agency the things mentioned in section 3.3.5(1)(a) and (b); and

(b) if referral coordination is required—the day the applicant complied with section 3.3.7(3).

'**(2)** Subsection (1)(a) does not apply to the extent a referral agency's functions have been lawfully devolved or delegated to the entity that is the assessment manager.

‘3.3.7 Referral coordination

‘**(1)** The information requests for an application require coordination (**“referral coordination”**) by the chief executive if either or both of the following apply—

(a) there are 3 or more concurrence agencies;

(b) all or part of the development—

(i) is assessable under a planning scheme; and

(iii) is prescribed under a regulation.

‘**(2)** However, subsection (1)(b) does not apply if the assessment manager gives the applicant written notice that the development—

(a) is minor; and

(b) would, in the assessment manager’s opinion, be unlikely to have significant effects on the environment.

‘**(3)** If referral coordination is required, the applicant must, within 3 months after the applicant is given a copy of the application endorsed by the assessment manager as being accepted under section 3.2.4, give the chief executive—

(a) a copy of the application, endorsed as accepted; and

(b) the fee prescribed under a regulation; and

(c) written notice of the day the applicant complied with section 3.3.5(1) for each referral agency, other than an advice agency nominated by the chief executive in an information request.

‘**(4)** If the applicant does not comply with subsection (3), the application lapses.

‘**(5)** If a concurrence agency’s functions have been lawfully devolved or delegated to the entity that is the assessment manager, the entity is not counted as a concurrence agency for subsection (1)(a).

‘3.3.8 Information requests to applicant (generally)

‘**(1)** This section does not apply if referral coordination is required.

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

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

'**(4)** If the assessment manager makes the request, the request must be made—

(a) for an application requiring only code assessment—within 10 business days after the start of the information and referral stage (the **"information request period"**); or

(b) if paragraph (a) does not apply—within 20 business days after the start of the information and referral stage (also the **"information request period"**).

'**(5)** If a referral agency makes the request, the request must be made within 10 business days after the agency's referral day (also the **"information request period"**).

'**(6)** If an information request is made by a referral agency, the referral agency must—

(a) give the assessment manager a copy of the request; and

(b) advise the assessment manager of the day the request was made.

'**(7)** The assessment manager or referral agency may, by written notice given to the applicant and without the applicant's agreement, extend the information request period by not more than 10 business days.

'**(8)** Only 1 notice may be given by each entity under subsection (7) and the notice must be given before the entity's information request period ends.

'**(9)** The information request period may be further extended if the applicant, before the period ends, gives written agreement to the extension.

'**(10)** If the information request period is extended for a referral agency, the referral agency must advise the assessment manager of the extension.

'3.3.9 Information requests to applicant (referral coordination)

'**(1)** This section applies if referral coordination is required.

'**(2)** The chief executive may, after consulting the assessment manager, each referral agency and any entity the chief executive intends to nominate as an advice agency—

(a) by written request (an **"information request"**) ask the applicant to give further information needed to assess the application; or

(b) by written notice advise the applicant, the assessment manager and each referral agency that an information request will not be made under this section.

'**(3)** The chief executive must take action under subsection (2)(a) or (b) within 20 business days after the chief executive receives the notice mentioned in section 3.3.7(3)(c) (the **"information request period"**).

'**(4)** If the chief executive gives an information request under subsection (2)(a), the chief executive must give the assessment manager and each referral agency a copy of the information request.

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

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

'**(7)** The information request period may be further extended if the applicant, before the information request period ends, gives written agreement to the extension.

'**(8)** If the chief executive extends the information request period, the chief executive must advise the assessment manager and each referral agency of the extension.

'3.3.10 Applicant responds to any information request

'**(1)** If the applicant receives an information request from the assessment manager or a referral agency (the **"requesting authority"**), the applicant must respond by giving the requesting authority—

(a) all or part of the information requested together with a notice—

(i) stating whether the applicant does or does not believe the applicant has given all the information requested; and

(ii) asking the requesting authority to proceed with the assessment of the application; or

(b) a notice—

(i) stating that the applicant does not intend to supply any of the information requested; and

(ii) asking the requesting authority to proceed with the assessment of the application.

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

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

(a) all or part of the information requested together with a notice—

(i) stating whether the applicant does or does not believe the applicant has given all the information requested; and

(ii) asking the assessment manager and referral agency to proceed with the assessment of the application; or

(b) a notice—

(i) stating that the applicant does not intend to supply any of the information requested; and

(ii) asking the assessment manager and each referral agency to proceed with the assessment of the application.

'**(4)** The application lapses if the applicant does not, for an information request, comply with the relevant requirements of this section within 6 months, or the longer period stated in the information request, after the applicant received the request.

'**(5)** A requesting authority may extend the period in which the applicant must respond to the authority's information request by giving the applicant written notice of the extension before the period ends.

'3.3.11 Referral agency advises assessment manager of response

'Each referral agency must, after receiving the applicant's response, advise the assessment manager of the day of the applicant's response under section 3.3.10.

'Division 3—Referral assistance

'3.3.12 When referral assistance may be requested

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

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

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

(b) the request is in conflict with another information request.

'3.3.13 Chief executive acknowledges receipt of referral assistance request

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

(a) the applicant; and

(b) if the request involves the assessment manager—the assessment manager; and

(c) if the request involves a referral agency—the referral agency.

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

'3.3.14 Chief executive may change information request

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

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

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

'3.3.15 Applicant may withdraw request for referral assistance

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

'Division 4—Referral agency assessment

'3.3.16 Referral agency assessment period

'**(1)** The period a referral agency has to assess the application (the **"referral agency's assessment period")** is—

(a) if chapter 5, part 7A applies—20 business days from the day the chief executive gives the referral agency documents under section 5.7A.13;[26] or

(b) if paragraph (a) does not apply—20 business days from the end of the referral agency's information period.

'**(2)** A concurrence agency may extend its referral agency's assessment period by not more than 20 business days—

(a) by giving the applicant written notice of the extension before the referral agency's assessment period ends; and

(b) without the applicant's agreement.

'**(3)** However, with the written agreement of the applicant before a referral agency's assessment period ends, the referral agency may extend its referral agency's assessment period for any period.

'**(4)** If the referral agency's assessment period is extended, the agency must give the assessment manager written notice of the extension.

26 Section 5.7A.13 (Who the chief executive must give EIS and other material to)

'3.3.17 Referral agency assesses application

'**(1)** Each referral agency must, within the limits of its jurisdiction, assess the part of the application to which the referral agency's jurisdiction relates—

(a) against the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the referral agency; and

(b) having regard to—

(i) any planning scheme in force, when the application was made, for the planning scheme area; and

(ii) any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme;[27] and

(iii) if the land to which the application relates is designated land—its designation; and

(c) for a concurrence agency—against any applicable concurrence agency code.

'**(2)** Despite subsection (1), a referral agency may give the weight it considers appropriate to any laws, planning schemes, policies and codes, of the type mentioned in subsection (1), coming into effect after the application was made, but before the agency's referral day.

'3.3.18 Referral agency's response

'**(1)** If a concurrence agency wishes to give a response to the assessment manager (a **"referral agency's response"**) under section 3.3.20, the concurrence agency must give—

(a) the response during the referral agency's assessment period; and

(b) a copy of the response to the applicant.

'**(2)** If an advice agency wishes to give a response to the assessment manager (also a **"referral agency's response"**) under section 3.3.21, the advice agency must give—

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

(a) the response during the referral agency's assessment period; and

(b) a copy of the response to the applicant.

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

'3.3.19 How a concurrence agency may change its response

'**(1)** Despite section 3.3.18(1), a concurrence agency may, after the end of the assessment period but before the application is decided, give a response or amend its response.

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

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

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

(b) to the applicant—a copy of the response or the amended response.

'3.3.20 Concurrence agency's response powers

'**(1)** A concurrence agency's response may state, within the limits of its jurisdiction, 1 or more of the following—

(a) the conditions that must attach to any development approval;

(b) that a stated part of the application must not be approved;

(c) a shorter currency period must apply for any development approval;

(d) that any approval must be a preliminary approval only.

'**(2)** Alternatively, a concurrence agency's response must state, within the limits of its jurisdiction—

(a) it has no concurrence agency requirements; or

(b) that the application must be refused.

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

'**(4)** For the application, or the part of the application not approved, a concurrence agency may only act under subsection (1)(b) or (2)(b) if the concurrence agency is satisfied—

(a) the development does not comply with a law, policy or code mentioned in section 3.3.17(1)(a) or (c); and

(b) compliance with the law, policy or code can not be achieved by imposing conditions.

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

(a) subsection (4) does not apply; and

(b) the concurrence agency may only act under subsection (1)(b) or (2)(b) if the concurrence agency is satisfied—

(i) the development, or part of the development, would compromise the intent of the designation; and

(ii) the intent of the designation could not be achieved by imposing conditions on the development approval.

'**(6)** To the extent a concurrence agency's jurisdiction is about additional costs for supplying State infrastructure for development, the agency can not act under subsection (1)(b) or (2)(b).

'**(7)** If a concurrence agency acts under subsection (1)(b) or (2)(b), the concurrence agency's response must include reasons for the concurrence agency's actions.

'**(8)** For section 1.2.3(1)(a)(iii), if a concurrence agency considers the applicant has not given the concurrence agency sufficient information to properly respond, the concurrence agency, in telling the assessment manager to take an action under subsection (1) or (2), must have regard to the precautionary principle.

'3.3.21 Advice agency's response powers

'**(1)** An advice agency's response may, within the limits of its jurisdiction, recommend to the assessment manager 1 or more of the following—

(a) the conditions that should attach to any development approval;

(b) that any approval should be for part only of the application;

(c) the currency period that should be stated, for section 3.5.25, for the development approval;

(d) that any approval should be a preliminary approval only.

'**(2)** Alternatively, an advice agency's response may, within the limits of its jurisdiction, advise the assessment manager—

(a) it has no advice agency recommendations; or

(b) it should refuse the application.

'**(3)** An advice agency's response may also do either or both of the following—

(a) offer other advice to the assessment manager about the application;

(b) tell the assessment manager to treat the response as a properly made submission.

'3.3.22 When does information and referral stage end

'**(1)** If there are no referral agencies but referral coordination is required or the assessment manager makes an information request, the information and referral stage ends when the assessment manager's information period ends.[28]

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

(a) the assessment manager receives the notice from the applicant under section 3.3.6;[29] and

(b) the assessment manager's information period ends; and

(c) all referral agency responses have been received by the assessment manager or, if all the responses have not been received, all referral agency assessment periods have ended.

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28 If there are no referral agencies, no referral coordination, and the assessment manager does not make an information request, the information and referral stage does not apply. See section 3.3.2.

29 See section 3.3.6 (Applicant advises assessment manager).

‘PART 4—NOTIFICATION STAGE

‘Division 1—Preliminary

‘3.4.1 Purpose of notification stage

‘The notification stage gives a person—

(a) the opportunity to make submissions, including objections, that must be taken into account before an application is decided; and

(b) the opportunity to secure the right to appeal to the court about the assessment manager’s decision.

‘3.4.2 When the notification stage applies

‘**(1)** The notification stage applies to an application if either of the following applies—

(a) any part of the application requires impact assessment;

(b) the application is an application to which section 3.1.6 applies.

‘**(2)** Subsection (1) applies even if—

(a) code assessment is required for another part of the application; or

(b) a concurrence agency advises the assessment manager it requires the application to be refused.

‘**(3)** However, subsection (1)(b) does not apply if—

(a) a preliminary approval to which section 3.1.6 applies has been given for land; and

(b) the application—

(i) does not seek to change the type of assessment for the development; or

(ii) seeks only to change development requiring code assessment to self-assessable development or development requiring assessment for compliance with codes; and

(c) a code proposed as part of the application is substantially consistent with a code in the preliminary approval.

‘3.4.3 When can the notification stage start

‘The applicant may start the notification stage any time after 2 business days after the application stage ends.

‘3.4.4 When the application lapses if notification stage not started

‘The application lapses if the notification stage is not started within 3 months after—

(a) if the information and referral stage does not apply—the application stage ends; or

(b) if the information and referral stage applies—the information and referral stage ends.

‘3.4.5 When the notification stage must be restarted

‘**(1)** The applicant must start the notification stage again if—

(a) the applicant has started the stage; and

(b) the applicant changes the application; and

(c) the change is a change mentioned in section 3.2.8(1)(a) or (b) or 3.2.10.

‘**(2)** Subsection (1) applies, whether or not the applicant has completed the notification stage.

‘**(3)** However, subsection (1) does not apply if—

(a) the notification stage for the original application had been completed when notice of the change is received; and

(b) the assessment manager states in writing it is satisfied the change to the application, if the notification stage were to apply to the change, would not cause a person to make a substantial submission on reasonable grounds to the thing comprising the change.

‘**(4)** Also, the restarting does not affect the application stage or the information and referral stage.[30]

30 See section 3.5.1(2) (When does the decision stage start).

'Division 2—Public notification

'3.4.6 Public notice of applications to be given

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

(a) publish a notice at least once in a newspaper circulating generally in the locality of the land; and

(b) place a notice on the land in the way prescribed under a regulation; and

(c) give a notice to the owners of all land adjoining the land.

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

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

'**(4)** For subsection (1)(c), roads and land below high-water mark are taken not to be adjoining land.

'**(5)** In this section—

"owner", for land adjoining the land the subject of the application, means[31]—

(a) if the adjoining land is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—the primary thoroughfare body corporate; or

(b) if the adjoining land is subject to the *Mixed Use Development Act 1993*—the community body corporate; or

(c) if the adjoining land is subject to the *Building Units and Group Titles Act 1980*—the body corporate; or

(d) if the adjoining land is, under the *Body Corporate and Community Management Act 1997* scheme land for a community titles scheme—

(i) the body corporate for the scheme; or

31 See *Acts Interpretation Act 1954*, section 13A (Acts not to affect native title except by express provision).

(ii) if the adjoining land is scheme land for more than 1 community titles scheme—the body corporate for the community titles scheme that is a principal scheme; or

(e) if there is a time sharing scheme on the adjoining land and the name and address of a person has been notified under the *Local Government Act 1993*, section 1124[32]—the person; or

(f) if the adjoining land is subject to a freeholding lease under the *Land Act 1994*—the lessee; or

(g) if the adjoining land is land granted in trust or reserved and set apart and placed under the control of trustees under the *Land Act 1994*—the trustees of the land and the chief executive of the department in which the *Land Act 1994* is administered; or

(h) if the adjoining land is the bed or bank of a watercourse, as defined in the *Water Act 2000*—the chief executive of the department in which the *Land Act 1994* is administered; or

(i) if the adjoining land is freehold land held in the name of a department or The State of Queensland—

(i) for freehold land held in the name of a department—the chief executive of the department managing the land; or

(ii) for freehold land held in the name of The State of Queensland—the chief executive of the department in which the *Land Act 1994* is administered; or

(j) if the adjoining land is, under the *Land Act 1994*, subject to a permit to occupy, licence or is unallocated State land—the chief executive of the department in which the *Land Act 1994* is administered; or

(k) if the adjoining land is, under the *Land Act 1994*, subject to a lease—the lessee and the chief executive of the department in which the *Land Act 1994* is administered; or

(l) if paragraphs (a) to (k) do not apply—the person for the time being entitled to receive the rent for the land or who would be entitled to receive the rent for it if it were let to a tenant at a rent.

32 *Local Government Act 1993*, section 1124 (Notice of time share scheme to local government)

‘3.4.7 Notification period for applications

‘**(1)** The **“notification period”** for the application must be not less than—

(a) if paragraph (b) does not apply—15 business days starting on the day after the last action under section 3.4.6(1) is carried out; or

(b) if there is referral coordination or the application is for a preliminary approval mentioned in section 3.1.6—30 business days starting on the day after the last action under section 3.4.6(1) is carried out.

‘**(2)** Any business day between 20 December in a particular year and 5 January in the following year, both dates inclusive, must be disregarded for calculating the **“notification period”**.

‘3.4.8 Requirements for certain notices

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

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

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

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

(a) outside any local government area; or

(b) within a local government area but in a location where compliance with section 3.4.6(1) would be unduly onerous or would not give effective public notice.

‘3.4.9 Notice of compliance to be given to assessment manager

‘**(1)** If the applicant carries out notification, the applicant must, within 3 months after the notification period has ended, give the assessment

manager written notice that the applicant has complied with the requirements of this division.[33]

'**(2)** If the applicant does not comply with subsection (1), the application lapses.

'3.4.10 Circumstances when applications may be assessed and decided without certain requirements

'Despite section 3.4.9, the assessment manager may assess and decide an application even if some of the requirements of this division have not been complied with, if the assessment manager is satisfied any noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the application; or

(b) restricted the opportunity of the public to make properly made submissions.

'3.4.11 Making submissions

'**(1)** Subject to subsection (2), any person may make a submission to the assessment manager about the application during the notification period.

'**(2)** A concurrence agency may not make a submission about a matter that is within the limits of its concurrence jurisdiction.[34]

'**(3)** The assessment manager must accept a submission if the submission is a properly made submission.

'**(4)** However, the assessment manager may accept a written submission even if the submission is not a properly made submission.

'**(5)** If the assessment manager has accepted a submission, the person who made the submission may, by written notice—

(a) during the notification period, amend the submission; or

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

34 For matters within its jurisdiction, see section 3.3.20 (Concurrence agency's response powers).

(b) at any time before a decision about the application is made, withdraw the submission.

'3.4.12 Submissions made during notification period effective for later notification period

'**(1)** This section applies if—

(a) a person makes a submission under section 3.4.11(1) and the submission is a properly made submission or the assessment manager accepts the submission under section 3.4.11(3); and

(b) the notification stage is repeated for any reason.

'**(2)** The properly made submission is taken to be a properly made submission for the later notification period and the submitter may, by written notice—

(a) during the later notification period, amend the submission; or

(b) at any time before a decision about the application is made, withdraw the submission.

'**(3)** A submission accepted by the assessment manager under section 3.4.11(3) is taken to be part of the common material unless the person who made the submission withdraws the submission before a decision is made about the application.

'Division 3—End of notification stage

'3.4.13 When does notification stage end

'A notification stage ends when—

(a) if notification is carried out by the applicant—the assessment manager receives written notice under section 3.4.9; or

(b) if notification is carried out by the assessment manager on behalf of the applicant—the notification period ends.

‘PART 5—DECISION STAGE

‘Division 1—Preliminary

‘3.5.1 When does the decision stage start

‘**(1)** The decision stage starts the day after all other stages applying to the application, other than the compliance stage, have ended.

‘**(2)** If the applicant starts a notification stage after the decision stage has started, the decision stage must start again the day after the notification stage ends.

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

‘3.5.2 Assessment necessary even if concurrence agency refuses application

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

‘Division 2—Assessment process

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

‘In this division (other than in section 3.5.8), a reference to a code, planning instrument, law or policy is a reference to a code, planning instrument, law or policy in effect when the application was made.

‘3.5.4 When assessment manager must not assess part of an application

(1) This section applies to the part of a development application (the **“coordinated part”**) for which, were it a separate development application, an alternative assessment manager would be—

(a) prescribed under a regulation; or

(b) decided by the Minister under section 3.1.7(2).

(2) Despite sections 3.5.5 and 3.5.6, the assessment manager must not assess the development, the subject of the coordinated part.

'3.5.5 Development requiring code assessment

'**(1)** This section applies for assessing development requiring code assessment.

'**(2)** The assessment manager must assess the development only against—

(a) applicable codes (other than concurrence agency codes the assessment manager does not apply); and

(b) subject to paragraph (a)—the common material, to the extent the common material is relevant to the applicable codes; and

(c) any relevant State planning policies;

(d) if the assessment manager is an infrastructure provider—the priority infrastructure plan.[35]

'**(3)** If the assessment manager is not a local government, the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the development, are taken to be applicable codes in addition to the applicable codes mentioned in subsection (2)(a).

'**(4)** Subsection (5) applies if—

(a) the application for the development is a development application (superseded planning scheme); and

(b) the local government has, in response to a request made under section 2.1.7A(1)(b), agreed to apply the superseded planning scheme for assessing and deciding the application.

'**(5)** The assessment manager must assess the development and decide the application as if—

(a) the development was development to which the superseded planning scheme applied; and

35 See chapter 5 (Miscellaneous), part 1 (Infrastructure planning and funding).

(b) the existing planning scheme was not in force; and

(c) for chapter 5, part 1, the infrastructure provisions of the existing planning scheme applied.

'3.5.6 Development requiring impact assessment or not requiring code assessment

'**(1)** This section applies for assessing development that does not require code assessment.

'**(2)** For development in a planning scheme area, the assessment manager must carry out the assessment having regard to each of the following—

(a) the common material;

(b) the planning scheme and any other relevant local planning instruments;

(c) any applicable code, other than a concurrence agency code;

(d) any relevant State planning policies;[36]

(e) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;

(f) if the assessment manager is not a local government—the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the development;

(g) the matters prescribed under a regulation (to the extent they apply to a particular proposal).

'**(3)** For development outside a planning scheme area, the assessment manager must carry out the impact assessment having regard to each of the following—

(a) the common material;

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

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

(c) any applicable code (other than concurrence agency codes the assessment manager does not apply);

(d) any relevant State planning policies;

(e) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;

(f) if the assessment manager is not a local government—the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the development;

(g) the matters prescribed under a regulation (to the extent they apply to a particular proposal).

'**(4)** Subsection (5) applies if—

(a) the application for the development is a development application (superseded planning scheme); and

(b) the local government has, in response to a request made under section 2.1.7A(1)(b), agreed to apply the superseded planning scheme for assessing and deciding the application.

'**(5)** The assessment manager must assess the development and decide the application as if—

(a) the development was development to which the superseded planning scheme applied; and

(b) the existing planning scheme was not in force; and

(c) for chapter 5, part 1, the infrastructure provisions of the existing planning scheme applied.

'3.5.7 Assessment for s 3.1.6 preliminary approvals that override a local planning instrument

'**(1)** Subsection (2) applies to the part of an application for a preliminary approval mentioned in section 3.1.6 that states the way in which the applicant seeks the approval to vary the effect of any applicable local planning instrument for the land.

'**(2)** The assessment manager must assess the part of the application having regard to each of the following—

(a) the common material;

(b) the result of the assessment manager's assessment of the development under section 3.5.5 or 3.5.6, or both;

(c) the effect the proposed variations would have on any right of a submitter for following applications, with particular regard to the amount and detail of supporting material for the current application available to any submitters;

(d) the consistency of the proposed variations with aspects of the planning scheme, other than those sought to be varied;

(e) the matters prescribed under a regulation (to the extent they apply to a particular proposal).

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

'**(1)** This section does not apply if the application is a development application (superseded planning scheme).

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

(a) before the day the decision stage started; or

(b) if the decision stage is stopped—before the day the decision stage is restarted.

'Division 3—Decision

'3.5.9 Decision making period (generally)

'**(1)** The assessment manager must decide the application within 20 business days after the decision stage starts (the **"decision making period"**).

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

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

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

'**(5)** If there is a concurrence agency, the decision must not be made before 10 business days after the information and referral stage ends, unless the applicant gives the assessment manager written notice that it does not intend to take action under section 3.5.11 or 3.5.12.

'3.5.10 Decision making period (changed circumstances)

'Despite section 3.5.9, the decision making period starts again from its beginning—

(a) if the applicant agrees to a concurrence agency giving the assessment manager a concurrence agency response or an amended concurrence agency response[37] after the end of the referral agency's assessment period—the day after the response or amended response is received by the assessment manager; or

(b) if the decision making period is stopped under section 3.5.11 or 3.5.12—the day after the assessment manager receives further written notice withdrawing the notice stopping the decision making period.

'3.5.11 Applicant may stop decision making period to make representations

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

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

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

37 Under section 3.3.19, a concurrence agency may, with the agreement of the applicant, amend its response.

‘3.5.12 Applicant may stop decision making period to request chief executive’s assistance

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

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

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

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

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

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

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

(a) the affected concurrence agency; and

(b) the assessment manager.

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

‘3.5.13 Decision generally

‘**(1)** In deciding the application, the assessment manager must—

(a) approve all or part of the application and attach to the approval any concurrence agency conditions; or

(b) approve all or part of the application subject to conditions decided by the assessment manager and attach to the approval any concurrence agency conditions; or

(c) refuse the application.

'**(2)** The assessment manager's decision must be based on the assessments made under division 2.

'**(3)** For an approval under subsection (1)(a) or (b), if a concurrence agency's response has, under section 3.3.20(1)(b), (c) or (d), stated an action that must be taken, the assessment manager must also take the action.

'**(4)** If a concurrence agency response has stated that the application must be refused, the assessment manager must refuse the application.

'**(5)** If, under section 3.3.20(1), more than 1 concurrence agency response has stated a shorter currency period for a development approval, and the stated currency periods are different, the shortest currency period is the currency period for the approval.

'**(6)** Subsections (1) to (4) do not apply to any part of an application for a preliminary approval mentioned in section 3.1.6 that states the way in which the applicant seeks the approval to vary the effect of any applicable local planning instrument for the land.[38]

'**(7)** It is declared that—

(a) a development approval includes the conditions imposed by the assessment manager and any concurrence agency; and

(b) the assessment manager may give a preliminary approval even though the applicant sought a development permit; and

(c) if the assessment manager approves only part of an application, the balance of the application is taken to be refused.

'3.5.14 Decision if development requires code assessment

'**(1)** This section applies for deciding any part of the application involving development that requires code assessment

'**(2)** The assessment manager's decision may conflict with an applicable code if there are sufficient grounds to justify the decision, having regard to the purpose of the code.

38 Section 3.5.16 establishes rules for decision making about the part of an application mentioned in subsection (5).

'**(3)** However—

(a) if the application is for building work—the assessment manager's decision must not conflict with the *Building Act 1975*; and

(b) for assessment against a code in a planning scheme—the assessment manager's decision must not compromise the achievement of the desired environmental outcomes for the planning scheme area.

'**(4)** The assessment manager may refuse the application only if the assessment manager is satisfied—

(a) the development does not comply with the applicable code; and

(b) compliance with the code can not be achieved by imposing conditions.

'**(5)** Subsection (3)(b) applies only to the extent the decision is consistent with any relevant State planning policy.

'3.5.15 Decision for development not requiring code assessment

'**(1)** This section applies for deciding any part of the application involving development that does not require code assessment.

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

(a) compromise the achievement of the desired environmental outcomes for the planning scheme area; or

(b) conflict with other aspects of the planning scheme, unless there are sufficient planning grounds to justify the decision.

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

'**(4)** Subsections (2)(a) and (3) apply only to the extent the decision is consistent with any relevant State planning policy.

'**(5)** For section 1.2.3(1)(a)(iii), if the assessment manager considers the applicant has not given the assessment manager sufficient information to

properly decide the application, the assessment manager in deciding the application, must apply the precautionary principle.

'3.5.16 Decision if application under s 3.1.6 requires assessment

'**(1)** In deciding the part of an application for a preliminary approval mentioned in section 3.1.6 that states the way in which the applicant seeks the approval to vary the effect of any applicable local planning instrument for the land, the assessment manager must—

(a) approve all or some of the variations sought; or

(b) subject to section 3.1.6(3) and (5)—approve different variations from those sought; or

(c) refuse the variations sought.

'**(2)** However, to the extent development applied for under other parts of the application is refused, any variation relating to the development must also be refused.

'**(3)** The assessment manager's decision must not compromise the achievement of the desired environmental outcomes for the planning scheme area.

'**(4)** Subsection (1) applies only to the extent the decision is consistent with any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme.

'3.5.17 Decision notice

'**(1)** The assessment manager must give written notice of the decision (a **"decision notice"**) to—

(a) the applicant; and

(b) each referral agency; and

(c) if the assessment manager is not the local government and the development is in a local government area—the local government.

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

(a) the day the decision was made;

(b) the name and address of each referral agency;

(c) whether all or part of the application is unconditionally approved, approved subject to conditions or refused;

(d) if all or part of the application is approved subject to conditions—

(i) the conditions; and

(ii) whether each condition is a concurrence agency or assessment manager condition, and if a concurrence agency condition, the name of the concurrence agency;

(e) if all or part of the application is refused—

(i) whether the assessment manager was directed to make the refusal and, if so, the name of the concurrence agency directing the refusal and whether the refusal is solely because of the concurrence agency's direction; and

(ii) the reasons for the refusal;

(f) if all or part of the application is approved—whether the approval is a preliminary approval, a development permit or a combined preliminary approval and development permit;

(g) if all or part of the application is for a preliminary approval mentioned in section 3.1.6 and the assessment manager has approved a variation to an applicable local planning instrument—the variation;

(h) any other development permits necessary to allow the development to be carried out;

(i) any code the applicant may need to comply with for self-assessable development related to the development approved;

(j) any compliance assessment required in relation to the development;

(k) whether or not there were any properly made submissions about the application and for each properly made submission, the name and address of the principal submitter;

(l) the rights of appeal for the applicant and any submitters.

'**(3)** If all or part of the application is approved subject to a concurrence agency condition, a copy of the condition must be attached to the decision notice.

'**(4)** If all or part of the application is approved, the assessment manager must give a copy of the decision notice to each principal submitter within 5 business days after the earliest of the following happens—

(a) the applicant gives the assessment manager a written notice stating that the applicant does not intend to apply for a negotiated decision notice under section 3.5.18;

(b) the assessment manager gives the applicant a notice under section 3.5.18(4);

(c) the applicant gives the assessment manager notice of the applicant's appeal;

(d) the applicant's appeal period ends.

'**(5)** If all or part of the application is refused, the assessment manager must give a copy of the decision notice to each principal submitter at about the same time as the decision notice is given to the applicant.

'**(6)** A copy of the relevant appeal provisions must also be given with each decision notice or copy of a decision notice.

'**(7)** When the assessment manager gives a decision notice, the assessment manager must also give a copy of any plans and specifications approved by the assessment manager in relation to the decision notice.

'Division 4—Negotiated decision notices

'3.5.18 Changing approvals during applicant's appeal period

'**(1)** The applicant may, during the applicant's appeal period, apply to the assessment manager to change a matter stated in the decision notice, other than a refusal, or a matter a concurrence agency gave the assessment manager under section 3.3.20(1).

'**(2)** The application must be in the approved form.

'**(3)** The assessment manager must reconsider the matters considered when the original decision was made, to the extent the matters are relevant.

'**(4)** If the assessment manager does not agree to any of the changes sought the assessment manager must give the applicant a written notice stating its decision.

'**(5)** If the assessment manager agrees to any of the changes sought the assessment manager must give a new notice (the **"negotiated decision notice"**) to—

(a) the applicant; and

(b) each principal submitter; and

(c) each referral agency; and

(d) for development in a local government area if the local government is not the assessment manager—the local government.

'**(6)** The negotiated decision notice—

(a) must be in the same form as the decision notice previously given; and

(b) must state the nature of the changes; and

(c) replaces the decision notice previously given.

'**(7)** A notice under subsection (4) or (5) must be given within 5 business days after the assessment manager decides the application.

'**(8)** Subsection (9) applies if the development approved by the negotiated decision notice is different from the development approved in the decision notice in a way that affects—

(a) the amount of the infrastructure charge; or

(b) a condition requiring a payment for, or the supply of infrastructure.

'**(9)** The local government may—

(a) give the applicant a new infrastructure charges notice under section 5.1.7 to replace the original notice; or

(b) amend the condition mentioned in subsection (8)(b).

‘3.5.19 Applicant may suspend applicant’s appeal period

‘**(1)** Before applying for a change under section 3.5.18(1), the applicant may, by written notice given to the assessment manager, suspend the applicant’s appeal period.

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

‘**(3)** Subject to section 3.5.20, the balance of the applicant’s appeal period restarts—

(a) the day after the applicant gives the assessment manager a notice withdrawing the notice under subsection (1); or

(b) if paragraph (a) does not apply—20 business days after the notice under subsection (1) is given.

‘3.5.20 When appeal period is automatically suspended

‘If an applicant applies for a change under section 3.5.18(1)—

(a) if no notice under section 3.5.19 is in force—the applicant’s appeal period is suspended; or

(b) if a notice under section 3.5.19 is in force—the applicant’s appeal period remains suspended.

‘3.5.21 When balance of appeal period restarts

‘If section 3.5.20 applies, the balance of the applicant’s appeal period restarts the day after—

(a) the applicant gives the assessment manager written notice withdrawing an application under 3.5.18; or

(b) the assessment manager gives the applicant a notice under section 3.5.18(4).

‘3.5.22 When applicant’s appeal period starts again

‘If subsection 3.5.20 applies, the applicant’s appeal period starts again the day after the assessment manager gives the applicant a negotiated decision notice.

'Division 5—Approvals

'3.5.23 When approval takes effect

'**(1)** If the application is approved, or approved subject to conditions, the decision notice, or if a negotiated decision notice is given, the negotiated decision notice, is taken to be the development approval and has effect—

(a) if there is no submitter and the applicant does not appeal the decision to the court, from—

(i) the time the decision notice is given; or

(ii) if a negotiated decision notice is given—the time the negotiated decision notice is given; or

(b) if there is a submitter and the applicant does not appeal the decision to the court, the earlier of the following—

(i) when the submitter's appeal period ends;

(ii) the day the last submitter gives the assessment manager written notice that the submitter will not be appealing the decision; or

(c) if an appeal is made to the court, subject to section 4.1.47(2) and the decision of the court under section 4.1.54—when the appeal is finally decided.

'**(2)** If a submitter acts under subsection (1)(b)(ii), the assessment manager must give the applicant a copy of the submitter's notice.

'**(3)** In this section—

"submitter" includes an advice agency that has told the assessment manager to treat its response as a properly made submission.[39]

'3.5.24 When assessable development may start

'**(1)** Assessable development may start when a development permit for the development takes effect.

'**(2)** Subsection (1) applies subject to—

39 See section 3.3.21 (Advice agency's response powers).

(a) any condition applying under section 3.5.30(1)(b)[40] to a development approval for the development; and

(b) any applicable requirement under part 7.

'3.5.25 When approval lapses

'**(1)** The development approval lapses at the end of the currency period for the approval unless—

(a) for development that is a material change of use—the change of use happens before the end of the currency period; or

(b) for a development permit for reconfiguring a lot—the plan (however called) for the reconfiguration of the lot is given to the local government for endorsement before the end of the currency period; or

(c) for development not mentioned in paragraphs (a) and (b)—development under the approval substantially starts before the end of the currency period.

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

'3.5.26 Certain approvals to be recorded on planning scheme

'**(1)** Subsection (2) applies if a local government—

(a) gives a development approval and is satisfied the approval is inconsistent with the planning scheme; or

(b) gives a development approval mentioned in section 3.1.6; or

(c) decides to apply a superseded planning scheme for a purpose mentioned in section 2.1.7A(1).

'**(2)** The local government must—

(a) note the approval or decision on its planning scheme; and

(b) give the chief executive written notice of the notation and the land to which the note relates.

'**(3)** The note is not an amendment of the planning scheme.

40 See section 3.5.30 (Conditions generally).

'**(4)** Failure to comply with subsection (2) does not affect the validity of the approval or decision.

'3.5.27 Approval attaches to land

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

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

'Division 6—Conditions

'3.5.28 Application of div 6

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

(a) a concurrence agency directs an assessment manager to attach to the approval; or

(b) decided by an assessment manager; or

(c) attached to the approval under the direction of the Minister.

'3.5.29 Conditions must be relevant or reasonable

'**(1)** The condition must—

(a) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or

(b) be reasonably required in respect of the development or use of premises as a consequence of the development.

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

‘3.5.30 Conditions generally

‘**(1)** The condition may—

(a) place a limit on how long a lawful use may continue or works may remain in place; or

(b) state a development may not start until other development permits, for development on the same premises, have been given or other development on the same premises (including development not covered by the development application) has been substantially started or completed; or

(c) require development, or an aspect of development, to be completed within a particular time and require the payment of security under an agreement under section 3.5.32[41] to support the condition; or

(d) for a development approval for a material change of use—require compliance assessment for works that are the natural and ordinary consequence of the material change of use even if the works are not assessable development.

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

‘3.5.31 Conditions that can not be imposed

‘**(1)** The condition must not—

(a) be inconsistent with a condition of an earlier development approval still in effect for the development; or

(b) require a monetary payment for the capital, operating and maintenance costs of, or works to be carried out for, community infrastructure (other than in accordance with chapter 5, part 1); or

(c) state that works required to be carried out for a development must be undertaken by an entity other than the applicant; or

(d) require an access restriction strip.

41 See section 3.5.32 (Agreements).

'**(2)** Nothing in this section stops a condition being imposed if the condition requires a monetary payment, or works to be carried out, to protect or maintain the safety or efficiency of State owned or State controlled transport infrastructure.

'**(3)** In subsection (2)—

"State owned or State controlled transport infrastructure" means transport infrastructure under the *Transport Infrastructure Act 1994* that is owned or controlled by the State.[42]

'3.5.32 Agreements

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

'3.5.33 Covenants not to be inconsistent with development approvals

'**(1)** Subsection (2) applies if a covenant under the *Land Act 1994*, section 373A(4)[43] or the *Land Title Act 1994*, section 97A(3)(a) or (b)[44] is entered into in connection with a development application.

'**(2)** The covenant is of no effect unless it is entered into as a requirement of a condition of a development approval for the application.

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42 Under the *Transport Infrastructure Act 1994*, schedule 3—
"transport infrastructure" includes road, rail, port and miscellaneous transport infrastructure.

43 *Land Act 1994*, section 373A (Covenant by registration)

44 *Land Title Act 1994*, section 97A (Covenant by registration)

‘PART 6—CHANGING OR CANCELLING DEVELOPMENT APPROVALS

‘Division 1—Changing or cancelling development approval by application

‘3.6.1 Application to change or cancel a development approval

‘**(1)** Subject to subsection (2), a person may apply to change or cancel a development approval under this division only if the approval has effect.

‘**(2)** A person may not, under this division, apply to change a preliminary approval into a development permit.

‘**(3)** The change application must—

(a) be made in the approved form to the deciding entity; and

(b) be accompanied by—

(i) if the deciding entity was a local government—the fee fixed by resolution of the local government; or

(ii) if the deciding entity was not a local government—the fee prescribed under a regulation under this or another Act.

‘**(4)** If the person is not the owner of the land, the change application must also be accompanied by the written consent of the owner.

‘**(5)** If the person is the owner of the land and there is a written agreement between the owner and another person in which the other person proposes to buy the land, the change application must also be accompanied by the written consent of the other person.

‘3.6.2 Deciding entity must assess and decide application to change or cancel a development approval

‘**(1)** For assessing and deciding the change application, the processes under parts 2 and 3 and sections 3.5.1 and 3.5.9 apply as if—

(a) the deciding entity were an assessment manager for development requiring code assessment; and

(b) there were no referral agencies for the development application; and

(c) referral coordination were not required.

'**(2)** To the extent relevant, the deciding entity must assess and decide the change application having regard to the matters it had regard to in assessing and deciding the development application for which the approval was given.

'**(3)** However, the deciding entity—

(a) may also consider other matters the entity is satisfied are relevant to the change application; and

(b) if there was a concurrence agency for the development application and the deciding entity was the assessment manager—must consult the agency.

'**(4)** After assessing the change application, the deciding entity must—

(a) approve the change application; or

(b) approve the change application in part; or

(c) refuse the change application.

'**(5)** However, the deciding entity must refuse the change application if the deciding entity is satisfied the development application would, if it could, and had, included the change —

(a) require referral to additional concurrence agencies; or

(b) cause development previously requiring only code assessment to require impact assessment; or

(c) for a deciding entity other than a concurrence agency—cause a person to make a substantial submission on reasonable grounds about the change.

'**(6)** Subsection (5)(c) does not apply for a change if the change is the complete removal of, or a reduction in the scale or intensity of, an aspect of the development.

'**(7)** Subsections (8) and (9) apply for an application to cancel a development approval.

'**(8)** Despite subsections (1) to (5), a deciding entity must—

(a) if the entity is satisfied the cancellation would compromise the fulfilment of a condition to mitigate the adverse environmental effects of the development or use of the premises—refuse the change application; or

(b) if subsection (a) does not apply—approve the change application.

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

'**(10)** A development approval may be changed under this division by removing an aspect of development from the approval.

'**(11)** Despite section 3.5.25, if the change application is for changing the currency period of a development approval, the development approval does not lapse before the change application is decided.

'3.6.3 Deciding entity must give notice of decision

'**(1)** The deciding entity must give notice of the entity's decision to—

(a) the person applying for the change; and

(b) if the deciding entity is the entity that was the assessment manager—each entity that was a concurrence agency for the development application; and

(c) if the deciding entity is not the entity that was the assessment manager—the entity.

'**(2)** A notice given under subsection (1) must be given within 5 business days after the entity made its decision.

'3.6.4 Effect of notice

'**(1)** A notice mentioned in section 3.6.3(1) takes effect on the day the person applying for the change is given the notice.

'**(2)** To the extent the notice is inconsistent with the development approval, the development approval is of no effect.

'Division 2—Changing or cancelling conditions of development approval by assessment manager or concurrence agency

'3.6.5 When conditions may be changed or cancelled by assessment manager or concurrence agency

'**(1)** This section applies for—

(a) a development condition as defined under another Act; or

(b) an operational condition of a development approval.

'**(2)** However, this section does not apply if under another Act an entity is authorised to change or cancel conditions of a development approval in a different way.

'**(3)** A condition mentioned in subsection (1) may be changed or cancelled by—

(a) if the condition was a concurrence agency condition—the entity that was the concurrence agency; or

(b) if the condition was imposed by an assessment manager—the entity that was the assessment manager; or

(c) if paragraph (a) or (b) does not apply—the entity that has jurisdiction for the condition.

'**(4)** However—

(a) a development condition as defined under the *Environmental Protection Act 1994* may be changed or cancelled only on a ground mentioned in section 130(2) of that Act; or

(b) a development condition as defined under another Act may be changed or cancelled only on a ground mentioned in that Act; or

(c) an operational condition of a development approval may be changed or cancelled only if the entity is satisfied the change or cancellation reflects a standard for environmental performance stated in a statutory instrument with which the condition does not comply.

'**(5)** The change or cancellation may be made without the consent of the owner of the land to which the approval attaches and any occupier of the land.

'**(6)** Section 3.5.29 applies to the changed condition.

'**(7)** If the entity is satisfied it is necessary to change or cancel the condition, the entity must give written notice to the owner of the land to which the approval attaches and any occupier of the land.

'**(8)** The notice must state—

(a) the proposed change or cancellation and the reasons for the change or cancellation; and

(b) that each person to whom the notice is given may make a written submission to the entity about the proposed change or cancellation; and

(c) the time (at least 15 business days after the notice is given to the holder) within which the submission may be made.

'**(9)** After considering any submissions, the entity must give to each person to whom the notice was given—

(a) if the entity is not satisfied the change or cancellation is necessary—written notice stating it has decided not to change or cancel the condition; or

(b) if the entity is satisfied the change or cancellation is necessary—written notice stating it has decided to change or cancel the condition, and include details of the changed conditions or cancellation.

'**(10)** If the entity is a concurrence agency, the entity must also give the entity that was the assessment manager written notice of the change or cancellation.

'**(11)** The changed condition or cancellation takes effect from the day the notice is given to the owner of the land to which the approval attaches.

'**(12)** In this section—

"operational condition", of a development approval, means a condition that states a standard of environmental performance for an activity or use that is the natural and ordinary consequence of the development.

'PART 7—COMPLIANCE STAGE

'Division 1—Preliminary

'3.7.1 Purpose of compliance stage

'The compliance stage allows for compliant development, a document or work relating to development to be assessed (**"compliance assessment"**) against, and if appropriate, approved as complying for—

(a) a matter or thing prescribed under a regulation; and

(b) conditions of a development approval.

'3.7.2 When compliance stage applies

'The compliance stage applies—

(a) for compliant development; or

(b) if a condition of a development approval requires assessment of documents or works under the approval for compliance with a condition of the approval; or

(c) if a preliminary approval states that development requires assessment for compliance with a code identified in the approval.

'3.7.3 What may be assessed for compliance

'**(1)** A regulation may prescribe compliant development, a document or work that may be assessed for compliance with a matter or thing mentioned in section 3.7.1.

'**(2)** Without limiting subsection (1)—

(a) for section 3.7.2(a), the regulation may prescribe compliant development, documents or works for compliance with a stated code or standard; or

(b) for section 3.7.2(b), the regulation may prescribe documents for compliance with a condition of the approval.

'3.7.4 When compliance stage starts

'The compliance stage starts—

(a) if a time is prescribed under a regulation for the start—at the time prescribed; or

(b) if a time is not prescribed under a regulation for the start—on the day a request for compliance assessment is made under section 3.7.5.

'Division 2—Compliance assessment

'3.7.5 Process for compliance assessment

'**(1)** A request for compliance assessment must be—

(a) in the approved form or in the form prescribed under a regulation; and

(b) given or made to the entity prescribed under a regulation; and

(c) supported by—

(i) the appropriate fee; and

(ii) for works yet to be completed—any relevant document mentioned in section 3.7.3(1).

'**(2)** For subsection (1), the appropriate fee is—

(a) if the entity is a local authority—the fee fixed by resolution of the local authority; or

(b) in any other case—the fee prescribed under a regulation.

'**(3)** The compliance assessor must assess the compliant development, document or work only against either or both of the following—

(a) the matters prescribed under a regulation;

(b) relevant conditions of a development approval.

'**(4)** In deciding the request, the assessor must—

(a) approve the compliant development, document or work; or

(b) approve the compliant development, document or work, subject to—

(i) for a document—any conditions decided by the assessor for achieving compliance, and that are noted on, or attached to, the document; or

(ii) for work—any written instruction given by the assessor for achieving compliance; or

(c) give the person making the request written notice of the action required for the compliant development, document or work to comply.

'**(5)** If the assessor approves the request, the assessor must give the person making the request—

(a) if the request was for approval of—

(i) compliant development—a compliance permit; or

(ii) a document, or work carried out—a compliance certificate; and

(b) the permit or certificate within the time prescribed under a regulation.

'**(6)** If the assessor gives the person making the request written notice under subsection (4)(c), the assessor must give the notice to the person within the time prescribed under a regulation.

'**(7)** If the assessor does not decide the request within the time prescribed under a regulation, the person making the request may take the action prescribed under the regulation for the type of request made.

'3.7.6 Regulation may prescribe additional requirements and actions

A regulation under this or another Act may prescribe—

(a) requirements, for example, scale, for the document for which compliance assessment is requested; or

(b) additional actions that may, or must, be taken by the compliance assessor.

'3.7.7 Effect of approvals under this part

'**(1)** An approval under this part has effect for—

(a) the period prescribed under a regulation; or

(b) if no period is prescribed under paragraph (a)—2 years from the day notice is given under section 3.7.5(4).

'**(2)** However, if the compliant development starts while the approval has effect, the approval continues to have effect.

'**(3)** A compliance permit attaches to the land, the subject of the request, and binds the owner, the owners successors in title and any occupier of the land.

‘3.7.8 Approval of plan taken to be approval for other Acts

‘**(1)** Approval of a plan (however called) for the reconfiguration of a lot under this part is taken to be an approval of the plan for another Act, if, under another Act, the plan requires the approval (in whatever form) of a local government before it can be registered under that Act.

‘**(2)** If a plan mentioned in subsection (1) does not require approval under this part, the *Land Title Act 1994*, section 50(g),[45] does not apply to the registration of the plan.

‘3.7.9 Codes for compliance assessment are not applicable codes

‘A code mentioned in this part is not an applicable code.

‘PART 8—MINISTERIAL POWERS FOR DEVELOPMENT APPLICATIONS AND APPROVALS

‘Division 1—Ministerial direction

‘3.8.1 When Ministerial direction may be given

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

(a) the assessment manager has not decided the application; and

(b) the development involves a State interest; and

(c) the matter the subject of the direction is not within the jurisdiction of a concurrence agency.

‘3.8.2 Notice of direction

‘**(1)** The Minister may direct the assessment manager, by written notice, to take 1 or more of the following actions or to refuse the application—

45 *Land Title Act 1994*, section 50 (Requirements for registration of plan of subdivision)

(a) to attach to the development approval the conditions stated in the notice;

(b) to approve part only of the development;

(c) to give a preliminary approval only.

'**(2)** The notice must state—

(a) the nature of the State interest giving rise to the direction; and

(b) the reasons for the Minister's direction.

'**(3)** The Minister must give a copy of the notice to the applicant.

'3.8.3 Effect of direction

'**(1)** If the Minister gives a direction, the assessment manager, in deciding the application, must comply with the direction.

'**(2)** For an appeal under sections 4.1.27 to 4.1.29, the Minister's direction is taken to be a concurrence agency's response and the chief executive is taken to be a co-respondent.

'Division 2—Ministerial call in powers (development application)

'3.8.4 When a development application may be called in

'The Minister may, under this division, call in an application—

(a) only if the development involves a State interest; and

(b) at any time after the application is made until 10 business days after the later of the following—

(i) the day the chief executive receives notice of an appeal against the application;

(ii) the end of both the applicant's appeal period and the submitter's appeal period for the decision on the application.

‘3.8.5 Notice of call in

‘**(1)** The Minister may, by written notice given to the assessment manager, call in the application.

‘**(2)** The notice must state the reasons for calling in the application.

‘**(3)** The Minister must give a copy of the notice to—

(a) the applicant; and

(b) any concurrence agency; and

(c) any submitter.

‘3.8.6 Effect of call in

‘**(1)** This section applies if the Minister calls in the application.

‘**(2)** If the application is called in before the assessment manager makes a decision on the application the Minister must—

(a) assess and decide the application in the place of the assessment manager; and

(b) continue the IDAS process from the point at which the application is called in.

‘**(3)** If the application is called in after the assessment manager makes a decision on the application—

(a) the Minister must reassess and re-decide the application in the place of the assessment manager; and

(b) before reassessing and re-deciding the application, the Minister may repeat any other stage of IDAS the Minister considers appropriate.

‘**(4)** For subsections (2) and (3)—

(a) the Minister is the assessment manager from the time the application is called in until the Minister gives the decision notice; and

(b) any time stated in this chapter for the assessment manager to take an action does not apply.

‘**(5)** The entity that was the assessment manager before the application was called in (the **“original assessment manager”**) must give the Minister

all reasonable assistance the Minister requires to assess and decide the application, including giving the Minister—

(a) all material about the application the assessment manager had before the application was called in; and

(b) any material about the application received by the assessment manager after the application is called in.

'**(6)** In addition to the matters the original assessment manager would be required to consider in assessing the application, the Minister may also consider any other matter the Minister considers is relevant to a State interest for which the call in was made.

'**(7)** Section 3.2.7 does not apply to the application unless the Minister agrees in writing to the proposed change.

'**(8)** Until the Minister gives the decision notice a concurrence agency is taken to be an advice agency.

'**(9)** When the Minister gives the decision notice to the applicant and each submitter and referral agency, the Minister also must give a copy of the notice to the original assessment manager.

'**(10)** Subject to subsection (11), the Minister's decision is taken to be the original assessment manager's decision.

'**(11)** A person may not appeal against the Minister's decision.

'**(12)** If an appeal was made before the application was called in, the appeal is of no further effect.

'3.8.7 Process if call in decision does not deal with all aspects of the application

'**(1)** If the Minister's decision notice does not decide all aspects of the application, the Minister must, by written notice, refer the aspects not decided back to the assessment manager.

'**(2)** If the Minister gives a notice under subsection (1), the notice must state the point in the IDAS process from which the process must restart for the aspects of the application not decided by the Minister.

'Division 3—Ministerial call in powers (changed or cancelled conditions)

'3.8.8 Definition for div 3

'In this division—

"change application" means an application to change or cancel a condition of a development approval.

'3.8.9 When a change application may be called in

'The Minister may, under this division, call in a change application—

(a) only if the change or cancellation involves a State interest; and

(b) at any time after the change application is made until—

(i) if the applicant appeals against the deciding entity's decision—10 business days after the appeal starts;[46] or

(ii) if the applicant does not appeal against the deciding entity's decision—30 business days after the deciding entity gives the applicant notice of the deciding entity's decision.[47]

'3.8.10 Notice of call in

'**(1)** The Minister may, by written notice given to the deciding entity, call in the change application.

'**(2)** The notice must state the reasons for calling in the application.

'**(3)** The Minister must give a copy of the notice to the applicant.

'3.8.11 Effect of call in

'**(1)** This section applies if the Minister calls in the change application.

'**(2)** If the application is called in before the deciding entity makes a decision on the application the Minister must—

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46 See section 4.1.31 (Appeals for matters arising after approval given (no co-respondents)).

47 See section 3.6.3 (Deciding entity must give notice of decision).

(a) assess and decide the application in the place of the deciding entity; and

(b) continue the process for deciding the application from the point at which the application is called in.

'**(3)** If the application is called in after the deciding entity makes a decision on the application the Minister must reassess and re-decide the application in the place of the deciding entity.

'**(4)** For subsections (2) and (3)—

(a) the Minister is the deciding entity from the time the application is called in until the Minister gives the notice of the Minister's decision to the applicant; and

(b) any time stated in this chapter for the deciding entity to take an action does not apply.

'**(5)** The entity that was the deciding entity before the application was called in (the **"original deciding entity"**) must give the Minister all reasonable assistance the Minister requires to assess and decide the application, including giving the Minister—

(a) all material about the application the deciding entity had before the application was called in; and

(b) any material received by the deciding entity after the application is called in.

'**(6)** In addition to the matters the original deciding entity would be required to consider in assessing the application, the Minister may also consider any other matter the Minister considers is relevant to a State interest for which the call in was made.

'**(7)** When the Minister gives notice of the Minister's decision, the Minister also must give a copy of the notice to the original deciding entity.

'**(8)** Subject to subsection (9), the Minister's decision is taken to be the original deciding entity's decision.

'**(9)** A person may not appeal against the Minister's decision.

'**(10)** If an appeal was made before the application was called in, the appeal is of no further effect.

'Division 4—Report to Parliament

'3.8.12 Report about decision

'**(1)** If the Minister calls in an application under division 2 or 3, the Minister must, after deciding the application, prepare a report about the Minister's decision.

'**(2)** Without limiting subsection (1), the Minister must include a copy of each of the following in the report—

(a) the application;

(b) the notice given under section 3.8.5 or 3.8.10;

(c) for an application under division 2—

(i) any referral agency's response; and

(ii) any properly made submission; and

(iii) an analysis of the submissions;

(d) if the Minister has invited the applicant to make a submission about the application—the submission;

(e) the decision notice or a copy of the Minister's decision under section 3.8.11;

(f) any notice given under section 3.8.7.

'**(3)** The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after the Minister's decision is made.'.

28 Insertion of new s 4.1.5A

After section 4.1.5—

insert—

'4.1.5A How court may deal with matters involving substantial compliance

'**(1)** Subsection (2) applies if in a proceeding before the court, the court—

(a) finds a requirement of this Act, or another Act in its application to this Act, has not been complied with, or has not been fully complied with; but

(b) is satisfied the non-compliance, or partial compliance, has not substantially restricted the opportunity for a person to exercise the rights conferred on the person by this or the other Act.

'**(2)** The court may deal with the matter in the way the court considers appropriate.'.

29 Amendment of s 4.1.21 (Court may make declarations)

(1) Section 4.1.21(1)(a), 'under'—

omit, insert—

'for'.

(2) Section 4.1.21(1)(e)—

omit.

(3) Section 4.1.21(7)—

omit, insert—

'**(7)** If the Minister is satisfied the proceeding involves a State interest, the Minister may elect to be a party to the proceeding by filing in the court a notice of election in the approved form.'.

30 Amendment of s 4.1.22 (Court may make orders about declarations)

Section 4.1.22(2) and (3)—

omit, insert—

'**(2)** If the order cancels a development approval, the court must also make the order it considers appropriate about any loss the owner of the premises, the subject of the development approval, will suffer as a result of the making of the order.'.

31 Amendment of s 4.1.23 (Costs)

(1) Section 4.1.23(1), 'Each'—

omit, insert—

'Subject to subsections (2) to (6), each'.

(2) Section 4.1.23(2), 'However'—

omit, insert—

'Subject to subsection (7)'.

(3) Section 4.1.23(3), '3.5.26'—

omit, insert—

'3.6.1(1)(b)'.

(4) Section 4.1.23(6), 'an acknowledgment notice'—

omit, insert—

'a copy of the application, endorsed as accepted,'.

32 Amendment of s 4.1.27 (Appeals by applicants)

Section 4.1.27—

insert—

'**(2A)** The applicant's appeal period does not include any period for which the applicant's appeal period is suspended under chapter 3, part 5, division 4.'.

33 Replacement of s 4.1.28 (Appeals by submitters)

Section 4.1.28—

omit, insert—

'4.1.28 Appeals by submitters

'**(1)** A submitter for a development application may appeal to the court only against—

(a) the part of the approval relating to the assessment manager's decision under section 3.5.15 or 3.5.16; or

(b) for an application processed under section 6.1.28(2)—the part of the approval about the aspects of the development that would have required public notification under the repealed Act.

'**(2)** To the extent an appeal may be made under subsection (1), the appeal may be against 1 or more of the following—

(a) the giving of a development approval;

(b) any provision of the approval including—

(i) a condition of, or lack of condition for, the approval; or

(ii) the length of a currency period for the approval.

'**(3)** However, a submitter may not appeal if the submitter—

(a) withdraws the submission before the application is decided; or

(b) has given the assessment manager a notice under section 3.5.23(1)(b)(ii).

'**(4)** The appeal must be started within 20 business days (the **"submitter's appeal period"**) after the decision notice or negotiated decision notice is given to the submitter.'.

34 Amendment of s 4.1.29 (Appeals by advice agency submitters)

(1) Section 4.1.29(1)—

omit, insert—

'**(1)** Subsection (1A) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.[48]

'**(1A)** The advice agency may, within the limits of its jurisdiction, appeal to the court about any part of the approval relating to the assessment manager's decision under section 3.5.15 or 3.5.16.'.

(2) Section 4.1.29—

insert—

'**(3)** However, if the advice agency has given the assessment manager a notice under section 3.5.23(1)(b)(ii), the advice agency may not appeal the decision.'.

48 See section 3.3.21 (Advice agency's response powers).

35 Replacement of ss 4.1.30–4.1.31

Sections 4.1.30 to 4.1.31—

omit, insert—

‘4.1.30 Appeals for matters arising after approval given (co-respondents)

‘**(1)** Subsection (3) applies if for a change application—

(a) a person receives a notice under section 3.6.3(1)(a); and

(b) section 3.6.3(1)(b) also applies for the notice.

‘**(2)** However, subsection (3) does not apply if the notice is about a change to the currency period if the approval resulted from a development application (superseded planning scheme) that was assessed as if it were an application made under a superseded planning scheme.

‘**(3)** The person may appeal to the court about the decision in the notice.

‘**(4)** The appeal must be started within 20 business days after the day the notice is given to the person.

‘**(5)** Also, a person who has made an application mentioned in subsection (1) may appeal to the court against a deemed refusal of the application.

‘**(6)** An appeal under subsection (5) may be started at any time after the last day the decision about the application should have been made.

‘Division 9—Appeals to court about other matters

‘4.1.31 Appeals for matters arising after approval given (no co-respondents)

‘**(1)** Subsection (2) applies if for a change application—

(a) a person receives a notice under section 3.6.3(1)(a) and section 3.6.3(1)(c) also applies for the notice; or

(b) section 3.6.5(8)(b)[49] applies for the notice.

49 Section 3.6.5 (When operational conditions may be changed or cancelled by assessment manager or concurrence agency)

'**(2)** The person may appeal to the court about the decision in the notice.

'**(3)** The appeal must be started within 20 business days after the day the notice is given to the person.

'**(4)** Also, a person who has made an application mentioned in subsection (1)(a) may appeal to the court against a deemed refusal of the application.

'**(5)** An appeal under subsection (4) may be started at any time after the last day the decision about the application should have been made.'.

36 Amendment of s 4.1.33 (Stay of operation of enforcement notice)

(1) Section 4.1.33(2)(b), 'carrying out development that is'—

omit, insert—

'stopping'.

(2) Section 4.1.33(2)—

insert—

'(e) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (d), from Queensland waters.'.

37 Amendment of s 4.1.40 (Certain appellants must obtain information about submitters)

Section 4.1.40(1)—

omit, insert—

'**(1)** If the applicant or a submitter for a development application appeals about the part of the assessment manager's decision relating to section 3.5.15 or 3.5.16, the appellant must ask the assessment manager to give the appellant the name and address of each principal submitter who—

(a) made a properly made submission about the application; and

(b) has not withdrawn the submission.'.

38 Replacement of s 4.1.41 (Notice of appeal to other parties (div 8))

Section 4.1.41—

omit, insert—

‘4.1.41 Notice of appeal to other parties (div 8)

‘**(1)** An appellant under division 8 must give written notice of the appeal to the chief executive and—

(a) if the appellant is an applicant—the assessment manager, any concurrence agency, any principal submitter whose submission has not been withdrawn and any advice agency treated as a submitter whose submission has not been withdrawn; or

(b) if the appellant is a submitter or an advice agency whose response to the development application is treated as a submission for an appeal—the assessment manager, the applicant and any concurrence agency; or

(c) if the appellant is a person to whom a notice mentioned in section 4.1.30 has been given—the deciding entity and any entity that was a concurrence agency for the development application to which the notice relates.

‘**(2)** The notice must be given within—

(a) if paragraphs (b) and (c) do not apply—10 business days after the appeal is started; or

(b) if information is requested under section 4.1.40—within 10 business days after the appellant is given the information; or

(c) if the appellant is a submitter or advice agency whose response to the development application is treated as a submission for an appeal—2 business days after the appeal is started.

‘**(3)** The notice must state—

(a) the grounds of the appeal; and

(b) if the person given the notice is not the respondent or a co-respondent under section 4.1.43—that the person may, within 10 business days after the notice is given, elect to become a co-respondent to the appeal by filing in the court a notice of election in the approved form.’.

39 Replacement of s 4.1.43 (Respondent and co-respondents for appeals under div 8)

Section 4.1.43—

omit, insert—

'4.1.43 Respondent and co-respondents for appeals under div 8

'**(1)** Subsections (2) to (9) apply for appeals under sections 4.1.27 to 4.1.29.

'**(2)** The assessment manager is the respondent for the appeal.

'**(3)** If the appeal is started by a submitter, the applicant is a co-respondent for the appeal.

'**(4)** A principal submitter is entitled to elect to become a co-respondent to the appeal.

'**(5)** If a principal submitter elects to become a co-respondent, any other submitter for the submission may also elect to become a co-respondent to the appeal.

'**(6)** If the appeal is about a concurrence agency response, the concurrence agency is a co-respondent for the appeal.

'**(7)** If the appeal is only about a concurrence agency response, the assessment manager may apply to the court to withdraw from the appeal.

'**(8)** The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.

'**(9)** A person to whom a notice of appeal is required to be given under section 4.1.41 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.

'**(10)** For an appeal under section 4.1.30—

(a) the deciding entity is the respondent; and

(b) any entity that was a concurrence agency for the development application to which a notice under section 3.6.3 relates may elect to become a co-respondent.'.

40 Replacement of s 4.1.45 (How a person may elect to be co-respondent)

Section 4.1.45—

omit, insert—

‘4.1.45 How an entity may elect to be a co-respondent

‘An entity that is entitled to elect to be a co-respondent to the appeal may do so, within 10 business days after notice of the appeal is given to the entity, by following the rules of court for the election.’.

41 Amendment of s 4.1.52 (Appeal by way of hearing anew)

Section 4.1.52(2)(b)—

omit, insert—

‘(b) must not consider a change to the application on which the decision being appealed was made unless—

(i) the change is a change that could be made under section 3.2.8 or 3.2.9; and

(ii) the court is satisfied the change would not substantially restrict the opportunity for a person to exercise a right conferred on the person by this or another Act.’.

42 Omission of s 4.1.53 (Court may decide appeal even if particular requirements not complied with)

Section 4.1.53—

omit.

43 Amendment of s 4.2.7 (Jurisdiction of tribunals)

Section 4.2.7(1)—

omit, insert—

‘**(1)** A tribunal may decide any matter that under this or another Act the tribunal is given jurisdiction to decide.’.

44 Insertion of new s 4.2.9A

After section 4.2.9—

insert—

‘4.2.9A Appeals by persons requesting compliance assessment

‘**(1)** A person requesting compliance assessment may appeal to a tribunal—

(a) against the compliance assessor’s decision; or

(b) if, under section 3.7.5(7), the compliance assessor does not decide a request for compliance assessment—in the circumstances prescribed under a regulation.

‘**(2)** For subsection (1)(a), the appeal must be started within 20 business days (the **“applicant’s appeal period”**) after notice of the decision is given to the person.

‘**(3)** For subsection (1)(b), the appeal may be started at any time after the last day a decision on the matter should have been made.

‘**(4)** If a tribunal acts under this section, the tribunal must decide the matter as if the tribunal were the assessor.’.

45 Replacement of ss 4.2.10 and 4.2.11

Sections 4.2.10 and 4.2.11—

omit, insert—

‘4.2.10 Appeals by compliance assessors

‘**(1)** A compliance assessor may appeal to a tribunal about the giving of a compliance permit in the circumstances prescribed under a regulation.

‘**(2)** The appeal must be started within the time prescribed under the regulation for the appeal.

‘4.2.11 Appeals for matters arising after approval given (co-respondents)

‘**(1)** Subsection (3) applies if for a change application—

(a) a person receives a notice under section 3.6.3(1)(a); and

(b) section 3.6.3(1)(b) also applies for the notice.

‘**(2)** However, subsection (3) does not apply if the notice is about a change to the currency period if the approval resulted from a development application (superseded planning scheme) that was assessed as if it were an application made under a superseded planning scheme.

'**(3)** The person may appeal to a tribunal about the decision in the notice.

'**(4)** The appeal must be started within 20 business days after the day the notice is given to the person.

'**(5)** Also, a person who has made an application mentioned in subsection (1) may appeal to a tribunal against a deemed refusal of the application.

'**(6)** An appeal under subsection (5) may be started at any time after the last day the decision about the application should have been made.'.

46 Replacement of s 4.2.12 (Appeals for matters arising after approval given (no co-respondents))

Section 4.2.12—

omit, insert—

'4.2.12 Appeals for matters arising after approval given (no co-respondents)

'**(1)** Subsection (2) applies if for a change application—

(a) a person receives a notice under section 3.6.3(1)(a) and section 3.6.3(1)(c) also applies for the notice; or

(b) section 3.6.5(8)(b)[50] applies for the notice.

'**(2)** The person may appeal to a tribunal about the decision in the notice.

'**(3)** The appeal must be started within 20 business days after the day the notice is given to the person.

'**(4)** Also, a person who has made an application mentioned in subsection (1)(a) may appeal to a tribunal against a deemed refusal of the application.

'**(5)** An appeal under subsection (4) may be started at any time after the last day the decision about the application should have been made.'.

47 Amendment of s 4.2.14 (Stay of operation of enforcement notice)

Section 4.2.14(2)(b)—

50 Section 3.6.5 (When operational conditions may be changed or cancelled by assessment manager or concurrence agency)

omit, insert—

‘(b) stopping the demolition of a work; or

(c) clearing vegetation on freehold land; or

(d) the removal of quarry material allocated under the *Water Act 2000*; or

(e) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (d), from Queensland waters.’.

48 Replacement of ss 4.2.17 and 4.2.18

Sections 4.2.17 and 4.2.18—

omit, insert—

‘4.2.17 Notice of appeal to other parties (div 3)

‘**(1)** For an appeal under division 3, the registrar must, within 10 business days after the appeal is started, give written notice of the appeal to—

(a) for an appeal under section 4.2.9—the assessment manager and any concurrence agency; or

(b) for an appeal under section 4.2.9A—any compliance assessor for the matter being appealed; or

(c) for an appeal under section 4.2.10—any compliance assessor for the matter being appealed and the person requesting compliance assessment; or

(d) for an appeal under section 4.2.11—the deciding entity and any entity that was a concurrence agency for the development application to which the notice relates.

‘**(2)** The notice must state—

(a) the grounds of the appeal; and

(b) if the person given the notice is not the respondent or a co-respondent under section 4.2.19[51]—that the person, within 10 business days after the day the notice is given, may elect to become a co-respondent to the appeal.

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51 Section 4.2.19 (Respondent and co-respondents for appeals under div 3)

‘4.2.18 Notice of appeal to other parties (div 4)

‘**(1)** For an appeal under division 4, the registrar must, within 10 business days after the appeal is started, give written notice of the appeal to—

(a) for an appeal under section 4.2.12[52]—the deciding entity; or

(b) for an appeal under section 4.2.13—the entity that gave the notice, and, if the entity is not the local government, the local government.

‘**(2)** The notice must state the grounds of the appeal.’.

49 Replacement of s 4.2.33 (Matters the tribunal may consider in making a decision)

Section 4.2.33—

omit, insert—

‘4.2.33 Matters the tribunal may consider in making a decision

‘**(1)** Subsection (2) applies if the appeal is about—

(a) a development application (including about a development approval given for a development application); or

(b) a request for compliance assessment (including about a decision given for the request).

‘**(2)** The tribunal must decide the appeal based on the laws and policies applying when the application or request was made, but may give the weight to any new laws and policies the tribunal considers appropriate.’.

50 Amendment of s 4.2.34 (Appeal decision)

(1) Section 4.2.34(2)(d)—

omit, insert—

‘(d) for a deemed refusal or a failure to decide a request for compliance assessment—

52 Section 4.2.12 (Appeals for matters arising after approval given (no co-respondents))

(i) order the assessment manager or compliance assessor to decide the application or request by a stated time; and

(ii) if the assessment manager or compliance assessor does not comply with the order under subparagraph (i)—decide the application or request; or'.

(2) Section 4.2.34(2)(e), 'application'—

omit, insert—

'request for compliance assessment'.

51 Replacement of s 4.2.35A (Notice of compliance)

Section 4.2.35A—

omit, insert—

'4.2.35A Notice of compliance

'If the tribunal orders or directs the assessment manager or a compliance assessor to do something, the assessment manager or compliance assessor must, after doing the thing, give the registrar written notice of doing the thing.'.

52 Omission of s 4.3.2A (Certain assessable development must comply with codes)

Section 4.3.2A—

omit.

53 Insertion of new s 4.3.4A

After section 4.3.4—

insert—

'4.3.4A Offences relating to compliance assessment

'**(1)** A person must not carry out compliant development—

(a) before a compliance permit for the development is obtained; and

(b) other than in accordance with the permit.

Maximum penalty—1 665 penalty units.

'**(2)** A person must request compliance assessment for a work mentioned in section 3.7.3 within the time prescribed under a regulation.

Maximum penalty—1 665 penalty units.'.

54 Replacement of s 4.3.5 (Carrying on unlawful use of premises)

Section 4.3.5—

omit, insert—

'4.3.5 Offences about the use of premises

'Subject to section 4.3.6, a person must not use premises—

(a) if the use is not a lawful use; or

(b) unless the use is in accordance with—

(i) for premises that have not been designated—a planning scheme or temporary local planning instrument that regulates the use of the premises;[53] or

(ii) for premises that have been designated—any requirements about the use of land that are part of the designation.[54]

Maximum penalty—1 665 penalty units.'.

55 Amendment of s 4.3.8 (Application of div 2)

(1) Section 4.3.8(c)—

omit, insert—

'(c) demolishing a work; or'.

(2) Section 4.3.8—

insert—

'(g) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (f), from Queensland waters.'.

---

53 See section 2.1.23(3) (Local planning instruments have force of law).

54 See section 2.6.4 (What designations may include).

56 Amendment of s 4.3.11 (Giving enforcement notice)

Section 4.3.11(5), 'about'—

omit, insert—

'ordering'.

57 Amendment of s 4.3.13 (Specific requirements of enforcement notice)

(1) Section 4.3.13(1)—

insert—

'(fa) to request compliance assessment;'.

(2) Section 4.3.13(1)(fa) and (g)—

renumber as section 4.3.13(g) and (h).

58 Replacement of s 4.3.16 (Processing application required by enforcement notice)

Section 4.3.16—

omit, insert—

'4.3.16 Processing application or request required by enforcement notice

'If a person applies for a development permit or requests compliance assessment as required by an enforcement notice, the person—

(a) must not discontinue the application or request, unless the person has a reasonable excuse; and

(b) must take all necessary and reasonable steps to enable the application or request to be decided as quickly as possible, unless the person discontinues the application or request with a reasonable excuse.

Maximum penalty—1 665 penalty units.'.

59 Replacement of ch 5, pt 1

Chapter 5, part 1—

omit, insert—

‘PART 1—INFRASTRUCTURE PLANNING AND FUNDING

‘Division 1—Non-trunk infrastructure

‘5.1.1 Conditions local governments may impose for non-trunk infrastructure

‘**(1)** If a local government imposes a condition about non-trunk infrastructure, the condition may only be for supplying infrastructure for 1 or more of the following—

(a) reticulation networks internal to the premises;

(b) connecting the premises to external infrastructure networks;

(c) protecting or maintaining the efficiency or safety of the infrastructure network of which the non-trunk infrastructure is a component.

‘**(2)** The condition must state—

(a) the infrastructure to be supplied; and

(b) when the infrastructure must be supplied.

‘Division 2—Trunk infrastructure

‘5.1.2 Priority infrastructure plans for trunk infrastructure

‘Each priority infrastructure plan[55] must be prepared in accordance with guidelines prescribed under a regulation.

‘5.1.3 Funding trunk infrastructure for certain local governments

‘**(1)** This section applies to a local government in whose area there is a significant business activity under the *Local Government Act 1993* involving the supply of trunk infrastructure.

---

55 See section 2.1.3(1)(d) (Key elements of planning schemes).

'**(2)** Under this Act, the local government must not, other than under an infrastructure charges schedule or under division 5, require a payment for supplying trunk infrastructure for the activity.[56]

'**(3)** However, the Minister may, for a part of a local government's area the Minister is satisfied has low growth, give a local government written approval to require a payment for supplying trunk infrastructure for the activity under an infrastructure payments schedule instead of an infrastructure charges schedule.

'Division 3—Trunk infrastructure funding under an infrastructure charges schedule

'5.1.4 Making or amending infrastructure charges schedules

'**(1)** Despite section 2.1.5,[57] an infrastructure charges schedule must be prepared or amended in accordance with—

(a) guidelines prescribed under a regulation; and

(b) the process stated in schedule 3,[58] as if it were a planning scheme policy.

'**(2)** The schedule, or the amendment of the schedule, has effect on and from—

(a) the day the adoption of the schedule, or the amendment of the schedule, is first notified in a newspaper circulating generally in the local government's area; or

(b) if a later day for the commencement of the schedule, or the amendment of the schedule, is stated in the schedule, or the amendment—the later day.

56 See the *Local Government Act 1993*, chapter 14 (Rates and charges), part 2 (Making and levying rates and charges) for a local government's power to levy rates and charges in other ways.

57 Section 2.1.5 (Process for making or amending planning schemes)

58 Schedule 3 (Process for making or amending planning scheme policies)

'5.1.5 Key elements of an infrastructure charges schedule

'**(1)** An infrastructure charges schedule must state each of the following—

(a) a charge (an **"infrastructure charge"**) for trunk infrastructure identified in the schedule;

(b) the estimated proportion of the establishment cost of the trunk infrastructure to be funded by the charge;

(c) the estimated timing for, and estimated establishment cost of, future trunk infrastructure;

(d) each area in which the charge applies;

(e) each type of lot, work or use, for which the charge applies;

(f) how the charge must be calculated for—

(i) each area mentioned in paragraph (d); and

(ii) each type of lot, work or use mentioned in paragraph (e).

'**(2)** An infrastructure charge may also apply to trunk infrastructure—

(a) despite section 2.1.2—that is not within, or completely within, the local government's area; or

(b) that is not owned by the local government if the owner of the infrastructure agrees; or

(c) supplied by a local government on a State-controlled road.

'5.1.6 Infrastructure charges

'**(1)** The infrastructure charge—

(a) must be for trunk infrastructure; and

(b) must not be more than the proportion of the establishment cost of the infrastructure that reasonably can be apportioned to the premises for which the charge is stated; and

(c) if it is levied for an existing lawful use—must be based on the current share of usage of the infrastructure at the time the charge is levied.

'**(2)** Subsection (1)(c) does not apply if the local government and the owner of the land to which the charge relates otherwise agree in writing.

'**(3)** However, an infrastructure charge must not be levied for a work or use of land authorised under the *Mineral Resources Act 1989*.

'5.1.7 Infrastructure charges notices

'**(1)** A notice requiring the payment of an infrastructure charge (an **"infrastructure charges notice"**) must state each of the following—

(a) the amount of the charge;

(b) the land to which the charge applies;

(c) when the charge is payable;

(d) the trunk infrastructure for which the charge has been stated;

(e) whether the infrastructure is necessary to service the premises but is not yet available;

(f) the person to whom the charge must be paid.

'**(2)** If the notice is given as a result of a development approval, the local government must give the notice to the applicant at the same time as the approval is given.

'**(3)** If the notice is given as a result of a compliance assessment by the local government, the local government must give the notice—

(a) to the person who requested compliance assessment; and

(b) at the same time as the approved document is given.

'**(4)** If the notice is given as a result of a compliance assessment by a private certifier, the local government must give the notice—

(a) to the person who requested compliance assessment; and

(b) within 10 business days after the local government receives a copy of the approved document, the subject of the assessment.

'**(5)** If the notice is given other than under subsection (2), (3) or (4), the local government must give the notice to the owner of the land.

'**(6)** If the owner of the land is not the person given a notice under subsections (2) to (4), the local government must give the owner of the land a copy of the notice at the same time as the notice was given.

'**(7)** If the notice is given under subsection (2), (3) or (4)—

(a) the charge is not recoverable unless the entitlements under the approval are exercised; and

(b) the notice lapses if the approval stops having effect.[59]

'5.1.8 When infrastructure charges are payable

'The infrastructure charge is payable—

(a) if the application involves reconfiguring a lot that is assessable development—before the approval by the local government of the plan of subdivision; or

(b) if paragraph (a) does not apply and the application involves building work that is assessable development or subject to compliance assessment—before the certificate of classification for the building work is issued; or

(c) if paragraphs (a) and (b) do not apply and the application involves a material change of use—before the change; or

(d) if paragraphs (a), (b) and (c) do not apply—on the day stated in the infrastructure charges notice.

'5.1.9 Agreements about, and alternatives to, paying infrastructure charges

'**(1)** Despite sections 5.1.7 and 5.1.8, a person to whom an infrastructure charges notice has been given may enter into a written agreement with the local government about 1 or more of the following—

(a) whether the charge may be paid at a different time from the time stated in the notice, and whether it may be paid by instalments;

(b) whether infrastructure may be supplied instead of paying all or part of the charge;

(c) whether the infrastructure may be supplied at a different time from the time stated in the notice;

(d) whether infrastructure that delivers the same standard of service as that identified in the priority infrastructure plan may be

59 See sections 3.5.25 (When approval lapses), 3.6.4 (Effect of notice) and 3.7.7 (Effect of approvals under this part).

supplied instead of the infrastructure identified in the infrastructure charges schedule;

(e) if section 5.1.7(2) applies for the charge and the infrastructure is land owned by the applicant—whether land in fee simple may be given instead of paying the charge or part of the charge.

'**(2)** If the notice of charge states that infrastructure necessary to service the premises is not yet available, an agreement under subsection (1)(b) must state the arrangements for refunding to the applicant an amount for the proportion of the establishment cost of the infrastructure that can reasonably be apportioned to other users' premises.

'**(3)** For land for public parks infrastructure or land for local community facilities, the local government may give the applicant a notice, in addition to, or instead of, the notice given under section 5.1.7, requiring the person to—

(a) give to the local government, in fee simple, part of the land the subject of the development application; or

(b) give to the local government, in fee simple, part of the land the subject of the development application and an infrastructure charge.

'**(4)** If the applicant is required to give land under subsection (3)(a), or a combination of land and a charge under subsection (3)(b), the total value of the contribution must not be more than the amount of the charge mentioned in subsection (1).

'**(5)** The applicant must comply with the notice as soon as practicable.

'**(6)** If subsection (1)(e) or (3) applies and the land is to be given to the local government for public parks infrastructure or local community facilities, the land must be given on trust.

'5.1.10 Local government may supply different trunk infrastructure to that identified in an infrastructure charges schedule

'**(1)** Despite section 5.1.5, a local government may supply trunk infrastructure other than the trunk infrastructure identified in the infrastructure charges schedule.

'**(2)** However, the trunk infrastructure supplied must deliver the same standard of service as that identified in the priority infrastructure plan.

'5.1.11 Infrastructure charges taken to be a rate

'**(1)** An infrastructure charge levied by a local government is, for the purposes of recovery, taken to be a rate within the meaning of the *Local Government Act 1993*.

'**(2)** However, if the local government and an applicant enter into a written agreement stating the charge is a debt owing to it by the applicant or person, subsection (1) does not apply.

'Division 4—Trunk infrastructure funding under an infrastructure payments schedule

'5.1.12 Making or amending infrastructure payments schedules

'**(1)** Despite section 2.1.5,[60] an infrastructure payments schedule must be prepared or amended in accordance with—

(a) guidelines prescribed under a regulation; and

(b) the process stated in schedule 3,[61] as if it were a planning scheme policy.

'**(2)** The schedule, or the amendment of the schedule, has effect on and from—

(a) the day the adoption of the schedule, or the amendment of the schedule, is first notified in a newspaper circulating generally in the local government's area; or

(b) if a later day for the commencement of the schedule, or the amendment of the schedule, is stated in the schedule, or the amendment—the later day.

'5.1.13 Key elements of an infrastructure payments schedule

'**(1)** An infrastructure payments schedule must state each of the following—

60 Section 2.1.5 (Process for making or amending planning schemes)

61 Schedule 3 (Process for making or amending planning scheme policies)

(a) a payment (an **"infrastructure payment"**) for trunk infrastructure identified in the schedule;

(b) the estimated proportion of the establishment cost of the trunk infrastructure to be funded by the payment;

(c) the estimated establishment cost of future trunk infrastructure;

(d) each area in which the payment applies;

(e) each type of lot, work or use, for which the payment applies; and

(f) how the payment must be calculated for—

(i) each area mentioned in paragraph (d); and

(ii) each type of lot, work or use mentioned in paragraph (e).

'**(2)** An infrastructure payment may also apply to trunk infrastructure—

(a) despite section 2.1.2—that is not within, or completely within, the local government's area; or

(b) that is not owned by the local government if the owner of the infrastructure agrees; or

(c) supplied by a local government on a State-controlled road.

'5.1.14 Infrastructure payments

'**(1)** The infrastructure payments—

(a) must be for trunk infrastructure; and

(b) must not be more than the proportion of the establishment cost of the infrastructure that reasonably can be apportioned to the premises for which the payments are stated.

'**(2)** However, a condition requiring an infrastructure payment must not be imposed for a work or use of land authorised under the *Mineral Resources Act 1989*.

'5.1.15 Imposing conditions for infrastructure payments

'**(1)** If a local government imposes a condition requiring an infrastructure payment under an infrastructure payments schedule, the condition must state each of the following—

(a) the amount of the payment;[62]

(b) when the payment must be made;[63]

(c) the trunk infrastructure for which the payment must be made;

(d) whether the infrastructure is necessary to service the premises but is not yet available;

(e) the person to whom the payment must be made.

'**(2)** However, for land for public parks infrastructure or land for community facilities, the local government may, instead of imposing a condition requiring an infrastructure payment, impose a condition requiring the applicant to give to the local government, in fee simple—

(a) part of the land the subject of the development application; or

(b) part of the land the subject of the development application and a payment.

'**(3)** If the applicant is required to give land under subsection (2)(a), or a combination of land and a payment under subsection (2)(b), the total value of the contribution must not be more than the amount of the payment mentioned in subsection (1).

'**(4)** If subsection (1)(b) or (2) applies and the land is to be given to the local government for public parks infrastructure or local community facilities, the land must be given on trust.

'**(5)** A condition imposed under this division complies with section 3.5.29, to the extent the trunk infrastructure is necessary, but not yet available, to service premises, even if the infrastructure is also intended to service other premises.

'5.1.16 When payment must be made

'The infrastructure payment must be made—

(a) if the application involves reconfiguring a lot that is assessable development—before the approval by the local government of the plan of subdivision; or

62 But see section 3.5.32 (Agreements).

63 See section 5.1.16 (When payment must be made).

(b) if paragraph (a) does not apply and the application involves building work that is assessable development—before the certificate of classification for the building work is issued; or

(c) if paragraphs (a) and (b) do not apply and the application involves a material change of use—before the change.

'5.1.17 Agreements about, and alternatives to, making infrastructure payments

'**(1)** Despite sections 5.1.15 and 5.1.16, if a condition requiring an infrastructure payment is imposed on a development approval, the applicant may enter into a written agreement with the local government about 1 or more of the following—

(a) whether the payment may be made at a different time from the time stated in the condition, and whether it may be made by instalments;

(b) whether infrastructure may be supplied instead of making all or part of the payment;

(c) whether the infrastructure may be supplied at a different time from the time stated in the condition;

(d) whether infrastructure that delivers the same standard of service as that identified in the priority infrastructure plan may be supplied instead of the infrastructure identified in the infrastructure payments schedule;

(e) if the infrastructure is land owned by the applicant—whether land in fee simple may be given instead of making the payment or part of the payment.

'**(2)** If the condition states that infrastructure necessary to service the premises is not yet available, an agreement under subsection (1)(b) must state the arrangements for refunding to the applicant an amount for the proportion of the establishment cost of the infrastructure that can reasonably be apportioned to other users' premises.

‘5.1.18 Local government may supply different trunk infrastructure to that identified in an infrastructure payments schedule

‘**(1)** Despite section 5.1.13, a local government may supply trunk infrastructure other than the trunk infrastructure identified in the infrastructure payments schedule.

‘**(2)** However, the trunk infrastructure supplied must deliver the same standard of service as that identified in the priority infrastructure plan.

‘Division 5—Conditions local governments may impose for additional infrastructure costs

‘5.1.19 Conditions local governments may impose for additional infrastructure costs

‘**(1)** If a local government imposes a condition requiring the payment of additional trunk infrastructure costs, the condition may be imposed only if the development—

(a) is—

(i) inconsistent with the assumptions stated in the priority infrastructure plan; or

(ii) for premises completely or partly outside the priority infrastructure area; and

(b) would impose additional trunk infrastructure costs on the infrastructure provider after taking into account infrastructure charges levied, or infrastructure payments imposed for the development.

‘**(2)** A condition mentioned in subsection (1) must state each of the following—

(a) why the condition is required;

(b) the amount of the payment required;

(c) details of the infrastructure for which the payment is required;

(d) when the payment must be made;

(e) the person to whom the payment must be made;

(f) the applicant may elect to supply all or part of the infrastructure instead of making payment for the infrastructure to be supplied;

(g) if the applicant makes an election under paragraph (f)—

(i) any compliance requirements for supplying the infrastructure; and

(ii) when the infrastructure must be supplied.

'**(3)** For subsection (2)(d), the payment must be made by the day the development, or work associated with the development, starts unless the applicant and the infrastructure provider otherwise agree in writing.

'**(4)** Subsection (5) applies if—

(a) a development approval no longer has effect; and

(b) a payment for the additional costs of trunk infrastructure had been made to the local government under the approval; and

(c) the infrastructure, the subject of the payment, had not been supplied immediately before the approval ceased having effect.

'**(5)** The local government must repay the payment to the person who made the payment.

'**(6)** A condition imposed under this division complies with section 3.5.29, to the extent the trunk infrastructure is necessary, but not yet available, to service premises, even if the infrastructure is also intended to service other premises.

'**(7)** A local government may not impose a condition under this division for State infrastructure.

'**(8)** Nothing in this division stops a local government from—

(a) levying a charge, or imposing a condition requiring an infrastructure payment, for the establishment cost of the component of the trunk infrastructure included in the infrastructure charges schedule or infrastructure payments schedule; or

(b) imposing a condition for non-trunk infrastructure.

‘5.1.20 Local government additional trunk infrastructure costs in priority infrastructure areas

‘**(1)** The costs that may be required by a local government under section 5.1.19, for development completely in the priority infrastructure area, may only include—

(a) for trunk infrastructure to be supplied earlier than the time anticipated in the priority infrastructure plan—the difference between the establishment cost of the infrastructure made necessary by the development and the amount of any charge paid or payment made for the infrastructure; or

(b) for trunk infrastructure associated with a different type, scale or intensity of development from that anticipated in the priority infrastructure plan—

(i) for a different type, a greater scale or a greater intensity of development—the establishment cost of any additional trunk infrastructure made necessary by the development; or

(ii) for a lesser scale or lesser intensity of development—the difference between the establishment cost of the infrastructure identified in the plan and the establishment cost of the infrastructure necessary for the development.

‘**(2)** The applicant may enter into an agreement with the infrastructure provider to obtain a refund from other users for the proportion of the establishment cost of the infrastructure—

(a) that reasonably can be apportioned to the other users’ premises mentioned in subsection (1)(a); and

(b) collected under an infrastructure charges schedule or infrastructure payments schedule.

‘5.1.21 Local government additional trunk infrastructure costs outside priority infrastructure areas

‘**(1)** The costs that may be required under section 5.1.19, for development completely or partly outside the priority infrastructure area, may only include—

(a) the establishment cost of any trunk infrastructure made necessary by the development; and

(b) the maintenance and operating costs of the infrastructure mentioned in paragraph (a) for up to 5 years; and

(c) the establishment, maintenance and operating costs of any temporary infrastructure required to ensure the safe or efficient operation of the infrastructure mentioned in paragraph (a) for up to 5 years.

'**(2)** Subsection (3) applies if the planning scheme indicates the premises is part of an area intended for future development for—

(a) residential purposes; or

(b) retail or commercial purposes; or

(c) industrial purposes.

'**(3)** For subsection (1)(a), trunk infrastructure made necessary by the development includes the trunk infrastructure necessary to service the balance of the area mentioned in subsection (2) to the point where the premises connect to the infrastructure.

'Division 6—Miscellaneous

'5.1.22 Agreements for infrastructure partnerships

'**(1)** A person may enter into a written agreement with a public sector entity about—

(a) supplying or funding infrastructure; or

(b) refunding payments made towards the cost of supplying or funding infrastructure.

'**(2)** Subsection (1) has effect despite divisions 1 to 5 or chapter 3, part 5, division 6.

'5.1.23 Public notice of proposed sale of certain land held in trust by local governments

'**(1)** Subsection (2) applies if—

(a) a local government intends to sell land; and

(b) the land is land for public parks infrastructure or local community facilities; and

(c) the local government completely or partly obtained the land in relation to an infrastructure charge levied, or a condition of an approval given, under this or the repealed Act.

'**(2)** The local government must advertise its intention to sell the land by placing a notice of the sale in a newspaper circulating in the local government's area.

'**(3)** The notice must contain—

(a) a description of the land proposed to be sold; and

(b) the purpose for which the land was given on trust; and

(c) the reason for proposing to sell the land; and

(d) the reasonable time within which submissions must be made.

'5.1.24 Local government to consider all submissions

'The local government must consider all submissions in relation to the notice before making a decision about the sale.

'5.1.25 Sale extinguishes the trust

'If a local government complies with sections 5.1.23 and 5.1.24 and sells the land, the land is sold free of the trust.'.

60 Replacement of s 5.2.1 (Meaning of "infrastructure agreement")

Section 5.2.1—

omit, insert—

'5.2.1 Meaning of "infrastructure agreement"

'In this part—

"infrastructure agreement" means an agreement, as amended from time to time, mentioned in any of the following sections[64]—

- section 3.5.32, to the extent the agreement is about a condition for the payment for, or the supply of, infrastructure
- section 5.1.6(2)
- section 5.1.9
- section 5.1.17
- section 5.1.19
- section 5.1.20
- section 5.1.22.'.

61 Omission of s 5.2.2 (Agreements may be entered into about infrastructure)

Section 5.2.2—

omit.

62 Amendment of s 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

Section 5.3.5(6) and (7)—

omit, insert—

'**(6)** If the private certifier approves the application, the private certifier must—

(a) within 5 business days after approving the application, give the assessment manager a copy of—

(i) the application; and

64 Section 3.5.32 (Agreements), section 5.1.6 (Infrastructure charges), section 5.1.9 (Agreements about, and alternatives to, paying infrastructure charges), section 5.1.17 (Agreements about, and alternatives to, making infrastructure payments), section 5.1.19 (Conditions local governments may impose for additional infrastructure costs), section 5.1.20 (Local government additional trunk infrastructure costs in priority infrastructure areas) and section 5.1.22 (Agreements for infrastructure partnerships)

(ii) the decision notice or negotiated decision notice; and

(iii) any other documents prescribed under a regulation under this or another Act; and

(b) if the assessment manager is the local government—pay the assessment manager the fee fixed under subsection (8).

'**(7)** If the private certifier issues any certificate required by this or another Act, the private certifier must—

(a) within 5 business days after issuing the certificate, give the assessment manager a copy of the certificate; and

(b) if the assessment manager is the local government—pay the assessment manager the fee fixed under subsection (8).

'**(8)** The local government may, by local law or resolution, fix a reasonable fee for accepting any document mentioned in subsection (6) or (7).

'**(9)** The local government is taken to have always had power, by local law or resolution, to fix a fee mentioned in subsection (8).

'**(10)** Subsection (9) does not affect a decision of a court made before the commencement of the subsection in relation to a particular action about the validity of a fee mentioned in subsection (8) fixed by local law or resolution and imposed on a particular person.'.

63 Amendment of s 5.4.2 (Compensation for reduced value of interest in land)

Section 5.4.2(b)—

omit, insert—

'(b) a development application (superseded planning scheme) relating to the land has been made; and'.

64 Amendment of s 5.4.4 (Limitations on compensation under ss 5.4.2 and 5.4.3)

(1) Section 5.4.4(1)(b), after 'land'—

insert—

'or the clearing of vegetation'.

(2) Section 5.4.4(1)(e) and (f)—

omit, insert—

'(e) is about the matters comprising a priority infrastructure plan; or'.

(3) Section 5.4.4(1)(g) and (h)—

renumber as section 5.4.4(1)(f) and (g).

65 Amendment of s 5.7.2 (Documents local government must keep available for inspection and purchase)

(1) Section 5.7.2(1)(g) and (m)—

omit.

(2) Section 5.7.2(1)—

insert—

'(m) each notice given by the local government in response to a request to apply a superseded planning scheme to premises;

(na) a register (the **"infrastructure charges register"**) of all infrastructure charges levied by the local government;

(t) each compliance permit or compliance certificate given by, or to, the local government.'.

(3) Section 5.7.2—

insert—

'**(1A)** The infrastructure charges register must, for each infrastructure charge levied, include each of the following—

(a) the real property description of the land to which the charge applies;

(b) the infrastructure charges schedule under which the charge was levied;

(c) the amount of the charge levied;

(d) the amount of the charge unpaid;

(e) the number of units of demand charged for;

(f) if the charge was levied as a result of a development approval—the approval reference number and the day the approval will lapse.'.

(4) Section 5.7.2(1)(h) to (na)—

renumber as section 5.7.2(1)(g) to (n).

(5) Section 5.7.2(1A) and (2)—

renumber as section 5.7.2(2) and (3).

66 Amendment of s 5.7.4 (Documents assessment manager must keep available for inspection and purchase)

(1) Section 5.7.4(1)(a), after 'manager'—

insert—

', together with any document, including, for example, plans, referenced in the notice'.

(2) Section 5.7.4(1)(c), after 'development application'—

insert—

'or change application'.

67 Amendment of s 5.7.5 (Documents assessment manager must keep available for inspection only)

Section 5.7.5(3)(e)(v), 'minor change to the approval'—

omit, insert—

'change to the approval under chapter 3, part 6'.

68 Amendment of s 5.7.6 (Documents chief executive must keep available for inspection and purchase)

(1) Section 5.7.6(f)—

omit, insert—

'(f) each notice given to the chief executive under section 3.5.26;'.

(2) Section 5.7.6(j), after 'development application'—

insert—

'or change application'.

(3) Section 5.7.6(k), '3.6.9(1)'

omit, insert—

'3.8.12(1)'.

(4) Section 5.7.6—

insert—

'(l) each final terms of reference, EIS and EIS assessment report prepared in accordance with chapter 5, part 7A;

(m) if the State has entered into a bilateral agreement with the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)—any material the agreement requires to be made publicly available by the State;

(n) each guideline issued by the chief executive under section 5.8.8.'.

(5) Section 5.7.6—

insert—

'**(2)** The documents mentioned in subsection (1) may be contained in hard copy or electronic form.'.

69 Amendment of s 5.7.7 (Documents chief executive must keep available for inspection only)

Section 5.7.7—

insert—

'**(2)** The documents mentioned in subsection (1) may be contained in hard copy or electronic form.'.

70 Replacement of s 5.7.9 (Limited planning and development certificates)

Section 5.7.9—

omit, insert—

‘5.7.9 Limited planning and development certificates

‘A limited planning and development certificate must contain the following information for premises—

(a) details of the provisions of any planning scheme, including a related infrastructure charges schedule, applying specifically to the premises;

(b) a description of any designations applying to the premises.’.

71 Amendment of s 5.7.10 (Standard planning and development certificates)

(1) Section 5.7.10(1)—

insert—

‘(aa) details of any decision to approve or refuse an application to amend a planning scheme made under section 4.3 of the repealed Act, including any conditions of approval;

(ab) a copy of any information recorded for the premises in the infrastructure charges register;’.

(2) Section 5.7.10(1)(b), ‘minor’—

omit.

(3) Section 5.7.10(1)(aa) to (f)—

renumber as section 5.7.10(1)(b) to (h).

72 Insertion of new ch 5, pt 7A

In chapter 5—

insert—

‘PART 7A—ENVIRONMENTAL IMPACT STATEMENTS

‘Division 1—Preliminary

‘5.7A.1 When EIS process applies

‘This part applies—

(a) in circumstances prescribed under a regulation, for development—

(i) that is, or is proposed to be, the subject of a development application; or

(ii) for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure; and

(b) for a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)—if the chief executive agrees in writing with the applicant to apply this part.

'5.7A.2 Purpose of EIS process

The purpose of the EIS process is as follows—

(a) to assess—

(i) the potential adverse and beneficial environmental, economic and social impacts of the development; and

(ii) management, monitoring, planning and other measures proposed to minimise any adverse environmental impacts of the development;

(b) if practicable, to consider feasible alternative ways to carry out the development;

(c) to give enough information about the matters mentioned in paragraphs (a) and (b) to the proponent, Commonwealth and State authorities and the public;

(d) to prepare or propose an environmental management plan for the development;

(e) for development under section 5.7A.1(a)—to help the assessment manager and any concurrence agencies to make an informed decision about the development application;

(f) for development under section 5.7A.1(b)—to help the designator to make an informed decision about—

(i) whether or not to proceed with a proposed designation; and

(ii) if the designation proceeds—the requirements included in the designation;[65]

(g) to meet any assessment requirements under—

(i) the Commonwealth Environment Act for development that is, or includes, a controlled action under that Act; or

(ii) a bilateral agreement;[66]

(h) to allow the State to meet its obligations, if any, under a bilateral agreement.

'Division 2—EIS process

'5.7A.3 Applying for terms of reference

'**(1)** A proponent of development to which this part applies must apply to the chief executive for terms of reference for an EIS for the development.

'**(2)** The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

'**(3)** If an applicant proposes to make 1 or more applications for preliminary approval for the development, the EIS must be prepared for the first of the applications.

'**(4)** However, if the chief executive agrees that the EIS can be prepared for a stated later application, the EIS must be prepared for that application.

'5.7A.4 Draft terms of reference for EIS

'**(1)** Subsection (2) applies—

(a) after the chief executive receives the application; and

---

65 See section 2.6.4.

66 For controlled actions under the *Commonwealth Protection and Biodiversity Conservation Act 1999*, see section 67 (What is a controlled action?) of that Act.

For assessment requirements of controlled actions, see chapter 4, part 8 (Assessing impacts of controlled actions) of that Act.

For bilateral agreements, see chapter 3 (Bilateral agreements) of that Act.

(b) if the chief executive is satisfied draft terms of reference for the EIS should be publicly notified; and

(c) after consulting the relevant entities mentioned in section 5.7A.13(b) and (c).

'**(2)** The chief executive must prepare draft terms of reference that allow the purposes of the EIS to be achieved for the development.

'**(3)** The chief executive must publish a notice stating each of the following—

(a) a description of the development and of the land on which the development is proposed to be carried out;

(b) that the chief executive has prepared draft terms of reference for the EIS;

(c) where a copy of the draft terms of reference may be inspected and, on payment of a reasonable fee, purchased;

(d) that anyone may make written comments to the chief executive about the draft terms of reference;

(e) the day by which comments must be made (the **"last day for making comments"**) and the address for making comments;

(f) another matter prescribed under a regulation.

'**(4)** The notice must be published at least once in the way prescribed under a regulation.

'**(5)** The last day for making comments must not be earlier than 15 business days after the notice is published.

'**(6)** The fee mentioned in subsection (3)(c) must not be more than the actual cost of producing the copy.

'**(7)** The chief executive must, until the last day for making comments, keep—

(a) a copy of the draft terms of reference available for inspection and purchase; and

(b) brief details about the draft terms of reference available on the department's web site on the internet.

'**(8)** Until the last day for making comments, any person may make written comments to the chief executive about the draft terms of reference.

'**(9)** Also, the chief executive must give a copy of the notice and the draft terms of reference to—

(a) each local government whose local government area the chief executive is satisfied the draft terms of reference relate; and

(b) for development that is, or is proposed to be, the subject of a development application—each entity that is, or would be, a referral agency.

'**(10)** A local government receiving a copy of the draft terms of reference must make the copy available for inspection and purchase until the last day of the comment period.

'5.7A.5 Terms of reference for EIS

'**(1)** The chief executive must—

(a) if the chief executive has acted under section 5.7A.4—finalise the terms of reference and give them to the proponent within 10 business days after the end of the comment period; or

(b) if the chief executive has not prepared draft terms of reference—prepare terms of reference and give them to the proponent within 20 business days after the chief executive receives the application.

'**(2)** For subsection (1)(a), the chief executive must take account of any comments received on or before the last day for making comments.

'**(3)** The chief executive may extend the period for preparing or finalising the terms of reference if the chief executive gives the proponent notice of the extension before the period ends.

'**(4)** The notice must state a new day by which the chief executive must give the proponent the terms of reference.

'**(5)** The chief executive must, within 5 business days after the chief executive gave a copy of the terms of reference to the proponent, also give a copy of the terms of reference to—

(a) to the extent the development for which the terms of reference have been prepared is, or is proposed to be, the subject of a development application—

(i) the assessment manager and all referral agencies; or

(ii) the entities that would be the assessment manager and all referral agencies for a development application for the development, if an application is made; and

(b) to the extent the development for which the terms of reference have been prepared is for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure—the entity who would be the designator under chapter 2, part 6.

'5.7A.6 Preparation of draft EIS

'**(1)** The proponent must prepare a draft EIS and give it to the chief executive.

'**(2)** If the chief executive is satisfied the draft EIS addresses the terms of reference and includes any matters stated for inclusion in the draft EIS under guidelines made by the chief executive under section 5.8.8, the chief executive must give the proponent a written notice to that effect.

'5.7A.7 Public notification of draft EIS

'**(1)** After the proponent has received notice under section 5.7A.6(2), the proponent must—

(a) publish a notice stating each of the following—

(i) a description of the development and of the land on which the development is proposed to be carried out;

(ii) where a copy of the draft EIS and any associated documents decided by the chief executive may be inspected and, on payment of a reasonable fee, purchased;

(iii) that anyone may make written submissions to the chief executive about the draft EIS;

(iv) the day by which submissions must be made (the **"last day for making submissions"**) and the address for making a submission;

(v) another matter prescribed under a regulation; and

(b) to the extent the development for which the EIS has been prepared is, or is proposed to be, the subject of a development application, give a copy of the draft EIS to—

(i) the assessment manager and all referral agencies; or

(ii) the entities that would be the assessment manager and all referral agencies for a development application for the development, if an application is made; and

(c) to the extent the development for which the EIS has been prepared is for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure, give a copy of the draft EIS to the entity who would be the designator under chapter 2, part 6.

'**(2)** The notice must be published at least once in the way prescribed under a regulation.

'**(3)** The last day for making submissions must not be earlier than 30 business days after the notice is published.

'**(4)** The fee mentioned in subsection (1)(a) must not be more than the actual cost of producing the copy.

'**(5)** The chief executive must, until the last day for making submissions, keep—

(a) a copy of the draft EIS and any associated documents decided by the chief executive available for inspection and purchase; and

(b) brief details about the draft EIS available on the department's web site on the internet.

'**(6)** The chief executive must give a copy of the notice and the draft EIS to each local government whose local government area the chief executive is satisfied the EIS relates.

'**(7)** A local government receiving a copy of the draft EIS must make the copy available for inspection and purchase until the last day for making submissions.

'5.7A.8 Making submissions on draft EIS

'**(1)** Until the last day for making submissions—

(a) any person may make a submission to the chief executive about the draft EIS; and

(b) the chief executive must accept properly made submissions about the draft EIS.

'**(2)** However, the chief executive may accept a submission even if the submission is not a properly made submission.

'**(3)** If the chief executive accepts a submission, the person who made the submission may, by notice given to the chief executive—

(a) until the last day for making submissions—amend the submission; or

(b) at any time before the chief executive gives the EIS to the assessment manager—withdraw the submission.

'5.7A.9 Chief executive evaluates draft EIS, submissions and other relevant material

'**(1)** The chief executive must, after the last day for making submissions and consulting the relevant entities mentioned in section 5.7A.13(b) and (c), consider each of the following—

(a) the draft EIS;

(b) all properly made submissions;

(c) other submissions accepted by the chief executive about the draft EIS;

(d) any other material the chief executive considers is relevant to the draft EIS.

'**(2)** After considering the matters mentioned in subsection (1), the chief executive must give the proponent a notice—

(a) asking the proponent to change the draft EIS in a way stated in the notice; or

(b) stating the chief executive has accepted the draft EIS as the EIS for the development.

'**(3)** The chief executive's action under subsection (2) must be based on the chief executive's considerations under subsection (1).

'**(4)** If the chief executive asks the proponent to change the draft EIS, the chief executive must, when the chief executive is satisfied with the changed draft EIS, give the proponent a notice stating the chief executive has accepted the changed draft as the EIS for the development.

'5.7A.10 EIS assessment report

The chief executive must prepare a report (an **"EIS assessment report"**) about the EIS within 30 business days after the chief executive gave the proponent the notice under section 5.7A.9(2)(b).

'5.7A.11 Criteria for preparing report

In preparing the EIS assessment report, the chief executive must consider each of the following—

(a) the terms of reference for the EIS;

(b) the EIS;

(c) all properly made submissions and any other submissions accepted by the chief executive;

(d) any other material the chief executive considers is relevant to preparing the report.

'5.7A.12 Required content of report

The EIS assessment report must—

(a) address the adequacy of the EIS in addressing the terms of reference; and

(b) address the adequacy of any environmental management plan for the development; and

(c) make recommendations about the suitability of the development; and

(d) recommend any conditions on which any approval required for the development may be given; and

(e) contain any other matter prescribed under a regulation.

‘5.7A.13 Who the chief executive must give EIS and other material to

‘The chief executive must, within 5 business days after the chief executive completes the EIS assessment report, give the EIS, copies of all properly made submissions, copies of submissions the chief executive has accepted and the EIS assessment report, to—

(a) the proponent; and

(b) to the extent the development for which the EIS has been prepared is, or is proposed to be, the subject of a development application—

(i) the assessment manager and all referral agencies; or

(ii) the entities that would be the assessment manager and all referral agencies for a development application for the development, if an application is made; and

(c) to the extent the development for which the EIS has been prepared is for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure—the entity who would be the designator under chapter 2, part 6.

‘Division 3—How EIS process affects IDAS

‘5.7A.14 How IDAS applies for development the subject of an EIS

‘**(1)** Subsection (2) applies to a development application to the extent the development is the subject of the EIS.

‘**(2)** For the application—

(a) the information period and the notification stage do not apply; and

(b) for development requiring impact assessment—a properly made submission about the draft EIS is taken to be a properly made submission about the application; and

(c) the EIS and the EIS assessment report are part of the supporting material; and

(d) if there is a referral agency—the referral agency’s assessment period does not start unless the chief executive gives the referral agency the material under section 5.7A.13; and

(e) if there is no referral agency—the decision stage does not start unless the chief executive gives the assessment manager the material under section 5.7A.13; and

(f) if the application is changed in a way that section 3.2.10 applies to the change—the EIS process starts again for the development.

'**(3)** If the application has not been made, subsection (2) applies only to the extent—

(a) the application is made within 3 months after the chief executive gives the applicant all of the material as required by section 5.7A.13; and

(b) the development is substantially the same as the development to which the EIS relates.

'Division 4—How EIS process affects designation

'5.7A.15 Matters a designator must consider

'**(1)** Subsection (2) applies to the extent the development, the subject of the EIS, is development for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure.

'**(2)** In fulfilling the designator's duties under sections 1.2.2(1)(a) and 1.2.3(1), the designator must have regard to the EIS and the EIS assessment report.'.

73 Amendment of s 5.8.2 (Regulation-making power)

Section 5.8.2.(2)—

insert—

'(c) prescribe a minor change of use that is not a material change of use.'.

74 Amendment of s 5.8.4 (Application of Judicial Review Act 1991)

(1) Section 5.8.4(1), 'The'—

omit, insert—

'Subject to subsection (2), the'.

(2) Section 5.8.4—

insert—

'**(1A)** A person who, but for subsection (1), could have made an application under that Act in relation to a matter mentioned in subsection (1), may apply under part 4 of that Act for a statement of reasons in relation to the matter.'.

(3) Section 5.8.4(2), 'but without limiting subsection (1)'—

omit, insert—

'for subsection (1)'.

(4) Section 5.8.4(2), ', 4'—

omit.

(5) Section 5.8.4(1A) and (2)—

renumber as 5.8.4(2) and (3).

75 Insertion of new s 5.8.8

In chapter 5, part 8, after section 5.8.7—

insert—

'5.8.8 Chief executive may issue guidelines

'**(1)** The chief executive may issue guidelines about—

(a) matters to be considered in deciding if an action is a material change of use; or

(b) environmental assessment and public consultation procedures for designating land for community infrastructure under chapter 2, part 6.

'**(2)** Before issuing a guideline, the chief executive must consult with any entity the chief executive considers appropriate about the issuing of the guideline.

'**(3)** If a guideline is issued, the chief executive must—

(a) notify the making of the guideline in the gazette; and

(b) keep the guideline available for inspection and purchase.'.

76 Amendment of s 6.1.28 (IDAS must be used for processing applications)

Section 6.1.28(2) and (3)—

omit, insert—

'**(2)** If an application mentioned in subsection (1) were an application for the same development under the repealed Act and would have required public notification under the repealed Act, the application must be processed as if it were a development application requiring impact assessment.

'**(3)** If an application mentioned in subsection (1) were an application for the same development under the repealed Act and would not have required public notification under the repealed Act, the application must be processed as if it were a development application requiring code assessment.'.

77 Amendment of s 6.1.29 (Assessing applications (other than against the Standard Building Regulation))

(1) Section 6.1.29(2), '3.5.4 and 3.5.5'—

omit, insert—

'3.5.5 and 3.5.6[67]'.

(2) Section 6.1.29(3)—

insert—

'(da) any temporary local planning instrument;'.

(3) Section 6.1.29(3)(da) to (i)—

renumber as section 6.1.29(3)(e) to (j).

78 Amendment of s 6.1.31 (Conditions about infrastructure for applications)

(1) Section 6.1.31(2)(b), '3.5.32(1)(b)'—

omit, insert—

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67 Sections 3.5.5 (Development requiring code assessment) and 3.5.6 (Development requiring impact assessment or not requiring code assessment)

'3.5.31(1)(b)'.

(2) Section 6.1.31(3)(b)—

omit, insert—

'(b) if the application is being decided under an IPA planning scheme, subsection (2) applies only until—

(i) 31 March 2003; or

(ii) if the Minister, by gazette notice, nominates a later day for a particular planning scheme—the later day.'.

(3) Section 6.1.31(4) and (5)—

omit, insert—

'**(4)** Subsection (5) applies if a local government is deciding a development application only under a transitional planning scheme.

'**(5)** For deciding the application and to the extent the application is about the aspects of the application to be decided by the local government—

(a) section 3.5.31(1)(b)[68] does not apply; and

(b) chapter 5, part 1, division 5[69] does not apply.'.

79 Replacement of s 6.1.35C (Applications requiring referral coordination)

Section 6.1.35C—

omit, insert—

'6.1.35C Future effect of approvals for applications mentioned in s 3.1.6

'**(1)** Subsection (2) applies if—

(a) a development application in which the applicant sought to vary the effect of a planning scheme in 1 or more of the ways mentioned in section 3.1.6(2), as that section was immediately before the commencement of this section, is made; and

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68 Section 3.5.31 (Conditions that can not be imposed)

69 Chapter 5 (Miscellaneous), part 1 (Infrastructure planning and funding), division 5 (Conditions local governments may impose for additional infrastructure costs)

(b) the application was made before the commencement of this section; and

(c) the application has been, or is, approved.

'**(2)** To the extent the approval does either or both of the following, the approval is valid—

(a) approves the development applied for;

(b) does 1 or more of the things mentioned in section 3.1.6(3) or 3.1.6(5), as that section was immediately before the commencement of this section.'.

80 Omission of s 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)

Section 6.1.44—

omit.

81 Replacement of ch 6, pt 2 (Repeals)

Chapter 6, part 2—

omit, insert—

'PART 2—TRANSITIONAL PROVISIONS FOR INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2001

'6.2.1 Transitional provisions for infrastructure charges plans

'**(1)** If immediately before the commencement of this section an infrastructure charges plan was in force—

(a) the infrastructure charges plan continues to have effect as if it were an infrastructure charges schedule; and

(b) a reference to—

(i) the infrastructure charges plan is taken to be a reference to an infrastructure charges schedule; and

(ii) infrastructure identified in the plan is taken to be a reference to trunk infrastructure.

'**(2)** If immediately before the commencement of this section a local government was preparing an infrastructure charges plan, the local government may continue to prepare the plan as if the *Integrated Planning and Other Legislation Amendment Act 2001* had not commenced.

'**(3)** If a plan mentioned in subsection (2), is adopted by the local government after the commencement of this section—

(a) the plan is taken to be an infrastructure charges schedule; and

(b) a reference to—

(i) the plan is taken to be a reference to an infrastructure charges schedule; and

(ii) infrastructure identified in the plan is taken to be a reference to trunk infrastructure.

'6.2.2 References to operational work

'If before the commencement of this section an Act or planning instrument referred to operational work for a matter, the reference is taken to be a reference to operational work as defined in this Act immediately before the commencement of this section.'.

82 Amendment of sch 1 (Process for making or amending planning schemes)

(1) Schedule 1, section 2—

omit, insert—

'2 Local government may shorten process for amendments to planning schemes

'**(1)** Sections 3 to 8 do not apply to an amendment of a planning scheme.

'**(2)** Sections 10 to 18 also do not apply if the amendment is a minor amendment.'.

(2) Schedule 1, section 4—

omit.

(3) Schedule 1, section 11, heading—

omit, insert—

'11 Considering proposed planning scheme for adverse affects on State interests'.

(4) Schedule 1, section 11(3A)—

omit.

(5) Schedule 1, section 11(4)—

omit, insert—

'**(4)** A condition imposed under subsection (2)(b)(ii) may only be for the purpose of providing public access to the proposed planning scheme to an extent greater than otherwise provided for in this schedule.'.

83 Omission of schs 6 and 7

Schedules 6 and 7—

omit.

84 Replacement of sch 8 (Assessable, self-assessable and exempt development)

Schedule 8—

omit, insert—

'SCHEDULE 8

'ASSESSABLE AND SELF–ASSESSABLE DEVELOPMENT

schedule 10, definitions "assessable development" and "self-assessable development"

'PART 1—ASSESSABLE DEVELOPMENT

'**1.** Making a material change of use of premises for—

(a) an environmentally relevant activity, other than a mining activity; or

(b) a major hazard facility, or possible major hazard facility, as defined under the *Dangerous Goods Safety Management Act 2001*; or

(c) a brothel.

'**2.** Making a material change of use of premises on strategic port land that is inconsistent with a land use plan approved under the *Transport Infrastructure Act 1994,* section 171.[70]

'**3.** Reconfiguring a lot under the *Land Title Act 1994*, unless the plan of subdivision necessary for the reconfiguration—

(a) is a building format plan of subdivision that does not subdivide land on or below the surface of the land; or

(b) is for the amalgamation of 2 or more lots; or

(c) is in relation to the acquisition, including by agreement, under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, for a purpose set out in paragraph (a) of the schedule to that Act; or

(d) is in relation to the acquisition by agreement, other than under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, for a purpose set out in paragraph (a) of the schedule to that Act; or

(e) is in relation to land held by the State, or a statutory body representing the State and the land is being subdivided for a purpose set out in the *Acquisition of Land Act 1967*, schedule, paragraph (a); or

(f) is for the reconfiguration of a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*.

'**4.** Carrying out work that is the clearing of native vegetation on freehold land, unless the clearing is—

(a) to the extent necessary to build a single residence and any reasonably associated building or structure; or

(b) necessary for essential management; or

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70 *Transport Infrastructure Act 1994*, section 171 (Approval of land use plans)

(c) necessary for routine management in an area that is outside—

(i) an area of high nature conservation value; and

(ii) an area vulnerable to land degradation; and

(iii) a remnant endangered regional ecosystem shown on a regional ecosystem map; or

(d) in an urban area, other than an area mentioned in paragraph (c)(i) or (iii); or

(e) in a non-urban area, other than an area mentioned in paragraph (c), and is—

(i) for the reconfiguration of a lot not involving the opening of a road; or

(ii) the natural and ordinary consequence of other assessable development and the total area of the part of the land on which the development is carried out is less than 5 ha; or

(f) for a mining activity; or

(g) by fire under the *Fire and Rescue Authority Act 1990*; or

(h) for the conservation or restoration of natural areas; or

(i) for work that is ancillary works and encroachments that are carried out in accordance with requirements specified by gazette notice by the chief executive under the *Transport Infrastructure Act 1994* or done as required by a contract entered into with the chief executive under the *Transport Infrastructure Act 1994*, section 47.

'**5.** Carrying out work that is operations of any kind and all things constructed or installed that allow taking, or interfering with, water (other than using a water truck to pump water) under the *Water Act 2000* if the operations allow, under that Act—

(a) taking, or interfering with, water from a watercourse, lake or spring (other than under the *Water Act 2000*, section 20(2), (3) or (5)) or from a dam constructed on a watercourse; or

(b) taking, or interfering with, artesian water under the *Water Act 2000*; or

(c) taking, or interfering with—

(i) overland flow water, if the operations are mentioned as assessable development in a water resource plan under the *Water Act 2000*; or

(ii) subartesian water, if the operations are mentioned as assessable development in a water resource plan under the *Water Act 2000* or prescribed under a regulation; or

(d) controlling the flow of water into or out of a watercourse, lake or spring in an area declared under the *Water Act 2000* to be a drainage and embankment area, if the operations are declared under the *Water Act 2000* to be assessable development.

'**6.** Carrying out work—

(a) that is the construction of a referable dam under the *Water Act 2000*; or

(b) that will increase the storage capacity of a referable dam by more than 10%.

'PART 2—SELF–ASSESSABLE DEVELOPMENT

'**1.** All building work declared under the Standard Building Regulation to be self-assessable development.

'**2.** All building work carried out by or on behalf of the State, a public sector entity or a local government, other than building work declared under the Standard Building Regulation to be exempt development.

'**3.** Carrying out work that is operations of any kind and all things constructed or installed for taking water if the operations allow—

(a) taking water from a watercourse, lake or spring under the *Water Act 2000*, section 20(3); or

(b) taking, or interfering with—

(i) overland flow water, if the operations are mentioned as self-assessable development in a water resource plan under the *Water Act 2000*; or

(ii) subartesian water, if the operations are mentioned as self-assessable development in a water resource plan under the *Water Act 2000* or prescribed under a regulation; or

(c) controlling the flow of water into or out of a watercourse, lake or spring in an area declared under the *Water Act 2000* to be a drainage and embankment area if the operations are declared under the *Water Act 2000* to be self-assessable development.

'SCHEDULE 9

'DEVELOPMENT THAT IS EXEMPT DEVELOPMENT FOR A PLANNING SCHEME

section 3.1.2(3)

'**1.** Development for an activity authorised under—

(a) the *Mineral Resources Act 1989*, including an activity for the purpose of 1 or more of the following Acts—

- *Alcan Queensland Pty. Limited Agreement Act 1965*
- *Aurukun Associates Agreement Act 1975*
- *Central Queensland Coal Associates Agreement Act 1968*
- *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*
- *Mount Isa Mines Limited Agreement Act 1985*
- *Queensland Cement & Lime Company Limited Agreement Act 1977*
- *Queensland Nickel Agreement Act 1970*
- *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*; or

(b) the *Petroleum Act 1923* (other than an activity relating to the construction and operation of an oil refinery); or

(c) the *Petroleum (Submerged Lands) Act 1982*; or

(d) the *Offshore Minerals Act 1998*.

'**2.** A material change of use of premises implied by work if the work was substantially commenced by the State, or an entity acting for the State, before 31 March 2000.

'**3.** A mining activity to which an environmental authority (mining activities) under the *Environmental Protection Act 1994* applies.

'**4.** A material change of use for a class 1 or class 2 building under the Building Code of Australia, part A3 if the use is for providing support services and short term accommodation for persons escaping domestic violence.

'**5.** Work associated with—

(a) management practices for the conduct of an agricultural use, other than—

(i) the clearing of native vegetation on freehold land; or

(ii) operations of any kind and all things constructed or installed for taking, or interfering with, water (other than using a water truck to pump water) if the operations are for taking, or interfering with, water under the *Water Act 2000*; or

(b) weed or pest control, unless it involves the clearing of native vegetation; or

(c) the use of fire under the *Fire and Rescue Authority Act 1990*; or

(d) the conservation or restoration of natural areas; or

(e) the use of premises for forest practices.

'**6.** Reconfiguring a lot other than a lot within the meaning of the *Land Title Act 1994*.

'**7.** Reconfiguring a lot under the *Land Title Act 1994*, if the plan of subdivision necessary for the reconfiguration—

(a) is a building format plan of subdivision that does not subdivide land on or below the surface of the land; or

(b) is for the amalgamation of 2 or more lots; or

(c) is in relation to the acquisition, including by agreement, under the *Acquisition of Land Act 1967,* of land by a constructing

authority, as defined under that Act, for a purpose set out in paragraph (a) of the schedule to that Act; or

(d) is in relation to the acquisition by agreement, other than under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, for a purpose set out in paragraph (a) of the schedule to that Act; or

(e) is in relation to land held by the State, or a statutory body representing the State and the land is being subdivided for a purpose set out in the *Acquisition of Land Act 1967*, schedule, paragraph (a); or

(f) is for the reconfiguration of a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*.

'**8.** Development a person is directed to carry out under a notice, order or direction made under a State law.

'**9.** Work for removing quarry material from a State forest, timber reserve, forest entitlement area or Crown land as defined under the *Forestry Act 1959.*

'**10.** Work, including maintenance or repair work, carried out by or on behalf of a public sector entity authorised or required under a State law to carry out the work.

'**11.** Work that is digging or boring into land by an authorised person under the *Coastal Protection and Management Act 1995*, section 70.

'**12.** Work that is ancillary works and encroachments that are carried out in accordance with requirements specified by gazette notice by the chief executive under the *Transport Infrastructure Act 1994* or done as required by a contract entered into with the chief executive under the *Transport Infrastructure Act 1994*, section 47.

'**13.** Work for the construction of a substituted railway crossing by a railway manager in response to an emergency under the *Transport Infrastructure Act 1994*, section 100.

'**14.** Work performed by Queensland Rail under the *Transport Infrastructure Act 1994*, section 150.

'**15.** Work carried out under a rail feasibility investigator's authority granted under the *Transport Infrastructure Act 1994*.

'**16.** Work for a subscriber connection.'.

85 Replacement of sch 10 (Dictionary)

Schedule 10—

omit, insert—

‘SCHEDULE 10

‘DICTIONARY

section 1.3.1

“accrediting body” means an incorporated or statutory body prescribed under a regulation to be an accrediting body for accrediting private certifiers.

“adoptable code” see section 3.1.10(5).

“advice agency”, for a development application, means—

(a) an entity prescribed under a regulation as an advice agency for the application or if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity; and

(b) any additional entity nominated by the chief executive—

(i) for an application requiring referral coordination—in an information request; or

(ii) for development requiring an EIS—in the terms of reference for the EIS.

“agency’s referral day”, for a referral agency, means—

(a) if the functions of the agency in relation to the application have not been lawfully devolved or delegated to the assessment manager—the day the agency receives the things mentioned in section 3.3.5(1); or

(b) if the agency is a concurrence agency and the functions of the agency in relation to the application have been lawfully devolved or delegated to the assessment manager—

(i) if the applicant has paid the concurrence agency's application fee to the assessment manager before or by the day the application is properly made—the day the application is properly made; or

(ii) if the applicant has not paid the concurrence agency's application fee before or by the day the application is properly made—the day the fee is paid.

"ancillary works and encroachments" means the following things—

(a) sugar tramways;

(b) monorails;

(c) bridges, overhead conveyors or other overhead structures;

(d) tunnels;

(e) rest area facilities;

(f) monuments or statues;

(g) advertising signs or other advertising devices;

(h) traffic and service signs;

(i) bores, wells, pumps, windmills, pipes, channels, culverts, viaducts, tanks or dams;

(j) cables;

(k) means of access;

(l) paths or bikeways;

(m) grids or other stock facilities;

(n) buildings, shelters, awnings or mail boxes;

(o) poles, lighting, gates or fences.

"appellant" means a person who appeals to the court or a tribunal under chapter 4.

"applicable code", for assessable and self-assessable development, means a code, including a concurrence agency code, that can reasonably be identified as applying to the development.

"applicant"—

1. "Applicant" means the applicant for a development application.

2. "Applicant", in section 3.5.32, chapter 4 and chapter 5, part 1, includes the person in whom the benefit of the development approval vests.

"applicant's appeal period", for an appeal—

(a) by an appellant to the court—see section 4.1.27(2); or

(b) by an appellant to a tribunal—see section 4.2.9(2).

"application", for chapter 3, means a development application.

"approved form" means a form approved under section 5.8.1.

"area of high nature conservation value" means an area of high nature conservation value as defined under the *Vegetation Management Act 1999*.

"area vulnerable to land degradation" means an area vulnerable to land degradation as defined under the *Vegetation Management Act 1999*.

"assessable development" means either or both of the following—

(a) development specified in schedule 8, part 1;

(b) for a planning scheme area—development that is declared to be assessable development under the planning scheme.

"assessing authority" means—

(a) for development under a development permit other than development to which paragraph (c) applies—the assessment manager giving the permit or any concurrence agency, each for the matters within their respective jurisdictions; or

(b) for assessable development not covered by a development permit—an entity that would have been the assessment manager or a concurrence agency for the permit if a development application had been made, each for the matters that would have been within their respective jurisdictions; or

(c) for assessable development for which a private certifier has been engaged to perform the functions of a private certifier under chapter 5, part 3—the private certifier or the local government; or

(d) for self assessable development other than building or plumbing work—the local government or the entity responsible for administering the code for the development; or

(e) for building or plumbing work carried out by or on behalf of a public sector entity—the chief executive (however described) of the entity; or

(f) for complying development—the compliance assessor or the entity that would have been the compliance assessor if a request for compliance assessment had been made; or

(g) for any other matter—the local government.

"assessment manager" see section 3.1.7.

"available for inspection and purchase" see section 5.7.1.

"benchmark development sequence", for a planning scheme, means a development sequence—

(a) applying to the areas in the planning scheme where residential development is preferred over a 15 year period (or other period agreed to by the Minister); and

(b) dividing the areas into 3 successive 5 year stages (or other stages agreed to by the Minister); and

(c) prepared having regard to any guidelines approved by the chief executive about the method of preparation and the contents of the sequence.

"brothel" see the *Prostitution Act 1999*, schedule 4.

"building" means building, as defined under the *Building Act 1975*.

"building work" means building work, as defined under the *Building Act 1975*.

"certified copy", of a document, means—

(a) for a document held by a local government—a copy of the document certified by the chief executive officer of the local government as a true copy of the document; and

(b) for a document held by an assessment manager—a copy of the document certified by the assessment manager or the chief executive officer of the assessment manager as a true copy of the document; and

(c) for a document held by a concurrence agency—a copy of the document certified by the chief executive officer of the concurrence agency as a true copy of the document; and

(d) for a document held by the department—a copy of the document certified by the chief executive of the department as a true copy of the document; and

(e) for a document held by the Minister—a copy of the document certified by the chief executive of any department the Minister has responsibility for as a true copy of the document.

"change application" means an application to cancel or change a development approval.

"clear", for vegetation—

(a) means remove or cut down, ringbark, push over, poison or destroy the vegetation in any way; but

(b) does not include—

(i) destroying standing vegetation by stock, or lopping a tree; and

(ii) removing or cutting down, ringbarking, pushing over, poisoning or destroying the vegetation in any way as a forest practice.

"code" means a document or part of a document identified as a code—

(a) in a planning instrument; or

(b) for IDAS under this Act or another Act;[71] or

(c) in a preliminary approval.

"code assessment" see section 3.5.5.

"common material", for a development application, means—

(a) all the material about the application the assessment manager has received in the first 3 stages of IDAS, including any concurrence agency requirements, advice agency recommendations and contents of submissions that have been accepted by the assessment manager; and

(b) if a development approval for the development has not lapsed—the approval.

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71 Under the *Acts Interpretation Act 1954*, section 7, "Act" includes a reference to a statutory instrument made or in force under an Act.

"community infrastructure" means community infrastructure stated in schedule 5.

"complete code" see section 3.1.10(1)(a).

"compliance assessment" see section 3.7.1.

"compliance assessor" see section 3.1.9.

"compliance certificate" see section 3.1.5(5).

"compliance permit" see section 3.1.5(4).

"compliant development" see section 3.1.2.

"concurrence agency", for a development application, means an entity prescribed under a regulation as a concurrence agency for the application, or if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

"concurrence agency code", for a concurrence agency, means a code, or part of a code, the concurrence agency is required under this Act or another Act to assess a development application against.

"concurrence agency condition", for a development approval, means a condition imposed on the approval by a concurrence agency.

"consolidated planning scheme" means a document that accurately combines a local government's planning scheme, as originally made, with all amendments made to the planning scheme since the planning scheme was originally made.

"consultation period" for—

(a) making or amending a planning scheme—see schedule 1, section 12(1)(g); or

(b) making or amending a planning scheme policy—see schedule 3, section 2(1)(g); or

(c) making or amending a State planning policy—see schedule 4, section 3(3)(g); or

(d) making a ministerial designation of land—the period for the making of submissions, being not less than 15 business days, stated in any notice given under section 2.6.7(4).

"convicted" includes being found guilty, and the acceptance of a plea of guilty, by a court.

"core matter" see section 2.1.3A.

"currency period" means—

(a) for a development approval not mentioned in paragraph (b)—

(i) the 4 years starting the day the approval takes effect; or

(ii) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time; or

(b) for a development approval resulting from a development application assessed and decided under section 3.5.5(5) or 3.5.6(5)—

(i) the 4 years starting the day the approval takes effect; or

(ii) if the approval states or implies a longer time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

"court" means the Planning and Environment Court continued in existence under section 4.1.1.

"deciding entity" means—

(a) for an aspect of a development approval decided by an assessment manager—the entity that was the assessment manager; or

(b) for an aspect of a development approval decided by a concurrence agency—the entity that was the concurrence agency; or

(c) for an aspect of a development approval decided by the court—the court; or

(d) for an aspect of a development approval decided by the tribunal—the tribunal; or

(e) for a development approval decided by a private certifier—the private certifier; or

(f) for an application to change a currency period if the development approval does not state or imply a currency period—the entity that was the assessment manager; or

(g) for an application to cancel a development approval—the entity that was the assessment manager for the application for the approval.

"decision making period" see section 3.5.9.

"decision notice" see section 3.5.17.

"deemed refusal" means a refusal that is taken to have happened if a decision is not made—

(a) for a development application—by the end of the decision making period (including any extension of the decision making period); and

(b) for a change application—within the time allowed under this Act for the decision to be made; and

(c) for a request made by a person under section 2.6.19 or for a claim for compensation under chapter 5—by the time for making the decision has ended.

"designate" means identify for community infrastructure.

"designated interest" see section 2.6.19.

"designated land" means land designated under chapter 2, part 6.

"designation" means the action taken by a designator to designate land under chapter 2, part 6.

"designation cessation day" see section 2.6.14.

"designator" see section 2.6.1.

"desired standard of service", for a network of development infrastructure, means the standard of performance stated in the priority infrastructure plan.

"destroy", for vegetation, includes destroy it by burning, flooding or draining.

"development" see section 1.3.2.

"development application" means an application for a development approval.

"development application (superseded planning scheme)" means a development application that is—

(a) for development substantially the same as particular development the subject of a request under section 2.1.7A; and

(b) made within 3 months after the local government gives notice of its decision about the request; and

(c) accompanied by a copy of the notice.

"development approval" means a decision notice or a negotiated decision notice that—

(a) approves, wholly or partially, development applied for in a development application (whether or not the approval has conditions attached to it); and

(b) is in the form of a preliminary approval, a development permit or an approval combining both a preliminary approval and a development permit in the one approval.[72]

"development infrastructure" means—

(a) land or works, or both land and works for—

(i) urban and rural residential water cycle management infrastructure (including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of waters and flood mitigation); or

(ii) transport infrastructure (including roads, vehicle lay-bys, traffic control devices, dedicated public transport corridors, public parking facilities predominantly serving a local area, cycle ways, pathways and ferry terminals, but not including State-controlled roads); 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, including, for example—

(i) community halls or centres; or

(ii) public recreation centres; or

(iii) public libraries.

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72 Under section 3.5.13(7), conditions attached to a development approval are part of the approval.

"development offence" means an offence against section 4.3.1, 4.3.2, 4.3.3, 4.3.4, 4.3.4A or 4.3.5.

"development permit" see section 3.1.5(3).

"drainage work" means sanitary drainage work, as defined under the *Sewerage and Water Supply Act 1949.*

"ecological sustainability" see section 1.3.3.

"EIS" means a document the chief executive is satisfied—

(a) addresses the terms of reference; and

(b) without limiting paragraph (a)—

(i) describes the development in sufficient detail to establish its likely environmental effects; and

(ii) identifies the likely beneficial and adverse environmental effects of the development; and

(iii) states the ways any adverse environmental effects may be mitigated; and

(iv) has been prepared using current information, and methodologies that represent best environmental practice.

"EIS assessment report" see section 5.7A.10.

"enforcement notice" see section 4.3.11.

"enforcement order" see section 4.3.22(1)(a).

"entity" includes a department.

"environment" includes—

(a) ecosystems and their constituent parts including people and communities; and

(b) all natural and physical resources; and

(c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony, and sense of community; and

(d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a), (b) and (c) or affected by those matters.

"environmentally relevant activity" means an environmentally relevant activity as defined under the *Environmental Protection Act 1994*.

"essential management" means clearing native vegetation—

(a) for establishing or maintaining a fire break sufficient to protect a building, property boundary or paddock; or

(b) that is likely to endanger the safety of a person or property on the land because the vegetation is likely to fall; or

(c) for maintaining an existing fence, stock yard, shed, road or other built infrastructure; or

(d) for maintaining a garden or orchard.

"executive officer", of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

"exempt development" is development other than assessable or self-assessable development.

"forest practice"—

1. "Forest practice" means planting trees or managing, felling and removing standing trees for an ongoing forestry business in—

(a) a plantation; or

(b) native forest, if, in the native forest—

(i) the activities are conducted in a way that is consistent with a code applying to native forest management and approved by the Minister responsible for administering the *Vegetation Management Act 1999*; or

(ii) the activities are conducted in a way that—

(A) ensures restoration of a similar type, and to the extent, of the removed trees; and

(B) ensures trees are only felled for the purpose of being sawn into timber or processed into another value added product (other than woodchips for an export market); and

(C) does not cause land degradation as defined under the *Vegetation Management Act 1999*.

2. The term includes carrying out limited associated work, including, for example, drainage and other necessary engineering works.

3. The term does not include clearing native vegetation for the initial establishment of a plantation.

"freehold land" includes land in a freeholding lease under the *Land Act 1994*.

"IDAS" see section 3.1.1.

"impact assessment" means the assessment of—

(a) the environmental effects of proposed development; and

(b) the ways of dealing with the effects.

"information period", for the assessment manager or a referral agency, means the period between the day the information and referral stage starts and the day—

(a) if referral coordination is required, but the chief executive does not make an information request—the assessment manager or referral agency receives the chief executive's advice under section 3.3.9(2)(b); or

(b) if the assessment manager or referral agency is entitled to, but does not, make an information request—the end of the assessment manager's or referral agency's information request period; or

(c) if an information request is made—the day the applicant gives a response under section 3.3.10(1) or (3).

"information request" see sections 3.3.8 and 3.3.9.

"information request period" see section 3.3.8 and 3.3.9.

"infrastructure" includes land, facilities, services and works used for supporting economic activity and meeting environmental needs.

"infrastructure agreement" see section 5.2.1.

"infrastructure charge" see section 5.1.5.

"infrastructure charges notice" see section 5.1.7.

"infrastructure charges register" see section 5.7.2.

"infrastructure charges schedule" means the part of a priority infrastructure plan that states infrastructure charges for the establishment costs of trunk infrastructure.

"infrastructure payment" see section 5.1.13.

"infrastructure payments schedule" means the part of a priority infrastructure plan that states infrastructure payments for the establishment costs of trunk infrastructure that may be imposed as a condition of a development approval.

"infrastructure provider", for an application, means—

(a) a local government that is the assessment manager and—

(i) supplies trunk infrastructure for development; or

(ii) has an agreement with another entity that supplies trunk infrastructure to the local government area; or

(b) a concurrence agency that supplies State infrastructure.

"interim enforcement order" see section 4.3.22(1)(b).

"land" includes—

(a) any estate in, on, over or under land; and

(b) the airspace above the surface of land and any estate in the airspace; and

(c) the subsoil of land and any estate in the subsoil.

"last day for making submissions" see section 5.7A.7.

"lawful use" see section 1.3.4.

"local government area" means a part of the State—

(a) established as a local government area under the *Local Government Act 1993*; or

(b) declared to be a council area under the *Community Services (Aborigines) Act 1984* or the *Community Services (Torres Strait) Act 1984.*

"local planning instrument" means a planning scheme, temporary local planning instrument or planning scheme policy.

"lopping", a tree, means cutting or pruning its branches, but does not include—

(a) removing its trunk; and

(b) cutting or pruning its branches so severely that it is likely to die.

"lot" see section 1.3.5.

"material change of use" see section 1.3.5.

"minor amendment", of a planning instrument, means an amendment correcting or changing—

(a) an explanatory matter about the instrument; or

(b) the format or presentation of the instrument; or

(c) a grammatical error in the instrument; or

(d) a factual matter incorrectly stated in the instrument.

"major hazard facility" means a major hazard facility as defined under the *Dangerous Goods Safety Management Act 2001*.

"mining activity" means mining activity, as defined under the *Environmental Protection Act 1994*.

"Minister"—

(a) in chapter 2, part 6—means any Minister of the Crown; and

(b) in chapter 3, part 6, divisions 2, 3 and 4—includes the Minister administering the *State Development and Public Works Organisation Act 1971*.

"native vegetation" means—

(a) a native tree; or

(b) a native plant, other than a grass or mangrove.

"negotiated decision notice" see section 3.5.18(5).

"network", for development infrastructure, includes part of a network.

"nominated interest" means the interest an owner asks a designator to buy under section 2.6.19(3)(a) or (b).

"non-acceptance notice" see section 3.2.3.

"non-urban area" means an area other than an urban area.

"non-trunk infrastructure" means development infrastructure that is not trunk infrastructure.

"notification period", for a development application, see section 3.4.7.

"owner", of land, means the person for the time being entitled to receive the rent for the land or who would be entitled to receive the rent for it if it were let to a tenant at a rent.

"owner of land", for chapter 2, part 6 (other than sections 2.6.19 to 2.6.24)—

1. "Owner of land" includes a lessee and sublessee of the land.
2. The term does not include—
   (a) for an interest the State or a public sector entity has in the land—the State or a public sector entity; and
   (b) for an interest in land already held for the designation—the owner of the interest.

"partial code" see section 3.1.10(1)(b).

"party", for an appeal to the court or a tribunal, means the appellant, the respondent, any co-respondent for the appeal and, if the Minister is represented in the appeal, the Minister.

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

"planning instrument" means a State planning policy, planning scheme, temporary local planning instrument or planning scheme policy.

"planning scheme" see section 2.1.1.

"planning scheme area" see section 2.1.2.

"planning scheme policy" see section 2.1.16.

"plans for trunk infrastructure" means the part of a priority infrastructure plan that identifies trunk infrastructure that exists or may be supplied to service future growth in the local government's area to meet the desired standard of service stated in the plan.

"plumbing work" means water plumbing work or sanitary plumbing work, as defined under the *Sewerage and Water Supply Act 1949.*

"preliminary approval" see section 3.1.5(1).

"premises" means—

(a) a building or other structure; or

(b) land (whether or not a building or other structure is situated on the land).

"principal submitter", for a properly made submission, means—

(a) if a submission is made by 1 person—the person; or

(b) if a submission is made by more than 1 person—the person identified as the principal submitter or if no person is identified as the principal submitter the submitter whose name first appears on the submission.

"priority infrastructure area"—

1. "Priority infrastructure area" means the area—

   (a) serviced by a mains pressure water supply network; and

   (b) to accommodate at least 10 years, but not more than 15 years, of growth for each of the following—

      (i) residential purposes;

      (ii) retail or commercial purposes;

      (iii) industrial purposes.

2. "Priority infrastructure area" includes an area not mentioned in item 1 that—

   (a) the local government decides to include in the area; and

   (b) is serviced by development infrastructure.

"priority infrastructure plan" means the part of a planning scheme that—

(a) identifies the priority infrastructure area; and

(b) identifies existing trunk infrastructure; and

(c) includes details of any future trunk infrastructure; and

(d) states the assumptions on which the plan is based; and

(e) states the desired standard of service for each development infrastructure network identified in the plan; and

(f) includes any infrastructure charges schedule or infrastructure payments schedule for the plan.

"private certifier" see section 5.3.3.

"properly made application" see section 3.2.1(7).

"properly made submission" means a submission that—

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

(b) is received on or before the last day—

(i) if the submission is about a draft EIS or a designation—for making the submission; or

(ii) if the submission is about a development application—of the notification period; or

(iii) in any other case—of the consultation period or preliminary consultation period; and

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

(d) states the grounds of the submission and the facts and circumstances relied on in support of the grounds; and

(e) is made—

(i) if the submission is about a development application—to the assessment manager; or

(ii) if the submission is about a proposed planning scheme, a proposed planning scheme policy or a proposed amendment of a planning scheme or a proposed amendment of a planning scheme policy—to the local government; or

(iii) if the submission is about a proposed planning scheme or a proposed amendment of a planning scheme being carried out by the Minister—to the Minister; or

(iv) if the submission is about a draft EIS—to the chief executive; or

(v) if the submission is about a proposed State planning policy or a proposed amendment of a State planning policy—to the Minister; or

(vi) if the submission is about a ministerial designation—to the person stated in the notice calling for submissions.

"proponent", for chapter 5, part 7A, means the person who proposes the development to which the part applies.

"public office", of a local government, means the premises kept as its public office under the *Local Government Act 1993*, section 37.[73]

"public sector entity"—

1. "Public sector entity" means—

(a) a department or part of a department; or

(b) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.

2. The term includes a government owned corporation.

"public utility easement" means a public utility easement as defined in the *Land Title Act 1994*, section 81A.

"reconfiguring a lot" see section 1.3.5.

"referral agency" means a concurrence agency or advice agency.

"referral agency's assessment period" see section 3.3.16.

"referral agency's response" see section 3.3.18.

"referral assistance" see section 3.3.12.

"referral coordination" see section 3.3.7.

"regional ecosystem" means a regional ecosystem as defined under the *Vegetation Management Act 1999*.

"regional ecosystem map" means a regional ecosystem map as defined under the *Vegetation Management Act 1999*.

"regional planning advisory committee" means a regional planning advisory committee established under section 2.5.2.

"remnant endangered regional ecosystem" means a remnant endangered regional ecosystem as defined under the *Vegetation Management Act 1999*.

"remnant map" means a remnant map as defined under the *Vegetation Management Act 1999*.

"remnant vegetation" means remnant vegetation as defined under the *Vegetation Management Act 1999*.

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73 *Local Government Act 1993*, section 37 (Site of public office)

"repealed Act" means the *Local Government (Planning and Environment) Act 1990*.

"replacement private certifier" see section 5.3.12(1).

"requesting authority" see section 3.3.10(1).

"road" has the same meaning as in the *Transport Infrastructure Act 1994*.[74]

"routine management" means clearing native vegetation—

(a) for establishing a necessary fence, road or other built infrastructure that is on less than 5 ha; or

(b) that is not remnant vegetation; or

(c) for supplying fodder for stock, in drought conditions only.

"self-assessable development" means either or both of the following—

(a) development specified in schedule 8, part 2; or

(b) for a planning scheme area—development that is not specified in schedule 8, part 2 but is declared under the planning scheme for the area to be self-assessable development.

"show cause notice" see section 4.3.9.

"stage" of IDAS, means a stage of the IDAS process mentioned in section 3.1.13.

"Standard Building Regulation" means the *Standard Building Regulation 1993*.

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74 Under the *Transport Infrastructure Act 1994*—

"road" means—

(a) an area of land dedicated to public use as a road; or

(b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or

(c) a bridge, culvert, ferry, ford, tunnel or viaduct; or

(d) a pedestrian or bicycle path; or

(e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d).

"State-controlled road" has the same meaning as in the *Transport Infrastructure Act 1994*.[75]

"State infrastructure" means any of the following—

(a) State schools infrastructure;

(b) public transport infrastructure;

(c) State-controlled roads infrastructure;

(d) police or emergency services infrastructure

"State interest" means—

(a) an interest that, in the Minister's opinion, affects an economic or environmental interest of the State or a region; or

(b) an interest in ensuring there is an efficient, effective and accountable planning and development assessment system.

"State planning policy" see section 2.4.1.

"submitter", for a development application, means a person who makes a properly made submission about the application.

"submitter's appeal period" see section 4.1.28(4).

"superseded planning scheme", for a planning scheme area, means the planning scheme, or any related planning scheme policies, in force immediately before—

(a) the planning scheme or policies, under which a development application is made, were adopted; or

(b) the amendment, creating the superseded planning scheme, was adopted.

"supporting material" means any material (including site plans, elevations and supporting reports) about the aspect of the application assessable against or having regard to the planning scheme that—

(a) was given to the assessment manager by the applicant; and

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75 Under the *Transport Infrastructure Act 1994*—

"State-controlled road" means a road or land, or part of a road or land, declared under section 23 to be a State-controlled road, and, for chapter 5, part 5, division 2, subdivision 2, see section 50.

(b) is in the assessment manager's possession when the request to inspect and purchase is made.

"temporary local planning instrument" see section 2.1.9.

"tribunal" means a building and development tribunal established under section 4.2.1.

"trunk infrastructure" means development infrastructure identified in a priority infrastructure plan as trunk infrastructure.

"urban area" means an area identified on a map in a planning scheme as an area for urban purposes, including rural residential purposes and future urban purposes.

"use" see section 1.3.4.

"variable code" see section 3.1.10(1)(c).

"work" see section 1.3.5.'.

PART 3—AMENDMENT OF BUILDING ACT 1975

86 Act amended in pt 3

This part amends the *Building Act 1975.*

87 Amendment of s 3 (Definitions)

Section 3(1), definition **"building work"**—

omit, insert—

"building work" means—

(a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or

(b) work regulated under the *Standard Building Regulation 1993*; or

(c) excavating or filling—

(i) for, or incidental to, the activities mentioned in paragraph (a); or

(ii) that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or

(d) supporting (whether vertically or laterally) land for activities mentioned in paragraph (a).'.

88 Insertion of new s 46A

After section 46—

insert—

'46A Fees for statutory functions

'**(1)** A local government may, by local law or resolution, fix a reasonable fee in relation to the performance of a function imposed on the local government under this Act.

'**(2)** The local law or resolution must prescribe the person liable to pay the fee.

'**(3)** A local government is taken to have always had power, by local law or resolution, to fix a fee mentioned in subsection (1).

'**(4)** Subsection (3) does not affect a decision of a court made before the commencement of this subsection in relation to a particular action about the validity of a fee mentioned in subsection (1) fixed by local law or resolution and imposed on a particular person.'.

PART 4—AMENDMENT OF ELECTRICITY ACT 1994

89 Act amended in pt 4

This part amends the *Electricity Act 1994*.

90 Omission of ch 4, pt 4, div 4A (Inapplicability of planning schemes in relation to particular transmission entity operating works)

Chapter 4, part 4, division 4A—

omit.

91 Insertion of new s 112A

After section 112—

insert—

‘112A Clearing native vegetation for operating works on freehold land

‘**(1)** Subsection (2) has effect despite the *Integrated Planning Act 1997*, schedule 8, part 1.

‘**(2)** Carrying out work that is the clearing of native vegetation on freehold land is exempt development if the clearing is for operating works for a transmission entity on land designated for the operating works by a Minister under the *Integrated Planning Act 1997*.

‘**(3)** If a word used in subsection (2) is defined in the *Integrated Planning Act 1997*, the word used has the same meaning as in that Act.’.

92 Insertion of new ch 14, pt 4

After section 303—

insert—

‘PART 4—TRANSITIONAL PROVISION FOR INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2001

‘304 Application of Acts Interpretation Act, s 20

‘The *Acts Interpretation Act 1954*, section 20 applies to the repeal of chapter 4, part 4, division 4A.’.

PART 5— AMENDMENT OF LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT 2000

93 Act amended in pt 5

This part amends the *Local Government and Other Legislation Amendment Act 2000.*

94 Omission of s 62 (Amendment of s 5.3.5 *of Act No. 69 of 1997*)

Section 62—

omit.

PART 6—AMENDMENT OF SEWERAGE AND WATER SUPPLY ACT 1949

95 Act amended in pt 6

This part amends the *Sewerage and Water Supply Act 1949*.

96 Amendment of s 2 (Definitions)

Section 2—

insert—

‘ **“drainage”** means apparatus, fittings, fixtures and pipes, below ground level, that carry sewage on premises.

“drainage work” includes installing, changing, extending, disconnecting, taking away and maintaining drainage.

“plumbing” means—

(a) for water—apparatus, fittings, and pipes for carrying water within premises; or

(b) for sewage—apparatus, fittings, fixtures and pipes, above ground level, that carry sewage on premises.

“plumbing work” includes installing, changing, extending, disconnecting, taking away and maintaining plumbing.’.

PART 7— AMENDMENT OF WATER ACT 2000

97 Act amended in pt 7

This part amends the *Water Act 2000*.

98 Amendment of s 492 (Changing safety conditions)

(1) Section 492, heading, '**safety**'

omit.

(2) Section 492(1)—

omit, insert—

'**(1)** Subsection (1A) applies for a referable dam if the chief executive is satisfied either or both of the following should be changed in the interests of dam safety—

(a) safety conditions;

(b) development conditions.

'**(1A)** The chief executive may change the conditions.'.

99 Amendment of schedule 2 (Amendments about planning matters)

(1) Schedule 2, amendment of *Integrated Planning Act 1997*, item 12, '(c)'—

omit, insert—

'(d)'.

(2) Schedule 2, amendment of *Integrated Planning Act 1997*, item 13, '(e)'—

omit, insert—

'(f)'.

SCHEDULE

MINOR AMENDMENTS OF INTEGRATED PLANNING ACT 1997

section 3

1 Section 1.3.8(g)—

omit.

2 Section 2.6.20, 2.6.21(a), 2.6.23(1)(a) and (b) and 2.6.23(2) 'interest'—

omit, insert—

'nominated interest'.

3 Section 2.6.21, 'interest,'—

omit, insert—

'nominated interest,'.

4 Section 2.6.21(b) and (c) and 2.6.23(1)(c), 'interest'—

omit, insert—

'designated interest'.

5 Section 4.3.7(1), '3.3.4 or 3.4.7'—

omit, insert—

'3.3.6 or 3.4.9'.

SCHEDULE (continued)

6 Section 4.3.7(2), '3.3.5'—

omit, insert—

'3.3.7(3)'.

7 Section 4.3.13(1)(a), (d) and (e), first mention, 'a development'

omit, insert—

'development'.

8 Section 4.3.18(3)(b), '4.3.2A'—

omit, insert—

'4.3.4A'.

9 Section 4.3.20(3)(e), after 'development permit'—

insert—

'or request compliance assessment'.

10 Section 5.6.4(3) and (4), '3.4.4 to 3.4.6'—

omit, insert—

'3.4.6 to 3.4.8'.

11 Section 5.7.5(3), 'The register must include,'—

omit, insert—

'The register must include the following'.

12 Section 5.7.5(3)(a), (b), (c), (d) and (e)(v), '; and"

omit, insert—

';'.

SCHEDULE (continued)

13 Section 5.7.6(e)(iii), '; and"

omit, insert—

';'.

14 Section 5.8.5 (Delegation by Minister)—

relocate and *renumber* as section 5.8.1A.

15 After section 5.8.8, as inserted by this Act—

insert—

'5.8.9 Numbering and renumbering of ch 5, pts 7A and 8

'In the next reprint of this Act, chapter 5, parts 7A and 8 must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.'.

16 Section 6.1.1, definition "assessable development", paragraph (b), after 'schedule 8'—

insert—

'or schedule 9'.

17 Section 6.1.1, definition "self-assessable development", paragraph (b), after 'schedule 8'—

insert—

'or schedule 9'.

18 Section 6.1.30(2), '3.5.13 and 3.5.14'—

omit, insert—

'3.5.14 and 3.5.15'.

SCHEDULE (continued)

19 Section 6.1.30(4), '3.5.11(1)(c)'—

omit, insert—

'3.5.13(1)(c)'.

20 Section 6.1.32(2)(a), '3.5.32(1)(b)'—

omit, insert—

'3.5.31(1)(b)'.

21 Section 6.1.34(3), '3.5.27'—

omit, insert—

'3.5.26'.

22 Section 6.1.41—

omit.

23 Section 6.1.51A(2), '1.4.6'—

omit, insert—

'1.4.1'.

24 Schedules 1, 2 and 3, ', by resolution,'—

omit.