Queensland

Sustainable Planning Act 2009

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Sustainable Planning Act 2009

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

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Sustainable Planning Act 2009*.

2 Commencement

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

Part 2 Purpose and advancing the purpose

3 Purpose of Act

The purpose of this Act is to seek to achieve ecological sustainability by—

(a) managing the process by which development takes place, including ensuring the process is accountable, effective and efficient and delivers sustainable outcomes; and

Authorised by the Parliamentary Counsel

(b) managing the effects of development on the environment, including managing the use of premises; and

(c) continuing the coordination and integration of planning at the local, regional and State levels.

4 Advancing Act's purpose

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

(a) unless paragraph (b) or (c) applies—perform the function or exercise the power in a way that advances this Act's purpose; or

(b) if the entity is an assessment manager other than a local government—in assessing and deciding a matter under this Act, have regard to this Act's purpose; or

(c) if the entity is a referral agency other than a local government (unless the local government is acting as a referral agency under devolved or delegated powers)—in assessing and deciding a matter under this Act, have regard to this Act's purpose.

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

5 What advancing Act's purpose includes

(1) Advancing this Act's purpose includes—

(a) ensuring decision-making processes—

(i) are accountable, coordinated, effective and efficient; and

(ii) take account of short and long-term environmental effects of development at local, regional, State and wider levels, including, for example, the effects of development on climate change; and

(iii) apply the precautionary principle; and

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(iv) seek to provide for equity between present and future generations; and

(b) ensuring the sustainable use of renewable natural resources and the prudent use of non-renewable natural resources by, for example, considering alternatives to the use of non-renewable natural resources; and

(c) avoiding, if practicable, or otherwise lessening, adverse environmental effects of development, including, for example—

(i) climate change and urban congestion; and

(ii) adverse effects on human health; and

(d) considering housing choice and diversity, and economic diversity; and

(e) supplying infrastructure in a coordinated, efficient and orderly way, including encouraging urban development in areas where adequate infrastructure exists or can be provided efficiently; and

(f) applying standards of amenity, conservation, energy, health and safety in the built environment that are cost-effective and for the public benefit; and

(g) providing opportunities for community involvement in decision making.

(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.

(3) In this section—

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

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Part 3 Interpretation

Division 1 Dictionary

6 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

Division 2 Key definitions

7 Meaning of *development*

Development is any of the following—

(a) carrying out building work;

(b) carrying out plumbing or drainage work;

(c) carrying out operational work;

(d) reconfiguring a lot;

(e) making a material change of use of premises.

8 Meaning of *ecological sustainability*

Ecological sustainability is a balance that integrates—

(a) protection of ecological processes and natural systems at local, regional, State and wider levels; and

(b) economic development; and

(c) maintenance of the cultural, economic, physical and social wellbeing of people and communities.

9 Meaning of *lawful use*

A use of premises is a ***lawful use*** of the premises if—

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(a) the use is a natural and ordinary consequence of making a material change of use of the premises; and

(b) the making of the material change of use was in compliance with this Act.

Division 3 Supporting definitions and explanations for key definitions

10 Definitions for terms used in *development*

(1) In this Act—

building work—

1 *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 building assessment provisions, other than IDAS; 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).

2 *Building work*, for administering IDAS in relation to a Queensland heritage place, includes any of the following—

(a) altering, repairing, maintaining or moving a built, natural or landscape feature on the place;

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(b) excavating, filling or other disturbances to land that damage, expose or move archaeological artefacts or underwater cultural heritage artefacts, as defined under the *Queensland Heritage Act 1992*, on the place;

(c) altering, repairing or removing artefacts that contribute to the place's cultural heritage significance, including, for example, furniture and fittings;

(d) altering, repairing or removing building finishes that contribute to the place's cultural heritage significance, including, for example, paint, wallpaper and plaster.

3 *Building work*, for administering IDAS in relation to a Queensland heritage place, does not include development for which an exemption certificate has been issued under the *Queensland Heritage Act 1992*.

4 *Building work* does not include undertaking—

(a) 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*; or

(b) tidal works; or

(c) work for reconfiguring a lot.

Example for paragraph (c)—

building a retaining wall

lot means—

(a) a lot under the *Land Title Act 1994*; 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

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

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

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

Note—

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

- *Integrated Resort Development Act 1987*
- *Mixed Use Development Act 1993*
- *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*
- *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*
- *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.

operational work—

1 *Operational work* means—

(a) extracting gravel, rock, sand or soil from the place where it occurs naturally; or

(b) conducting a forest practice; or

(c) excavating or filling that materially affects premises or their use; or

(d) placing an advertising device on premises; or

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(e) undertaking work in, on, over or under premises that materially affects premises or their use; or

(f) clearing vegetation, including vegetation to which the Vegetation Management Act applies; or

(g) undertaking 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*; or

(h) undertaking—

(i) tidal works; or

(ii) work in a coastal management district; or

(i) constructing or raising waterway barrier works; or

(j) performing work in a declared fish habitat area; or

(k) removing, destroying or damaging a marine plant; or

(l) undertaking roadworks on a local government road.

2 *Operational work* does not include—

(a) for item 1(a) to (f) and (j), any element of work that is—

(i) building work; or

(ii) drainage work; or

(iii) plumbing work; or

(b) clearing vegetation on—

(i) a forest reserve under the *Nature Conservation Act 1992*; or

(ii) a protected area under the *Nature Conservation Act 1992*, section 28; or

(iii) an area declared as a State forest or timber reserve under the *Forestry Act 1959*; or

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(iv) a forest entitlement area under the *Land Act 1994*.

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 rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—

(i) a lease for a term, including renewal options, not exceeding 10 years; or

(ii) an agreement for the exclusive use of part of the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or

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

(2) For the definition of *building work* in subsection (1), item 1(b), work includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure.

Example—

a management procedure under the fire safety standard under the Building Act relating to a budget accommodation building

11 Explanation of terms used in *ecological sustainability*

For section 8—

(a) ecological processes and natural systems are protected if—

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(i) the life-supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored for present and future generations; and

(ii) biological diversity is protected; and

(b) economic development takes place if there are diverse, efficient, resilient and strong economies (including local, regional and State economies) enabling communities to meet their present needs while not compromising the ability of future generations to meet their needs; and

(c) the cultural, economic, physical and social wellbeing of people and communities is maintained if—

(i) well-serviced and healthy communities with affordable, efficient, safe and sustainable development are created and maintained; and

(ii) areas and places of special aesthetic, architectural, cultural, historic, scientific, social or spiritual significance are conserved or enhanced; and

(iii) integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction are provided; and

(iv) potential adverse impacts on climate change are taken into account for development, and sought to be addressed through sustainable development, including, for example, sustainable settlement patterns and sustainable urban design.

Division 4 General matters

12 Meaning of words in Act prevail over planning instruments

If a word in a planning instrument has a meaning that is inconsistent with the meaning of the same word in this Act,

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the meaning of the word in this Act prevails to the extent of the inconsistency.

13 References in Act to particular terms

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

(a) the applicant is a reference to the person who made the application; and

(b) development, or the development, is a reference to development the subject of the application; and

(c) the assessment manager is a reference to the assessment manager for the application; and

(d) a referral agency, concurrence agency or advice agency is a reference to a referral agency, concurrence agency or advice agency for the application; and

(e) the local government is a reference to the local government for the local government area where the development is proposed; and

(f) an information request is a reference to an information request for assessing the application; and

(g) the acknowledgement notice is a reference to the acknowledgement notice for the application; and

(h) a referral agency's response is a reference to a referral agency's response for the application; and

(i) the development approval is a reference to the development approval for the application; and

(j) the land is a reference to the land the subject of the application; and

(k) the premises is a reference to the premises the subject of the application; and

(l) the planning scheme is a reference to the planning scheme for the locality where the development is proposed; and

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(m) a submitter is a reference to a submitter for the application; and

(n) the decision notice or negotiated decision notice is a reference to the decision notice or negotiated decision notice for the application.

Part 4 Application of Act

14 Act binds all persons

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

(2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

(3) Subsection (1) does not apply to the functions and powers of the Coordinator-General under the *State Development and Public Works Organisation Act 1971*.

Chapter 2 State planning instruments

Part 1 Preliminary

15 State planning instruments under Act

The following are State planning instruments under this Act—

(a) a State planning regulatory provision;

(b) a State planning policy;

(c) a regional plan;

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(d) the standard planning scheme provisions.

Part 2 State planning regulatory provisions

Division 1 Preliminary

16 What is a *State planning regulatory provision*

(1) A ***State planning regulatory provision*** is an instrument made under division 2 and part 6 for an area to advance the purpose of this Act by—

(a) providing regulatory support for regional planning; or

(b) providing for a charge for the supply of infrastructure; or

(c) protecting planning scheme areas from adverse impacts.

(2) A *State planning regulatory provision* includes a draft State planning regulatory provision that under section 73 has effect as a State planning regulatory provision.

Note—

See also section 858 (Transition of validated planning documents to master planning documents).

17 Status of State planning regulatory provision

(1) A State planning regulatory provision is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

(2) A State planning regulatory provision is not subordinate legislation.

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18 State interest

For this Act, a State planning regulatory provision is taken to be a State interest.

19 Relationship with other instruments

(1) If there is an inconsistency between a State planning regulatory provision and another planning instrument, or any plan, policy or code under an Act, the State planning regulatory provision prevails to the extent of the inconsistency.

(2) A State planning regulatory provision may suspend or otherwise affect the operation of another planning instrument, but does not amend the planning instrument.

Division 2 General matters about State planning regulatory provisions

20 Power to make State planning regulatory provision

(1) The Minister may make a State planning regulatory provision for the State or a part of the State (a ***relevant area***) if the Minister is satisfied the provision is necessary—

(a) to implement a regional plan; or

(b) to prevent a compromise of the implementation of a proposed regional plan for a designated region or a proposed designated region; or

(c) to provide for the matters mentioned in section 629.

(2) The Minister also may make a State planning regulatory provision if the Minister is satisfied—

(a) there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions happening in a planning scheme area; and

(b) giving a direction under section 126 would not be the most appropriate way to address the risk.

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(3) The Minister and an eligible Minister may jointly make a State planning regulatory provision for the State or a part of the State (also a ***relevant area***) if—

(a) the matter to which the State planning regulatory provision relates is a matter administered by the eligible Minister; and

(b) the Minister is satisfied—

(i) there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions happening in a planning scheme area; and

(ii) giving a direction under section 126 would not be the most appropriate way to address the risk.

Note—

Section 858 (Transition of validated planning documents to master planning documents) also allows the making of State planning regulatory provisions.

21 Content of State planning regulatory provision

A State planning regulatory provision may—

(a) declare development to be—

(i) self-assessable development; or

(ii) development requiring compliance assessment; or

(iii) assessable development; or

(iv) prohibited development; and

(b) require impact or code assessment, or both impact and code assessment, for assessable development, including assessable development mentioned in paragraph (a); and

(c) include a code for IDAS, or other criteria for the assessment of development applications; and

(d) otherwise regulate development by, for example, stating aspects of development that may not take place in stated localities until—

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(i) a stated planning instrument has been made; or

(ii) a stated development application has been approved; and

(e) state transitional arrangements for development applications affected by the provision; and

(f) provide for a matter mentioned in section 20.

Note—

For other matters that may be included in a State planning regulatory provision, see chapter 6, part 10 (Compliance stage).

Part 3 State planning policies

Division 1 Preliminary

22 What is a *State planning policy*

A ***State planning policy*** is an instrument that—

(a) is made under division 2 and part 6, or division 3; and

(b) advances the purpose of this Act by stating the State's policy about a matter of State interest.

23 Status of State planning policy

A State planning policy is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

24 Area to which State planning policy applies

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

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25 Relationship with regional plans and local planning instruments

If there is an inconsistency between a State planning policy and a regional plan or local planning instrument, the State planning policy prevails to the extent of the inconsistency.

Division 2 General matters about State planning policies

26 Power to make State planning policy—generally

(1) The Minister may, under part 6, make a State planning policy.

(2) Also, the Minister and an eligible Minister may, under part 6, jointly make a State planning policy if the State interest addressed by the policy is a matter administered by the eligible Minister.

27 Duration of State planning policy made under pt 6

(1) A State planning policy mentioned in section 26 ceases to have effect on—

(a) the day the policy is repealed under part 6; or

(b) the day that is 10 years after the day the policy had effect.

(2) Despite subsection (1)(b), if a day for the ending of the State planning policy is prescribed under a regulation made before the period mentioned in the subsection ends, the policy ends on the prescribed day.

(3) The prescribed day must not be more than 12 years after the day the State planning policy had effect.

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Division 3 Temporary State planning policies

28 Power to make temporary State planning policy

(1) The Minister may, under section 29, make a State planning policy (a ***temporary State planning policy***) if the Minister considers the policy is urgently required to protect or give effect to a State interest.

(2) Also, the Minister and an eligible Minister may, under section 29, jointly make a State planning policy (also a ***temporary State planning policy***) if—

(a) the State interest addressed by the policy is a matter administered by the eligible Minister; and

(b) the Minister considers the policy is urgently required to protect or give effect to the State interest.

(3) Part 6, divisions 1 to 3, do not apply to the making of a temporary State planning policy.

29 Making temporary State planning policy

(1) The Minister, or the Minister and an eligible Minister jointly, may make a temporary State planning policy by publishing a notice about the policy—

(a) in the gazette; and

(b) if the policy is to have effect throughout the State—in a newspaper circulating generally in the State; and

(c) if the policy is to have effect only in a part of the State—in a newspaper circulating generally in the part.

(2) If the Minister and an eligible Minister propose to jointly make a temporary State planning policy, the policy is validly made if—

(a) the eligible Minister publishes a notice about the policy under subsection (1); and

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(b) the policy is endorsed by the Minister and the eligible Minister before the eligible Minister publishes the notice.

(3) The notice mentioned in subsection (1) must state the following—

(a) the name of the State planning policy;

(b) if the policy applies only to a particular part of the State—the name of the part or other information necessary to adequately describe the part;

(c) the period for which the policy has effect;

(d) where a copy of the policy may be inspected and purchased.

30 Effect of temporary State planning policy

A temporary State planning policy may suspend or otherwise affect the operation of a State planning policy, but does not amend the State planning policy.

31 Duration of temporary State planning policy

A temporary State planning policy has effect for—

(a) 1 year after the day it is made; or

(b) if the policy states a lesser period of effect—the lesser period.

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Part 4 Regional plans

Division 1 Preliminary

32 What is a *designated region*

(1) A ***designated region*** is—

(a) the local government areas, or the parts of local government areas, prescribed as a designated region under a regulation; and

(b) Queensland waters adjacent to the local government areas or parts.

(2) A regulation under subsection (1)(a) must give a name to each designated region it prescribes.

Division 2 Regional plans for designated regions

Subdivision 1 Preliminary

33 What is a *regional plan*

A ***regional plan***, for a designated region, is an instrument that—

(a) is made under subdivision 2 and part 6 by the regional planning Minister for the region; and

(b) advances the purpose of this Act by providing an integrated planning policy for the region.

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34 Status of regional plan

A regional plan is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

35 State interest

For this Act, a designated region's regional plan is taken to be a State interest.

36 Relationship with other instruments

(1) This section does not apply to a State planning regulatory provision.

(2) If there is an inconsistency between a regional plan and a local planning instrument, the regional plan prevails to the extent of the inconsistency.

Subdivision 2 Requirement to make, and key elements of, regional plans

37 Requirement to make regional plan

The regional planning Minister for a designated region must make a regional plan for the region.

38 Key elements of regional plan

The regional planning Minister for a designated region must be satisfied its regional plan—

(a) identifies—

(i) the desired regional outcomes for the region; and

(ii) the policies and actions for achieving the desired regional outcomes; and

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(b) identifies the desired future spatial structure of the region including—

(i) a future regional land use pattern; and

(ii) provision for regional infrastructure to service the future regional land use pattern, to inform—

(A) local governments when preparing LGIPs; and

(B) the State, local governments and other entities about infrastructure plans and investments; and

(iii) key regional environmental, economic and cultural resources to be preserved, maintained or developed; and

(iv) the way the resources are to be preserved, maintained or developed; and

(v) for paragraph (b)(iii), regional landscape areas; and

(c) includes any other relevant regional planning matter for this Act.

Subdivision 3 Requirement to amend planning schemes to reflect regional plans

39 Amending planning schemes to reflect regional plan

(1) This section applies to a local government if its local government area or part of its area is prescribed under section 32(1) as a designated region, unless the regional planning Minister for the region gives the local government a written direction to the contrary.

(2) The local government must amend its planning scheme, under the process stated in the guideline mentioned in section 117(1), to reflect the designated region's regional plan as made, amended or replaced.

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(3) The regional planning Minister for the designated region may amend the planning scheme if—

(a) the regional planning Minister is satisfied a local government must amend its planning scheme under subsection (2); and

(b) the local government has not, within 90 business days after the day notice of the making of the designated region's regional plan was gazetted—

(i) made the amendment; or

(ii) complied with the guideline mentioned in section 117(1) to the extent it requires the local government to give the Minister a copy of the proposed amendment.

(4) Anything done by the regional planning Minister under subsection (3) is taken to have been done by the local government and has the same effect as it would have had if the local government had done it.

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

(6) The regional planning Minister may, in writing, extend the period mentioned in subsection (3)(b).

(7) Nothing in this section affects or is affected by chapter 3, part 6.

Division 3 Regional planning committees

40 What are regions

In this Act—

(a) there are no fixed geographical areas of the State constituting regions, other than designated regions; and

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

41 Establishment of regional planning committee

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

(2) The regional planning Minister for a designated region must establish a regional planning committee for the region.

(3) However, subsection (4) applies if—

(a) there is a regional planning committee for a region that is not a designated region; and

(b) the area covered by the region is the same or substantially the same as a designated region.

(4) The regional planning committee for the region is taken to be the regional planning committee established for the designated region.

(5) Before establishing a regional planning committee for a region that is not a designated region, the Minister must—

(a) prepare draft terms of reference for the proposed committee; and

(b) identify the proposed region and local governments likely to be affected by the advice of the proposed committee; and

(c) consult with the local governments and interest groups the Minister considers appropriate about—

(i) the draft terms of reference, including the term of the proposed committee; and

(ii) the membership of the proposed committee; and

(iii) the extent of their, the Commonwealth's and the State's, proposed participation in, and support for, the proposed committee.

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(6) In establishing a regional planning committee for a region that is not a designated region, the Minister must state—

(a) the committee's name; and

(b) the membership of the committee; and

(c) the area covered by the region for which the committee is established; and

(d) the committee's terms of reference.

42 Functions of regional planning committee

(1) The functions of a regional planning committee for a region that is not a designated region are the functions stated in the committee's terms of reference.

(2) The function of a designated region's regional planning committee is to advise the regional planning Minister for the region about the development and implementation of the region's regional plan.

43 Membership of regional planning committee

(1) A designated region's regional planning committee has the membership decided by the regional planning Minister for the region and notified in the gazette.

(2) A member of a designated region's regional planning committee must be—

(a) a Minister; or

(b) a mayor or councillor of a local government of the region; or

(c) a person who has the appropriate qualifications, experience or standing to be a member of the committee.

(3) However, this section does not apply if section 41(4) applies to the designated region.

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(4) The membership of a regional planning committee for a region that is not a designated region—

(a) may be identified in general or specific terms; and

(b) without limiting the scope of possible membership, must include representatives of appropriate local governments.

(5) However, a local government may elect not to be represented on a regional planning committee for a region that is not a designated region.

44 Changing particular committee

After consulting the regional planning committee for a region that is not a designated region and any other entities the Minister considers appropriate, the Minister may change any aspect of the committee, including, for example, its name, membership, region and terms of reference.

45 Dissolution of regional planning committee

(1) The Minister may dissolve the regional planning committee for a region that is not a designated region at any time.

(2) The regional planning Minister for a designated region may dissolve its regional planning committee at any time.

46 Quorum

A quorum for a meeting of a regional planning committee is 1 more than half the number of members of the committee.

47 Presiding at meetings

(1) The regional planning Minister for a designated region presides at all meetings of its regional planning committee.

(2) If the regional planning Minister for the designated region is absent, the member nominated by the regional planning Minister must preside.

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48 Conduct of meetings

(1) Meetings of a designated region's regional planning committee must be conducted at the time and place the regional planning Minister for the region decides.

(2) A regional planning committee must conduct its business and proceedings at meetings in the way it decides.

49 Reports of particular committee

A regional planning committee for a region that is not a designated region must report its findings under its terms of reference to the Minister and the local governments of its region.

Part 5 Standard planning scheme provisions

Division 1 Preliminary

50 What are *standard planning scheme provisions*

The ***standard planning scheme provisions*** are the provisions that—

(a) are made under division 2 and part 6 by the Minister; and

(b) advance the purpose of this Act by providing for—

(i) a consistent structure for planning schemes; and

(ii) standard provisions for implementing integrated planning at the local level.

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51 Status of standard planning scheme provisions

The instrument consisting of the standard planning scheme provisions is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

52 Effect of standard planning scheme provisions

The standard planning scheme provisions do not regulate or affect development unless, under section 53, the provisions have effect in a planning scheme area.

53 Relationship with local planning instruments

If a local planning instrument for a planning scheme area is inconsistent with the standard planning scheme provisions, the standard planning scheme provisions—

(a) prevail to the extent of the inconsistency; and

(b) have effect in place of the local planning instrument, but only to the extent of the inconsistency and to the extent the instrument applies in the planning scheme area.

Division 2 General matters about standard planning scheme provisions

54 Power to make standard planning scheme provisions

The Minister may make standard planning scheme provisions for the whole of the State.

55 Local governments to amend planning schemes to reflect standard planning scheme provisions

(1) A local government must ensure each of its local planning instruments is consistent with the standard planning scheme provisions.

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(2) If the standard planning scheme provisions are amended, the local government must amend its planning scheme under the process stated in the guideline mentioned in section 117(1) to reflect the standard planning scheme provisions as amended.

(3) The Minister may amend the planning scheme if—

(a) the Minister is satisfied a local government must amend its planning scheme under subsection (2); and

(b) the local government has not, within 90 business days after the day notice of the making of the amended standard planning scheme provisions was gazetted—

(i) made the amendment; or

(ii) complied with the guideline mentioned in section 117(1) to the extent it requires the local government to give the Minister a copy of the proposed amendment.

(4) Anything done by the Minister under subsection (3) is taken to have been done by the local government and has the same effect as it would have had if the local government had done it.

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

(6) The Minister may, in writing, extend the period mentioned in subsection (3)(b).

(7) Subsection (2) does not apply to a local government if, under section 129, the Minister amends the local government's planning scheme to reflect the standard planning scheme provisions as amended.

(8) Subject to subsection (7), nothing in this section affects or is affected by chapter 3, part 6.

55A Limited application of s 777 for IPA standard provisions

(1) This section applies in relation to a local planning instrument to which section 777 applies (an ***IPA local planning***

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instrument) if any provision of the standard planning scheme provisions states that it applies to the IPA local planning instrument.

(2) The provisions of the standard planning scheme provisions stated to apply to the IPA local planning instrument are the ***IPA standard provisions*** for the instrument.

(3) Subsections (4) to (7) apply despite section 777(2), (3) and (7).

(4) Section 53 applies to the IPA local planning instrument as if a reference in the section to the standard planning scheme provisions were a reference to the IPA standard provisions for the instrument.

(5) Section 55(1) applies to a local government in relation to its IPA local planning instrument as if a reference in the provision to the standard scheme provisions were a reference to the IPA standard provisions for the instrument.

(6) If—

(a) the standard planning scheme provisions are amended to state that the IPA standard provisions for the IPA local planning instrument apply; or

(b) the IPA standard provisions for the instrument are amended;

the local government must amend its planning scheme under the process stated in the guideline mentioned in section 117(1) to reflect the IPA standard provisions, or the IPA standard provisions as amended, for the instrument.

(7) Section 55(3) and (7) applies to a local government in relation to its IPA local planning instrument as if a reference in the provision to the standard planning scheme provisions as amended were a reference to the IPA standard provisions, or the IPA standard provisions as amended, for the instrument.

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Part 6 Making, amending and repealing State planning instruments

Division 1 Preliminary

56 Process for making, amending or repealing State planning instrument

(1) The process stated in this part must be followed for making, amending or repealing a State planning instrument.

(2) A regulation may state an additional requirement to be followed for making, amending or repealing a State planning instrument.

(3) If a regulation under subsection (2) states an additional requirement, the requirement must be complied with.

57 Compliance with divs 2 and 3

Despite divisions 2 and 3, if a State planning instrument is made or amended in substantial compliance with the process stated in the divisions, the State planning instrument or amendment is valid so long as any noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the proposed State planning instrument or amendment; or

(b) restricted the opportunity of the public to make properly made submissions about the proposed instrument or amendment under the process stated in the divisions.

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Division 2 Process for making State planning instruments

58 Preparation of draft instrument

(1) Before making a State planning instrument, the Minister must prepare a draft of the proposed instrument.

(2) In preparing a draft regional plan, the regional planning Minister must consult with the region's regional planning committee about preparing the draft.

(3) In subsection (1)—

Minister means—

(a) if the State planning instrument is to be jointly made by the Minister and an eligible Minister—the eligible Minister; or

(b) otherwise—the Minister proposing to make the State planning instrument.

59 Endorsing particular draft instrument

(1) Subsection (2) applies if a draft State planning regulatory provision or State planning policy is prepared by an eligible Minister.

(2) The Minister and the eligible Minister must endorse the instrument before the eligible Minister acts under section 60.

60 Notice about draft instrument

(1) The Minister who prepared the draft State planning instrument must publish a notice—

(a) in the gazette; and

(b) if the draft instrument is to have effect throughout the State or is made for the whole of the State—in a newspaper circulating generally in the State; and

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(c) if the draft instrument is to have effect only in a part of the State—in a newspaper circulating generally in the part.

(2) The notice must state the following—

(a) that the draft State planning instrument is available for inspection and purchase;

(b) where copies of the draft instrument may be inspected and purchased;

(c) a contact telephone number for information about the draft instrument;

(d) that written submissions about any aspect of the draft instrument may be given by any person to the Minister who prepared the draft;

(e) the period (the ***consultation period***) during which the submissions may be made;

(f) the requirements for a properly made submission.

(3) The consultation period must be for at least—

(a) for a draft regional plan—60 business days after the day the notice is gazetted; or

(b) for a draft State planning regulatory provision—30 business days after the day the notice is gazetted; or

(c) otherwise—40 business days after the day the notice is gazetted.

(4) The Minister who prepared the draft State planning instrument must give a copy of the notice and the draft instrument to each of the following—

(a) for a draft State planning instrument other than draft standard planning scheme provisions—each local government whose local government area includes a part of the State in which the draft instrument is to have effect;

(b) for draft standard planning scheme provisions—each local government;

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(c) any other person or entity prescribed under a regulation.

61 Keeping draft instrument available for inspection and purchase

For all of the consultation period, the Minister who prepared the draft State planning instrument must keep a copy of the draft instrument available for inspection and purchase by members of the public.

62 Dealing with draft State planning regulatory provision

(1) The Minister who prepared a draft State planning regulatory provision may, during the consultation period, amend, replace or remove the draft State planning regulatory provision, other than to change the relevant area.

(2) If an eligible Minister prepared the draft State planning regulatory provision, an amended or replacement instrument must be endorsed by the eligible Minister and the Minister.

63 Making State planning instruments

(1) The Minister who prepared the draft State planning instrument must—

(a) consider each properly made submission about the draft instrument; and

(b) for a draft regional plan for a designated region—consult with the designated region's regional planning committee about making the regional plan.

(2) After acting under subsection (1), the Minister may—

(a) make the State planning instrument as provided for in the draft State planning instrument as published; or

(b) make the State planning instrument and include any amendments of the draft State planning instrument the Minister considers appropriate; or

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(c) for a State planning instrument other than a regional plan—decide not to make the State planning instrument as mentioned in paragraph (a) or (b).

(3) If an eligible Minister prepared the draft State planning instrument, the eligible Minister and the Minister must jointly—

(a) make the State planning instrument as mentioned in subsection (2)(a) or (b); or

(b) decide not to make the State planning instrument.

(4) A State planning instrument is taken to be jointly made when the instrument is endorsed by both Ministers.

64 Notice about making State planning instrument

(1) After the State planning instrument is made, the Minister who prepared the draft instrument must publish a notice about its making—

(a) in the gazette; and

(b) if the instrument has effect throughout the State or is made for the whole of the State—in a newspaper circulating generally in the State; and

(c) if the instrument has effect only in a part of the State—in a newspaper circulating generally in the part.

(2) The notice must state—

(a) the day the State planning instrument was made; and

(b) where a copy of the instrument may be inspected and purchased.

(3) The Minister mentioned in subsection (1) must give a copy of the State planning instrument to—

(a) for a State planning instrument other than the standard planning scheme provisions—each local government whose local government area includes a part of the State in which the instrument has effect; or

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(b) for the standard planning scheme provisions—each local government.

65 Notice about decision not to make State planning instrument

If a decision is made not to make a State planning instrument, the Minister who prepared the draft instrument must publish notice of the decision in the gazette.

66 Particular State planning regulatory provisions to be ratified by Parliament

(1) This section applies to a State planning regulatory provision made to—

(a) implement a regional plan; or

(b) prevent a compromise of the implementation of a proposed regional plan for a designated region or a proposed designated region.

(2) Within 14 sitting days after the State planning regulatory provision is made, a copy of the provision must be tabled in the Legislative Assembly by the Minister who made the State planning regulatory provision.

(3) If the provision is not ratified by Parliament within 14 sitting days after the day the copy is tabled, the provision ceases to have effect.

67 State planning regulatory provisions that are subject to disallowance

(1) This section applies to a State planning regulatory provision made because the Minister was satisfied there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions happening in a planning scheme area.

(2) The *Statutory Instruments Act 1992*, sections 49, 50 and 51, apply to the provision as if it were subordinate legislation.

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Division 3 Amending State planning instruments

Subdivision 1 Administrative and minor amendments, and particular amendments to reflect documents

68 Administrative and minor amendment or amendment to reflect other documents

(1) The Minister who made a State planning instrument may make an administrative amendment or minor amendment of the instrument.

(2) If the State planning instrument was jointly made by 2 Ministers—

(a) for an administrative amendment—either Minister may make the amendment; and

(b) for a minor amendment—

(i) the amendment must be jointly made by both Ministers; and

(ii) the amendment is taken to be jointly made when the amendment is endorsed by both Ministers.

(3) The regional planning Minister for a designated region also may amend the region's regional plan to include a document to be made under the plan that—

(a) has been prepared by a public sector entity; and

(b) the regional planning Minister is satisfied—

(i) demonstrates how the regional plan will be implemented; and

(ii) has been subject to adequate public consultation.

(4) Division 2 does not apply to the making of an amendment under this section.

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69 Notice of amendment under s 68

(1) After the State planning instrument is amended, the Minister who made the amendment, or the eligible Minister if the amendment was jointly made, must publish a notice about the amendment—

(a) in the gazette; and

(b) if the instrument has effect throughout the State or is made for the whole of the State—in a newspaper circulating generally in the State; and

(c) if the instrument has effect only in a part of the State—in a newspaper circulating generally in the part.

(2) The notice must state—

(a) the day the amendment was made; and

(b) where a copy of the State planning instrument, as amended, may be inspected and purchased.

Subdivision 2 Other amendments

70 Other amendments

(1) The Minister who made a State planning instrument may make an amendment of the instrument, other than an amendment under section 68, only if the process under division 2 for the making of the State planning instrument has been followed.

(2) To remove any doubt, it is declared that if the State planning instrument was jointly made by 2 Ministers, the amendment must be jointly made by both Ministers.

(3) For subsection (1), division 2 applies—

(a) as if a reference in the division to preparing a draft State planning instrument were a reference to preparing a draft amendment; and

(b) as if a reference in the division to a draft State planning instrument were a reference to the draft amendment; and

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(c) as if a reference in the division to making a State planning instrument were a reference to the making of the amendment; and

(d) as if a reference in the division to a State planning instrument were a reference to the amendment; and

(e) as if the reference in section 60(3)(a) to 60 business days were a reference to 30 business days; and

(f) as if the reference in section 60(3)(c) to 40 business days were a reference to 20 business days; and

(g) with other necessary changes.

71 Decision not to proceed with amendment of regional plan

When acting under division 2, the Minister also may decide not to proceed with the amendment of a regional plan.

Division 4 When State planning instrument or amendment has effect

72 When State planning instrument or amendment has effect

(1) A State planning instrument, or an amendment of a State planning instrument, has effect on—

(a) the day the notice about the making of the instrument or amendment is gazetted; or

(b) if a later day for the commencement of the instrument or amendment is stated in the instrument or amendment—the later day.

(2) Subsection (1) is subject to sections 66 and 67.

73 Effect of draft State planning regulatory provision and draft amendments

(1) This section applies to—

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(a) a draft State planning regulatory provision under this part (the ***draft provision***); or

(b) a State planning regulatory provision as amended by a draft amendment of the provision under this part (also the ***draft provision***).

(2) The Minister may state in the gazette notice for the draft instrument, or amendment, that the draft provision has effect as if it were a State planning regulatory provision on the day the notice of the draft instrument, or amendment, is gazetted if the Minister is satisfied any delay in the commencement would increase the risk of—

(a) serious harm to the environment or serious adverse cultural, economic or social conditions happening in a planning scheme area; or

(b) compromising the implementation of a regional plan or proposed regional plan.

(3) If the Minister states a draft provision has effect as mentioned in subsection (2), the draft provision has effect as if it were a State planning regulatory provision from the day the notice of the draft instrument, or amendment, is gazetted until the first of the following happens—

(a) a decision to make a State planning regulatory provision is made under section 63(2)(a) or (b) relating to the draft provision and the State planning regulatory provision takes effect under section 72;

(b) a decision not to make a State planning regulatory provision is made under section 63(2)(c) relating to the draft provision and is gazetted;

(c) the day that is 12 months after the day the notice of the draft instrument, or amendment, is gazetted ends.

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Division 5 Repealing and replacing State planning instruments

74 Notice of repeal

(1) The Minister may decide to repeal a State planning instrument, other than a regional plan.

(2) However, if the State planning instrument was jointly made by 2 Ministers, the decision to repeal the instrument must be jointly made by both Ministers.

(3) A State planning instrument may only be repealed by publishing a notice—

(a) in the gazette; and

(b) if the instrument has effect throughout the State or is made for the whole of the State—in a newspaper circulating generally in the State; and

(c) if the instrument has effect only in a part of the State—in a newspaper circulating generally in the part.

(4) The notice must—

(a) identify the State planning instrument being repealed; and

(b) if the State planning instrument has effect only in a part of the State—identify the part of the State in which it has effect; and

(c) state that the State planning instrument is repealed.

(5) The Minister must give a copy of the notice to—

(a) for a State planning instrument other than the standard planning scheme provisions—each local government whose local government area includes a part of the State in which the instrument had effect; and

(b) for the standard planning scheme provisions—each local government.

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(6) If the State planning instrument was jointly made by the Minister and an eligible Minister, the Minister must act under subsections (3) and (5) in relation to the repeal of the instrument.

75 When repeal has effect

The repeal of a State planning instrument has effect on the day the notice of the repeal is gazetted.

76 Replacement of regional plans

If a regional plan (the ***replacement plan***) states that it replaces an existing regional plan, it replaces the existing regional plan on and from the day the replacement plan takes effect.

Chapter 3 Local planning instruments

Part 1 Preliminary

77 Local planning instruments under Act

The following are local planning instruments under this Act—

(a) a planning scheme;

(b) a temporary local planning instrument;

(c) a planning scheme policy.

78 Infrastructure intentions in local planning instruments not binding

(1) If a local planning instrument indicates the intention of a local government or a supplier of State infrastructure to supply

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infrastructure, it does not create an obligation on the local government or the supplier to supply the infrastructure.

(2) If a local government or a supplier of State infrastructure states a desired standard of service in an LGIP, an entity does not have a right to expect or demand the standard.

78A Relationship between local planning instruments and Building Act

(1) A local planning instrument must not include provisions about building work, to the extent the building work is regulated under the building assessment provisions, unless permitted under the Building Act.

Note—

The Building Act, sections 31, 32 and 33 provide for matters about the relationship between local planning instruments and that Act for particular building work.

(2) To the extent a local planning instrument does not comply with subsection (1), the local planning instrument has no effect.

(3) In this section—

building assessment provisions does not include IDAS or a provision of a local planning instrument.

Part 2 Planning schemes

Division 1 Preliminary

79 What is a *planning scheme*

A ***planning scheme*** is an instrument that—

(a) is made by a local government under division 2 and part 5; and

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(b) advances the purpose of this Act by providing an integrated planning policy for the local government's planning scheme area.

80 Status of planning scheme

A planning scheme is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

81 Effects of planning scheme

A planning scheme for a planning scheme area—

(a) becomes the planning scheme for the area; and

(b) replaces any existing planning scheme applying to the area.

82 Area to which planning scheme applies

(1) A local government's planning scheme applies to all of the local government's area (the ***planning scheme area***).

(2) The local government also may apply its planning scheme for assessing prescribed tidal work in its tidal area to the extent stated in a code for prescribed tidal work.

83 Relationship with planning scheme policies

If there is an inconsistency between a planning scheme and a planning scheme policy for a planning scheme area, the planning scheme prevails to the extent of the inconsistency.

Note—

For the relationship between planning schemes and State planning instruments, see sections 19 (Relationship with other instruments), 25 (Relationship with local planning instruments), 36 (Relationship with other instruments) and 53 (Relationship with local planning instruments).

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Division 2 General provisions about planning schemes

84 Power to make planning scheme

A local government may make a planning scheme for its planning scheme area.

85 Documents planning scheme may adopt

(1) The only documents made by a local government that the local government's planning scheme may, under the *Statutory Instruments Act 1992*, section 23, apply, adopt or incorporate are—

(a) a planning scheme policy; or

(b) an LGIP.

(2) In this section—

documents does not include the following—

(a) a development approval;

(b) an approval for an application mentioned in repealed IPA, section 6.1.26.

86 Planning schemes for particular local governments

(1) This section applies to the planning scheme for the following local governments—

(a) Ipswich City Council;

(b) Moreton Bay Regional Council;

(c) Sunshine Coast Regional Council.

(2) The *Statutory Instruments Act 1992*, section 23 (***section 23***), applies for the following development control plans (each a ***DCP***) under the repealed LGP&E Act—

(a) the DCP known as the Development Control Plan 1 Kawana Waters;

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Editor's note—

At the commencement of this section, a copy of the DCP was available on the Sunshine Coast Regional Council's website at <www.sunshinecoast.qld.gov.au>.

(b) the DCP known as the Mango Hill Infrastructure Development Control Plan;

Editor's note—

At the commencement of this section, a copy of the DCP was available on the Moreton Bay Regional Council's website at <www.moretonbay.qld.gov.au>.

(c) the DCP known as the Springfield Structure Plan.

Editor's note—

At the commencement of this section, a copy of the DCP was available on the Ipswich City Council's website at <www.ipswich.qld.gov.au>.

(3) However, a DCP can not be incorporated into the text of the planning scheme itself.

(4) A planning scheme may under section 23 apply or adopt a DCP by including a statement that the DCP applies to the part of the planning scheme area to which the DCP applies (an ***adopted DCP***).

(5) Section 857 and any definition relevant to it apply for an adopted DCP—

(a) as if—

(i) the planning scheme were an existing planning scheme to which that section applies; and

(ii) the adopted DCP were a development control plan to which that section applies; and

(iii) as if a reference in the section to a development control plan being included in an existing planning scheme under repealed IPA, section 6.1.45A were a reference to the adopted DCP; and

(b) with necessary changes.

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87 Covenants not to conflict with planning scheme

Subject to section 349, 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.

Division 3 Key concepts for planning schemes

88 Key elements of planning scheme

(1) A local government and the Minister must be satisfied the local government's planning scheme—

(a) appropriately reflects the standard planning scheme provisions; and

(b) identifies the strategic outcomes for the planning scheme area; and

(c) includes measures that facilitate achieving the strategic outcomes; and

(d) coordinates and integrates the matters, including the core matters, dealt with by the planning scheme, including any State and regional dimensions of the matters.

Note—

State and regional dimensions of matters are explained in section 90.

(2) Measures facilitating achievement of the strategic outcomes include the identification of relevant—

(a) self-assessable development; and

(b) development requiring compliance assessment; and

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(c) assessable development requiring code or impact assessment, or both code and impact assessment; and

(d) prohibited development, but only if the standard planning scheme provisions state the development may be prohibited development.

89 Core matters for planning scheme

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

(a) land use and development;

(b) infrastructure;

(c) valuable features.

(2) In this section—

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

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.

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

(a) resources or areas that are of ecological significance, including, for example, 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;

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(b) areas contributing significantly to amenity, including, for example, 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, including, for example, 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, including, for example, extractive deposits, fishery resources, forestry resources, water resources, sources of renewable and non-renewable energy and good quality agricultural land.

90 State, regional and local dimensions of planning scheme matters

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

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

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

(a) about which a regional planning committee report makes a recommendation; or

(b) reflected in a regional plan; or

(c) that can best be dealt with by the cooperation of 2 or more local governments.

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

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Division 4 Provisions about reviewing planning schemes generally

Subdivision 1 Reviewing planning schemes

91 Local government must review planning scheme every 10 years

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

(a) within 10 years after the planning scheme was originally made; or

(b) if a review of the planning scheme has been previously completed—within 10 years after the completion of the last review.

(2) The review must include an assessment of the achievement of the strategic outcomes stated in the planning scheme.

92 Action local government may take after review

After reviewing its planning scheme, the local government must, by resolution—

(a) propose to prepare a new scheme; or

(b) propose to amend the scheme; or

(c) if the local government is satisfied the scheme is suitable to continue without amendment—decide to take no further action.

93 Report about review if decision is to take no action

If a local government decides to take no further action under section 92(c), the local government must—

(a) prepare a report stating the reasons why the local government decided to take no further action; and

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(b) give a copy of the report to the chief executive.

94 Notice about report to be published

(1) After preparing the report mentioned in section 93, the local government must publish, in a newspaper circulating generally in the local government's area, a notice stating the following—

(a) the name of the local government;

(b) that the local government has prepared a report stating the reasons why the local government decided to take no further action under section 92(c);

(c) that the report is available for inspection and purchase;

(d) a contact telephone number for information about the report;

(e) the period (the ***inspection period***), of at least 40 business days, during which the report is available for inspection and purchase.

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

Subdivision 2 LGIP review

94A Requirement to review LGIP

(1) Each local government must complete a review of any LGIP included in its planning scheme (an ***LGIP review***) within—

(a) 5 years after the LGIP was included in the planning scheme; and

(b) each subsequent 5-year period after completing the review under paragraph (a).

(2) In conducting an LGIP review, the local government must follow the process stated in a guideline—

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(a) made by the Minister; and

(b) prescribed by regulation.

(3) An LGIP review is not a review for the purposes of a review under subdivision 1.

Division 5 Application of superseded planning schemes

95 Request for application of superseded planning scheme

(1) A person may, by written notice given to a local government, ask the local government—

(a) to apply a superseded planning scheme to the carrying out of assessable development, prohibited development or development requiring compliance assessment that was, under the superseded planning scheme, exempt development or self-assessable development; or

(b) to assess and decide a proposed development application under a superseded planning scheme; or

(c) to—

(i) accept a development application for development that is prohibited development under the planning scheme and was assessable development under a superseded planning scheme; and

(ii) assess and decide the application under the superseded planning scheme; or

(d) to assess and decide a request for compliance assessment under a superseded planning scheme; or

(e) to—

(i) accept a request for compliance assessment of development that is assessable development or prohibited development, and was development requiring compliance assessment under a superseded planning scheme; and

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(ii) assess and decide the request under the superseded planning scheme.

(2) However, the notice may be given to the local government only within 1 year after the day—

(a) the planning scheme or planning scheme policy creating the superseded planning scheme took effect; or

(b) the amendment of a planning scheme or planning scheme policy creating the superseded planning scheme took effect.

(3) The notice must—

(a) be in the approved form; and

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

(c) contain a description of the proposed development or be accompanied by a copy of the proposed development application or request for compliance assessment.

(4) The local government must keep the notice available for inspection and purchase from when the local government receives it until the request is decided under this division.

96 Decision on request

(1) The local government must decide to agree to the request, or refuse the request, within 30 business days after receiving it (the ***request period***).

(2) However, the local government may, by written notice given to the person making the request and without the person's agreement, extend the request period by not more than 10 business days.

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

(4) However, the request period may be further extended if the person making the request gives written agreement to the extension before the period ends.

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(5) The local government is taken to have decided to agree to the request if the local government does not decide the request within the latest of the following periods to end—

(a) the request period;

(b) if the request period is extended under subsections (2) and (3)—the extended period;

(c) if the request period is further extended under subsection (4)—the further extended period.

97 Notice of decision

The local government must give the person making the request written notice of the local government's decision within 5 business days after making the decision.

98 When development under superseded planning scheme must start

(1) If the local government agrees or is taken to have agreed to a request made under section 95(1)(a), the superseded planning scheme applies for carrying out the development if—

(a) for development that is a material change of use—the first change of use started within 4 years after the person is given, or was entitled to be given, notice of the decision under this division; or

(b) for development that is reconfiguring a lot—a plan for the reconfiguration is given to the local government within 2 years after the person is given, or was entitled to be given, notice of the decision under this division; or

(c) for other development—the development is substantially started within 2 years after the person is given, or was entitled to be given, notice of the decision under this division.

(2) A person may, by written notice given to the local government before the end of the period stated in subsection (1) for the development, ask the local government to extend the period.

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(3) A request under subsection (2)—

(a) must be accompanied by the fee fixed by resolution of the local government; and

(b) if the local government has a form for the request—must be in that form; and

(c) may not be withdrawn.

(4) The local government must give the person written notice of the local government's decision within 30 business days after receiving the request.

(5) If a person makes a request under subsection (2), the period stated in subsection (1) for the development does not end until the local government gives the person notice of its decision.

99 When development application (superseded planning scheme) can be made

(1) If the local government agrees or is taken to have agreed to a request made under section 95(1)(b) or (c), a development application (superseded planning scheme) for the development may be made to the assessment manager.

(2) However, the development application (superseded planning scheme) must be made within 6 months after the day the person is given, or was entitled to be given, notice of the decision.

(3) Despite section 239, a development application can be made for development that is prohibited development under a planning scheme if—

(a) the local government agrees or is taken to have agreed to assess and decide the development application under a superseded planning scheme; and

(b) the development was not prohibited development under the superseded planning scheme.

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100 When request for compliance assessment under a superseded planning scheme can be made

(1) If the local government agrees or is taken to have agreed to a request made under section 95(1)(d) or (e), a request for compliance assessment of the development under the superseded planning scheme may be made to the assessment manager.

(2) However, the request must be made within 6 months after the day the person is given, or was entitled to be given, notice of the decision.

(3) Despite section 239, a request for compliance assessment can be made for development that is prohibited development under a planning scheme if—

(a) the local government agrees or is taken to have agreed to assess and decide the request under a superseded planning scheme; and

(b) the development was not prohibited development under the superseded planning scheme.

Part 3 Temporary local planning instruments

Division 1 Preliminary

101 What is a *temporary local planning instrument*

A ***temporary local planning instrument*** is an instrument that—

(a) is made by a local government under division 2 and part 5; and

(b) advances the purpose of this Act by protecting a planning scheme area from adverse impacts.

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102 Status of temporary local planning instrument

A temporary local planning instrument is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

103 Area to which temporary local planning instrument applies

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

104 Relationship with planning scheme

A temporary local planning instrument may suspend or otherwise affect the operation of a planning scheme for up to 1 year, but—

(a) does not amend a planning scheme; and

(b) is not a change to a planning scheme under section 703.

Note—

For the relationship between temporary local planning instruments and State planning instruments, see sections 19 (Relationship with other instruments), 25 (Relationship with local planning instruments), 36 (Relationship with other instruments) and 53 (Relationship with local planning instruments).

Division 2 General matters about temporary local planning instruments

105 Power to make temporary local planning instrument

A local government may make a temporary local planning instrument for all or part of its planning scheme area only if the Minister is satisfied—

(a) there is a significant risk of serious environmental harm, or serious adverse cultural, economic or social conditions happening in the planning scheme area; and

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(b) the delay involved in using the process stated in the guideline mentioned in section 117(1) to amend the planning scheme would increase the risk; and

(c) State interests would not be adversely affected by the proposed temporary local planning instrument; and

(d) the proposed temporary local planning instrument appropriately reflects the standard planning scheme provisions.

106 Content of temporary local planning instrument

(1) A temporary local planning instrument may—

(a) declare development to be—

(i) self-assessable development; or

(ii) development requiring compliance assessment; or

(iii) assessable development; and

(b) require impact or code assessment, or both impact and code assessment, for assessable development; and

(c) state that development is prohibited development, but only if the standard planning scheme provisions state the development may be prohibited development.

(2) This section does not limit the matters that may be included in a temporary local planning instrument.

107 Temporary local planning instrument may adopt planning scheme policy

(1) The only document made by a local government that a temporary local planning instrument of the local government may, under the *Statutory Instruments Act 1992*, section 23, apply, adopt or incorporate is a planning scheme policy.

(2) In this section—

document does not include the following—

(a) a development approval;

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(b) an approval for an application mentioned in repealed IPA, section 6.1.26.

Part 4 Planning scheme policies

Division 1 Preliminary

108 What is a *planning scheme policy*

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

(a) is made by a local government under division 2 and part 5; and

(b) supports the local dimension of a planning scheme; and

(c) supports local government actions under this Act for IDAS and for making or amending its planning scheme.

109 Status of planning scheme policy

A planning scheme policy is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

110 Effect of planning scheme policy

A planning scheme policy for a planning scheme area—

(a) becomes a policy for the area; and

(b) if the policy states that it replaces an existing policy—replaces the existing policy.

111 Area to which planning scheme policy applies

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

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112 Relationship with other planning instruments

To the extent a planning scheme policy is inconsistent with another planning instrument, the other planning instrument prevails.

Division 2 General matters about planning scheme policies

113 Power to make planning scheme policy

A local government may make a planning scheme policy for all or a part of its planning scheme area.

114 Content of planning scheme policy

(1) A planning scheme policy may only do 1 or more of the following—

(a) state information a local government may request for a development application;

(b) state the consultation the local government may carry out under section 256;

(c) state actions a local government may take to support the process for making or amending its planning scheme;

(d) contain standards identified in a code;

(e) include guidelines or advice about satisfying assessment criteria in the planning scheme.

(2) Subsection (1) applies despite section 109.

115 Planning scheme policy can not adopt particular documents

(1) A planning scheme policy must not apply, adopt or incorporate another document made by the local government.

(2) In this section—

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document does not include the following—

(a) a development approval;

(b) an approval for an application mentioned in repealed IPA, section 6.1.26.

Part 5 Making, amending or repealing local planning instruments

Division 1 Making or amending local planning instruments

117 Process for preparing, making or amending local planning instruments

(1) For making or amending a planning scheme or planning scheme policy, a local government must follow the process stated in a guideline—

(a) made by the Minister; and

(b) prescribed under a regulation.

(2) Without limiting the application of subsection (1) in relation to an LGIP, an LGIP or an amendment of an LGIP must be prepared as required under a guideline—

(a) made by the Minister; and

(b) prescribed by regulation.

(3) For making a temporary local planning instrument, a local government must follow the process stated in a guideline—

(a) made by the Minister; and

(b) prescribed under a regulation.

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118 Content of guideline for making or amending local planning instrument

(1) The guideline mentioned in section 117(1) must make provision for—

(a) the local government to publish at least once in a newspaper circulating in the local government's area, notice about a proposal to make—

(i) a planning scheme; or

(ii) a planning scheme policy; and

(b) the local government to carry out public consultation about a proposal mentioned in paragraph (a) for a period (the ***consultation period***) of at least—

(i) for a proposed planning scheme—30 business days; and

(ii) for a proposed planning scheme policy—20 business days; and

(c) if public consultation about a proposal mentioned in paragraph (a) must be carried out—

(i) the local government to have available for inspection and purchase during all of the consultation period a copy of the proposed planning scheme or planning scheme policy; and

(ii) members of the public to make submissions to the local government about the proposed planning scheme or planning scheme policy; and

(iii) the local government to consider all properly made submissions about the proposed planning scheme or planning scheme policy; and

(iv) the local government to advise persons who make a properly made submission about how the local government has dealt with the submission; and

(v) the local government to give the Minister a notice containing a summary of matters raised in the

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properly made submissions and stating how the local government dealt with the matters; and

(d) any proposed planning scheme to be approved by the Minister; and

(e) the making of a proposed planning scheme, or amendment of a planning scheme, to be notified in the gazette; and

(f) the making of a proposed planning scheme policy, or amendment of a planning scheme policy, to be notified in a newspaper circulating generally in the local government's area.

(2) The guideline mentioned in section 117(2) must make provision for—

(a) any proposed temporary local planning instrument to be approved by the Minister; and

(b) the making of a proposed temporary local planning instrument to be notified in the gazette.

119 Compliance with guideline

(1) Despite section 117(1), if a planning scheme or planning scheme policy is made or amended in substantial compliance with the process stated in the guideline mentioned in the subsection, the planning scheme, planning scheme policy or amendment is valid so long as any noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the proposed planning scheme, planning scheme policy or amendment; or

(b) restricted the opportunity of the public to make properly made submissions about the proposed planning scheme, planning scheme policy or amendment under the guideline; or

(c) for a planning scheme or amendment of a planning scheme—restricted the opportunity of the Minister to

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consider whether State interests would be adversely affected.

(2) Despite section 117(2), if a temporary local planning instrument is made in substantial compliance with the process stated in the guideline mentioned in the subsection, the instrument is valid.

120 When planning scheme, temporary local planning instrument and amendments have effect

(1) A planning scheme or temporary local planning instrument for a planning scheme area has effect on and from—

(a) the day the making of the planning scheme or temporary local planning instrument is notified in the gazette; or

(b) if a later day for the commencement of the planning scheme or temporary local planning instrument is stated in the planning scheme or instrument—the later day.

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

(a) the day the making of the amendment is notified in the gazette; or

(b) if a later day for the commencement of the amendment is stated in the amendment—the later day.

(3) A temporary local planning instrument has effect until the instrument expires or is repealed.

Note—

For when particular provisions of a planning scheme have no effect for development in the SEQ region, see the SEQ Water Act, section 78A.

121 When planning scheme policy and amendments have effect

A planning scheme policy or amendment of a planning scheme policy for a planning scheme area has effect on and from—

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(a) the day the making of the policy or amendment is first notified in a newspaper circulating generally in the local government's area; or

(b) if a later day for the commencement of the policy or amendment is stated in the policy or amendment—the later day.

122 Consolidating planning schemes

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

(2) The guideline mentioned in section 117(1) does not apply to the preparation or adoption of the consolidated planning scheme.

(3) The consolidated planning scheme is, in the absence of evidence to the contrary, taken to be the local government's planning scheme on and from the day the consolidated planning scheme is adopted by the local government.

(4) As soon as practicable after the local government adopts the consolidated planning scheme, the local government must give the chief executive a certified copy of the consolidated planning scheme.

Division 3 Repealing local planning instruments

123 Repealing temporary local planning instruments

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

(a) a resolution of a local government; or

(b) the adoption of a planning scheme or an amendment of a planning scheme that specifically repeals the instrument.

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

(a) was made by the local government under the direction of the Minister under section 126; or

(b) was made by the Minister under section 128 after the local government did not comply with a direction of the Minister under section 126; or

(c) was made by the Minister under section 129.

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

(a) the name of the local government;

(b) the name of the temporary local planning instrument being repealed;

(c) the day the resolution was made;

(d) the purpose and general effect of the resolution.

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

(5) The repeal takes effect—

(a) if the resolution is made under subsection (1)(a)—on the day the resolution is notified in the gazette; or

(b) if the temporary local planning instrument is repealed by the making of a planning scheme or an amendment of a planning scheme—on the day the planning scheme or amendment takes effect.

124 Repealing planning scheme policies

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

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

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

(a) the name of the local government;

(b) the name of the planning scheme policy being repealed;

(c) the day the resolution was made.

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

(5) The repeal takes effect—

(a) on the day the notice is first published in the newspaper; or

(b) if the notice states a later day—on the later day.

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

Part 6 Powers of State in relation to local planning instruments

Division 1 Direction to take action about local planning instruments

125 Procedures before exercising particular power

(1) Before a power is exercised under section 126 or 127, the Minister must give written notice of the proposed exercise of

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the power to the local government to be affected by the exercise of the power.

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

(3) The notice must state—

(a) the reasons for the proposed exercise of the power; and

(b) a period within which the local government may make submissions to the Minister about the proposed exercise of the power.

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

(a) not to exercise the power; or

(b) to exercise the power.

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

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

(1) This section applies if the Minister is satisfied it is necessary to give a direction to a local government—

(a) to protect or give effect to a State interest; or

(b) to ensure a local planning instrument, proposed local planning instrument or proposed amendment of a local planning instrument appropriately reflects the standard planning scheme provisions.

(2) The Minister may direct the local government to take an action in relation to—

(a) a local planning instrument; or

(b) a proposed local planning instrument; or

(c) a proposed amendment of a local planning instrument.

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

(4) Without limiting subsection (2), the direction may require the local government to—

(a) review its planning scheme; or

(b) make a planning scheme or amend its planning scheme; or

(c) make or repeal a temporary local planning instrument; or

(d) make, amend or repeal a planning scheme policy.

127 Power of Minister to direct local government to prepare a consolidated planning scheme

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

128 Power of Minister if local government does not comply with direction

(1) If the local government does not comply with the Minister's direction under section 126 or 127 within the reasonable period stated in the direction, the Minister may take the action the Minister directed the local government to take.

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

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

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Division 2 Making or amending local planning instrument without direction

129 Power of Minister to take action about local planning instrument without direction to local government

(1) Subsection (2) applies if the Minister is satisfied urgent action is necessary to protect or give effect to a State interest.

(2) The Minister may make or amend a local planning instrument without giving a direction under section 126 to the local government about the making or amendment of the local planning instrument.

(3) Subsection (4) applies if the Minister is satisfied a local planning instrument does not appropriately reflect the standard planning scheme provisions.

(4) The Minister may amend the local planning instrument without giving a direction under section 126 to the local government about the amendment of the instrument.

(5) Before acting under subsection (2) or (4), the Minister must give written notice of the proposed action to the local government to be affected by the action.

(6) The notice must state the reasons for taking the action.

(7) To remove any doubt, it is declared that the Minister is not required to consult with anyone before taking the action.

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

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

Note—

The regional planning Minister may amend a planning scheme to reflect a regional plan. See section 39 (Amending planning schemes to reflect regional plan).

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Division 3 Process for dealing with local planning instruments under part 6

130 Process for Minister to take action under pt 6

(1) A guideline mentioned in section 117 must state a process for the Minister—

(a) to take the action the Minister directed the local government to take under division 1; and

(b) to make or amend a local planning instrument under division 2.

(2) In taking the action, or making or amending the local planning instrument, the Minister must follow the stated process.

Chapter 5 Designation of land for community infrastructure

Part 1 Preliminary

200 Who may designate land

A Minister or a local government may, under this chapter, designate land for community infrastructure prescribed under a regulation for this section.

Note—

In this chapter, *Minister* includes any Minister. See definition *Minister* in schedule 3 (Dictionary).

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201 Matters to be considered when designating land

Land may be designated for community infrastructure only if the Minister or local government is satisfied the community infrastructure will—

(a) facilitate the implementation of legislation and policies about environmental protection or ecological sustainability; or

(b) facilitate the efficient allocation of resources; or

(c) satisfy statutory requirements or budgetary commitments of the State or local government for the supply of community infrastructure; or

(d) satisfy the community's expectations for the efficient and timely supply of the infrastructure.

202 What designations may include

A designation may include—

(a) requirements about works or the use of the land for the community infrastructure, including the height, shape, bulk or location of the works on the land, vehicular access to the land, vehicular and pedestrian circulation on the land, hours of operation of the use, landscaping on the land and ancillary uses of the land; and

(b) other requirements designed to lessen the impacts of the works or the use of the land for community infrastructure, including procedures for environmental management.

203 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, development requiring compliance assessment or assessable development under a planning scheme;

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(b) reconfiguring a lot.

204 Relationship of designation to State Development and Public Works Organisation Act 1971

(1) Subsection (2) applies if land in a declared State development area under the *State Development and Public Works Organisation Act 1971* is designated under this part.

(2) Despite part 6, division 1 of that Act, development of the land in accordance with the designation—

(a) is taken to be development of the land in accordance with the approved development scheme for the land under that Act; and

(b) does not contravene section 84A or 84B of that Act.

205 How infrastructure charges apply to designated land

If a public sector entity that is a department or part of a department proposes or starts development under a designation, the entity is not required to pay any adopted charge for the development.

206 How designations must be shown in planning schemes

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

(a) identify the land; and

(b) state the type of community infrastructure for which the land was designated; and

(c) state the day the designation was made; and

(d) refer to any matters included as part of the designation under section 202; and

(e) be shown in the planning scheme in a way that other provisions in the planning scheme applying to the land

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remain effective even if the designation is repealed or ceases to have effect.

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

(a) a designation is part of a planning scheme; and

(b) designation is not the only way community infrastructure may be identified in a planning scheme; and

(c) the provisions of a planning scheme, other than the provision that designates land, applying to designated land remain effective even if the designation is repealed or ceases to have effect.

Part 2 Ministerial designations

207 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; 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; and

(d) for land to which section 204 applies—adequate account has been taken of the approved development scheme mentioned in that section.

(2) The Minister must also consider—

(a) every properly made submission under subsection (4); and

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(b) for land to which a State planning regulatory provision applies—the provision; and

(c) for land in a designated region—the region's regional plan; and

(d) each relevant State planning policy; and

(e) each relevant local planning instrument.

(3) For subsection (1), there has been adequate environmental assessment and public consultation in carrying out environmental assessment if—

(a) the assessment and consultation has been carried out as required by guidelines made by the chief executive under section 760 for assessing the impacts of the development; or

(b) the processes under chapter 6, part 4 and part 5, division 2, have been completed for a development application for the community infrastructure to which the designation relates; or

(c) the process under chapter 9, part 2, division 2, has been completed for an EIS for development for the community infrastructure; or

(d) public notification has been carried out for a planning scheme, or an amendment of a planning scheme, that includes the community infrastructure, under the guideline mentioned in section 117(1); or

(e) the Coordinator-General has, under the *State Development and Public Works Organisation Act 1971*—

(i) prepared a report under section 34D of that Act evaluating an EIS for, or including, development for the community infrastructure; or

(ii) prepared a report under section 34L of that Act evaluating an IAR for, or including, development for the community infrastructure and a draft of the IAR was publicly notified under section 34H or 34K(3) of that Act; or

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(f) the process under the Environmental Protection Act, chapter 3, part 1 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 at least 15 business days to make a submission.

208 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 the Minister is satisfied the designation affects; and

(c) the chief executive.

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

(a) that 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 202 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).

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209 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 the persons mentioned in section 208(1)(a) and (b).

210 Effects of ministerial designations

A designation made under this part—

(a) if the designation states that it replaces an existing designation—replaces the existing designation; and

(b) has effect on and from—

(i) the day the designation is notified in the gazette; or

(ii) if a later day for the commencement of the designation is stated in the notice—the later day.

211 When local government must include designation in planning scheme

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

(a) its planning scheme (if any); and

(b) any new planning scheme it makes before the designation ceases to have effect.

(2) The note is not an amendment of the planning scheme.

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Part 3 Local government designations

212 Designation of land by local government

(1) A local government may only designate land by using the process stated in the guideline mentioned in section 117(1) to include the designation as a substantive provision of its planning scheme.

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

(3) However, land identified in an LGIP as land for community infrastructure is not designated land unless it is also specifically identified as designated land.

213 Designating land the local government does not own

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

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

(3) The notice must state the following—

(a) the description of the land proposed to be designated, including a plan of the land;

(b) the type of community infrastructure for which the designation is proposed;

(c) the reasons for the designation;

(d) that written submissions about any aspect of the proposed designation may be given to the local government during the consultation period.

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Part 4 Duration and reconfirmation of designations

214 Duration of designations

(1) A designation ceases to have effect—

(a) if the designation is made by a Minister—6 years after notice of the designation was published in the gazette (the ***designation cessation day***); or

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

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

(a) the existing designation continues to have effect until its designation cessation day under subsection (1); and

(b) section 213 does not apply to remaking the designation in the new planning scheme.

215 When designations do not cease

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

(a) on the designation cessation day, an entity other than a public sector entity or the local government owns, or has a public utility easement over, the designated land and construction of community infrastructure started before the designation cessation day; or

(b) on the designation cessation day, a public sector entity or the local government owns, or has a public utility easement, for the same purpose as the designation, over, the designated land; or

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(c) before the designation cessation day, a public sector entity or the local government gave a notice of intention to resume the designated land under the Acquisition Act, section 7; or

(d) before the designation cessation day, a public sector entity or the local government signed an agreement to take under the Acquisition Act or to otherwise buy the designated land; or

(e) for a designation made by the Minister—before the designation cessation day, the Minister gave the local government written notice reconfirming the designation.

(2) However, if a public sector entity or a local government discontinues proceedings to resume designated land, whether before or after the designation cessation day, the designation ceases to have effect the day the proceedings are discontinued.

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

216 Reconfirming designation

(1) If the Minister gives a local government written notice under section 215(1)(e) reconfirming a designation—

(a) the local government must display the notice in a conspicuous place in the local government's public office; and

(b) the Minister must—

(i) give the owner of the land a copy of the notice; and

(ii) publish the notice in the gazette; and

(c) the designation has effect for another 6 years after the notice is published in the gazette.

(2) When a local government receives a notice from the Minister reconfirming a designation in or near its planning scheme

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area, the local government must again note the designation on—

(a) its planning scheme (if any); and

(b) any new planning scheme it makes before the designation ceases to have effect.

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

(4) A reconfirmation of a designation is taken to be a designation to which sections 214 and 215 apply.

Part 5 Repealing designations

217 Who may repeal designations

(1) A Minister may repeal a designation made by the Minister.

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

218 Notice of repeal

(1) The repeal of a designation must be made by publishing a notice of repeal of the designation—

(a) in the gazette; and

(b) in a newspaper circulating generally in the area where the designated land is situated.

(2) The notice must state the following—

(a) that the designation has been repealed;

(b) the description of the land to which the designation applied;

(c) the purpose of the community infrastructure for which the land was designated;

(d) the reasons for the decision.

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219 Minister or local government to give notice of repeal to particular entities

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

(a) each local government to which a notice about the making of the designation was given; and

(b) if the land is owned by an entity other than the State or the local government—the owner; and

(c) the chief executive.

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

220 When designation ceases to have effect

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

221 Local government to note repeal on planning scheme

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

(2) The note is not an amendment of the planning scheme.

Part 6 Acquiring designated land

222 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.

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(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 Act 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 land adjoining the designated land and retaining the interest without the designated interest would also cause the owner hardship—the designated interest and the interest in the land adjoining the designated land.

223 Decision about request

(1) 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 226; or

(c) refuse the request.

(2) 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 section 222(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;

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

224 Notice about grant of request

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

225 Notice about refusal of request

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

(a) the request has been refused; and

(b) the owner may appeal against the decision.

226 Alternative action designator may take

If the designator decides not to buy the nominated interest, the designator may, instead of taking action under section 225 and within 5 business days after deciding the request, give the owner a notice stating that the designator proposes to—

(a) exchange the nominated interest for property held by the designator; or

(b) repeal the designation or remove the designation from the designated interest; or

(c) investigate the removal of the designation from the designated interest.

227 If the designator does not act under the notice

(1) This section applies if the designator gave a notice under section 224 or 226 and, within 40 business days after giving the notice, the designator has not—

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(a) signed an agreement with the owner to buy the nominated interest or to take the nominated interest under the Acquisition Act, part 2, division 3; or

(b) signed an agreement with the owner to exchange the nominated interest; or

(c) repealed the designation or removed the designation from the designated interest.

(2) The designator must, within 5 business days after the end of the period mentioned in subsection (1), give the owner a notice of intention to resume the nominated interest.

(3) The notice given under subsection (2) is taken to be a notice of intention to resume given under the Acquisition Act, section 7.

(4) However, the Acquisition Act, sections 13 and 41, do not apply to the resumption.

228 How value of interest is decided

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

Part 7 Delegation of Minister's functions

229 Ministers may delegate particular administrative functions about designations

A Minister may delegate the Minister's functions under sections 208, 209 and 224 to 227 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.

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Chapter 6 Integrated development assessment system (IDAS)

Part 1 Preliminary

Division 1 Introduction

230 What is IDAS

IDAS is the system detailed in this chapter for integrating State and local government assessment and approval processes for development.

231 Categories of development under Act

(1) The categories of development under this Act are as follows—

(a) exempt development;

(b) self-assessable development;

(c) development requiring compliance assessment;

(d) assessable development;

(e) prohibited development.

(2) Under this Act, all development is exempt development unless it is—

(a) self-assessable development; or

(b) development requiring compliance assessment; or

(c) assessable development; or

(d) prohibited development.

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232 Regulation may prescribe categories of development or require code or impact assessment

(1) A regulation may prescribe that development is—

(a) self-assessable development; or

(b) development requiring compliance assessment; or

(c) assessable development.

Note—

See section 397(3) for matters a regulation under subsection (1)(b) must state.

(2) Also, a regulation may prescribe development that a planning scheme, a temporary local planning instrument or a preliminary approval to which section 242 applies can not declare to be self-assessable development, development requiring compliance assessment, assessable development or prohibited development.

(3) In addition, a regulation may require code or impact assessment, or both code and impact assessment, for assessable development.

Note—

Under this Act, the following also may state that development is self-assessable development, development requiring compliance assessment or assessable development requiring code or impact assessment, or both code and impact assessment—

(a) a State planning regulatory provision;

(b) a temporary local planning instrument;

(c) a preliminary approval to which section 242 applies;

(d) a planning scheme.

233 Relationship between regulation and planning scheme, temporary local planning instrument or local law

(1) To the extent a planning scheme or temporary local planning instrument is inconsistent with a regulation made under section 232(1) or (2), the planning scheme or temporary local planning instrument is of no effect.

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(2) However, to the extent a planning scheme or temporary local planning instrument is inconsistent with a regulation made under section 232(1) because the planning scheme or temporary local planning instrument states development is self-assessable but the regulation states the development is assessable—

(a) codes in the planning scheme or temporary local planning instrument for the development are not applicable codes; but

(b) must be complied with.

(3) If a regulation requires code assessment for development, a planning scheme or temporary local planning instrument can not require impact assessment instead of code assessment for the aspect of development the code is about.

(4) To the extent a planning scheme or temporary local planning instrument is inconsistent with a regulation mentioned in section 232(3), for assessable development, the planning scheme or temporary local planning instrument is of no effect.

(5) Subsections (3) and (4) apply whether the regulation was made before or after the commencement of the planning scheme or temporary local planning instrument.

(6) A regulation under this or another Act may also identify a code, or a part of a code, as a code, or a part of a code, that can not be changed under a local planning instrument or a local law.

(7) To the extent a local planning instrument or a local law is inconsistent with the scope of a code, or a part of a code, identified in the regulation mentioned in subsection (6), the local planning instrument or local law is of no effect.

234 Relationship between sch 1 and planning instruments

To the extent a planning instrument purports to provide for any matter about development that is prohibited development under schedule 1, the planning instrument is of no effect.

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Division 2 Particular provisions about categories of development

235 Exempt development

(1) A development permit is not necessary for exempt development.

(2) Also, exempt development need not comply with planning instruments, other than a State planning regulatory provision.

(3) Nothing in subsection (2) stops a planning instrument, a development approval or compliance permit affecting exempt development if—

(a) the development is the natural and ordinary consequence of another aspect of development that is self-assessable development, development requiring compliance assessment or assessable development; and

(b) the effect mitigates impacts of the self-assessable development, development requiring compliance assessment or assessable development.

Example for subsection (3)—

A development approval for a material change of use may include conditions, including, for example, conditions about landscaping, parking or buildings that are the natural and ordinary consequence of the material change of use if the conditions would mitigate impacts, including, for example, visual amenity, noise or traffic generation, of the material change of use.

236 Self-assessable development

(1) A development permit is not necessary for self-assessable development.

(2) However, self-assessable development must comply with applicable codes.

Note—

It is an offence to carry out self-assessable development in contravention of applicable codes. See section 574 (Self-assessable development must comply with codes).

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237 Development requiring compliance assessment

(1) A development permit is not necessary for development requiring compliance assessment.

(2) A compliance permit is necessary for development requiring compliance assessment.

Note—

It is an offence to carry out development requiring compliance assessment without a compliance permit. See section 575 (Carrying out development without compliance permit).

238 Assessable development

A development permit is necessary for assessable development.

Note—

It is an offence to carry out assessable development without a development permit. See section 578 (Carrying out assessable development without permit).

239 Prohibited development

(1) An application or request for compliance assessment can not be made for development if the development is prohibited development.

(2) If an application or request for compliance assessment is made and any part of the development applied for is prohibited development, the application or request is taken not to have been made and IDAS does not apply to it.

Note—

It is an offence to carry out development that is prohibited development. See section 581 (Offence to carry out prohibited development).

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Division 3 Approvals for IDAS

Subdivision 1 Preliminary

240 Types of approval

The types of approval under this Act for IDAS are—

(a) a preliminary approval; and

(b) a development permit; and

(c) a compliance permit; and

(d) a compliance certificate.

Note—

See part 10 (Compliance stage) for provisions about compliance permits and compliance certificates.

Subdivision 2 Preliminary approvals

241 Preliminary approvals

(1) A ***preliminary approval***—

(a) approves development, but does not authorise assessable development to take place; and

(b) approves development—

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

(ii) subject to the conditions of the approval.

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

Note—

Preliminary approvals assist in the staging of approvals.

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242 Preliminary approval may affect 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 part 5, do either or both of the following for the material change of use or development relating to the material change of use—

(a) state that the development is—

(i) exempt development; or

(ii) self-assessable development; or

(iii) development requiring compliance assessment; or

(iv) assessable development requiring code or impact assessment, or both code and impact assessment;

(b) identify or include codes for the development.

Note—

For other things that a preliminary approval to which this section applies may do, see part 10 (Compliance stage).

(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 part 5, do either or both of the following for the development—

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(a) state that the development is—

(i) exempt development; or

(ii) self-assessable development; or

(iii) development requiring compliance assessment; or

(iv) assessable development requiring code or impact assessment, or both code and impact assessment;

(b) identify or include 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 different from 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 or compliance permit is completed;

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

Note—

For the time limit for completing development, see section 343 (When approval lapses if development started but not completed—preliminary approval).

(8) To the extent the preliminary approval is inconsistent with a regulation made under section 232(1), (2) or (3), the preliminary approval is of no effect.

Subdivision 3 Development permits

243 Development permits

A ***development permit*** authorises assessable development to take place—

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

(b) subject to—

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(i) the conditions of the permit; and

(ii) any preliminary approval relating to the development the permit authorises, including any conditions of the preliminary approval.

Subdivision 4 Other matters about development approvals

244 Development approval includes conditions

A development approval includes any conditions—

(a) imposed by the assessment manager; and

(b) that a concurrence agency has given in a response under section 285 or 290, or an amended response under section 290; and

(c) that the Minister has directed the assessment manager to attach to the approval under section 419; and

(d) that under another Act must be imposed on, or that apply to, the development approval.

Example for paragraph (d)—

The conditions taken to be imposed under the Building Act, chapter 4, part 5, division 1.

245 Development approval attaches to land

(1) A development approval—

(a) attaches to the land the subject of the application to which the approval relates; and

(b) binds the owner, the owner's 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.

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Division 4 Assessment managers and referral agencies

Subdivision 1 Assessment managers

246 Who is the assessment manager

(1) The ***assessment manager*** for an application is the entity prescribed under a regulation as the assessment manager for the application.

(2) Without limiting subsection (1), the regulation may state that the assessment manager for an application is the entity decided by the Minister.

(3) If, under the regulation, the assessment manager is to be decided by the Minister, the Minister may instead require the application to be split into 2 or more applications.

247 Role of assessment manager

The assessment manager for an application administers and decides the application, but may not always assess all aspects of development for the application.

Note—

See section 312 (When assessment manager must not assess part of an application).

248 Jurisdiction of local government as assessment manager for particular development

If a local government is the assessment manager for development not completely within the local government's planning scheme area—

(a) sections 246(1) and 247 apply despite the Local Government Act, section 9 and the City of Brisbane Act, section 11; and

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(b) to the extent the application is for development for prescribed tidal work, the local government has the jurisdiction to assess the application in addition to any other jurisdiction it may have for assessing the application.

249 When assessment manager also has jurisdiction as concurrence agency

(1) If an entity is the assessment manager and has 1 or more jurisdictions as a concurrence agency, whether or not the jurisdiction has been devolved or delegated to the entity—

(a) the entity is not a concurrence agency; but

(b) the entity's jurisdiction as assessment manager includes each jurisdiction the entity would have had as a concurrence agency.

(2) Despite subsection (1)(a), the entity's fee under section 260(1)(d) for a development application is taken to include the fee that would have been payable under section 272(1)(c) for the application if the entity were a concurrence agency for the application.

Subdivision 2 Referral agencies

250 Who is an *advice agency*

An ***advice agency***, for an application, is—

(a) an entity prescribed under a regulation as an advice agency for the application; or

(b) if the functions of the entity in relation to the application have been devolved or delegated to another entity—the other entity.

251 Who is a *concurrence agency*

A ***concurrence agency***, for an application, is—

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(a) an entity prescribed under a regulation as a concurrence agency for the application; or

(b) if the functions of the entity in relation to the application have been devolved or delegated to another entity—the other entity.

252 Who is a *referral agency*

A ***referral agency*** is an advice agency or a concurrence agency.

254 Jurisdiction of referral agencies for applications—generally

(1) A referral agency has, for assessing and responding to the part of an application giving rise to the referral, the jurisdiction or jurisdictions prescribed under a regulation.

(2) If 2 or more entities prescribed as referral agencies are the same entity (however called), the entities are taken to be a single referral agency with multiple jurisdictions.

255 Concurrence agencies if Minister decides assessment manager

(1) This section applies if—

(a) the assessment manager for an application is decided by the Minister; and

(b) the Minister is satisfied 1 or more other entities, that are not concurrence agencies for the application, could have been the assessment manager for the application.

(2) The Minister may state that 1 or more of the entities are to be a concurrence agency for the application.

(3) An entity that becomes a concurrence agency under subsection (2) has the jurisdiction it would have had if it were the assessment manager.

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Subdivision 2A Chief executive assessing particular applications as assessment manager or referral agency

255A Application requiring code assessment

(1) This section applies if—

(a) the chief executive is the assessment manager for an application; and

(b) any part of the application requires code assessment.

(2) For assessing the part of the application—

(a) section 313(2)(c), (4) and (5) does not apply; and

(b) the chief executive may have regard, and give the weight the chief executive is satisfied is appropriate, to the matters prescribed under a regulation.

255B Application requiring impact assessment

(1) This section applies if—

(a) the chief executive is the assessment manager for an application; and

(b) any part of the application requires impact assessment.

(2) For assessing the part of the application—

(a) section 314(2)(c) does not apply; and

(b) the chief executive may have regard, and give the weight the chief executive is satisfied is appropriate, to the matters prescribed under a regulation.

255C Chief executive assessing application as a referral agency

(1) This section applies if the chief executive is assessing an application as a referral agency.

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(2) For assessing the application—

(a) section 282(1)(c) and (e) does not apply; and

(b) the chief executive may have regard, and give the weight the chief executive is satisfied is appropriate, to the matters prescribed under a regulation.

255D Chief executive imposes conditions or recommends conditions be imposed on development approval

(1) Subsection (3) applies if the chief executive—

(a) is the assessment manager for an application and imposes a condition on the development approval; or

(b) is a concurrence agency for an application and, in a concurrence agency's response given under section 285 or 290 or in an amended response given under section 290, tells the assessment manager that a condition must attach to the development approval; or

(c) is an advice agency for an application and, in an advice agency's response given under section 291, makes a recommendation to the assessment manager about a condition that should attach to the development approval, and the assessment manager imposes the condition.

(2) Subsection (3) also applies if—

(a) the chief executive is a referral agency for a matter within the referral agency's jurisdiction about a development; and

(b) the chief executive gives a referral agency's response under section 271 before an application for the development is made that—

(i) if the chief executive is a concurrence agency—tells the assessment manager that a condition must attach to any development approval for the application; or

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(ii) if the chief executive is an advice agency—makes a recommendation to the assessment manager about a condition that should attach to any development approval and the assessment manager imposes the condition on a development approval for the application; and

(c) the functions of the chief executive as a referral agency in relation to the application are lawfully devolved or delegated to the assessment manager.

(3) The chief executive may nominate an entity to be the assessing authority for the development to which the development approval relates for the administration and enforcement of a matter relating to the condition.

(4) If the chief executive nominates an entity under subsection (3), the chief executive must give the entity a written notice to that effect.

255E Relationship with other Acts

(1) This section applies to an application if—

(a) the chief executive is the assessment manager or a referral agency for the application; and

(b) had the application been made before the commencement of this section, an entity (a ***relevant entity***) other than the local government would have been the assessment manager, or the referral agency, for the application; and

(c) another Act imposes requirements on the relevant entity assessing the application as the assessment manager or referral agency.

(2) If there is an inconsistency between this subdivision and the other Act, this subdivision prevails to the extent of the inconsistency.

(3) Subsection (2) applies despite express words or an implied intention to the contrary in the other Act.

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(4) Without limiting subsections (2) and (3)—

(a) a provision of the other Act stating that matters referred to in that Act to which the relevant entity in assessing the application must or may have regard does not apply to the chief executive in assessing the application; and

(b) for assessing the application, the chief executive may under section 255A(2)(b), 255B(2)(b) or 255C(2)(b) have regard, and give the weight the chief executive considers appropriate, to the matters prescribed under a regulation for that section, despite any provision in the other Act that states the relevant entity must or may have regard to other particular matters.

(5) Subsection (6) applies if, under the other Act, a function is conferred on the relevant entity for assessing a matter as the assessment manager or a referral agency for the application.

(6) For assessing the matter—

(a) the function is conferred on the chief executive; and

(b) the chief executive may, but is not required to, have regard to the other Act's purpose.

(7) If a provision of the other Act states that the relevant entity may impose particular conditions on any development approval for the application—

(a) the provision does not apply to the chief executive for imposing conditions on the development approval; but

(b) any condition the chief executive imposes on the development approval must comply with section 345.

(8) If a provision of the other Act states that the relevant entity would be, or would be taken to be, the assessment manager or a referral agency for assessing a matter for the application, the chief executive is, or is taken to be, the assessment manager or the referral agency for assessing the matter.

(9) Subsection (10) applies if a provision of the other Act (a ***stated provision***) requires the applicant to give the relevant entity a document relating to the application.

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(10) Despite the stated provision, the applicant must give the chief executive the document.

(11) Subsection (12) applies if, under the other Act, a function is conferred—

(a) on the relevant entity as the assessment manager or a referral agency for the application; and

(b) for an investigative or enforcement purpose.

(12) For the purpose, the relevant entity is taken to be the assessment manager or a referral agency for the application.

(13) This section does not apply to the *Airport Assets (Restructuring and Disposal) Act 2008*, chapter 3, part 2 or the *Sustainable Ports Development Act 2015*.

(14) In this section—

application includes part of an application.

assessing, an application or a matter, includes deciding the application or the matter.

function includes power.

must have regard to includes must comply with.

Subdivision 3 Additional third party advice or comment about applications

256 Assessment manager or concurrence agency may seek advice or comment about application

(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 of IDAS, other than the compliance stage.

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

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

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(a) asking for and receiving advice or comment does not extend any stage; and

(b) public notification under subsection (2) is not notification under part 4, division 2.

Division 5 Stages of IDAS

257 Stages of IDAS

(1) IDAS involves the following possible stages—

- application stage
- information and referral stage
- notification stage
- decision stage
- compliance stage.

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

Example—

An application for development approval for a factory requiring code assessment and a referral for workplace health and safety purposes involves 3 stages—the application, information and referral and decision stages.

(3) For development requiring compliance assessment only, the compliance stage is the only stage that applies to the development.

Division 6 Giving notices electronically

259 Giving notices using e-IDAS

(1) This section applies if, under the application stage, information and referral stage, notification stage or decision stage of IDAS, an entity (the ***first entity***) is required to give another entity a notice in writing about an application made using e-IDAS.

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(2) The first entity may comply with the requirement by electronically sending to the other entity, using e-IDAS, the information required to be given in the notice.

Part 2 Application stage

Division 1 Application process

Subdivision 1 Applying for development approvals

260 Applying for development approval

(1) Each application must—

(a) be made to the assessment manager; and

(b) be in the approved form or made electronically under section 262(3); and

(c) be accompanied by any supporting information the approved form states is mandatory supporting information for the application; and

(d) be accompanied by—

(i) if the assessment manager is a local government—the fee for administering the application fixed by resolution of the local government; or

(ii) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act; and

Note—

See also section 249(2).

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(e) if, under section 263, the consent of the owner of the land the subject of the application is required for the making of the application—

(i) contain or be accompanied by the owner's written consent; or

(ii) include a declaration by the applicant that the owner has given written consent to the making of the application.

Note—

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

(2) The approved form—

(a) must contain a mandatory requirements part; and

(b) may make provision for mandatory supporting information for the application.

(3) In making an application, the applicant must give the information required under the mandatory requirements part of the approved form.

261 When application is a *properly made application*

(1) An application is a ***properly made application*** only if—

(a) either—

(i) the application complies with section 260(1) and (3); or

(ii) the assessment manager for the application—

(A) is satisfied the application complies with section 260(1)(a), (b), (d) and (e) and (3); and

(B) receives and, after considering any noncompliance with section 260(1)(c), accepts the application; and

(b) if the application is taken, under the Environmental Protection Act, section 115, to also be an application for

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an environmental authority—the application complies with the Environmental Protection Act, section 125, as if a reference to—

(i) the application were a reference to the development application; and

(ii) the applicant were a reference to the applicant for the development application.

(2) Despite subsection (1)(b), the Environmental Protection Act, section 125(1)(a) and (b) does not apply to the application.

262 Special provision about electronic applications

(1) The chief executive may approve an electronic system to send and receive electronic communications for carrying out actions involved in IDAS.

(2) The electronic system approved by the chief executive under subsection (1) is called ***e-IDAS***.

(3) If an applicant can use e-IDAS for making an application—

(a) the application may be made by electronically sending to the assessment manager, using e-IDAS, the information required in the approved form for the application in the format provided for under e-IDAS; and

(b) electronic communications for carrying out actions involved in IDAS may be made using e-IDAS.

(4) Subsection (5) applies if—

(a) an applicant uses e-IDAS for making an application; and

(b) an action required to be taken under IDAS for the application has not been taken by the end of the last day for taking the action; and

(c) e-IDAS does not operate for any period on the last day.

(5) The person required to take the action may extend the period for taking the action under IDAS by not more than 2 business

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days after the end of the day on which e-IDAS begins to operate again by—

(a) taking the action within 2 business days after the end of that day; and

(b) giving each other party to the application written notice of the extension at the same time as the action is taken using e-IDAS.

(6) If a person acts under subsection (5), the period for taking the action under IDAS is extended until the time the action is taken using e-IDAS and the notice is given.

(7) In this section—

party, to an application, means each of the following—

(a) the applicant;

(b) the assessment manager;

(c) any referral agency to which the action required to be taken relates.

263 When owner's consent is required for application

(1) The consent of the owner of the land the subject of an application is required for its making if the application is for—

(a) a material change of use of premises or reconfiguring a lot; or

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

(c) work on rail corridor land as defined under the Transport Infrastructure Act.

(2) Despite subsection (1)—

(a) to the extent the land the subject of the application has the benefit of an easement, and the development is not inconsistent with the terms of the easement, the consent

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of the owner of the servient tenement is not required; and

(b) the consent of the owner of the land is not required to the extent—

(i) the land the subject of the application is acquisition land; and

(ii) the application relates to the purpose for which the land is to be taken or acquired.

265 Approved material change of use required for particular developments

(1) This section applies if, at the time an application for a development permit is made—

(a) a structure or works, the subject of the application, may not be used unless a development permit exists for the material change of use of premises for which the structure is, or works are, proposed; and

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

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

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

Subdivision 2 Notices about receipt of applications

266 Notice about application that is not a properly made application

(1) If the application is not a properly made application, the assessment manager must give the applicant a notice stating—

(a) that the application is not a properly made application; and

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(b) the reasons the assessment manager is satisfied the application is not a properly made application; and

(c) the action the assessment manager is satisfied the applicant must take for the application to comply with section 261.

(2) The assessment manager must give the applicant the notice within 10 business days after the assessment manager receives the application.

(3) If the applicant does not take the action mentioned in subsection (1)(c) within 20 business days after receiving the notice, or the further period agreed between the assessment manager and the applicant—

(a) the application lapses; and

(b) the assessment manager must as soon as practicable—

(i) return the application to the applicant, other than any part of the application made electronically; and

(ii) refund to the applicant the fee mentioned in section 260(1)(d) that accompanied the application, less a reasonable fee, if any, decided by the assessment manager for processing the application.

267 Notice about properly made application

(1) This section applies if the application is a properly made application.

(2) The assessment manager must give the applicant a notice (the ***acknowledgement notice***) unless—

(a) the application relates to development that requires code assessment only; and

(b) there are no referral agencies, or all referral agencies have stated in writing that they do not require the application to be referred to them under the information and referral stage.

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(3) The acknowledgement notice must be given to the applicant within 10 business days after the assessment manager receives the properly made application (the ***acknowledgement period***).

268 Content of acknowledgement notice

The acknowledgement notice must state the following—

(a) the type of approval applied for;

(b) which of the following aspects of development the application seeks a development approval for—

(i) carrying out building work;

(ii) carrying out plumbing or drainage work;

(iii) carrying out operational work;

(iv) reconfiguring a lot;

(v) making a material change of use of premises;

(c) whether an aspect of the development applied for requires code assessment, and if so, the names of all the codes the assessment manager considers to be applicable codes for the development;

(d) whether an aspect of the development applied for requires impact assessment, and if so, the public notification requirements;

(e) the name and address of each referral agency for the application, and whether the referral agency is an advice or concurrence agency;

(f) if the assessment manager does not intend to make an information request under section 276—the assessment manager does not intend to make an information request;

(g) if there are referral agencies for the application—the application will lapse unless the applicant gives to each referral agency the referral agency material within the period mentioned in section 272(2).

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Division 2 End of application stage

269 When does application stage end

The application stage for a properly made application ends—

(a) if the application is an application that requires an acknowledgement notice to be given—the day the acknowledgement notice is given; or

(b) if the application is an application that does not require an acknowledgement notice to be given—the day the properly made application was received.

Part 3 Information and referral stage

Division 1 Preliminary

270 Purpose of information and referral stage

The information and referral stage for an application—

(a) gives the assessment manager and any concurrence agencies the opportunity to ask the applicant for further information needed to assess the application; and

(b) gives concurrence agencies the opportunity to exercise their concurrence powers; and

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

271 Referral agency responses before application is made

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

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(2) However, a referral agency is not obliged to give a referral agency's response mentioned in subsection (1) before the application is made.

(3) If a concurrence agency gives a referral agency's response before an application for the development is made to the assessment manager, the applicant must, if asked by the concurrence agency, give the concurrence agency the agency's application fee mentioned in section 272(1)(c).

Division 2 Giving material to referral agencies

272 Applicant gives material to referral agency

(1) The applicant must give each referral agency the following things (the ***referral agency material***)—

(a) a copy of the application, unless the referral agency already has a copy;

(b) a copy of the acknowledgement notice, unless the referral agency was the entity that gave the notice;

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

(i) generally—the agency's application fee prescribed under a regulation under this or another Act; or

(ii) if the functions of the concurrence agency in relation to the application have been devolved or delegated to a local government, the fee that is, by resolution, adopted by the local government.

(2) The referral agency material must be given to all referral agencies within—

(a) 20 business days after the applicant receives the acknowledgement notice; or

(b) the further period agreed between the assessment manager and the applicant.

(3) However, the applicant need not give a referral agency the referral agency material if—

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(a) the applicant gave the assessment manager a copy of the referral agency's response mentioned in section 271(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) any conditions mentioned in paragraph (b)(ii) are satisfied.

(4) The assessment manager may, if asked by the applicant, give the referral agency material to a referral agency on behalf of the applicant for a fee, not more than the assessment manager's reasonable costs of giving the material.

(5) 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 (4), other than subsection (1)(c), do not apply.

273 Lapsing of application if material not given

(1) The application lapses if the applicant does not comply with section 272.

(2) However, if the application is revived under section 274(1), the application lapses if the applicant does not comply with section 274(2).

274 When application taken not to have lapsed

(1) An application that, other than for this section, would lapse under section 273(1) is revived if, within 5 business days after the application would otherwise have lapsed, the applicant gives the assessment manager written notice that the applicant seeks to revive the application.

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(2) If the application is revived under subsection (1), the applicant must comply with section 272 before the end of—

(a) 5 business days after giving the notice mentioned in subsection (1); or

(b) the further period agreed between the assessment manager and the applicant.

(3) If the application is revived under subsection (1), for the purpose of the IDAS process the application is taken not to have lapsed under section 273(1).

275 Applicant to advise assessment manager when material given

(1) After complying with section 272, the applicant must give the assessment manager written notice of the day the applicant gave each referral agency the referral agency material.

(2) To the extent the functions of a referral agency in relation to the application have been lawfully devolved or delegated to the assessment manager, subsection (1) does not apply.

Division 3 Information requests

276 Information request to applicant

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

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

(3) An information request must state that the application will lapse unless the applicant gives the assessment manager or concurrence agency a response under section 278.

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

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(a) for an application requiring an acknowledgement notice to be given—within 10 business days after giving the acknowledgement notice (the ***information request period***); and

(b) for an application that does not require an acknowledgement notice to be given—within 10 business days after the day the properly made application was received (also the ***information request period***).

(5) If a concurrence agency makes the request—

(a) the request must be made within 10 business days after the agency's referral day (also the ***information request period***); and

(b) the concurrence agency must—

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

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

(6) Without limiting subsection (1), an assessment manager or concurrence agency may, within the limits of their jurisdiction, include in an information request advice to the applicant about how the applicant may change the application.

277 Extending information request period

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

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

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

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

278 Applicant responds to any information request

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

(a) all of the information requested; or

(b) part of the information requested together with a written notice asking the requesting authority to proceed with the assessment of the application; or

(c) a written notice—

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

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

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

279 Lapsing of application if no response to information request

(1) The application lapses if the applicant does not comply with section 278 within—

(a) for an application required by an enforcement notice or in response to a show cause notice—3 months after receiving the information request (the ***response period***) or the further period agreed between the applicant and the entity making the information request; or

(b) for any other application—6 months after receiving the information request (also the ***response period***) or the

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further period agreed between the applicant and the entity making the information request.

(2) However, if the application is revived under section 280(1), the application lapses if the applicant does not comply with section 280(2).

(3) Subsection (4) applies if—

(a) the applicant asks the entity making the information request to agree to extend the response period; and

(b) the entity does not respond to the request until 5 business days before the response period ends, or later; and

(c) the entity does not agree to the extension.

(4) The response period does not end until 10 business days after the response, advising that the entity does not agree to the extension, is received.

(5) The entity making the information request must not unreasonably refuse to extend the response period.

280 When application taken not to have lapsed

(1) An application that, other than for this section, would lapse under section 279(1) is revived if, within 5 business days after the application would otherwise have lapsed, the applicant gives the assessment manager and the concurrence agency that made the information request written notice that the applicant seeks to revive the application.

(2) If an application is revived under subsection (1), the applicant must comply with section 278 before the end of—

(a) 5 business days after giving the notice mentioned in subsection (1); or

(b) the further period agreed between the assessment manager and the applicant.

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(3) If the application is revived under subsection (1), for the purpose of the IDAS process the application is taken not to have lapsed under section 279(1).

281 Referral agency to advise 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 278.

Division 4 Referral agency assessment

Subdivision 1 Assessment generally

282 Referral agency assesses application

(1) Each referral agency must, to the extent relevant to the development and within the limits of its jurisdiction, assess the application against each of the following—

(a) the State planning regulatory provisions applied by the referral agency;

(b) the regional plan for a designated region, to the extent it is not identified in the planning scheme as being appropriately reflected in the planning scheme;

(c) for a concurrence agency—any applicable concurrence agency codes that are identified as a code for IDAS in this or another Act;

(d) State planning policies applied by the referral agency, to the extent the policies are not identified in—

(i) any relevant regional plan as being appropriately reflected in the regional plan; or

(ii) the planning scheme as being appropriately reflected in the planning scheme;

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(e) the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the referral agency.

Note—

However, if the chief executive is a referral agency for the application, see section 255C.

(2) Also, each referral agency must, to the extent relevant to the development and within the limits of its jurisdiction, assess the application having regard to each of the following—

(a) the State planning regulatory provisions not applied by the referral agency;

(b) State planning policies not applied by the referral agency, to the extent the policies are not identified in—

(i) any relevant regional plan as being appropriately reflected in the regional plan; or

(ii) the planning scheme as being appropriately reflected in the planning scheme;

(c) a temporary local planning instrument for the planning scheme area;

(d) the planning scheme;

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

(f) to the extent the referral agency's jurisdiction involves the assessment of the cost impacts of supplying infrastructure for development under chapter 8, part 2, division 2, subdivision 2 or part 3—any relevant charges resolution.

(3) Despite subsections (1) and (2) a referral agency—

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

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(b) must disregard any planning scheme or temporary local planning instrument for the planning scheme area if the referral agency's jurisdiction is limited to considering the effect of the building assessment provisions on building work.

283 Referral agency's assessment period

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

(a) the number of business days, starting on the day immediately after the agency's referral day and being less than 30 business days, prescribed under a regulation; or

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

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

(3) The referral agency's assessment period mentioned in subsection (1) applies even if there is no information request period for the application because an EIS is required.

(4) The referral agency's assessment period does not include—

(a) any extension for giving an information request; or

(b) any period in which the agency is waiting for a response to an information request.

284 Extending referral agency's assessment period

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

(a) if a regulation under section 283(1)(a) has prescribed the referral agency's assessment period—the number of business days, being less than 20 business days, prescribed under a regulation; or

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(b) if paragraph (a) does not apply—20 business days.

(2) A notice under subsection (1) may be given only before the referral agency's assessment period ends.

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

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

Subdivision 2 Concurrence agency responses

285 When concurrence agency must give response for particular matters

(1) Subsection (2) applies if a concurrence agency—

(a) wants the assessment manager to include concurrence agency conditions in the development approval, or to refuse the application; or

(b) under this Act, requires the assessment manager to do something else in relation to the application.

(2) The concurrence agency must give its response (a ***concurrence agency's response***) to the assessment manager, and give a copy of its response to the applicant, before the referral agency's assessment period for the application and any extension of that period ends.

Note—

Under section 271, a referral agency may give a referral agency's response about development before an application for the development is made.

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286 Effect if concurrence agency does not give response

(1) If a concurrence agency does not give a response under section 285, the assessment manager must decide the application as if the agency had assessed the application and had no concurrence agency requirements.

(2) However, the concurrence agency's response is taken to be a refusal of the application if—

(a) the application is a building development application; and

(b) the concurrence agency is the local government; and

(c) the matter being decided by the concurrence agency is a matter other than assessing the amenity and aesthetic impact of a building or structure; and

(d) the concurrence agency does not give a response under section 285.

287 Concurrence agency's response powers

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

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

(b) that any approval must be for part only of the development;

(c) that any approval must be a preliminary approval only;

(d) a different period for section 341(1)(b), (2)(c) or (3)(b).

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

(a) the concurrence agency has no requirements relating to the application; or

(b) to refuse the application.

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

(4) Subsection (5) applies if a concurrence agency's response is about the part of an application for a preliminary approval mentioned in section 242 that states the way in which the applicant seeks approval to vary the effect of any applicable local planning instrument for the land.

(5) The concurrence agency's response may, within the limits of the concurrence agency's jurisdiction, tell the assessment manager in relation to the part of the application—

(a) that the concurrence agency has no requirements relating to the part of the application; or

(b) if an approval is given, to do any of the following—

(i) approve only some of the variations sought;

(ii) subject to section 242(3) and (5)—approve different variations from those sought; or

(c) to refuse the variations sought.

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

288 Limitation on concurrence agency's power to refuse application

(1) To the extent a concurrence agency's jurisdiction is about assessing the effects of development on designated land, the concurrence agency may only tell the assessment manager to refuse the application if—

(a) the concurrence agency is satisfied the development would compromise the intent of the designation; and

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

(2) To the extent a local government's concurrence agency jurisdiction is about assessing the amenity and aesthetic impact of a building or structure, the concurrence agency may

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only tell the assessment manager to refuse the application if the concurrence agency considers—

(a) the building or structure, when built, will have an extremely adverse effect on the amenity or likely amenity of its neighbourhood; or

(b) the aesthetics of the building or structure, when built, will be in extreme conflict with the character of its neighbourhood.

289 Concurrence agency's response to include reasons for refusal or conditions

(1) If a concurrence agency's response, other than a refusal taken to have been given under section 286(2), requires an application to be refused or requires a development approval to include conditions, the response must include reasons for the refusal or inclusion.

(2) If—

(a) a concurrence agency's response is for the part of an application for a preliminary approval mentioned in section 242 that states the way in which the applicant seeks approval to vary the effect of any applicable local planning instrument for the land; and

(b) the response requires the assessment manager to take an action mentioned in section 287(5)(b) or to refuse the variations sought;

the response must include reasons for the requirement.

290 How a concurrence agency may change its response or give late response

(1) Despite section 285, a concurrence agency may, after its referral agency's assessment period and any extension of that period ends but before the application is decided—

(a) give a response (a ***concurrence agency's response***) if the applicant has given written agreement to the content

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of the response or the Minister has given the concurrence agency a direction under section 420; or

(b) amend its response if—

(i) the applicant has given written agreement to the amended response or the Minister has given the concurrence agency a direction under section 420; or

(ii) the amended response relates directly to a change made to a development application in response to an information request or a matter raised in a properly made submission for the application.

(2) If a concurrence agency proposes to amend a response under subsection (1)(b)(ii), the concurrence agency must give written notice of the proposal to the assessment manager and the applicant within 5 business days after receiving notice of the change under section 352.

(3) The assessment manager must not decide the application until the first of the following happens—

(a) the assessment manager receives a copy of the amended response;

(b) the end of 10 business days after the notice is given under subsection (2).

(4) 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 any agreement under subsection (1)(a) or (b)(i); and

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

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Subdivision 3 Advice agency responses

291 When advice agency must give response for particular matters

(1) Subsection (2) applies if an advice agency wants the assessment manager to consider its advice or recommendations when assessing the application.

(2) The advice agency must give its response (an ***advice agency's response***) to the assessment manager, and give a copy of its response to the applicant, before the referral agency's assessment period for the application and any extension of that period ends.

Note—

Under section 271, a referral agency may give a referral agency's response about development before an application for the development is made.

292 Advice agency's response powers

(1) An advice agency's response may, within the limits of the advice agency's jurisdiction, make a recommendation to the assessment manager about any aspect of the application relevant to the assessment manager's decision on the application, including, for example—

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

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

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

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

(a) the advice agency has no recommendations relating to the application; or

(b) it should refuse the application.

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(3) An advice agency's response may also tell the assessment manager to treat the response as a properly made submission.

Division 5 End of information and referral stage

293 When does information and referral stage end

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

(a) the assessment manager states in the acknowledgement notice that it does not intend to make an information request; or

(b) if a request has been made—the applicant has finished responding to the request; or

(c) if neither paragraph (a) nor paragraph (b) applies—the assessment manager's information request period has ended.

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

(a) the assessment manager has received the notice from the applicant under section 275; and

(b) an action mentioned in subsection (1)(a) or (b) has happened or the assessment manager's information request period has ended; and

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

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Part 4 Notification stage

Division 1 Preliminary

294 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.

295 When 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 242 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 242 applies has been given for land; and

(b) the application does not seek to change the type of assessment for the development or, if it does, it seeks only 1 or both of the following—

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(i) to change development requiring code assessment to self-assessable development or development requiring compliance assessment;

(ii) to increase the level of assessment for development; and

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

(4) However, this part does not apply for an application to which chapter 9, part 7 applies.

Note—

See chapter 9 (Miscellaneous), part 7 (Notification stage for particular aquaculture development) for the notification stage that applies for development applications to which that part applies.

296 When notification stage can start

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

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

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

(a) all information request responses to all information requests made; and

(b) copies of the responses to the assessment manager.

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Division 2 Public notification

297 Applicant or assessment manager to give public notice of application

(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) If the assessment manager carries out notification for 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.

(3) For subsection (1)(c), roads, land below high-water mark and the beds and banks of rivers are taken not to be adjoining land.

(4) In this section—

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

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

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

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

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

(i) the body corporate for the scheme; or

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(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 share scheme, as defined under the Local Government Act, for a structure on the adjoining land—the person notified to the local government concerned as the person responsible for the administration of the scheme as between the participants in the scheme; or

(f) if the adjoining land is land being bought from the State for an estate in fee simple under the *Land Act 1994*—the buyer; or

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

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

298 Notification period for applications

(1) The ***notification period*** for the application must be at least—

(a) 30 business days starting on the day after the last action under section 297(1) is carried out, if any of the following apply for the application—

(i) there are 3 or more concurrence agencies;

(ii) all or part of the development—

(A) is assessable under a planning scheme; and

(B) is prescribed under a regulation for this subparagraph;

(iii) all or part of the development is the subject of an application for a preliminary approval mentioned in section 242; or

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(b) if paragraph (a) does not apply—15 business days starting on the day after the last action under section 297(1) is carried out.

(2) The notification period must not include any business day from 20 December in a particular year to 5 January in the following year, both days inclusive.

299 Requirements for particular notices

(1) The notices mentioned in section 297(1) must be in the approved form.

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

(3) All actions mentioned in section 297(1) 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 297(1) would be unduly onerous or would not give effective public notice.

300 Applicant to give assessment manager notice about particular matters

If the applicant carries out notification, the applicant must, within 5 business days after the day the last of the actions mentioned in section 297(1) is carried out, give the assessment manager written notice of the day the last of the actions is carried out.

301 Notice of compliance to be given to assessment manager

If the applicant carries out notification, the applicant must, within 20 business days after the notification period ends, give

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the assessment manager written notice that the applicant has complied with the requirements of this division.

302 Application lapses if notification not carried out or notice of compliance not given

(1) An application to which the notification stage applies lapses if—

(a) the last action under section 297(1) is not carried out before the end of 20 business days after the applicant was entitled to start the notification stage or the further period agreed between the assessment manager and the applicant; or

(b) the applicant has not complied with section 301 within the period stated in the section or the further period agreed between the assessment manager and the applicant.

(2) However, if the application is revived under section 303(1), the application lapses if the applicant does not comply with—

(a) if subsection (1)(a) applies to the application—section 303(2); or

(b) if subsection (1)(b) applies to the application—section 303(3).

303 When application taken not to have lapsed

(1) An application that, other than for this section, would lapse under section 302(1) is revived if, within 5 business days after the application would otherwise have lapsed, the applicant gives the assessment manager written notice that the applicant seeks to revive the application.

(2) If the application is revived under subsection (1) and section 302(1)(a) applies to the application, the applicant must, within 10 business days after giving the notice under subsection (1) or the further period agreed between the assessment manager and the applicant, carry out the actions under section 297(1).

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(3) If the application is revived under subsection (1) and section 302(1)(b) applies to the application, the applicant must, within 5 business days after giving the notice under subsection (1) or the further period agreed between the assessment manager and the applicant, comply with section 301.

(4) If the application is revived under subsection (1), for the purpose of the IDAS process the application is taken not to have lapsed under section 302(1).

304 Assessment manager may assess and decide application if some requirements not complied with

(1) Despite section 301, 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.

(2) However, the assessment manager can not assess and decide an application that has lapsed and has not been revived under this division.

Division 3 Submissions about applications

305 Making submissions

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

(2) The assessment manager must accept a submission if the submission is a properly made submission.

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

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

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

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

306 Submissions made during notification period effective for later notification period

(1) This section applies if—

(a) a person makes a submission under section 305(1) and the submission is a properly made submission or the assessment manager accepts the submission under section 305(3); and

(b) the notification stage for the application 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) amend the submission during the later notification period; or

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

(3) The submission the assessment manager accepted under section 305(3) is taken to be part of the common material for the application unless the person who made the submission withdraws the submission before a decision is made about the application.

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Division 4 End of notification stage

307 When does notification stage end

The notification stage ends—

(a) if notification is carried out by the applicant—when the assessment manager receives the written notice mentioned in section 301; or

(b) if notification is carried out by the assessment manager for the applicant—when the notification period ends.

Part 5 Decision stage

Division 1 Preliminary

308 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.

309 When does decision stage start

(1) If an acknowledgement notice for an application is required, the decision stage for the application starts the day after all other stages applying to the application, other than the compliance stage, have ended.

(2) If subsection (1) does not apply to an application, the decision stage for the application starts—

(a) if an information request has been made about the application—the day the applicant responds to the information request; or

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(b) if an information request has not been made about the application—the day the properly made application was received.

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

310 Effect on decision stage if action taken under Native Title Act (Cwlth)

(1) This section applies if an assessment manager takes action under the *Native Title Act 1993* (Cwlth), section 24HA or 24KA.

(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.

Division 2 Assessment process

311 References in div 2 to planning instrument, code, law or policy

In this division, other than section 317, a reference to a planning instrument, code, law or policy is a reference to a planning instrument, code, law or policy in effect when the application was properly made.

312 When assessment manager must not assess part of an application

(1) This section applies to the part of an application (the ***coordinated part***) for which, were it a separate development application, there would be a different assessment manager.

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(2) Despite sections 313 to 315, the assessment manager must not assess the development the subject of the coordinated part.

313 Code assessment—generally

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

(2) The assessment manager must assess the part of the application against each of the following matters or things to the extent the matter or thing is relevant to the development—

(a) the State planning regulatory provisions;

(b) the regional plan for a designated region, to the extent it is not identified in the planning scheme as being appropriately reflected in the planning scheme;

(c) any applicable codes, other than concurrence agency codes the assessment manager does not apply, that are identified as a code for IDAS under this or another Act;

Note—

However, if the chief executive is the assessment manager for the application, see section 255A.

(d) State planning policies, to the extent the policies are not identified in—

(i) any relevant regional plan as being appropriately reflected in the regional plan; or

(ii) the planning scheme as being appropriately reflected in the planning scheme;

(e) any applicable codes in the following instruments—

(i) a temporary local planning instrument;

(ii) a preliminary approval to which section 242 applies;

(iii) a planning scheme;

(f) if the assessment manager is an infrastructure provider—the provider's LGIP, if any.

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Note—

See chapters 2 and 3 for particular provisions about the relationship between the matters or things mentioned in subsection (2).

(3) In addition to the matters or things against which the assessment manager must assess the application under subsection (2), the assessment manager must assess the part of the application having regard to the following—

(a) the common material;

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

(c) any referral agency's response for the application;

(d) the purposes of any instrument containing an applicable code.

(4) If the assessment manager is not a local government, the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application, are taken to be applicable codes in addition to the applicable codes mentioned in subsection (2)(c) or (e).

(5) The assessment manager must not assess the application against, or having regard to, anything other than a matter or thing mentioned in this section.

(6) Subsection (2)(a), (b) and (d) does not apply for the part of an application involving assessment against the Building Act.

314 Impact assessment—generally

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

(2) The assessment manager must assess the part of the application against each of the following matters or things to the extent the matter or thing is relevant to the development—

(a) the State planning regulatory provisions;

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(b) the regional plan for a designated region, to the extent it is not identified in the planning scheme as being appropriately reflected in the planning scheme;

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

Note—

However, if the chief executive is the assessment manager for the application, see section 255B.

(d) State planning policies, to the extent the policies are not identified in—

(i) any relevant regional plan as being appropriately reflected in the regional plan; or

(ii) the planning scheme as being appropriately reflected in the planning scheme;

(e) a temporary local planning instrument;

(f) a preliminary approval to which section 242 applies;

(g) a planning scheme;

(h) for development not in a planning scheme area—any planning scheme or temporary local planning instrument for a planning scheme area that may be materially affected by the development;

(i) if the assessment manager is an infrastructure provider—the provider's LGIP, if any.

Note—

See chapters 2 and 3 for particular provisions about the relationship between the matters or things mentioned in subsection (2).

(3) In addition to the matters or things against which the assessment manager must assess the application under subsection (2), the assessment manager must assess the part of the application having regard to the following—

(a) the common material;

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

(c) any referral agency's response for the application.

315 Code and impact assessment—superseded planning scheme

(1) If the application is a development application (superseded planning scheme), the assessment manager must assess and decide the application as if—

(a) the application were an application to which the superseded planning scheme applied; and

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

(c) for chapter 8, parts 2 and 3, the infrastructure provisions of the existing planning scheme applied; and

(d) for section 848, the existing planning scheme policy applied.

(2) This section applies despite sections 81, 120 and 121.

316 Assessment for s 242 preliminary approvals that affect a local planning instrument

(1) This section applies to an application for a preliminary approval mentioned in section 242.

(2) Sections 313 and 314 apply to any part of the application requiring code or impact assessment.

(3) Subsection (4) applies to the part of the application that states the way in which the applicant seeks to vary the effect of any applicable local planning instrument for the land.

(4) The assessment manager must assess the part of the application having regard to—

(a) the common material; and

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(b) the result of the assessment manager's assessment of any parts of the application requiring code or impact assessment; and

(c) all of the following to the extent they are relevant to the application—

(i) the State planning regulatory provisions;

(ii) the regional plan for a designated region, to the extent it is not identified in the planning scheme as being appropriately reflected in the planning scheme;

(iii) State planning policies, to the extent the policies are not identified in—

(A) any relevant regional plan as being appropriately reflected in the regional plan; or

(B) the planning scheme as being appropriately reflected in the planning scheme; and

(d) the consistency of the proposed variations with aspects of the local planning instrument, other than the aspects sought to be varied; and

(e) 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; and

(f) any referral agency's response for the application.

317 Assessment manager may give weight to later planning instrument, code, law or policy

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

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

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

(2) However, for a development application (superseded planning scheme), subsection (1) does not apply to an existing local planning instrument, other than any infrastructure provisions or planning scheme policy applied in relation to the assessment of the application under section 315(1)(c) and (d).

Division 3 Decision

Subdivision 1 Decision-making period

318 Decision-making period—generally

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

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

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

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

(5) If there is a concurrence agency for the application, the decision must not be made before 10 business days after the day the information and referral stage ends, unless the applicant gives the assessment manager written notice that it does not intend to take action under section 320 or 321.

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(6) Despite subsections (2) and (4), the decision-making period can not be extended or further extended if the assessment manager has been given a direction under section 418(1)(c) to decide the application.

319 Decision-making period—changed circumstances

Despite section 318, the decision-making period starts again from its beginning—

(a) if a concurrence agency gives a concurrence agency's response or an amended concurrence agency's response under section 290—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 320—the day after the assessment manager receives further written notice withdrawing the notice stopping the decision-making period; or

(c) if the decision-making period is stopped under section 321, the day after the first of the following to happen—

(i) the assessment manager receives, under section 321, a copy of all reissued concurrence agency's responses for the application;

(ii) the assessment manager receives further written notice withdrawing the notice stopping the decision-making period.

320 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.

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

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

321 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's responses containing conditions the applicant is satisfied are inconsistent; and

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

(2) The request must identify the conditions 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's responses to address any inconsistency.

(5) If the chief executive reissues a concurrence agency's 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.

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Subdivision 2 Decision rules—generally

323 Application of sdiv 2

This subdivision does not apply to the part of an application for a preliminary approval mentioned in section 242 that states the way in which the applicant seeks approval to vary the effect of any applicable local planning instrument for the land.

324 Decision generally

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

(a) approve all or part of the application; or

(b) approve all or part of the application subject to conditions decided by the assessment manager; or

(c) refuse the application.

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

(3) The assessment manager's decision must not be inconsistent with a State planning regulatory provision.

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

(a) the assessment manager may give a preliminary approval, other than a preliminary approval to which section 242 applies, even though the applicant sought a development permit; and

(b) if the assessment manager approves only part of an application, the balance of the application is refused.

325 Effect of concurrence agency's response

(1) If a concurrence agency's response requires conditions to be attached to a development approval for the application, the assessment manager must attach to any approval, in the exact

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form given by the concurrence agency, the concurrence agency conditions.

(2) If a concurrence agency's response has, under section 287(1)(b) or (c), stated an action that must be taken, the assessment manager must take the action.

(3) If a concurrence agency's response has, under section 287(1)(d), stated a different period for section 341(1)(b), (2)(c) or (3)(b), the assessment manager must, on any development approval, state the period.

(4) If a concurrence agency's response requires the application to be refused, the assessment manager must refuse it.

326 Other decision rules

(1) The assessment manager's decision must not conflict with a relevant instrument unless—

(a) the conflict is necessary to ensure the decision complies with a State planning regulatory provision; or

(b) there are sufficient grounds to justify the decision, despite the conflict; or

(c) the conflict arises because of a conflict between—

(i) 2 or more relevant instruments of the same type, and the decision best achieves the purposes of the instruments; or

Example of a conflict between relevant instruments—

a conflict between 2 State planning policies

(ii) 2 or more aspects of any 1 relevant instrument, and the decision best achieves the purposes of the instrument.

Example of a conflict between aspects of a relevant instrument—

a conflict between 2 codes in a planning scheme

(2) In this section—

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relevant instrument means a matter or thing mentioned in section 313(2) or 314(2), other than a State planning regulatory provision, against which code assessment or impact assessment is carried out.

Subdivision 3 Decision rules—application under section 242

327 Decision if application under s 242 requires assessment

(1) In deciding the part of an application for a preliminary approval mentioned in section 242 that states the way in which the applicant seeks approval to vary the effect of any applicable local planning instrument for the premises, the assessment manager must—

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

(b) subject to section 242(3) and (5)—approve different variations from those sought; or

(c) refuse the variations sought.

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

(3) The assessment manager's decision must not be inconsistent with a State planning regulatory provision.

(4) To the extent development applied for under other parts of the application is refused, any variation relating to the development must also be refused.

328 Effect of concurrence agency's response

(1) If the part of the application is approved and a concurrence agency's response has, under section 287(5)(b), stated an action that must be taken, the assessment manager must take the action.

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(2) If a concurrence agency's response requires the variations to be refused, the assessment manager must refuse the variations.

329 Other decision rules

(1) The assessment manager's decision must not conflict with a relevant instrument unless—

(a) the conflict is necessary to ensure the decision complies with a State planning regulatory provision; or

(b) there are sufficient grounds to justify the decision, despite the conflict; or

(c) the conflict arises because of a conflict between—

(i) 2 or more relevant instruments of the same type, and the decision best achieves the purposes of the instruments; or

Example of a conflict between relevant instruments—

a conflict between 2 State planning policies

(ii) 2 or more aspects of any 1 relevant instrument, and the decision best achieves the purposes of the instrument.

Example of a conflict between aspects of a relevant instrument—

a conflict between 2 codes

(2) In this section—

relevant instrument means a matter or thing mentioned in section 316(4)(c) or (d), other than a State planning regulatory provision, the assessment manager must have regard to in assessing the part of the application.

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Subdivision 4 Deemed decision for particular applications

330 Application of sdiv 4

This subdivision applies to an application requiring code assessment only, other than—

(a) an application for a preliminary approval to which section 242 applies; or

(b) an application that a concurrence agency has directed the assessment manager to refuse or approve in part only; or

(c) an application for development—

(i) in a wet tropics area under the *Wet Tropics World Heritage Protection and Management Act 1993*; or

(ii) in a strategic environmental area under the *Regional Planning Interests Act 2014*; or

(iii) on a Queensland heritage place; or

(iv) in a protected area, critical habitat or area of major interest under the *Nature Conservation Act 1992*; or

(d) a vegetation clearing application under the Vegetation Management Act; or

(e) a building development application; or

(f) an application for which chapter 9, part 7 applies.

331 Deemed approval of applications

(1) If the assessment manager does not decide the application within the decision-making period, including any extension of the period, the applicant may before the application is decided give written notice (a ***deemed approval notice***) to the assessment manager that the application should be deemed to have been approved by the assessment manager.

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(2) A deemed approval notice for an application must be in the approved form.

(3) If the applicant acts under subsection (1), the applicant must at the same time give a copy of the deemed approval notice to each entity mentioned in section 334(1)(b) or (c) that would be entitled to receive a decision notice for the application.

(4) Subsections (5) to (9) apply if the applicant gives the assessment manager a deemed approval notice for an application.

(5) For this Act, the assessment manager is taken to have decided to approve the application on the day the deemed approval notice is received.

(6) Despite section 334(2), the assessment manager must, within 10 business days after receiving the deemed approval notice, give the applicant a decision notice approving the application or approving the application subject to conditions.

(7) Despite section 324(4)(a), a decision notice given for the application after a deemed approval notice is received must state that the approval is—

(a) if a concurrence agency has directed that any approval for the application must be a preliminary approval only—a preliminary approval; or

(b) if the application is for a preliminary approval—a preliminary approval; or

(c) if the application is for a development permit and paragraph (a) does not apply—a development permit; or

(d) if the application is for a preliminary approval and a development permit, and paragraph (a) does not apply—a combined preliminary approval and development permit.

(8) If a decision notice or negotiated decision notice is not given for the application, the approval is taken to be a development approval given by the assessment manager in the form of—

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(a) if a concurrence agency has directed that any approval for the application must be a preliminary approval only—a preliminary approval; or

(b) if the application is for a preliminary approval—a preliminary approval; or

(c) if the application is for a development permit and paragraph (a) does not apply—a development permit; or

(d) if the application is for a preliminary approval and a development permit, and paragraph (a) does not apply—a combined preliminary approval and development permit.

(9) If a decision notice is not given and a concurrence agency's response tells the assessment manager a different period for section 341(1)(b), (2)(c) or (3)(b), the different period applies for the deemed approval.

332 Standard conditions for deemed approvals

(1) If the assessment manager does not give a decision notice for the application, the deemed approval is subject to the conditions (the ***standard conditions***) made by the Minister and in effect at the time the deemed approval notice was given to the assessment manager.

(2) Before making or amending the standard conditions, the Minister must consult with the persons or entities the Minister considers appropriate.

(3) The Minister must notify the making or amendment of the standard conditions in the gazette.

(4) If a deemed approval is subject to the standard conditions, the conditions are taken to have been imposed by the assessment manager.

(5) This section does not limit section 244.

Example for subsection (5)—

If an assessment manager does not give a decision notice for an application and a concurrence agency's response required conditions to

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be imposed on the development approval, the concurrence agency conditions apply to the approval in addition to the standard conditions.

333 Limitation on giving deemed approval notice

(1) If, under a provision of an Act, the assessment manager can not decide an application until an action or thing is done or happens, the applicant can not give a deemed approval notice for an application to which this subdivision applies until the action or thing is done or happens.

(2) If the Minister gives the assessment manager a direction under section 418(1)(b) for a particular application, the applicant can not give a deemed approval notice for the application until the end of the period stated in the direction for deciding the application.

(3) This section applies despite section 331(1).

Division 4 Notice of decision

334 Assessment manager to give notice of decision

(1) The assessment manager must give written notice of the decision in the approved form (the ***decision notice***) to—

(a) the applicant; and

(b) each referral agency; and

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

(d) if the application is a building development application—each designated person for the application.

(2) The decision notice must be given within 5 business days after the day the decision is made.

(3) In this section—

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designated person, for a building development application, means—

(a) if the building to which the application relates is, under the BCA, a single detached class 1a building or a class 10 building or structure—the owner of the building; and

(b) any other person nominated on the approved form under section 260(2), as the person to receive documents.

335 Content of decision notice

(1) The decision notice must state the following—

(a) the day the decision was made;

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

(c) whether the application is approved, approved subject to conditions or refused;

(d) whether the assessment manager is taken to have approved the application under section 331;

(e) if the application is approved subject to conditions—

(i) the conditions; and

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

(iii) for each condition about infrastructure imposed under chapter 8—the provision under which the condition was imposed;

(f) if the application is refused—

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

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(ii) for a refusal for any reason other than because of a concurrence agency's direction—the reasons for the refusal;

(g) if the application is approved—whether the approval is a preliminary approval, a development permit or a combined preliminary approval and development permit;

(h) if all or part of the application is for a preliminary approval mentioned in section 242 and a variation to an applicable local planning instrument has been approved under this Act—the variation;

(i) any other development permits or compliance permits necessary to allow the development to be carried out;

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

(k) details of any compliance assessment required under part 10 for documents or work in relation to the development;

(l) 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;

(m) whether the assessment manager considers the assessment manager's decision conflicts with a relevant instrument;

(n) if the assessment manager is satisfied the decision conflicts with a relevant instrument—the reasons for the decision, including a statement of the sufficient grounds mentioned in sections 326(1)(b) and 329(1)(b);

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

(2) To remove doubt, it is declared that subsection (1)(n) does not require the assessment manager to give reasons for each condition of approval.

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(3) Also, if the application is a building development application, the decision notice must—

(a) include the approved drawings for the development approval; and

(b) if the development involves building work that is building, repairing or altering a building—state the classification or proposed classification of the building or parts of the building under the BCA.

(6) If the application is taken to have been approved under section 331, the decision notice need not include the matters mentioned in subsection (1)(m) or (n).

(7) In this section—

relevant instrument, in relation to an assessment manager's decision, means a matter or thing mentioned in section 313(2), 314(2) or 316(4)(c) or (d), other than a State planning regulatory provision, against which the assessment was carried out or to which the assessment manager had regard.

336 Material to be given with decision notice

When the assessment manager gives a decision notice under section 334, the assessment manager must also give a copy of—

(a) any relevant appeal provisions; and

(b) any plans and specifications approved by the assessment manager in relation to the decision notice.

337 Assessment manager to give copy of decision notice to principal submitter

(1) If 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—

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(a) the applicant gives the assessment manager a written notice stating that the applicant does not intend to make representations mentioned in section 361(1);

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

(c) the applicant's appeal period ends.

(2) If 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.

(3) A copy of the relevant appeal provisions must also be given with each copy of the decision notice.

338 Decision notice given by private certifier

If the decision notice is given by a private certifier, sections 334 to 337 apply subject to the Building Act, chapter 4, part 6.

Division 5 Approvals

339 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 or a building and development committee, from when—

(i) the decision notice is given; or

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

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(b) if there is a submitter and the applicant does not appeal the decision to the court or a building and development committee—

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

(ii) if the last submitter gives the assessment manager written notice that the submitter will not be appealing the decision before the period mentioned in subparagraph (i) ends—on the day the last submitter gives the notice; or

(c) if an appeal is made to the court or a building and development committee, subject to sections 490(3) and 553(3) and the decision of the court or committee under section 496 or 564—when the appeal is finally decided or withdrawn.

(2) However, if the approval relates to land that was acquisition land to which section 263(2)(b) applied when the application was made, the development approval does not have effect until the later of the following—

(a) the day the land is taken or acquired under the *State Development and Public Works Organisation Act 1971* or the Acquisition Act;

(b) the time the development approval would, other than for this subsection, have effect.

(3) If a decision notice or negotiated decision notice is not given for an application to which a deemed approval relates, the deemed approval has effect—

(a) if the applicant does not appeal the decision to the court or a building and development committee, from when the decision notice should have been given under section 331(6); or

(b) if an appeal is made to the court or a building and development committee, subject to sections 490(3) and 553(3) and the decision of the court or committee under section 496 or 564—when the appeal is finally decided or withdrawn.

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

(5) In this section—

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

340 When development may start

(1) Development may start—

(a) when a development permit for the development takes effect; or

(b) if an application for a development permit is taken to have been approved under section 331 and the assessment manager does not give a decision notice for the application—when the deemed approval for the application has effect.

(2) Subsection (1) applies subject to any condition applying under section 346(1)(b) to a development approval for the development.

341 When approval lapses if development not started

(1) To the extent a development approval is for a material change of use of premises, the approval lapses if the first change of use under the approval does not start within the following period (the ***relevant period***)—

(a) 4 years starting the day the approval takes effect;

(b) if the approval states a different period from when the approval takes effect—the stated period.

(2) To the extent a development approval is for reconfiguring a lot, the approval lapses if a plan for the reconfiguration is not given to the local government within the following period (also the ***relevant period***)—

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(a) for reconfiguration not requiring operational works—2 years starting the day the approval takes effect;

(b) for reconfiguration requiring operational works—4 years starting the day the approval takes effect;

(c) if the approval states a different period from when the approval takes effect—the stated period.

(3) To the extent a development approval is for development other than a material change of use of premises or reconfiguring a lot, the approval lapses if the development does not substantially start within the following period (also the ***relevant period***)—

(a) 2 years starting the day the approval takes effect;

(b) if the approval states a different period from when the approval takes effect—the stated period.

(4) Despite subsections (1) and (2), if there are 1 or more related approvals for a development approval mentioned in subsection (1) or (2), the relevant period is taken to have started on the day the latest related approval takes effect.

(5) If a monetary security has been given in relation to any development approval, the security must be released if the approval lapses under this section.

(6) The lapsing of a development approval for a material change of use of premises or reconfiguring a lot does not cause an approval mentioned in subsection (3) to lapse.

(7) In this section—

related approval, for a development approval for a material change of use of premises (the ***earlier approval***), means—

(a) the first development approval for a development application made to a local government or private certifier, or first compliance permit for a request for compliance assessment made to a local government or entity nominated by a local government, within 2 years of the start of the relevant period, that is—

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(i) to the extent the earlier approval is a preliminary approval—a development permit or compliance permit for the material change of use of premises; or

(ii) to the extent the earlier approval is a development permit or a preliminary approval for development mentioned in section 242(3)(a)(i) or (ii)—a development permit or compliance permit for building work or operational work necessary for the material change of use of premises to take place; and

(b) each further development permit, for a development application made to a local government or private certifier within 2 years of the day the last related approval takes effect, that is for building work or operational work necessary for the material change of use of premises to take place; and

(c) each further compliance permit, for a request for compliance assessment made to a local government or entity nominated by a local government within 2 years of the day the last related approval takes effect, that is for building work or operational work necessary for the material change of use of premises to take place.

related approval, for a development approval for reconfiguring a lot (also the ***earlier approval***), means—

(a) the first development permit for a development application made to a local government, or first compliance permit for a request for compliance assessment made to a local government or entity nominated by a local government, within 2 years of the start of the relevant period, that is—

(i) to the extent the earlier approval is a preliminary approval—for the reconfiguration; or

(ii) to the extent the earlier approval is a development permit for reconfiguring a lot—for operational work related to the reconfiguration; and

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(b) each further development permit, for a development application made to a local government within 2 years of the day the last related approval takes effect, that is for operational work related to the reconfiguration; and

(c) each further compliance permit, for a request for compliance assessment made to a local government or entity nominated by a local government within 2 years of the day the last related approval takes effect, that is for operational work related to the reconfiguration.

342 When approval lapses if development started but not completed—general

(1) Subsection (2) applies if—

(a) a condition requires assessable development, or an aspect of assessable development, to be completed within a particular time; and

(b) the assessable development, or aspect, is started but not completed within the time.

(2) The approval, to the extent it relates to the assessable development or aspect not completed, lapses.

(3) However, even though the approval has lapsed, any security paid under a condition mentioned in section 346(1)(f) may be used in a way stated by the approval, including, for example, to finish the development.

(4) This section does not apply to a preliminary approval to which section 242 applies.

343 When approval lapses if development started but not completed—preliminary approval

(1) This section applies to a preliminary approval to which section 242 applies if development, or an aspect of development, to which the approval relates is started but not completed within the prescribed period for the approval.

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(2) The approval, to the extent it relates to the development or aspect not completed, lapses at the end of the prescribed period.

(3) In this section—

prescribed period, for a preliminary approval to which section 242 applies, means—

(a) if a condition of the approval requires development, or an aspect of development, to which the approval relates to be completed within a stated period—the stated period; or

(b) if paragraph (a) does not apply—the period, if any, nominated by the applicant for that purpose and stated in the application to which the approval relates; or

(c) if paragraphs (a) and (b) do not apply—

(i) 5 years after the day the preliminary approval takes effect; or

(ii) if there is 1 or more related approvals for the preliminary approval—5 years after the day the last related approval takes effect.

related approval, for a preliminary approval, means a related approval for the preliminary approval under section 341(7).

Division 6 Conditions

344 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 impose; or

(b) decided by an assessment manager; or

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

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345 Conditions must be relevant or reasonable

(1) A 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 relation to 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.

346 Conditions generally

(1) A condition may—

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

(b) state a development may not start until other development permits or compliance 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 compliance with an infrastructure agreement relating to the land; or

(d) require a document or work to be subject to compliance assessment; or

(e) require development, or an aspect of development, to be completed within a particular time; or

(f) require the payment of security under an agreement under section 348 to support a condition mentioned in paragraph (e).

(2) A condition imposed under subsection (1)(c) is taken to comply with section 345.

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Note—

See chapter 8, parts 2 and 3 for other conditions that may be imposed on a development approval.

346A Environmental offset conditions

(1) This section applies to a condition that requires or otherwise relates to an environmental offset (an ***environmental offset condition***).

(3) If the applicant has entered into an agreement about an environmental offset for this section, a condition may require the applicant to comply with the agreement.

(3A) An agreement entered into under subsection (3) is not an environmental offset agreement under the *Environmental Offsets Act 2014*.

(3B) Section 347(1)(b) and (c) does not apply in relation to a deemed condition.

(4) A condition imposed under subsection (3)—

(a) is taken to comply with section 345; and

(b) is not invalid on the ground of being uncertain or lacking finality.

(5) If an entity other than the applicant agrees, under an agreement mentioned in subsection (3), to carry out works required for the development, section 347(1)(b) and (c) do not apply to a condition stating that those works must be undertaken by the entity.

Note—

Also, under section 348, the applicant may enter into an agreement to establish the obligations, or secure the performance, of a party to the agreement about an environmental offset condition.

(6) An environmental offset condition may require an environmental offset to be undertaken on land on which the development is undertaken or on other land in the State.

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346B Conditions of authority

(1) This section applies if, on or after the commencement of this section, a condition comes into force that is an environmental offset condition under section 346A.

(2) To the extent the environmental offset condition is inconsistent with a deemed condition, the deemed condition prevails.

Note—

See the *Environmental Offsets Act 2014*, section 5(3). Under that provision, particular imposed conditions prevail over deemed conditions.

347 Conditions that can not be imposed

A condition must not—

(a) be inconsistent with a condition of an earlier development approval or compliance permit still in effect for the development; or

(b) other than under chapter 8, part 2 or 3— require a monetary payment for the establishment, operating or maintenance costs of, or works to be carried out—

(i) for development infrastructure; or

(ii) for the imposition of a condition by a State infrastructure provider— infrastructure or works to protect or maintain the infrastructure operation; or

Note—

Chapter 8, parts 2 and 3 deal with infrastructure conditions.

(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; or

(e) limit the time a development approval has effect for a use or work forming part of a network of community

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infrastructure, other than State-owned or State-controlled transport infrastructure; or

(f) require a person to enter into an infrastructure agreement.

347A Conditions about water infrastructure

(1) This section applies if an assessment manager or concurrence agency is a participating local government of a distributor-retailer.

(2) A condition can not be imposed in relation to the distributor-retailer's water infrastructure about a matter for which the SEQ Water Act requires a water approval.

Examples of conditions that can not be imposed—

- works to be carried out
- a monetary payment
- land in fee simple to be given
- that an infrastructure agreement be entered into

(3) However, a condition may be imposed that any necessary water approval under the SEQ Water Act must be obtained from a distributor-retailer.

348 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.

349 Covenants not to be inconsistent with development approvals

(1) Subsection (2) applies if a covenant under the *Land Act 1994*, section 373A(4) or the *Land Title Act 1994*, section 97A(3)(a) or (b) is entered into in connection with a development application.

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(2) The covenant is of no effect unless it is entered into—

(a) as a requirement of a condition of a development approval for the application; or

(b) under an infrastructure agreement.

Part 6 Changing or withdrawing development applications

Division 1 Preliminary

350 Meaning of *minor change*

(1) A ***minor change*** in relation to an application, is any of the following changes to the application—

(a) a change that merely corrects a mistake about the name or address of the applicant or owner, or the address or other property details of the land to which the application applies, if the assessment manager is satisfied the change would not adversely affect the ability of a person to assess the changed application;

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

(c) a change that merely corrects a spelling or grammatical error;

(d) a change that—

(i) does not result in a substantially different development; and

(ii) does not require the application to be referred to any additional referral agencies; and

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(iii) does not change the type of development approval sought; and

(iv) does not require impact assessment for any part of the changed application, if the original application did not involve impact assessment.

(2) In deciding whether a change is a minor change under subsection (1)(d), the planning instruments or law in force at the time the change was made apply (the ***applicable law***).

(3) Application of the applicable law does not stop a change mentioned in subsection (1)(d)(ii) or (iv) from being a minor change only because the applicable law, if applied to the application as originally made, would require referral to any additional referral agencies or involve impact assessment.

Division 2 Procedure for changing applications

351 Changing application

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

Note—

An assessment manager or concurrence agency may, in an information request, advise an applicant about changing an application. See section 276 (Information request to applicant).

(2) An applicant can not change an application if the change would, if the application were remade including the change, result in the application—

(a) not being a properly made application; or

(b) involving prohibited development.

(3) Subsection (2)(a) does not apply to the applicant if the applicant takes the action that would be necessary to make the application a properly made application if it were remade.

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(4) If the change to the application is, or includes, a change of applicant, the notice of the change—

(a) may be given to the assessment manager by the person proposing to become the applicant; and

(b) must be accompanied by the written consent of the person who is the applicant immediately before the change.

352 Assessment manager to advise referral agencies about changed applications

When the assessment manager receives notice of the change, the assessment manager must give a copy of the notice to the following entities and advise them of its effect under division 3—

(a) any referral agencies for the original application;

(b) if the change requires the application to be referred to a referral agency, other than a referral agency mentioned in paragraph (a)—the referral agency.

Note—

Under section 290(1)(b)(ii), a concurrence agency may amend its concurrence agency's response for particular changes to the application.

Division 3 Changed applications—effect on IDAS

353 Effect on IDAS—minor change

(1) IDAS does not stop for a changed application if the change is a minor change of the application.

(2) For a changed application, the notification stage does not again apply, and is not required to restart, if—

(a) the change is a minor change; and

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(b) the notification stage applied to the original application; and

(c) the change was made during the notification stage or after the notification stage ended.

354 Effect on IDAS—changes about matters relating to submissions or information requests

(1) This section applies to a changed application if—

(a) the change is not a minor change of the application; and

(b) the assessment manager is satisfied the change—

(i) only deals with a matter raised in a properly made submission for the application; or

(ii) is in response to an information request.

(2) IDAS does not stop for the changed application.

(3) Subsection (4) applies if the notification stage applied to the original application and the change was made during the notification stage or after the notification stage ended.

(4) The notification stage must restart or be repeated unless the assessment manager is satisfied the change would not be likely to attract a submission objecting to the thing comprising the change, if the notification stage were to apply to the change.

(5) Also, if the notification stage applies to the changed application, the assessment manager can not decide the application until the notification stage has ended.

355 Effect on IDAS—other changes

(1) Subsection (2) applies to a changed application if—

(a) the change is not a minor change; and

(b) the assessment manager is satisfied the change is not a change that—

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(i) only deals with a matter raised in a properly made submission for the application; or

(ii) is in response to an information request.

(2) The IDAS process stops on the day the notice of the change is received by the assessment manager and starts again from the start of the acknowledgement period.

(3) Subsection (4) applies to a changed application if—

(a) the IDAS process has stopped under subsection (2) for the application; and

(b) the notification stage applied to the original application; and

(c) the change was made during the notification stage or after the notification stage ended.

(4) The notification stage must be repeated unless the assessment manager is satisfied the change would not be likely to attract a submission objecting to the thing comprising the change, if the notification stage were to apply to the change.

Division 4 Withdrawing applications

356 Withdrawing an application

(1) At any time before the application is decided, the applicant may withdraw the application by giving written notice of the withdrawal to—

(a) the assessment manager; and

(b) any referral agency.

(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.

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Part 7 Missed referral agencies

357 Notice of missed referral agency

(1) This section applies if an applicant has not referred an application to a referral agency (the ***missed referral agency***) as required under section 272.

(2) A party to the application may, by written notice given to each other party to the application, advise the other parties that the applicant has not referred the application as required under section 272.

(3) In this section—

party, to an application, means the applicant, assessment manager and each referral agency for the application.

358 Effect of missed referral agency on information and referral stage and notification stage

(1) This section applies if a notice is given under section 357(2) during the information and referral stage or the notification stage for the application.

(2) Despite section 273, the application does not lapse.

(3) The IDAS process for the application does not stop.

(4) However, the decision stage for the application does not start until—

(a) the information and referral stage is carried out in relation to the missed referral agency; and

(b) either—

(i) all referral agency's responses for the application have been received; or

(ii) all referral agency's assessment periods for the application have ended; and

(c) the notification stage has ended.

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(5) If the applicant gives the notice under section 357(2), the applicant must comply with section 272 for the missed referral agency within 10 business days after giving the notice.

(6) If another party to the application gives the notice under section 357(2), the applicant must comply with section 272 for the missed referral agency within 10 business days after receiving the notice.

(7) If the notice under section 357(2) is given during the notification stage for the application and the applicant has started or carried out notification under section 297, notification under section 297 need not be restarted or carried out again for the application.

359 Effect of missed referral agency on decision stage

(1) This section applies if a notice is given under section 357(2) during the decision stage for the application and before the application is decided.

(2) Despite section 273, the application does not lapse.

(3) The application can not be decided until the information and referral stage for the application is carried out in relation to the missed referral agency.

(4) If the applicant gives the notice under section 357(2), the applicant must comply with section 272 for the missed referral agency within 10 business days after giving the notice.

(5) If another party to the application gives the notice under section 357(2), the applicant must comply with section 272 for the missed referral agency within 10 business days after receiving the notice.

(6) The applicant is not required to again carry out notification under section 297 for the application, if the notification has been carried out.

(7) The decision stage for the application starts again—

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(a) on the day the referral agency's response for the missed referral agency is received by the assessment manager; or

(b) if the missed referral agency does not give a referral agency's response—on the day the referral agency's assessment period of the missed referral agency ends.

Part 8 Dealing with decision notices and approvals

Division 1 Changing decision notices and approvals during applicant's appeal period

360 Application of div 1

This division applies only during the applicant's appeal period.

361 Applicant may make representations about decision

(1) The applicant may make written representations to the assessment manager about—

(a) a matter stated in the decision notice, other than a refusal or a matter about which a concurrence agency told the assessment manager under section 287(1) or (5); or

(b) the standard conditions applying to a deemed approval.

(2) However, the applicant can not make representations under subsection (1)(a) about a condition attached to an approval under the direction of the Minister.

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362 Assessment manager to consider representations

The assessment manager must consider any representations made to the assessment manager under section 361.

363 Decision about representations

(1) If the assessment manager agrees with any of the representations about a decision notice or a deemed approval, the assessment manager must give a new decision notice (the ***negotiated decision notice***) to—

(a) the applicant; and

(b) each principal submitter; and

(c) each referral agency; and

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

(2) Before the assessment manager agrees to a change under this section, the assessment manager must consider the matters the assessment manager was required to consider in assessing the application, to the extent the matters are relevant.

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

(4) The negotiated decision notice—

(a) must be given within 5 business days after the day the assessment manager agrees with the representations; and

(b) must comply with section 335; and

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

(d) replaces—

(i) the decision notice previously given; or

(ii) if a decision notice was not previously given and the negotiated decision notice relates to a deemed approval—the standard conditions applying to the deemed approval.

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(5) If the assessment manager does not agree with any of the representations, the assessment manager must, within 5 business days after the day the assessment manager decides not to agree with any of the representations, give written notice to the applicant stating the decision about the representations.

364 Giving new notice about charges for infrastructure

(1) This section applies if the development approved by the negotiated decision notice is different from the development approved in the decision notice or deemed approval in a way that affects the amount of a levied charge.

(2) The local government may give the applicant a new infrastructure charges notice to replace the original notice.

366 Applicant may suspend applicant's appeal period

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

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

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

(4) If the representations are made within 20 business days after the day written notice was given to the assessment manager—

(a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the balance of the applicant's appeal period restarts the day after the assessment manager receives the notice of withdrawal; or

(b) if the assessment manager gives the applicant a notice under section 363(5)—the balance of the applicant's appeal period restarts the day after the applicant receives the notice; or

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(c) if the assessment manager gives the applicant a negotiated decision notice—the applicant's appeal period starts again the day after the applicant receives the negotiated decision notice.

Division 2 Changing approvals—request for change after applicant's appeal period ends

Subdivision 1 Preliminary

367 What is a *permissible change* for a development approval

(1) A ***permissible change***, for a development approval, is a change to the approval that would not, because of the change—

(a) result in a substantially different development; or

(b) if the application for the approval were remade including the change—

(i) require referral to additional concurrence agencies; or

(ii) for an approval for assessable development that previously did not require impact assessment—require impact assessment; or

(c) for an approval for assessable development that previously required impact assessment—be likely, in the responsible entity's opinion, to cause a person to make a properly made submission objecting to the proposed change, if the circumstances allowed; or

(d) cause development to which the approval relates to include any prohibited development.

(2) For deciding whether a change is a permissible change under subsection (1)(b) or (d), the planning instruments or law in force at the time the request for the change was made apply.

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368 Notice about proposed change before request is made

(1) This section applies if a person proposes to make a request under section 369 to change a development approval.

(2) Before making the request, the person may advise any relevant entity about the person's intention to make the request and the details of the proposed change.

(3) The relevant entity may give the person a written notice (a ***pre-request response notice***) stating whether or not the entity objects to the proposed change.

(4) In this section—

relevant entity means an entity to whom the person would, under section 372, be required to give a copy of the request if it were made.

Subdivision 2 Procedure for changing approvals

369 Request to change development approval

(1) If a person wants to make a permissible change to a development approval, the person must by written notice ask the following entity (the ***responsible entity***) stated for the change or approval to make the change—

(a) if the change is to a condition imposed by the Minister under part 11, division 1—the Minister;

(b) if the approval was given by the Minister under part 11, division 2—the Minister;

(c) if the change is to a condition of the approval imposed by a concurrence agency—the concurrence agency;

(d) if the approval was given by the court—the court;

(e) for another change or approval—the assessment manager for the application to which the approval relates.

(2) If a request is made to the Minister under subsection (1)(b) and the Minister is satisfied the change does not affect a State

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interest, the Minister may refer the request to the original assessment manager.

(3) If the Minister refers the request to the original assessment manager, the original assessment manager is taken to be the responsible entity for the development approval.

(4) If the development approval is for building work or operational work for the supply of community infrastructure on land designated for the community infrastructure, a request under subsection (1) may be made only by the person who intends to supply, or is supplying, the infrastructure.

370 Notice of request

(1) If the responsible entity has a form for the request under section 369, the request must be in the form.

(2) Also, the request must be accompanied by—

(a) the fee for the request—

(i) if the responsible entity is a local government—fixed by a resolution of the local government; or

(ii) if the responsible entity is another public sector entity or the Minister—prescribed under a regulation under this or another Act; and

(b) a copy of any pre-request response notice relevant to the request; and

(c) evidence to show the person making the request has complied with section 372.

(3) The request may be accompanied by other information the person making the request considers relevant.

371 When owner's consent required for request

If the person making the request is not the owner of the land to which the development approval attaches, the request must be accompanied by the owner's consent unless—

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(a) the approval relates to land that was acquisition land to which section 263(2)(b) applied when the application for the approval was made; or

(b) the approval is for building work or operational work for the supply of community infrastructure on land designated for the community infrastructure; or

(c) the consent of the owner would not be required under section 263(1) if a development application were made for the requested change; or

(d) the responsible entity is satisfied that—

(i) having regard to the nature of the proposed change, the owner has unreasonably withheld consent; and

(ii) the requested change does not materially affect the owner's land; or

(e) the responsible entity is satisfied that—

(i) because of the number of owners of the land, it is not practicable to obtain the owners' consent; and

(ii) the requested change does not materially affect the owners' land.

Example for paragraph (e)(i)—

It may not be practicable to obtain the consent of all the owners of land if the land was subdivided, after the development approval was given, and is subsequently owned by multiple persons.

372 Copy of request to be given to particular entities

(1) When the person makes the request, the person must give a copy of the request to the following—

(a) if the responsible entity is a concurrence agency—

(i) the assessment manager for the application to which the development approval applies (the ***original application***); and

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(ii) any other concurrence agencies for the original application;

(b) if the responsible entity is the Minister or the court—the assessment manager and any concurrence agencies for the original application;

(c) if the responsible entity is the assessment manager—any concurrence agencies for the original application;

(d) another entity prescribed under a regulation.

(2) Despite subsection (1), the person need not give a copy of the request to an entity that has given the person a pre-request response notice for the request.

Subdivision 3 Assessing and deciding request for change

373 Particular entities to assess request for change

(1) An entity given a copy of the request under section 372 must, within 20 business days after receiving the request, give the responsible entity a written notice advising—

(a) it has no objection to the change being made; or

(b) it objects to the change being made and the reasons for the objection.

(2) If the entity (the ***relevant entity***) does not give a written notice within 20 business days after receiving the copy of the request, the responsible entity must decide the request as if the relevant entity had no objection to the request.

374 Responsible entity to assess request

(1) To the extent relevant, the responsible entity must assess the request having regard to—

(a) the information the person making the request included with the request; and

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(b) the matters the responsible entity would have regard to if the request were a development application; and

(c) if submissions were made about the original application—the submissions; and

(d) any notice about the request given under section 373 to the entity; and

(e) any pre-request response notice about the request given to the entity.

(2) For subsection (1)(b), the responsible entity must have regard to the planning instruments, plans, codes, laws or policies applying when the original application was made, but may give the weight it considers appropriate to the planning instruments, plans, codes, laws or policies applying when the request was made.

375 Responsible entity to decide request

(1) After assessing the request under section 374, the responsible entity must decide to—

(a) approve the request, with or without conditions; or

(b) refuse the request.

(2) A condition imposed under subsection (1)(a) must—

(a) be relevant to the proposed change; and

(b) comply with section 345.

(3) If no other entity is required to be given a copy of the request under section 372, the responsible entity must decide the request within 30 business days after receiving the request.

(4) If another entity is required to be given a copy of the request under section 372, the responsible entity—

(a) must not decide the request until the first of the following happens—

(i) a written notice has been received under section 373 from each entity given a copy of the request;

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(ii) the period of 25 business days after the responsible entity received the request ends; but

(b) must decide the request within 30 business days after receiving the request.

(5) However, the responsible entity and the person making the request may agree to extend the period within which the entity must decide the request by not more the 20 business days.

(6) Subsections (3) to (5) do not apply if the responsible entity is the court.

376 Notice of decision

(1) The responsible entity must give written notice of the decision to each of the following—

(a) the person who made the request;

(b) if the responsible entity is not the assessment manager—the assessment manager;

(c) any referral agency for the original application;

(d) if the responsible entity is not a local government and the development approval relates to land in a local government area—the local government whose local government area includes the land;

(e) if the request relates to a development approval given by the Minister under part 11, division 2 and the Minister referred the request to the original assessment manager—the Minister.

(2) The notice must—

(a) state all of the following—

(i) the day the request was made;

(ii) the day the development approval for the original application was decided;

(iii) the decision;

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(iv) if the request was refused—the reasons for the decision; and

(b) if the request was approved and the responsible entity is a concurrence agency—be accompanied by a copy of the concurrence agency's response for the original application showing the changes; and

(c) if the request was approved and paragraph (b) does not apply—be accompanied by a copy of the decision notice, if any, for the original application showing the changes.

(3) Subsection (4) applies if—

(a) the responsible entity is the assessment manager for the application to which the approval relates; and

(b) the decision is to refuse the request or approve the request on conditions.

(4) If the notice is given to the person who made the request or an entity that gave the responsible entity a notice under section 373 or a pre-request response notice, the notice also must state—

(a) that the person or entity may appeal against the decision; and

(b) how the person or entity may appeal.

(5) Subsection (6) applies if—

(a) the responsible entity is a concurrence agency; and

(b) the decision is to refuse the request or approve the request on conditions.

(6) If the notice is given to the person who made the request, the notice also must state—

(a) that the person may appeal against the decision; and

(b) how the person may appeal.

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377 When decision has effect

If the decision is to approve the request for a permissible change, the decision takes effect—

(a) on the day the notice mentioned in section 376(1) is given to the person who made the request; or

(b) if a person has appealed against the decision—on the day the appeal is finally decided or withdrawn.

Division 3 Changing or cancelling particular conditions—other than on request

378 When condition may be changed or cancelled by assessment manager or concurrence agency

(1) This section applies for a development condition under another Act if, under the other Act, 'development condition' is defined with reference to a development approval.

(2) However, if under the other Act an entity is authorised to change or cancel conditions of a development approval in a different way, the other Act prevails to the extent of any inconsistency with this section.

(3) The development condition may be changed or cancelled by—

(a) if the condition was imposed as 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, the condition may be changed or cancelled only on a ground mentioned in the other Act.

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(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 345 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—

(a) state the following—

(i) the proposed change or cancellation and the reasons for the change or cancellation;

(ii) that each person to whom the notice is given may make a written submission to the entity about the proposed change or cancellation;

(iii) the period, which must be at least 15 business days after the notice is given, within which the submission may be made; and

(b) if the condition was imposed by a concurrence agency—be accompanied by a copy of the concurrence agency's response for the original application showing the changes; and

(c) if paragraph (b) does not apply—be accompanied by a copy of the decision notice, if any, for the original application showing the changes.

(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.

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(10) If the entity was 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.

Division 4 Cancelling approvals

379 Request to cancel development approval

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

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

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

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

(3) Subsection (1) applies to an owner of land designated for community infrastructure only if the owner is the entity who intends, or intended, to supply the infrastructure.

380 Restriction on making request

(1) Cancellation can not be requested under section 379(1) if development under the development approval has started.

(2) Also, cancellation can not be requested under section 379(1) unless written consent to the cancellation is given by—

(a) if there is a written arrangement between the owner and another person under which the other person proposes to buy the land—the person proposing to buy the land; or

(b) if the application is for land the subject of a public utility easement—the entity in whose favour the easement is given.

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381 Assessment manager to cancel approval

After receiving the request under section 379, the assessment manager must—

(a) cancel the approval; and

(b) give notice of the cancellation to the person who applied for the cancellation and to each concurrence agency.

382 Release of monetary security

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

Division 5 Extending period of approvals

383 Request to extend period in s 341

(1) If, before a development approval lapses under section 341, a person wants to extend a period mentioned in that section, the person must, by written notice—

(a) advise each entity that was a concurrence agency that the person is asking for an extension of the period; and

(b) ask the assessment manager to extend the period.

(2) The notices must be given at about the same time.

(3) The notice to the assessment manager must—

(a) if the assessment manager has a form for the request—be in the form; and

(b) include a copy of each notice given under subsection (1)(a); and

(c) be accompanied by the fee—

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

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(ii) if the assessment manager is another public sector entity—prescribed under a regulation under any Act; and

(d) if the person making the request is not the owner of the land to which the approval attaches—be accompanied by the owner's consent if, under section 263(1), the written consent of the owner of the land the subject of the application for the approval was required for the making of the application.

(4) Despite subsection (3)(d), the notice to the assessment manager need not be accompanied by the owner's consent if the assessment manager is satisfied that—

(a) having regard to the nature of the request, the owner has unreasonably withheld consent; or

(b) because of the number of owners of the land, it is not practicable to obtain the owners' consent.

Example for subsection (4)(b)—

It may not be practicable to obtain the consent of all the owners of land if the land was subdivided, after the development approval was given, and is subsequently owned by multiple persons.

384 Request can not be withdrawn

A request under this division may not be withdrawn.

385 Concurrence agency may advise assessment manager about request

A concurrence agency given a notice under section 383(1)(a) may give the assessment manager a written notice—

(a) stating it has no objection to the extension being approved; or

(b) stating it objects to the extension being approved and giving reasons for the objection.

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386 Deciding particular requests

(1) This section applies if the request for the extension was accompanied by evidence showing that the person asked a chief executive for the chief executive's written agreement to the extension.

(2) The assessment manager must refuse the request if the chief executive gives the assessment manager written notice that the chief executive does not agree to the extension.

(3) If the chief executive agrees to the extension, the assessment manager must decide the request within 30 business days after receiving the written agreement.

(4) Subsection (3) applies despite section 387(1).

387 Assessment manager to decide request

(1) The assessment manager must approve or refuse the extension within 30 business days after receiving the request.

(2) If there was a concurrence agency, the assessment manager must not approve or refuse the extension until at least 20 business days after receiving the request.

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

(4) The assessment manager may decide the request even if the development approval was granted by the court.

388 Deciding request

(1) In deciding a request under section 383, the assessment manager must only have regard to—

(a) the consistency of the approval, including its conditions, with the current laws and policies applying to the development, including, for example, the amount and type of infrastructure contributions, or charges payable under chapter 8, parts 2 and 3; and

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(b) the community's current awareness of the development approval; and

(c) whether, if the request were refused—

(i) further rights to make a submission may be available for a further development application; and

(ii) the likely extent to which those rights may be exercised; and

(d) the views of any concurrence agency for the approval given under section 385.

(2) If the assessment manager does not receive a notice under section 385 from a concurrence agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must decide the request as if the concurrence agency had no objection to the request.

(3) Despite subsection (2), if the development approval is subject to a concurrence agency condition about the period mentioned in section 341, the assessment manager must not approve the request unless the concurrence agency advises it has no objection to the extension being approved.

(4) If the assessment manager receives a notice under section 385 from a concurrence agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must have regard to the notice when deciding the request.

389 Assessment manager to give notice of decision

After deciding the request, the assessment manager must give written notice of the decision to the person asking for the extension and any concurrence agency that gave the assessment manager a notice under section 385.

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390 Approval does not lapse until request is decided

Despite section 341, the development approval does not lapse until the assessment manager decides the request.

Division 6 Recording approvals on planning scheme

391 Particular approvals to be recorded on planning scheme

(1) This section applies if a local government—

(a) gives a development approval, other than a deemed approval, and is satisfied the approval conflicts with the planning scheme; or

(b) gives a development approval mentioned in section 242; or

(c) decides to agree or is taken to have decided to agree under chapter 3, part 2, division 5 to a request for a superseded planning scheme to apply for particular development.

(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.

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

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Part 10 Compliance stage

Division 1 Preliminary

393 Purpose of compliance stage

The compliance stage allows for development, or a document or work relating to development, to be assessed for compliance with—

(a) a matter or thing prescribed under a regulation; or

(b) a planning instrument; or

(c) a preliminary approval to which section 242 applies; or

(d) a condition of a development approval or compliance permit.

394 Compliance permit

A ***compliance permit*** authorises development requiring compliance assessment to take place—

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

(b) subject to the conditions in the permit.

395 Compliance certificate

A ***compliance certificate*** approves documents or works requiring compliance assessment—

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

(b) subject to the conditions in the certificate.

396 What does compliance stage apply to

The compliance stage applies to—

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(a) development that under section 232(1) requires compliance assessment; or

(b) a document or work relating to development that, under section 397, requires compliance assessment.

397 Nominating a document or work for compliance assessment—generally

(1) A regulation may declare that a document or work is a document or work requiring compliance assessment.

Note—

Under section 232(1), a regulation may prescribe that development is development requiring compliance assessment.

(2) Any of the following also may state that a document or work is a document or work requiring compliance assessment—

(a) a State planning regulatory provision;

(b) a preliminary approval to which section 242 applies;

(c) a temporary local planning instrument;

(d) a planning scheme.

(3) A regulation under subsection (1), or a regulation under section 232(1) prescribing development requiring compliance assessment, or an instrument mentioned in subsection (2) must state—

(a) the matters or things against which the development, document or work must be assessed; and

(b) the entity to whom a request for compliance assessment under this part must be made (the ***compliance assessor***).

(4) The regulation or other instrument also may state, for documents or work, when the request for compliance assessment must be made.

(5) An instrument mentioned in subsection (2)(b), (c) or (d) is a ***relevant instrument***.

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398 Nominating document or work for compliance assessment—condition of development approval or compliance permit

(1) A condition of a development approval or compliance permit may state that a document or work is a document or work requiring compliance assessment.

(2) The condition must state—

(a) the matters or things against which the document or work must be assessed; and

(b) the entity to whom a request for compliance assessment under this part must be made (the ***compliance assessor***); and

(c) when the request for compliance assessment under this part must be made.

(3) However, the condition may only require the document or work to be assessed for compliance with any of the following—

(a) a matter or thing prescribed under a regulation;

(b) a State planning regulatory provision or part of a State planning regulatory provision;

(c) a State planning policy or part of a State planning policy;

(d) a planning scheme or part of a planning scheme;

(e) a temporary local planning instrument or part of a temporary local planning instrument;

(f) if the development approval relates to an application made under a preliminary approval to which section 242 applies—a matter or thing stated in the preliminary approval.

399 Who may carry out compliance assessment

(1) Compliance assessment of development, a document or work must be carried out by—

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(a) a local government; or

(b) a nominated entity of a local government; or

(c) a public sector entity; or

(d) a nominated entity of a public sector entity.

(2) Subsection (3) applies if a relevant instrument or a local government condition states that a nominated entity of a local government may be the compliance assessor for development, a document or work.

(3) A nominated entity of a local government may carry out compliance assessment under this part for the development, document or work.

(4) Subsection (5) applies if an instrument mentioned in section 397(2) or a public sector entity condition states that a nominated entity of a public sector entity may be the compliance assessor for development, a document or work.

(5) A nominated entity of a public sector entity may carry out compliance assessment under this part for the development, document or work.

(6) In this section—

local government condition means a condition of—

(a) a development approval imposed by a local government as assessment manager; or

(b) a compliance permit imposed by a local government as compliance assessor.

nominated entity, of a local government, means a suitably qualified entity that, by resolution of the local government, is nominated to carry out compliance assessment for the local government.

nominated entity, of a public sector entity, means a suitably qualified entity that is nominated by the chief executive of the public sector entity to carry out compliance assessment for the public sector entity.

public sector entity condition means a condition of—

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(a) a development approval imposed by a public sector entity as assessment manager or a concurrence agency; or

(b) a compliance permit imposed by a public sector entity as compliance assessor.

400 When compliance stage starts

The compliance stage starts on the day a request for compliance assessment is given to the compliance assessor under section 401.

Division 2 Compliance assessment

Subdivision 1 Request for compliance assessment

401 Request for compliance assessment

A request for compliance assessment of development, a document or work must—

(a) be given to the compliance assessor for the development, document or work; and

(b) be in the approved form; and

(c) be accompanied by—

(i) if the compliance assessor is a local government—the fee fixed by resolution of the local government; or

(ii) if the compliance assessor is a public sector entity—the fee prescribed under a regulation under this or another Act; or

(iii) if the compliance assessor is a nominated entity of a local government or a public sector entity—the

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fee agreed between the person making the request and the nominated entity; and

(d) for work yet to be completed—be supported by any document, relevant to the work, that is subject to compliance assessment.

Subdivision 2 Referring request to local government

402 Aspects of development requiring compliance assessment to be referred to local government

(1) This section applies if—

(a) the compliance assessor for development requiring compliance assessment is a nominated entity of a local government; and

(b) under a relevant instrument an aspect of the development must be referred to the local government.

(2) The nominated entity must give the local government a copy of the request for compliance assessment.

(3) The local government's jurisdiction is limited to assessing the aspect of development referred to the local government.

(4) The local government must assess the aspect of development against the matters or things mentioned in section 403 that are relevant to the aspect.

(5) The local government must, within 10 business days after receiving the copy of the request—

(a) assess the aspect of development referred to the local government; and

(b) give the compliance assessor written notice of its response.

(6) The local government's response may, within the limits of its jurisdiction, tell the compliance assessor—

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(a) the conditions that must attach to the compliance permit; or

(b) that the local government is satisfied the development does not achieve compliance; or

(c) that it has no requirements relating to the request.

(7) If the local government is satisfied the development does not achieve compliance, the local government's response must include—

(a) the reasons the local government is satisfied the development does not achieve compliance; and

(b) the action required for the development to comply.

(8) If the local government does not give the compliance assessor written notice of its response within 10 business days after receiving the copy of the request, the local government is taken to have no requirements relating to the request.

(9) For assessing the aspect of development referred to the local government, the local government may charge the applicant the fee fixed by resolution of the local government.

Subdivision 3 Compliance assessor to assess and decide request

403 Assessment of request

The compliance assessor must assess the development, document or work only against the matters or things against which the development, document or work must be assessed under the regulation, State planning regulatory provision, relevant instrument or condition requiring the compliance assessment.

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404 Assessment of request under superseded planning scheme

(1) If, under chapter 3, part 2, division 5, a local government has agreed or is taken to have agreed to assess a request for compliance assessment under a superseded planning scheme, the compliance assessor must assess and decide the request as if—

(a) the request were a request to which the superseded planning scheme applied; and

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

(c) for chapter 8, parts 2 and 3, the infrastructure provisions of the existing planning scheme applied.

(2) This section applies despite sections 81, 120 and 121.

405 Deciding request

(1) Subsections (2) and (3) apply if the compliance assessor is satisfied the development, document or work achieves compliance, or would achieve compliance if particular conditions were complied with.

(2) The compliance assessor must approve the request, unless a local government has, under section 402, told the compliance assessor that it considers the development does not achieve compliance.

(3) The request may be approved with or without conditions.

(4) Subsection (5) applies if—

(a) the compliance assessor is satisfied the development, document or work does not achieve compliance; or

(b) a local government has, under section 402, told the compliance assessor that it considers the development does not achieve compliance.

(5) The compliance assessor must give the person making the request written notice (an ***action notice***) stating—

(a) the day the notice is given; and

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(b) the reasons the development, document or work does not achieve compliance; and

(c) the action required for the development, document or work to comply; and

(d) the reasonable period within which the person may again make a request for compliance assessment of the development, document or work after taking the action; and

(e) that the person may make written representations to the compliance assessor about the matters mentioned in paragraph (b), (c) or (d); and

(f) that the request may lapse under section 411 if the person does not again make a request for the compliance assessment within the period mentioned in paragraph (d); and

(g) the rights of appeal of the person making the request.

(6) If the compliance assessor gives a person an action notice, the person may, after carrying out the stated action required for the development, document or work to comply, again apply for compliance assessment of the development, document or work under section 401 within the period stated in the notice for that purpose.

(7) However, sections 401(c) and 402(9) do not apply to the request.

406 Conditions must be relevant and reasonable

(1) A condition imposed on development or work requiring compliance assessment must—

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

(b) be reasonably required in relation to the development or work, or use of premises as a consequence of the development or work.

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(2) A condition imposed on a document requiring compliance assessment must be relevant to the matters dealt with in the document.

(3) If the compliance assessor is a public sector entity or a local government, subsections (1) and (2) apply despite the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the compliance assessor.

406A Conditions about water infrastructure

(1) This section applies if the compliance assessor is—

(a) a participating local government of a distributor-retailer; or

(b) a nominated entity of a participating local government of a distributor-retailer.

(2) A condition can not be imposed in relation to the distributor-retailer's water infrastructure about a matter for which the SEQ Water Act requires a water approval.

Examples of conditions that can not be imposed—

- works to be carried out
- a monetary payment
- land in fee simple to be given
- that an infrastructure agreement be entered into

(3) However, a condition may be imposed that any necessary water approval under the SEQ Water Act must be obtained from a distributor-retailer.

407 Compliance assessor to give compliance permit or certificate on approval of request

(1) If the compliance assessor approves the request, the assessor must give the person making the request—

(a) if the request is for compliance assessment of development—a compliance permit; or

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(b) if the request is for compliance assessment of a document or work—a compliance certificate.

(2) The compliance permit or certificate must state the conditions, if any, imposed on the permit or certificate.

(3) The compliance permit must include any conditions that a local government has, under section 402(6)(a), told the compliance assessor to attach to the permit.

(4) If the compliance permit or certificate states any conditions, the permit or certificate must be accompanied by a written notice stating the rights of appeal of the person making the request.

408 When notice about decision must be given

(1) The compliance assessor must, within the period prescribed under a regulation—

(a) decide the request; and

(b) give the person making the request—

(i) a compliance permit or compliance certificate; or

(ii) an action notice.

(2) If the compliance assessor is a nominated entity of a local government and a copy of the request for compliance assessment is given to the local government under section 402, the compliance assessor must not decide the request until at least 15 business days after giving the copy to the local government.

(3) If the compliance assessor does not comply with subsection (1) for a request—

(a) the request is taken to have been approved by the assessor without conditions; and

(b) the assessor must as soon as practicable give the person making the request—

(i) if the request is for compliance assessment of development—a compliance permit; or

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(ii) if the request is for compliance assessment of a document or work—a compliance certificate.

(4) If a compliance assessor, other than a local government, gives a person a compliance permit or compliance certificate, the compliance assessor must give a copy of the permit or certificate to the local government for the area to which the permit or certificate relates.

409 Duration and effect of compliance permit

(1) A compliance permit for development takes effect—

(a) if the person who requested the permit does not appeal the decision to the court or a building and development committee—on the day the permit is given; or

(b) if the person who requested the permit appeals the decision to the court or a building and development committee, subject to sections 490(3) and 553(3) and the decision of the court or committee under section 496 or 564—when the appeal is finally decided or withdrawn.

(2) A compliance permit for development lapses if the development is not completed within—

(a) the period stated for that purpose in a condition of the permit; or

(b) if no period is stated for that purpose in a condition of the permit—the period prescribed under a regulation.

(3) A compliance permit attaches to the land the subject of the request and binds the owner, the owner's successors in title and any occupier of the land.

410 When development may start

Development requiring compliance assessment may start when a compliance permit for the development takes effect.

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Subdivision 4 Lapsing of request

411 When request for compliance assessment lapses

(1) This section applies if a person requesting compliance assessment of development, a document or work is given an action notice about the request.

(2) If the person—

(a) has not made written representations about the action notice under section 412; and

(b) does not again apply for compliance assessment of the development, document or work within the period stated in the notice for that purpose;

the request lapses at the end of the stated period.

(3) If the person—

(a) is given a new action notice under section 412(4) or (5) for the development, document or work; and

(b) does not again apply for compliance assessment of the development, document or work within the period stated in the new notice for that purpose;

the request lapses at the end of the stated period.

(4) If the person—

(a) is given a notice (the ***assessment notice***) under section 412(9) for the development, document or work; and

(b) does not again apply for compliance assessment of the development, document or work within the period stated in the assessment notice for that purpose;

the request lapses at the end of the stated period.

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Division 3 Changing notices, compliance permits and certificates

412 Changing and withdrawing action notice

(1) This section applies if a person is given an action notice.

(2) The person may, before the period mentioned in section 405(5)(d) and stated in the notice ends, make written representations to the compliance assessor about a matter mentioned in section 405(5)(b), (c) or (d) and stated in the notice.

(3) If the compliance assessor agrees with all the written representations about a matter mentioned in section 405(5)(b)—

(a) the compliance assessor must withdraw the action notice; and

(b) the period prescribed under section 408 for deciding the request starts on the day the notice is withdrawn.

(4) If the compliance assessor agrees with some, but not all, of the written representations about a matter mentioned in section 405(5)(b), the compliance assessor must give a new action notice to the person.

(5) If the compliance assessor agrees with any written representations about a matter mentioned in section 405(5)(c) or (d), the compliance assessor must give a new action notice to the person.

(6) If the compliance assessor is a nominated entity of a local government and the local government's response under section 402 states the development does not achieve compliance, the compliance assessor must not withdraw the action notice, or give a new action notice, without the written agreement of the local government.

(7) Only 1 new action notice may be given.

(8) The new action notice replaces the notice initially given under section 405(5).

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(9) If the compliance assessor does not agree with all the written representations about a matter mentioned in section 405(5)(b), (c) or (d), the compliance assessor must give the person a written notice stating—

(a) the decision about the representations; and

(b) the reasonable period within which the person may again make a request for compliance assessment of the development, document or work.

413 Changing compliance permit or compliance certificate

(1) A person may, by written notice given to the compliance assessor that gave a compliance permit or compliance certificate, ask the compliance assessor to change the permit or certificate.

(2) The compliance assessor must, as soon as practicable after receiving the request—

(a) decide to change or refuse to change the compliance permit or compliance certificate; and

(b) if the compliance assessor decides to change the compliance permit or compliance certificate—give the person a new permit or certificate showing the change; and

(c) if the compliance assessor decides to refuse to change the compliance permit or compliance certificate—give the person a written notice stating—

(i) the decision and the reasons for the decision; and

(ii) the rights of appeal for the person seeking the change.

(3) If the compliance assessor is a nominated entity of a local government and the change is to a condition of a compliance permit imposed by a local government, the compliance assessor must not change the condition without the written agreement of the local government.

(4) Subsection (5) applies if—

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(a) the entity that gave the compliance permit or compliance certificate was a nominated entity of a local government or a public sector entity; and

(b) the entity is no longer a nominated entity.

(5) For subsection (1), the person may ask the following entity to change the permit or certificate—

(a) if the entity that gave the compliance permit or compliance certificate was a nominated entity of a local government—the local government;

(b) if the entity that gave the compliance permit or compliance certificate was a nominated entity of a public sector entity—the public sector entity.

414 When decision about change has effect

If the compliance assessor decides to change the compliance permit or compliance certificate, the change takes effect—

(a) on the day the new compliance permit or compliance certificate is given to the person who requested the change; or

(b) if a person has appealed against the decision—on the day the appeal is finally decided or withdrawn.

Division 4 Other matters

415 Regulation may prescribe additional requirements and actions

A regulation 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; or

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(c) the form of a compliance permit or compliance certificate.

416 Effect on deciding request if action taken under Native Title Act 1993 (Cwlth)

(1) This section applies if a compliance assessor takes action under the *Native Title Act 1993* (Cwlth), section 24HA or 24KA.

(2) If the compliance assessor takes the action before the request is decided, the request can not be decided until the action is completed.

Part 11 Ministerial IDAS powers

Division 1 Ministerial directions

417 Ministerial directions to assessment managers—future applications

(1) The Minister may give a direction to an assessment manager requiring a copy of all applications for particular development or for development in a particular area to be given to the Minister.

(2) The Minister may give the direction only in relation to development or an area involving a State interest.

(3) The direction must be given by publishing a notice—

(a) in a newspaper circulating generally in the State; and

(b) in the gazette.

(4) The notice must state—

(a) details of the development or area to which the direction relates; and

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(b) the reasons for deciding to give the direction; and

(c) the State interest giving rise to the direction; and

(d) the point in the IDAS process when the copy of the application must be given to the Minister; and

(e) the material that must be given to the Minister.

(5) The Minister must give a copy of the notice to each entity the Minister considers is likely to be an assessment manager or referral agency for an application to which the direction relates.

418 Ministerial directions to assessment managers—particular applications

(1) The Minister may, by written notice, give a direction to an assessment manager for an application—

(a) to not decide the application until the end of the stated period of not more than 20 business days after the direction is given, if—

(i) the assessment manager has not decided the application; and

(ii) the development involves, or may involve, a State interest; or

(b) to decide the application within a stated period of at least 20 business days, if the assessment manager has not decided the application by the end of the decision-making period, including any extension of the decision-making period; or

(c) to decide the application within the decision-making period, if the development involves a State interest; or

(d) to decide whether to give a negotiated decision notice within a stated period of at least 20 business days, if the assessment manager has not made a decision on representations made to the assessment manager under section 361; or

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(e) to take an action under IDAS within the reasonable period stated in the direction, if the assessment manager has not otherwise complied with the period for taking the action; or

(f) to take an action under IDAS within the reasonable period stated in the direction, if the Minister is satisfied the development involves a State interest.

(2) The notice must state—

(a) the reasons for deciding to give the direction; and

(b) for a direction under subsection (1)(a)—

(i) the State interest giving rise to the direction; and

(ii) that the Minister may, within the period in which the assessment manager can not decide the application, call in the application under division 2 or give a further direction; and

(c) for a direction under subsection (1)(c) or (f)—the State interest giving rise to the direction.

(3) The Minister must give the applicant and any referral agencies a copy of the notice.

(4) The assessment manager must comply with the direction.

(5) If the Minister gives the assessment manager a direction under subsection (1)(a)—

(a) the IDAS process stops on the day the direction is given and starts again—

(i) when the period mentioned in subsection (1)(a) ends; or

(ii) if the Minister calls in the application under division 2 or gives a new direction before the period mentioned in subsection (1)(a) ends—on the day the Minister calls in the application or gives the new direction; and

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Note—

A notice of call in under division 2 also may affect the IDAS process.

(b) the Minister must not call in the application under division 2 after the period mentioned in subsection (1)(a) ends.

419 Ministerial directions to assessment managers—conditions

(1) The Minister may, by written notice, give a direction to an assessment manager for an application to attach to any development approval the conditions stated in the notice if—

(a) the assessment manager has not decided the application, or a deemed approval for the application has not taken effect under section 339; and

(b) the development involves a State interest; and

(c) the matter the subject of the direction is not within the jurisdiction of a concurrence agency for the application.

(2) The notice must state—

(a) the reasons for deciding to give the direction; and

(b) the State interest giving rise to the direction.

(3) The Minister must give the applicant and any referral agencies a copy of the notice.

(4) The assessment manager must comply with the direction.

420 Ministerial directions to concurrence agencies

(1) The Minister may, by written notice, give a direction to a concurrence agency for an application—

(a) if the Minister is satisfied there are inconsistencies between 2 or more concurrence agency's responses—to reissue the concurrence agency's response to address the inconsistency; or

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(b) if the Minister is satisfied the concurrence agency's response contains a condition that does not comply with section 345 or 347—to reissue the concurrence agency's response without the condition or with a modified condition; or

(c) if the Minister is satisfied the concurrence agency's response is not within the limits of its jurisdiction—to reissue the concurrence agency's response in a stated way to ensure the concurrence agency's response is within the limits of its jurisdiction; or

(d) if the Minister is satisfied the concurrence agency has not assessed an application under the Act—to reissue the concurrence agency's response in a stated way to ensure the concurrence agency has assessed the application under the Act; or

(e) if the Minister is satisfied the concurrence agency has not complied with the reasonable period for taking an action under IDAS—to take the action within the reasonable period stated in the direction; or

(f) if the Minister is satisfied the development involves a State interest—to take an action under IDAS within the reasonable period stated in the direction.

(4) A notice given under subsection (1) must state the reasons for deciding to give the direction.

(5) The Minister must give the assessment manager, the applicant and any other referral agency a copy of the notice.

(6) The concurrence agency must comply with the direction.

(7) The Minister may give a direction under this section even if the referral agency's assessment period for the concurrence agency has ended.

(8) If the Minister gives a direction under this section, the assessment manager can not decide the application until the concurrence agency's response is reissued or the action is taken.

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Note—

If the Minister gives a direction under this section, the concurrence agency may give or amend its response after the end of the assessment period for the application. See section 290(1).

421 Ministerial directions to applicants

(1) The Minister may, by written notice, give a direction to an applicant who has not complied with a stage of IDAS, or an aspect of a stage of IDAS, to take stated action relating to the stage or aspect to ensure compliance with IDAS.

(2) The notice must state—

(a) the reasons for deciding to give the direction; and

(b) the reasonable period within which the action must be taken.

(3) The notice may also state the point in the IDAS process from which the process must restart.

(4) The Minister must give the assessment manager and the referral agencies a copy of the notice.

(5) The applicant must comply with the direction.

(6) If the direction states the point in the IDAS process from which the process must restart and the applicant complies with the direction, the process must, for the application, restart at that point.

422 Report about decision

(1) If the Minister gives a direction under section 419, the Minister must, after giving the direction, prepare a report about the Minister's decision.

(2) Without limiting subsection (1), the Minister must include the following in the report—

(a) a copy of the application;

(b) a copy of the notice given under section 419;

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(c) the Minister's reasons for the decision.

(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.

422A No requirement to consult on directions

The Minister is not required to consult with anyone before giving a direction under this division.

Division 2 Ministerial call in powers

423 Definitions for div 2

In this division—

assessment and decision provisions means sections 313, 314, 316, 326 and 329.

Minister includes the Minister administering the *State Development and Public Works Organisation Act 1971*.

proposed call in notice, for an application, see section 424A(1).

representation period, for an application, means—

(a) the stated representation period mentioned in section 424A(3)(h); or

(b) if the stated representation period is extended or further extended under section 424A(4)—the period as extended or further extended.

424 Application may be called in only for State interest

The Minister may, under this division, call in an application only if the development involves a State interest.

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424A Notice of proposed call in

(1) Before calling in the application, the Minister must give written notice of the proposed call in (the ***proposed call in notice***) to each of the following—

(a) the assessment manager;

(b) the applicant;

(c) any submitters for the application, of which the Minister is aware when the notice is given;

(d) each concurrence agency for the application.

(2) The notice may be given at any time after the application is made until the latest of the following—

(a) 15 business days after the day the chief executive receives notice of an appeal about the application;

(b) if there are any submitters for the application—50 business days after the day the decision notice or negotiated decision notice is given to the applicant;

(c) if there are no submitters for the application and a decision notice or negotiated decision notice is given—25 business days after the day the decision notice or negotiated decision notice is given to the applicant;

(d) if the application is taken to have been approved under section 331 and a decision notice or negotiated decision notice is not given—25 business days after the day the decision notice was required to be given to the applicant.

(3) The notice must state all of the following—

(a) the Minister is proposing to call in the application;

(b) the reasons for the proposed call in;

(c) if the notice is given before the assessment manager makes a decision on the application—that the IDAS process stops on the day the notice is given;

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(d) the point in the IDAS process, before or at the start of the decision stage, the Minister proposes the process will restart if the application is called in;

(e) whether the Minister intends to assess and decide, or reassess and re-decide, the application having regard only to the State interest for which the application may be called in;

(f) if the Minister intends to assess and decide, or reassess and re-decide, the application having regard only to the State interest—that the assessment and decision provisions do not apply to the Minister's assessment of, and decision on, the application;

(g) if the application is proposed to be called in before the assessment manager makes a decision on the application—whether the Minister intends to give a direction to the assessment manager under section 425(6);

(h) that the person to whom the notice is given may make representations to the Minister about the proposed call in within the period (the ***stated representation period***), of at least 5 business days after the notice is given, stated in the notice.

(4) The Minister may, by notice given to each person to whom the proposed call in notice was given and before the end of the stated representation period or any extension of the period, extend or further extend the period for making representations to the Minister.

424B Effect of proposed call in notice on IDAS process

(1) If the proposed call in notice is given before the assessment manager decides the application, the IDAS process stops at the point in the process at which the notice is given.

(2) If the Minister gives notice under section 424C(2) that the application will not be called in, the IDAS process restarts from the point in the process at which it stopped under subsection (1).

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424C Minister to consider representations about proposed call in

(1) The Minister must, after considering all representations made to the Minister in the representation period for the application, decide—

(a) to call in the application; or

(b) not to call in the application.

(2) If the Minister decides not to call in the application, the Minister must, within 20 business days after the end of the representation period for the application, give each person to whom the proposed call in notice was given a written notice stating—

(a) the application will not be called in; and

(b) if the proposed call in notice was given before the assessment manager made a decision on the application—the IDAS process for the application restarts from the point in the process at which it stopped because of the giving of the proposed call in notice.

424D Effect of proposed call in on appeal period

(1) This section applies—

(a) to an application for which a notice is given under section 424C(2) if the assessment manager has made a decision on the application before the notice is given; and

(b) for any appeal period relating to the application under this Act.

(2) The appeal period for the application is taken to have started again the day after the notice is given.

(3) Subsection (2) applies—

(a) whether or not the notice is given after the appeal period would, but for this section, have ended; and

(b) despite any other provision of this Act.

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424E Effect of proposed call in notice on development approval

(1) This section applies if a proposed call in notice is given for an application—

(a) after a development permit or a deemed approval for development under the application has taken effect; or

(b) before a development permit or a deemed approval for development under the application has taken effect, if a permit or approval takes effect for the development before the application is called in under section 425.

(2) For this Act, the development permit or deemed approval is taken not to be in effect—

(a) from—

(i) if subsection (1)(a) applies to the application—the day the applicant receives the proposed call in notice; or

(ii) if subsection (1)(b) applies to the application—the day the development permit or deemed approval would take effect but for this section; and

(b) until—

(i) if the Minister decides not to call in the application—the day the applicant receives notice of that decision; or

(ii) if the Minister decides to call in the application—the day the applicant receives notice of the call in under section 425.

425 Notice of call in

(1) If the Minister decides to call in the application, the Minister may, by written notice given to the assessment manager, call in the application.

(2) The notice may be given at any time before the day that is 20 business days after the representation period for the application ends.

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(3) The notice must state—

(a) the reasons for calling in the application; and

(b) whether the Minister intends to assess and decide, or reassess and re-decide, the application having regard only to the State interest for which the application was called in; and

(c) if the Minister intends to assess and decide, or reassess and re-decide, the application having regard only to the State interest—that the assessment and decision provisions do not apply to the Minister's assessment of, and decision on, the application; and

(d) the point in the IDAS process, before or at the start of the decision stage decided by the Minister, from which the process must restart.

(4) For subsection (3)(d), the Minister may decide a point in the IDAS process that is different to the restarting point mentioned in the proposed call in notice for the application.

(5) In deciding the point at which the IDAS process restarts, the Minister may have regard to the application, the representations made to the Minister in the representation period for the application and any other matters the Minister considers relevant.

(6) If the application is called in before the assessment manager makes a decision on the application, the Minister may, in the notice, direct the assessment manager—

(a) to assess, or continue to assess, the application; and

(b) to refer the application to the Minister for decision.

(7) The Minister must not give the assessment manager a direction under subsection (6) if the Minister intends to assess and decide the application having regard only to the State interest for which the application was called in.

(8) The Minister must give a copy of the notice to—

(a) the applicant; and

(b) any concurrence agency; and

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(c) any submitter.

426 Minister's action on calling in application

(1) If the application is called in before the assessment manager makes a decision on the application—

(a) the Minister may assess and decide the application in the place of the assessment manager; or

(b) the Minister may—

(i) direct the assessment manager to assess or continue to assess the application; and

(ii) decide the application in the place of the assessment manager.

(2) If the application is called in after the assessment manager makes a decision on the application, the Minister may reassess and re-decide the application in the place of the assessment manager.

(3) Subsection (4) applies if the Minister assesses and decides, or reassesses and re-decides, the application.

(4) The Minister may, if the Minister considers it appropriate in the circumstances, assess and decide, or reassess and re-decide, the application having regard only to the State interest for which the application was called in.

427 Effect of call in

(1) If the Minister calls in an application, the Minister is the assessment manager from when the application is called in until the Minister gives the decision notice.

(2) If the application is called in before the assessment manager makes a decision on the application, the IDAS process restarts from the point in the IDAS process stated in the notice of the call in for that purpose.

(3) If the application is called in after the assessment manager makes a decision on the application, the decision is taken to be

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of no effect and the IDAS process restarts from the point in the IDAS process stated in the notice of the call in for that purpose.

(4) Until the Minister gives the decision notice on the application, a concurrence agency is taken to be an advice agency.

(5) The Minister's decision on the application is taken to be the original assessment manager's decision but a person may not appeal against the Minister's decision.

Note—

Also, see sections 456(1)(a) and (2) (Court may make declarations and orders) and 508 (Jurisdiction of committees).

(6) If an appeal was made before the application was called in, the appeal is of no further effect.

(7) If the Minister assesses and decides or reassesses and re-decides the application, part 5, division 3, subdivision 4 does not apply to the application.

(8) Despite subsections (2) and (3), if the Minister assesses and decides or reassesses and re-decides the application having regard only to the State interest for which it was called in—

(a) the assessment and decision provisions do not apply to the Minister's assessment of, and decision on, the application; and

(b) in assessing the application, the Minister may have regard to the common material for the application and any other matter the Minister considers relevant to the State interest.

428 Original assessment manager to assist Minister

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 or decide the application, including giving the Minister—

(a) all material about the application the assessment manager had before the application was called in; and

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(b) any material received by the assessment manager after the application is called in; and

(c) any other material relevant to the assessment of the application.

429 Minister's decision notice

(1) The Minister must give a copy of the decision notice to the original assessment manager when the Minister gives the decision notice to the applicant.

(2) Section 335(1)(e)(ii), (f)(i), and (o) does not apply for the decision notice.

(3) Also, if the Minister assesses and decides, or reassesses and re-decides, the application having regard only to the State interest stated in the call in notice, section 335(1)(m) and (n) does not apply for the decision notice.

430 Provision for application called in by regional planning Minister

(1) This section applies despite section 427(2) and (3) for an application called in by the regional planning Minister for a designated region.

(2) The regional planning Minister for the designated region may, by written notice given to the applicant and the relevant local government, suspend the IDAS process until the number of days stated in the notice after—

(a) publication of a notice under section 60 about the designated region's draft regional plan; or

(b) publication of a notice under section 64 about the designated region's regional plan.

(3) Despite section 427, the regional planning Minister for the designated region may by written notice, at the end of the suspension of the IDAS process, refer the application to the original assessment manager to assess and decide.

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(4) The notice mentioned in subsection (3) must state the point in the IDAS process from which, and the day on which, the process must restart for the application.

(5) For assessing the application, whether by the regional planning Minister for the designated region after acting under subsection (2) or the original assessment manager, section 311 does not apply to the designated region's regional plan or a planning scheme amendment reflecting the designated region's regional plan.

431 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.

432 Report about decision

(1) If the Minister calls in an application, the Minister must, after deciding the application, prepare a report about the Minister's decision.

(2) Without limiting subsection (1), the Minister must include the following in the report—

(a) a copy of the application;

(b) a copy of the notice given under section 425;

(c) a copy of any referral agency's response;

(d) an analysis of any submissions made about the application;

(e) a copy of the decision notice;

(f) the Minister's reasons for the decision;

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(g) a copy of any notice given under section 431.

(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.

433 Report about compliance with development approval

(1) The Minister may, by written notice given to the assessment manager, require the assessment manager to give the Minister a report about a person's compliance with a development approval given by the Minister for aspects of the application decided by the Minister.

(2) The notice must include—

(a) details about the matters to be included in the report; and

(b) the period within which the assessment manager must give the report.

(3) The assessment manager must comply with the requirement.

Part 12 Miscellaneous provision

434 Refunding fees

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

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Chapter 7 Appeals, offences and enforcement

Part 1 Planning and Environment Court

Division 1 Establishment and jurisdiction of court

435 Continuance of Planning and Environment Court

(1) The Planning and Environment Court, continued in existence under repealed IPA, section 4.1.1, is continued in existence under this Act.

(2) The court is a court of record.

(3) The court has a seal that must be judicially noticed.

436 Jurisdiction of court

(1) The court has the jurisdiction given to it under any Act, including the jurisdiction to hear and decide every appeal made under this Act for the review of a decision of a building and development committee.

(2) Subject to section 508, the jurisdiction given to the court under this Act is exclusive.

(3) Subject to division 14, every decision of the court is final and conclusive and is not to be impeached for any informality or want of form or be appealed against, reviewed, quashed or in any way called into question in any court.

(4) If a proceeding comes before the court under another Act, subsection (3) applies subject to the other Act.

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437 Proceedings open to public

Each proceeding must be open to the public, unless the rules of court provide otherwise.

Division 2 Powers of court

438 Subpoenas

(1) The court may summon a person as a witness and may—

(a) require the person to produce in evidence documents in the person's possession or power; and

(b) examine the person; and

(c) punish the person for not attending under the summons or for refusing to give evidence or for neglecting or refusing to produce the documents.

(2) Despite subsection (1), a person is not required to give evidence that may tend to incriminate the person.

(3) For subsection (1), a judge of the court has the same powers as a District Court judge.

439 Contempt and contravention of orders

(1) A judge of the court has the same power to punish a person for contempt of the court as the judge has to punish a person for contempt of the District Court.

(2) The *District Court of Queensland Act 1967*, section 129, applies in relation to the court in the same way as it applies in relation to the District Court.

(3) If a person at any time contravenes an order of the court, the person is also taken to be in contempt of the court.

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440 How court may deal with matters involving noncompliance

(1) Subsection (2) applies if the court finds a provision of this Act, or another Act in its application to this Act, has not been complied with, or has not been fully complied with.

(2) The court may deal with the matter in the way the court considers appropriate.

(3) To remove any doubt, it is declared that this section applies in relation to a development application that has lapsed or is not a properly made application.

441 Terms of orders etc.

The court may make an order, give leave or do anything else it is authorised to do on the terms the court considers appropriate.

442 Taking and recording evidence etc.

The court must take evidence on oath, affirmation, affidavit or declaration and must record the evidence.

Division 3 Constituting court

443 Constituting court

(1) The Governor in Council may, from time to time by gazette notice, notify the names of District Court judges who are to be the judges who constitute the court.

(2) The Governor in Council may notify the names of District Court judges to constitute the court for a stated period only.

(3) A District Court judge who constitutes the court may do so even if another District Court judge is constituting the court at the same time.

(4) A failure to notify the name of a District Court judge under subsection (1) does not affect, and never has affected, the

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validity of any decision or order made by the judge constituting, or purporting to constitute, the court.

(5) A decision or order of a District Court judge constituting, or purporting to constitute, the court after the expiry of the period stated for the judge under subsection (2) is not, and never has been, invalidly made merely because the decision or order was made after the expiry.

444 Jurisdiction of judges not impaired

The jurisdiction of a District Court judge named to constitute the court is not limited exclusively to the court.

Division 4 Rules and orders or directions about proceedings

445 Rules of court

(1) The Governor in Council, with the concurrence of 2 or more District Court judges of whom the Chief Judge is to be 1, may make rules about anything—

(a) required or permitted to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for the purposes of the court.

(2) Without limiting subsection (1), the rules may provide for the procedures of the court, including matters that may be dealt with by a court officer.

(3) The procedures of the court are governed by the rules.

(4) The rules may be uniform rules that apply to other courts.

(5) The rules are subordinate legislation.

446 Orders or directions

(1) The court may make an order or direction about the conduct of a proceeding it considers appropriate, even though the

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order or direction may be inconsistent with a provision of the rules.

(2) The Chief Judge of the District Court may issue directions of general application about the procedure of the court, even though the direction may be inconsistent with a provision of the rules.

(3) In deciding whether to make an order or direction, the interests of justice are paramount.

(4) If an order or direction of the court or the Chief Judge is inconsistent with a provision of the rules, the order or direction prevails to the extent of the inconsistency.

(5) The court or Chief Judge may at any time vary or revoke an order or direction made under this section.

Division 5 Parties to proceedings and court sittings

447 Where court may sit

The court may sit at any place.

448 Appearance

A party to a proceeding may appear personally or by lawyer or agent.

449 Adjournments

The court may—

(a) adjourn proceedings from time to time and from place to place; and

(b) adjourn proceedings to a time, or a time and place, to be fixed.

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450 What happens if judge dies or is incapacitated

(1) This section applies if, after starting to hear a proceeding, the judge hearing the proceeding (the ***first judge***) dies or can not continue with the proceeding for any reason, including, for example, absence or illness.

(2) Another judge may—

(a) after consulting with the parties—

(i) order the proceeding be reheard; or

(ii) adjourn the proceeding to allow the first judge to continue dealing with the proceeding when able; or

(b) with the consent of the parties, make an order the judge considers appropriate about—

(i) deciding the proceeding; or

(ii) completing the hearing of, and deciding, the proceeding.

(3) An order mentioned in subsection (2)(b) is taken to be a decision of the court.

451 Stating case for Court of Appeal's opinion

(1) This section applies if a question of law arises during a proceeding and the judge considers it desirable that the question be decided by the Court of Appeal.

(2) The judge may state the question in the form of a special case for the opinion of the Court of Appeal.

(3) The special case may be stated only during the proceeding mentioned in subsection (1).

(4) Until the Court of Appeal has decided the special case, the court must not make a decision to which the question is relevant.

(5) When the Court of Appeal has decided the special case, the court must not proceed in a way, or make a decision, that is inconsistent with the Court of Appeal's decision on the special case.

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Division 6 Registry and other court officers

452 Registrars and other court officers

(1) The principal registrar of the District Court at Brisbane is the principal registrar of the court.

(2) The registrars of the District Court are the registrars of the court.

(3) The other court officers of the District Court are the other court officers of the court.

453 Registries

(1) Each District Court registry is a registry of the court.

(2) The registry of the court at Brisbane is the principal registry of the court.

(3) The registries of the court are under the control of the principal registrar.

(4) The principal registrar may give directions to the registrars and other court officers employed in the registries.

454 Court records

(1) The principal registrar must keep records of decisions of the court and perform the other functions the court directs.

(2) The records of the court held at a place must be kept in the custody of the principal registrar.

455 Judicial notice

All courts and persons acting judicially must take judicial notice of the appointment and signature of every person holding office under this part.

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Division 7 Other court matters

456 Court may make declarations and orders

(1) Any person may bring a proceeding in the court for a declaration about any of the following—

(a) a matter done, to be done or that should have been done for this Act other than a matter for chapter 6, part 11;

(b) the construction of this Act, planning instruments under this Act and guidelines made under section 117, 627 or 630(1);

(c) the construction of a land use plan under the *Airport Assets (Restructuring and Disposal) Act 2008* and chapter 3, part 1 of that Act;

(d) the construction of the Brisbane port LUP under the Transport Infrastructure Act;

(e) the lawfulness of land use or development.

(2) However, an assessment manager may bring a proceeding about a matter done, to be done or that should have been done for chapter 6, part 11, division 2 for a development application if, when the application was called in under that part, the assessment manager—

(a) had not decided the application; or

(b) had refused the application.

(3) The proceeding may be brought on behalf of a person.

(4) If the proceeding is brought on behalf of a person, the person must consent or if the person is an unincorporated body, its committee or other controlling or governing body must consent.

(5) A person on whose behalf a proceeding is brought may contribute to, or pay, the legal costs incurred by the person bringing the proceeding.

(6) The court has jurisdiction to hear and decide a proceeding for a declaration about a matter mentioned in subsection (1).

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(7) The court may also make an order about a declaration made by the court.

(8) If a person starts a proceeding under this section, the person must, on the day the person starts the proceeding, give the chief executive written notice of the proceeding.

(9) 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.

457 Costs

(1) Costs of a proceeding or part of a proceeding, including an application in a proceeding, are in the discretion of the court.

(2) In making an order for costs, the court may have regard to any of the following matters—

(a) the relative success of the parties in the proceeding;

(b) the commercial interests of the parties in the proceeding;

(c) whether a party commenced or participated in the proceeding for an improper purpose;

(d) whether a party commenced or participated in the proceeding without reasonable prospects of success;

(e) if the proceeding is an appeal against a decision on a development application and the court decides the decision conflicts with a relevant instrument as defined under section 326(2) or 329(2), whether the matters mentioned in section 326(1) or 329(1) have been satisfied;

(f) if the proceeding is an appeal to which section 495(2) applies and there is a change to the application on which the decision being appealed was made, the circumstances relating to making the change and its effect on the proceeding;

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(g) whether the proceeding involves an issue that affects, or may affect, a matter of public interest, in addition to any personal right or interest of a party to the proceeding;

(h) whether a party has acted unreasonably leading up to the proceeding, including, for example, if the proceeding is an appeal against a decision on a development application, the party did not, in responding to an information request, give all the information reasonably requested before the decision was made;

(i) whether a party has acted unreasonably in the conduct of the proceeding, including, for example—

(i) by not giving another party reasonable notice of the party's intention to apply for an adjournment of the proceeding; or

(ii) by causing an adjournment of the proceeding because of the conduct of the party;

(j) whether a party has incurred costs because another party has introduced, or sought to introduce, new material;

(k) whether a party has incurred costs because another party has not complied with, or has not fully complied with, a provision of this Act or another Act relating to a matter the subject of the proceeding;

(l) whether a party has incurred costs because another party has defaulted in the court's procedural requirements;

(m) whether a party should have taken a more active part in a proceeding and did not do so.

(3) Subsection (2) does not limit the matters to which the court may have regard in making an order as to costs.

(4) Despite subsection (1), if—

(a) early in a proceeding the parties to the proceeding participate in a dispute resolution process under the ADR provisions or the *Planning and Environment Court Rules 2010*; and

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(b) the proceeding is resolved during the dispute resolution process or soon after it has been finalised;

each party to the proceeding must bear the party's own costs for the proceeding unless the court orders otherwise.

(5) If the parties to a proceeding under this part participate in a dispute resolution process under the ADR provisions or the *Planning and Environment Court Rules 2010* and the proceeding is not resolved, the costs of the proceeding include the costs of the dispute resolution process.

(6) Also, the costs of a proceeding include investigation costs for the following—

(a) a declaration under section 456(1)(e);

(b) an order made by the court under section 456(7) about a declaration made by the court;

(c) an appeal against the giving of an enforcement notice under section 473(1);

(d) a proceeding mentioned in section 601(1).

(7) Investigation costs for subsection (6) include costs the court decides were reasonably incurred by a party to the proceeding relating to investigations or gathering of evidence for the making of the declaration or order, the giving of the enforcement notice or the bringing of the proceeding.

(8) Subsections (9) to (15) apply to a proceeding despite subsection (1).

(9) Costs of a proceeding mentioned in section 601, including an application in a proceeding mentioned in that section, are in the discretion of the court but follow the event, unless the court orders otherwise.

(10) If a person brings a proceeding in the court for a declaration against an owner who sought the cancellation of a development approval without the consent of another person or entity mentioned in section 380(2), and the court makes the order, the court must award costs against the owner.

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(11) If a person brings an appeal under section 477 and the appeal is not withdrawn, the court must award costs against the relevant Minister or local government—

(a) if the appeal is upheld; and

(b) if the appeal is against a deemed refusal—even if the appeal is not upheld.

(12) If a person brings a proceeding in the court for a declaration requiring a designator to give, under section 227, a notice of intention to resume an interest in land under the Acquisition Act and the court makes an order about the declaration, the court must award costs against the designator.

(13) If a person brings a proceeding in the court for a declaration and order requiring an assessment manager to give, under section 267, an acknowledgement notice and the court makes the order, the court must award costs against the assessment manager.

(14) If the court allows an assessment manager or compliance assessor to withdraw from an appeal, the court must not award costs against the assessment manager or compliance assessor.

(15) The court may, if it considers it appropriate, order the costs to be decided under the appropriate procedure, and scale of costs, prescribed by law for proceedings in the District Court.

(16) An order made under this section may be made an order of the District Court and enforced in the District Court.

Note—

See section 491B(3) for when a party to a proceeding must bear the party's own costs.

458 Privileges, protection and immunity

A person who is one of the following has the same privileges, protection or immunity as the person would have if the proceeding were in the District Court—

(a) the judge presiding over the proceeding;

(b) a lawyer or agent appearing in the proceeding;

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(c) a witness attending in the proceeding.

459 Payment of witnesses

Every witness summoned is entitled to be paid reasonable expenses by the party requiring the attendance of the witness.

460 Evidence of local planning instruments

(1) If a chief executive officer of a local government is satisfied a document is a true copy of a local planning instrument, or a part of the local planning instrument, in force for the local government at a time stated in the document, the chief executive officer may so certify the document.

(2) In a proceeding, a document certified under subsection (1) is admissible in evidence as if it were the original local planning instrument or part of the instrument.

Division 8 Appeals to court relating to development applications and approvals

461 Appeals by applicants

(1) An applicant for a development application may appeal to the court against any of the following—

(a) the refusal, or the refusal in part, of the development application;

(b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;

(c) the decision to give a preliminary approval when a development permit was applied for;

(d) the length of a period mentioned in section 341;

(e) a deemed refusal of the development application.

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(2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the ***applicant's appeal period***) after—

(a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or

(b) otherwise—the day a decision notice was required to be given to the applicant.

(3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

462 Appeals by submitters—general

(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 about any part of the application requiring impact assessment under section 314; or

(b) the part of the approval relating to the assessment manager's decision under section 327.

(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 period mentioned in section 341 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 339(1)(b)(ii).

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(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.

463 Additional and extended appeal rights for submitters for particular development applications

(1) This section applies to a development application to which chapter 9, part 7 applies.

(2) A submitter of a properly made submission for the application may appeal to the court about a referral agency's response made by a concurrence agency for the application.

(3) However, the submitter may only appeal against a referral agency's response to the extent it relates to—

(a) development for an aquacultural ERA; or

(b) development that is—

(i) a material change of use of premises for aquaculture; or

(ii) operational work that is the removal, damage or destruction of a marine plant.

(4) Despite section 462(1), the submitter may appeal against the following matters for the application even if the matters relate to code assessment—

(a) a decision about a matter mentioned in section 462(2) if it is a decision of the chief executive;

(b) a referral agency's response mentioned in subsection (2).

464 Appeals by advice agency submitters

(1) Subsection (2) applies if an advice agency, in its response for an application, told the assessment manager to treat the response as a properly made submission.

(2) The advice agency may, within the limits of its jurisdiction, appeal to the court about—

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(a) any part of the approval relating to the assessment manager's decision about any part of the application requiring impact assessment under section 314; or

(b) any part of the approval relating to the assessment manager's decision under section 327.

(3) The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the advice agency as a submitter.

(4) However, if the advice agency has given the assessment manager a notice under section 339(1)(b)(ii), the advice agency may not appeal the decision.

465 Appeals about decisions relating to extensions for approvals

(1) For a development approval given for a development application, a person to whom a notice is given under section 389, other than a notice for a decision under section 386(2), may appeal to the court against the decision in the notice.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

(3) Also, a person who has made a request under section 383 may appeal to the court against a deemed refusal of the request.

(4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

466 Appeals about decisions relating to permissible changes

(1) For a development approval given for a development application, the following persons may appeal to the court against a decision on a request to make a permissible change to the approval—

(a) if the responsible entity for making the change is the assessment manager for the application—

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(i) the person who made the request; or

(ii) an entity that gave a notice under section 373 or a pre-request response notice about the request;

(b) if the responsible entity for making the change is a concurrence agency for the application—the person who made the request.

(2) The appeal must be started within 20 business days after the day the person is given notice of the decision on the request under section 376.

(3) Also, a person who has made a request under section 369 may appeal to the court against a deemed refusal of the request.

(4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

467 Appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency

(1) A person to whom a notice under section 378(9)(b) giving a decision to change or cancel a condition of a development approval has been given may appeal to the court against the decision in the notice.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

Division 9 Appeals to court about compliance assessment

468 Appeals against decision on request for compliance assessment

(1) A person to whom an action notice has been given under section 405(5) about a request for compliance assessment of development, a document or work may appeal to the court against the decision in the notice.

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(2) The appeal must be started within 20 business days after the notice is given to the person.

469 Appeals against condition imposed on compliance permit or certificate

(1) A person who is given a compliance permit or compliance certificate subject to any conditions may appeal to the court against the decision to impose the condition.

(2) The appeal must be started within 20 business days after the day the compliance permit or compliance certificate is given to the person.

470 Appeals against particular decisions about compliance assessment

(1) A person to whom any of the following notices have been given may appeal to the court against the decision in the notice—

(a) a notice of a decision on a request to change or withdraw an action notice;

(b) a notice under section 413(2)(c) about a decision to refuse a request to change a compliance permit or compliance certificate.

(2) The appeal must be started within 20 business days after the day the notice is given to the person.

Division 10 Appeals to court about other matters

472 Appeal about extension of period under s 98

(1) A person who has requested an extension under section 98(2) may appeal to the court against a refusal of the request.

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(2) An appeal under subsection (1) must be started within 20 business days after the day the person is given notice of the refusal.

(3) Also, a person who has made a request under section 98(2) may appeal to the court against a deemed refusal of the request.

(4) An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.

(5) However, an appeal under this section may only be about whether the refusal is so unreasonable that no reasonable relevant local government could have refused the request.

473 Appeals against enforcement notices

(1) A person who is given an enforcement notice may appeal to the court against the giving of the notice.

(2) The appeal must be started within 20 business days after the day notice is given to the person.

474 Stay of operation of enforcement notice

(1) The lodging of a notice of appeal about an enforcement notice stays the operation of the enforcement notice until—

(a) the court, on the application of the entity issuing the notice, decides otherwise; or

(b) the appeal is withdrawn; or

(c) the appeal is dismissed.

(2) However, subsection (1) does not apply if the enforcement notice is about—

(a) a work, if the enforcement notice states the entity believes the work is a danger to persons or a risk to public health; or

(b) stopping the demolition of a work; or

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(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; or

(f) development the assessing authority reasonably believes is causing erosion or sedimentation; or

(g) development the assessing authority reasonably believes is causing an environmental nuisance.

475 Appeals against local laws

(1) This section applies if—

(a) an applicant is dissatisfied with a decision of a local government or the conditions applied under a local law about the use of premises or the erection of a building or other structure; and

(b) the use is not prohibited development under the planning scheme or a temporary local planning instrument for the planning scheme area.

(2) The applicant may appeal to the court against the decision or the conditions applied.

(3) The appeal must be started within 20 business days after the day notice of the decision is given to the applicant.

475A Appeals against decisions under ch 8A

(1) A person who has been given an information notice for a decision of the Minister under chapter 8A, part 3 may appeal to the court against the decision.

(2) An appeal under subsection (1) must be started within 20 business days after the day the information notice is given.

(3) If the Minister decides, under chapter 8A, part 3, to register premises or to renew the registration of premises, a relevant

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person for the premises who is dissatisfied with the decision may appeal to the court against the decision.

(4) An appeal under subsection (3) must be started within 20 business days after the day notice about the registration or renewal is published under section 680Y.

(5) In this section—

relevant person, for premises, means any owner or occupier of land in the affected area for the premises.

476 Appeals against decisions on compensation claims

(1) A person who is dissatisfied with a decision under section 710 or 716 for the payment of compensation may appeal to the court against—

(a) the decision; or

(b) a deemed refusal of the claim.

(2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.

(3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

477 Appeals against decisions on requests to acquire designated land under hardship

(1) A person who is dissatisfied with a designator's decision to refuse a request made by the person under section 222 may appeal to the court against—

(a) the decision; or

(b) a deemed refusal of the request.

(2) An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.

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(3) An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

478 Appeals about infrastructure charges notice

(1) The recipient of an infrastructure charges notice may appeal to the court about the decision to give the notice.

(2) However, the appeal may be made only on 1 or more of the following grounds—

(a) the charge in the notice is so unreasonable that no reasonable relevant local government could have imposed it;

(b) the decision involved an error relating to—

(i) the application of the relevant adopted charge; or

(ii) the working out, for section 636, of additional demand; or

(iii) an offset or refund;

(c) there was no decision about an offset or refund;

Examples of possible errors in applying an adopted charge—

- the incorrect application of gross floor area for a non-residential development
- applying an incorrect 'use category' under an SPRP (adopted charges) to the development

(d) if the infrastructure charges notice states a refund will be given—the timing for giving the refund.

(3) To remove any doubt, it is declared that the appeal must not be about—

(a) the adopted charge itself; or

(b) for a decision about an offset or refund—

(i) the establishment cost of infrastructure identified in an LGIP; or

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(ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

(4) The appeal must be started within 20 business days after the day the recipient is given the relevant infrastructure charges notice.

478A Appeals against refusal of conversion application

(1) The applicant for a conversion application may appeal to the court against a refusal, or deemed refusal, of the application.

(2) The appeal must be started within the following period—

(a) if the applicant is given written notice of the refusal—20 business days after the day the applicant is given the notice;

(b) otherwise—20 business days after the end of the required period under section 660(5) for the application.

479 Appeals from building and development committees

(1) A party to a proceeding decided by a building and development committee may appeal to the court against the committee's decision, but only on the ground—

(a) of an error or mistake in law on the part of the committee; or

(b) that the committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

(2) An appeal against a building and development committee's decision must be started within 20 business days after the day notice of the committee's decision is given to the party.

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480 Court may remit matter to building and development committee

If an appeal includes a matter within the jurisdiction of a building and development committee and the court is satisfied the matter should be dealt with by a building and development committee, the court must remit the matter to the committee for decision.

Division 11 Making an appeal to court

481 How appeals to the court are started

(1) An appeal is started by lodging written notice of appeal with the registrar of the court.

(2) The notice of appeal must state the grounds of the appeal.

(3) The person starting the appeal must also comply with the rules of the court applying to the appeal.

(4) However, the court may hear and decide an appeal even if the person has not complied with subsection (3).

482 Notice of appeal to other parties—development applications and approvals

(1) An appellant under division 8 must give written notice of the appeal to—

(a) if the appellant is an applicant—

(i) the chief executive; and

(ii) the assessment manager; and

(iii) any concurrence agency; and

(iv) any principal submitter whose submission has not been withdrawn; and

(v) any advice agency treated as a submitter whose submission has not been withdrawn; or

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(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—

(i) the chief executive; and

(ii) the assessment manager; and

(iii) any referral agency; and

(iv) the applicant; or

(c) if the appellant is a person to whom a notice mentioned in section 465(1) has been given—

(i) the chief executive; and

(ii) the assessment manager for the development application to which the notice relates; and

(iii) any entity that was a concurrence agency for the development application to which the notice relates; and

(iv) the person who made the request under section 383 to which the notice relates, if the person is not the appellant; or

(d) if the appellant is a person mentioned in section 466(1)—

(i) the chief executive; and

(ii) the responsible entity for making the change to which the appeal relates; and

(iii) the person who made the request to which the appeal relates under section 369, if the person is not the appellant; and

(iv) if the responsible entity is the assessment manager—any entity that was a concurrence agency for the development application to which the notice of the decision on the request relates; or

(e) if the appellant is a person to whom a notice mentioned in section 467 has been given—the entity that gave the notice.

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(2) The notice must be given within—

(a) 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; or

(b) otherwise—10 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 485—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.

483 Notice of appeals to other parties—compliance assessment

(1) An appellant under division 9 must, within 10 business days after the day the appeal is started, give written notice of the appeal to—

(a) if the appellant is a person to whom an action notice, compliance permit or compliance certificate has been given—

(i) the compliance assessor who gave the notice, permit or certificate; and

(ii) if the compliance assessor was a nominated entity of a local government and a copy of the request for compliance assessment was given to the local government under section 402—the local government; or

(b) if the appellant is a person to whom a notice mentioned in section 470(1) has been given—

(i) the entity that gave the notice; and

(ii) if the entity that gave the notice was a nominated entity of a local government and the written

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agreement of the local government was required to give the notice—the local government.

(2) The notice must state the grounds of the appeal.

484 Notice of appeal to other parties—other matters

(1) An appellant under division 10 must, within 10 business days after the day the appeal is started, give written notice of the appeal to—

(a) if the appeal is under section 472 or 475—the local government; or

(b) if the appeal is under section 475A(1)—the Minister; or

(c) if the appeal is under section 475A(3)—the Minister and the owner of the registered premises; or

(d) if the appeal is under section 478—the entity that gave the notice the subject of the appeal; or

(e) if the appellant is a person to whom an enforcement notice is given—the entity that gave the notice and if the entity is not the local government, the local government; or

(f) if the appellant is a person dissatisfied with a decision about compensation—the local government that decided the claim; or

(g) if the appellant is a person dissatisfied with a decision about acquiring designated land—the designator; or

(h) if the appellant is a party to a proceeding decided by a building and development committee—the other party to the proceeding.

(2) The notice must state the grounds of the appeal.

485 Respondent and co-respondents for appeals under div 8

(1) Subsections (2) to (8) apply for appeals under sections 461 to 464.

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(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) Any submitter may elect to become a co-respondent for the appeal.

(5) If the appeal is about a concurrence agency's response, the concurrence agency is a co-respondent for the appeal.

(6) If the appeal is only about a concurrence agency's response, the assessment manager may apply to the court to withdraw from the appeal.

(7) The respondent and any co-respondents for an appeal are entitled to be heard in the appeal as a party to the appeal.

(8) A person to whom a notice of appeal is required to be given under section 482 and who is not the respondent or a co-respondent for the appeal may elect to be a co-respondent.

(9) For an appeal under section 465—

(a) the assessment manager is the respondent; and

(b) if the appeal is started by a concurrence agency that gave the assessment manager a notice under section 385—the person asking for the extension the subject of the appeal is a co-respondent; and

(c) any other person given notice of the appeal may elect to become a co-respondent.

(10) For an appeal under section 466—

(a) the responsible entity for making the change to which the appeal relates is the respondent; and

(b) if the responsible entity is the assessment manager—

(i) if the appeal is started by a person who gave a notice under section 373 or a pre-request response notice—the person who made the request for the change is a co-respondent; and

(ii) any other person given notice of the appeal may elect to become a co-respondent.

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(11) For an appeal under section 467, the respondent is the entity given notice of the appeal.

486 Respondent and co-respondents for appeals under div 9

(1) For an appeal under section 468 or 469—

(a) the compliance assessor is the respondent; and

(b) if the compliance assessor is a nominated entity of a local government and the appeal relates to a matter required by a local government—the local government is a co-respondent.

(2) However, if the appeal is only about a matter required by the local government, the compliance assessor may apply to the court to withdraw from the appeal.

(3) For an appeal under section 470—

(a) the entity that gave the notice to which the appeal relates is the respondent; and

(b) if the entity mentioned in paragraph (a) is a nominated entity of a local government and the local government did not agree to the request mentioned in section 470(1)—the local government is a co-respondent.

(4) However, if the appeal is only about the local government's refusal of the request, the entity that gave the notice to which the appeal relates may apply to the court to withdraw from the appeal.

487 Respondent and co-respondents for appeals under div 10

(1) This section applies if an entity is required under section 484 to be given a notice of an appeal.

(2) The entity given notice is the respondent for the appeal.

(3) However, if under a provision of the section more than 1 entity is required to be given notice, only the first entity mentioned in the provision is the respondent.

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(4) The second entity mentioned in the provision may elect to be a co-respondent.

488 How an entity may elect to be a co-respondent

An entity that is entitled to elect to be a co-respondent to an 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.

489 Minister entitled to be party to an appeal involving a State interest

If the Minister is satisfied an appeal involves a State interest, the Minister may, at any time before the appeal is decided, elect to be a party to the appeal by filing in the court a notice of election in the approved form.

490 Lodging appeal stops particular actions

(1) If an appeal, other than an appeal under section 465, 466 or 467, is started under division 8, the development must not be started until the appeal is decided or withdrawn.

(2) If an appeal is about a condition imposed on a compliance permit, the development must not be started until the appeal is decided or withdrawn.

(3) Despite subsections (1) and (2), if the court is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the court may allow the development or part of the development to start before the appeal is decided.

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Division 12 Alternative dispute resolution

491 ADR process applies to proceedings started under this part

(1) The *Civil Proceedings Act 2011*, part 6 (the ***ADR provisions***) applies to proceedings started under this part.

(2) To the extent there is any inconsistency between the cost provisions of the ADR provisions and the cost provisions of this Act, the cost provisions of the ADR provisions prevail.

(3) If a dispute in a proceeding under this part is referred to a dispute resolution process under the ADR provisions—

(a) the proceeding is not stayed unless the court orders otherwise; and

(b) the court must not decide the proceeding until the dispute resolution process under the ADR provisions has been finalised.

(4) In applying the ADR provisions to a proceeding under this part—

(a) a reference to a court is taken to be a reference to the Planning and Environment Court; and

(b) definitions and other interpretative provisions of the *Civil Proceedings Act 2011* relevant to the ADR provisions apply.

Division 12A ADR registrar

491A Definition for div 12A

In this division—

ADR registrar means a registrar or court officer of the District Court appointed as an ADR registrar of the court by the principal registrar of the court, in consultation with the Chief Judge of the District Court.

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491B Power of ADR registrar

(1) The Chief Judge of the District Court may issue directions about the matters in which the ADR registrar may exercise a power of the court under this part.

(2) The court may direct the ADR registrar in a particular matter to hear and decide a proceeding started under this part.

(3) Despite section 457(1), (4) and (9) to (14), if the court directs the ADR registrar under subsection (2) and the ADR registrar decides the proceeding, each party to the proceeding bears the party's own costs for the proceeding.

(4) In exercising a power of the court under this division, the ADR registrar must act as quickly, and with as little formality and technicality, as is consistent with a fair and appropriate consideration of the issues.

(5) A decision, direction or act of the ADR registrar made, given or done under this part, may be reviewed by the court.

(6) An application for the review of a decision, direction or act of the ADR registrar made, given or done under this part, must be made within—

(a) 21 days after the decision, direction or act complained of is made, given or done; or

(b) any further period allowed by the court.

491C Reference by ADR registrar

(1) If a proceeding before the ADR registrar appears to the ADR registrar to be proper for the decision of the court, the ADR registrar may refer the matter to the court.

(2) If the ADR registrar refers a matter to the court, the court may dispose of the matter or refer it back to the ADR registrar with any direction that the court considers appropriate.

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Division 13 Court process for appeals

492 Hearing procedures

The procedure for hearing an appeal is to be under the rules of court and the orders or directions of the court or the Chief Judge.

Note—

See section 446(4) for when an order or direction of the court or the Chief Judge prevails over the rules of court.

493 Who must prove case

(1) In an appeal by the applicant for a development application, it is for the appellant to establish that the appeal should be upheld.

(2) In an appeal by a submitter for a development application, it is for the applicant to establish that the appeal should be dismissed.

(3) In an appeal by an advice agency for a development application that told the applicant and the assessment manager to treat its response to the application as a submission for an appeal, it is for the applicant to establish that the appeal should be dismissed.

(4) In an appeal by a person who appeals under section 465, 466, 467, 472, 475, 475A(1) or 478, it is for the appellant to establish that the appeal should be upheld.

(5) In an appeal by a person who appeals under division 9, it is for the appellant to establish that the appeal should be upheld.

(6) In an appeal by a person who is given an enforcement notice, it is for the entity that gave the notice to establish that the appeal should be dismissed.

(7) In an appeal by a person who is dissatisfied with a decision about compensation, it is for the local government that decided the claim to establish that the appeal should be dismissed.

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(8) In an appeal by a person who is dissatisfied with a decision about acquiring designated land, it is for the designator to establish that the appeal should be dismissed.

(9) In an appeal by a party to a proceeding decided by a building and development committee, it is for the appellant to establish that the appeal should be upheld.

(10) In an appeal under section 475A(3) by a person who is dissatisfied with a decision to register or renew registration of premises under chapter 8A, it is for the owner of the registered premises to establish that the appeal should be dismissed.

494 Court may hear appeals together

The court may hear 2 or more appeals together.

495 Appeal by way of hearing anew

(1) An appeal is by way of hearing anew.

(2) However, if the appellant is the applicant or a submitter for a development application, the court—

(a) must decide the appeal based on the laws and policies applying when the application was made, but may give weight to any new laws and policies the court considers appropriate; and

(b) must not consider a change to the application on which the decision being appealed was made unless the change is only a minor change.

(3) Also, if the appellant is a person who made a request for compliance assessment, the court must decide the appeal based on the laws and policies applying when the request was made, but may give weight to any new laws and policies the court considers appropriate.

(4) To remove any doubt, it is declared that if the appellant is the applicant or a submitter for a development application—

(a) the court is not prevented from considering and making a decision about a ground of appeal (based on a

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concurrence agency's response) merely because this Act required the assessment manager to refuse the application or approve the application subject to conditions; and

(b) in an appeal against a decision about a development application (superseded planning scheme), the court also must—

(i) consider the aspect of the appeal relating to the assessment manager's consideration of the superseded planning scheme as if the application were made under the superseded planning scheme; and

(ii) in considering the aspect, disregard the planning scheme applying when the application was made.

(5) In addition, if the appellant is a person who made a request for compliance assessment—

(a) the court is not prevented from considering and making a decision about a ground of appeal (based on a response given by a local government under section 402) merely because this Act required the compliance assessor to give an action notice or include conditions in a compliance permit or compliance certificate; and

(b) in an appeal against a decision about a request for compliance assessment assessed and decided under a superseded planning scheme, the court also must—

(i) consider the appeal as if the request were made under the superseded planning scheme; and

(ii) disregard the planning scheme applying when the request was made.

496 Appeal decision

(1) In deciding an appeal the court may make the orders and directions it considers appropriate.

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(2) Without limiting subsection (1), the court may—

(a) confirm the decision appealed against; or

(b) change the decision appealed against; or

(c) set aside the decision appealed against and make a decision replacing the decision set aside.

(3) If the court acts under subsection (2)(b) or (c), the court's decision is taken, for this Act, other than this division, to be the decision of the entity making the appealed decision.

(4) If the appeal is an appeal against the decision of a building and development committee, the court may return the matter to the committee with a direction that the committee make its decision according to law.

497 Court may allow longer period to take an action

In this part, if an action must be taken within a specified time, the court may allow a longer time to take the action if the court is satisfied there are sufficient grounds for the extension.

Division 14 Appeals to Court of Appeal

498 Who may appeal to Court of Appeal

(1) A party to a proceeding may, under the rules of court, appeal a decision of the court on the ground—

(a) of error or mistake in law on the part of the court; or

(b) that the court had no jurisdiction to make the decision; or

(c) that the court exceeded its jurisdiction in making the decision.

(2) However, the party may appeal only with the leave of the Court of Appeal or a judge of appeal.

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499 When leave to appeal must be sought and appeal made

(1) A party intending to seek leave of the Court of Appeal to appeal against a decision of the court must, within 30 business days after the court's decision is given to the party, apply to the Court of Appeal for leave to appeal against the decision.

(2) If the Court of Appeal grants the leave, the notice of appeal against the decision must be served and filed within 30 business days after the Court of Appeal grants leave to appeal.

500 Power of Court of Appeal

The Court of Appeal may do 1 or more of the following—

(a) return the matter to the court or judge for decision in accordance with the Court of Appeal's decision;

(b) affirm, amend, or revoke and substitute another order or decision for, the court's or judge's order or decision;

(c) make an order the Court of Appeal considers appropriate.

501 Lodging appeal stops particular actions

(1) If a decision on an appeal under division 8, other than an appeal under section 465, 466 or 467, is appealed under this division, the development must not be started until the appeal under this division is decided or withdrawn.

(2) If a decision on an appeal about a condition imposed on a compliance permit is appealed under this division, the development must not be started until the appeal under this division is decided or withdrawn.

(3) Despite subsections (1) and (2), if the Court of Appeal is satisfied the outcome of the appeal before it would not be affected if the development or part of the development is started before the appeal is decided, the Court of Appeal may allow the development or part of the development to start before the appeal is decided.

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Part 2 Building and development dispute resolution committees

Division 1 Constitution and jurisdiction of committees

502 Committee membership

(1) A building and development committee must not consist of more than 5 members.

Note—

For the establishment of a building and development committee and the appointment of its chairperson, see section 554.

(2) If the committee is to hear only an appeal about a referral agency's response concerning the amenity and aesthetic impact of a building or structure, its chairperson must be an architect.

(3) If the committee is to hear only an appeal about an infrastructure charges notice or a conversion application, its chairperson must be a lawyer.

503 Membership continuity for proceeding

After a building and development committee is established for a committee proceeding, its membership must not be changed, except under section 554B.

505 Referee with conflict of interest not to be member of committee

(1) This section applies to a referee if the chief executive advises the referee that the chief executive proposes to appoint the referee as a member of a building and development committee, and either or both of the following apply—

(a) the committee is to hear a matter about premises—

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(i) the referee owns; or

(ii) in relation to which the referee was, is, or is to be, an architect, builder, drainer, engineer, planner, plumber, plumbing inspector, private certifier, site evaluator or soil assessor; or

(iii) in relation to which the referee has been, or will be, engaged by any party to the proposed proceeding in the referee's capacity as an accountant, lawyer or other professional; or

(iv) situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;

(b) the referee has a direct or indirect personal interest in a matter to be considered by the committee, and the interest could conflict with the proper performance of the referee's functions in relation to the committee's consideration of the matter.

(2) However, subsection (1) does not apply to a referee merely because the referee previously acted in relation to the preparation of a relevant local planning instrument.

(3) The referee must advise the chief executive that this section applies to the referee, and the chief executive must not appoint the referee to the committee.

506 Referee not to act as member of committee in particular cases

If a member of a building and development committee is aware, or becomes aware, that the member should not have been appointed to the committee, the member must not act as a member of the committee.

507 Remuneration of members of committee

(1) A member of a building and development committee must be paid the remuneration the Governor in Council decides.

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(2) A member who is a public service officer must not be paid remuneration if the officer acts as a member during the officer's ordinary hours of duty as an officer but is entitled to be paid expenses necessarily incurred by the officer in so acting.

508 Jurisdiction of committees

A building and development committee has jurisdiction—

(a) to hear and decide a proceeding for a declaration about a matter mentioned in division 3, other than a matter done for chapter 6, part 11; and

(b) to decide any matter that may be appealed to a building and development committee under divisions 4 to 7; and

(c) to decide any matter that under another Act may be appealed to a building and development committee.

Division 2 Other officials of building and development committees

509 Appointment of registrar and other officers

(1) The chief executive may at any time by gazette notice appoint a registrar of building and development committees, and other officers the chief executive considers appropriate to help building and development committees to perform their functions.

(2) A public service officer may be appointed under subsection (1) or may be assigned by the chief executive to perform functions to help building and development committees, and may hold the appointment or perform the functions concurrently with any other appointment the officer holds in the public service.

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Division 3 Committee declarations

Subdivision 1 Declarations

510 Declaration about whether development application is properly made

(1) An applicant for a development application may bring a proceeding before a building and development committee for a declaration about whether the application is a properly made application.

(2) The applicant must bring the proceeding within 20 business days after receiving notice under section 266 that the application is not a properly made application.

(3) The assessment manager may, within 10 business days after receiving a development application, bring a proceeding before a building and development committee for a declaration about whether the application is a properly made application.

(4) However, a person can not seek a declaration under this section about whether a development application includes or is supported by the written consent of the owner of the land the subject of the application.

511 Declaration about acknowledgement notices

(1) This section applies to a development application if the application is only for a material change of use of premises that involves the use of a prescribed building.

(2) The applicant for the development application may, within 20 business days after receiving an acknowledgement notice for the application, bring a proceeding before a building and development committee for a declaration about a matter stated in the notice.

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512 Declaration about lapsing of request for compliance assessment

A person requesting compliance assessment of development, a document or work, or the compliance assessor for the request, may bring a proceeding before a building and development committee for a declaration about whether the request has lapsed under this Act.

513 Declaration about change to development approval

(1) This section applies to a development approval if the approval is only for a material change of use of premises that involves the use of a prescribed building.

(2) A person may bring a proceeding before a building and development committee for a declaration that a change sought by the person to the approval is a permissible change, unless the responsible entity for making the change is the Minister or the Court.

(3) If the responsible entity for making the change is other than the Minister or the Court, the responsible entity may bring a proceeding before a building and development committee for a declaration about whether a proposed change to the approval is a permissible change.

Subdivision 2 Proceedings for declarations

514 How proceedings for declarations are started

(1) A person starts a proceeding for a declaration by lodging an application for the declaration, in the approved form, with the registrar of building and development committees.

(2) The application must be accompanied by the fee prescribed under a regulation.

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515 Fast-track proceedings for declarations

(1) A person who is entitled to bring a proceeding under this division may, by written request, ask the chief executive to appoint a building and development committee to start hearing the proceeding within 2 business days after starting the proceeding.

(2) A request made under subsection (1) must be accompanied by the fee prescribed under a regulation.

(3) The chief executive may grant or refuse the request.

(4) The chief executive may grant the request only if all the parties to the proceeding, including any person who could elect to become a co-respondent, have agreed in writing to the request.

(5) If the chief executive grants the request, the chief executive may as a condition of granting the request require the person making the request to pay—

(a) the reasonable costs of the respondent and any co-respondents for the proceeding after the request is granted; and

(b) an additional fee prescribed under a regulation.

(6) If the request is granted, any notice of the proceeding to be given under this subdivision must be given before any hearing for the proceeding starts.

516 Notice of proceedings to other parties

For a proceeding under this division, the registrar must, within 10 business days after the day the proceeding is started, give written notice of the proceeding to—

(a) for a proceeding under section 510—

(i) if the applicant is the person starting the proceeding—the assessment manager; or

(ii) if the assessment manager is the person starting the proceeding—the applicant; or

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(b) for a proceeding under section 511—the assessment manager; or

(c) for a proceeding under section 512—

(i) if the person starting the proceeding is the person who made the request for compliance assessment—the compliance assessor; or

(ii) if the person starting the proceeding is the compliance assessor—the person who made the request for compliance assessment; or

(d) for a proceeding under section 513—

(i) if the person starting the proceeding is the person seeking to change the development approval—the responsible entity for making the change; or

(ii) if the person starting the proceeding is the responsible entity for making the change—the person seeking to change the development approval.

517 Respondent for declarations

(1) If an applicant for a development application brings a proceeding for a declaration under section 510 or 511, the assessment manager is the respondent for the proceeding.

(2) If the assessment manager brings a proceeding for a declaration about a development application under section 510, the applicant is the respondent for the proceeding.

(3) If a person requesting compliance assessment of development, a document or work brings a proceeding for a declaration under section 512, the compliance assessor for the request is the respondent for the proceeding.

(4) If the compliance assessor for a request for compliance assessment of development, a document or work brings a proceeding for a declaration under section 512, the person

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requesting compliance assessment is the respondent for the proceeding.

(5) If a person seeking a change to a development approval brings a proceeding for a declaration under section 513 about the change, the responsible entity for making the change is the respondent for the proceeding.

(6) If the responsible entity for making a change to a development approval brings a proceeding for a declaration under section 513, the person seeking the change is the respondent for the proceeding.

(7) The respondent for a proceeding for a declaration is entitled to be heard in the proceeding as a party to the proceeding.

518 Minister entitled to be represented in proceeding involving a State interest

If the Minister is satisfied a proceeding for a declaration involves a State interest, the Minister is entitled to be represented in the proceeding.

Division 4 Appeals to committees about development applications and approvals

Subdivision 1 Appeals about particular material changes of use

519 Appeal by applicant—particular development application for material change of use of premises

(1) This section applies to a development application if the application is only for a material change of use of premises that involves the use of a prescribed building.

(2) However, this section does not apply to the development application if any part of the application required impact

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assessment and any properly made submissions were received by the assessment manager for the application.

(3) The applicant for the development application may appeal to a building and development committee against any of the following—

(a) the refusal, or the refusal in part, of the application;

(b) any condition of the development approval and another matter, other than the identification or inclusion of a code under section 242, stated in the development approval;

(c) the decision to give a preliminary approval when a development permit was applied for;

(d) the length of a period mentioned in section 341;

(e) a deemed refusal of the application.

(4) An appeal under subsection (3)(a), (b), (c) or (d) must be started within 20 business days (the ***applicant's appeal period***) after—

(a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or

(b) otherwise—the day a decision notice was required to be given to the applicant.

(5) An appeal under subsection (3)(e) may be started at any time after the last day a decision on the matter should have been made.

520 Appeal about decision relating to extension for development approval

(1) This section applies to a development approval if the approval is only for a material change of use of premises that involves the use of a prescribed building.

(2) A person to whom a notice is given under section 389 in relation to the development approval, other than a notice for a

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decision under section 386(2), may appeal to a building and development committee against a decision in the notice.

(3) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

521 Appeal about decisions relating to permissible changes

(1) This section applies to a development approval if the approval is only for a material change of use of premises that involves the use of a prescribed building.

(2) The following persons may appeal to a building and development committee against a decision on a request to make a permissible change to the development approval, other than a deemed refusal of the request—

(a) if the responsible entity for making the change is the assessment manager for the development application to which the approval relates—

(i) the person who made the request; or

(ii) an entity that gave a notice under section 373 or a pre-request response notice about the request;

(b) if the responsible entity for making the change is a concurrence agency for the development application—the person who made the request.

(3) The appeal must be started within 20 business days after the day the person is given notice of the decision on the request under section 376.

Subdivision 2 Appeals about conditions of particular development approvals

522 Appeal by applicant—condition of particular development approval

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

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(a) the application is only for a material change of use that involves the use of a building classified under the BCA as a class 2 building; and

(b) the proposed development is for premises of not more than 3 storeys; and

(c) the proposed development is for not more than 60 sole-occupancy units.

(2) However, this section does not apply to the development application if any part of the application required impact assessment and any properly made submissions were received by the assessment manager for the application.

(3) The applicant for the development application may appeal to a building and development committee against a condition of the development approval.

(4) The appeal must be started within 20 business days (the ***applicant's appeal period***) after—

(a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or

(b) otherwise—the day a decision notice was required to be given to the applicant.

(5) In this section—

sole-occupancy unit, in relation to a class 2 building, means a room or other part of the building used as a dwelling by a person to the exclusion of any other person.

storey means a space within a building between 2 floor levels, or a floor level and a ceiling or roof, other than—

(a) a space containing only—

(i) a lift shaft, stairway or meter room; or

(ii) a bathroom, shower room, laundry, water closet or other sanitary compartment; or

(iii) accommodation for not more than 3 motor vehicles; or

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(iv) a combination of any things mentioned in subparagraph (i), (ii) or (iii); or

(b) a mezzanine.

Division 5 Appeals to committees about compliance assessment

523 Appeal against decision on request for compliance assessment

(1) A person who is given an action notice about a request for compliance assessment of development, a document or work may appeal to a building and development committee against the decision in the notice.

(2) The appeal must be started within 20 business days after the day the notice is given to the person.

524 Appeal against condition imposed on compliance permit or certificate

(1) A person who is given a compliance permit or compliance certificate subject to any conditions may appeal to a building and development committee against the decision to impose the condition.

(2) The appeal must be started within 20 business days after the day the compliance permit or compliance certificate is given to the person.

525 Appeals against particular decisions about compliance assessment

(1) A person who is given any of the following notices may appeal to a building and development committee against the decision in the notice—

(a) a notice of a decision on a request to change or withdraw an action notice;

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(b) a notice under section 413(2)(c) about a decision to refuse to change a compliance permit or compliance certificate.

(2) The appeal must be started within 20 business days after the day the notice is given to the person.

Division 6 Appeals to committees about building, plumbing and drainage and other matters

Subdivision 1 Preliminary

526 Matters about which a person may appeal under div 6

An appeal to a building and development committee under this division may only be about—

(a) a matter under this Act that relates to the Building Act, other than a matter under that Act that may or must be decided by the *Queensland Building and Construction Commission*, or the *Plumbing and Drainage Act 2002*; or

(b) a matter that under another Act may be appealed to a building and development committee; or

(c) a matter prescribed under a regulation.

Subdivision 2 Appeals about development applications and approvals

527 Appeals by applicants

(1) An applicant for a development application may appeal to a building and development committee against any of the following—

(a) the refusal, or the refusal in part, of the application;

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(b) any condition of the development approval and another matter, other than the identification or inclusion of a code under section 242, stated in the development approval;

(c) the decision to give a preliminary approval when a development permit was applied for;

(d) the length of a period mentioned in section 341;

(e) a deemed refusal of the application.

(2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the ***applicant's appeal period***) after—

(a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or

(b) otherwise—the day a decision notice was required to be given to the applicant.

(3) An appeal under subsection (1)(e) may be started at any time after the last day a decision on the matter should have been made.

528 Appeal by advice agency

(1) An advice agency may, within the limits of its jurisdiction, appeal to a building and development committee about the giving of a development approval if the development application involves code assessment for the aspect of building work to be assessed against the Building Act.

(2) The appeal must be started—

(a) within 10 business days after the day the decision notice or negotiated decision notice is given to the advice agency; or

(b) for a deemed approval for which a decision notice or negotiated decision notice has not been given—within 20 business days after receiving a copy of the deemed approval notice for the application from the applicant.

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529 Appeal about decision relating to extension for development approval

(1) For a development approval given for a development application, a person to whom a notice is given under section 389, other than a notice for a decision under section 386(2), may appeal to a building and development committee against a decision in the notice.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

530 Appeal about decision relating to permissible changes

(1) For a development approval given for a development application, the following persons may appeal to a building and development committee against a decision on a request to make a permissible change to the approval, other than a deemed refusal of the request—

(a) if the responsible entity for making the change is the assessment manager for the application to which the approval relates—

(i) the person who made the request; or

(ii) an entity that gave a notice under section 373 or a pre-request response notice about the request;

(b) if the responsible entity for making the change is a concurrence agency for the application to which the approval relates—the person who made the request.

(2) The appeal must be started within 20 business days after the day the person is given notice of the decision on the request under section 376.

531 Appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency

(1) A person to whom a notice under section 378(9)(b), giving a decision to change or cancel a condition of a development

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approval, has been given may appeal to a building and development committee against the decision in the notice.

(2) The appeal must be started within 20 business days after the day the notice of the decision is given to the person.

Subdivision 3 Other matters

532 Appeals for building and plumbing and drainage matters

(1) If—

(a) a person has been given, or is entitled to be given—

(i) an information notice under the Building Act about a decision other than a decision under that Act made by the *Queensland Building and Construction Commission*; or

(ii) an information notice under the *Plumbing and Drainage Act 2002* about a decision under part 4 or 5 of that Act; or

(b) a person—

(i) was an applicant for a building development approval; and

(ii) is dissatisfied with a decision under the Building Act by a building certifier or referral agency about inspection of building work the subject of the approval;

the person may appeal against the decision to a building and development committee.

(2) An appeal under subsection (1) must be started within 20 business days after the day the person is given notice of the decision.

(3) If—

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(a) under the Building Act, a person makes an application other than a building development application to a local government; and

(b) the period required under that Act for the local government to decide the application (the ***decision period***) has passed; and

(c) the local government has not decided the application;

the person may appeal to a building and development committee against the lack of the decision and for the committee to decide the application as if it were the local government.

(4) An appeal under subsection (3) must be started within 20 business days after the end of the decision period.

533 Appeals against enforcement notices

(1) A person who is given an enforcement notice may appeal to a building and development committee against the giving of the notice.

(2) The appeal must be started within 20 business days after the day the notice is given to the person.

534 Stay of operation of enforcement notice

(1) The lodging of a notice of appeal about an enforcement notice stays the operation of the enforcement notice until—

(a) the building and development committee, on the application of the entity issuing the notice, decides otherwise; or

(b) the appeal is withdrawn; or

(c) the appeal is dismissed.

(2) However, subsection (1) does not apply if the enforcement notice is about—

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(a) a work, if the enforcement notice states the entity believes the work is a danger to persons or a risk to public health; or

(b) 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; or

(f) development the assessing authority reasonably believes is causing erosion or sedimentation; or

(g) development the assessing authority reasonably believes is causing an environmental nuisance.

Division 7 Appeals about particular charges

535 Appeals about infrastructure charges decisions

(1) The recipient of an infrastructure charges notice may appeal to a building and development committee about the decision to give the notice.

(2) However, the appeal may be made only on 1 or more of the following grounds—

(a) the decision involved an error relating to—

(i) the application of the relevant adopted charge; or

(ii) the working out, for section 636, of additional demand; or

(iii) an offset or refund;

(b) there was no decision about an offset or refund;

Examples of possible errors in applying an adopted charge—

- the incorrect application of gross floor area for a non-residential development

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- applying an incorrect 'use category' under an SPRP (adopted charges) to the development

(c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund.

(3) To remove any doubt, it is declared that the appeal must not be about—

(a) the adopted charge itself; or

(b) for a decision about an offset or refund—

(i) the establishment cost of infrastructure in an LGIP; or

(ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

(4) The appeal must be started within 20 business days after the day the recipient is given the relevant infrastructure charges notice.

535A Appeals against refusal of conversion application

(1) The applicant for a conversion application may appeal to a building and development committee against a refusal, or deemed refusal, of the application.

(2) The appeal must be started within the following period—

(a) if the applicant is given written notice of the refusal—20 business days after the day the applicant is given the notice;

(b) otherwise—20 business days after the end of the required period under section 660(5) for the application.

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Division 8 Making appeals to building and development committees

536 How appeals to committees are started

(1) A person starts an appeal by lodging written notice of appeal, in the approved form, with the registrar of building development committees.

(2) The notice of appeal must state the grounds of the appeal and be accompanied by the fee prescribed under a regulation.

537 Fast-track appeals

(1) A person who is entitled to start an appeal under this part, may, by written request, ask the chief executive to appoint a building and development committee to start hearing the appeal within 2 business days after starting the appeal.

(2) A request made under subsection (1) must be accompanied by the fee prescribed under a regulation.

(3) The chief executive may grant or refuse the request.

(4) The chief executive may grant the request only if all the parties to the appeal, including any person who could elect to become a co-respondent, have agreed in writing to the request.

(5) If the chief executive grants the request, the chief executive may as a condition of granting the request require the person making the request to pay—

(a) the reasonable costs of the respondent and any co-respondents for the appeal after the request is granted; and

(b) an additional fee prescribed under a regulation.

(6) If the request is granted, any notice of appeal to be given and any election to be a co-respondent to the appeal under this part must be given or made before any hearing for the appeal starts.

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538 Notice of appeal to other parties (under other Acts)

(1) For an appeal to a building and development committee under another Act, the registrar must, within 10 business days after the day the appeal is started, give written notice of the appeal to any other person the registrar considers appropriate.

(2) The notice must state the grounds of the appeal.

539 Notice of appeal to other parties (div 4)

(1) The registrar must, within 10 business days after the day the appeal is started, give written notice of an appeal under division 4 to—

(a) for an appeal under section 519—the assessment manager and any concurrence agency for an aspect of the development application the subject of the appeal; and

(b) for an appeal under section 520—

(i) the assessment manager and any concurrence agency for the development application the subject of the appeal; and

(ii) if the person who made the request for the extension is not the appellant—the person who made the request; and

(c) for an appeal under section 521—

(i) the responsible entity for making the change to which the appeal relates; and

(ii) if the responsible entity is the assessment manager—any entity that was a concurrence agency for the development application the subject of the appeal; and

(iii) if the person who made the request for the permissible change is not the appellant—the person who made the request; and

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(d) for an appeal under section 522—the assessment manager and any concurrence agency for an aspect of the development application the subject of the appeal.

(2) The notice must state—

(a) the grounds of the appeal; and

(b) if the person given the notice is not the respondent or a co-respondent under this division—that the person, within 10 business days after the day the notice is given, may elect to become a co-respondent to the appeal.

540 Notice of appeal to other parties (div 5)

(1) The registrar must, within 10 business days after the day the appeal is started, give written notice of an appeal under division 5 to—

(a) if the appellant is a person to whom an action notice, compliance permit or compliance certificate has been given—

(i) the compliance assessor who gave the notice, permit or certificate; and

(ii) if the compliance assessor was a nominated entity of a local government and a copy of the request for compliance assessment was given to the local government under section 402—the local government; or

(b) if the appellant is a person to whom a notice mentioned in section 525(1) has been given—

(i) the entity that gave the notice; and

(ii) if the entity that gave the notice was a nominated entity of a local government and the written agreement of the local government was required for the giving of the notice—the local government.

(2) The notice must state the grounds of the appeal.

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541 Notice of appeal to other parties (div 6)

(1) The registrar must, within 10 business days after the day the appeal is started, give written notice of an appeal under division 6 to—

(a) for an appeal under section 527—the assessment manager, the private certifier, if any, and any concurrence agency for an aspect of the development application the subject of the appeal; and

(b) for an appeal under section 528—

(i) the applicant for the development application the subject of the appeal; and

(ii) the assessment manager, the private certifier, if any, and any concurrence agency for an aspect of the development application the subject of the appeal; and

(c) for an appeal under section 529—

(i) the assessment manager, the private certifier, if any, and any concurrence agency for an aspect of the development application the subject of the appeal; and

(ii) if the person who made the request for the extension is not the appellant—the person who made the request; and

(d) for an appeal under section 530—

(i) the responsible entity for making the change; and

(ii) if the responsible entity is the assessment manager—the private certifier, if any, and any entity that was a concurrence agency for the development application the subject of the appeal; and

(iii) if the person who made the request for the permissible change is not the appellant—the person who made the request; and

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(e) for an appeal under section 531—the entity that gave the notice mentioned in the section; and

(f) for an appeal under section 532(1)—the entity that gave the notice or made the decision mentioned in the subsection; and

(g) for an appeal under section 532(3)—the local government to whom the application mentioned in the subsection was made; and

(h) for an appeal under section 533—the entity that gave the enforcement notice, and, if the entity is not the local government, the local government.

(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 this division and the appeal is other than under section 532 or 533—that the person, within 10 business days after the day the notice is given, may elect to become a co-respondent to the appeal.

542 Notice of appeal to other parties (s 535)

(1) The registrar must, within 10 business days after the day the appeal is started, give written notice of an appeal under section 535 to the entity that gave the relevant notice mentioned in section 535(1)(a).

(2) The notice must state the grounds of the appeal.

543 Respondent and co-respondents for appeals under s 519, 522 or 527

(1) This section applies to an appeal under section 519, 522 or 527 for a development application.

(2) The assessment manager is the respondent for the appeal.

(3) If the appeal is about a concurrence agency's response, the concurrence agency is a co-respondent for the appeal.

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(4) If the appeal is only about a concurrence agency's response, the assessment manager may apply to the building and development committee to withdraw from the appeal.

(5) A person to whom a notice of appeal is required to be given under section 539 or 541 and who is not the respondent or a co-respondent for the appeal under subsections (1) to (3) may elect to be a co-respondent.

544 Respondent and co-respondents for appeals under s 520 or 529

For an appeal under section 520 or 529—

(a) the assessment manager for the development application the subject of the appeal is the respondent for the appeal; and

(b) the person asking for the extension the subject of the appeal is a co-respondent, if the appeal is started by a concurrence agency that gave the assessment manager a notice under section 385; and

(c) any other person to whom a notice of the appeal is required to be given under section 539 or 541 for the appeal may elect to be a co-respondent.

545 Respondent and co-respondents for appeals under s 521 or 530

For an appeal under section 521 or 530—

(a) the responsible entity for making the change is the respondent for the appeal; and

(b) if the responsible entity is the assessment manager—

(i) if the appeal is started by a person who gave a notice under section 373 or a pre-request response notice—the person who made the request for the change is a co-respondent; and

(ii) any other person given notice of the appeal may elect to become a co-respondent.

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546 Respondent and co-respondents for appeals under s 528

For an appeal under section 528—

(a) the assessment manager for the development application the subject of the appeal is the respondent for the appeal; and

(b) the applicant for the development application is a co-respondent for the appeal; and

(c) any other person to whom a notice of the appeal is required to be given under section 541 may elect to be a co-respondent.

547 Respondent and co-respondents for appeals under s 531, 532, 533 or 535

(1) This section applies to an appeal under section 531, 532, 533 or 535.

(2) An entity required under section 541 or 542 to be given a notice of the appeal is the respondent for the appeal.

(3) However, if under section 541(1)(h) more than 1 entity is required to be given notice—

(a) the entity that gave the enforcement notice the subject of the appeal is the respondent; but

(b) the local government may elect to be a co-respondent.

548 Respondent and co-respondents for appeals under div 5

(1) For an appeal under section 523 or 524—

(a) the compliance assessor is the respondent; and

(b) if the compliance assessor is a nominated entity of a local government and the appeal relates to a matter required by a local government—the local government is a co-respondent.

(2) However, if the appeal is only about a matter required by the local government, the compliance assessor may apply to the

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building and development committee to withdraw from the appeal.

(3) For an appeal under section 525—

(a) the entity that gave the notice to which the appeal relates is the respondent; and

(b) if the entity mentioned in paragraph (a) is a nominated entity of a local government and the local government did not agree to the request mentioned in section 525(1)—the local government is a co-respondent.

(4) However, if the appeal is only about the local government's refusal of the request, the entity that gave the notice to which the appeal relates may apply to the building and development committee to withdraw from the appeal.

549 How a person may elect to be co-respondent

An entity elects to be a co-respondent by lodging in the building and development committee, within 10 business days after the day the notice of the appeal is given to the entity, a notice of election in the approved form.

550 Respondent and co-respondents to be heard in appeal

The respondent and any co-respondents for an appeal are each entitled to be heard in the appeal as a party to the appeal.

551 Registrar must ask assessment manager for material in particular proceedings

(1) If an appeal is about a deemed refusal or a deemed approval of a development application, the registrar must ask the assessment manager to give the registrar—

(a) all material, including plans and specifications, about the aspect of the application being appealed; and

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(b) a statement of the reasons the assessment manager had not decided the application during the decision-making period or extended decision-making period; and

(c) any other information the registrar requires.

(2) The assessment manager must give the material mentioned in subsection (1) within 10 business days after the day the registrar asks for the material.

552 Minister entitled to be represented in an appeal involving a State interest

If the Minister is satisfied an appeal involves a State interest, the Minister is entitled to be represented in the appeal.

553 Lodging appeal stops particular actions

(1) If an appeal is started under section 519, 522, 527 or 528 the development must not be started until the appeal is decided or withdrawn.

(2) If an appeal is about a condition imposed on a compliance permit, the development must not be started until the appeal is decided or withdrawn.

(3) Despite subsections (1) and (2), if the building and development committee is satisfied the outcome of the appeal would not be affected if the development or part of the development is started before the appeal is decided, the committee may allow the development or part of the development to start before the appeal is decided.

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Division 9 Process for appeals or proceedings for declarations in building and development committees

554 Action when committee proceeding starts

(1) This section applies when the registrar of building and development committees receives a document starting a committee proceeding within the period required under this Act and accompanied by the prescribed fee.

(2) The chief executive must—

(a) establish a building and development dispute resolution committee for the proceeding; and

(b) subject to section 502(2) and (3)—appoint 1 of the referees as the committee's chairperson.

(3) If a building and development committee is established, the registrar must give each party to the proceeding written notice of the establishment.

(4) Despite subsection (2), the chief executive may decide to end the committee proceeding without establishing a building and development committee if satisfied it is not reasonably practicable to do so.

Note—

See section 554B(2)(b), for examples of when it is not reasonably practicable.

(5) The chief executive must give all parties to the committee proceeding written notice of the decision to end the proceeding.

(5A) A notice under subsection (5) must state—

(a) that the person who started the ended proceeding may commence proceedings in the court; and

(b) how the court proceedings may be commenced.

(6) Despite another provision of this Act, a court appeal period for the matter the subject of the ended proceeding only begins

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when the person who started the ended proceeding is given a notice under subsection (5).

554A Power of chief executive to excuse irregularities

(1) This section applies if—

(a) the registrar of building and development committees receives a document purporting to start a committee proceeding, accompanied by the prescribed fee; and

(b) either of the following applies (the ***noncompliance***)—

(i) the document was not lodged within the period required under this Act;

(ii) the document does not otherwise comply with requirements under this Act for validly starting a proceeding of that type.

(2) The registrar must, in writing, refer the document to the chief executive together with the registrar's reasons for deciding there is a noncompliance.

(3) The chief executive must—

(a) consider the document and the noncompliance and decide whether the noncompliance would cause substantial injustice to anyone who would be a party to the committee proceeding; and

(b) give written notice to the registrar about the decision.

Example of no substantial injustice—

A notice of appeal contains an incorrect real property description of the land the subject of the appeal, but an attached supporting document contains the correct one.

(4) If the chief executive decides the noncompliance would cause substantial injustice, the registrar must give the person who lodged the document a written notice stating that the document is of no effect because of the noncompliance.

(5) If the chief executive does not decide the noncompliance would cause any substantial injustice, the chief executive may

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act under section 554 as if the noncompliance had not happened.

554B Power to end committee proceeding or establish new committee

(1) This section applies if the chief executive is satisfied the building and development committee established for a committee proceeding—

(a) does not have the expertise to hear or decide the proceeding; or

(b) is not able to make a decision for a proceeding.

(2) The chief executive may—

(a) suspend the proceeding and establish another building and development dispute resolution committee to re-hear the proceeding; or

(b) if satisfied it is not reasonably practicable to establish another building and development dispute resolution committee—decide to end the committee proceeding.

Examples of when it is not reasonably practicable—

- if there are no general referees or insufficient general referees appointed under section 571, who are not disqualified under section 505(3)
- if the referees who are available will not be able to decide the proceeding in a timely way

(3) The chief executive must give all parties to the committee proceeding written notice of an action taken or decision made under subsection (2).

(4) Subsections (5) and (6) apply if the chief executive decides to end the committee proceeding.

(5) The notice under subsection (3) must state—

(a) that the person who started the ended proceeding may commence proceedings in the court; and

(b) how the court proceedings may be commenced.

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(6) Despite another provision of this Act, a court appeal period for the matter the subject of the ended proceeding starts again when the person who started the ended proceeding is given a notice under subsection (3).

555 Procedures of committees

(1) A building and development committee must—

(a) conduct its business in the way prescribed under a regulation or, in so far as the way is not prescribed, as it considers appropriate; and

(b) make its decisions in a timely way.

(2) A building and development committee may—

(a) sit at the times and places it decides; and

(b) hear an appeal and application for a declaration together; and

(c) hear 2 or more appeals or applications for a declaration together.

556 Costs

Each party to an appeal or a proceeding for a declaration must bear the party's own costs for the appeal or proceeding.

557 Committee may allow longer period to take an action

(1) In this part, if an action must be taken within a specified time, the building and development committee may allow a longer time to take the action if the committee is satisfied there are sufficient grounds for the extension.

(2) Subsection (1) does not apply to a notice of appeal or an application for a declaration that is not received within the time stated for starting the appeal or proceeding for the declaration.

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558 Appeal or other proceedings may be by hearing or written submission

The chairperson of the building and development committee must decide whether the committee will—

(a) conduct a hearing for the appeal or application for the declaration; or

(b) if all the parties to the appeal or application agree—decide the appeal or application on the basis of written submissions.

559 Appeals or other proceedings by hearing

If the appeal or application for the declaration is to be decided by way of a hearing, the chairperson must—

(a) fix a time and place for the hearing; and

(b) give all the parties to the appeal or proceeding for the declaration written notice of the time and place of the hearing.

560 Right to representation at hearing

(1) A party to an appeal or a proceeding for a declaration may appear in person or be represented by an agent.

(2) A person must not be represented at an appeal or a proceeding for a declaration by an agent who is a lawyer.

561 Conduct of hearings

(1) In conducting a hearing, the building and development committee—

(a) need not proceed in a formal way; and

(b) is not bound by the rules of evidence; and

(c) may inform itself in the way it considers appropriate; and

(d) may seek the views of any person; and

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(e) must give all persons appearing before it reasonable opportunity to be heard; and

(f) may prohibit or regulate questioning in the hearing.

(2) The building and development committee may hear an appeal or conduct a proceeding for a declaration without hearing a person if the person is not present or represented at the time and place appointed for hearing the person.

(3) If, because of the time available for conducting the appeal or other proceeding, a person does not have an opportunity to be heard, or fully heard, the person may make a written submission about the matter to the building and development committee.

562 Appeals or other proceedings by written submission

(1) If the building and development committee is to decide the appeal or application for the declaration on the basis of written submissions, the chairperson must—

(a) decide a reasonable time within which the committee may accept the written submissions; and

(b) give the parties written notice that the appeal or application is to be decided on the basis of written submissions.

(2) The notice must ask for written submissions about the appellant's grounds of appeal, or the application, to be given to the chairperson within the time decided under subsection (1)(a).

563 Matters committee may consider in making a decision

(1) This section applies if the appeal or application for the declaration is about—

(a) a development application, including about a development approval given for a development application; or

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(b) a request for compliance assessment, including an action notice, compliance permit or compliance certificate.

(2) The building and development committee must decide the appeal or application based on the laws and policies applying when the development application or request was made, but may give the weight to any new laws and policies the committee considers appropriate.

564 Appeal decision

(1) In deciding an appeal the building and development committee may make the orders and directions it considers appropriate.

(2) Without limiting subsection (1), the building and development committee may—

(a) confirm the decision appealed against; or

(b) change the decision appealed against; or

(c) set aside the decision appealed against and make a decision replacing the decision set aside; or

(d) for a deemed refusal of a development application—

(i) order the assessment manager to decide the application or request by a stated time; and

(ii) if the assessment manager does not comply with the order under subparagraph (i)—decide the application; or

(e) if the application is for building work—with the consent of the appellant, vary the application so that the building and development committee is satisfied—

(i) the building, when erected, will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; and

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(ii) the aesthetics of the building, when erected, will not be in extreme conflict with the character of the building's neighbourhood.

(3) If the building and development committee acts under subsection (2)(b), (c), (d)(ii) or (e), the committee's decision is taken, for this Act, other than this division, to be the decision of the entity that made the decision being appealed.

(4) The chairperson of the building and development committee must give all parties to the appeal written notice of the committee's decision.

Note—

Any person receiving a notice may appeal the decision. See section 479 (Appeals from building and development committees).

(5) The decision of the building and development committee takes effect—

(a) if a party to the proceeding does not appeal against the decision—at the end of the period during which the committee's decision may be appealed; or

(b) if an appeal is made to the court against the committee's decision—subject to the decision of the court, when the appeal is finally decided or withdrawn.

565 Committee may make orders about declaration

A building and development committee may make orders about a declaration made by the committee.

566 Declaration decision

The chairperson of the building and development committee must give all parties to a proceeding for a declaration a written notice of the committee's declaration and any orders made by the committee for the declaration.

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567 When decision may be made without representation or submission

The building and development committee may decide an appeal or application for a declaration without the representations or submissions of a person who has been given a notice under section 559(b) or section 562(1)(b) if—

(a) for a hearing without written submissions—the person does not appear at the hearing; or

(b) for a hearing on the basis of written submissions—the person's submissions are not received within the time stated in the notice given under section 562(1).

568 Notice of compliance

If the building and development committee orders or directs the assessment manager, including a private certifier acting as an 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.

569 Publication of committee decisions

The registrar may publish decisions of a building and development committee under arrangements, and in the way, approved by the chief executive.

569A Power to refund fees for committee proceeding ended by chief executive

If, under section 554(4) or 554B(2)(b), the chief executive ends a committee proceeding, the chief executive may, but need not, refund the fee paid to start the proceeding.

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Division 10 Referees

570 Appointment of referees

(1) The Minister, by gazette notice, may appoint the number of persons the Minister considers appropriate to be general referees under this Act.

(2) Also, the chief executive may, by written notice, appoint other persons to be referees if satisfied each person has the qualifications, experience or qualifications and experience to be a referee.

(3) A public service officer may be appointed as a referee.

(4) A public service officer appointed under this section holds the appointment concurrently with any other appointment the officer holds in the public service.

571 Qualifications of general referees

A general referee may be appointed as a member of a building and development committee to hear and decide a matter only if the general referee has the qualifications, experience or qualifications and experience prescribed for the matter under a regulation.

572 Term of referee's appointment

(1) A person may be appointed—

(a) as a general referee—for the term the Minister considers appropriate, but the term must not be longer than 3 years; and

(b) as a referee appointed by the chief executive—for the term the chief executive considers appropriate, but the term must not be longer than 3 years.

(2) The term of appointment as mentioned in subsection (1) must be stated in the notice of appointment.

(3) A referee may be reappointed.

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(4) A referee may, at any time, resign the referee's appointment by signed notice given to—

(a) if the Minister appointed the referee—the Minister; or

(b) if the chief executive appointed the referee—the chief executive.

(5) An appointment may be cancelled at any time by—

(a) if the referee is a general referee—the Minister; or

(b) otherwise—the chief executive.

573 Referee to make declaration

(1) A person appointed as a referee must—

(a) sign a declaration in the approved form; and

(b) give the declaration to the chief executive as soon as the declaration is signed.

(2) The person must not sit as a member of a building and development committee until the declaration has been given to the chief executive.

Part 3 Provisions about offences, notices and orders

Division 1 Particular offences and exemptions

Subdivision 1 Development offences

574 Self-assessable development must comply with codes

A person must comply with applicable codes for self-assessable development.

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Maximum penalty—165 penalty units.

575 Carrying out development without compliance permit

(1) A person must not carry out development requiring compliance assessment unless there is an effective compliance permit for the development.

Maximum penalty—1665 penalty units.

(2) Subsection (1) applies subject to sections 584, 585 and 586.

576 Compliance with compliance permit or compliance certificate

(1) A person must not contravene a compliance permit, including any condition in the permit.

Maximum penalty—165 penalty units.

(2) A person must not contravene a condition in a compliance certificate.

Maximum penalty—165 penalty units.

(3) Subsections (1) and (2) apply subject to subdivision 2.

577 Making request for compliance assessment

(1) This section applies if, under a regulation or other instrument mentioned in section 397(4), a person is required to request compliance assessment of a document or work within a period stated in the regulation or other instrument.

(2) The person must comply with the requirement.

Maximum penalty—165 penalty units.

578 Carrying out assessable development without permit

(1) A person must not carry out assessable development unless there is an effective development permit for the development.

Maximum penalty—1665 penalty units.

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(2) Subsection (1)—

(a) applies subject to subdivision 2; and

(b) does not apply to development carried out under section 342(3).

(3) Despite subsection (1), the maximum penalty is 17000 penalty units if the assessable development is on a Queensland heritage place or local heritage place.

579 Particular assessable development must comply with codes

A person must comply with codes mentioned in section 233(2) when carrying out assessable development.

Maximum penalty—165 penalty units.

580 Compliance with development approval

(1) A person must not contravene a development approval, including any condition in the approval.

Maximum penalty—1665 penalty units.

(2) Subsection (1) applies subject to subdivision 2.

(3) In subsection (1)—

development approval includes an approval under the repealed LGP&E Act, section 4.4(5) or 4.7(5).

581 Offence to carry out prohibited development

(1) A person must not carry out development that is prohibited development.

Maximum penalty—1665 penalty units.

(2) Subsection (1) applies subject to section 584 and chapter 9, part 1.

(3) Also, subsection (1) does not apply to the carrying out of development under—

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(a) a development approval given for a development application (superseded planning scheme); or

(b) a compliance permit given for a request for compliance assessment assessed and decided under a superseded planning scheme.

582 Offences about the use of premises

Subject to subdivision 2, 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; or

Note—

See sections 80 (Status of planning scheme) and 102 (Status of temporary local planning instrument).

(ii) for premises that have been designated—any requirements about the use of land that are part of the designation.

Note—

See section 202 (What designations may include).

Maximum penalty—1665 penalty units.

Subdivision 2 Exemptions

584 General exemption for emergency development or use

(1) Sections 575, 576, 578, 580, 581 and 582 do not apply to a person if—

(a) the person carries out development or a use, other than operational work that is tidal works or building work to

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which section 585 or 586 applies, because of an emergency endangering—

(i) the life or health of a person; or

(ii) the structural safety of a building; or

(iii) the operation or safety of community infrastructure that is not a building; and

(b) the person gives written notice of the development or use to the assessing authority as soon as practicable after starting the development or use.

(2) However, subsection (1) does not apply if the person is required by an enforcement notice or order to stop carrying out the development or use.

585 Coastal emergency exemption for operational work that is tidal works

(1) This section applies to operational work (the ***emergency work***) if all of the following circumstances apply—

(a) the emergency work is tidal works;

(b) other than for this section, a development permit or compliance permit would have been required to carry out the emergency work;

(c) the emergency work is necessary to ensure the following are not, or are not likely to be, endangered by a coastal emergency—

(i) the structural safety of an existing structure for which there is a development permit or compliance permit for operational work that is tidal works; or

(ii) the life or health of a person; or

(iii) the structural safety of a building; or

(iv) the operation or safety of community infrastructure that is not a building.

(2) Sections 575, 576, 578, 580 and 582 do not apply to a person who carries out the emergency work if—

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(a) the person has made a safety management plan for the emergency work, after having regard to the following matters—

(i) the long-term safety of members of the public who have access to the emergency work or any structure to which the emergency work relates;

(ii) if practicable, the advice of any registered professional engineer who has conducted an audit of any structure to which the emergency work relates; and

(b) the person complies with the safety management plan; and

(c) the person takes reasonable precautions and exercises proper diligence to ensure the emergency work, and any structure to which the emergency work relates, are in a safe condition; and

(d) without limiting paragraph (c), the person commissions a registered professional engineer to conduct an audit of any structure to which the emergency work relates, to ensure the emergency work and the structure are in a safe condition; and

(e) as soon as reasonably practicable after starting the emergency work, the person—

(i) makes a development application for any development permit, or a request for compliance assessment for any compliance permit, that would otherwise be required for the work; and

(ii) gives the assessment manager for the application, or the compliance assessor for the request, written notice of the work and a copy of the safety management plan.

(3) However, subsection (2) does not apply if the person is required by an enforcement notice or order to stop carrying out the emergency work.

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(4) Also, subsection (2) ceases to apply if the development application is refused.

(5) If, under subsection (4), subsection (2) ceases to apply, the person must remove the emergency work as soon as practicable.

Maximum penalty—1665 penalty units.

586 Exemption for building work on Queensland heritage place or local heritage place

(1) This section applies to building work (the ***emergency building work***) if—

(a) the work is carried out on a Queensland heritage place or a local heritage place; and

(b) other than for this section, a development permit or compliance permit would have been required to carry out the work; and

(c) it is necessary to carry out the work because of an emergency endangering—

(i) the life or health of a person; or

(ii) the structural safety of a building; or

(iii) the operation or safety of community infrastructure that is not a building.

(2) Sections 575, 576, 578, 580 and 582 do not apply to a person who carries out the emergency building work if—

(a) before starting the work and if practicable, the person obtains the advice of a registered professional engineer about the work; and

(b) the person takes all reasonable steps—

(i) to ensure the work is reversible; or

(ii) if the work is not reversible—to limit the impact of the work on the cultural heritage significance of the Queensland heritage place or local heritage place; and

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(c) as soon as reasonably practicable after starting the work, the person—

(i) makes a development application for any development permit, or a request for compliance assessment for any compliance permit, that would otherwise be required for the work; and

(ii) gives the assessment manager for the application, or the compliance assessor for the request, written notice of the work.

(3) However, subsection (2) does not apply if the person is required by an enforcement notice or order to stop carrying out the emergency building work.

(4) Also, subsection (2) ceases to apply if the development application mentioned in subsection (2)(c) is refused.

(5) If, under subsection (4), subsection (2) ceases to apply, the person must remove the emergency building work as soon as practicable.

Maximum penalty—1665 penalty units.

Subdivision 3 False or misleading documents or declarations

587 False or misleading document or declaration

(1) A person must not give an assessment manager a notice under section 275, 300, 301 or 749 that is false or misleading.

Maximum penalty—1665 penalty units.

(2) A person must not give to any of the following entities a document containing information that the person knows is false or misleading in a material particular—

(a) the assessment manager;

(b) a concurrence agency;

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(c) a responsible entity for making a permissible change to a development approval;

(d) a compliance assessor.

Maximum penalty—1665 penalty units.

(3) A person must not give a declaration to an assessment manager under section 260(1)(e)(ii) that the person knows is false or misleading.

Maximum penalty—1665 penalty units.

Division 2 Show cause notices

588 Giving show cause notice

(1) This section applies if the assessing authority reasonably believes a person has committed, or is committing, a development offence.

(2) Before giving an enforcement notice about the development offence, the assessing authority must give the person a notice (a ***show cause notice***) inviting the person to show cause why the enforcement notice should not be given.

(3) Despite subsection (2), the assessing authority need not give a show cause notice if it reasonably considers it is not appropriate in the circumstances to give the notice.

Example—

An assessing authority might not give a show cause notice if it considers urgent action is necessary to address a danger to public health or safety or giving the notice would be likely to adversely affect the effectiveness of the enforcement notice.

589 General requirements of show cause notice

(1) A show cause notice must—

(a) be in writing; and

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(b) outline the facts and circumstances forming the basis for the assessing authority's belief that an enforcement notice should be given to the person; and

(c) state that representations may be made about the show cause notice; and

(d) state how the representations may be made; and

(e) state where the representations may be made or sent; and

(f) state—

(i) a day and time for making the representations; or

(ii) a period within which the representations must be made.

(2) The day or period stated in the notice must be, or must end, at least 20 business days after the notice is given.

Division 3 Enforcement notices

590 Giving enforcement notice

(1) If an assessing authority reasonably believes a person has committed, or is committing, a development offence, the authority may give a notice (an ***enforcement notice***) to the person requiring the person to do either or both of the following—

(a) to refrain from committing the offence;

(b) to remedy the commission of the offence in the way stated in the notice.

Note—

A person who receives an enforcement notice may appeal against the notice under section 473 or 533 (Appeals against enforcement notices).

(2) If the assessing authority giving the notice reasonably believes the person has committed, or is committing, the development offence in a local government area and the assessing authority

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is not the local government, the assessing authority must also give the local government a copy of the notice.

(3) If the assessing authority gives the local government a copy of the notice under subsection (2) and the notice is later withdrawn, the assessing authority must give the local government written notice of the withdrawal.

(4) If a private certifier is engaged for an aspect of a development, the assessing authority must not give an enforcement notice in relation to the aspect until the assessing authority has consulted with the private certifier about the giving of the notice.

(5) If the assessing authority is the private certifier, the assessing authority must not give an enforcement notice until the assessing authority has consulted with the assessment manager about the giving of the notice.

(6) Subsections (4) and (5) do not apply if the assessing authority reasonably believes the work, in relation to which the enforcement notice is to be given, is dangerous.

(7) If the assessing authority is the private certifier or the local government, the assessing authority may not delegate its power to give an enforcement notice ordering the demolition of a building.

(8) An enforcement notice requiring any person carrying out development to stop carrying out the development may be given by fixing the notice to the premises, or the building or structure on the premises, in a way that a person entering the premises would normally see the notice.

(9) If, in relation to a development offence involving premises, the person who committed the offence is not the owner of the premises, the assessing authority may also give an enforcement notice to the owner requiring the owner to remedy the commission of the offence in the way stated in the notice.

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591 Restriction on giving enforcement notice

(1) This section applies if the assessing authority has given a person a show cause notice about a development offence.

(2) The assessing authority may give the person an enforcement notice about the development offence only if the assessing authority—

(a) has considered all representations made by the person about the show cause notice within the period stated in the notice; and

(b) still believes it is appropriate to give the enforcement notice.

592 Specific requirements of enforcement notice

(1) Without limiting specific requirements an enforcement notice may impose, a notice may require a person to do any of the following—

(a) to stop carrying out development;

(b) to stop a stated use of a premises;

(c) to demolish or remove a work;

(d) to restore, as far as practicable, premises to the condition the premises were in immediately before development was started;

(e) to do, or not to do, another act to ensure development complies with a development approval, a compliance permit or a code;

(f) to apply for a development permit;

(g) to make a request under section 401 for compliance assessment of development, a document or work requiring compliance assessment;

(h) if the assessing authority reasonably believes a work is dangerous—

(i) to repair or rectify the work; or

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(ii) to secure the work, whether by a system of supports or in another way; or

(iii) to fence off the work to protect persons;

(i) to prepare and submit to the assessing authority a compliance program demonstrating how compliance with the enforcement notice will be achieved.

(2) However, a person may be required to demolish or remove a work only if the assessing authority reasonably believes it is not possible and practical to take steps—

(a) to make the work comply with a development approval, a compliance permit or a code; or

(b) if the work is dangerous—to remove the danger.

593 General requirements of enforcement notices

(1) An enforcement notice must—

(a) be in writing; and

(b) describe the nature of the alleged offence; and

(c) inform the person to whom the notice is given of the person's right to appeal against the giving of the notice.

(2) If an enforcement notice requires a person to do an act involving the carrying out of work, it also must give details of the work involved.

(3) If an enforcement notice requires a person to refrain from doing an act, it also must state either—

(a) a period for which the requirement applies; or

(b) that the requirement applies until further notice.

(4) If an enforcement notice requires a person to do an act, it also must state a period within which the act is required to be done.

(5) If an enforcement notice requires a person to do more than 1 act, it may state different periods within which the acts are required to be done.

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594 Offences relating to enforcement notices

(1) A person who is given an enforcement notice must comply with the notice.

Maximum penalty—1665 penalty units.

(2) A person must not damage, deface or remove an enforcement notice given under section 590(8).

Maximum penalty—1665 penalty units.

595 Processing application or request required by enforcement notice or show cause notice

If a person applies for a preliminary approval or development permit or makes a request for compliance assessment of development under section 401 as required by an enforcement notice or in response to a show cause 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; and

(c) if the person appeals against the decision on the application or request—must take all necessary and reasonable steps to enable the appeal to be decided by the court as quickly as possible, unless the person has a reasonable excuse.

Maximum penalty—1665 penalty units.

596 Assessing authority may take action

(1) If a person to whom an enforcement notice is given contravenes the notice by not doing something, the assessing authority, if it is not a local government, may do the thing.

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Note—

If the assessing authority is a local government, it has similar powers and may recover its costs. See the Local Government Act, section 142 and the City of Brisbane Act, section 132.

(2) Any reasonable costs or expenses incurred by an assessing authority in doing anything under subsection (1) may be recovered by the authority as a debt owing to it by the person to whom the notice was given.

Division 4 Offence proceedings in Magistrates Court

597 Proceedings for offences

(1) A person may bring a proceeding in a Magistrates Court on a complaint to prosecute another person for an offence against this part.

(2) The person may bring the proceeding whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

(3) However, a proceeding may only be brought by the assessing authority for an offence under—

(a) section 574, 578 or 580 about the building assessment provisions; or

(b) section 579, 587, 594 or 595.

598 Proceeding brought in a representative capacity

(1) A proceeding under section 597 may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

(a) if the proceeding is brought on behalf of a body of persons or a corporation—the consent of the members of the governing body;

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(b) if the proceeding is brought on behalf of an individual—the consent of the individual.

599 Magistrates Court may make orders

(1) After hearing the complaint, the Magistrates Court may make an order on the defendant it considers appropriate.

(2) The order may be made in addition to, or in substitution for, any penalty the court may otherwise impose.

(3) The order may require the defendant—

(a) to stop development or carrying on a use; or

(b) to demolish or remove a work; or

(c) to restore, as far as practicable, premises to the condition the premises were in immediately before development or use of the premises started; or

(d) to do, or not to do, another act to ensure development or use of the premises complies with a development approval, a compliance permit or a code; or

(e) for development that has started—to apply for a development permit; or

(f) to make a request under section 401 for compliance assessment of development, a document or work requiring compliance assessment; or

(g) if the court believes a work is dangerous—

(i) to repair or rectify the work; or

(ii) to secure the work.

(4) The order must state the time, or period, within which the order must be complied with.

(5) A person who contravenes the order commits an offence against this Act.

Maximum penalty—1665 penalty units or imprisonment for 12 months.

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(6) If the order states that contravention of the order is a public nuisance, an assessing authority, other than a local government, may undertake any work necessary to remove the nuisance.

(7) If an assessing authority carries out works under subsection (6), it may recover the reasonable cost of the works as a debt owing to the assessing authority from the person to whom the order was given.

600 Costs involved in bringing proceeding

If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

Division 5 Enforcement orders of court

601 Proceeding for orders

(1) A person may bring a proceeding in the court—

(a) for an order to remedy or restrain the commission of a development offence (an ***enforcement order***); or

(b) if the person has brought a proceeding under paragraph (a) and the court has not decided the proceeding—for an order under section 603 (an ***interim enforcement order***); or

(c) to cancel or change an enforcement order or interim enforcement order.

(2) However, if the offence under subsection (1)(a) is an offence under section 574, 578 or 580 about the building assessment provisions, the proceeding may be brought only by the assessing authority.

(3) The person may bring a proceeding under subsection (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

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602 Proceeding brought in a representative capacity

(1) A proceeding under section 601 may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

(a) if the proceeding is brought on behalf of a body of persons or a corporation—the consent of the members of the governing body;

(b) if the proceeding is brought on behalf of an individual—the consent of the individual.

603 Making interim enforcement order

(1) The court may make an interim enforcement order pending a decision of the proceeding if the court is satisfied it would be appropriate to make the order.

(2) The court may make the order subject to conditions, including a condition requiring the applicant for the order to give an undertaking to pay costs resulting from damage suffered by the respondent if the proceeding is unsuccessful.

604 Making enforcement order

(1) The court may make an enforcement order if the court is satisfied the offence—

(a) has been committed; or

(b) will be committed unless restrained.

(2) If the court is satisfied the offence has been committed, the court may make an enforcement order whether or not there has been a prosecution for the offence under division 4.

605 Effect of orders

(1) An enforcement order or an interim enforcement order may direct the respondent—

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(a) to stop an activity that constitutes, or will constitute, a development offence; or

(b) not to start an activity that will constitute a development offence; or

(c) to do anything required to stop committing a development offence; or

(d) to return anything to a condition as close as practicable to the condition it was in immediately before a development offence was committed; or

(e) to do anything about a development or use to comply with this Act.

(2) Without limiting the court's powers, the court may make an order requiring—

(a) the repair, demolition or removal of a building; or

(b) for a development offence relating to the clearing of vegetation on freehold land—

(i) rehabilitation or restoration of the area cleared; or

(ii) if the area cleared is not capable of being rehabilitated or restored—the planting and nurturing of stated vegetation on a stated area of equivalent size.

(3) An enforcement order or an interim enforcement order—

(a) may be in terms the court considers appropriate to secure compliance with this Act; and

(b) must state the time by which the order is to be complied with.

606 Court's powers about orders

(1) The court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—

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(a) it appears to the court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or

(b) the person has previously engaged in an activity of the kind; or

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

(2) The court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—

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

(b) the person has previously failed to do a thing of the kind; or

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

(3) The court may cancel or change an enforcement order or interim enforcement order.

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

607 Costs involved in bringing proceeding

If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

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Division 6 Application of Acts

608 Application of other Acts

(1) This section applies if another Act—

(a) specifies monetary penalties for offences about development greater or less than the penalties specified in this part; or

(b) provides that an activity specified in this part as a development offence is not an offence; or

(c) contains provisions about the carrying out of development in an emergency; or

(d) includes requirements about enforcement notices that are different from the requirements of this part; or

(e) includes provisions about the issuing of other notices having the same effect as enforcement notices; or

(f) includes requirements about proceedings for the prosecution for development offences or other offences that are different from the requirements of this part; or

(g) includes requirements about proceedings for enforcement orders that are different from the requirements of this part.

(2) The provisions of the other Act prevail over the provisions of this part to the extent of any inconsistency.

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Part 4 Legal proceedings

Division 1 Proceedings

609 Summary proceedings for offences

Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.

610 Limitation on time for starting proceedings

A proceeding for an offence against this Act must start—

(a) within 1 year after the commission of the offence; or

(b) within 6 months after the offence comes to the complainant's knowledge.

611 Executive officers must ensure corporation complies with Act

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer

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exercised reasonable diligence to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Division 2 Fines and costs

612 When fines payable to local government

(1) This section applies if—

(a) the assessing authority by which the administration and enforcement of a matter is carried out is a local government; and

(b) a proceeding for an offence about the matter is taken by the local government; and

(c) a court imposes a fine for the offence.

(2) The fine must be paid to the local government.

613 Order for compensation or remedial action

(1) This section applies if—

(a) a person is convicted of a development offence; and

(b) the court convicting the person finds that, because of the commission of the offence, another person—

(i) has suffered loss of income; or

(ii) has suffered a reduction in the value of, or damage to, property; or

(iii) has incurred costs or expenses in replacing or repairing property or in preventing or minimising, or attempting to prevent or minimise, a loss, reduction or damage mentioned in subparagraph (i) or (ii).

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(2) The court may order the person to do either or both of the following—

(a) pay to the other person an amount of compensation the court considers appropriate for the loss, reduction or damage suffered or costs or expenses incurred;

(b) take stated remedial action the court considers appropriate.

(3) An order under subsection (2) is in addition to the imposition of a penalty and any other order under this Act.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

614 Recovery of costs of investigation

(1) This section applies if—

(a) a person is convicted of an offence against this Act; and

(b) the court convicting the person finds the assessing authority has reasonably incurred costs and expenses in taking a sample or conducting an inspection, test, measurement or analysis during the investigation of the offence; and

(c) the assessing authority applies for an order against the person for the payment of the costs and expenses.

(2) The court may order the person to pay to the assessing authority the reasonable costs and expenses incurred by the authority if it is satisfied it would be just to make the order in the circumstances of the particular case.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

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Division 3 Evidence

615 Application of div 3

This division applies to a proceeding under or in relation to this Act.

616 Appointments and authority

It is not necessary to prove—

(a) the appointment of the chief executive or the chief executive officer, however called, of an assessing authority; or

(b) the authority of the chief executive or the chief executive officer, however called, of an assessing authority to do anything under this Act.

617 Signatures

A signature purporting to be the signature of the chief executive or the chief executive officer, however called, of an assessing authority is evidence of the signature it purports to be.

618 Matter coming to complainant's knowledge

In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

619 Instruments, equipment and installations

Any instrument, equipment or installation prescribed under a regulation that is used by an appropriately qualified person in compliance with any conditions prescribed under a regulation is taken to be accurate and precise in the absence of evidence to the contrary.

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620 Analyst's certificate or report

A certificate or report purporting to be signed by an appropriately qualified person and stating any of the following matters is evidence of the matter—

(a) the person's qualifications;

(b) the person took, or received from a stated person, a stated sample;

(c) the person analysed the sample on a stated day, or during a stated period, and at a stated place;

(d) the results of the analysis.

621 Evidence of planning instruments or notices of designation

(1) In a proceeding, a certified copy of a planning instrument or a notice of designation is evidence of the content of the instrument or notice.

(2) All courts, judges and persons acting judicially must take judicial notice of a certified copy of a planning instrument or a notice of designation.

(3) In a proceeding, a copy of the gazette or newspaper containing a notice about the making of a planning instrument is evidence of the matters stated in the notice.

622 Planning instruments presumed to be within jurisdiction

In a proceeding, the following are presumed unless the issue is raised—

(a) the competence of a Minister to make a planning instrument;

(b) the competence of a local government to make a local planning instrument.

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623 Evidentiary aids generally

A certificate purporting to be signed by the chief executive officer, however called, of an assessing authority stating any of the following matters is evidence of the matter—

(a) a stated document is—

(i) an appointment or a copy of an appointment; or

(ii) a direction or decision, or a copy of a direction or decision, given or made under this Act; or

(iii) a notice, order, permit or other document, or a copy of a notice, order, permit or other document, given under this Act;

(b) on a stated day, or during a stated period, a stated person was or was not the holder of a development permit or a compliance permit for stated development, or a compliance certificate for a stated document or work;

(c) on a stated day, or during a stated period, a development permit or compliance permit—

(i) was or was not in force for a stated person or development; or

(ii) was or was not subject to a stated condition;

(d) on a stated day, or during a stated period, a compliance certificate—

(i) was or was not in force for a stated person, document or work; or

(ii) was or was not subject to a stated condition;

(e) on a stated day, a stated person was given a stated notice or direction under this Act;

(f) a stated amount is payable under this Act by a stated person and has not been paid.

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624 Responsibility for acts or omissions of representatives

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

representative means—

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

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

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

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

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

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Chapter 8 Infrastructure

Part 1 Preliminary

625 Simplified outline of chapter

(1) Part 1, other than this section, states interpretative provisions.

(2) Part 2—

(a) authorises local governments to do the following for development approvals—

(i) for trunk infrastructure, either or both of the following—

(A) adopt, by resolution, charges for development infrastructure and levy charges in accordance with the resolution;

(B) impose particular conditions about development infrastructure;

(ii) for non-trunk infrastructure, impose particular conditions about development infrastructure; and

(b) provides for a State planning regulatory provision to govern local government adopted charges and charges by distributor-retailers under the SEQ Water Act for trunk infrastructure.

(3) Part 3 authorises State infrastructure providers to impose particular conditions on development approvals about infrastructure.

(4) Part 4 provides for agreements between public sector entities and others about infrastructure.

(5) Part 5 contains miscellaneous provisions.

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626 Extension of chapter to permissible changes, extension approvals and compliance assessment

(1) A reference in a provision of this chapter to a person or matter as follows (the ***subject***) includes a reference to the other person or matter stated for the subject—

(a) for a development application—

(i) a change request; and

(ii) a request (an ***extension request***) under section 383 to extend the period of a development approval; and

(iii) a request for compliance assessment for development;

(b) for the applicant for a development approval—a person making a change request, an extension request or a request for compliance assessment for development;

(c) for a development approval—an approval of a change request or an extension request, or a compliance permit;

(d) for the giving of a development approval—the giving of a change approval, an extension approval or a compliance permit.

(2) The inclusions apply to both general and specific references and with necessary changes for them to apply for change requests, extension requests and compliance assessment.

(3) In applying this chapter to a change approval or an extension approval, parts 2 and 3 apply as if—

(a) the power to give infrastructure charges notices were instead a power to amend, by notice to the applicant for the approval, any infrastructure charges notice for the relevant development approval; and

(b) a reference to an infrastructure charges notice were a reference to the infrastructure charges notice as so amended; and

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(c) a reference to the giving of a development approval were a reference to the giving of the change approval or extension approval; and

(d) a power to impose a particular condition on a development approval were a power to amend the development approval the subject of the change request or extension request to impose the particular condition, as well as the power to impose under section 375; and

(e) a reference to a development approval, or to a condition of a development approval, were a reference to the relevant development approval as so amended or the condition.

(3A) However, despite subsection (3)(a), a local government may only amend an infrastructure charges notice for a relevant development approval for a change approval or an extension approval if the amendment relates to the change to, or extension of, the development approval.

(4) In this section—

change approval means the approval under section 375(1) of a change request.

change request means a request under section 369(1) to change a development approval.

extension approval means the approval, under section 387(1), of an extension request.

relevant development approval means—

(a) for a change approval—the development approval changed under the change approval; or

(b) for an extension approval—the development approval to which the extension approval relates.

627 Definitions for ch 8

In this chapter—

additional payment condition see section 650(1).

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adopted charge see section 630(1).

agreement means an agreement in writing.

automatic increase provision see section 631(3)(b).

charges breakup means the proportion of the maximum adopted charges under this chapter and under the SEQ Water Act as between—

(a) the local government; and

(b) a distributor-retailer of the local government.

charges resolution see section 630(1).

conversion application see section 659(1).

development infrastructure means—

(a) land or works, or both land and works, for—

(i) water cycle management infrastructure, including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of waters and flood mitigation, but not water cycle management infrastructure that is State infrastructure; or

(ii) transport infrastructure, including roads, vehicle lay-bys, traffic control devices, dedicated public transport corridors, public parking facilities predominantly serving a local area, cycle ways, pathways and ferry terminals; or

(iii) public parks infrastructure, including playground equipment, playing fields, courts and picnic facilities; or

(b) land, and works that ensure the land is suitable for development, for local community facilities, including, for example, the following—

(i) community halls or centres;

(ii) public recreation centres;

(iii) public libraries.

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establishment cost, for a provision about trunk infrastructure, means the following—

(a) for existing infrastructure—

(i) the current replacement cost of the infrastructure as reflected in the relevant local government's asset register; and

(ii) the current value of the land acquired for the infrastructure;

(b) for future infrastructure—all costs of land acquisition, financing, and design and construction, for the infrastructure.

impose, for a provision about a condition of a development approval, includes a concurrence agency requiring the condition to be attached to a development approval.

information notice, about a decision, means a notice stating—

(a) the decision and the reasons for it; and

(b) that its recipient may appeal against the decision; and

(c) how the recipient may appeal.

Note—

For appeals relating to this chapter, see sections 478, 478A, 535 and 535A.

infrastructure agreement see section 670.

infrastructure charges notice means—

(a) if paragraphs (b) and (c) do not apply—an infrastructure charges notice given under section 364(2), 635(2) or 662(4)(a); or

(b) if, under section 643(1), a negotiated notice within the meaning of that section replaces an existing infrastructure charges notice—the negotiated notice; or

(c) if an existing infrastructure charges notice is amended under section 626(3), 657(3) or 662(4)(b)—the notice as amended.

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levied charge see section 635(6).

LGIP (an acronym for local government infrastructure plan) means the part of a local government's planning scheme that, to the extent applicable, does any or all of the following—

(a) identifies the PIA;

(b) states assumptions about—

(i) population and employment growth; and

(ii) the type, scale, location and timing of future development;

(c) includes plans for trunk infrastructure;

(d) states the desired standard of service for development infrastructure.

maximum adopted charge see section 629(5).

necessary infrastructure condition see section 645(2).

non-rural purposes means purposes other than rural or rural residential purposes.

non-trunk infrastructure means development infrastructure other than trunk infrastructure.

notice means a notice in writing.

original notice see section 640.

payer, for a provision about a levied charge or for a payment, means anyone who pays part or all of the charge or payment.

payment includes a contribution by way of a payment.

PIA (an acronym for priority infrastructure area) means an area—

(a) used, or approved for use, for non-rural purposes; and

(b) serviced, or intended to be serviced, with development infrastructure networks; and

(c) that will accommodate at least 10 (but no more than 15) years of growth for non-rural purposes.

PPI index means the following—

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(a) generally—the producer price index for construction 6427.0 (ABS PPI) index number 3101—Road and Bridge construction index for Queensland published by the Australian Bureau of Statistics;

(b) if an index described in paragraph (a) ceases to be published—another similar index prescribed by regulation.

public sector entity does not include a distributor-retailer.

relevant appeal period, for a provision about an infrastructure charges notice, means the period within which its recipient may appeal under section 478 or 535.

relevant or reasonable requirements means sections 345 and 406.

SPRP (adopted charges) see section 629(5).

State infrastructure provider means—

(a) the chief executive; or

(b) a public sector entity, other than a local government, that provides State infrastructure or administers a regional plan for a designated region.

State-related condition see section 666(1).

subject premises see section 645(1).

submission means written submission.

trunk infrastructure, for a provision about a local government, means all of the following—

(a) development infrastructure identified in the LGIP as trunk infrastructure;

(b) development infrastructure that, because of a conversion application, becomes trunk infrastructure;

(c) development infrastructure that is required to be provided under a condition imposed under section 647(2).

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Note—

Until 1 July 2016, identification of trunk infrastructure may also take place by resolution. See, for example, section 979.

628 References in ch 8

(1) A reference in a provision of this chapter to a person or matter as follows (the ***subject***) is a reference to the other person or matter stated for the subject—

(a) for 'the applicant'—

(i) for a provision about a development approval—the applicant for the approval and anyone else in whom the benefit of the application vests from time to time; or

(ii) for a charge matter—the applicant for the relevant development approval;

(b) for 'the development'—

(i) for a provision about a development approval—the development the subject of the approval; or

(ii) for a provision about a condition of a development approval—the development the subject of the development approval of which the condition is a part; or

(iii) for a provision about a charge matter—the development the subject of the relevant development approval;

(c) for 'the land'—

(i) for a provision about a development approval—the land the subject of the approval; or

(ii) for a provision about a levied charge or infrastructure charges notice—the land to which the levied charge, or the levied charge under the notice, attaches;

(d) for 'the premises'—

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(i) for a provision about a development approval—the land the subject of the approval; or

(ii) for a provision about a charge matter—the land the subject of the relevant development approval;

(e) for 'the PIA'—

(i) for a provision about a local government—the local government's PIA; or

(ii) for a provision about a development application or condition of a development approval—the relevant local government's PIA;

(f) for 'the LGIP'—

(i) for a provision about a local government—the local government's LGIP; or

(ii) for a provision about a development application or condition of a development approval—the relevant local government's LGIP.

(2) In this section—

charge matter means an adopted charge, infrastructure charges notice or levied charge.

relevant development approval, for a charge matter, means the development approval to which the matter relates or will relate.

Part 2 Provisions for local governments

Division 1A Preliminary

628A Application of pt 2

This part, other than section 629 and division 4, applies to a local government only if the local government's planning scheme includes an LGIP.

Division 1 Charges for trunk infrastructure

Subdivision 1 Power to adopt charges

629 State planning regulatory provision governing charges

(1) A State planning regulatory provision may impose a maximum for each adopted charge—

(a) under this chapter in relation to providing trunk infrastructure for development; or

(b) under the SEQ Water Act in relation to providing trunk infrastructure.

(2) The Minister may, by gazette notice, change the amount of a maximum adopted charge.

(3) Any increase under subsection (2) in a maximum adopted charge over a financial year must not be more than an amount equal to the amount of the maximum adopted charge at the start of the financial year multiplied by the 3-year moving average annual percentage increase in the PPI index for the period of 3 years ending at the start of the financial year.

(4) The SPRP (adopted charges) may also—

(a) provide for the charges breakup; and

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(b) state development for which there may be an adopted charge under this chapter or land uses for which there may be an adopted charge under the SEQ Water Act for trunk infrastructure; and

(c) provide for the parameters mentioned in section 633(2).

(5) In this section—

maximum adopted charge means the maximum for an adopted charge imposed under an SPRP (adopted charges) as mentioned in subsection (1) as the amount of that maximum is changed, from time to time, under subsection (2).

SPRP (adopted charges) means a State planning regulatory provision that imposes a maximum for each adopted charge under this chapter.

630 Power to adopt charges by resolution

(1) A local government may, by resolution (a ***charges resolution***), adopt charges (each an ***adopted charge***) for providing trunk infrastructure for development.

(2) However—

(a) a charges resolution does not, of itself, levy an infrastructure charge; and

(b) the making of a charges resolution is subject to this subdivision and subdivision 2; and

(c) an adopted charge must not be for—

(i) work or use of land authorised under the *Greenhouse Gas Storage Act 2009*, the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; or

(ii) development in a priority development area under the *Economic Development Act 2012*.

(3) A charges resolution must state the day when an adopted charge under the resolution is to take effect.

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Note—

See section 634(2).

Subdivision 2 Charges resolutions

631 Contents—general

(1) An adopted charge may be made only if it is—

(a) permitted under the SPRP (adopted charges); and

(b) no more than the maximum adopted charge for providing trunk infrastructure for development.

Note—

See also section 632(5).

(2) There may be different adopted charges for developments in different parts of the local government's area.

(3) Also, a charges resolution may do the following—

(a) declare there is no adopted charge for part or all of the relevant local government area;

(b) provide for automatic increases in levied charges from when they are levied to when they are paid (an ***automatic increase provision***).

(4) However, an automatic increase provision must state how increases under it are to be worked out.

(5) Also, the automatic increase must not be more than the lesser of the following—

(a) the difference between the levied charge and the maximum adopted charge the local government could have levied for the development when the charge is paid;

(b) the increase for the PPI index for the period starting on the day the levied charge was levied and ending on the day it is paid, adjusted by reference to the 3-yearly PPI index average.

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(6) In this section—

3-yearly PPI index average means the PPI index smoothed in accordance with the 3-year moving average quarterly percentage change between quarters.

632 Provisions for participating local governments and distributor-retailers

(1) This section applies to each of the following (the ***parties***)—

(a) a local government that, under the SEQ Water Act, is a participating local government for a distributor-retailer;

(b) the distributor-retailer.

(2) The parties may agree about the charges breakup (a ***breakup agreement***).

(3) A breakup agreement prevails over a charges breakup under the SPRP (adopted charges).

(4) A charges resolution of the local government must state the charges breakup for all adopted charges under the resolution.

(5) However, the adopted charges must not be more than the proportion of the maximum adopted charges the local government may have under—

(a) a breakup agreement to which it is a party; or

(b) if it is not a party to a breakup agreement—the SPRP (adopted charges).

(6) Subsection (7) applies if there is a charges resolution of the local government and the parties later enter into a breakup agreement with a different charges breakup from the resolution.

(7) The breakup agreement does not take effect until the later of the following—

(a) the local government makes a new charges resolution that reflects the agreement;

(b) the distributor-retailer adopts a new infrastructure charge schedule that reflects the agreement.

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633 Working out cost of infrastructure for offset or refund

(1) For the purpose of working out an offset or refund under this part, a charges resolution must include a method for working out the cost of the infrastructure the subject of the offset or refund.

(2) The method must be consistent with the parameters for the purpose provided for under—

(a) the SPRP (adopted charges); or

(b) if the parameters are not provided for under the SPRP (adopted charges)—a guideline made by the Minister and prescribed by regulation.

633A Criteria for deciding conversion application

(1) A charges resolution must include criteria for deciding a conversion application.

(2) The criteria must be consistent with parameters for the criteria provided for under a guideline made by the Minister and prescribed by regulation.

634 Steps after making charges resolution

(1) On making a charges resolution, a local government must—

(a) upload and keep the resolution on its website; and

(b) attach the resolution to each copy of its planning scheme that it gives to, or publishes for, others.

Note—

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

(2) The charges under the charges resolution take effect—

(a) if the charges resolution is uploaded on the relevant local government website before the beginning of the day stated in the resolution as the day for the charges to take effect—on the day stated in the resolution; or

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(b) otherwise—on the day the charges resolution is uploaded on the website.

Subdivision 3 Levying charges

635 When charge may be levied and recovered

(1) This section applies if—

(a) a development approval has been given; and

(b) an adopted charge applies for providing the trunk infrastructure for the development; and

(c) section 205 does not apply to the development.

(2) The local government must give the applicant an infrastructure charges notice.

Note—

Under section 364, a local government may give a new infrastructure charges notice for a negotiated decision notice.

(3) The local government must give the notice—

(a) generally—

(i) if it is the assessment manager—at the same time as, or as soon as practicable after, the development approval is given; or

(ii) if it is a concurrence agency—within 10 business days after it receives a copy of the development approval; or

(b) if the development approval is a deemed approval for which a decision notice has not been given—within 20 business days after the local government receives a copy of the deemed approval notice; or

(c) if paragraphs (a) and (b) do not apply—within 20 business days after the local government receives a copy of the development approval.

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(4) Subsection (3) is subject to any provision under which an infrastructure charges notice may be amended or replaced.

Note—

See sections 626(3), 643(1), 657(3) and 662(4)(b).

(5) The infrastructure charges notice lapses if the development approval stops having effect.

(6) If the infrastructure charges notice levies on the applicant an amount for a charge worked out by applying the adopted charge (a ***levied charge***), the following apply for the levied charge—

(a) its amount is subject to sections 636 and 649;

(b) it is payable by the applicant;

(c) it attaches to the land;

(d) it only becomes payable as provided for under subdivision 4;

(e) it is subject to any agreement under section 639(1).

636 Limitation of levied charge

(1) A levied charge may be only for additional demand placed upon trunk infrastructure that will be generated by the development.

(2) In working out additional demand, the demand on trunk infrastructure generated by the following must not be included—

(a) an existing use on the premises if the use is lawful and already taking place on the premises;

(b) a previous use that is no longer taking place on the premises if the use was lawful at the time it was carried out;

(c) other development on the premises if the development may be lawfully carried out without the need for a further development permit.

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(3) However, the demand generated by a use or development mentioned in subsection (2) may be included if an infrastructure requirement that applies or applied to the use or development has not been complied with.

(3A) Also, the demand generated by development mentioned in subsection (2)(c) may be included if—

(a) an infrastructure requirement applies to the land on which the development will be carried out; and

(b) the infrastructure requirement was imposed on the basis of development of a lower scale or intensity being carried out on the land.

(4) In this section—

charges notice means—

(a) an infrastructure charges notice; or

(b) a notice mentioned in section 977(1).

infrastructure requirement means a charges notice, or a condition of a development approval, that requires infrastructure or a payment in relation to demand on trunk infrastructure.

637 Requirements for infrastructure charges notice

(1) An infrastructure charges notice must state all of the following for the levied charge—

(a) its current amount;

(b) how it has been worked out;

(c) the land;

(d) when it will be payable under section 638 (without considering any possible operation of section 639);

(e) if an automatic increase provision applies—

(i) that it is subject to automatic increases; and

(ii) how the increases are worked out under the provision;

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(f) whether an offset or refund under this part applies and, if so, information about the offset or refund, including when the refund will be given.

(1A) However, the infrastructure charges notice need not include the information mentioned in subsection (1)(f) if the person who is to receive the notice has—

(a) advised, in writing, the local government giving the notice that the information need not be included in the notice; or

(b) indicated, in an approved form, that the information need not be included in the notice.

(2) The infrastructure charges notice must also include, or be accompanied by, an information notice about the decision to give the notice.

Subdivision 4 Payment

638 Payment triggers generally

(1) A levied charge becomes payable—

(a) if the charge applies for reconfiguring a lot—when the local government that levied the charge approves the plan of subdivision for the reconfiguration; or

(b) if the charge applies for building work—when the certificate of classification or final inspection certificate for the building work is given; or

(c) if the charge applies for a material change of use—when the change happens; or

(d) if the charge applies for other development—on the day stated in the infrastructure charges notice under which the charge was levied.

(2) This section is subject to section 639.

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639 Agreements about payment or provision instead of payment

(1) The recipient of an infrastructure charges notice and the local government that gave it may agree about either or both of the following—

(a) whether the levied charge under the notice may be paid other than as required under section 638 including whether it may be paid by instalments;

(b) whether infrastructure may be provided instead of paying part or all of the levied charge.

(2) If the levied charge is subject to an automatic increase provision, the agreement must state how increases in the charge are payable under the agreement.

Subdivision 5 Changing charges during relevant appeal period

640 Application of sdiv 5

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

641 Submissions for infrastructure charges notice

During the relevant appeal period, the recipient may make submissions to the local government about the original notice.

642 Consideration of submissions

The local government must consider the submissions.

643 Decision about submissions

(1) If the local government decides it agrees with a submission, it must, within 5 business days after making the decision, give

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the recipient a new infrastructure charges notice (a ***negotiated notice***).

(2) The local government may give only 1 negotiated notice.

(3) A negotiated notice—

(a) must be in the same form as the original notice; and

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

(c) replaces the original notice.

(4) If the local government decides it does not agree with any of the submissions, it must, within 5 business days after making the decision, give the recipient a notice stating the decision.

(5) Despite another provision of this Act, the relevant appeal period for the infrastructure charges notice starts again when the recipient is given the notice under subsection (4).

644 Suspension of relevant appeal period

(1) If the recipient needs more time to make submissions, the recipient may give the local government a notice (a ***suspension notice***) suspending the relevant appeal period.

(2) The recipient may give only1 suspension notice.

(3) If the submissions are not made within 20 business days after the giving of the suspension notice, the balance of the relevant appeal period restarts.

(4) If submissions are made within the 20 business days and the recipient gives the local government a notice withdrawing the suspension notice, the balance of the relevant appeal period restarts the day after the local government receives the notice of withdrawal.

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Division 2 Development approval conditions about trunk infrastructure

Subdivision 1 Conditions for necessary trunk infrastructure

645 Application and operation of sdiv 1

(1) This subdivision applies if trunk infrastructure necessary to service premises the subject of a development application (the ***subject premises***)—

(a) has not been provided; or

(b) has been provided but is inadequate.

(2) Sections 646 and 647 provide for a local government to be able to impose particular conditions on the development approval (each condition is a ***necessary infrastructure condition***).

646 Necessary infrastructure condition for LGIP-identified infrastructure

(1) This section applies if the LGIP identifies adequate trunk infrastructure to service the subject premises.

(2) The local government may impose a condition requiring either or both of the following to be provided at a stated time—

(a) the identified infrastructure;

(b) different trunk infrastructure delivering the same desired standard of service.

647 Necessary infrastructure condition for other infrastructure

(1) This section applies if the LGIP does not identify adequate trunk infrastructure to service the subject premises.

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(2) The local government may impose a condition on a development approval that requires development infrastructure necessary to service the premises to be provided at a stated time.

Note—

See section 627, definition *trunk infrastructure*.

(3) However, a local government may impose a condition under subsection (2) only if the development infrastructure services development consistent with the assumptions stated in the LGIP about the type, scale, location or timing of future development.

648 Deemed compliance with necessary or reasonable requirements

(1) A necessary infrastructure condition is taken to comply with the relevant or reasonable requirements if—

(a) generally, the infrastructure required is—

(i) necessary to service the subject premises; and

(ii) the most efficient and cost-effective solution for servicing other premises in the general area of the subject premises; and

(b) for a necessary infrastructure condition that requires the provision of the infrastructure on the subject premises—its provision is not an unreasonable imposition on—

(i) the development; or

(ii) the use of the subject premises as a consequence of the development.

(2) To remove any doubt, it is declared that a necessary infrastructure condition may be imposed for infrastructure even if it will service premises other than the subject premises.

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649 Offset or refund requirements

(1) This section applies if—

(a) trunk infrastructure the subject of a necessary infrastructure condition services, or is planned to service, premises other than the subject premises; and

(b) an adopted charge applies to the development.

(2) If the cost of the infrastructure required to be provided under the condition is equal to or less than the amount worked out by applying the adopted charge to the development, the cost must be offset against that amount.

Note—

For how the cost is worked out, see sections 633 and 657.

(3) If the cost of the infrastructure required to be provided under the condition is more than the amount worked out by applying the adopted charge to the development—

(a) there is no amount payable for the development approval; and

(b) the local government must refund the applicant an amount equal to the difference between the establishment cost of the trunk infrastructure and the amount worked out by applying the adopted charge to the development.

Example—

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

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Subdivision 2 Conditions for additional trunk infrastructure costs

650 Power to impose

(1) A local government may impose a condition (an ***additional payment condition***) requiring the payment of additional trunk infrastructure costs only if—

(a) the development—

(i) will generate infrastructure demand of more than that required to service the type or scale of future development that the LGIP assumes; or

(ii) will require new trunk infrastructure earlier than when identified in the LGIP; or

(iii) is for premises completely or partly outside the PIA; and

(b) the development would impose additional trunk infrastructure costs on the local government after taking into account either or both of the following—

(i) levied charges for the development;

(ii) trunk infrastructure provided, or to be provided, by the applicant under this part.

(2) However, an additional payment condition must not be imposed for a State infrastructure provider.

(3) An additional payment condition is taken to comply with the relevant or reasonable requirements to the extent the infrastructure is necessary, but not yet available, to service the development.

(4) Subsection (3) applies even if the infrastructure is also intended to service other development.

(5) The power to impose an additional payment condition is subject to the rest of this subdivision.

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651 Content of additional payment condition

(1) An additional payment condition must state all of the following—

(a) why it was imposed;

(b) the amount of the payment to be made under the condition;

(c) details of the trunk infrastructure for which the payment is required;

(d) when the amount becomes payable (the ***payment time***);

(e) that the applicant may, instead of making the payment, elect to provide part or all of the trunk infrastructure;

(f) if the applicant so elects—

(i) any requirements for providing the trunk infrastructure; and

(ii) when it must be provided.

(2) Unless the applicant and the local government otherwise agree, the payment time is—

(a) if the trunk infrastructure is necessary to service the premises—by the day the development, or work associated with the development, starts; or

(b) otherwise—

(i) if the additional payment condition applies for reconfiguring a lot—when the local government approves the plan of subdivision for the reconfiguration; or

(ii) if the additional payment condition applies for building work—when the certificate of classification or final inspection certificate for the work is given; or

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

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652 Restriction if development completely in PIA

(1) This section applies for an additional payment condition imposed by a local government for development completely inside the PIA.

(2) The additional payment condition may require a payment only as follows—

(a) for trunk infrastructure to be provided earlier than planned in the LGIP—the additional establishment cost that would be incurred by the local government in providing the trunk infrastructure earlier than planned;

(b) for infrastructure associated with a different type or scale of development from that assumed in the LGIP—the establishment cost of any additional trunk infrastructure made necessary by the development.

653 Other area restrictions

(1) This section applies for an additional payment condition imposed by a local government for development completely or partly outside the PIA.

(2) The additional payment condition may only require the payment of—

(a) the establishment cost of infrastructure that is—

(i) made necessary by the development; and

(ii) if the relevant local government's planning scheme indicates the premises is part of an area intended for future development for non-rural purposes—necessary to service the rest of the area; and

(b) either or both of the following establishment costs of any temporary infrastructure—

(i) costs required to ensure the safe or efficient operation of infrastructure needed to service the development;

(ii) costs made necessary by the development; and

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(c) any decommissioning, removal and rehabilitation costs of the temporary infrastructure; and

(d) the maintenance and operating costs for up to 5 years of the infrastructure and temporary infrastructure as mentioned in paragraphs (a) and (b).

654 Refund if development in PIA

(1) This section applies for an additional payment condition imposed by a local government for development completely inside the PIA.

(2) The local government must refund the payer the proportion of the establishment cost of the infrastructure that—

(a) may be apportioned reasonably to other users of the infrastructure; and

(b) has been, is or is to be, the subject of a levied charge by the local government.

655 Refund if development approval ceases

(1) This section applies if—

(a) a development approval subject to an additional payment condition no longer has effect; and

(b) a payment has been made under the condition; and

(c) construction of the infrastructure the subject of the condition has not substantially started before the development approval no longer has effect.

(2) The local government must refund the payer any part of the payment the local government has not spent, or contracted to spend, on designing and constructing the infrastructure.

(3) Timing of the refund is subject to terms agreed between the payer and local government.

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656 Additional payment condition does not affect other powers

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

(a) adopting charges for trunk infrastructure and levying charges;

(b) imposing a condition for non-trunk infrastructure;

(c) imposing a necessary infrastructure condition.

Subdivision 3 Working out cost for required offset or refunds

657 Process

(1) This section applies if—

(a) a development approval requires the applicant to provide trunk infrastructure; and

(b) the local government has given the applicant for the development approval an infrastructure charges notice that includes details of an offset or refund under this part relating to the establishment cost of the trunk infrastructure; and

(c) the applicant does not agree with the value of the establishment cost.

(2) The applicant may, by notice to the local government, require it to use the method under the relevant charges resolution to recalculate the establishment cost.

(2A) A notice under subsection (2) must be given to the local government before the levied charge under the infrastructure charges notice becomes payable under section 638.

(3) By notice to the applicant, the local government must amend the existing infrastructure charges notice.

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

Division 3 Miscellaneous provisions about trunk infrastructure

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

658 Application of sdiv 1

This subdivision applies if—

(a) a particular condition of a development approval under section 665 requires non-trunk infrastructure to be provided; and

(b) the construction of the non-trunk infrastructure has not started.

Note—

The combined effect of the definitions *trunk infrastructur*e and *non-trunk infrastructure* under section 627 is that where infrastructure is not identified in an LGIP it is, by default, non-trunk infrastructure.

659 Application to convert infrastructure to trunk infrastructure

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

(2) The application must be made to the local government in writing.

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660 Deciding conversion application

(1) The local government must consider and decide the conversion application within the required period.

(2) In deciding the conversion application, the local government must have regard to the criteria for deciding the application in its charges resolution.

(3) However, at any time before making the decision, the local government may give a notice to the applicant requiring the applicant to give information the local government reasonably needs to make the decision.

(4) The notice must state—

(a) what information it requires; and

(b) a period of at least 10 business days for giving the information; and

(c) the effect of subsection (5).

(5) The application lapses if the applicant does not comply with the notice within the later of the following—

(a) the period stated in the notice for giving the information;

(b) any later period, as agreed within the period stated in the notice, between the local government and the applicant.

(6) In this section—

required period means 30 business days after—

(a) generally—the making of the application; or

(b) if an information requirement is made—the requirement is complied with.

661 Notice of decision

(1) As soon as practicable after deciding the conversion application, the local government must give the applicant notice of the decision.

(2) If the decision is to convert non-trunk infrastructure to trunk infrastructure, the notice must state whether an offset or

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refund under this part applies and, if it does, details of the offset or refund.

(3) If the decision is not to convert non-trunk infrastructure to trunk infrastructure, the notice must be an information notice about the decision.

662 Effect of and action after conversion

(1) This section applies if the decision on a conversion application is to convert non-trunk infrastructure to trunk infrastructure.

Note—

See section 627, definition *trunk infrastructure*.

(2) The condition of the relevant development approval requiring the non-trunk infrastructure to be provided no longer has effect.

(3) Within 20 business days after making the decision, the local government may amend the development approval by imposing a necessary infrastructure condition for the trunk infrastructure.

(4) If a necessary infrastructure condition is imposed, the local government must also do either of the following within 10 business days after the imposition for the purposes of section 649(2) or (3)(b)—

(a) give an infrastructure charges notice;

(b) amend, by notice to the applicant, any existing infrastructure charges notice for the development approval.

(5) For taking action under subsections (3) and (4), divisions 1 and 2 and sections 478 and 535 apply (and IDAS does not) as if—

(a) a development approval were a reference to the conversion; and

(b) a levied charge were a reference to the amendment of a levied charge.

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Subdivision 2 Other provisions

663 Financial provisions

(1) A levied charge paid to a local government must be used to provide trunk infrastructure.

(2) To remove any doubt, it is declared that the amount paid need not be held in trust by the local government.

664 Levied charge taken to be rates

(1) A levied charge is, for the purpose of its recovery, taken to be rates of the local government that levied it.

(2) However, subsection (1) is subject to any agreement between the local government and the applicant.

(3) In this section—

rates means rates within the meaning of—

(a) for Brisbane—the City of Brisbane Act; or

(b) otherwise—the Local Government Act.

Division 4 Non-trunk infrastructure

665 Conditions local governments may impose

(1) This section applies for the imposition by a local government of a condition of a development approval about non-trunk infrastructure.

(2) The condition may be only about providing development infrastructure for 1 or more of the following—

(a) a network, or part of a network, internal to the premises;

(b) connecting the premises to external infrastructure networks;

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(c) protecting or maintaining the safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component.

Example for paragraph (c)—

A condition may require construction works in the vicinity of existing transport infrastructure must not adversely affect the infrastructure's integrity.

(3) The condition must state the infrastructure to be provided and when it must be provided.

Part 3 Provisions for State infrastructure providers

666 Power to impose conditions about infrastructure

(1) A State infrastructure provider may impose a condition on a development approval (a ***State-related condition***) about—

(a) infrastructure; and

(b) works to protect or maintain infrastructure operation.

(2) However, a State-related condition may be only about protecting or maintaining the safety or efficiency of any or all of the following—

(a) existing or proposed State-owned or State-controlled transport infrastructure;

(b) public passenger transport or public passenger transport infrastructure (whether or not State-owned or State-controlled);

(c) the safety or efficiency of railways, ports or airports under the Transport Infrastructure Act;

(d) if the State infrastructure provider is the chief executive—a matter mentioned in paragraph (a), (b) or (c) for another State infrastructure provider.

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

- turning lanes or traffic signals at a site access or nearby intersection that are to ensure road links and intersections continue to perform at an acceptable level
- upgraded traffic control devices at a level crossing in response to increased traffic
- drainage or retaining structures that are to protect transport infrastructure from changed hydraulics or excavation adjacent to State-owned or State-controlled transport infrastructure

(3) In this section—

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

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

safety or efficiency, of infrastructure mentioned in subsection (2), means—

(a) the safety of any of its users and of others it affects; or

(b) the efficiency of its use.

State-owned or State-controlled, for transport infrastructure, means transport infrastructure under the Transport Infrastructure Act that is owned or controlled by the State.

667 Content requirements for condition

A State-related condition must state—

(a) the infrastructure or works to be provided, or the contribution to be made, under it; and

(b) when the provision or contribution must take place.

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668 Refund if State-related condition ceases

(1) This section applies if—

(a) a State infrastructure provider imposed a State-related condition on a development approval; and

(b) a payment has been made under the condition; and

(c) the development approval ceases to have effect; and

(d) construction of the infrastructure the subject of the condition had not substantially started before the cessation.

(2) The public sector entity responsible for providing the infrastructure must refund the payer any part of the payment not spent, or contracted to be spent, on designing or constructing the infrastructure before being told of the cessation.

669 Reimbursement by local government for replacement infrastructure

(1) This section applies if infrastructure provided under a State-related condition—

(a) has replaced, or is to replace, infrastructure for which there has been, is or is to be a levied charge by a local government; and

(b) provides the same desired standard of service as the replaced infrastructure.

(2) The local government must—

(a) pay the amount of the levied charge, when paid to it, to the State infrastructure provider that imposed the condition to—

(i) provide the replacement infrastructure; or

(ii) reimburse someone else who provided the replacement infrastructure; and

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(b) agree with the State infrastructure provider and the person who provided the replacement infrastructure about when the amount of the levied charge will be paid.

Part 4 Infrastructure agreements

670 Infrastructure agreement

An ***infrastructure agreement*** is an agreement, as amended from time to time, mentioned in any of the following—

- section 348, to the extent the agreement is about a condition for paying for, or providing, infrastructure
- section 639
- section 651(2)
- section 655(3)
- section 664(2)
- section 669(2)
- section 677.

671 Obligation to negotiate in good faith

(1) This section applies if—

(a) a public sector entity proposes to another entity that they enter into an infrastructure agreement; or

(b) another entity proposes to a public sector entity that they enter into an infrastructure agreement.

(2) The public entity or other entity to whom the proposal is made must in writing tell the proponent if the public entity or other entity agrees to entering into negotiation for an infrastructure agreement.

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(3) In negotiating an infrastructure agreement, the public sector entity and the other entity must act in good faith.

Examples of actions that subsection (3) requires—

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

672 Content of infrastructure agreement

(1) An infrastructure agreement must—

(a) if obligations under it would be affected by a change in the ownership of land the subject of the agreement—include a statement about how the obligations must be fulfilled in that event; and

(b) if the fulfilment of obligations under it depends on development entitlements that may be affected by a change to a planning instrument—include a statement about both of the following—

(i) refunding or reimbursing amounts paid under the agreement;

(ii) changing or cancelling the obligations if the development entitlements are changed without the obligee's consent; and

(c) include any other matter required by regulation to be included.

(2) To remove any doubt, it is declared that an infrastructure agreement may include matters that are not within the jurisdiction of a public sector entity that is a party to the agreement.

673 Copy of infrastructure agreement to be given to local government

(1) This section applies if—

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(a) a distributor-retailer or a public sector entity other than a local government is a party to an infrastructure agreement; and

(b) the local government for the area to which the agreement applies is not a party to it.

(2) The distributor-retailer or public sector entity must give the local government a copy of the agreement.

673A Copy of particular infrastructure agreements to be given to distributor-retailers

(1) This section applies if—

(a) a participating local government for a distributor-retailer is a party to an infrastructure agreement; and

(b) the distributor-retailer is not a party to the infrastructure agreement; and

(c) the infrastructure agreement relates to a water approval or an application for a water approval under the SEQ Water Act, chapter 4C, part 2.

(2) The local government must give the distributor-retailer a copy of the agreement.

674 When infrastructure agreement binds successors in title

(1) This section applies if the owner of land to which an infrastructure agreement applies is a party to the agreement or consents to the obligations under it being attached to the land.

(2) However, subsection (1) does not apply for any of the obligations that are to be fulfilled by a public sector entity.

(3) The obligations under the infrastructure agreement attach to the land and bind the owner and the owner's successors in title of the land.

(4) If the owner's consent under subsection (1) is given but not endorsed on the agreement, the owner must give a copy of the

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document evidencing the owner's consent to the local government for the land to which the consent applies.

(5) Despite subsection (3), subsections (6) and (7) apply if—

(a) the infrastructure agreement states that if the land is subdivided, part of the land is to be released from the obligations; and

(b) the land is subdivided.

(6) The part is released from the obligations.

(7) The obligations are no longer binding on the owner of the part.

675 Exercise of discretion unaffected by infrastructure agreement

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

676 Infrastructure agreement prevails over approval and charges notice

(1) If an infrastructure agreement is inconsistent with a development approval or charges notice, the agreement prevails to the extent of the inconsistency.

(2) However, if a State infrastructure provider (other than the chief executive) is a party to the infrastructure agreement, subsection (1) applies only if the chief executive has approved the agreement.

(3) The approval of the agreement must be given by notice to all parties to it.

(4) In this section—

charges notice means—

(a) an infrastructure charges notice; or

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(b) a notice mentioned in section 977(1).

677 Agreement for infrastructure partnerships

(1) A person may enter into an agreement with a public sector entity about—

(a) providing or funding infrastructure; or

(b) refunding payments made towards the cost of providing or funding infrastructure.

(2) Subsection (1) has effect despite parts 2 and 3 and chapter 6, part 5, division 6.

Part 5 Miscellaneous

678 Sale of particular local government land held on trust

(1) This section applies if a local government intends to sell land it holds on trust in fee simple for public parks infrastructure or local community facilities.

(2) The local government must advertise its intention to sell the land by placing notice of the sale in a newspaper circulating in the local government area if—

(a) part or all of the land was obtained under a condition of a development approval; or

(b) selling the land would not be inconsistent with a current infrastructure agreement under which the local government obtained the land.

(3) The notice must state the following—

(a) a description of the land;

(b) the purpose for which the land is held on trust;

(c) the reason for the proposed sale;

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(d) a reasonable period within which submissions about the proposed sale may be made to the local government.

(4) Before making a decision about the sale, the local government must consider all submissions made to it within the stated period.

(5) The following apply if the local government complies with this section and sells the land—

(a) the land is sold free of the trust;

(b) the net proceeds of the sale must be used to provide trunk infrastructure.

679 Conditions about non-trunk infrastructure if no LGIP etc.

(1) This section applies if the trunk infrastructure for a local government is not identified because paragraphs (a), (b) and (c) of the definition *trunk infrastructure* under section 627 do not apply.

(2) The local government may impose a condition on a development approval for the supply of development infrastructure for 1 or more of the purposes mentioned in section 665(2).

(3) The condition must state the infrastructure to be provided and when it must be provided.

Chapter 8A Provisions about urban encroachment

Part 1 Preliminary

680A Definitions for ch 8A

In this chapter—

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accepted representations see section 680R(2).

affected area see section 680O(2).

affected area notation—

(a) for registered premises—see section 680X(1); or

(b) for a relevant development application—see section 680Z(1).

appropriate register, for a lot or premises, means the register the registrar keeps under an Act, in which register the lot or premises is registered.

code of environmental compliance means a code of environmental compliance under the Environmental Protection Act.

information notice, for a decision, means a notice stating—

(a) the decision and the reasons for it; and

(b) that the person to whom the notice is given may appeal to the court against the decision; and

(c) how the person may appeal.

Note—

For appeals against decisions under this chapter, see section 475A.

mapped area see section 680G(2)(a).

notice means a written notice.

registered premises, if the registration is in force, means premises that are registered under this chapter.

registrar means the registrar of titles under the *Land Title Act 1994* or another person who, under an Act, is responsible for keeping a register for dealings in land.

registration certificate see the Environmental Protection Act, section 73F.

relevant development application see section 680B.

show cause notice see section 680Q(1).

show cause period see section 680Q(2)(d).

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technical report see section 680G(2)(h).

680B What is a *relevant development application*

(1) A ***relevant development application*** is a development application made under this Act or repealed IPA for—

(a) if the application is for development on land, other than undeveloped land, in an affected area—a material change of use of premises or reconfiguring a lot in the affected area, other than in relation to—

(i) a class 1a or class 1b building; or

(ii) a class 10 building or structure; or

(b) if the application is for development on undeveloped land in an affected area—a material change of use of premises or reconfiguring a lot in the affected area, other than in relation to a class 10 building or structure.

(2) In this section—

class, for a building or structure, means its particular classification under the BCA.

undeveloped land means any of the following land—

(a) land in its natural state;

(b) land that is or was used for a following purpose and has not been developed for urban purposes—

(i) agriculture;

(ii) animal husbandry activities;

(iii) apiculture;

(iv) aquaculture;

(v) dairy farming;

(vi) grazing;

(vii) horticulture;

(viii) viticulture;

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(c) land on which an abattoir or tannery is or was situated and that has not been developed for urban purposes.

680C Purpose of ch 8A and its achievement

(1) The purpose of this chapter is to protect existing uses of particular premises from encroachment by, and the intensification of, other development.

(2) The purpose is to be achieved mainly by restricting particular civil proceedings, and criminal proceedings relating to a local law, in connection with activities involving the emission of aerosols, fumes, light, noise, odour, particles or smoke.

Part 2 Restrictions on legal proceedings

680D Application of pt 2

This part applies to the following relevant development applications—

(a) a relevant development application made after the commencement of this section;

(b) a relevant development application made before the commencement for which a decision notice had not been given to the applicant before the commencement;

(c) a relevant development application for premises for which—

(i) a development approval has been given for the application before the commencement; and

(ii) a certificate of classification had not been given before the commencement.

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680E Restrictions on legal proceedings

(1) This section applies to a claim by an affected person that—

(a) an act or omission of a person in carrying out an activity at registered premises (a ***relevant act***) is, was or will be an unreasonable interference, or likely interference, with an environmental value; and

(b) the relevant act was, or was caused by or caused, the emission of aerosols, fumes, light, noise, odour, particles or smoke.

(2) The affected person can not take a civil proceeding for nuisance, or a criminal proceeding relating to a local law, against any person in relation to the claim if the following have been complied with for the relevant act—

(a) the development approval for the registered premises;

(b) any code of environmental compliance applying to the relevant act.

(3) Subsection (2) applies despite the Environmental Protection Act or any other Act.

(4) This section does not apply if—

(a) either—

(i) a development approval for the registered premises or a registration certificate for the carrying out of an activity at the premises is amended (an ***amended authority***); or

(ii) a new development approval is given for the premises or a new registration certificate is given authorising the carrying out of an environmentally relevant activity at the premises (a ***new authority***); and

(b) greater emissions of aerosols, fumes, light, noise, odour, particles or smoke at the registered premises are authorised under the amended authority or new authority than were authorised under the relevant

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development approval or registration certificate in force when the premises became registered premises.

(5) Also, this section does not apply if—

(a) a code of environmental compliance is amended (also an ***amended authority***) or a new code of environmental compliance is approved or made (also a ***new authority***); and

(b) an activity involving greater emissions of aerosols, fumes, light, noise, odour, particles or smoke could be carried out at the registered premises in compliance with the amended or new authority than could have been carried out in compliance with the relevant code of environmental compliance in force when the premises became registered premises.

(6) In this section—

***affected person*—**

(a) means the owner, occupier or lessee of premises if the premises is the subject of a relevant development application for a material change of use of the premises or reconfiguring a lot on which the premises is situated; and

(b) includes the owner's successors in title.

environmental value means an environmental value under the Environmental Protection Act.

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Part 3 Registration of premises

Division 1 Application for registration

680F Who may apply

The owner of premises may apply to the Minister for registration of the premises under this part if—

(a) an activity carried out at the premises involves the emission of aerosols, fumes, light, noise, odour, particles or smoke; and

(b) the activity is not a mining activity or a chapter 5A activity; and

(c) the levels of emissions of the aerosols, fumes, light, noise, odour, particles or smoke are in compliance with the following—

(i) the development approval for the premises;

(ii) any code of environmental compliance applying to the activity.

680G Requirements for application

(1) The application must be in the approved form.

(2) The application must be accompanied by all of the following—

(a) a map showing details of the area (the ***mapped area***) for which the premises are proposed to be registered;

(b) details of any intensification of development, or proposed development, within the mapped area, that is encroaching, or is likely to encroach, on the premises;

(c) details of information in the planning scheme, and any regional plan, applying to the mapped area about the nature of development proposed for the mapped area;

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(d) information about the significance of the activity carried out at the premises to the economy, heritage or infrastructure of the State, a region or the locality in which the mapped area is situated;

(e) details of public consultation undertaken in the mapped area by or for the applicant about the proposed registration, including the period for which it was undertaken and its outcomes;

Examples of public consultation—

- letters circulated
- public notices published
- meetings held to seek feedback about the proposed registration from residents of the mapped area

(f) details of any written complaints made to the applicant—

(i) within 1 year before the application is made; and

(ii) about the emission of aerosols, fumes, light, noise, odour, particles or smoke from the activity carried out at the premises;

(g) details of any action taken by or for the applicant to mitigate the emission of aerosols, fumes, light, noise, odour, particles or smoke from the activity carried out at the premises;

(h) a report (the ***technical report***) prepared by an appropriately qualified person and showing the levels of emissions of aerosols, fumes, light, noise, odour, particles or smoke from the carrying out of the activity during normal operating hours for the premises;

(i) if the activity is a chapter 4 activity under the Environmental Protection Act—a copy of the registration certificate for carrying out the activity;

(j) any supporting information the approved form states is mandatory supporting information for the application;

(k) the fee prescribed under a regulation.

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(3) The map mentioned in subsection (2)(a) must include a lot on plan description of the mapped area.

(4) The technical report must include a certification by the person who prepared it as to whether the levels of emissions of aerosols, fumes, light, noise, odour, particles or smoke from the carrying out of the activity are in compliance with the following—

(a) the development approval for the premises;

(b) any code of environmental compliance applying to the activity.

(5) In this section—

appropriately qualified, for the preparation of the technical report, means having the technical expertise, qualifications or experience necessary to prepare the report.

680H Consideration of, and decision on, application

The Minister must consider the application and decide to—

(a) register the premises, with or without conditions; or

(b) refuse to register the premises.

680I Criteria for registration

The Minister may decide to register the premises only if satisfied—

(a) the activity carried out at the premises—

(i) is significant to the economy, heritage or infrastructure of the State, a region or the locality in which the mapped area is situated; and

(ii) is consistent with the nature of development proposed for the mapped area under the planning scheme, and any regional plan, applying to the mapped area; and

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(b) the levels of emissions of aerosols, fumes, light, noise, odour, particles or smoke that are shown in the technical report for the application are in compliance with the following—

(i) the development approval for the premises;

(ii) any code of environmental compliance applying to the activity; and

(c) public consultation about the proposed registration has been undertaken in the mapped area by or for the applicant; and

(d) the outcomes of the public consultation show the levels of support for the proposed registration.

Division 2 Renewal of registration

680J Application for renewal

(1) The owner of registered premises may apply for renewal of the registration.

(2) The application must—

(a) be made to the Minister within 1 year before the term of the registration ends; and

(b) comply with section 680G(1) to (4) as applied under subsection (3).

(3) For subsection (2)(b)—

(a) section 680G(2)(a) applies as if the reference to 'the premises are proposed to be registered' were a reference to 'the registration is proposed to be renewed'; and

(b) section 680G(2)(e) applies as if the references to 'proposed registration' were a reference to 'proposed renewal of registration'.

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680K Consideration of, and decision on, application

The Minister must consider the application and decide to—

(a) renew the registration, with or without conditions; or

(b) refuse to renew the registration.

680L Criteria for renewal of registration

(1) The Minister may decide to renew the registration only if satisfied about the matters mentioned in section 680I.

(2) For considering the matters mentioned in that section—

(a) the reference to 'decide to register the premises' is taken to be a reference to 'decide to renew registration of the premises'; and

(b) the references to 'proposed registration' are taken to be references to 'proposed renewal of registration'.

680M Registration taken to be in effect while application for renewal is considered

Registration of the premises is taken to continue in effect from the day that it would, apart from this section, have ended until the application is—

(a) decided under section 680K; or

(b) withdrawn by the applicant; or

(c) taken to have been withdrawn under section 680N(2).

Division 3 Inquiries about applications and notice of decisions

680N Inquiry about application

(1) Before deciding an application under division 1 or 2, the Minister may, by notice given to the applicant, require the applicant to give the Minister within the reasonable period of

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at least 30 business days stated in the notice further information or a document the Minister reasonably requires to decide the application.

(2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with a requirement under subsection (1).

(3) A notice under subsection (1) must be given to the applicant within 30 business days after the Minister receives the application.

680O Notice of decision on application

(1) The Minister must, as soon as practicable after deciding the application, give the applicant notice of the decision.

(2) If the Minister decides to register the premises or renew registration of the premises, the notice must include information identifying the area (the ***affected area***) for which the premises are registered.

(3) If the Minister decides to refuse to register, or renew registration of, the premises, or impose conditions on the registration, the notice must be an information notice.

(4) If the Minister decides a term of registration for the premises of more than 10 years, the notice must state the term.

Note—

Under section 680W(1), the Minister may decide a term of registration for particular premises of at least 10 years, but not more than 25 years.

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Division 4 Cancellation, and amendment of conditions, of registration

Subdivision 1 Cancellation

680P Grounds for cancellation

Each of the following is a ground for cancelling the registration of premises—

(a) the levels of emissions of aerosols, fumes, light, noise, odour, particles or smoke at the premises are not in compliance with the following—

(i) the development approval for the premises;

(ii) any code of environmental compliance applying to activities carried out at the premises;

(b) a condition of the registration is contravened.

680Q Show cause notice

(1) If the Minister believes a ground exists to cancel the registration, the Minister must give the owner of the premises a notice under this section (a ***show cause notice***).

(2) The show cause notice must state the following—

(a) the Minister proposes to cancel the registration;

(b) the grounds for the proposed cancellation;

(c) an outline of the facts and circumstances forming the basis for the grounds;

(d) that the owner may, within a stated period (the ***show cause period***), make written representations to the Minister to show why the registration should not be cancelled.

(3) The show cause period must end at least 20 business days after the owner is given the show cause notice.

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680R Representations about show cause notice

(1) The owner may make written representations about the show cause notice to the Minister in the show cause period.

(2) The Minister must consider all representations (the ***accepted representations***) made under subsection (1).

680S Ending show cause notice without further action

If, after considering the accepted representations for the show cause notice, the Minister no longer believes a ground exists to cancel the registration, the Minister must—

(a) take no further action about the show cause notice; and

(b) give the owner a notice that no further action is to be taken about it.

680T Cancellation

(1) This section applies if—

(a) there are no accepted representations for the show cause notice; or

(b) after considering the accepted representations for the show cause notice, the Minister—

(i) still believes a ground exists to cancel the registration; and

(ii) believes cancellation of the registration is warranted.

(2) The Minister may cancel the registration.

(3) If the Minister decides to cancel the registration, the Minister must as soon as practicable give the owner an information notice for the decision.

(4) The decision takes effect on the later of the following days—

(a) the day the information notice is given to the owner;

(b) the day stated in the information notice for that purpose.

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Subdivision 2 Amending conditions of registration

680U Amendment of conditions

(1) The Minister may amend the conditions of the registration of premises on the Minister's own initiative.

(2) Before making an amendment under subsection (1), the Minister must—

(a) give notice to the owner of the premises—

(i) of the particulars of, and reasons for, the proposed amendment; and

(ii) that the owner may make written representations to the Minister about the proposed amendment before a stated day, not later than 14 business days after the notice is given to the owner; and

(b) consider all representations made under paragraph (a)(ii) before the stated day.

(3) If the Minister decides not to amend the conditions, the Minister must give the owner notice of the decision.

(4) If the Minister decides to amend the conditions, the Minister must give the owner an information notice for the decision.

(5) A decision to amend the conditions takes effect on the later of the following days—

(a) the day the information notice is given to the owner;

(b) the day stated in the information notice for that purpose.

Division 5 Other matters about registration

680V Owner of premises may end registration

(1) The owner of registered premises may, by notice given to the Minister, end the registration.

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(2) If the owner of premises acts under subsection (1), the registration of the premises ends on the later of the following days—

(a) the day the Minister receives the notice;

(b) the day stated in the notice for that purpose.

680W Term of registration

(1) Registration of premises is, unless sooner cancelled or ended, for a term of—

(a) 10 years; or

(b) if, having regard to the application for registration of particular premises, the Minister considers a longer term is appropriate for the premises—at least 10 years, but not more than 25 years, decided by the Minister.

(2) The registration starts on—

(a) for an initial registration under division 1—the later of the following days—

(i) the day the owner of the premises is given notice of the Minister's decision under section 680O;

(ii) the day stated in the notice for that purpose; or

(b) for a renewed registration under division 2—the day immediately after the day the registration would have ended if it had not been renewed.

Part 4 Particular obligations

680X Record of registration of premises in appropriate register

(1) The owner of registered premises must, within 20 business days after the premises are registered, give the registrar notice, in the form approved by the registrar, asking the registrar to

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keep a record (an ***affected area notation***) that this chapter applies to all lots within the affected area for the premises.

Maximum penalty—200 penalty units.

(2) On receiving the notice, the registrar must keep a record so that a search of the appropriate register will show the affected area notation for the lots.

(3) If—

(a) the registration of the premises ends; and

(b) the registrar was given a notice under subsection (1);

the owner of the premises must give the registrar notice, in the form approved by the registrar, asking the registrar to remove the record of the affected area notation from the register.

Maximum penalty—20 penalty units.

(4) As soon as practicable after receiving the notice under subsection (3), the registrar must remove the record of the affected area notation from the register.

(5) Also, the registrar may remove the affected area notation from the register if the registrar is satisfied, on reasonable grounds, the registration of the registered premises has ended.

680Y Public notice of registration, or renewal of registration, of premises

(1) The owner of registered premises must, within 20 business days after the premises are registered, or registration of the premises is renewed, publish notice in compliance with subsection (2) about the registration or renewal in a newspaper circulating generally in the affected area for the premises.

Maximum penalty—50 penalty units.

(2) The notice must—

(a) state the name, or a description, of the registered premises; and

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(b) include a description of the affected area for the premises; and

(c) state where a member of the public can obtain the information mentioned in subsection (3) about the registration.

(3) For subsection (2)(c), the information is—

(a) a map showing details of the affected area for the premises; and

(b) the conditions, if any, of the registration; and

(c) details of the type and levels of emissions of aerosols, fumes, light, noise, odour, particles or smoke from the carrying out of the activity for which the premises are registered.

(4) The owner must, while the premises are registered, keep the information mentioned in subsection (3) reasonably available for inspection, free of charge, by members of the public.

Maximum penalty—50 penalty units.

(5) As soon as practicable after complying with subsection (1), the owner of the registered premises must give the Minister notice of the compliance.

Maximum penalty—20 penalty units.

680Z Record of relevant development application in appropriate register

(1) The applicant for a relevant development application must, within 20 business days after making the application, give the registrar notice, in the form approved by the registrar, asking the registrar to keep a record (an ***affected area notation***) that this chapter applies to the premises or lot the subject of the application.

Maximum penalty—200 penalty units.

(2) On receiving the notice, the registrar must keep a record so that a search of the appropriate register will show the affected area notation for the premises or lot.

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(3) If—

(a) the relevant development application is refused, or lapses or is withdrawn before the application is decided; and

(b) the applicant has given the registrar a notice under subsection (1);

the applicant must give the registrar notice, in the form approved by the registrar, asking the registrar to remove the record of the affected area notation from the register.

Maximum penalty—20 penalty units.

(4) As soon as practicable after receiving the notice under subsection (3), the registrar must remove the record of the affected area notation from the register.

(5) Also, the registrar may remove the affected area notation from the register if the registrar is satisfied, on reasonable grounds, the relevant development application has been refused, has lapsed or was withdrawn before it was decided.

680ZA Publication of information on website

(1) The owner of registered premises must, if there is a website for the premises, publish on the website—

(a) a map showing details of the affected area for the premises; and

(b) details of the levels of emissions of aerosols, fumes, light, noise, odour, particles or smoke from the carrying out of the activity for which the premises are registered.

Maximum penalty—50 penalty units.

(2) A failure to comply with subsection (1) does not affect the operation of section 680E.

(3) In this section—

website, for registered premises, means a website used by the owner of the premises to provide public access to information

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about the premises, including, for example, information about the activities carried out at the premises.

680ZB Notice to lessee about application of ch 8A

(1) A relevant person for premises in an affected area must, before entering into a letting agreement for the premises with someone else (a ***lessee***), give to the lessee a notice stating—

(a) the premises is in an affected area; and

(b) that restrictions under section 680E may apply to the lessee in relation to taking a civil proceeding or a criminal proceeding about the emission of aerosols, fumes, light, noise, odour, particles or smoke from registered premises in the affected area.

Maximum penalty—30 penalty units.

(2) In this section—

letting agreement means an agreement under which a person gives someone else a right to occupy premises in exchange for money or other valuable consideration.

relevant person, for premises, means the owner of the premises or the owner's agent.

680ZC Additional consequence of failure to give notice asking for affected area notation for Milton rail precinct

(1) This section applies if—

(a) the applicant for a relevant development application for development in the Milton rail precinct enters into a contract with someone else (the ***buyer***) for the buyer to buy the premises or lot the subject of the application, or part of the premises; and

(b) at the time of entering into the contract, an affected area notation is not shown on the appropriate register because the applicant has failed to comply with section 680Z(1).

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(2) The buyer may end the contract at any time before the contract is completed by giving the applicant or applicant's agent a signed, dated notice of ending of the contract.

(3) The notice must state that the contract is ended under this section.

(4) If the buyer ends the contract, the applicant must, within 14 days, refund to the buyer any deposit paid to the seller under the contract.

Maximum penalty—200 penalty units.

(5) This section applies despite anything to the contrary in the contract.

(6) In this section—

Milton rail precinct means the area called Milton rail precinct shown on the map—

(a) included as schedule 1 of the repealed *Planning (Urban Encroachment—Milton Brewery) Act 2009*; and

(b) held by the department.

Note—

Milton rail precinct is taken to be the affected area for Milton Brewery under chapter 10, part 5, division 2.

680ZD Minister to advise local government about registration

As soon as practicable after premises are registered under this chapter the Minister must give notice of the registration to the local government in whose local government area the affected area for the premises is situated.

680ZE Local government to include registration in planning scheme

(1) If a local government receives a notice under section 680ZD, the local government must note the registration on—

(a) its planning scheme (if any); and

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(b) any new planning scheme it makes before the registration ends.

(2) The note is not an amendment of the planning scheme.

Part 5 Register of premises

680ZF Keeping register of registered premises

The chief executive must—

(a) keep a register of all registered premises; and

(b) publish the register on the department's website.

680ZG Content of register

The register must contain the following particulars about each registered premises—

(a) the name, or a description, of the premises;

(b) details of the activities associated with the premises for which a person can not, under this chapter, take a civil proceeding or a criminal proceeding;

(c) a map showing the affected area for the premises;

(d) details of any conditions of the registration;

(e) the day the registration ends.

680ZH Availability of register

The chief executive must keep the register reasonably available for inspection, free of charge, by local governments and members of the public.

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Part 6 Review of chapter 8A

680ZI Review of ch 8A

(1) The Minister must, within 3 years after the commencement of this chapter, carry out a review of the operation and effectiveness of the chapter.

(2) The Minister must, as soon as practicable after the review is completed, cause a report on the outcome to be laid before the Legislative Assembly.

Chapter 9 Miscellaneous

Part 1 Existing uses and rights protected

681 Lawful uses of premises on commencement

(1) To the extent an existing use of premises was lawful immediately before the commencement of this Act, the use is taken to be a lawful use under this Act on the commencement.

(2) To remove any doubt, it is declared that subsection (1) does not, and has never, affected or otherwise limited a requirement under another Act to obtain an approval for the existing use.

Example of an approval—

an environmental authority under the Environmental Protection Act

682 Lawful uses of premises protected

(1) Subsection (2) applies if—

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(a) 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; or

(b) immediately before an existing planning instrument starts applying to land, 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.

683 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.

684 New planning instruments can not affect existing development approvals or compliance permits

(1) This section applies if—

(a) a development approval or compliance permit exists for premises; and

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

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

685 Implied and uncommenced right to use premises protected

(1) Subsection (2) applies if—

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(a) a development approval comes into effect for a development application; and

(b) when the application was properly made, 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, 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 development requiring compliance assessment; 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.

(3) Subsection (4) applies if—

(a) a compliance permit comes into effect for development; and

(b) when the request for compliance assessment of the development was made, a material change of use, for a use implied by the development, was self-assessable development or exempt development; and

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

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

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

(4) The use is taken to be a lawful use in existence immediately before the commencement of the new planning instrument or amendment if the use of the premises starts within 5 years after the compliance permit is given.

686 State forests

For this Act, each of the following is taken to be an existing lawful use of a State forest—

(a) conservation;

(b) planting trees, or managing, felling and removing standing trees, for an ongoing forestry business in a plantation or native forest;

(c) grazing;

(d) recreation.

687 Particular development may still be assessable or self-assessable development or development requiring compliance assessment

Nothing in this part stops development in relation to a lawful use being prescribed under a regulation under section 232(1) as self-assessable development, development requiring compliance assessment or assessable development if the development begins after it is so prescribed.

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Part 2 Environmental impact statements

Division 1 Preliminary

688 When EIS process applies

This part applies for development prescribed under a regulation, if the development—

(a) is or is proposed to be the subject of a development application; or

(b) is for community infrastructure intended to be carried out on land proposed to be designated for the infrastructure.

689 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 688(a)—to help the assessment manager and any concurrence agencies to

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make an informed decision about the development application;

(f) for development under section 688(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;

Note—

See section 202 (What designations may include).

(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;

(h) to allow the State to meet its obligations, if any, under a bilateral agreement.

Notes—

1 For controlled actions under the Commonwealth Environment Act, see section 67 (What is a *controlled action*?) of that Act.

2 For assessment requirements of controlled actions, see chapter 4, part 8 (Assessing impacts of controlled actions) of that Act.

3 For bilateral agreements, see chapter 3 (Bilateral agreements) of that Act.

Division 2 EIS process

690 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.

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(2) The application must be made in the approved form and be accompanied by the fee prescribed under a regulation for administering the terms of reference.

(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) Despite subsection (3), if the chief executive agrees that the EIS can be prepared for a stated later application, the EIS must be prepared for that application.

691 Draft terms of reference for EIS

(1) Subsection (2) applies—

(a) after the chief executive receives the application; and

(b) if the chief executive, having regard to criteria prescribed under a regulation, is satisfied draft terms of reference for the EIS should be publicly notified; and

(c) after the chief executive consults the relevant entities mentioned in section 700(b), (c) and (d).

(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;

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(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 website.

(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 to; 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 for making comments.

692 Terms of reference for EIS

(1) The chief executive must—

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(a) if the chief executive has acted under section 691—finalise the terms of reference and give them to the proponent within 10 business days after the end of the period for making comments; or

(b) if the chief executive has not prepared draft terms of reference—

(i) prepare draft terms of reference the chief executive is satisfied will allow the purposes of the EIS to be achieved for the development; and

(ii) 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

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proposed to be designated for the infrastructure—the entity who would be the designator under chapter 5.

693 Preparation of draft EIS

(1) The proponent must prepare a draft EIS and give it to the chief executive together with the fee prescribed under a regulation for administering the remaining EIS process.

(2) If the chief executive is satisfied the draft EIS addresses the terms of reference and includes any matters prescribed under a regulation for inclusion in the draft EIS, the chief executive must give the proponent a written notice to that effect.

694 Public notification of draft EIS

(1) After the proponent has received notice under section 693(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—

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(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 5.

(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)(ii) 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 website.

(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.

695 Making submissions on draft EIS

(1) Until the last day for making submissions—

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(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.

696 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 700(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.

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(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.

697 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 696(2)(b).

698 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.

699 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

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(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.

700 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 5; and

(d) another entity prescribed under a regulation.

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Division 3 How EIS process affects IDAS

701 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 EIS and the EIS assessment report are part of the supporting material; and

(b) sections 276 to 281 and the notification stage do not apply; and

(c) 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

(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 700; 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 700; and

(f) if the application is changed in a way that the development is substantially different—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 under section 700; and

(b) the development is substantially the same as the development to which the EIS relates.

(4) The chief executive may extend the time mentioned in subsection (3)(a) at any time before the period ends.

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Division 4 How EIS process affects designation

702 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 functions under sections 4(1)(a) and 5(1), the designator must have regard to the EIS and the EIS assessment report.

Part 3 Compensation

703 Definitions for pt 3

In this part—

change, for an interest in land, means a change to the planning scheme or any planning scheme policy affecting the land.

owner, of an interest in land, means an owner of the interest at the time a change relating to the interest is made.

704 Compensation for reduced value of interest in land

(1) An owner of an interest in land is entitled to be paid reasonable compensation by a local government if—

(a) a change reduces the value of the interest; and

(b) a request is made to a local government under chapter 3, part 2, division 5—

(i) to apply a superseded planning scheme to the carrying out of assessable development; or

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(ii) to assess and decide a proposed development application under a superseded planning scheme; or

(iii) to—

(A) accept a request for compliance assessment of development that is assessable development and was development requiring compliance assessment under a superseded planning scheme; and

(B) assess and decide the request under the superseded planning scheme; and

(c) the local government decides to refuse the request; and

(d) a development application for a development permit has been made for the development for which the request was made; and

(e) the application is assessed having regard to the planning scheme and planning scheme policies in effect when the application was made; and

(f) the assessment manager, or, on appeal, the court or building and development committee—

(i) refuses the application; or

(ii) approves the application in part or subject to conditions or both in part and subject to conditions.

(2) Also, an owner of an interest in land is entitled to be paid reasonable compensation by a local government if—

(a) a change reduces the value of the interest; and

(b) a request is made to a local government under chapter 3, part 2, division 5—

(i) to apply a superseded planning scheme to the carrying out of development requiring compliance assessment; or

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(ii) to assess and decide a proposed request for compliance assessment under a superseded planning scheme; and

(c) the local government decides to refuse the request mentioned in paragraph (b); and

(d) a request for compliance assessment has been made for the development for which the request mentioned in paragraph (b) was made; and

(e) the request for compliance assessment is assessed having regard to the planning scheme and planning scheme policies in effect when the request was made; and

(f) the compliance assessor, or, on appeal, the court or building and development committee approves the application subject to conditions.

(3) In addition, an owner of an interest in land is entitled to be paid reasonable compensation by a local government if—

(a) a change reduces the value of the interest; and

(b) a request is made to a local government under chapter 3, part 2, division 5—

(i) to apply a superseded planning scheme to the carrying out of prohibited development; or

(ii) to accept, assess and decide a proposed development application or to accept, assess and decide a proposed request for compliance assessment for prohibited development under a superseded planning scheme; and

(c) the local government decides to refuse the request.

705 Compensation for interest in land being changed to public purpose

An owner of an interest in land is entitled to be paid reasonable compensation by a local government if because of a change the only purpose for which the land could be used,

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other than the purpose for which it was lawfully being used when the change was made, is for a public purpose.

706 Limitations on compensation under ss 704 and 705

(1) Despite sections 704 and 705, compensation is not payable if the change—

(a) has the same effect as another statutory instrument, other than a temporary local planning instrument, in relation to which compensation is not payable; or

(b) is made to include a mandatory part of the standard planning scheme provisions; or

(c) is made to include a part of the standard planning scheme provisions (the ***standard part***) and the effect of the part is substantially similar to the part of the planning scheme or planning scheme policy replaced by the standard part; or

(d) is about the relationships between, the location of, or the physical characteristics of buildings, works or lots, but the yield achievable is substantially the same as it would have been before the change; or

(e) is about a designation made under chapter 5; or

(f) is about the matters comprising a priority infrastructure plan; or

(g) is about the matters comprising a planning scheme policy to which section 847 applies; or

(h) removes or changes an item of infrastructure shown in the scheme; or

(i) affects development that, had it happened under the superseded planning scheme—

(i) would have led to significant risk to persons or property from natural processes (including flooding, land slippage or erosion) and the risk could not have been significantly reduced by conditions attached to a development approval; or

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(ii) would have caused serious environmental harm and the harm could not have been significantly reduced by conditions attached to a development approval.

(2) For subsection (1)(d), yield for residential building work is substantially the same if—

(a) the proposed residential building has a gross floor area of not more than 2000m^2; and

(b) the gross floor area of the proposed residential building is reduced by not more than 15%.

(3) Also, compensation is not payable—

(a) for a matter under this part if compensation has already been paid for the matter to a previous owner of the interest in land; or

(b) for anything done in contravention of this Act; or

(c) if infrastructure shown in a planning scheme is not supplied, or supplied to a different standard, or supplied at a different time than the time stated in the planning scheme.

(4) If a matter for which compensation is payable under this part is also a matter for which compensation is payable under another Act, the claim for the compensation must be made under the other Act.

(5) In this section—

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

mandatory part, of the standard planning scheme provisions, means a part of the provisions that the provisions state—

(a) must be included in a local planning instrument; and

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(b) a local government does not have a discretion to include an alternative part of the provisions in its planning scheme or a planning scheme policy.

Example—

The standard planning scheme provisions might state that all planning schemes must include a particular car parking code set out in the provisions. If, under the provisions, there is no alternative to including this particular car parking code, the code is a mandatory part of the standard planning scheme provisions.

yield means—

(a) for buildings and works—the gross floor area, or density of buildings or persons, or plot ratio, achievable for premises; and

(b) for reconfiguring a lot—the number of lots in a given area of land.

707 Compensation for erroneous planning and development certificates

If a person suffers financial loss because of an error or omission in a planning and development certificate, the person is entitled to be paid reasonable compensation by the local government.

708 Time limits for claiming compensation

A claim for compensation under this part must be given to the local government—

(a) if the entitlement to claim the compensation is under section 704(1)—within 6 months after the day the application mentioned in section 704(1)(d) is refused or approved in part, or subject to conditions or approved both in part and subject to conditions; or

(b) if the entitlement to claim the compensation is under section 704(2)—within 6 months after the day the request for compliance assessment mentioned in section 704(2)(d) is approved subject to conditions; or

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(c) if the entitlement to claim the compensation is under section 704(3)—within 6 months after the day the request mentioned in section 704(3)(b) is refused; or

(d) if the entitlement to claim the compensation is under section 705—within 2 years after the day the change came into effect; or

(e) if the entitlement to claim the compensation is under section 707—at any time after the day the certificate is given.

709 Time limits for deciding and advising on claims

(1) The local government must decide each claim for compensation within 60 business days after the day the claim is made.

(2) The chief executive officer of the local government must, within 10 business days after the day the claim is decided—

(a) give the claimant written notice of the decision; and

(b) if the decision is to pay compensation—notify the amount of the compensation to be paid; and

(c) advise the claimant that the decision, including any amount of compensation payable, may be appealed.

710 Deciding claims for compensation

(1) In deciding a claim for compensation under this part, the local government must—

(a) grant all of the claim; or

(b) grant part of the claim and reject the rest of the claim; or

(c) refuse all of the claim.

(2) However, if the entitlement to claim the compensation is under section 705, the local government may decide the claim by—

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(a) giving a notice of intention to resume the interest in the land under the Acquisition Act, section 7; or

(b) in addition to making a decision under subsection (1)(b) or (c)—decide to amend the planning scheme so that use of the land for the purposes the land could have been used for under the superseded planning scheme would be consistent with the new or amended planning scheme or planning scheme policy.

711 Calculating reasonable compensation involving changes

(1) For compensation payable because of a change mentioned in section 704 or 705, reasonable compensation is the difference between the market values, appropriately adjusted having regard to the following matters, to the extent they are relevant—

(a) any limitations or conditions that may reasonably have applied to the development of the land if the land had been developed under the superseded planning scheme;

(b) any benefit accruing to the land from the change, including but not limited to the likelihood of improved amenity in the locality of the land;

(c) if the owner has an interest in land adjacent to the land, any benefit accruing to the adjacent land because of—

(i) the coming into effect of the change or any other change made before the claim for compensation was made; or

(ii) the construction of, or improvement to, infrastructure on the adjacent land under the planning scheme or planning scheme policy, other than infrastructure funded by the owner, before the claim for compensation was made;

(d) the effect of any other changes to the planning scheme or planning scheme policy made since the change, but before the request under chapter 3, part 2, division 5 was made;

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(e) if the request under chapter 3, part 2, division 5 was refused and a development application, made for the development for which the request was made, is approved in part or subject to conditions—the effect of the approval on the value of the land;

(f) if the request under chapter 3, part 2, division 5 was refused and a request for compliance assessment, made for the development for which the request was made, is approved subject to conditions—the effect of the approval on the value of the land.

(2) Despite subsection (1), if the land for which compensation is claimed has, since the day of the change, become or ceased to be separate from other land, the amount of reasonable compensation must not be increased because the land has become, or ceased to be, separate from other land.

(3) In this section—

difference between the market values is the difference between the market value of the interest in land immediately before the change came into effect, disregarding any temporary local planning instrument, and the market value of the interest immediately after the change came into effect.

712 When compensation is payable

If compensation is payable under this part, the compensation must be paid within 30 business days after the last day an appeal could be made against the local government's decision about the payment of compensation, or if an appeal is made, within 30 business days after the day the appeal is decided or withdrawn.

713 Payment of compensation to be recorded on title

(1) The chief executive officer of the local government must give the registrar of titles written notice of the payment of compensation under section 704.

(2) The notice must be in the form approved by the registrar.

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(3) The registrar must keep the information stated in the notice as information under the *Land Title Act 1994*, section 34.

Part 4 Power to purchase, take or enter land for planning purposes

714 Local government may take or purchase land

(1) This section applies if—

(a) a local government is satisfied the taking of land would help to achieve the strategic outcomes stated in its planning scheme; or

(b) at any time after a development approval or compliance permit has taken effect, the local government is satisfied—

(i) the development the subject of the development approval or compliance permit would create a need to construct infrastructure on land or carry drainage over land; and

(ii) the applicant for the development approval or the person who made the request for compliance assessment has taken reasonable measures to obtain the agreement of the owner of the land to actions that would facilitate the construction of the infrastructure or the carriage of the drainage, but has not been able to obtain the agreement; and

(iii) the action is necessary to allow the development to proceed.

(2) If the local government satisfies itself of a matter in subsection (1) and the Governor in Council approves of the taking of the land, the local government is taken to be a

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constructing authority under the Acquisition Act and under that Act may take the land.

(3) If the local government satisfies itself of the matters in subsection (1)(b), it is immaterial that the applicant or person who requested compliance assessment may also derive any measurable benefit from the resumption action.

(4) To avoid any doubt, it is declared that the local government's power under this section to purchase or take land as a constructing authority under the Acquisition Act includes the ability to purchase or take an easement under section 6 of that Act.

715 Power of assessment manager or other entity to enter land in particular circumstances

(1) An assessment manager or its agent, or a relevant entity for a request for compliance assessment or its agent, may enter land at all reasonable times to undertake works if the assessment manager or entity is satisfied—

(a) implementing a development approval or compliance permit would require the undertaking of works on land other than the land the subject of the approval or permit; and

(b) the applicant or person who requested compliance assessment has taken reasonable steps to obtain the agreement of the owner of the land to enable the works to proceed, but has not been able to obtain the agreement; and

(c) the action is necessary to implement the development approval or compliance permit.

(2) In this section—

relevant entity, for a request for compliance assessment, means—

(a) if the compliance assessor for the request is a State entity or a local government—the entity or local government; or

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(b) if the compliance assessor for the request is a nominated entity of a local government—the local government; or

(c) if the compliance assessor for the request is a nominated entity of a public sector entity—the public sector entity.

716 Compensation for loss or damage

(1) Any person who incurs loss or damage because of the exercise, by an assessment manager or other entity, of powers under section 715 is entitled to be paid reasonable compensation by the assessment manager or entity.

(2) A claim for the compensation must be made—

(a) to the assessment manager or entity in the approved form; and

(b) within 2 years after the entitlement to compensation arose.

(3) The assessment manager or entity must decide the claim within 40 business days after the claim is made.

(4) If the assessment manager or entity decides to pay compensation, the payment must be made within 10 business days after making the decision.

(5) The assessment manager or entity may recover from the applicant or person who requested compliance assessment the amount of any compensation for loss or damage paid under this part that is not attributable to the assessment manager's or entity's negligence.

Part 5 Public housing

717 Application of pt 5

This part applies to development for public housing.

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718 Definition for pt 5

In this part—

chief executive means the chief executive of the department in which the *Housing Act 2003* is administered.

719 How IDAS applies to development under pt 5

Development to which this part applies is exempt development, to the extent the development is self-assessable development, development requiring compliance assessment or assessable development under a planning scheme or a temporary local planning instrument.

Note—

The *Housing Act 2003*, sections 94G and 94H also apply to development for public housing.

720 How charges for infrastructure apply for development under pt 5

If the State, or a statutory body representing the State, proposes or starts development under this part, the State or body is not required to pay any charge for infrastructure under chapter 8, parts 2 and 3 for the development.

721 Chief executive must publicly notify particular proposed development

(1) This section applies to development for public housing the chief executive considers is substantially inconsistent with the planning scheme.

(2) Before starting the development, the chief executive must—

(a) give the local government information, including the plans or specifications, about the proposed development; and

(b) publicly notify the proposed development.

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(3) The public notification must be carried out in the same way public notification of a development application is carried out under sections 297 to 299.

(4) Even though the public notification is to be carried out in the same way as public notification under sections 297 to 299, the form of the notice to be used for the public notification under this section is the form approved by the chief executive.

(5) The chief executive must have regard to any submissions received following the public notification before deciding whether or not to proceed with the proposed development.

722 Chief executive must advise local government about all development

(1) This section applies to development to which section 721 does not apply.

(2) Before the development starts, the chief executive must give the local government information, including the plans or specifications, about the proposed development.

Part 6 Public access to planning and development information

Division 1 Preliminary

723 Meaning of *available for inspection and purchase*

(1) A document mentioned in this Act as being available for inspection and purchase is ***available for inspection and purchase*** if the document or a certified copy of the document is—

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(a) for a document held by a local government—held in the local government's office and any other place decided by the local government; and

(b) for a document held by an assessment manager—held in the assessment manager's office and any other place decided by the assessment manager; and

(c) for a document held by a referral agency—held in the referral agency's office and any other place decided by the referral agency; and

(d) for a document held by a compliance assessor—held in the compliance assessor's office and any other place decided by the compliance assessor; and

(e) for a document held by the chief executive—held in the department's State office and any other place the chief executive approves.

(2) If a document is available for inspection and purchase, a person may—

(a) inspect the document free of charge at any time the office in which the document is held is open for business; and

(b) obtain a copy of the document, or part of the document, from the entity required to keep the document available for inspection.

Note—

The *Copyright Act 1968* (Cwlth) overrides this Act and may limit the copying of material subject to copyright.

(3) An entity required to keep a document available for inspection and purchase may charge a person for supplying a copy of the document, or part of the document.

(4) The charge must not be more than the cost to the entity of—

(a) making the copy available to the person; and

(b) if the person asks for the material to be posted—the postage.

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Division 2 Documents available for inspection and purchase or inspection only

Subdivision 1 Requirements for local governments

724 Documents local government must keep available for inspection and purchase—general

(1) A local government must keep available for inspection and purchase the original or the designated type of copy of each of the following—

(a) its current planning scheme, including a consolidated planning scheme;

(ab) if the local government's planning scheme includes an LGIP—all supporting material used to draft the LGIP;

(b) each amendment of the planning scheme;

(c) if the guideline mentioned in section 117(1) requires public notification of an amendment proposed to be made to the planning scheme—each proposed amendment;

(d) any current temporary local planning instrument for its area;

(e) each current planning scheme policy for its area;

(f) each superseded local planning instrument for its area;

(g) each study, report or explanatory statement prepared in relation to the preparation of each of the following for its area—

(i) a local planning instrument;

(ii) an LGIP;

(h) for each local government in the relevant area for a State planning regulatory provision—the provision;

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(i) for a local government in a designated region—the region's regional plan;

(j) each current State planning policy applying to its area;

(k) the standard planning scheme provisions;

(l) any terms of reference for a regional planning committee of which the local government is a member, or on which the local government has elected not to be represented;

(m) each report of a regional planning committee given to the local government since the planning scheme immediately preceding its current planning scheme was made;

(n) any written direction of the Minister given to the local government to—

(i) make or amend a planning scheme; and

(ii) make or repeal a temporary local planning instrument; and

(iii) make, amend or repeal a planning scheme policy;

(o) each notice about the designation of land given to the local government by a Minister;

(p) each document mentioned in the local government's LGIP, if any, that was used to prepare it;

(q) each charges resolution of the local government;

(r) a register (the ***infrastructure charges register***) of all infrastructure charges the local government levies;

(u) each infrastructure agreement to which the local government is a party, or has been given to the local government under section 673;

(v) each show cause notice and enforcement notice given by the local government under this Act or the Building Act;

(w) each enforcement notice or show cause notice a copy of which was given to the local government under this Act

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or the Building Act by an assessing authority or private certifier;

(x) each enforcement order made by the court on the application of the local government;

(y) planning scheme maps for the designation, under the Building Act, of bush fire prone areas for the BCA;

(z) its register of resolutions about land liable to flooding, made under the Building Act;

(za) its register of exemptions granted under the Building Act, chapter 8;

(zb) each record that it must keep under the Building Act, section 230;

(zc) all development information it has about building development applications, other than information that may be purchased from the registrar of titles;

(zd) its register mentioned in the Building Act, section 251.

(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form in 1 or more registers kept for the purpose.

(3) The infrastructure charges register must, for each charge levied, include each of the following—

(a) the real property description of the land to which the charge applies;

(b) the resolution under which the charge was levied;

(c) the amount of the charge levied;

(d) the amount of the charge unpaid;

(e) if relevant, the number of units of demand charged for;

(f) if the charge was levied as a result of a development approval or compliance permit—the approval or permit reference number and the day the approval or permit will lapse;

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(g) if infrastructure was to be provided instead of paying the charge—details of any infrastructure still to be provided.

(5) Despite subsection (1), the obligation under that subsection does not apply to the extent the local government is reasonably satisfied a document mentioned in subsection (1)(y) to (zd) contains—

(a) sensitive security information; or

(b) information of a purely private nature about an individual, including, for example, someone's residential address.

(6) Also, the obligation under subsection (1)(zc) only applies if the person seeking the information applies for it in the approved form.

(7) An amendment mentioned in subsection (1)(c) must be kept available for inspection and purchase from when it has been publicly notified under a guideline mentioned in the paragraph until it is made or the local government decides not to make it.

(8) In this section—

designated type of copy, for a document, means—

(a) for a document mentioned in subsection (1)(a) to (x)—a certified copy; or

(b) otherwise—an ordinary copy.

development information, for a building development application, means information about any of the following—

(a) the physical characteristics and location of infrastructure related to the application;

(b) local government easements, encumbrances or estates or interests in land likely to be relevant to the application;

(c) site characteristic information likely to affect the assessment of the application.

Examples of information mentioned in paragraph (c)—

- design levels of proposed road or footway works

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- design or location of stormwater connections
- design or location of vehicle crossings
- details of any State heritage place or local heritage place under the *Queensland Heritage Act 1992*
- discharge of swimming pool backwash water
- flood level information
- limitations on driveway gradients
- limitations on the capacity of sewerage, stormwater and water supply services
- location of any erosion control districts
- location of contaminated land
- location of land-slip areas
- location of mine subsidence areas

726 Documents local government must keep available for inspection and purchase—compliance assessment

(1) The local government must keep a copy of the following documents available for inspection and purchase—

(a) each response given by the local government to a compliance assessor under section 402(5);

(b) any compliance permit or compliance certificate given to the local government under section 408(4).

(2) The documents mentioned in subsection (1)(a) must be kept available for inspection and purchase until—

(a) the request for compliance assessment to which the response relates 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 request.

(3) Subsection (1) does not apply to documents to the extent the local government is reasonably satisfied the documents contain sensitive security information.

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727 Documents local government must keep available for inspection only

(1) A local government must keep the following documents available for inspection only—

(a) an official copy of this Act, the Building Act, and every regulation made under the Acts and still in force;

(b) the BCA.

(2) The register may be in hard copy or electronic form.

Subdivision 2 Requirements for assessment managers

728 Documents assessment manager must keep available for inspection and purchase—development application

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

(a) the application, including any supporting material;

(b) any acknowledgement notice;

(c) any information request;

(d) any properly made submission;

(e) any referral agency's response.

(2) The documents mentioned in subsection (1) must be kept available for inspection and purchase from when 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 reasonably satisfied the material contains sensitive security information.

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(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.

(5) In this section—

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

(b) is in the assessment manager's possession when the request to inspect and purchase is made.

729 Documents assessment manager must keep available for inspection and purchase—general

(1) An assessment manager must keep available for inspection and purchase the original or the designated type of copy of each of the following—

(a) each decision notice and negotiated decision notice given by the assessment manager, including any plans and specifications approved by the assessment manager in relation to the notice;

(b) each decision notice and negotiated decision notice a copy of which was given to the assessment manager by a private certifier;

(c) each deemed approval notice given to the assessment manager;

(d) each decision notice amended under chapter 6, part 8, division 2 or 3;

(e) each changed concurrence agency's response given to the assessment manager under chapter 6, part 8, division 2;

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(f) each notice of a change or cancellation of a concurrence agency condition given to the assessment manager under chapter 6, part 8, division 3;

(g) each written notice given to the assessment manager by the Minister calling in a development application;

(h) each direction given by the Minister directing the assessment manager to attach conditions to a development approval;

(i) each agreement to which the assessment manager or a concurrence agency is a party about a condition of a development approval;

(j) each show cause notice and enforcement notice given by the assessment manager as an assessing authority;

(k) each enforcement order made by the court on the application of the assessment manager as an assessing authority;

(l) for each building development application approved for a building in its area—

(i) if, under the Building Act, the application was made to a private certifier (class A)—the documents relating to the application given to the local government, under section 86 of that Act; or

(ii) if the application was made to the local government—the application and the approval documents for the application as defined under the Building Act;

(m) inspection certificates or other documents about the inspection of building work that, under the Building Act, the assessment manager must keep.

(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form in 1 or more registers kept for the purpose.

(3) If the assessment manager has a website, the assessment manager must publish on the website—

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(a) all decision notices and negotiated decision notices given by the assessment manager; and

(b) all deemed approval notices given to the assessment manager; and

(c) all decision notices amended under chapter 6, part 8, division 2 or 3; and

(d) all changed concurrence agency's responses given to the assessment manager under chapter 6, part 8, division 2; and

(e) all notices of a change or cancellation of a concurrence agency condition given to the assessment manager under chapter 6, part 8, division 3.

(4) Subsection (3) does not apply to a decision notice or a negotiated decision notice given by a private certifier.

(5) Despite subsection (1), the obligation under the subsection does not apply to the extent the assessment manager is reasonably satisfied a document mentioned in subsection (1)(l) or (m) contains—

(a) sensitive security information; or

(b) information of a purely private nature about an individual, including, for example, someone's residential address.

(6) Also, the obligation under subsection (1)(l) applies only until—

(a) if the building the subject of the approval is, under the BCA, a class 10 building, other than a swimming pool fence, the earlier of the following to happen—

(i) the building's demolition or removal;

(ii) the end of 10 years from when the approval was given; or

(b) if the building the subject of the approval is of any other class under the BCA or is a swimming pool fence—the building's demolition or removal.

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(7) In this section—

designated type of copy, for a document, means—

(a) for a document mentioned in subsection (1)(a) to (k)—a certified copy; or

(b) otherwise—an ordinary copy.

730 Documents assessment manager must keep available for inspection only

(1) An assessment manager must keep available for inspection only—

(a) an official copy of this Act and every regulation made under this Act and still in force; and

(b) a register of all development applications—

(i) made to the assessment manager; and

(ii) copies of which were given to the assessment manager by a private certifier.

(2) Subsection (1)(b) does not apply for a development application until the decision notice for the application has been given, or was required to be given, or the application lapses or is withdrawn.

Note—

Under section 728 (Documents assessment manager must keep available for inspection and purchase—development application) a copy of the application and any supporting material may be obtained or inspected from when the assessment manager receives the application.

(3) The register must include the following for each development application—

(a) a property description that identifies the premises or the location of the premises to which the application related;

(b) the type of development applied for;

(c) the names of any referral agencies;

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(d) whether the application was withdrawn, lapsed or decided;

(e) if the application was decided—

(i) the day the decision was made; and

(ii) whether the application was approved, approved subject to conditions or refused; and

(iii) whether the application was taken to have been approved under section 331; and

(iv) for an application approved subject to conditions—whether any of the conditions included the conditions of a concurrence agency, and if so, the name of the concurrence agency; and

(v) whether a negotiated decision notice also was given for the application; and

(vi) for an application that was approved—whether there has subsequently been a permissible change to the approval;

(f) if there was an appeal about the decision—whether the decision was changed because of the outcome of the appeal;

(g) other information about the application prescribed under a regulation.

(4) The register may be in hard copy or electronic form.

(5) The chief executive may, by written notice given to an assessment manager, ask the assessment manager to give the chief executive a copy of any information included in the register.

(6) The assessment manager must comply with a notice given under subsection (5).

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Subdivision 3 Requirements for referral agencies

731 Documents referral agency must keep available for inspection only

(1) A referral agency must keep available for inspection only a register of all development applications given to the referral agency under section 272.

(2) Subsection (1) does not apply for a development application until the decision notice for the application has been given, or was required to be given, or the application lapses or is withdrawn.

(3) The register must include the following for each development application—

(a) a property description that identifies the premises or the location of the premises to which the application related;

(b) the type of development applied for;

(c) whether the referral agency was an advice agency or concurrence agency;

(d) whether a referral agency's response was given by the referral agency;

(e) other information about the application prescribed under a regulation.

(4) The register may be in hard copy or electronic form.

(5) The chief executive may, by written notice given to a referral agency, ask the referral agency to give the chief executive a copy of any information included in the register.

(6) The referral agency must comply with a notice given under subsection (5).

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Subdivision 4 Requirements for chief executive

732 Documents chief executive must keep available for inspection and purchase

(1) The chief executive must keep available for inspection and purchase the original or the designated type of copy of each of the following—

(a) each State planning regulatory provision;

(b) the regional plan for each designated region;

(c) all current State planning policies;

(d) all explanatory statements about current State planning policies;

(e) the standard planning scheme provisions;

(f) any terms of reference for all regional planning committees;

(g) all reports of regional planning committees;

(h) any written direction of the Minister given to a local government to—

(i) make or amend a planning scheme; or

(ii) make or repeal a temporary local planning instrument; or

(iii) make, amend or repeal a planning scheme policy;

(i) any direction given by the Minister under chapter 6, part 11, division 1;

(j) each notice of a proceeding given to the chief executive under section 456;

(k) each notice of appeal given to the chief executive under section 482;

(l) each notice given by the Minister calling in a development application;

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(m) each report prepared by the Minister under section 422(1) or 432(1);

(n) each final terms of reference, EIS and EIS assessment report prepared under chapter 9, part 2;

(o) 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;

(p) each guideline made by the Minister or chief executive under section 117, 627, 630, 759 or 760;

(q) each notice given to the chief executive under section 208(1)(c);

(r) the standard conditions for deemed approvals;

(s) the Queensland Development Code.

(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form.

(3) However, the chief executive must not charge anyone for supplying a copy of all or part of the Queensland Development Code.

(4) In this section—

designated type of copy, for a document, means—

(a) for the Queensland Development Code—an ordinary copy; or

(b) otherwise—a certified copy.

733 Documents chief executive must keep available for inspection only

(1) The chief executive must keep the following available for inspection only—

(a) an official copy of this Act and every regulation made under this Act and still in force;

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(b) all current planning schemes, including all consolidated planning schemes;

(c) all amendments of the planning schemes;

(d) all current planning scheme policies;

(e) any current temporary local planning instrument.

(2) The documents mentioned in subsection (1) may be in hard copy or electronic form.

Subdivision 5 Requirements for compliance assessors

734 Documents compliance assessor must keep available for inspection and purchase

(1) A compliance assessor must keep available for inspection and purchase the original or a certified copy of each of the following—

(a) each request for compliance assessment received by the compliance assessor;

(b) each action notice given by the compliance assessor;

(c) each compliance permit or compliance certificate given by the compliance assessor;

(d) if a local government gives the compliance assessor notice of a response under section 402—the response;

(e) each show cause notice or enforcement notice given by the compliance assessor as an assessing authority;

(f) each enforcement order made by the court on the application of the compliance assessor as an assessing authority.

(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form in 1 or more registers kept for the purpose.

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(3) Despite subsection (1), the obligation under the subsection does not apply to the extent the compliance assessor is reasonably satisfied a document mentioned in the subsection contains—

(a) sensitive security information; or

(b) information of a purely private nature about an individual, including, for example, someone's residential address.

(4) The documents mentioned in subsection (1)(a), (b) or (d) must be kept available for inspection and purchase until—

(a) the request for compliance assessment 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 request.

735 Documents compliance assessor must keep available for inspection only

(1) A compliance assessor must keep available for inspection only a register of all requests for compliance assessment received by the compliance assessor.

(2) Subsection (1) does not apply for a request for compliance assessment until the compliance permit or compliance certificate has been given or the request lapses.

(3) The register must include the following for each request for compliance assessment—

(a) a property description that identifies the premises or the location of the premises to which the request related;

(b) whether the request lapsed, was decided or was taken to be approved under section 408;

(c) if the request was decided—

(i) the day the compliance permit or compliance certificate was given; and

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(ii) whether the request was approved or approved subject to conditions; and

(iii) for a request approved subject to conditions—whether any of the conditions were required to be imposed by a local government; and

(iv) whether there has subsequently been a change to the compliance permit or compliance certificate;

(d) if the request was taken to be approved under section 408—

(i) the day the compliance permit or compliance certificate was given; and

(ii) whether there has subsequently been a change to the compliance permit or compliance certificate;

(e) if there was an appeal about the decision—whether the decision was changed because of the outcome of the appeal.

(4) The register may be in hard copy or electronic form.

Division 3 Local governments to publish particular information about development applications

736 Publishing particular information about development application

(1) A local government must publish on its website the following information about each development application made to the local government as assessment manager—

(a) the day the application was made;

(b) the applicant's name and address;

(c) a property description that identifies the premises or the location of the premises to which the application relates;

(d) a description of the proposed development;

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(e) whether the application requires code or impact assessment, or both code and impact assessment;

(f) whether public notification of the application is required.

(2) A local government may publish on its website the information and documents that—

(a) are prescribed under a regulation; and

(b) relate to each development application made to the local government as assessment manager.

Examples of information—

- the names of the referral agencies for the development application
- the day the development application was decided, and whether it was approved, approved subject to conditions or refused

Examples of documents—

- the approved form in which the development application was made
- the acknowledgement notice
- a technical report

(3) The local government must keep the information mentioned in subsection (1) on its website from when the local government 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.

(4) The local government may continue to publish on its website the information mentioned in subsection (1) after the period for which it is required to be published under subsection (3) ends.

(5) Subsections (1) and (2) do not apply to information or documents mentioned in the subsections to the extent the local government is reasonably satisfied the information contains sensitive security information.

(6) In subsection (2)—

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development application includes a development application made under repealed IPA.

Division 4 Planning and development certificates

737 Application for planning and development certificate

(1) A person may apply to a local government for a limited, standard or full planning and development certificate for a premises.

(2) The application must be accompanied by the fee fixed by resolution of the local government for the certificate.

738 Limited planning and development certificates

A limited planning and development certificate must contain the following information for premises—

(a) a summary of the provisions of any planning scheme or charges resolution applying specifically to the premises;

(b) if any of the State planning regulatory provisions apply to the premises—a description of the provisions that apply;

Note—

A State planning regulatory provision (adopted charges) may apply to the premises.

(c) a description of any designations applying to the premises.

739 Standard planning and development certificates

A standard planning and development certificate, in addition to the information contained in a limited planning and development certificate, must contain or be accompanied by the following information for premises—

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(a) a copy of every decision notice or negotiated decision notice for a development approval given under this Act or repealed IPA that has not lapsed;

(b) a copy of every deemed approval notice relating to the premises, if the development approval to which the notice relates has not lapsed;

(c) a copy of every continuing approval mentioned in repealed IPA, section 6.1.23(1)(a) to (d);

(d) details of any decision to approve or refuse an application to amend a planning scheme made under the repealed LGP&E Act, section 4.3, including any conditions of approval;

(e) a copy of every compliance permit or compliance certificate in effect at the time the standard planning and development certificate is given;

(f) a copy of any information recorded for the premises in the infrastructure charges register;

(g) details of any permissible changes to a development approval given under this Act or minor changes made to a development approval given under repealed IPA;

(h) details of any changes to a compliance permit or compliance certificate;

(i) a copy of any judgment or order of the court or a building and development committee about the development approval or a condition included in the compliance permit or compliance certificate;

(j) a copy of any agreement to which the local government or a concurrence agency is a party about a condition of the development approval;

(k) a copy of any infrastructure agreement applying to the premises to which the local government is a party or that it has received a copy of under section 673;

(l) a description of each amendment, proposed to be made by the local government to its planning scheme, that has not yet been made at the time the certificate is given.

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740 Full planning and development certificates

(1) A full planning and development certificate, in addition to the information contained in a limited and standard planning and development certificate, must contain or be accompanied by the following information for premises—

(a) if there is currently in force for the premises a development approval or a compliance permit containing conditions (including conditions about the carrying out of works or the payment of money, other than under an infrastructure agreement)—a statement about the fulfilment or non-fulfilment of each condition, at a stated day after the day the certificate was applied for;

(b) if there is an infrastructure agreement to which the local government is a party—

(i) if there are obligations under the agreement that have not been fulfilled—details of the nature and extent of the obligations not fulfilled; and

(ii) details of the giving of any security and whether any payment required to be made under the security has been made;

(c) advice of—

(i) any prosecution for a development offence under this Act or repealed IPA in relation to the premises of which the local government is aware; or

(ii) proceedings for a prosecution for a development offence under this Act or repealed IPA in relation to the premises of which the local government is aware.

(2) However, the applicant may request that a full certificate be given without the information normally contained in a limited and standard certificate.

(3) If a condition under subsection (1)(a) relates to the ongoing operating requirements of the use of premises, the statement

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need not make reference to the fulfilment or non-fulfilment of the conditions other than under subsection (1)(b).

741 Time within which planning and development certificate must be given

A local government must give a planning and development certificate to an applicant within—

(a) if the certificate is a limited certificate—5 business days after the day the certificate was applied for; or

(b) if the certificate is a standard certificate—10 business days after the day the certificate was applied for; or

(c) if the certificate is a full certificate—30 business days after the day the certificate was applied for.

742 Effect of planning and development certificate

In a proceeding, a planning and development certificate is evidence of the information contained in the certificate.

Part 7 Notification stage for particular aquaculture development

Division 1 Preliminary

743 Purpose of notification stage under pt 7

The notification stage under this part gives a person—

(a) the opportunity to make submissions, including objections, that must be taken into account—

(i) by the assessment manager before deciding a development application for which this part applies; or

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(ii) by a concurrence agency before giving a referral agency's response, to the extent the response relates to development mentioned in section 744(1); and

(b) the opportunity to secure the right to appeal to the court about—

(i) the assessment manager's decision; or

(ii) a referral agency's response by the concurrence agency.

Note—

See, in particular, section 463 (Additional and extended appeal rights for submitters for particular development applications).

744 When notification stage under pt 7 applies

(1) This part applies for a development application—

(a) for which the chief executive is the assessment manager or a concurrence agency; and

(b) for development that—

(i) is a material change of use of premises—

(A) for a hatchery for the production of larvae; or

(B) for aquaculture carried out in ponds with a surface area of more than 5ha; and

(ii) is carried out completely or partly on land within the area with the following boundaries—

- the line every point of which is 5km inland from the line of the highest astronomical tide
- the parallel of latitude 24º30'00" south
- the western boundary of the Great Barrier Reef Marine Park
- the parallel of latitude 10º41'20" south; and

(iii) will cause the discharge of waste into waters.

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(2) However, this part does not apply if—

(a) chapter 9, part 2 applies to the development; or

(b) there is a preliminary approval for the development and the preliminary approval was subject to this part.

(3) In this section—

Great Barrier Reef Marine Park means the Great Barrier Reef Marine Park established under the *Great Barrier Reef Marine Park Act 1975* (Cwlth).

highest astronomical tide means the highest level of the tides that can be predicted to occur under average meteorological conditions and under any combination of astronomical conditions.

745 When can notification stage start

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

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

(a) all information request responses to all information requests made; and

(b) copies of the responses to the assessment manager and any concurrence agency for the application.

Division 2 Public notification

746 Public notice of proposed development

(1) The applicant or, if the applicant has agreed in writing, the assessment manager for the development application must—

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(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) If the assessment manager carried 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.

(3) For subsection (1)(c), roads, land below high-water mark and the beds and banks of rivers are taken not to be adjoining land.

(4) In this section—

owner, for land adjoining the land, see section 297(4).

747 Notification period for development applications

The ***notification period*** for the application—

(a) must be no less than 30 business days starting on the day after the last action under section 746(1) is carried out; and

(b) must not include any business day from 20 December in a particular year to 5 January in the following year, both days inclusive.

748 Requirements for particular notices

(1) The notices mentioned in section 746(1) must be in the approved form.

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

(3) All actions mentioned in section 746(1) must be completed within 5 business days after the first of the actions is carried out.

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(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 746(1) would be unduly onerous or would not give effective public notice.

749 Notice of compliance to be given to assessment manager and concurrence agency

(1) If the applicant carries out notification, the applicant must, after the notification period has ended—

(a) give the assessment manager and any concurrence agency for the application written notice that the applicant has complied with the requirements of this division; and

(b) if there is a concurrence agency for the application—give the assessment manager written notice that the applicant has given the concurrence agency the notice mentioned in paragraph (a).

(2) If the assessment manager carries out notification, the assessment manager must, after the notification period has ended, give any concurrence agency for the application written notice that the assessment manager has complied with the requirements of this division.

750 Assessment manager may assess and decide application if some requirements not complied with

Despite section 749, the assessment manager may assess and decide the application even if some of the requirements of this division have not been complied with, if—

(a) the assessment manager is satisfied any noncompliance has not—

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

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(ii) restricted the opportunity of the public to make properly made submissions; and

(b) any concurrence agency for the application has given written consent to the assessment and decision being made in this way.

751 Making submissions

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

(2) The assessment manager must accept a submission if the submission is a properly made submission.

(3) A person who has made a properly made submission may, by written notice—

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

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

(4) The assessment manager must within 5 business days after the end of the notification period—

(a) give a copy of any properly made submission to any concurrence agency; and

(b) if the person who made the submission amends or withdraws the submission under subsection (3)—notify any concurrence agency that the submission has been amended or withdrawn.

752 Submissions made during notification period effective for later notification period

(1) This section applies if—

(a) a person makes a properly made submission under section 751(1); and

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

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(2) The 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.

Division 3 End of notification stage

753 When does notification stage end

The notification stage ends—

(a) if notification is carried out by the applicant—when the assessment manager receives written notice under section 749(1); or

(b) if notification is carried out by the assessment manager on behalf of the applicant—when any concurrence agency receives written notice under section 749(2).

Division 4 Changed referral agency provisions for applications to which this part applies

754 Referral agency must not respond before notification stage ends

(1) This section applies if the chief executive is a concurrence agency for the development application.

(2) Despite section 271, the concurrence agency must not give a referral agency's response for a matter relating to the development to which the application relates before the notification stage for the application ends.

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755 Adjusted referral agency's assessment period

(1) This section applies if the chief executive is a concurrence agency for the development application.

(2) Despite section 283(1), the referral agency's assessment period for the concurrence agency is a period of 30 days starting on the day after the concurrence agency has received both of the following—

(a) a notice of compliance under section 749;

(b) a copy of all the properly made submissions.

Part 7A Party houses

Division 1 Preliminary

755A Definitions for pt 7A

In this part—

party house means premises containing a dwelling that is used to provide accommodation or facilities for guests if—

(a) the premises, or any part of the premises, is regularly used by guests for parties, including, for example, bucks nights, hens nights, raves, wedding receptions or similar parties; and

(b) the accommodation or facilities are provided for a period of less than 10 days; and

(c) the accommodation or facilities are provided for a fee; and

(d) the premises is not occupied by the owner of the premises during the period mentioned in paragraph (b).

residential dwelling means premises used for a self-contained residence that is—

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(a) a dual occupancy; or

(b) a dwelling house; or

(c) a dwelling unit; or

(d) a multiple dwelling.

residential dwelling development means a material change of use for a residential dwelling.

Division 2 Regulating party houses in local planning instruments

755B Planning scheme or temporary local planning instrument may regulate material change of use for party house

(1) A planning scheme or temporary local planning instrument may—

(a) state that a material change of use for a party house is assessable development in all or part of the planning scheme area; and

(b) include a code for assessing development applications for a material change of use for a party house.

(2) This section applies despite sections 53, 88(1)(a) and 105(d).

755C Planning scheme or temporary local planning instrument may identify party house restriction area

(1) A local government may, in a planning scheme or temporary local planning instrument, identify all or part of the planning scheme area as a party house restriction area.

(2) This section applies despite sections 53, 88(1)(a) and 105(d).

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755D Effect of identification of party house restriction area

(1) This section applies if a planning scheme or temporary local planning instrument identifies an area as a party house restriction area under section 755C.

(2) A development permit or compliance permit for a residential dwelling development in the area does not authorise, and has never authorised, a material change of use for a party house to take place as part of the residential dwelling development.

(3) The use of a residential dwelling in the area as a party house is not, and has never been, a natural and ordinary consequence of a residential dwelling development.

(4) Subsection (5) applies if, at any time, whether before or after the commencement of this section, a planning scheme or temporary local planning instrument provides or provided that a residential dwelling development is self-assessable development or exempt development.

(5) The planning scheme or temporary local planning instrument does not authorise, and has never authorised, a material change of use for a party house to be carried out as part of the residential dwelling development.

Part 8 General

756 Giving electronic submissions

(1) This section applies if, under this Act—

(a) a notice relating to a development application, a State planning instrument or a local planning instrument is given to a person or published in the gazette or a newspaper; and

(b) the notice provides that a person or any other entity may make a submission about the matter the subject of the notice.

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(2) The submission may be made electronically if the notice states it may be made electronically.

757 Application of Judicial Review Act 1991

(1) Subject to subsection (2), the *Judicial Review Act 1991* does not apply to the following matters under this Act—

(a) conduct engaged in for the purpose of making a decision;

(b) other conduct that relates to the making of a decision;

(c) the making of a decision or the failure to make a decision;

(d) a decision.

(2) 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) In particular, for subsection (1), the Supreme Court does not have jurisdiction to hear and determine applications made to it under the *Judicial Review Act 1991*, part 3 or 5 in relation to matters mentioned in subsection (1).

758 References to Planning and Environment Court and judge of the court in other Act

(1) This section applies if another Act refers to the Planning and Environment Court or a judge of that court.

(2) If the context permits, the reference may be taken to refer to the court or a judge of the court.

758A No requirement to consult for particular decisions under repealed IPA

(1) This section applies to—

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(a) a decision of the Minister to give a direction under repealed IPA, section 2.5B.49 or 2.5B.50 or chapter 3, part 6, division 1; and

(b) a decision of the Minister, under repealed IPA, chapter 3, part 6, division 2 to call in a development application, and any decision of the Minister under repealed IPA made in relation to the called in application.

(2) To remove any doubt, it is declared that the Minister was not, under repealed IPA, required to consult with anyone before making the decision.

759 Minister may make guidelines

(1) The Minister may make guidelines about—

(a) the matters to be considered by an assessment manager in deciding whether there are sufficient grounds to justify a decision that may conflict with a relevant instrument under section 326 or 329; or

(b) the form of a preliminary approval to which section 242 applies; or

(c) the matters to be considered in deciding whether or not a change to a development application or a development approval would result in a substantially different development; or

(d) another matter the Minister considers appropriate for the administration of this Act.

(2) Before making a guideline, the Minister must consult with the persons or entities the Minister considers appropriate.

(3) If a guideline is made, the Minister must notify the making of the guideline in the gazette.

(4) This section does not limit sections 117, 627 and 630.

760 Chief executive may make guidelines

(1) The chief executive may make guidelines about—

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(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 5; or

(c) the form in which documents may be given under this Act; or

(d) another matter the chief executive considers appropriate for the administration of this Act.

(2) Before making a guideline, the chief executive must consult with the persons or entities the chief executive considers appropriate.

(3) If a guideline is made, the chief executive must notify the making of the guideline in the gazette.

761 Delegation by Ministers

(1) The Minister may delegate the Minister's functions under this Act to an appropriately qualified public service officer.

(2) The regional planning Minister may delegate that Minister's functions under this Act to an appropriately qualified public service officer.

(3) An eligible Minister may, if acting under chapter 2, delegate the eligible Minister's functions under that chapter to an appropriately qualified public service officer.

(4) The Minister administering the *State Development and Public Works Organisation Act 1971*, if acting under chapter 6, part 11, division 2, may delegate that Minister's functions under the division to an appropriately qualified public service officer.

(5) In this section—

functions includes powers.

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761A Special requirement to amend or make planning scheme

(1) This section applies to a local government that has a declared master planned area in its local government area.

(2) The local government must amend its planning scheme, other than an IPA planning scheme, within 3 years after the commencement—

(a) for each of the local government's declared master planned areas that has a structure plan for the area—to incorporate the structure plan in the planning scheme; or

(b) for each of the local government's declared master planned areas that does not have a structure plan for the area—to address the matters mentioned in subsection (4) for the area in the planning scheme by following the process stated in the guideline mentioned in section 117(1).

(3) However, if on the commencement the local government's planning scheme is an IPA planning scheme, the local government must—

(a) make a planning scheme under this Act within 3 years after the commencement; and

(b) either—

(i) for each of the local government's declared master planned areas that has a structure plan for the area—incorporate the structure plan in the planning scheme; or

(ii) for each of the local government's declared master planned areas that does not have a structure plan for the area—address the matters mentioned in subsection (4) for the area in the planning scheme by following the process stated in the guideline mentioned in section 117(1).

(3A) The local government is taken to have complied with subsection (2)(a) or (3)(b)(i) if—

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(a) the Minister is satisfied the amended or new planning scheme, to the extent it applies to the declared master planned area—

(i) is consistent with the strategic intent of the structure plan; and

(ii) does not affect development entitlements or development obligations stated in the structure plan in an adverse and material way; and

(b) the Minister gives written notice to the local government that the Minister is satisfied of the matters mentioned in paragraph (a).

(4) For subsections (2)(b) and (3)(b)(ii), the matters are all of the following—

(a) set out the broad environmental, infrastructure and development intent to guide detailed planning for the area;

(b) appropriately reflect the standard planning scheme provisions;

(c) include a code that—

(i) states the development entitlements and development obligations for the area; and

(ii) includes a map that gives a spatial dimension to the matters the subject of the code;

(d) for development in the area—

(i) state development that is—

(A) exempt development; and

(B) self-assessable development; and

(C) development requiring compliance assessment; and

(D) assessable development requiring code or impact assessment, or both code and impact assessment; and

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(ii) identify or include codes for the development.

(5) In this section—

commencement means the commencement of this section.

declared master planned area means an area identified as a master planned area in a declaration made under the unamended Act, section 133 and in force on the commencement.

structure plan, for a declared master planned area, means the structure plan for the area made under the unamended Act and in effect on the commencement.

unamended Act means this Act as in force immediately before the commencement.

761B Review of operation of s 761A

The Minister must review the operation of section 761A before 3 years after the date of assent of the *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012*.

762 Approved forms

The chief executive may approve forms for use under this Act.

763 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may—

(a) prescribe fees payable under this Act; and

(b) impose a penalty for contravention of a provision of a regulation of no more than 20 penalty units; and

(c) prescribe a minor change of use that is not a material change of use; and

(d) prescribe requirements to allow—

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(i) processes under the Act to be accredited under the Commonwealth Environment Act; or

(ii) the making of a bilateral agreement under that Act to which the State is proposed as a party; or

(iii) the State to meet its obligations under a bilateral agreement under that Act to which the State is a party.

Chapter 10 Repeal, transitional and validation provisions

Part 1 Repeal provision

764 Act repealed

The Integrated Planning Act 1997, No. 69 is repealed.

Part 2 Transitional provisions for Act No. 36 of 2009

Division 1 Preliminary

765 Definitions for pt 2

In this part—

commencement means the day on which the provision in which the term is used commences.

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existing, in relation to a regional planning advisory committee or regional coordination committee under repealed IPA, means in existence under that Act immediately before the commencement.

existing application see section 802(1).

existing planning scheme see section 778(1).

existing planning scheme policy see section 785.

existing structure plan see section 790(1).

existing temporary local planning instrument see section 782.

Division 2 Provisions for State planning instruments

766 Continuing effect of State planning regulatory provisions

A State planning regulatory provision in force under repealed IPA immediately before the commencement continues to have effect and is taken to be a State planning regulatory provision under this Act.

767 Making or amending State planning regulatory provisions under repealed IPA

(1) If immediately before the commencement the Minister has started the process under repealed IPA, chapter 2, part 5C, division 2, to make or amend a State planning regulatory provision, the Minister may continue to make or amend the provision under repealed IPA as if this Act had not commenced.

(2) To remove any doubt, it is declared that repealed IPA, sections 2.5C.7, 2.5C.8 and 2.5C.12 continue to apply in relation to the making or amendment of a State planning regulatory provision mentioned in subsection (1).

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(3) A State planning regulatory provision or amendment mentioned in subsection (1) and made under repealed IPA is taken to be a State planning regulatory provision or amendment made under this Act.

768 Continuing effect of regional plans

A regional plan in force under repealed IPA immediately before the commencement continues to have effect and is taken to be a regional plan under this Act.

769 Making or amending regional plans under repealed IPA

(1) If immediately before the commencement the regional planning Minister for a designated region has started the process under repealed IPA, chapter 2, part 5A, divisions 4 and 5, to make or amend a regional plan, the regional planning Minister may continue to make or amend the plan under repealed IPA as if this Act had not commenced.

(2) A regional plan or amendment mentioned in subsection (1) and made under repealed IPA is taken to be a regional plan or amendment made under this Act.

770 Continuing effect of particular directions and notices

(1) A direction given to a local government under repealed IPA, section 2.5A.20(1) before the commencement continues to have effect and is taken to be a direction under section 29(1).

(2) A notice given to a local government under repealed IPA, section 2.5A.20(8) before the commencement continues to have effect and is taken to be a written extension under section 29(6).

771 Continuation of regional planning advisory committees

(1) An existing regional planning advisory committee continues as a regional planning committee established under this Act.

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(2) The existing regional planning advisory committee—

(a) continues with the same name, membership and terms of reference it had immediately before the commencement; and

(b) is taken to be established for the same area covered by the region for which it was established under repealed IPA.

772 Continuation of regional coordination committees

An existing regional coordination committee for a designated region continues as the regional planning committee established under section 31 for the region.

773 Continuing effect of particular State planning policies

(1) This section applies to a State planning policy in force under repealed IPA immediately before the commencement, other than a State planning policy having effect for less than 1 year.

(2) The State planning policy continues to have effect and is taken to be a State planning policy made under this Act.

(3) The State planning policy is taken to have effect on the day it had effect under repealed IPA.

(4) If the State planning policy had effect at least 10 years before the commencement, section 45 applies to the policy as if the reference in section 45(1)(b) to the day that is 10 years after the day the policy had effect were a reference to the day that is 3 years after the commencement.

774 Continuing effect of State planning policy having effect for less than 1 year

(1) This section applies to a State planning policy—

(a) made under repealed IPA; and

(b) having effect under that Act for less than 1 year; and

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(c) in force immediately before the commencement.

(2) The State planning policy continues to have effect and is taken to be a temporary State planning policy made under this Act.

(3) For section 49, the temporary State planning policy is taken to have been made on the day it had effect under repealed IPA.

775 Making or amending State planning policies under repealed IPA

(1) If immediately before the commencement the Minister has started the process under repealed IPA, chapter 2, part 4 to make or amend a State planning policy, the Minister may continue to make or amend the policy under repealed IPA as if this Act had not commenced.

(2) Without limiting subsection (1), repealed IPA, section 2.4.4 continues to apply to the making or amendment of the State planning policy.

(3) A State planning policy or amendment mentioned in subsection (1) and made under repealed IPA is taken to be a State planning policy or amendment made under this Act.

(4) However, if the State planning policy mentioned in subsection (1) and made under repealed IPA has effect for less than 1 year, it is taken to be a temporary State planning policy made under this Act.

776 Notification requirements do not apply for making particular State planning instruments

(1) Sections 60 and 63(1) do not apply to the making of a State planning instrument made within the relevant period if the Minister is satisfied—

(a) the State planning instrument substantially reflects, and does not change the effect of, an existing code, law or policy; and

(b) for an existing code, law or policy, other than an Act or regulation or a code or policy included in an Act or

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regulation—adequate public consultation was carried out in relation to the making of the code, law or policy.

(2) In this section—

existing code, law or policy means a code, law or policy in force immediately before the commencement that, under repealed IPA, could have been considered in assessing a development application.

relevant period means—

(a) 2 years after the commencement; or

(b) if the Minister, by gazette notice and within the period mentioned in paragraph (a), nominates a later day that is not more than 4 years after the commencement—the later day.

Division 3 Provisions for local planning instruments

777 Relationship between standard planning scheme provisions and particular instruments

(1) This section applies to—

(a) a local planning instrument under repealed IPA that is in force immediately before the commencement; and

(b) a local planning instrument mentioned in section 779, 783 or 786 and made under repealed IPA.

(2) Sections 53 and 55 do not apply to the local planning instrument.

(3) Despite sections 88(1)(a) and 141(1)(c), if the local planning instrument is a planning scheme, the planning scheme or an amendment of the planning scheme, including an amendment to include a structure plan, need not reflect the standard planning scheme provisions.

(4) A planning scheme mentioned in subsection (3) may be amended to state that development is prohibited development

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only if the standard planning scheme provisions state the development may be prohibited development.

(5) Despite section 155(1)(b), a master plan made under a structure plan included in a planning scheme mentioned in subsection (3) need not reflect the standard planning scheme provisions.

(6) A structure plan included in a planning scheme mentioned in subsection (3) may state that development is prohibited development only if the standard planning scheme provisions state the development may be prohibited development.

(7) Despite section 105(d), a temporary local planning instrument made for all or part of an area to which a planning scheme mentioned in subsection (3) applies need not reflect the standard planning scheme provisions.

(8) A temporary local planning instrument mentioned in subsection (7) may state that development is prohibited development only if the standard planning scheme provisions state the development may be prohibited development.

778 Continuing effect of planning schemes

(1) A local government's planning scheme made under repealed IPA that is in force immediately before the commencement (an ***existing planning scheme***) continues to have effect and is taken to be the planning scheme for the local government's planning scheme area made under this Act.

(2) However, if on the commencement a local government has more than 1 existing planning scheme, each existing planning scheme has effect for the part of the planning scheme area for which the scheme had effect immediately before the commencement.

(3) For this Act, the planning scheme is taken to have effect on the day it had effect under repealed IPA.

(4) Subsection (5) applies if an existing planning scheme mentioned in subsection (1) states desired environmental outcomes for the local government's planning scheme area.

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(5) For this Act, the stated desired environmental outcomes are taken to be strategic outcomes for the planning scheme area.

779 Making or amending planning schemes under repealed IPA

(1) If immediately before the commencement a local government or the Minister has started the process under repealed IPA, chapter 2, part 1, division 3, to make or amend a planning scheme, the local government or Minister may continue to make or amend the planning scheme under repealed IPA as if this Act had not commenced.

(2) Without limiting subsection (1), repealed IPA, section 2.1.6 continues to apply to the making or amendment of the planning scheme.

(3) A planning scheme or amendment mentioned in subsection (1) and made under repealed IPA is taken to be a planning scheme or amendment made under this Act.

(4) Subsection (5) applies if a planning scheme mentioned in subsection (1) states desired environmental outcomes for the local government's planning scheme area.

(5) For this Act, the stated desired environmental outcomes are taken to be strategic outcomes for the planning scheme area.

780 Continuing superseded planning schemes

A planning scheme that was a superseded planning scheme for a planning scheme area under repealed IPA immediately before the commencement is a superseded planning scheme under this Act for the planning scheme area.

781 Reviewing planning schemes and priority infrastructure plans

(1) This section applies if, immediately before the commencement, a local government is reviewing its planning

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scheme or priority infrastructure plan under repealed IPA, section 2.2.1 or 2.2.5.

(2) The local government must continue to carry out the review under repealed IPA as if this Act had not commenced.

(3) However, this Act applies to the making of any new planning scheme or amendment of the planning scheme or priority infrastructure plan because of the review.

782 Continuing effect of temporary local planning instruments

(1) A temporary local planning instrument made under repealed IPA that is in force immediately before the commencement (an ***existing temporary local planning instrument***) continues to have effect and is taken to be a temporary local planning instrument made under this Act.

(2) The temporary local planning instrument—

(a) is taken to have effect on the day it had effect under repealed IPA; and

(b) continues to have effect for the period it would have had effect under repealed IPA, unless it is sooner repealed under this Act.

783 Making temporary local planning instruments under repealed IPA

(1) If immediately before the commencement a local government or the Minister has started the process under repealed IPA to make a temporary local planning instrument, the local government or Minister may continue to make the temporary local planning instrument under repealed IPA as if this Act had not commenced.

(2) Without limiting subsection (1)—

(a) repealed IPA, section 2.1.13 continues to apply to the making of the temporary local planning instrument; and

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(b) section 105(d) does not apply to the temporary local planning instrument.

(3) A temporary local planning instrument mentioned in subsection (1) and made under repealed IPA is taken to be a temporary local planning instrument made under this Act.

784 Repealing particular temporary local planning instruments

(1) If immediately before the commencement a local government has started the process under repealed IPA to repeal an existing temporary local planning instrument, the local government may continue to repeal the instrument under repealed IPA as if this Act had not commenced.

(2) The repeal of a temporary local planning instrument under subsection (1) has effect as if it were repealed under this Act.

(3) Subsection (4) applies to an existing temporary local planning instrument and a temporary local planning instrument mentioned in section 783.

(4) The temporary local planning instrument can not be repealed under this Act without the Minister's written approval if the temporary local planning instrument was made by—

(a) the local government under a direction of the Minister under repealed IPA, section 2.3.2; or

(b) the Minister under repealed IPA, section 2.3.3.

785 Continuing effect of planning scheme policies

(1) A planning scheme policy made under repealed IPA that is in force immediately before the commencement (an ***existing planning scheme policy***) continues to have effect and is taken to be a planning scheme policy made under this Act.

(2) A planning scheme policy made under repealed IPA, section 6.1.20 and continued in effect under subsection (1) can not be amended.

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786 Making or amending planning scheme policies under repealed IPA

(1) If immediately before the commencement a local government or the Minister has started the process under repealed IPA to make or amend a planning scheme policy, the local government or Minister may continue to make or amend the policy under repealed IPA as if this Act had not commenced.

(2) Without limiting subsection (1), repealed IPA, section 2.1.20 continues to apply to the making or amendment of the planning scheme policy.

(3) A planning scheme policy or amendment mentioned in subsection (1) and made under repealed IPA is taken to be a planning scheme policy or amendment made under this Act.

(4) Subsection (1) does not apply to a planning scheme policy being made under repealed IPA, section 6.1.20.

787 Repealing particular planning scheme policies

(1) If immediately before the commencement a local government has started the process under repealed IPA to repeal an existing planning scheme policy, the local government may continue the repeal of the policy under repealed IPA as if this Act had not commenced.

(2) The repeal of a planning scheme policy under subsection (1) has effect as if it were repealed under this Act.

788 Particular notices and directions under repealed IPA

(1) Subsection (2) applies to a notice given by the Minister under repealed IPA, section 2.3.1(1) if on the commencement the Minister has not acted under repealed IPA, section 2.3.1(4) in relation to the notice.

(2) For this Act, the notice is taken to be a notice given under section 125(1).

(3) Subsection (4) applies to a direction given to a local government under repealed IPA, section 2.3.2 in relation to an

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action that, on the commencement, has not been taken by the local government.

(4) The direction continues to have effect as a direction given under section 126 or 127 of this Act.

Division 4 Provisions for planning partnerships

789 Master planned areas

(1) An area that is a master planned area under repealed IPA immediately before the commencement is taken to be a master planned area under this Act.

(2) A master planned area declaration made under repealed IPA, section 2.5B.3 before the commencement is taken to be a master planned area declaration made under this Act.

(3) Subsection (4) applies to a master planned area declaration mentioned in subsection (2) if on the commencement the process for making the structure plan for the area has not started.

(4) Any timeframes stated in the master planned area declaration for steps identified in repealed IPA, schedule 1A, (the ***repealed steps***) for the making of the structure plan are taken to be timeframes for carrying out the steps under the process for making the structure plan under this Act that are equivalent to the repealed steps.

790 Structure plans

(1) A structure plan made under repealed IPA, chapter 2, part 5B for a master planned area and in effect immediately before the commencement (an ***existing structure plan***) is taken to be a structure plan made under this Act for the area.

(2) For this Act, a desired environmental outcome stated in an existing structure plan is taken to be a strategic outcome for the master planned area.

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791 Making structure plan under repealed IPA

(1) If immediately before the commencement a local government has started the process under repealed IPA to make a structure plan, the local government may continue to make the structure plan under repealed IPA as if this Act had not commenced.

(2) A structure plan mentioned in subsection (1) and made under repealed IPA is taken to be a structure plan made under this Act.

(3) Despite section 141(1)(c), the structure plan need not reflect the standard planning scheme provisions.

(4) However, the structure plan may state that development is prohibited development only if the standard planning scheme provisions state the development may be prohibited development.

(5) Subsection (6) applies if the structure plan states desired environmental outcomes for a master planned area.

(6) For this Act, the stated desired environmental outcomes are taken to be strategic outcomes for the master planned area.

792 Application of s 149 to particular structure plans

Section 149 applies in relation to an existing structure plan and a structure plan mentioned in section 791(1) and made under repealed IPA—

(a) as if the reference in section 149(1) to the guideline mentioned in section 145 were a reference to repealed IPA, schedule 1A; and

(b) as if the reference in section 149(2) to comply again were a reference to comply.

793 Master plans

A master plan approved under repealed IPA for a declared master planned area and in force immediately before the commencement (an ***existing master plan***) is taken to be a master plan approved under this Act for the area.

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794 Applications for approval or amendment of master plans under repealed IPA

(1) This section applies to a following application made but not decided before the commencement—

(a) an application for approval of a proposed master plan for a declared master planned area made under repealed IPA, chapter 2, part 5B, division 5;

(b) an application to amend a master plan for a declared master planned area made under repealed IPA, section 2.5B.59.

(2) For dealing with and deciding the application, repealed IPA, chapter 2, part 5B, division 5 and sections 2.5B.58 and 2.5B.59 continue to apply as if this Act had not commenced.

(3) Without limiting subsection (2), repealed IPA, sections 2.5B.49 and 2.5B.50 continue to apply in relation to the application.

(4) Despite section 155(1)(b), a master plan or an amendment mentioned in subsection (1) need not reflect the standard planning scheme provisions.

(5) For repealed IPA, section 2.5B.34(2), a participating agency or coordinating agency may also give the weight it is satisfied is appropriate to a document of a type mentioned in repealed IPA, section 2.5B.34(1)(b) or (c), that is made under this Act.

(6) For repealed IPA, section 2.5B.41(2), a local government may also give the weight it is satisfied is appropriate to a document of a type mentioned in repealed IPA, section 2.5B.41(1), that is made under this Act.

(7) If a proposed master plan or amendment mentioned in subsection (1) is approved under repealed IPA, the master plan or amendment is taken to be a master plan or amendment approved under this Act.

795 Continuation of particular agreements

(1) An agreement entered into under repealed IPA, section 2.5B.51, in relation to a master plan and in force

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immediately before the commencement continues in force and is taken to be an agreement entered into under section 193 of this Act.

(2) An agreement entered into under repealed IPA, section 2.5B.74, in relation to the preparation of a structure plan and in force immediately before the commencement continues in force and is taken to be an agreement entered into under section 143 of this Act.

796 Continuation of particular local government resolutions

A resolution of a local government under repealed IPA, section 2.5B.75, to make and levy a charge in relation to a structure plan and in effect immediately before the commencement continues in effect and is taken to be a resolution under section 144 of this Act.

797 Master plans prevail over conditions of rezoning approvals under the repealed LGP&E Act

A master plan under this Act prevails to the extent the plan is inconsistent with a condition—

(a) of an approval given under the repealed LGP&E Act, section 4.4(5); or

(b) decided under the repealed LGP&E Act, section 2.19(3).

Division 5 Provisions for designations of community infrastructure

798 Designation of community infrastructure

(1) A designation of land for community infrastructure under repealed IPA that is in effect immediately before the commencement—

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(a) continues as a designation under chapter 5 of this Act; and

(b) is taken to have had effect on the day it had effect under repealed IPA.

(2) A notice given under repealed IPA, section 2.6.15(1)(e) about a designation mentioned in subsection (1) before the commencement continues in effect and is taken to be a notice given under section 215(1)(e) of this Act.

799 Designation of land under repealed IPA

(1) If immediately before the commencement a Minister has started the process under repealed IPA, chapter 2, part 6 to designate land, the Minister may continue the designation under repealed IPA as if this Act had not commenced.

(2) The designation of the land is taken to be a designation by the Minister under chapter 5 of this Act.

(3) For this Act, a notice given by the Minister under repealed IPA, section 2.6.8(1)(b), in relation to the designation has effect as if it were a notice given under section 208(1)(b) of this Act.

(4) If under repealed IPA an amendment of a local government's planning scheme is continuing for the purpose of the local government designating land, repealed IPA, section 2.6.13 continues to apply in relation to the proposed amendment.

800 Continuing request to acquire designated land under repealed IPA

(1) This section applies if, under repealed IPA, section 2.6.19, a person has asked a Minister or local government to buy an interest in land and the request has not been decided before the commencement.

(2) The Minister or local government must continue to deal with and decide the request under repealed IPA.

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(3) For subsection (2), repealed IPA, sections 2.6.19 to 2.6.25, apply as if this Act had not commenced.

Division 6 Provisions for integrated development assessment system

801 Continuing effect of development approvals

(1) A development approval under repealed IPA that is in force immediately before the commencement continues as a development approval under this Act.

(2) For this Act, a development approval continued in force under subsection (1) is taken to have had effect on the day it had effect under repealed IPA.

802 Development applications under repealed IPA

(1) This section applies to a development application made under repealed IPA, but not decided, before the commencement (an ***existing application***).

(2) For dealing with and deciding the application, repealed IPA continues to apply as if this Act had not commenced.

(3) For repealed IPA, section 3.3.15(2), a referral agency for the application may also give the weight it considers appropriate to any laws, planning schemes, policies and codes of a type mentioned in repealed IPA, section 3.3.15(1), made under this Act and coming into effect after the application was made.

(4) For repealed IPA, section 3.5.6(2), an assessment manager for the application may also give the weight it considers appropriate to a code, planning instrument, law or policy made under this Act and coming into effect after the application was made, but—

(a) before the day for the decision stage for the application under repealed IPA started; or

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

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

(a) any requirement or restriction on the making or deciding of the application applying under repealed IPA or another Act as in force before the commencement continues to apply in relation to the application to the extent it would have applied before the commencement; and

(b) repealed IPA, chapter 3, part 7 continues to apply in relation to a development permit given for the application.

(6) Despite subsection (2)—

(a) repealed IPA, section 3.2.4 does not apply to the application; and

(b) chapter 6, part 11 of this Act applies to the application.

(7) If a development approval is given under repealed IPA in relation to the application, it is taken to be a development approval given under this Act.

803 Dealing with existing applications under other Acts

(1) This section applies if, after the commencement, a reference in another Act to the *Sustainable Planning Act 2009* or a provision of the *Sustainable Planning Act 2009* relates to a development application.

(2) For dealing with and deciding an existing application under repealed IPA, and carrying out any action under the other Act in relation to the application, the other Act as in force before the commencement continues to apply.

804 Continuing application of repealed IPA, s 5.1.25(1)

(1) This section applies to a development application made under repealed IPA if an acknowledgement notice was given for the

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application under that Act before the commencement, other than under repealed IPA, section 3.2.4.

(2) Repealed IPA, section 5.1.25(1) continues to apply in relation to a development approval given for the application as if this Act had not commenced.

805 Request about application of superseded planning schemes

(1) This section applies if a planning scheme or amendment of a planning scheme creating a superseded planning scheme took effect under repealed IPA before the commencement.

(2) Section 95 applies to a request mentioned in that section in relation to the superseded planning scheme as if the reference in section 95(2) to within 1 year were a reference to within 2 years.

(3) Section 99(2) applies to a development application (superseded planning scheme) made in relation to the request as if the reference in section 99(2) to 6 months were a reference to 20 business days.

806 Particular acknowledgement notices

(1) This section applies to a person given an acknowledgement notice under repealed IPA, section 3.2.5(1)(a) before or after the commencement.

(2) The person may, under section 98(2) to (5) of this Act, ask a local government to extend the period mentioned in repealed IPA, section 3.2.5(5) for the development to which the acknowledgement notice relates.

(3) For subsection (2), section 98(2) and (5) apply as if the reference in the subsections to subsection (1) were a reference to repealed IPA, section 3.2.5(5).

807 Application of repealed IPA, ch 3, pt 5, div 4

(1) Subsection (2) applies if—

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(a) an applicant has made representations about a decision notice to an assessment manager under repealed IPA, section 3.5.17 before the commencement; and

(b) the assessment manager has not dealt with the representations under that section on the commencement.

(2) The assessment manager may continue to deal with the representations under that section as if repealed IPA had not been repealed.

(3) Subsection (4) applies if—

(a) within 20 business days before the commencement an applicant has given an assessment manager a notice under repealed IPA, section 3.5.18(1) suspending the applicant's appeal period for a decision notice; and

(b) on the commencement the applicant has not made representations about the decision notice to the assessment manager under repealed IPA, section 3.5.17.

(4) Repealed IPA, chapter 3, part 5, division 4 continues to apply in relation to the decision notice as if repealed IPA had not been repealed.

808 Preliminary approvals under repealed IPA

(1) This section applies to a preliminary approval to which repealed IPA, section 3.1.6 applies, whether the approval was given under repealed IPA before the commencement or after the commencement for a development application made before the commencement.

(2) The preliminary approval is taken to be a preliminary approval to which section 242 applies.

(3) Section 342(1) to (3) applies to the preliminary approval.

(4) Section 343 does not apply to the preliminary approval.

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809 Requests to extend period under repealed IPA, s 3.5.21

(1) This section applies to a request made under repealed IPA, section 3.5.22, and not decided, before the commencement.

(2) For dealing with and deciding the request, repealed IPA, sections 3.5.22 and 3.5.23 continue to apply as if this Act had not commenced.

(3) However, a decision on the request under repealed IPA, section 3.5.23 is taken to be a decision on a request under chapter 6, part 8, division 5 of this Act.

810 Changing development approvals under repealed IPA

(1) Subsection (2) applies to a request to change a development approval made under repealed IPA, section 3.5.24, and not decided, before the commencement.

(2) For dealing with and deciding the request, repealed IPA, sections 3.5.24 and 3.5.25 continue to apply as if this Act had not commenced.

(3) Subsection (4) applies to a request to change or cancel a condition of a development approval made under repealed IPA, section 3.5.33, and not decided, before the commencement.

(4) For dealing with and deciding the request, repealed IPA, section 3.5.33 continues to apply as if this Act had not commenced.

(5) Subsection (6) applies to a notice given under repealed IPA, section 3.5.33A(7) (the ***first notice***) if, before the commencement, notice under repealed IPA, section 3.5.33A(9) had not been given in relation to the first notice.

(6) On the commencement, the first notice is taken to be a notice given under section 378(7) of this Act and may continue to be dealt with under section 378.

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811 Request to cancel development approval

(1) This section applies to a request to cancel a development approval that was made but not finally dealt with under repealed IPA, section 3.5.26 before the commencement.

(2) For dealing with the request, repealed IPA, section 3.5.26 continues to apply as if this Act had not commenced.

(3) The cancellation of the development approval under repealed IPA, section 3.5.26 has effect as if the approval were cancelled under section 381 of this Act.

812 Particular condition of development approvals

(1) This section applies if a condition of a development approval given under repealed IPA before or after the commencement requires, for a matter prescribed under section 3.5.31A of that Act, a document or work to be assessed for compliance with a condition.

(2) Repealed IPA, section 3.5.31A and any regulation under that section in force immediately before the commencement continue to apply for the assessment.

813 Continuation of agreements under repealed IPA, s 3.5.34

An agreement entered into under repealed IPA, section 3.5.34 in relation to a condition of a development approval continues to have effect and is taken to be an agreement entered into under section 348 of this Act.

814 Directions and call in powers under repealed IPA

(1) Repealed IPA, chapter 3, part 6, division 1 continues to apply in relation to a direction given by the Minister under the division before the commencement.

(2) Repealed IPA, chapter 3, part 6, division 2 continues to apply in relation to a notice given to the assessment manager under the division before the commencement.

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815 Continuing effect of repealed IPA, ch 3, pt 7

(1) This section applies to a development permit given under repealed IPA before the commencement if the permit—

(a) authorises the reconfiguring of a lot; or

(b) includes a condition requiring a plan for reconfiguring a lot to be submitted to a local government.

(2) Repealed IPA, chapter 3, part 7 continues to apply in relation to the development permit.

Division 7 Provisions for appeals and enforcement

Subdivision 1 Planning and Environment Court

816 Appointments of judges continue

A judge of the District Court notified by gazette notice under repealed IPA, section 4.1.8 as a judge who constituted the court before the commencement is, until a further notice is gazetted under section 443, a judge who, on and from the commencement, constitutes the court.

817 Rules of court and directions continue

(1) The rules of court in force immediately before the commencement continue in force on and after the commencement as if they were made under section 445.

(2) A direction issued by the Chief Judge of the District Court under repealed IPA, section 4.1.11(2) and in force immediately before the commencement continues in force on and after the commencement as if it were issued under section 446(2).

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818 Proceedings for declarations

(1) A proceeding started before the court under repealed IPA, section 4.1.21 and not finished on the commencement may be continued and completed by the court under repealed IPA as if this Act had not commenced.

(2) A person may bring a proceeding in the court for a declaration under repealed IPA, section 4.1.21 after the commencement in relation to any of the following for which the person could have brought a proceeding if this Act had not commenced—

(a) a matter done, to be done or that should have been done, for repealed IPA;

(b) the construction of repealed IPA.

(3) Despite subsection (2), repealed IPA, sections 4.1.5A and 4.1.23(2)(a) do not apply in relation to a proceeding mentioned in the subsection.

(4) A decision of the court in a proceeding mentioned in subsection (2) is taken to be a decision under this Act for the purposes of an appeal to the Court of Appeal under chapter 7, part 1, division 14.

819 Appeals to court—generally

(1) Subsection (2) applies if—

(a) a person has appealed to the court under repealed IPA, or repealed IPA as applied under another Act, before the commencement; and

(b) the appeal has not been decided before the commencement.

(2) The court must hear, or continue to hear, and decide the appeal under repealed IPA, or repealed IPA as applied under the other Act, as if this Act had not commenced.

(3) Subsection (4) applies if—

(a) immediately before the commencement a person could have appealed to the court under repealed IPA, or repealed IPA as applied under another Act; and

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(b) the person has not appealed before the commencement.

(4) The person may appeal, and the court must hear and decide the appeal under repealed IPA, or repealed IPA as applied under the other Act, as if this Act had not commenced.

(5) Subsection (6) applies if a person could have appealed to the court under repealed IPA about a following matter if this Act had not commenced—

(a) a matter relating to a development application or a master plan application made before the commencement that is continuing to be dealt with under repealed IPA after the commencement;

(b) a decision made under repealed IPA after the commencement on a request—

(i) under repealed IPA, section 2.6.19; or

(ii) for an extension of a period mentioned in repealed IPA, section 3.5.21; or

(iii) to make a minor change to a development approval; or

(iv) to change or cancel a condition of a development approval;

(c) a decision given in a notice under repealed IPA, section 6.1.44 after the commencement to change or cancel a condition of a development approval;

(d) a deemed refusal of a request mentioned in paragraph (b) and made before the commencement;

(e) a decision made after the commencement on an application to change the conditions attached to an approval given under the repealed LGP&E Act, section 2.19(3) or 4.4;

(f) a decision made before or after the commencement about an assessment mentioned in repealed IPA, section 3.5.31A;

(g) a decision made under repealed IPA, section 5.4.8 or 5.5.3 after the commencement.

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(6) The person may appeal, and the court must hear and decide the appeal under repealed IPA as if this Act had not commenced.

(7) Despite subsections (4) and (6), repealed IPA, sections 4.1.5A and 4.1.23(2)(a) do not apply in relation to a proceeding for an appeal mentioned in the subsections.

(8) A decision of the court on an appeal mentioned in this section is taken to be a decision under this Act for the purposes of an appeal to the Court of Appeal under chapter 7, part 1, division 14.

820 Proceedings for particular declarations and appeals

(1) If, in a proceeding for a declaration mentioned in section 818(2) or an appeal mentioned in section 819(4) or (6), the court finds a provision of repealed IPA, or another Act in its application to repealed IPA, has not been complied with or has not been fully complied with, the court may deal with the matter in the way the court considers appropriate.

(2) For a proceeding for a declaration mentioned in section 818(2) or an appeal mentioned in section 819(4) or (6), section 457(2)(a) applies.

(3) To remove any doubt, it is declared that subsection (1) applies in relation to a development application that has lapsed or is not a properly made application.

821 Application of repealed IPA, s 4.1.52

(1) This section applies for an appeal to the court under repealed IPA.

(2) For deciding the appeal, repealed IPA, section 4.1.52(2) applies—

(a) as if the reference in repealed IPA, section 4.1.52(2)(a) to new laws and policies included any laws and policies coming into effect after the commencement; and

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(b) as if the reference in repealed IPA, section 4.1.52(2)(b) to a minor change were a reference to a minor change as defined under this Act.

822 Appeals to Court of Appeal

(1) Subsection (2) applies if—

(a) a person has appealed to the Court of Appeal under repealed IPA before the commencement; and

(b) the appeal has not been decided before the commencement.

(2) The Court of Appeal may hear, or continue to hear, and decide the appeal under repealed IPA as if this Act had not commenced.

(3) Subsection (4) applies if—

(a) immediately before the commencement a person could have appealed to the Court of Appeal under repealed IPA; and

(b) the person has not appealed before the commencement.

(4) The person may appeal, and the Court of Appeal may hear and decide the appeal under repealed IPA as if this Act had not commenced.

Subdivision 2 Building and development tribunals

823 Establishment of tribunal under repealed IPA

(1) A tribunal established under repealed IPA for a matter before the commencement continues in existence for hearing and deciding the matter.

(2) If a tribunal mentioned in subsection (1) had not started hearing the matter before the commencement, the tribunal may hear and decide the matter under repealed IPA.

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824 Continuation of appointment as general or aesthetics referee

(1) This section applies to a person who, immediately before the commencement, is a general referee or aesthetics referee appointed under repealed IPA, chapter 4, part 2, division 7.

(2) On the commencement, the person is taken to be a general referee or aesthetics referee appointed under chapter 7, part 2, division 10 of this Act.

(3) The person's term of appointment ends on the day it would have ended if this Act had not commenced, unless the appointment is sooner cancelled.

(4) Despite subsection (2), the person also continues as a general referee or aesthetics referee for a proceeding under repealed IPA after the commencement.

825 Continuation of appointment as registrar or other officer

(1) This section applies to a person who, immediately before the commencement, is a registrar of building and development tribunals, or other officer, appointed under repealed IPA, section 4.2.8.

(2) On the commencement, the person is taken to be a registrar of building and development committees, or other officer, appointed under section 509 of this Act.

(3) Despite subsection (2), the person also continues as a registrar of building and development tribunals, or other officer, for a proceeding under repealed IPA after the commencement.

826 Application of ch 7, pt 2, div 3

Despite any other provision of this part, chapter 7, part 2, division 3 does not apply in relation to a development application made under repealed IPA before the commencement.

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827 Appeals to tribunals

(1) Subsection (2) applies if—

(a) a person has appealed to a tribunal under repealed IPA before the commencement; and

(b) the appeal has not been decided before the commencement.

(2) The tribunal must hear, or continue to hear, and decide the appeal under repealed IPA as if this Act had not commenced.

(3) Subsection (4) applies if—

(a) immediately before the commencement a person could have appealed to a tribunal under repealed IPA; and

(b) the person has not appealed before the commencement.

(4) The person may appeal, and a tribunal must hear and decide the appeal, under repealed IPA as if this Act had not commenced.

(5) Subsection (6) applies if a person could have appealed to a tribunal under repealed IPA about a following matter if this Act had not commenced—

(a) a matter relating to a development application made before the commencement that is continuing to be dealt with under repealed IPA after the commencement;

(b) a decision made under repealed IPA after the commencement on a request—

(i) for an extension of a period mentioned in repealed IPA, section 3.5.21; or

(ii) to make a minor change to a development approval; or

(iii) to change or cancel a condition of a development approval;

(c) a decision given in a notice under repealed IPA, section 6.1.44 after the commencement to change or cancel a condition of a development approval.

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(6) The person may appeal, and a tribunal must hear and decide the appeal, under repealed IPA as if this Act had not commenced.

(7) A decision of the tribunal is taken to be a decision of a building and development committee under this Act for the purposes of an appeal to the court under section 479.

828 Application of repealed IPA, s 4.2.33

(1) This section applies for an appeal to a tribunal under repealed IPA.

(2) Section 4.2.33 of that Act applies as if the reference in the section to new laws and policies included any laws and policies coming into effect after the commencement.

Subdivision 3 Show cause notices and enforcement notices

829 Show cause notices

(1) Subsection (2) applies to a show cause notice given to a person by an assessing authority under repealed IPA, section 4.3.9 before the commencement.

(2) The show cause notice continues to have effect as if repealed IPA had not been repealed and is taken to be a show cause notice under this Act.

(3) An assessing authority may act under section 588 as if the reference in that section to a development offence included a reference to a development offence under repealed IPA.

830 Enforcement notices

(1) An enforcement notice given to a person under repealed IPA, section 4.3.11 before the commencement continues in effect and is taken to be an enforcement notice given under section 590.

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(2) An assessing authority may act under section 590 as if a reference in that section to a development offence included a reference to a development offence under repealed IPA.

Subdivision 4 Legal proceedings

831 Proceedings for offences, and orders

(1) A proceeding for an offence against a provision of repealed IPA under chapter 4, part 3, division 4 or chapter 4, part 4 of that Act may be continued under that Act as if this Act had not commenced.

(2) If, immediately before the commencement, a proceeding for an offence against a provision of repealed IPA, chapter 4, part 3, division 4 or chapter 4, part 4 could have been started under that Act, the proceeding may be started under this Act.

(3) An order mentioned in repealed IPA, section 4.3.20, 4.4.5(2) or 4.4.6(2) and in force immediately before the commencement continues in force as if the order were made under this Act.

832 Enforcement orders of the court

(1) A proceeding under repealed IPA, chapter 4, part 3, division 5 may be continued under that Act as if this Act had not commenced.

(2) If, immediately before the commencement, a proceeding could have been started under repealed IPA, chapter 4, part 3, division 5, the proceeding may be started under this Act.

(3) An enforcement order or interim enforcement order made under repealed IPA continues in force as if the order were made under this Act.

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Division 8 Provisions about infrastructure

Subdivision 1 Preliminary

833 Charges for infrastructure

(1) This section applies if an infrastructure charge, regulated infrastructure charge or regulated State infrastructure charge is payable under an infrastructure charges notice, regulated infrastructure charges notice or regulated State infrastructure charges notice given under repealed IPA before the commencement.

(2) The notice is taken to be an infrastructure charges notice, regulated infrastructure charges notice or regulated State infrastructure charges notice under this Act.

Subdivision 2 Infrastructure planning and funding

835 Continuing effect of priority infrastructure plans

(1) On the commencement, a priority infrastructure plan under repealed IPA is taken to be a priority infrastructure plan under this Act.

(2) If immediately before the commencement a local government has started the process under repealed IPA to prepare a priority infrastructure plan, the local government may continue preparing the plan under repealed IPA as if this Act had not commenced.

(3) A priority infrastructure plan mentioned in subsection (2) and prepared under repealed IPA is taken to be a priority infrastructure plan made under this Act.

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836 Infrastructure charges schedules

(1) On the commencement, an infrastructure charges schedule under repealed IPA is taken to be an infrastructure charges schedule under this Act.

(2) If immediately before the commencement a local government has started the process under repealed IPA to prepare or amend an infrastructure charges schedule, the local government may continue to prepare or amend the infrastructure charges schedule under repealed IPA as if this Act had not commenced.

(3) An infrastructure charges schedule or amendment mentioned in subsection (2) and made under repealed IPA is taken to be an infrastructure charges schedule or amendment made under this Act.

837 Regulated infrastructure charges schedules

(1) A regulated infrastructure charges schedule in effect under repealed IPA immediately before the commencement is taken to be a regulated infrastructure charges schedule under this Act.

(2) If immediately before the commencement a local government has started the process under repealed IPA to adopt a regulated infrastructure charges schedule, the local government may continue the process under repealed IPA as if this Act had not commenced.

(3) A regulated infrastructure charges schedule mentioned in subsection (2) and adopted under repealed IPA is taken to be a regulated infrastructure charges schedule adopted under this Act.

838 Continued application of particular provisions about charges

Repealed IPA, sections 5.1.10, 5.1.11, 5.1.20 and 5.1.21 continue to apply in relation to an infrastructure charge or

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regulated infrastructure charge levied and collected under that Act before the commencement.

839 Application of ch 8, pt 4

Chapter 8, part 4 applies to a following notice given under repealed IPA as if the notice were given under this Act—

(a) an infrastructure charges notice;

(b) a regulated infrastructure charges notice;

(c) a regulated State infrastructure charges notice.

Subdivision 3 Infrastructure agreements

840 Infrastructure agreements

An infrastructure agreement in force under repealed IPA immediately before the commencement continues to have effect and is binding on the parties to the agreement as if it were an infrastructure agreement under this Act.

Subdivision 4 Funding of State infrastructure in master planned areas

841 Regulated State infrastructure charges schedules and agreements

(1) On the commencement, a regulated State infrastructure charges schedule under repealed IPA is taken to be a regulated State infrastructure charges schedule under this Act.

(2) An agreement in force under repealed IPA, section 5.3.8 immediately before the commencement continues to have effect and is binding on the parties to the agreement as if it were an agreement under section 673.

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Division 9 Provisions about matters under repealed IPA, chapter 5

842 Claims for compensation

(1) Subsection (2) applies if, before the commencement—

(a) a person has made a claim for compensation under repealed IPA, section 5.4.2, 5.4.3, 5.4.5 or 5.5.3 to a local government or assessment manager; and

(b) the claim has not been decided.

(2) The local government or assessment manager may decide the claim under repealed IPA as if this Act had not commenced.

(3) Subsection (4) applies if, immediately before the commencement—

(a) a person had a right to claim compensation under repealed IPA, section 5.4.2, 5.4.3, 5.4.5 or 5.5.3; and

(b) the person had not exercised the right.

(4) The person may exercise the right within the period stated under repealed IPA for exercising the right.

(5) Subsection (6) applies if, before or after the commencement, a person is given an acknowledgement notice under repealed IPA, section 3.2.5(1)(b) or (3)(b) for a development application (superseded planning scheme) decided after the commencement.

(6) Any right a person may have to claim compensation under repealed IPA, section 5.4.2 in relation to the development application (superseded planning scheme) continues as if this Act had not commenced.

(7) A claim for compensation in relation to a right mentioned in subsection (4) or (6) may be dealt with under repealed IPA as if this Act had not commenced.

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843 Keeping particular documents

(1) A document required to be kept by an entity for inspection and purchase under repealed IPA, chapter 5, part 7 or section 6.1.48 must be kept available by the entity for inspection and purchase under this Act.

(2) A document required to be kept by an entity for inspection only under repealed IPA, chapter 5, part 7 must be kept available by the entity for inspection under this Act.

844 Planning and development certificates

(1) Subsection (2) applies to an application for a planning and development certificate made under repealed IPA, but not decided, before the commencement.

(2) For dealing with and deciding the application, repealed IPA continues to apply as if this Act had not commenced.

(3) A planning and development certificate given under repealed IPA, whether before or after the commencement, is taken to be a planning and development certificate under this Act.

845 Delegations

A delegation made before the commencement that is necessary to give effect to this part continues to have effect on and after the commencement until specifically withdrawn by the person who gave the delegation.

846 Guidelines

A guideline issued by the chief executive under repealed IPA, section 5.9.9(1)(a) or (b) and in effect immediately before the commencement continues in effect and is taken to be a guideline made by the chief executive under section 760.

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Division 10 Provisions about matters under repealed IPA, chapter 6

847 Planning scheme policies for infrastructure

(1) This section applies if, immediately before the commencement, a local government has an existing planning scheme that includes a planning scheme policy about infrastructure prepared under repealed IPA, section 6.1.20.

(2) An infrastructure contribution mentioned in the policy may apply to development infrastructure—

(a) despite section 82—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.

(3) The infrastructure contribution must be for a development infrastructure network that services, or is planned to service, premises and is identified in the policy.

(4) The infrastructure contribution required under the policy may be calculated—

(a) in the way permitted under the repealed LGP&E Act; or

(b) as if it were an infrastructure charge under this Act.

(5) If the planning scheme policy requires an infrastructure contribution for works for the local function of a State-controlled road, the contribution must be—

(a) separately accounted for; and

(b) used to provide works on a State-controlled road.

(6) However, if the local government has an infrastructure charges plan, an infrastructure charges schedule or a regulated infrastructure charges schedule (a ***relevant instrument***) and there is an inconsistency between the planning scheme policy

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and a relevant instrument, the relevant instrument prevails to the extent of the inconsistency.

(7) This section applies despite section 114.

(8) A planning scheme policy mentioned in subsection (1) ceases to have effect on—

(a) generally—30 June 2010; or

(b) if the Minister, by gazette notice, nominates a later day for the planning scheme—the later day.

(9) Despite subsection (8), a requirement under this section about an infrastructure contribution required under the planning scheme policy before the day it ceases to have effect continues to apply.

848 Conditions about infrastructure for particular applications

(1) Subsection (2) applies if—

(a) a local government is deciding a development application under an existing planning scheme; and

(b) the local government has a planning scheme policy about infrastructure prepared under repealed IPA, section 6.1.20.

(2) For deciding the aspect of the application relating to the planning scheme policy—

(a) chapter 8, part 1 does not apply; and

(b) section 347(1)(b) does not apply; and

(c) the local government may impose a condition on the development approval requiring land, works or a contribution towards the cost of supplying infrastructure, including parks, under the planning scheme policy.

(3) However—

(a) if a condition imposed under subsection (2)(c) is inconsistent with an infrastructure agreement for

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supplying the infrastructure, to the extent of the inconsistency, the agreement prevails; or

(b) if the application is being decided under an existing planning scheme, subsection (2) applies only until—

(i) 30 June 2010; or

(ii) if the Minister, by gazette notice, nominates a later day for the planning scheme—the later day.

(4) Subsection (5) applies—

(a) if the planning scheme policy provides for the contribution mentioned in subsection (2)(c) to be adjusted or increased; and

(b) despite the planning scheme policy.

(5) The amount of the contribution may only be adjusted or increased, for the relevant period, by not more than an amount representing the increase in the consumer price index for the relevant period.

(6) In this section—

consumer price index means the all groups consumer price index for Brisbane published by the Australian Statistician.

relevant period, in relation to a development approval, means the period starting on the day the approval comes into effect and ending on the day the contribution amount payable under a condition of the approval is to be paid.

849 Appeals about infrastructure contributions

(1) This section applies to a person who—

(a) under section 847 or repealed IPA, section 6.1.20, is required to pay an infrastructure contribution under a planning scheme policy; and

(b) is dissatisfied with the calculation of the amount of the contribution.

(2) The person may appeal to a building and development committee about an error in the calculation of the amount.

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(3) An appeal under this section must be started within 20 business days after the day the person is given written notice of the requirement.

(4) The registrar of building and development committees must, within 10 business days after the appeal is started, give written notice of the appeal to the assessment manager.

(5) The assessment manager is the respondent for the appeal.

(6) For an appeal under this section, chapter 7, part 2, divisions 8 and 9 apply with all necessary changes.

(7) To remove any doubt, it is declared that an appeal under this section can not be about the methodology used to establish the amount of the infrastructure contribution.

850 Conditions attaching to land

(1) This section applies to a condition mentioned in repealed IPA, section 6.1.24(2) that, under that section, attaches to land and is binding on successors in title.

(2) On and from the commencement, the condition remains attached to the land and is binding on successors in title.

851 Applications in progress under transitional planning schemes

(1) This section applies to a following application to which repealed IPA, section 6.1.28, 6.1.29, 6.1.30, 6.1.30A or 6.1.32 as in force on the commencement (the ***repealed sections***) would have applied if this Act had not commenced—

(a) an existing application;

(b) a development application (superseded planning scheme), if the superseded planning scheme for the application is a transitional planning scheme under repealed IPA, chapter 6, part 1.

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

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(a) the repealed sections continue to apply for dealing with and deciding the application as if this Act had not commenced; and

(b) a reference in repealed IPA, section 6.1.29(3) to a planning scheme policy or a State planning policy includes a reference to a planning scheme policy or a State planning policy made under this Act; and

(c) for assessing an application to which repealed IPA, section 6.1.29 applies—repealed IPA, sections 6.4.1 and 6.8.10 continue to apply as if this Act had not commenced.

852 Applications to change conditions of rezoning approvals under repealed LGP&E Act

(1) This section applies if a person wants to change the conditions attached to an approval given under the repealed LGP&E Act, section 2.19(3)(a) or 4.4(5).

(2) The person may make a development application to achieve the change.

(3) On and from the commencement, the person can not apply under the repealed LGP&E Act, section 4.3(1) or 4.15(1) to change the conditions.

(4) However, if before the commencement an application under the repealed LGP&E Act, section 4.3(1) or 4.15(1) to change the conditions had been made but not decided, the application must be processed by the local government as if the repealed LGP&E Act had not been repealed.

853 Development approvals prevail over conditions of rezoning approvals under repealed LGP&E Act

A development approval given under this Act or repealed IPA prevails, to the extent the approval is inconsistent with a condition—

(a) of an approval given under the repealed LGP&E Act, section 4.4(5); or

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(b) decided under the repealed LGP&E Act, section 2.19(3).

854 Notice under repealed IPA, s 6.1.44

(1) This section applies if, before the commencement, an entity has given a person a notice under repealed IPA, section 6.1.44(4) about a condition of a development approval but has not given a notice under section 6.1.44(6) of that Act in relation to the condition.

(2) Repealed IPA, section 6.1.44 continues to apply for the development approval.

855 Infrastructure agreements

(1) An infrastructure agreement made under the repealed LGP&E Act, part 6, division 2 that, immediately before the commencement, was in effect and was binding on the parties to the agreement continues in effect and continues to be binding on the parties as if the repealed LGP&E Act had not been repealed.

(2) If an infrastructure agreement mentioned in subsection (1) or made under repealed IPA contains permission criteria inconsistent with a regulation made under section 250(a) or 251(a) of this Act, to the extent of the inconsistency the agreement prevails.

(3) In this section—

permission criteria means criteria under any of the following—

(a) for an agreement—

(i) mentioned in subsection (1)—the *Transport Infrastructure Act 1994*, section 40, as in force immediately before 1 December 1999; or

(ii) made under repealed IPA—the *Transport Infrastructure Act 1994*, section 40;

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(b) the *Transport Operations (Passenger Transport) Act 1994*, section 145(4), as in force before 19 September 2005.

856 Rezoning agreements under previous Acts

(1) This section applies to an agreement made for securing the conditions of a rezoning approval if the conditions did not attach to the land the subject of the approval and bind successors in title.

(2) To the extent the agreement was validly made, still has effect and is not inconsistent with a condition of a development approval or master plan, nothing in the repealed LGP&E Act, repealed IPA or this Act affects the agreement.

(3) If—

(a) an assessment manager is imposing a condition under this Act about infrastructure; or

(b) a coordinating agency or the local government is proposing to include a condition about infrastructure in a proposed master plan; or

(c) a local government is fixing an infrastructure charge under chapter 8, part 1; or

(d) a coordinating agency or State infrastructure provider is giving a regulated State infrastructure charges notice;

any amount relating to infrastructure that has been paid, or is payable, under the agreement must be taken into account.

(4) In this section—

rezoning approval means an approval—

(a) given under the repealed LGP&E Act, section 4.4(5); or

(b) decided under the repealed LGP&E Act, section 2.19(3).

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857 Development control plans under repealed LGP&E Act

(1) This section applies to a development control plan if—

(a) the plan is included in an existing planning scheme under repealed IPA, section 6.1.45A; and

(b) a statement in the existing planning scheme identifies the area of a development control plan included in the scheme.

(2) The repealed LGP&E Act and the transitional planning scheme and any transitional planning scheme policies under repealed IPA continue to apply to the extent necessary to administer the development control plan.

(3) Repealed IPA, sections 6.1.28 to 6.1.30 apply for assessing development applications in the development control plan area.

(4) The development control plan may include or refer to codes or other measures of the planning scheme.

(5) To the extent the development control plan includes a process for making and approving plans, however called, with which development must comply in addition to, or instead of, the planning scheme or provides for appeals against decisions under the plan—

(a) the development control plan is, and always has been, valid; and

(b) development under the development control plan must comply with the plans in the way stated in the development control plan; and

(c) if the development control plan states that an appeal may be made, and an appeal is made, the appeal is validly made.

(6) If the development control plan is changed after the commencement in a way that, if repealed IPA and this Act had not commenced, would have given rise to a claim for compensation under the repealed LGP&E Act, the compensation may be claimed as if repealed IPA and this Act had not commenced.

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(7) Subsection (5) applies even if the process mentioned in the subsection is inconsistent with chapter 6 or a guideline made under section 117(1).

(8) Subsection (9) also applies to a transitional planning scheme under repealed IPA that includes the development control plan.

(9) The transitional planning scheme or the development control plan may be amended under—

(a) the provisions of this Act relating to the process for amending a planning scheme; or

(b) a process mentioned in subsection (5) to the extent stated in the development control plan.

(10) A transitional planning scheme policy mentioned in subsection (2) may be amended under—

(a) the provisions of this Act relating to the process for amending a planning scheme policy; or

(b) a process mentioned in subsection (5) to the extent stated in the development control plan.

(11) If the development control plan is amended under subsection (9), subsections (5) and (6) continue to apply to the plan.

858 Transition of validated planning documents to master planning documents

(1) This section applies to a development control plan, transitional planning scheme, transitional planning scheme policy or other plan (the ***validated planning document***) to which section 857 applies.

(2) A State planning regulatory provision (the ***transitional regulatory provision***) may provide for—

(a) the transition of the validated planning document to a structure plan for a declared master planned area, and a master plan or master plans for the area; and

(b) any other matter related to the transition.

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(3) Without limiting subsection (2), the transitional regulatory provision may provide for all or any of the following—

(a) the identification of the master planned area for the structure plan;

(b) how the structure plan is made;

(c) how master plans for the identified master planned area are made, with or without approval;

(d) infrastructure agreements relating to the identified master planned area.

(4) If the transition mentioned in subsection (2)(a) is made under the transitional regulatory provision—

(a) the validated planning document ceases to have effect to the extent provided for under the provision; and

(b) section 857 ceases to apply for the validated planning document.

(5) This section applies despite chapter 2, part 2, chapter 4 and section 857 to the extent provided for under the transitional regulatory provision.

(6) However, on the making of the transition, this Act applies to the structure plan, the master planned area and any master plan made under the transitional regulatory provision as if they had been made under chapter 4.

(7) Section 66(2) and (3) applies to a transitional regulatory provision.

859 Local Government (Robina Central Planning Agreement) Act 1992

Despite the repeal of the repealed LGP&E Act, the *Local Government (Robina Central Planning Agreement) Act 1992* applies as if the repealed LGP&E Act had not been repealed.

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860 Town planning certificates may be used as evidence

In a proceeding, a town planning certificate issued under the repealed LGP&E Act is evidence of the matters contained in the certificate.

861 Orders in council about particular land

(1) This section applies to—

(a) any orders in council made under the repealed *Local Government Act 1936*, section 33(22A) or the repealed *City of Brisbane Town Planning Act 1964*, section 7A(8), to the extent the orders are still in force immediately before the commencement; and

(b) all orders in council made under the repealed LGP&E Act, section 2.21(2)(c).

(2) To remove any doubt, it is declared that all orders mentioned in subsection (1) and still in force immediately before the commencement continue in force as if the orders were regulations made under this Act.

(3) Any development lawfully undertaken on premises to which an order in council mentioned in subsection (1) applied while the premises were owned by the State is and always has been lawful development, and any use of the premises that is a natural and ordinary consequence of the development is a lawful use.

(4) Subsection (3) applies even though the premises may no longer be owned by the State.

862 Application of repealed IPA, s 6.1.54

To remove any doubt, it is declared that, for dealing with and deciding an existing application, repealed IPA, section 6.1.54 continues to apply as if that Act had not been repealed.

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863 Provision for infrastructure charges plans

(1) This section applies to an infrastructure charges plan continued in effect as if it were an infrastructure charges schedule under repealed IPA, section 6.2.5.

(2) A reference in the planning scheme or the infrastructure charges plan to—

(a) the infrastructure charges plan is taken to be a reference to an infrastructure charges schedule; and

(b) infrastructure identified in the plan is taken to be a reference to trunk infrastructure.

(3) For section 650, an assumption about the type, scale, location or timing of future development on which the plan is based has effect as if the assumption were stated in a priority infrastructure plan.

(4) If an infrastructure charges plan mentioned in subsection (1) includes public parks infrastructure—

(a) the infrastructure is taken to have been validly included in the plan; and

(b) any infrastructure charge levied under the plan is taken to have been validly levied.

Division 11 Provisions for SEQ regional plan

864 Definitions for div 11

In this division—

former, for a provision mentioned in this division, means the provision to which the reference relates is a provision of repealed IPA as in force before 21 September 2007.

SEQ region means the area, including the area of any Queensland waters, that comprised the SEQ region under former section 2.5A.2 immediately before 11 September 2007.

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SEQ regional plan means the instrument made by the regional planning Minister under former section 2.5A.15(2) in existence under repealed IPA immediately before 11 September 2007.

SEQ regional plan structure plan means a structure plan under former section 2.5A.20(5).

865 References in SEQ regional plan and regulatory provisions

(1) This section applies to a reference in the SEQ regional plan or the regulatory provisions to a structure plan.

(2) For this Act a reference to a structure plan is taken to be a reference to an SEQ regional plan structure plan.

(3) In this section—

regulatory provisions means the regulatory provisions under former section 2.5A.12.

866 Structure plan

(1) This section applies to a local government whose local government area is in the SEQ region if—

(a) the local government has resolved to prepare an SEQ regional plan structure plan—

(i) before 21 September 2007; or

(ii) if the regional planning Minister for the SEQ region and the Minister approve the preparation of the plan—after 21 September 2007; and

(b) the local government has prepared the plan; and

(c) the regional planning Minister has approved the plan; and

(d) on the commencement, the local government has not started the process under repealed IPA to amend its planning scheme to include the plan.

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(2) Despite any provision of a guideline made under section 117(1), the Minister must advise the local government that it may—

(a) adopt the plan as an amendment of its planning scheme; or

(b) adopt the plan as an amendment of its planning scheme, but subject to compliance with conditions the Minister may impose about the content of the proposed amendment of its planning scheme.

(3) If the local government adopts the plan as an amendment of its planning scheme, section 706(1)(j) applies to the amendment as if it were about a matter comprising a structure plan for a declared master planned area.

Division 12 Miscellaneous

867 Provision for particular development applications—local heritage places

(1) Subsection (2) applies to a development application made under repealed IPA that—

(a) was made before 31 March 2008 (whether or not the application was decided before 31 March 2008); and

(b) was a properly made application.

(2) For dealing with and deciding the application, repealed IPA, schedule 8, part 1, table 5, item 2A as in force on or after 31 March 2008 does not apply to the application.

(3) Subsection (4) applies to a development application made under repealed IPA that—

(a) was made after 30 March 2008 and before 11 December 2008 (whether or not the application was decided before that day); and

(b) was a properly made application.

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(4) For dealing with and deciding the application, repealed IPA, schedule 8, part 1, table 5, item 2A as in force on or after 11 December 2008 applies to the application.

(5) Subsection (2) applies despite repealed IPA, section 1.4.8.

868 Particular activities not a material change of use

Section 10(1), definition *material change of use*, paragraph (e) does not apply to an activity carried out in connection with operating a road tunnel ventilation shaft for the projects known as Clem Jones Tunnel and Airport Link Project described in the Coordinator-General's reports for the EIS, and change reports, for the projects under the *State Development and Public Works Organisation Act 1971*.

Editor's note—

The Clem Jones Tunnel was formerly called the North-South Bypass Tunnel.

869 Deferment of application of s 578 to particular material changes of use

(1) Section 578 does not apply to the carrying out of a material change of use of premises mentioned in section 10(1), definition *material change of use*, paragraph (d), until 1 year after the commencement of that paragraph.

(2) Section 578 does not apply to the carrying out of a material change of use of premises mentioned in section 10(1), definition *material change of use*, paragraph (e), until 1 year after the day the activity becomes an environmentally relevant activity.

870 References to repealed IPA and other legislation

(1) A reference in another Act or document to the *Integrated Planning Act 1997* may, if the context permits, be taken as a reference to this Act.

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(2) A reference in another Act or document to a particular provision of repealed IPA (the ***repealed provision***) may, if the context permits, be taken as a reference to any provision of this Act, or a regulation made under this Act, all or part of which corresponds, or substantially corresponds, to the repealed provision.

(3) Subsection (4) applies—

(a) for a reference in this Act to the *Local Government Act 2009* or a provision of that Act or a regulation made under that Act (the ***local government reference***); and

(b) until the day the *Local Government Act 2009*, section 288 commences.

Note—

The *Local Government Act 2009*, section 288 repeals the *Local Government Act 1993*.

(4) The local government reference may, if the context permits, be taken as a reference to the *Local Government Act 1993* or any provision of that Act, all or part of which corresponds or substantially corresponds to the reference.

(5) This section is subject to the other provisions of this part.

Part 3 Transitional provisions for Revenue and Other Legislation Amendment Act 2011

872 Definitions for pt 3

In this part—

chairperson, of a panel, means the person who, under the repealed Iconic Places Act immediately before the commencement, was the chairperson of the panel.

commencement means the day this part commences.

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iconic places development application means a development application to which the repealed Iconic Places Act, part 4, division 3 applies immediately before the commencement.

panel means a panel established under the repealed Iconic Places Act.

reference decision means a reference decision under the repealed Iconic Places Act.

873 Dealing with iconic places development applications

(1) Subsection (2) applies to an iconic places development application if, before the commencement, the local government for the application—

(a) has not acted under the repealed Iconic Places Act, section 44 or 45 for the application; or

(b) has acted under the repealed Iconic Places Act, section 44 for the application, but a panel has not made a reference decision for the application.

(2) On the commencement, the repealed Iconic Places Act ceases to apply to the application.

(3) Subsection (4) applies to an iconic places development application if, before the commencement—

(a) a panel has made a reference decision for the application; and

(b) the reference decision is that the panel is to decide the application instead of the local government for the application; and

(c) the application has not been decided by the local government.

(4) On the commencement—

(a) the repealed Iconic Places Act ceases to apply to the application; and

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(b) the local government may continue to decide the application and give the decision notice for the application.

(5) Subsection (6) applies to an iconic places development application if, before the commencement—

(a) a panel has made a reference decision for the application; and

(b) the reference decision is that the panel is to decide the application instead of the local government for the application; and

(c) the application has been decided by the local government; and

(d) the panel—

(i) has not decided the application under IDAS in compliance with the repealed Iconic Places Act, section 52; or

(ii) has decided the application under IDAS in compliance with the repealed Iconic Places Act, section 52, but has not given a decision notice for the application.

(6) On the commencement—

(a) the repealed Iconic Places Act ceases to apply to the application; and

(b) the local government's decision on the application is taken to be the decision under IDAS for the application; and

(c) for this Act, the local government is taken to have made the decision on the commencement.

874 Decisions of panels

(1) This section applies if, before the commencement—

(a) a panel has given a decision notice for an iconic places development application; and

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(b) the applicant has, under chapter 6, part 8, division 1, made representations to the panel about the decision notice; and

(c) the panel has not given a negotiated decision notice for the application.

(2) For this Act—

(a) the representations are taken to have been made to the local government for the application; and

(b) the local government must consider the representations and make a decision about the representations under chapter 6, part 8, division 1.

(3) Despite section 876 and the repeal of the repealed Iconic Places Act, the chairperson of the panel must, as soon as practicable after the commencement, give the representations to the local government.

875 Provision about appeals

(1) This section applies for any appeal, under sections 461 to 464, relating to an iconic places development application for which a panel has given a decision notice or negotiated decision notice.

(2) Despite section 485, the Minister is the respondent for the appeal.

(3) The local government for the application may appeal to the court as if it had been a submitter for the application.

(4) Subsection (2) applies whether or not the appeal started before the commencement.

876 Dissolution of panels

(1) On the commencement—

(a) each panel is dissolved; and

(b) the members of each panel go out of office.

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(2) No compensation is payable to a member because of subsection (1).

877 Responsible entity for development approvals

(1) This section applies—

(a) if a development approval is a decision notice or a negotiated decision notice that is given by a panel; and

(b) for chapter 6, part 8, division 2.

(2) The local government for the development application to which the approval relates is the responsible entity for a change or approval mentioned in section 369(1)(e).

878 Panel's report

(1) This section applies despite section 876 and the repeal of the repealed Iconic Places Act.

(2) The chairperson of each panel must, as soon as practicable after the commencement, give the Minister a written report about the performance of the panel's functions during the financial year in which the panel was dissolved.

Part 4 Transitional provisions for Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011

879 Extended application of s 856 for adopted infrastructure charge

Section 856 applies to an agreement mentioned in section 856(1) as if the reference in section 856(3)(c) to an

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infrastructure charge included a reference to an adopted infrastructure charge.

880 When local government must not levy particular charges for infrastructure

(1) This section applies—

(a) on the day a State planning regulatory provision (adopted charges) first has effect; and

(b) until the day the State planning regulatory provision ceases to have effect.

(2) A local government must not—

(a) levy an infrastructure charge or regulated infrastructure charge under chapter 8, part 1, division 4 or 5; or

(b) impose a condition under a planning scheme policy to which section 847 applies.

(3) Subsection (2)—

(a) applies despite chapter 8, part 1, division 4 or 5 and sections 847 and 848; and

(b) does not stop a local government—

(i) collecting an infrastructure charge or regulated infrastructure charge lawfully levied by the local government; or

(ii) collecting an infrastructure contribution payable under a condition lawfully imposed under a planning scheme policy to which section 847 applies; and

(c) does not stop a local government giving a new notice under section 185(8) or 364; and

(d) does not affect a right or liability, or action that can be taken, under this Act in relation to a charge or infrastructure contribution mentioned in paragraph (b).

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881 Effect of local government resolution made before commencement of amending Act

(1) This section applies to a resolution made by a local government before the commencement of the amending Act, part 3, if the resolution provides for any matters mentioned in section 648D(1).

(2) For this Act, the resolution is taken—

(a) to be an adopted infrastructure charges resolution; and

(b) to have effect—

(i) immediately after a State planning regulatory provision (adopted charges) first has effect; or

(ii) if a later day is stated in the resolution for that purpose—the later day.

(3) However, the resolution is taken to be of no effect to the extent a charge adopted under the resolution for particular development or a part of the local government's area is more than the maximum adopted charge for the development or part.

(4) Section 648D(2) to (4) and (6) to (8) applies in relation to the local government and the resolution as if the reference in section 648D(3) to 'the local government makes an adopted infrastructure charges resolution' were a reference to 'the commencement of the amending Act, part 3'.

(5) In this section—

amending Act means the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011*.

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Part 5 Validation and transitional provisions for Sustainable Planning and Other Legislation Amendment Act 2012

Division 1 Validation provision

882 Validation provision for applications and development approvals under repealed IPA

(1) Subsection (2) applies to a development application (superseded planning scheme) made under repealed IPA before 30 March 2006 if—

(a) the application—

(i) was made within 2 years after the day the planning scheme, planning scheme policy or amendment of the planning scheme, creating the superseded planning scheme to which the application related took effect; but

(ii) was not made within 2 years after the day the planning scheme, planning scheme policy or amendment of the planning scheme was adopted; and

(b) a development approval was given under repealed IPA for the application.

(2) The development application (superseded planning scheme) is not invalid merely because it was not made within 2 years after the day the planning scheme, planning scheme policy or amendment of the planning scheme was adopted.

(3) The development approval is not invalid merely because the development application (superseded planning scheme) to which it relates was not made within 2 years after the day the planning scheme, planning scheme policy or amendment of the planning scheme was adopted.

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Division 2 Provisions for chapter 8A

883 Definitions for div 2

In this division—

Milton Brewery means the brewery situated on lot 35 on plan SL805565.

Editor's note—

The address for the Milton Brewery is 185 Milton Road, Milton.

Milton rail precinct means the area called Milton rail precinct shown on the map—

(a) included as schedule 1 of the repealed *Planning (Urban Encroachment—Milton Brewery) Act 2009*; and

(b) held by the department.

884 Registration of Milton Brewery for ch 8A, pt 3

(1) On the commencement of this division—

(a) Milton Brewery is taken to be premises registered under chapter 8A, part 3; and

(b) the Milton rail precinct is taken to be the affected area for Milton Brewery.

(2) The term of the registration is 10 years starting on 27 April 2009.

(3) Section 475A does not apply to the registration of Milton Brewery under this section.

885 Restriction on legal proceedings for Milton Brewery

(1) This section applies to a claim under section 680E(1) by an affected person in relation to a relevant act at Milton Brewery.

(2) If the relevant act was, or caused, the emission of light, section 680E(2) applies to the claim only if the emission was

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no more than the intensity of light for the relevant act before 27 April 2009.

(3) In this section—

affected person see section 680E(6).

relevant act see section 680E(1).

886 Non-application of s 680X(1)

Section 680X(1) does not apply to Milton Brewery.

887 Application of s 680Y

Section 680Y applies to Milton Brewery only for a renewal of its registration under chapter 8A, part 3.

888 Notifying prospective buyers

(1) This section applies if—

(a) a relevant development application, as defined under the repealed *Planning (Urban Encroachment—Milton Brewery) Act 2009*, section 5, was made before 27 April 2009; and

(b) the application is a current application; and

(c) anyone (the ***seller***) offers the premises or lot the subject of the application, or part of the premises, (the ***property***) for sale to someone else (a ***prospective buyer***).

(2) Before the prospective buyer enters into a contract to buy the property, the seller must give the prospective buyer a notice (an ***affected area notice***) of—

(a) the restrictions under section 680E that may apply to the prospective buyer if the prospective buyer buys the property; and

Note—

For the restrictions under section 680E in the Milton rail precinct, also see section 885.

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(b) the keeping in the appropriate register of a record of the affected area notation for the property.

(3) If—

(a) the seller fails to give the prospective buyer an affected area notice for the property; and

(b) the prospective buyer enters into a contract with the seller to buy the property;

the failure to notify gives the prospective buyer the right to end the contract.

(4) The prospective buyer may end the contract at any time before the contract is completed by giving the seller or the seller's agent a signed, dated notice of the ending of the contract.

(5) The notice must state the contract is ended under this section.

(6) If the prospective buyer ends the contract, the seller must, within 14 days, refund to the prospective buyer any deposit paid to the seller under the contract.

Maximum penalty—200 penalty units.

(7) This section applies despite anything to the contrary in the contract.

(8) To remove any doubt, it is declared that this section applies—

(a) even if the offer for sale is made by someone other than the applicant for the relevant development application; and

(b) if the seller is not the applicant—whether or not the seller received an affected area notice for the property; and

(c) regardless of the number of times the property has been sold since the making of the development application.

(9) In this section—

current application means a relevant development application, as defined under the repealed *Planning (Urban Encroachment—Milton Brewery) Act 2009*, section 5, that has

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not been refused, or has not lapsed or been withdrawn before the application is decided.

889 Development applications made before commencement

Section 680Z(1) applies to a development application mentioned in section 680D(b) or (c) as if the reference in section 680Z(1) to '20 business days after making the application' were a reference to '20 business days after the commencement of this section'.

Division 3 Other provisions

890 Transitional provision about call in of application

(1) This section applies to a development application called in under chapter 6, part 11, division 2 before the commencement of the section if, under that division, the application has not been finally dealt with before the commencement.

(2) For dealing with the application, chapter 6, part 11, division 2 as in force before the commencement continues to apply to the application.

891 Transitional provision for s 648A

For deciding the amount of an adopted infrastructure charge under section 648A, section 648A(2), definition *pre-SPRP amount* as inserted by the *Sustainable Planning and Other Legislation Amendment Act 2012* is taken to have had effect on 6 June 2011.

892 Proceedings for particular appeals under repealed IPA

(1) This section applies to an appeal, under repealed IPA, mentioned in section 819(1).

(2) If, in a proceeding for the appeal, the court finds a provision of repealed IPA, or another Act in its application to repealed

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IPA, has not been complied with or has not been fully complied with, the court may deal with the matter in the way the court considers appropriate.

(3) Subsection (2) applies despite section 819(2) and repealed IPA, section 4.1.5A.

Part 6 Transitional provisions for Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012

Division 1 Preliminary

893 Definitions for pt 6

(1) In this part—

amending Act means the *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012*.

commencement means the commencement of the provision in which the term is used.

declared master planned area see section 761A(5).

former, in relation to a provision, means the provision as in force immediately before the repeal or amendment of the provision under the amending Act.

master planned area means an area identified under former section 132 as a master planned area in a local government's planning scheme.

structure plan, for a master planned area, means the structure plan for the area made under the unamended Act and in effect on the commencement.

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structure plan guideline means the guideline in force under former section 145 immediately before the commencement.

unamended Act means this Act as in force before the commencement.

(2) Despite subsection (1), it is declared that—

(a) a reference in this part to a master planned area is, and always has been, a reference to an area identified under former section 132 as a master planned area; and

(b) a reference in this part to a structure plan for a master planned area is, and always has been, a reference to a structure plan for a declared master planned area.

(3) It is also declared that a reference in sections 899(1), 913(2), 916, 917(3), 926(1)(b) and 937 to a master planned area is, and always has been, a reference to a declared master planned area.

894 References to former provisions

If this part states that a former provision continues to apply—

(a) the provision applies as if the amending Act had not been enacted; and

(b) any other former provision mentioned in the provision, or necessary to give effect to the provision, continues to apply unless otherwise stated.

Division 2 Provisions for former chapter 4

Subdivision 1 Preliminary

895 Operation of div 2

(1) This division provides for transitional matters relating to the omission of chapter 4 and the continued operation of former provisions about master planned areas under the division.

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(2) If a provision in this division uses a term defined under the unamended Act, other than a term defined under section 893, the term has the same meaning as it had under the unamended Act unless otherwise stated.

Subdivision 2 State planning instruments and local planning instruments

896 State planning regulatory provisions relating to master planning

(1) This section applies in relation to the making of a State planning regulatory provision after the commencement.

(2) Section 16 applies as if section 16(1)(a) included a reference to providing regulatory support for master planning.

(3) Section 20 applies as if—

(a) section 20(1)(a) included a reference to implementing a structure plan for a declared master planned area; and

(b) section 20(1)(b) included a reference to the implementation of a structure plan for a master planned area.

(4) Former section 21 continues to apply in relation to the making of the State planning regulatory provision.

(5) Section 73 applies as if section 73(2)(b) included a reference to increasing the risk of compromising the implementation of a structure plan.

897 Adoption of documents by local planning instruments

(1) Despite sections 85(1) and 107(1), a planning scheme or a temporary local planning instrument of a local government may, under the *Statutory Instruments Act 1992*, section 23, apply, adopt or incorporate the following documents made by the local government—

(a) a structure plan;

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(b) a master plan.

(2) Despite section 115(1), a planning scheme policy of a local government may, under the *Statutory Instruments Act 1992*, section 23, apply, adopt or incorporate a master plan.

Subdivision 3 Structure plans

898 General matters about structure plans

(1) Subject to subsection (5), a structure plan for a master planned area of a local government continues in effect for this Act and any other Act—

(a) as if former chapter 4 had not been repealed; and

(b) until the local government amends its planning scheme, or makes a planning scheme, under section 761A.

(2) To the extent a structure plan is inconsistent with a regulation made under section 232(1) or (2), the structure plan is of no effect.

(3) If there is an inconsistency between a structure plan and a State planning instrument, the State planning instrument prevails to the extent of the inconsistency.

(4) A structure plan may state that development is prohibited development, but only if the standard planning scheme provisions state the development may be prohibited development.

(5) The following provisions of a structure plan for a master planned area are of no effect—

(a) the identification of any master planning requirements under former section 141(2)(b);

(b) a provision that states a master plan may identify alternative levels of assessment under former section 141(3)(b);

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(c) a provision under former section 141(3)(c) that states development can not be carried out in the area until there is a master plan for the area;

(d) a provision that states a development application for a preliminary approval to which section 242 applies can not be made for development in the area.

899 Changes to restrictions on, and notification requirements for, particular development applications in master planned area

(1) This section applies to a development application for a preliminary approval to which section 242 applies that is made after the commencement for a master planned area.

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

(a) despite former section 134, the development application can seek to vary the effect of the structure plan area code identified or included in the structure plan for the area; and

(b) if the development application seeks to vary the effect of the structure plan area code, chapter 6, part 4 applies to the application.

(3) Despite section 295(1), the notification stage does not apply to the development application if—

(a) the development for which the application is made is substantially consistent with—

(i) the structure plan area code identified or included in the structure plan for the area; and

(ii) any master plan area code included in a master plan that applies to land or part of the land in the area; and

(b) the application does not seek to change the type of assessment for the development or, if it does, it seeks to change it in a way mentioned in section 295(3)(b).

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(4) Despite subsection (3)(b) and section 295(1), it is declared that the notification stage does not apply, and has never applied, to a development application mentioned in subsection (1) if—

(a) before the commencement of this subsection, the development application had not been decided; and

(b) the development for which the application is or was made is substantially consistent with—

(i) the structure plan area code identified or included in the structure plan for the area; and

(ii) any master plan area code included in a master plan that applies to land or part of the land in the area.

900 Amendments of planning scheme to include structure plans

For amending a planning scheme to include a structure plan, section 117 applies as if a reference in that section to amending a planning scheme included a reference to amending a planning scheme to include a structure plan.

901 Agreements to fund structure plans

(1) This section applies if—

(a) before the commencement, a local government entered into an agreement under former section 143 to fund the preparation of a structure plan for a declared master planned area; and

(b) on the commencement—

(i) the agreement is in force; and

(ii) the structure plan is not in effect for the area.

(2) Subject to subsections (3) and (4), the agreement continues in force and is binding on the parties to the agreement.

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(3) The local government must, as required under section 761A, amend its planning scheme or make a planning scheme instead of preparing the structure plan.

(4) The planning scheme amended or made under subsection (3) must be consistent with the policy the local government adopted under former section 143(2) about providing funding for preparing the structure plan.

Subdivision 4 Master plans

902 Existing master plans

(1) For this Act and any other Act, a master plan in force at the commencement continues in force—

(a) as if former chapter 4 had not been repealed; and

(b) until it would have ceased to have effect under section 907.

(2) A provision of a master plan that requires later master plans for the master planning unit is of no effect.

903 Relationship with regulation under s 232

(1) A master plan, whether it takes effect before or after the commencement, must be consistent with a regulation made under section 232(1) or (2).

(2) To the extent a master plan is inconsistent with a regulation made under section 232(1) or (2), the master plan is of no effect.

904 Relationship with other planning instruments

(1) If there is an inconsistency between a master plan and a State planning instrument, the State planning instrument prevails to the extent of the inconsistency.

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(2) To the extent a master plan is, by doing either or both of the following things for development in the master planning unit for the plan, different from a local planning instrument, the master plan prevails—

(a) stating whether the development is—

(i) exempt development; or

(ii) self-assessable development; or

(iii) development requiring compliance assessment; or

(iv) assessable development requiring code or impact assessment, or both code and impact assessment;

(b) identifying or including codes for the development.

(3) Subsection (1) is subject to section 905.

905 New planning instruments can not affect approved master plan

If, after a master plan is approved, a new planning instrument or an amendment of a planning instrument commences, neither the planning instrument nor the amendment can change or otherwise affect the master plan.

906 Master plan attaches to land in master planning unit

(1) A master plan attaches to all land in the master planning unit for the plan, and binds the owner, the owner's 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 carried out or approved for the land, or the land is reconfigured.

907 When master plan ceases to have effect

A master plan ceases to have effect—

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(a) at the time stated in the plan as the time by which development in the master planning unit for the plan must be completed, whether or not the development has been completed; or

(b) the earlier time when all development in the master planning unit has been carried out in accordance with the master plan.

908 Existing applications for approval of master plans

(1) This section applies to a master plan application made but not decided before the commencement.

(2) The application must be decided under the unamended Act.

(3) For dealing with and deciding the application, former section 155 and former chapter 4, part 3, division 3, and any other former provisions necessary to give effect to the decision, continue to apply.

(4) However, despite former section 155 continuing to apply to a master plan, a master plan may not—

(a) require later master plans for the master planning unit; or

(b) state requirements with which a later master plan must comply.

909 Applications for amendment or cancellation of master plans

(1) This section applies to an application to amend or cancel a master plan for a declared master planned area that is made but not decided before the commencement or made after the commencement.

(2) The application must be decided under the unamended Act.

(3) For dealing with and deciding the application, former section 155 and former chapter 4, part 3, divisions 3 and 4, and any other former provisions necessary to give effect to the decision, continue to apply.

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(4) However, despite former section 155 continuing to apply to a master plan, a master plan may not—

(a) require later master plans for the master planning unit; or

(b) state requirements with which a later master plan must comply.

Subdivision 5 Designation of land for community infrastructure

910 Minister must consider master plans before designating land

(1) This section applies in relation to a Minister designating land under chapter 5 for community infrastructure prescribed under a regulation for section 200.

(2) Section 207 applies to designating the land as if—

(a) section 207(2) included a requirement for the Minister to consider any master plans for land in a declared master planned area; and

(b) section 207(3) included a reference to carrying out public notification for a structure plan for a declared master planned area that includes the community infrastructure, under the guideline in force under former section 145 immediately before the commencement.

Subdivision 6 Matters relating to IDAS

911 Categories of development for master plans

(1) Subsection (2) applies to a regulation in force immediately before the commencement that prescribes development that a master plan can not declare to be self-assessable development, development requiring compliance assessment, assessable development or prohibited development.

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(2) The regulation continues in force for a master plan until the master plan ceases to have effect.

(3) A regulation may, from the commencement, prescribe development that a master plan can not declare to be self-assessable development, development requiring compliance assessment, assessable development or prohibited development.

912 Exempt development in master planned areas

Section 235 applies to a master plan as if—

(a) section 235(2) included a reference to exempt development not needing to comply with master plans for declared master planned areas; and

(b) section 235(3) included a reference to section 235(2) as applied under paragraph (a) not stopping a master plan for a declared master planned area affecting exempt development in the circumstances mentioned in section 235(3)(a) and (b).

913 Exclusion of particular entities as referral agency for a master planned area

(1) This section applies to a development application for land in a declared master planned area, whether made before or after the commencement.

(2) Despite sections 250 and 251, to the extent an entity has exercised a coordinating agency's or participating agency's jurisdiction for the structure plan or a master plan for the master planned area, the entity is a referral agency for the application only if a regulation for this subsection provides that the entity is a referral agency for the application.

(3) However, if—

(a) the structure plan for the declared master planned area requires 1 or more master plans for all or part of the land; and

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(b) not all the master plans are in effect;

the coordinating agency and the participating agencies identified in the structure plan are referral agencies for the application to the extent of the jurisdiction or jurisdictions identified in the structure plan for the coordinating agency and each participating agency.

(4) Also, if the application is a development application for a preliminary approval to which section 242 applies, subsection (2) applies only if—

(a) the development for which the application is made is substantially consistent with the structure plan area code identified or included in the structure plan for the area; and

(b) the development for which the application is made is substantially consistent with any master plan area code included in a master plan that applies to the land or part of the land; and

(c) the application does not seek to change the type of assessment for the development or, if it does, it seeks to change it in a way mentioned in section 295(3)(b).

914 Exclusion of particular provisions about making development application for declared master planned area

(1) This section applies to the making of a development application, or proposed application, for development in a declared master planned area, whether made before and not decided on the commencement or made after the commencement.

(2) The following do not apply to the making of the application or proposed application—

(a) section 239, to the extent the development includes prohibited development under schedule 1;

(b) a provision of any other Act that imposes a requirement for, or a restriction on, the making of the application.

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(3) This section applies despite any other Act and prevails to the extent of any inconsistency with another provision of chapter 6.

915 Referral agency assesses application

(1) This section applies to a referral agency assessing a development application for land in a declared master planned area, whether made before and not decided on the commencement or made after the commencement.

(2) Section 282 applies to the assessment of the application as if section 282(2) included a reference to assessing the application with regard to—

(a) the structure plan for the area; and

(b) the master plan for the area.

(3) However, if—

(a) the chief executive is a referral agency for the application; and

(b) the application is made after the commencement of the amending Act, section 35;

section 255C also applies for assessing the application.

916 Code and impact assessment and particular s 242 preliminary approval assessment

(1) Subsections (2) and (3) apply if any part of a development application for a master planned area requires code assessment.

(2) On the commencement, section 313 applies to the application as if section 313(2)(e) included a reference to assessing the part of the application against any applicable codes in a structure plan or master plan for the area.

(3) However, if—

(a) the chief executive is the assessment manager for the application; and

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(b) the application is made after the commencement of the amending Act, section 35;

section 255A also applies for assessing the part.

(4) Subsections (5) and (6) apply to any part of a development application for a master planned area requiring impact assessment.

(5) On the commencement, section 314 applies to the application as if section 314(2) included a reference to assessing the part of the application against each of the following matters or things to the extent the matter or thing is relevant to the development—

(a) a structure plan;

(b) all master plans for the area.

(6) However, if—

(a) the chief executive is the assessment manager for the application; and

(b) the application is made after the commencement of the amending Act, section 35;

section 255B also applies for assessing the part.

(7) Subsection (8) applies to a development application for a preliminary approval mentioned in section 242 for a master planned area.

(8) On the commencement, section 316 applies to the application as if section 316(4) included a reference to assessing the part of the application having regard to both of the following to the extent they are relevant to the application—

(a) the structure plan for the area;

(b) a master plan for the area.

917 Continued application of former provisions relating to decision for and approval of application

(1) Subsection (2) applies if—

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(a) a development application relates to land in a declared master planned area; and

(b) the structure plan for the master planned area requires a master plan for the land; and

(c) a proposed master plan has not been approved; and

(d) a master plan application has been made but not decided before the commencement.

(2) Until the master plan application has been decided—

(a) the assessment manager's decision can not be made; and

(b) the decision-making period for the application is suspended.

(3) Subsection (4) applies for the assessment manager deciding under section 324 an application for development in a master planned area if the structure plan for the area requires a master plan for the development.

(4) If a master plan application for the master plan is refused, the development application must be refused.

918 Compliance assessment of development application

(1) On the commencement, section 397 applies as if section 397(2) provided that the following may state that a document or work is a document or work requiring compliance assessment—

(a) a structure plan;

(b) a master plan.

(2) Subsection (3) applies if—

(a) a condition of a development approval states that a document or work is a document or work requiring compliance assessment; and

(b) the development approval relates to an application for development in a declared master planned area, whether made before or after the commencement.

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(3) Section 398 applies as if section 398(3) provided that the condition may require the document or work to be assessed for compliance with a matter or thing stated in a structure plan or master plan for the area.

Subdivision 7 Appeals, offences and enforcement

919 Court matters relating to master plans and the structure plan guideline

(1) A person may bring a proceeding in the court for a declaration under section 456 about the construction of master plans under this Act and the structure plan guideline.

(2) Section 460 applies to a proceeding as if section 460(1) provided for a local government to certify a copy of a master plan, or a part of the master plan, under that subsection.

920 Appeals to court relating to master plans

(1) This section applies in relation to a person who has applied for approval of a proposed master plan if the application was decided, or made but not decided, before the commencement.

(2) The person may appeal to the court under former section 471 against—

(a) the refusal, or the refusal in part, to give the approval of the master plan; or

(b) a matter stated in the notice of decision about the application; or

(c) a deemed refusal of the master plan application.

(3) Former section 471(2) and (3) continues to apply to an appeal under subsection (2).

(4) Section 484 applies to the appellant as if section 484(1) included a reference to giving written notice of the appeal to the local government and coordinating agency for the application for approval of the master plan.

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(5) Section 493 applies in an appeal as if section 493(1) included a reference to a person who has applied for approval of a proposed master plan.

(6) Section 495 applies in an appeal as if section 495(2) applied to a person who has applied for approval of a proposed master plan.

(7) In an appeal, the court is not prevented from considering and making a decision about a ground of appeal (based on any coordinating agency's response) merely because this Act required the local government to refuse the application or include conditions in any approval of a master plan.

921 Compliance with master plans

(1) This section is subject to section 584, as applied under subsection (2), and chapter 9, part 1.

(2) For this section, section 584 applies as if section 584(1) provided that this section did not apply to a person in the circumstances mentioned in section 584(1).

(3) This section does not apply to development carried out on designated land in accordance with the relevant designation.

(4) A person must not carry out development in a declared master planned area if the carrying out of the development is contrary to a master plan for the area.

Maximum penalty—1665 penalty units.

(5) A person must not carry out development in a declared master planned area if the structure plan for the area requires that the development can not be carried out in the master planned area until there is a master plan for the development.

Maximum penalty—1665 penalty units.

(6) An offence against subsection (4) or (5) is taken to be a development offence.

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922 False or misleading document relating to master plan application

Section 587 applies to a person as if section 587(2) included a reference to the person giving a local government to which a master plan application has been made but not decided before the commencement a document containing information that the person knows is false or misleading in a material particular.

923 Enforcement notices and orders relating to master plans and master plan applications

(1) Subsection (2) applies to an enforcement notice given after the commencement.

(2) Section 592 applies for giving the notice as if—

(a) section 592(1)(e) included a reference to the notice requiring a person to do, or not to do, another act to ensure development complies with a master plan; and

(b) section 592(2)(a) included a reference to the notice requiring a person to demolish or remove a work only if the assessing authority reasonably believes it is not possible and practical to take steps to make the work comply with a master plan.

(3) Subsection (4) applies if a person has brought a proceeding in a Magistrates Court on a complaint to prosecute another person for an offence against chapter 7, part 3, whether before or after the commencement.

(4) Section 599 applies to the proceeding as if section 599(3)(d) provided that an order of the Magistrates Court may require the defendant to do, or not to do, another act to ensure development or use of the premises complies with a master plan.

924 Evidentiary aids relating to master plan application

(1) This section applies to a certificate purporting to be signed by the chief executive officer, however called, of an assessing

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authority stating that a particular matter is evidence of the matter.

(2) Section 623 applies to the certificate as if the section provided the certificate may state that, on a stated day, or during a stated period—

(a) there was or was not a master plan for stated land or development; or

(b) a stated condition was included in a master plan.

Subdivision 8 Funding for infrastructure

925 Adopted infrastructure charges

(1) Subsection (2) applies to a local government making an adopted infrastructure charges resolution under section 648D, whether before or after the commencement.

(2) The local government may, under its adopted infrastructure charges resolution, state whether or not an adopted infrastructure charge may be levied for development in a declared master planned area of the local government.

(3) An adopted infrastructure charge must not be levied for development in a declared master planned area in the local government's area, unless an adopted infrastructure charges resolution of the local government states the charge applies for development in the declared master planned area.

926 Infrastructure agreements

(1) An infrastructure agreement relating to the following and in force immediately before the commencement continues to have effect and is binding on the parties to the agreement as if the amending Act had not been enacted—

(a) the making of a structure plan for a declared master planned area;

(b) master plans for a master planned area.

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(2) Subsections (3) to (5) apply to an infrastructure agreement, whether entered into before or after the commencement.

(3) Section 664 applies to the agreement as if the section provided that an infrastructure agreement is not invalid merely because its fulfilment depends on the exercise of a discretion by a public sector entity about—

(a) a structure plan; or

(b) a master plan or an application for approval of a master plan.

(4) To the extent the infrastructure agreement is inconsistent with a master plan, the agreement prevails.

(5) To the extent the infrastructure agreement is inconsistent with a regulated State infrastructure charges notice or negotiated regulated State infrastructure charges notice, the agreement prevails.

927 Regulated State infrastructure charges schedule for master planned area

(1) A regulated State infrastructure charges schedule for a master planned area continues in effect as if the amending Act had not been enacted.

(2) A State planning regulatory provision may provide for a regulated State infrastructure charges schedule for a master planned area.

(3) The Minister may seek advice or comment from the Queensland Competition Authority about a regulated State infrastructure charges schedule for a master planned area.

(4) A regulated State infrastructure charges schedule for a master planned area must state—

(a) the infrastructure network that services, or is planned to service, the area; and

(b) a charge for the supply of the State infrastructure for the area; and

(c) the development for which the charge may be levied.

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(5) A regulated State infrastructure charges schedule may also state a matter related to a matter mentioned in subsection (4).

928 Regulated State infrastructure charges notice

(1) The unamended Act continues to apply to a person who has been given a regulated State infrastructure charges notice before the commencement.

(2) A regulated State infrastructure charges notice may be given after the commencement.

(3) A regulated State infrastructure charges notice must state each of the following—

(a) the amount of the regulated State infrastructure charge under the notice;

(b) the land to which the charge applies;

(c) when the charge is payable;

(d) the State infrastructure network for which the charge has been stated.

(4) If the notice is given as a result of a development approval—

(a) the relevant State infrastructure provider must give the notice to the applicant for the development approval at the same time as the concurrence agency's response is given to the assessment manager; and

(b) the charge is not recoverable unless the entitlements under the development approval are exercised; and

(c) the notice lapses if the approval stops having effect.

(5) If the notice is not given as a result of a development approval, the relevant State infrastructure provider must give the notice to the owner of the land to which the charge applies.

(6) The amount of a regulated State infrastructure charge must take account of any relevant infrastructure charge for State infrastructure.

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Example—

an infrastructure charge relating to the local function of State-controlled roads

929 Giving new regulated State infrastructure charges notice

(1) This section applies if the development approved by a negotiated decision notice, whether given before or after the commencement, is different from the development approved in the decision notice or deemed approval in a way that affects the amount of a regulated State infrastructure charge.

(2) The relevant State infrastructure provider may give the applicant for the development approval a new regulated State infrastructure charges notice under section 928 to replace the original notice.

930 When regulated State infrastructure charge is payable

A regulated State infrastructure charge is payable—

(a) if the charge applies to reconfiguring a lot that is assessable development—before the local government approves the plan of subdivision for the reconfiguration; or

(b) if the charge applies to building work that is assessable development—before the certificate of classification for the building work is issued; or

(c) if the charge applies to a material change of use—before the change of use happens; or

(d) otherwise—on the day stated in the regulated State infrastructure charges notice or negotiated regulated State infrastructure charges notice.

931 Application of regulated State infrastructure charges

A regulated State infrastructure charge levied and collected for a network of State infrastructure must be used to provide infrastructure for the network.

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932 Accounting for regulated State infrastructure charges

To remove any doubt, it is declared that a regulated State infrastructure charge levied and collected by a State infrastructure provider need not be held in trust.

933 Infrastructure agreements about, and alternatives to, paying regulated State infrastructure charges

(1) Despite sections 928 and 930, a person to whom a regulated State infrastructure charges notice or a negotiated regulated State infrastructure charges notice has been given and the State infrastructure provider may, after the commencement, enter into an infrastructure agreement for the charge, including, for example, that—

(a) the charge may be paid at a different time from the time stated in the notice, and whether it may be paid by instalments; or

(b) whether the State infrastructure may be supplied instead of paying all or part of the charge; or

(c) land in fee simple may be given instead of paying the charge or part of the charge; or

(d) other infrastructure, or contributions to other infrastructure, may be provided instead of paying the charge or part of the charge.

(2) An agreement entered into under former section 673 and in force immediately before the commencement continues in force and is binding on the parties to the agreement as if the amending Act had not been enacted.

934 Recovery of regulated State infrastructure charges

Former section 674 continues to apply in relation to a regulated State infrastructure charge, whether levied before or after the commencement.

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935 Appeals about charges for infrastructure

(1) Subsection (2) applies to a person who has been given, whether before or after the commencement, and is dissatisfied with—

(a) a regulated State infrastructure charges notice; or

(b) a negotiated regulated State infrastructure charges notice.

(2) Section 478 applies to the person as if—

(a) section 478(4)(a) included a reference to a coordinating agency imposing a charge in the notice; and

(b) section 478(5) included a reference to the methodology used to establish a regulated State infrastructure charges schedule.

(3) Subsection (4) applies to a person who—

(a) has been given, whether before or after the commencement—

(i) a regulated State infrastructure charges notice; or

(ii) a negotiated regulated State infrastructure charges notice; and

(b) is dissatisfied with the calculation of a charge in the notice.

(4) Section 535 applies to the person as if section 535(4) included a reference to the methodology used to establish a regulated State infrastructure charges schedule.

Subdivision 9 Miscellaneous

936 Limitations on compensation under ss 704 and 705 relating to structure plan

(1) This section applies to an owner of an interest in land who is entitled under section 704 or 705 to be paid reasonable

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compensation by a local government because a change reduces the value of the interest.

(2) Section 706 applies in relation to the compensation as if section 706(1) included a reference to compensation not being payable if the change is about any of the matters comprising a structure plan for a declared master planned area.

937 Local government may take or purchase land in master planned area

Section 714 applies to the taking of land in a master planned area as if—

(a) section 714(1)(a) included a reference to a local government being satisfied the taking of the land would help to achieve any of the outcomes in a structure plan made by the local government; and

(b) section 714(1)(b) included a reference to a master plan having taken effect; and

(c) section 714(1)(b)(ii) included a reference to the applicant for the approval of the master plan having taken reasonable measures to obtain the agreement of the owner of the land to actions that would facilitate the construction of the infrastructure or the carriage of the drainage, but has not been able to obtain the agreement.

938 Documents local government or chief executive must keep available for inspection and purchase—general

(1) Section 724 applies to a local government as if section 724(1) included a reference to keeping available the original or the designated type of copy of each of the following—

(a) each amendment of the local government's planning scheme to include a structure plan;

(b) if the structure plan guideline requires public notification of an amendment proposed to be made to the planning scheme to include a structure plan—each proposed amendment;

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(c) each master planned area declaration for the local government's planning scheme area;

(d) each master plan for declared master planned areas in its planning scheme area.

(2) Section 732 applies to the chief executive as if section 732(1) included a reference to keeping available the original or the designated type of copy of master planned area declarations.

939 Documents local government must keep available for inspection and purchase—master plan applications

For keeping documents about master plan applications available for inspection and purchase, former section 725 continues to apply to a local government.

940 Documents local government must keep available for inspection only

(1) Section 727 applies to a local government as if section 727(1) included a reference to keeping available a register of all master plan applications made to the local government.

(2) However, subsection (1) does not apply for a master plan 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) Former section 727(3) continues to apply to a local government for the register mentioned in subsection (1).

941 Standard planning and development certificates and full planning and development certificates

(1) Subsection (2) applies to a standard planning and development certificate.

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(2) Section 739 applies to the certificate as if the section included a reference to the certificate containing or being accompanied by the following information for premises—

(a) a copy of each master plan applying to the premises;

(b) a copy of every notice of decision or negotiated notice about a master plan application for a master plan, given under this Act or repealed IPA, in force for the planning scheme area for the premises;

(c) a copy of any judgment or order of the court or a building and development committee about a condition included in the master plan;

(d) a description of each amendment, proposed to be made by the local government to its planning scheme to include a structure plan, that has not yet been made at the time the certificate is given.

(3) Subsection (4) applies to a full planning and development certificate if there is a master plan that applies to premises that includes conditions, including conditions of a type mentioned in section 740(1)(a).

(4) Section 740 applies to the certificate as if section 740(1) included a reference to the certificate for the premises containing or being accompanied by a statement about the fulfilment or non-fulfilment of each condition, at a stated day after the day the certificate was applied for.

942 Electronic submissions about master plan applications

Section 756 applies to an entity giving a submission under this Act as if section 756(1)(a) included a reference to a notice relating to a master plan application.

943 Continued application of particular transitional provisions relating to master planned areas

(1) Despite the enactment of the amending Act, the following provisions continue to apply for master planned areas—

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(a) sections 777, 789 to 797, 819(5) to (8), 820, 841 and 856;

(b) chapter 10, part 2, division 11.

(2) However, if a provision of this Act as amended under the amending Act, other than this section, is inconsistent with subsection (1), the provision as amended prevails to the extent of the inconsistency.

(3) To remove any doubt, it is declared that section 871, to the extent it provides for matters relating to former chapter 4, continues to apply for master planned areas.

Division 3 Other provisions

944 Development applications not decided on commencement

(1) This section applies to a development application made but not decided on the commencement.

(2) The development application must be dealt with and decided under this Act as in force immediately before the commencement.

944A Chief executive is assessment manager or concurrence agency for ch 6, pt 8, divs 2 and 5

(1) This section applies to a relevant development approval if—

(a) an entity other than the chief executive (the ***relevant entity***) was the assessment manager or a concurrence agency for the application to which the approval relates; and

(b) had the application been made after the commencement, the chief executive would have been the assessment manager or a concurrence agency for the application.

(2) For chapter 6, part 8, divisions 2 and 5—

(a) the chief executive is taken to be—

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(i) if the relevant entity was the assessment manager—the assessment manager; or

(ii) if the relevant entity was a concurrence agency—that concurrence agency; and

(b) if the relevant entity as a concurrence agency imposed a condition of the approval—the chief executive is taken to have imposed the condition.

(3) In this section—

relevant development approval means a development approval—

(a) given before the commencement; or

(b) given after the commencement if the application to which the approval relates was made before the commencement.

945 Costs for existing court proceedings

(1) Former section 457 continues to apply to a proceeding in the court that has been brought before the commencement.

(2) For subsection (1), a proceeding in the court (the ***originating proceeding***) includes any interlocutory proceeding relating to the originating proceeding that is brought after the commencement.

946 Declaration about whether development application involving particular State resource is properly made

Former section 510(4) continues to apply to a person seeking a declaration under the section about whether a development application made before the commencement is a properly made application.

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Part 8 Transitional provisions for Local Government and Other Legislation Amendment Act 2013

Division 1 State planning instruments

948 Existing development applications

(1) This section applies to a development application made, but not decided, before this section commences.

(2) The development application must be dealt with and decided under this Act as if sections 26 and 43, as in force before the commencement, had not been amended by the amending Act.

(3) However, for assessing or deciding the application, an assessment manager or referral agency for the application may apply the sections amended by the amending Act to the extent it considers appropriate.

(4) In this section—

amending Act means the *Local Government and Other Legislation Amendment Act 2013*.

Division 2 De-amalgamation of particular local governments

Subdivision 1 Preliminary

949 Definitions for pt 8, div 2

In this division—

application means an application made under this Act.

changeover day means 1 January 2014.

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continuing local government means—

(a) Cairns Regional Council; or

(b) Rockhampton Regional Council; or

(c) Sunshine Coast Regional Council; or

(d) Tablelands Regional Council.

continuing local government area, for a continuing local government, means the local government area for the continuing local government that comes into existence on the changeover day.

decision maker, for a continuing or new local government, means an entity that has a function under this Act to make a decision about a matter.

existing proceeding, means a proceeding that—

(a) started under the Act before this section commences—

(i) before a building and development committee; or

(ii) in a court; and

(b) on the commencement—

(i) has not been decided; or

(ii) has not been withdrawn, or dismissed, struck out or otherwise disposed of under the Act.

land, for an application, offence committed, proceeding or request means the land to which it relates.

new local government means each of the following local governments that comes into existence on the changeover day—

(a) Douglas Shire Council;

(b) Livingstone Shire Council;

(c) Noosa Shire Council;

(d) Mareeba Shire Council.

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new local government area, for a new local government, means the local government area for the new local government that comes into existence on the changeover day.

related—

1 Cairns Regional Council is *related* to Douglas Shire Council.

2 Rockhampton Regional Council is *related* to Livingstone Shire Council.

3 Sunshine Coast Regional Council is *related* to Noosa Shire Council.

4 Tablelands Regional Council is *related* to Mareeba Shire Council.

request means a request made under this Act.

Subdivision 2 Applications or requests made before changeover day

950 Application or request relating to land wholly within continuing local government area

(1) This section applies if—

(a) before the changeover day, a continuing local government—

(i) is the decision maker for an application or request; and

(ii) has not decided the application or request; and

(b) on the changeover day, the land is wholly within the local government's area.

(2) On the changeover day, the local government continues as the decision maker for the application or request.

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951 Application or request relating to land wholly within new local government area

(1) This section applies if—

(a) before the changeover day, a continuing local government—

(i) is the decision maker for an application or request; and

(ii) has not decided the application or request; and

(b) on the changeover day, the land is wholly within a new local government's area.

(2) On the changeover day, the new local government becomes the decision maker for the application or request.

(3) Subsection (4) applies if, on the changeover day—

(a) the new local government must under this Act, take a particular step as decision maker for the application or request within a certain period; and

(b) the step has not been fully taken.

(4) The local government has a further 10 business days to take the step as well as any unexpired part of the period.

952 Application or request relating to land within continuing and new local government area

(1) This section applies if—

(a) before the changeover day, a continuing local government—

(i) is the decision maker for an application or request; and

(ii) has not decided the application or request; and

(b) on the changeover day the land is partly within—

(i) a continuing local government area; and

(ii) a new local government area.

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(2) The continuing local government for the continuing local government area must decide by the end of 2 January 2014 whether it is to continue to be the decision maker for the application or request.

(3) Within 2 business days of making the decision, the continuing local government must, give written notice of its decision to—

(a) for an application—the applicant; and

(b) for a request—the person who made the request; and

(c) the new local government.

(4) If the continuing local government gives notice that it is not continuing as the decision maker for the application or request, the new local government becomes the decision maker on the day it receives the notice (the ***notification day***).

(5) A continuing local government that continues as the decision maker, or a new local government that becomes the decision maker, under this section must consult the related local government, in the way it considers appropriate, before it decides the application or request.

(6) However, subsection (5) does not apply to a local government if the application is a development application.

(7) Subsection (8) applies if, on the notification day—

(a) the new local government is required to take a particular step as the decision maker for an application or request within a certain period; and

(b) the step has not been fully taken.

(8) The new local government has a further 10 business days to take the step as well as any unexpired part of the period.

(9) Subsections (10) to (12) apply to an application that is a development application if—

(a) a continuing local government continues as the decision maker under subsection (2); or

(b) a new local government becomes the decision maker under subsection (4).

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(10) Regardless of which stage of IDAS applies to the application, the other local government that is not the decision maker is the concurrence agency for the application to the extent the application is about land within the local government's area.

(11) The concurrence agency must give the concurrence agency's response within 30 business days after the notification day.

(12) The decision maker can not make a decision about the application until the earlier of the following—

(a) the receipt of the concurrence agency's response;

(b) the expiration of 30 business days after the notification day.

953 Continuing local government to assist related new local government

(1) This section applies if a new local government becomes a decision maker for an application or request under this subdivision.

(2) The related continuing local government must do all acts and things necessary or desirable to facilitate the transfer of the decision maker function to the new local government.

(3) Without limiting subsection (2), the related continuing local government must give the new local government the documents that are necessary to enable compliance with a provision of this Act including, for example—

(a) all material relevant to the application or request the continuing local government had on the changeover day; and

(b) any material the continuing local government receives about the application or request after the new local government becomes the decision maker.

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Subdivision 3 Existing proceedings

954 Land wholly within new local government area

(1) This section applies to an existing proceeding if—

(a) the proceeding was started before the changeover day; and

(b) a continuing local government was a party to the proceeding; and

(c) on the changeover day, the land is wholly within a new local government area.

(2) For the proceeding, the new local government becomes a party to the proceeding in place of the related continuing local government.

955 Land within both continuing and new local government area

(1) This section applies to an existing proceeding if—

(a) the proceeding was started before the changeover day; and

(b) a continuing local government was a party to the proceeding; and

(c) on the changeover day, the land to which the proceeding relates is partly within—

(i) a continuing local government area; and

(ii) a new local government area.

(2) Within 5 business days after the changeover day, the continuing local government must ask the Minister to make a decision under subsection (3).

(3) The Minister must decide whether one or both of the local governments is to be a party to the remainder of the proceeding.

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(4) Until the decision is made, the continuing local government continues to be a party to the proceeding.

(5) Despite subsection (3), and at any time up until the Minister makes the decision, the new local government may elect to be joined as a party to the proceeding.

Subdivision 4 Proceedings commenced after changeover day

956 Land wholly within new local government area

(1) This section applies if—

(a) before the changeover day—

(i) a continuing local government made a decision (a ***relevant decision***) about an application, request or previous decision made under this Act; or

(ii) a court made a decision (also a ***relevant decision***) about an application, request or previous decision made under this Act; and

(b) immediately before the changeover day, a person could have, but has not, commenced a proceeding about the relevant decision; and

(c) on the changeover day, the land is wholly within a new local government area.

(2) A person—

(a) may start a proceeding about the relevant decision against the new local government for the new local government area; but

(b) can not start a proceeding about the relevant decision against the continuing local government.

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957 Land within both continuing and new local government area

(1) This section applies if—

(a) before the changeover day—

(i) a continuing local government made a decision (a ***relevant decision***) about an application, request or previous decision made under this Act; or

(ii) a court made a decision (also a ***relevant decision***) about an application, request or previous decision made under this Act; and

(b) immediately before the changeover day, a person could have, but has not, commenced a proceeding about the relevant decision; and

(c) on the changeover day, the land to which the relevant decision relates is partly within—

(i) a continuing local government area; and

(ii) a new local government area.

(2) If a person wishes to start a proceeding about the relevant decision, the person can only start it against both local governments.

(3) Within 5 business days after service of the proceeding, the continuing local government must ask the Minister to make a decision under subsection (4).

(4) If so requested, the Minister must decide whether one or both of the local governments is to be a party to the proceeding.

(5) Until the Minister makes the decision, both local governments are parties to the proceeding.

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Subdivision 5 Enforcement provision

958 Enforcement that may be taken by new local governments

(1) This section applies for an offence against this Act if—

(a) before the changeover day, a continuing local government would have been the assessing authority for the offence; and

(b) on the changeover day, the land to which the offence relates is wholly or partly within a new local government area.

(2) From the changeover day, the new local government for the new local government area may also do any of the following about the offence—

(a) give a show cause notice under chapter 7, part 3, division 2;

(b) give an enforcement notice under chapter 7, part 3, division 3;

(c) bring a proceeding under chapter 7, part 3, division 4 or 5.

(3) For chapter 7, parts 3 and 4, as applied under subsection (2), the following applies, if the context permits—

(a) a reference to an assessing authority or a local government includes a reference to the new local government;

(b) a reference to a chief executive or the chief executive officer, however called, of an assessing authority includes a reference to a chief executive or the chief executive officer of the new local government.

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Subdivision 6 Miscellaneous

959 Provision about consultations

(1) This section applies for a requirement under this division for one local government to consult another about a decision.

(2) The local government may carry out the consultation in any way it considers appropriate.

(3) A failure to consult does not invalidate or otherwise affect the decision.

Part 9 Transitional provisions for Water Supply Services Legislation Amendment Act 2014

959A Definitions for pt 9

In this part—

amended Act means this Act as in force after the commencement.

amending Act means the *Water Supply Services Legislation Amendment Act 2014*.

commencement means the commencement of the amending Act, section 30.

former, in relation to a provision, means the provision as in force immediately before the repeal or amendment of the provision under the amending Act.

unamended Act means this Act as in force immediately before the commencement.

water connection aspect, of a development application or development approval, means an aspect of the application or

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approval that is for a matter for which a distributor-retailer or its delegate has a concurrence role under the amended Act.

959B Distributor-retailer or participating local government continues as concurrence agency for existing applications

(1) This section applies if—

(a) a development application was made, but not decided, before the commencement; and

(b) the development application involves a water connection aspect.

(2) For dealing with and deciding the development application, the following entity continues to be a concurrence agency for the water connection aspect—

(a) if the distributor-retailer has delegated its functions as a concurrence agency for the application to its participating local government—the participating local government;

(b) otherwise—the distributor-retailer.

(3) The unamended Act continues to apply to the development application as if the amending Act had not been enacted.

Note—

See also the SEQ Water Act, section 140C.

(4) However, if the development application is for a material change of use of premises or reconfiguring a lot, the unamended Act applies to the application only until a development approval takes effect for the application.

(5) To avoid any doubt, it is declared that after a development approval for an application mentioned in subsection (4) takes effect, this Act does not apply to the water connection aspect of the development approval.

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959C Related applications

(1) This section applies if—

(a) for a development approval (an ***original approval***) given before the commencement—another development application (a ***related application***) for a development approval related to the original approval is made; and

(b) the related application involves a water connection aspect.

(2) For dealing with and deciding the related application, the following entity is taken to be a concurrence agency for the water connection aspect—

(a) if the distributor-retailer has delegated its functions as a concurrence agency for the application to its participating local government—the participating local government;

(b) otherwise—the distributor-retailer.

(3) The unamended Act continues to apply to the related application as if the amending Act had not been enacted.

Note—

See also the SEQ Water Act, section 140C.

(4) However, if the related application is for a material change of use of premises or reconfiguring a lot, the unamended Act applies to the application only until a development approval takes effect for the application.

(5) To avoid any doubt, it is declared that after a development approval for a related application mentioned in subsection (4) takes effect, this Act does not apply to the water connection aspect of the development approval.

959D Existing staged development approvals

(1) This section applies if—

(a) before the commencement, a staged development approval has been granted; and

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(b) the development approval involves a water connection aspect; and

(c) for the same land, or part of the same land, to which the staged development approval relates, a later development application for either of the following would have been made for the water connection aspect, if the amending Act had not commenced—

(i) reconfiguring a lot;

(ii) operational works.

(2) On and after the commencement, this Act does not apply to the water connection aspect of the staged development approval.

(3) In this section—

staged development approval means a development approval for reconfiguring a lot.

959E Other development approvals

(1) This section applies if—

(a) before the commencement, a development approval, other than an approval to which section 959D applies, has been given; and

(b) the development approval involves a water connection aspect.

(2) This section also applies to a development approval for operational works that—

(a) takes effect for a development application under section 959B or 959C; and

(b) involves a water connection aspect.

(3) The unamended Act continues to apply to the development approval as if the amending Act had not been enacted.

(4) Without limiting subsection (3), the unamended Act continues to apply to the following for the development approval—

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(a) a request to change the approval;

(b) an appeal about the approval;

(c) the levying of charges for the approval;

(d) infrastructure agreements and other infrastructure requirements relating to the approval.

Note—

See also the SEQ Water Act, section 140D.

959F Existing compliance assessments

(1) This section applies if—

(a) before the commencement, a compliance assessment for development, a document or work was required under the unamended Act but not completed (an ***existing assessment***); and

(b) former section 755G or 755H applied to the existing assessment.

(2) For dealing with the existing assessment, former chapter 9, part 7A, division 4 continues to apply as if the amending Act had not been enacted.

959G Infrastructure charges notices continue in effect etc.

(1) This section applies to each of the following notices given by a distributor-retailer under the unamended Act before or after the commencement—

(a) an infrastructure charges notice;

(b) an adopted infrastructure charges notice;

(c) a regulated infrastructure charges notice;

(d) a negotiated infrastructure charges notice;

(e) a negotiated regulated infrastructure charges notice;

(f) a negotiated adopted infrastructure charges notice.

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(2) The unamended Act continues to apply to the notice as if the amending Act had not been enacted.

Note—

See also the SEQ Water Act, section 140D.

959H Infrastructure agreements

(1) This section applies to an infrastructure agreement that—

(a) is in force immediately before the commencement; and

(b) relates to the infrastructure of a distributor-retailer in relation to its water service or wastewater service.

(2) The infrastructure agreement continues to have effect and is binding on the parties to the agreement as if the amending Act had not been enacted.

959I Existing land transfer agreements or requirements in lieu of charge

(1) An existing land transfer agreement, or an existing land transfer requirement, not complied with immediately before the commencement continues to have effect.

(2) Despite the repeal of former sections 755L and 755MA, the sections continue to apply for the existing land transfer agreement or existing land transfer requirement, as is applicable.

(3) In this section—

existing land transfer agreement means an agreement mentioned in former section 755L(1)(d) or 755MA(2)(d) or (9)(c).

existing land transfer requirement means a requirement under former section 755L(2) or 755MA(4).

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Part 10 Transitional provision for Environmental Offsets Act 2014

970 Continued effect to make payment

(1) This section applies if, immediately before the commencement of this section, an environmental offset condition required a person to make a monetary payment to an environmental offset trust and the payment had not been made.

(2) Despite the repeal of section 346A(7) by the *Environmental Offsets Act 2014*, the person is still required to make the payment.

(3) However, a payment made in relation to an offset condition imposed by a department is to be made to the offset account under that Act instead of to an environmental offset trust.

Part 11 Savings and transitional provisions for Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014

Division 1 Purpose of part and definitions

974 Purpose of pt 11

(1) The purpose of this part is to make particular provisions of a savings or transitional nature.

(2) Division 2 provides for matters under the unamended Act to be saved and for the unamended Act to continue to apply to those matters.

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(3) Division 3 provides for matters dealt with under the unamended Act to be dealt with under the amended Act unless a provision of division 2 or another provision of division 3 otherwise provides.

(4) Division 4 provides for other matters including transitional regulations.

(5) This part does not limit the *Acts Interpretation Act 1954*, section 20 and 20B unless a provision otherwise provides.

975 Definitions for pt 11

In this part—

amended Act means this Act as in force after the commencement.

amending Act means the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014*.

commencement means the day the amending Act, section 18 commences.

cut-off date, for a local government, see section 975A.

PIP means a priority infrastructure plan under the unamended Act.

transitional regulation see section 990(1).

unamended Act means this Act as in force immediately before the commencement.

975A Cut-off date for particular local governments

(1) The ***cut-off date***, for a local government is—

(a) if the local government is granted an extension of time under section 997—the day after the extension ends; or

(b) otherwise—1 July 2016.

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(2) However, if the local government takes either of the following actions before its cut-off date under subsection (1), the ***cut-off date*** for the local government is the day it takes the action—

(a) amends its planning scheme to include an LGIP;

(b) adopts a new planning scheme that includes an LGIP.

Division 2 Saving provisions

976 Deferment of LGIP requirement for existing planning schemes

(1) If a planning scheme in effect under the unamended Act does not include a PIP, the planning scheme need not include an LGIP until 1 July 2016.

(2) However, on or after 1 July 2016, a local government may not do any of the following unless its planning scheme includes an LGIP—

(a) make a charges resolution as mentioned in section 630;

(b) impose conditions about trunk infrastructure under section 646, 647 or 650;

(c) give an infrastructure charges notice under section 635.

(3) This section ceases to have effect on the commencement of section 628A.

976A Preparing and making PIP under unamended Act

(1) This section applies if, immediately before the commencement, a local government has started the process under former section 627 to prepare a PIP.

(2) The local government may continue to prepare and make the PIP under the unamended Act as if the amending Act had not commenced.

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(3) For preparing and making the PIP, the guideline mentioned in former section 627 continues to apply as if the amending Act had not commenced.

(4) A PIP made under subsection (2) is taken to be an LGIP under the amended Act.

(5) Section 982(2) and (3) apply to the PIP as made under subsection (2).

(6) In this section—

former, in relation to a provision, means the provision as in force immediately before the repeal or amendment of the provision under the amending Act.

976B Existing development approvals

(1) This section applies if, before the commencement, a development approval has been given.

(2) The unamended Act continues to apply to the development approval as if the amending Act had not been enacted.

(3) Without limiting subsection (2), the unamended Act continues to apply to the following for the development approval—

(a) a request to change the approval;

(b) an appeal about the approval;

(c) the levying of charges for the approval;

(d) infrastructure agreements and other infrastructure requirements relating to the approval.

(4) Subsections (5) to (10) apply to the development approval if—

(a) the development approval is subject to a condition imposed under section 848; and

(b) either or both of the following is approved for the development approval—

(i) a request under section 369(1) to change the development approval;

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(ii) a request under section 383 to extend the period of the development approval.

(5) Despite subsections (2) and (3), an infrastructure charges notice may be given for the development approval under the amended Act.

(6) However—

(a) the infrastructure charges notice must relate only to the change to, or extension of, the development approval; and

(b) section 626(3)(a) and (b) does not apply to the approval of the request to change or extend the development approval.

(7) Subsection (8) applies to the development approval if—

(a) it is a development approval to which section 959E applies because of section 959E(1); and

(b) any change to the approval is to a water connection aspect of the approval.

(8) A distributor-retailer may give an infrastructure charges notice under the SEQ Water Act, chapter 4C, for the development approval as if the development approval were a water approval under that Act.

(9) The SEQ Water Act, chapter 4C, applies to the giving of an infrastructure charges notice under subsection (8)—

(a) as if a reference in that Act to an amendment to a condition of a water approval were a reference to a change to, or extension of, the development approval; and

(b) with any other necessary changes.

(10) However, an infrastructure charges notice given under subsection (8) must relate only to the change to, or extension of, the development approval.

(11) In this section—

water connection aspect see section 959A.

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977 Existing notices

(1) This section applies to each of the following notices given under the unamended Act before or after the commencement—

(a) an infrastructure charges notice;

(b) a negotiated infrastructure charges notice;

(c) a regulated infrastructure charges notice;

(d) a negotiated regulated infrastructure charges notice;

(e) an adopted infrastructure charges notice;

(f) a negotiated adopted infrastructure charges notice.

(2) The unamended Act continues to apply to each notice.

(3) Despite subsection (2) and section 976B(2), if a person makes a request under section 369(1) to change the development approval the subject of the notice, the notice may be amended under the amended Act.

(4) However, section 657 does not apply to an infrastructure charges notice as amended under subsection (3).

(5) Also, subsection (3) does not apply if the notice was given by a distributor-retailer.

Note—

For the amendment of notices given by a distributor-retailer, see the SEQ Water Act, section 140D.

978 Existing charges

(1) This section applies to each of the following charges that are payable under the unamended Act—

(a) an infrastructure charge;

(b) a regulated infrastructure charge;

(c) an adopted infrastructure charge.

(2) The unamended Act continues to apply to—

(a) each charge; and

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(b) any offset, refund or repayment under the unamended Act that previously applied to the charge.

979 Charges resolutions until cut-off date

(1) Subject to this section, an adopted infrastructure charges resolution of a local government as in existence under the unamended Act (an ***existing resolution***) continues in effect and is taken to be a charges resolution under the amended Act.

(1A) Subsection (1) applies even if an existing resolution includes a provision that is contrary to, or does not otherwise comply with, the amended Act.

Example—

An existing resolution continues in effect even if it does not comply with section 630(3), 632(4) or 633(1).

(1B) A charge adopted under an existing resolution (an ***existing charge***) is taken to be an adopted charge under the amended Act and is taken to have had effect on the day it had effect under the unamended Act.

(1C) However, on and after 1 July 2015—

(a) an existing resolution ceases to be a charges resolution under the amended Act; and

(b) an existing charge ceases to be an adopted charge under the amended Act.

(2) Also, an existing resolution or an existing charge is of no effect to the extent it is inconsistent with the SPRP (adopted charges).

(3) If the existing resolution does not include a method for working out the cost of infrastructure the subject of an offset or refund, the existing resolution is taken to include a method as set out in a guideline—

(a) made by the Minister; and

(b) prescribed by regulation.

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(3A) If the existing resolution does not include criteria for deciding a conversion application, the existing resolution is taken to include criteria as set out in a guideline—

(a) made by the Minister; and

(b) prescribed by regulation.

(4) Subsections (5) to (8) apply if the local government's planning scheme does not include an LGIP.

(5) Until 1 July 2015, an existing resolution may continue to do either or both of the following (each a ***saved provision***)—

(a) identify development infrastructure as trunk infrastructure for its local government area;

(b) for the identified trunk infrastructure, state the required standard of service and establishment costs.

(6) Until the cut-off date for the local government, it may make a charges resolution under this Act that includes a saved provision (a ***modified charges resolution***).

(6A) Subsection (6) applies despite—

(a) section 628A; and

(b) sections 630 and 631 preventing a charges resolution including a saved provision.

(7) For applying chapter 8 for the modified charges resolution, the saved provisions are taken to have been done under an LGIP.

(8) On the cut-off date for the local government, each saved provision included in the modified charges resolution ceases to have effect.

980 Existing land transfer requirements in lieu of charge

(1) An agreement mentioned under the unamended Act, section 637(1)(d), or a requirement under the unamended Act, section 637(2), not complied with immediately before the commencement continues in force for the amended Act.

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(2) A requirement under the unamended Act, section 648K(3) not complied with immediately before the commencement continues in force for the amended Act.

(3) Despite the repeal of the unamended Act, sections 637 and 648K, the sections continue to apply for the agreement or the requirement, as is applicable.

981 Undecided appeals

(1) This section applies if, before the commencement, a person—

(a) had started an appeal and it had not been finally decided before the commencement; or

(b) had a right to appeal under the unamended Act but had not started an appeal.

(2) The unamended Act continues to apply to—

(a) the appeal and the right of appeal as mentioned in subsection (1)(a) and (b); and

(b) any subsequent appeal that would have been available if the amending Act had not commenced.

Division 3 Transitional provisions

982 PIP to LGIP

(1) A local government's PIP becomes its LGIP.

(2) The day the PIP was included in the local government's planning scheme is to be used for working out when the LGIP is to be reviewed under section 94A(1)(a).

(3) Before the cut-off date for the local government—

(a) an amendment to the PIP must be prepared in accordance with the guideline mentioned in section 117(2); and

(b) the amendment must be made.

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(4) In this section—

cut-off date, for a local government is—

(a) if the local government is granted an extension of time under section 997—the day after the extension ends; or

(b) otherwise—1 July 2016.

983 Existing SPRP for adopted charges

(1) On the commencement, the State Planning Regulatory Provision (adopted charges) dated July 2012 becomes the SPRP (adopted charges) under the amended Act.

(2) However, the SPRP (adopted charges) mentioned in subsection (1)—

(a) continues subject to section 988 and a regulation under the amended Act; and

(b) may, until the cut-off date for a local government, identify PIAs for the local government.

(3) A PIA identified for a local government under the SPRP (adopted charges) ceases to have effect on the cut-off date for the local government.

984 Existing application for development approval

(1) This section applies to an application for a development approval that was not decided under the unamended Act, other than a development application to which section 959B or 959C applies.

Note—

For development applications to which section 959B or 959C applies, see the SEQ Water Act, section 140C.

(2) The amended Act applies to the application, including, for example, the conditions that may be imposed on the development approval and the charges that may be levied.

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(3) For subsection (2), section 988 applies as if the application had become an application for development approval under the amended Act.

985 Existing agreements under s 648G

(1) An agreement under the unamended Act, section 648G, as the agreement is in existence immediately before the commencement, becomes a breakup agreement under the amended Act.

(2) Subsection (1) applies even if the agreement includes a provision contrary to, or does not otherwise comply with, the amended Act.

986 Infrastructure charges register

(1) This section applies to the following registers of a local government under the unamended Act, section 724 as those registers were in existence immediately before the commencement—

(a) its infrastructure charges register;

(b) its regulated infrastructure charges register;

(c) its adopted infrastructure charges register.

(2) On the commencement, the registers become part of the local government's infrastructure charges register under the amended Act, section 724.

987 Infrastructure agreements

(1) An infrastructure agreement in force immediately before the commencement becomes an infrastructure agreement under the amended Act.

(2) Subsection (1) applies even if the infrastructure agreement includes a provision contrary to, or does not otherwise comply with, the amended Act.

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(3) Also, section 676(2) does not apply to the infrastructure agreement.

988 Consequential provisions

The following apply to a document that, under this division, becomes something under the amended Act—

(a) it must be read with the changes necessary to make it consistent with, and adapt its operation to, the amended Act;

Example—

In line with section 983, a reference in the existing SPRP to a maximum adopted charge for trunk infrastructure must be read as a reference to a maximum adopted charge under the amended Act.

(b) a reference to the document in another Act or document is taken to be a reference to what it has become.

Division 4 Other provision

989 Regulated infrastructure charges schedule

On the commencement, a regulated infrastructure charges schedule in existence before the commencement ceases to exist.

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Part 12 Savings and transitional provisions for State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014

Division 1 Preliminary

991 Definitions for pt 12

In this part—

amending Act means the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014*.

commencement means the day this part commences.

former, in relation to a provision, means the provision as in force immediately before the repeal or amendment of the provision under the amending Act.

Division 2 Provisions for advisory panels for iconic places

992 Definitions for div 2

In this division—

advisory panel means an advisory panel established under former chapter 9, part 7B.

chairperson, of an advisory panel, means the person who, under former chapter 9, part 7B, was the chairperson of the panel immediately before the commencement.

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993 Dissolution of advisory panels

(1) On the commencement—

(a) each advisory panel is dissolved; and

(b) the members of each panel go out of office.

(2) No compensation is payable to a member because of subsection (1).

994 Advisory panel's report

(1) This section applies despite section 993 and the repeal of former chapter 9, part 7B.

(2) The chairperson of each advisory panel must, as soon as practicable after the commencement, give the Minister a written report about the performance of the panel's function during—

(a) if a report has been given to the Minister for the 2013–14 financial year—the part of the financial year in which the panel was dissolved; or

(b) otherwise—the 2013–14 financial year and the part of the financial year in which the panel was dissolved.

(3) In this section—

2013–2014 financial year means the financial year ending 30 June 2014.

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Part 13 Transitional provision for Queensland Heritage and Other Legislation Amendment Act 2014

996 Provision for planning schemes in effect before 4 July 2014 that do not include an LGIP or PIP

(1) This section applies to a local government if its planning scheme—

(a) does not include an LGIP; and

(b) before 4 July 2014, did not include a PIP.

(2) Despite section 628A, the local government may do the following until the cut-off date for the local government—

(a) adopt charges under section 630;

(b) give an infrastructure charges notice under section 635;

(c) impose conditions about trunk infrastructure under section 646, 647 or 650.

(3) In this section—

cut-off date see section 975A.

PIP see section 975.

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Part 14 Transitional and validating provisions for Local Government and Other Legislation Amendment Act (No. 2) 2015

997 Extension of time for particular planning schemes

(1) This section applies to a local government if its planning scheme—

(a) does not include an LGIP; or

(b) includes a PIP for which an amendment, prepared in accordance with the guideline mentioned in section 117(2), has not yet been made.

Note—

Section 982(3) requires an amendment, prepared in accordance with the guideline mentioned in section 117(2), to be made to a local government's PIP before the cut-off date for the local government.

(2) The local government may, by resolution, apply to the Minister for an extension of time for sections 979, 982, 983 and 996.

(3) The application must be accompanied by—

(a) evidence of the resolution to make the application; and

(b) a project plan that demonstrates how the local government will finalise the LGIP within the extension, including a summary of the resources and time-frame to be used by the local government.

(4) The Minister must—

(a) consider the application and the documents mentioned in subsection (3); and

(b) decide to grant, or refuse to grant, the application; and

(c) inform the local government of the Minister's decision.

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(5) However, if the Minister does not inform the local government of the Minister's decision within 20 business days after receiving the application, the local government is taken to have been granted an extension of time ending 30 June 2018, at the end of the day.

(6) An extension of time granted under this section must end before 1 July 2018.

(7) In this section—

PIP see section 975.

resolution, of a local government, means the formal decision of the local government at a local government meeting.

998 Validation provision for particular charges resolutions

(1) This section applies if, after the commencement of section 628A but before the commencement of this section, a local government purported to make a charges resolution under former section 979(6).

(2) Chapter 8, part 2 applied for making the charges resolution despite section 628A.

(3) The charges resolution may have included a saved provision despite sections 630 and 631.

(4) The charges resolution, and any action taken in relation to the resolution, is taken to be, and to always have been, as valid as it would have been if section 628A had not commenced before the resolution was made.

(5) Section 979(8) applies to a saved provision included in the charges resolution as if the resolution were a modified charges resolution made under section 979(6).

(6) In this section—

former section 979(6) means section 979(6) as in force immediately before its replacement under the *Local Government and Other Legislation Amendment Act (No. 2) 2015*.

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saved provision see section 979(5).

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Schedule 1 Prohibited development

schedule 3, definition *prohibited development*, paragraph (1)

For clearing native vegetation	
3	Assessable development prescribed under section 232(1) that— (a) is operational work that is the clearing of native vegetation; and (b) is not for a relevant purpose under the Vegetation Management Act, section 22A.
For a brothel	

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5	Development that is a material change of use for a brothel if— (a) more than 5 rooms in the proposed brothel are to be used for providing prostitution; or (b) any land the subject of the development— (i) is in, or within 200m of the closest point on any boundary of, a primarily residential area or an area approved for residential development or intended to be residential in character; or (ii) is within 200m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities; measured according to the shortest route a person may reasonably and lawfully take, by vehicle or on foot, between the land the subject of the development and the other land; or (c) any land the subject of the development is within 100m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities, measured in a straight line; or (d) for land the subject of the development that is in a town with a population of less than 25000— (i) the local government for the local government area has required that all material changes of use for such development within the area be prohibited; and (ii) the Minister has agreed that the development should be prohibited.
For a dredging or extractive activity in the North Stradbroke Island Region	

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13	Development in the North Stradbroke Island Region that is an environmentally relevant activity under the *Environmental Protection Regulation 2008*, schedule 2, part 4, section 16 to the extent it involves dredging or extracting more than 10000 tonnes of material a year.

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Schedule 3 Dictionary

section 6

accepted representations, for chapter 8A, see section 680R(2).

acknowledgement notice see section 267(2).

acknowledgement period see section 267(3).

Acquisition Act means the *Acquisition of Land Act 1967*.

acquisition land means land—

(a) proposed to be taken or acquired under the Acquisition Act or the *State Development and Public Works Organisation Act 1971*; and

(b) in relation to which a notice of intention to resume under the Acquisition Act has been served, and the proposed taking or acquisition has not been discontinued; and

(c) that has not been taken or acquired.

action notice see section 405(5).

additional payment condition see section 650(1).

administering authority see the Environmental Protection Act, schedule 4.

administrative amendment, of a State 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 spelling, grammatical or mapping error in the instrument; or

(d) a factual matter incorrectly stated in the instrument; or

(e) a redundant or outdated term in the instrument; or

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(f) inconsistent numbering of provisions in the instrument; or

(g) a cross-reference in the instrument.

adopted charge see section 630(1).

adopted infrastructure charges register see section 724(1)(ta).

ADR provisions see section 491(1).

ADR registrar, for chapter 7, part 1, division 12A, see section 491A.

advice agency, for a development application, see section 250.

advice agency's response see section 291(2).

affected area see section 680O(2).

affected area notation, for chapter 8A, see section 680A.

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 referral agency material; 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 fee mentioned in section 272(1)(c) to the assessment manager before the day the acknowledgement notice is given—the day the acknowledgement notice is given; or

(ii) if the applicant has not paid the fee mentioned in section 272(1)(c) to the assessment manager before the day the acknowledgement notice is given—the day the fee is paid.

agreement, for chapter 8, see section 627.

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allocation notice, for schedule 1, item 9, means an allocation notice given under—

(a) the *Water Act 2000*, section 283; or

(b) the *Coastal Protection and Management Act 1995*, section 76, before 2 December 2005.

amended Act, for part 11, see section 975.

amending Act, for part 11, see section 975.

appellant means a person who appeals to the court or a building and development committee under chapter 7.

applicable code, for development, means a code, including a concurrence agency code, that can reasonably be identified as applying to the development.

applicant—

(a) for chapter 6, means the applicant for a development application; or

(b) for a development application mentioned in chapter 7, includes the person in whom the benefit of the application vests.

applicant's appeal period, for an appeal—

(a) by an appellant to the court, for a development application—see section 461(2); or

(b) by an appellant to a building and development committee, for an appeal under section 519—see section 519(4); or

(c) by an appellant to a building and development committee, for an appeal under section 522—see section 522(4); or

(d) by an appellant to a building and development committee, for an appeal under section 527—see section 527(2).

application—

(a) for chapter 6, means a development application; or

(b) for chapter 10, part 8, division 2, see section 949.

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appropriate register, for chapter 8A, see section 680A.

appropriately qualified, for the performance of a function or exercise of a power under this Act, includes having the qualifications, experience or standing appropriate to perform the function or exercise the power.

Example of standing—

a person's classification level in the public service

approved form means a form approved by the chief executive under section 762.

aquacultural ERA means an environmentally relevant activity, prescribed under a regulation for this definition, relating to aquaculture.

aquaculture see the Fisheries Act, schedule.

assessable development—

1 Generally, *assessable development* means development prescribed under section 232(1)(c) to be assessable development.

2 The term also includes development declared under a State planning regulatory provision to be assessable development.

3 For a planning scheme area, the term also includes other development not prescribed under a regulation to be assessable development, but declared to be assessable development under any of the following that applies to the area—

(a) the planning scheme for the area;

(b) a temporary local planning instrument;

(c) a preliminary approval to which section 242 applies.

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

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concurrence agency for the application, 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 (class A) is, under the Building Act, chapter 6, engaged to perform private certifying functions under that Act—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 for a public sector entity—the chief executive, however described, of the entity; or

(f) for an aspect of development to which a State planning regulatory provision applies—

(i) if the provision was jointly made by an eligible Minister and the Minister—the chief executive of the department administered by the Minister with responsibility for the matter to which the State planning regulatory provision applies; or

(ii) otherwise—the chief executive; or

(g) for development under a compliance permit—

(i) if the compliance assessor giving the permit for the development is a local government or a public sector entity—the compliance assessor; or

(ii) if the compliance assessor giving the permit for the development is a nominated entity of a local government—the local government; or

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(iii) if the compliance assessor giving the permit for the development is a nominated entity of a public sector entity—the public sector entity; or

(h) for development requiring compliance assessment for which there is no compliance permit—

(i) if the entity that would have been the compliance assessor is a local government or a public sector entity—the local government or public sector entity; or

(ii) if the entity that would have been the compliance assessor is a nominated entity of a local government—the local government; or

(iii) if the entity that would have been the compliance assessor is a nominated entity of a public sector entity—the public sector entity; or

(i) for a document or work to which a compliance certificate applies—

(i) if the compliance assessor giving the certificate is a local government or a public sector entity—the compliance assessor; or

(ii) if the compliance assessor giving the certificate is a nominated entity of a local government—the local government; or

(iii) if the compliance assessor giving the certificate is a nominated entity of a public sector entity—the public sector entity; or

(j) for a document or work requiring compliance assessment for which there is no compliance certificate—

(i) if the entity that would have been the compliance assessor is a local government or a public sector entity—the local government or public sector entity; or

(ii) if the entity that would have been the compliance assessor is a nominated entity of a local government—the local government; or

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(iii) if the entity that would have been the compliance assessor is a nominated entity of a public sector entity—the public sector entity; or

(k) for development under a development approval for which the chief executive is the assessment manager or a referral agency and has, under section 255D, nominated an entity to be the assessing authority for the development for the administration and enforcement of a matter relating to a condition of the development approval—the entity; or

(l) for any other matter—the local government.

assessment and decision provisions, for chapter 6, part 11, division 2, see section 423.

assessment manager see section 246(1).

automatic increase provision, for chapter 8, see section 631(3)(b).

available for inspection and purchase see section 723(1).

BCA means Building Code of Australia.

brothel see the *Prostitution Act 1999*, schedule 4.

building means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building.

Building Act means the *Building Act 1975*.

building and development committee means a building and development dispute resolution committee that is established under section 554(2)(a) or 554B(2)(a) or, if the case requires, that may be so established.

building assessment provisions see the Building Act, section 30.

building certifier—

1 A *building certifier* is an individual who, under the Building Act, is licensed as a building certifier.

2 A reference to a building certifier includes a reference to a private certifier.

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Building Code of Australia—

1 The *Building Code of Australia* is the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board.

2 A reference to the code includes the edition as amended from time to time by amendments published by the board.

building development application means a development application to the extent it is for building work.

building work see section 10.

business day does not include a day between 26 December of a year and 1 January of the following year.

certificate of classification see the Building Act, schedule 2.

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; or

(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; or

(c) for a document held by a referral agency—a copy of the document certified by the chief executive officer of the referral agency as a true copy of the document; or

(d) for a document held by a compliance assessor—a copy of the document certified by the compliance assessor or the chief executive officer of the compliance assessor as a true copy of the document; or

(e) 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; or

(f) for a document held by the Minister—a copy of the document certified by the chief executive of any

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department the Minister has responsibility for as a true copy of the document.

changeover day for chapter 10, part 8, division 2, see section 949.

charge rate, in relation to trunk infrastructure, means the amount, expressed in dollars, for each unit of demand for the infrastructure.

charges breakup, for chapter 8, see section 627.

charges resolution see section 630(1).

City of Brisbane Act means the *City of Brisbane Act 2010*.

clear, for vegetation—

(a) means remove, cut down, ringbark, push over, poison or destroy in any way including by burning, flooding or draining; but

(b) does not include destroying standing vegetation by stock, or lopping a tree.

coastal management district means a coastal management district under the *Coastal Protection and Management Act 1995*, other than an area declared as a coastal management district under section 54(2) of that Act.

code means a document or part of a document identified as a code—

(a) in a planning instrument; or

(b) for IDAS under this or another Act; or

(c) in a preliminary approval to which section 242 applies.

code assessment means the assessment of development by the assessment manager under section 313 or, if the chief executive is the assessment manager, by the chief executive under sections 255A and 313.

code of environmental compliance, for chapter 8A, see section 680A.

committee proceeding means a proceeding for which a building and development committee must be established.

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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—

(i) any concurrence agency requirements, advice agency recommendations and contents of submissions that have been accepted by the assessment manager; and

(ii) any advice or comment about the application received under section 256; and

(b) if a development approval for the development has not lapsed—the approval; and

(c) an infrastructure agreement applicable to the land the subject of the application.

Commonwealth Environment Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

community infrastructure means community infrastructure prescribed under a regulation for section 200.

compliance assessment means assessment of development, a document or work for compliance with a matter or thing mentioned in section 403.

compliance assessor see sections 397(3)(b) and 398(2)(b).

compliance certificate see section 395.

compliance permit see section 394.

concurrence agency, for a development application, see section 251.

concurrence agency code, for a concurrence agency, means a code, or part of a code, the concurrence agency is required under this 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.

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concurrence agency's response see sections 285(2) and 290(1)(a).

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—

(a) for making a State planning instrument—see section 60(2)(e); or

(b) for amending a State planning instrument—means the consultation period under section 60(2)(e) as applied under section 70; or

(c) for making or amending a planning scheme or planning scheme policy—see section 118(1)(b); or

(d) for making a ministerial designation of land—means the period for the making of submissions stated in any notice given under section 207(4).

continuing local government for chapter 10, part 8, division 2, see section 949.

continuing local government area for chapter 10, part 8, division 2, see section 949.

conversion application see section 659(1).

convicted includes being found guilty, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

core matters, for the preparation of a planning scheme, see section 89.

court means the Planning and Environment Court continued in existence under section 435.

court appeal period means the period under this Act for bringing an appeal to the court.

crude oil or petroleum product storage ERA means an environmentally relevant activity, prescribed under a

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regulation for this definition, relating to storing crude oil or petroleum product.

decision maker for chapter 10, part 8, division 2, see section 949.

decision-making period see section 318.

decision notice see section 334(1).

declared fish habitat area see the Fisheries Act, schedule.

deemed approval means an approval taken to have been given under section 331.

deemed approval notice see section 331(1).

deemed condition see the *Environmental Offsets Act 2014*, schedule 2.

deemed refusal, for a proceeding under chapter 7, part 1 or 2, means a refusal that is taken to have happened if a decision is not made—

(a) for a development application, other than an application to which chapter 6, part 5, division 3, subdivision 4 applies—by the end of the decision-making period, including any extension of the decision-making period; and

(b) for a matter as follows—within the period allowed under this Act for the matter to be decided—

(i) a request under section 98(2);

(ii) a request made by a person under section 222(3);

(iii) a request to make a change to a development approval;

(iv) a request to extend a period mentioned in section 341;

(v) a conversion application;

(vi) a claim for compensation under chapter 9, part 3.

designate means identify for community infrastructure.

designated land means land designated under chapter 5.

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designated region see section 32(1).

designation cessation day see section 214(1).

designator, in relation to land, means the Minister or local government who designated the land under chapter 5.

desired standard of service, for a network of development infrastructure, means the standard of performance stated in an adopted infrastructure charges resolution or the priority infrastructure plan.

destroy, for vegetation, includes destroy it by burning, flooding or draining.

development see section 7.

development application means an application for a development approval.

development application (superseded planning scheme) means a development application for development to which a superseded planning scheme applies because under chapter 3, part 2, division 5 the assessment manager for the development has agreed, or is taken to have agreed, to a request made under that part for the development.

development approval means—

(a) a decision notice or a negotiated decision notice that—

(i) approves, wholly or partially, development applied for in a development application (whether or not the approval has conditions attached to it); and

(ii) 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; or

(b) a deemed approval, including any conditions applying to it.

development infrastructure see section 627.

development offence means an offence against section 574, 575, 576, 577, 578, 579, 580, 581 or 582.

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Note—

See also section 921.

development permit see section 243.

distributor-retailer means a distributor-retailer established under the SEQ Water Act.

draft EIS means a draft EIS for section 693.

draft terms of reference, for an EIS, means a document prepared by the chief executive under section 691(2).

drainage work see the *Plumbing and Drainage Act 2002*, schedule.

dredging ERA means an environmentally relevant activity, prescribed under a regulation for this definition, relating to dredging material.

ecological sustainability see section 8.

e-IDAS see section 262(2).

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 697.

EIS process means the process mentioned in chapter 9, part 2.

eligible Minister, for chapter 2, means a Minister, other than the Minister administering this Act or the regional planning Minister.

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enforcement notice see section 590(1).

enforcement order see section 601(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) the 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 the matters.

environmentally relevant activity see the Environmental Protection Act, section 18.

environmental management plan, for development to which the EIS process applies, means a document prepared by the proponent that proposes conditions and mechanisms to manage the potential environmental impacts of the development.

environmental nuisance see the Environmental Protection Act, section 15.

environmental offset see the *Environmental Offsets Act 2014*, schedule 2.

Environmental Protection Act means the *Environmental Protection Act 1994*.

establishment cost, for a provision about trunk infrastructure, see section 627.

executive officer, of a corporation, means a person who is concerned with or takes part in its management, whether or not the person is a director or the person's position is given the name of executive officer.

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exempt development is development other than self-assessable development, development requiring compliance assessment, assessable development or prohibited development.

existing, in relation to a regional planning advisory committee or regional coordination committee under repealed IPA for chapter 10, part 2, see section 765.

existing application, for chapter 10, part 2, see section 765.

existing planning scheme, for chapter 10, part 2, see section 765.

existing planning scheme policy, for chapter 10, part 2, see section 765.

existing proceeding for chapter 10, part 8, division 2, see section 949.

existing structure plan, for chapter 10, part 2, see section 765.

existing temporary local planning instrument, for chapter 10, part 2, see section 765.

extraction ERA means an environmentally relevant activity, prescribed under a regulation for this definition, relating to extracting rock or other material.

Fisheries Act means the *Fisheries Act 1994*.

forest practice—

1 *Forest practice* means planting trees, or managing, felling and removing standing trees, on freehold land or indigenous land, for an ongoing forestry business in a—

(a) plantation; or

(b) native forest, if, in the native forest—

(i) all the activities are conducted in a way that is consistent with the native forest practice code; or

(ii) if the native forest practice code does not apply to the activities, all the activities are conducted in a way that—

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(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.

2 The term includes carrying out limited associated work, including, for example, drainage, construction and maintenance of roads or vehicular tracks, 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*.

grounds, for sections 326(1)(b) and 329(1)(b)—

1 *Grounds* means matters of public interest.

2 *Grounds* does not include the personal circumstances of an applicant, owner or interested party.

high-water mark means the ordinary high-water mark at spring tides.

iconic places development application, for chapter 10, part 3, see section 872.

IDAS see section 230.

impact assessment means the assessment of the following by the assessment manager under section 314 or, if the chief executive is the assessment manager, by the chief executive under sections 255B and 314—

(a) the environmental effects of proposed development;

(b) the ways of dealing with the effects.

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impose, for a provision about a condition of a development approval, see section 627.

indigenous land means land held under a following Act by, or on behalf of or for the benefit of, Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes—

(a) the *Aurukun and Mornington Shire Leases Act 1978*;

(b) the *Aboriginal Land Act 1991*;

(c) the *Torres Strait Islander Land Act 1991*;

(d) the *Land Act 1994*.

industrial area, for the definition *residential building*, means land, however described, that is designated in a planning instrument as industrial, or that is predominantly industrial in character, having regard to—

(a) dominant land uses in the area; or

(b) the relevant provisions of a planning instrument applying to the area.

Examples of ways of describing industrial areas—

- heavy industry
- commercial industry
- light industry
- service industry
- general industry
- waterfront industry

information notice—

(a) for chapter 8, see section 627; or

(b) for chapter 8A, see section 680A.

information request see section 276(1).

information request period see section 276(4) and (5).

infrastructure includes land, facilities, services and works used for supporting economic activity and meeting environmental needs.

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infrastructure agreement see section 670.

infrastructure charges notice see section 627.

infrastructure charges plan means an infrastructure charges plan under repealed IPA before the commencement of the *Integrated Planning and Other Legislation Amendment Act 2003*, part 2, division 3.

infrastructure charges register see section 724(1)(r).

infrastructure provider—

(a) for an application, means 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; and

(b) for a request for compliance assessment, means a local government that is the compliance assessor for the request and—

(i) supplies trunk infrastructure for development; or

(ii) has an agreement with another entity that supplies trunk infrastructure to the local government area.

interim enforcement order see section 601(1)(b).

IPA planning scheme means a planning scheme made under repealed IPA, schedule 1.

land for chapter 10, part 8, division 2, see section 949.

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 comments see section 691(3)(e).

last day for making submissions see section 694(1)(a)(iv).

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lawful use see section 9.

levied charge see section 635(6).

LGIP see section 627.

Local Government Act means the *Local Government Act 2009*.

local government road has the same meaning as in the *Transport Planning and Coordination Act 1994*.

local heritage place means a place on a local heritage register within the meaning of the *Queensland Heritage Act 1992*.

local infrastructure agreement means an infrastructure agreement entered into by a local government.

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 10(1).

low impact activity means a borrow pit of not more than 10,000m^3.

mapped area, for chapter 8A, see section 680G(2)(a).

marine plant see the Fisheries Act, section 8.

material change of use see section 10(1).

maximum adopted charge see section 629(5).

Milton Brewery, for chapter 10, part 5, division 2, see section 883.

Milton rail precinct, for chapter 10, part 5, division 2, see section 883.

mining activity see the Environmental Protection Act, section 110.

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Minister—

(a) in chapter 2, part 2 or 4 and chapter 6, part 11, means—

(i) generally—the Minister administering the part; or

(ii) for a matter the regional planning Minister is satisfied relates to chapter 2, part 2 or 4—the regional planning Minister for the region; and

(b) in chapter 2, part 3 or 5, means the Minister administering the part; and

(c) in chapter 5—means any Minister; and

(d) in chapter 6, part 11, division 2, includes the Minister administering the *State Development and Public Works Organisation Act 1971*; and

(e) in any other provision of this Act, means the Minister administering the provision.

minor amendment, of a State planning instrument, means—

(a) for a regional plan or a State planning regulatory provision made by the regional planning Minister—an amendment of the plan or provision, if the regional planning Minister is satisfied—

(i) the amendment is made merely to reflect a part of another State planning instrument; and

(ii) adequate public consultation was carried out in relation to the making of the part; or

(b) for a State planning instrument to which paragraph (a) does not apply—an amendment of the instrument, if the Minister is satisfied—

(i) the amendment is made merely to reflect a part of another State planning instrument; and

(ii) adequate public consultation was carried out in relation to the making of the part; or

(c) another amendment of a minor nature prescribed under a regulation.

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minor change, in relation to a development application, see section 350.

missed referral agency see section 357(1).

native forest practice means a forest practice other than—

(a) a forest practice in a plantation; or

(b) the harvesting, on freehold land, of sandalwood.

native forest practice code means a self-assessable vegetation clearing code under the Vegetation Management Act, section 19O(1) applying to conducting a native forest practice.

native vegetation means vegetation under the Vegetation Management Act.

necessary infrastructure condition see section 645(2).

negotiated decision notice see section 363(1).

new local government for chapter 10, part 8, division 2, see section 949.

new local government area for chapter 10, part 8, division 2, see section 949.

non-rural purposes see section 627.

non-trunk infrastructure see section 627.

North Stradbroke Island Region see the *North Stradbroke Island Protection and Sustainability Act 2011*, section 5.

notice—

(a) for chapter 8—see section 627; or

(b) for chapter 8A—see section 680A.

notification period—

(a) for a development application to which chapter 9, part 7 applies—see section 747; or

(b) for another development application—see section 298.

operational work see section 10(1).

original application, for chapter 6, part 8, division 2, see section 372(1)(a).

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original assessment manager see section 428.

original notice, for chapter 8, see section 640.

overland flow water see the *Water Act 2000*, schedule 4.

owner, of land, means the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for it if it were let to a tenant at a rent.

Note—

See the Transport Infrastructure Act, section 247, for when the chief executive of the department in which that Act is administered is taken to be the owner of particular rail corridor land or non-rail corridor land under that Act.

panel, for chapter 10, part 3, see section 872.

participating local government means a participating local government for a distributor-retailer under the SEQ Water Act.

party, for a provision about proceeding before the court or a building and development committee, or proposed proceeding, means any or all of the following for the proceeding or proposed proceeding—

(a) the applicant or appellant;

(b) the respondent;

(c) any co-respondent;

(d) if the Minister is represented—the Minister.

party house see section 755A.

payer, for a provision about a levied charge, see section 627.

payment, for chapter 8, see section 627.

permissible change, for a development approval, see section 367.

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

PIA see section 627.

PIP, for part 11, see section 975.

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planning instrument means a State planning regulatory provision, a designated region's regional plan, a State planning policy, the standard planning scheme provisions, a planning scheme, a temporary local planning instrument or a planning scheme policy.

planning scheme see section 79.

planning scheme area see section 82(1).

planning scheme policy see section 108.

plumbing work see the *Plumbing and Drainage Act 2002*, schedule.

PPI index see section 627.

preliminary approval see section 241(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.

pre-request response notice see section 368(3).

prescribed building means a building that is classified under the BCA as—

(a) a class 1 building; or

(b) a class 10 building, other than a class 10 building that is incidental or subordinate to the use, or proposed use, of a building classified under the BCA as a class 2, 3, 4, 5, 6, 7, 8 or 9 building.

prescribed tidal work means work prescribed under a regulation for this definition under this or another Act.

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.

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private certifier means a building certifier whose licence under the Building Act has private certification endorsement under that Act.

private certifier (class A) means a private certifier whose licence under the Building Act has development approval endorsement under that Act.

prohibited development—

1 Generally, *prohibited development* means development mentioned in schedule 1.

2 The term also includes development declared under a State planning regulatory provision to be prohibited development.

3 For a planning scheme area, the term also includes development not mentioned in schedule 1, but stated or declared under any of the following for the area to be prohibited development—

(a) the planning scheme;

(b) a temporary local planning instrument.

properly made application, for a development application, see section 261(1).

properly made submission means a submission that—

(a) is in writing and, unless the submission is made electronically under this Act, is signed by each person who made the submission; and

(b) is received—

(i) if the submission is about a draft EIS or a designation—on or before the last day for making the submission; or

(ii) if the submission is about a development application—during the notification period; or

(iii) otherwise—during the consultation period; and

(c) states the name and residential or business address of each person who made the submission; and

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(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 proposed State planning regulatory provision or an amendment of a State planning regulatory provision being made by the regional planning Minister—to the regional planning Minister; or

(ii) if the submission is about a proposed State planning regulatory provision or an amendment of a State planning regulatory provision being made by the Minister—to the Minister; or

(iii) if the submission is about a proposed State planning regulatory provision or an amendment of a State planning regulatory provision being made jointly by the Minister and an eligible Minister—to the eligible Minister; or

(iv) if the submission is about a designated region's regional plan—to the regional planning Minister for the region; or

(v) if the submission is about a proposed State planning policy or an amendment of a State planning policy being made by the Minister—to the Minister; or

(vi) if the submission is about a proposed State planning policy or an amendment of a State planning policy being made jointly by the Minister and an eligible Minister—to the eligible Minister; or

(vii) if the submission is about the proposed standard planning scheme provisions or an amendment of the standard planning scheme provisions being made by the Minister—to the Minister; or

(viii) if the submission is about a ministerial designation—to the Minister; or

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(ix) if the submission is about a proposed planning scheme or planning scheme policy or an amendment of a planning scheme or planning scheme policy—to the local government; or

(x) if the submission is about a proposed planning scheme or an amendment of a planning scheme being carried out by the Minister or regional planning Minister—to the Minister or regional planning Minister; or

(xi) if the submission is about a development application—to the assessment manager.

proponent means the person who proposes development to which chapter 9, part 2 applies.

proposed call in notice, for chapter 6, part 11, division 2, see section 424A(1).

public housing—

(a) means housing—

(i) provided by or for the State or a statutory body representing the State; and

(ii) for short or long term residential use; and

(iii) that is totally or partly subsidised by the State or a statutory body representing the State; and

(b) includes services provided for residents of the housing, if the services are totally or partly subsidised by the State or a statutory body representing the State.

public office, of a local government, means the premises kept as its public office under—

(a) for a local government other than the Brisbane City Council—the Local Government Act; or

(b) for the Brisbane City Council—the City of Brisbane Act.

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 *Public sector entity* includes—

(a) a government owned corporation; and

(b) other than for chapter 8, a distributor-retailer; and

(c) a rail government entity under the *Transport Infrastructure Act 1994*.

public sector entity, for chapter 8, see section 627.

public utility easement means an easement in favour of a public utility provider within the meaning of the *Land Title Act 1994*, section 81A.

quarry material see the *Water Act 2000*, schedule 4.

Queensland Building and Construction Commission means the Queensland Building and Construction Commission established under the *Queensland Building and Construction Commission Act 1991*, section 5.

Queensland Competition Authority means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*.

Queensland Development Code means the version, current at the relevant time, of the document called, Queensland Development Code, published by the department in which the Building Act is administered.

Queensland heritage place see the *Queensland Heritage Act 1992*, schedule.

recipient, for a provision about a direction, notice or order, means any person to whom it is given.

reconfiguring a lot see section 10(1).

reference decision, for chapter 10, part 3, see section 872.

referral agency see section 252.

referral agency material see section 272(1).

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referral agency's assessment period see section 283.

referral agency's response means an advice agency's response or a concurrence agency's response.

regional plan see section 33.

regional planning committee means a regional planning committee established under section 41.

regional planning Minister, for a designated region, means the Minister administering chapter 2, part 2 or 4 for the region.

registered premises, for chapter 8A, see section 680A.

registered professional engineer means a registered professional engineer under the *Professional Engineers Act 2002* or a person registered as a professional engineer under an Act of another State.

registrar, for chapter 8A, see section 680A.

registration certificate, for chapter 8A, see section 680A.

related, for chapter 10, part 8, division 2, see section 949.

relevant appeal period see section 627.

relevant area, for a State planning regulatory provision, see section 20(1).

relevant development application, for chapter 8A, see section 680B.

relevant instrument, for chapter 6, part 10, see section 397(5).

relevant or reasonable requirements see section 627.

repealed Iconic Places Act means the repealed *Iconic Queensland Places Act 2008*.

repealed IPA means the repealed *Integrated Planning Act 1997*.

repealed LGP&E Act means the repealed *Local Government (Planning and Environment) Act 1990*.

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representation period, for chapter 6, part 11, division 2, see section 423.

request for chapter 10, part 8, division 2, see section 949.

requesting authority see section 278(1).

residential building, for schedule 1, item 5, means a building or part of a building used primarily for private residential use, other than a building or part of a building used only for a caretaker's residence on land in an industrial area.

residential dwelling, for chapter 9, part 7A, see section 755A.

residential dwelling development, for chapter 9, part 7A, see section 755A.

responsible entity, for making a permissible change to a development approval, means the responsible entity under section 369 for making the change.

road—

1 *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).

2 *Road* does not include—

(a) an area or thing that is busway land, busway transport infrastructure, light rail land or light rail transport infrastructure within the meaning of the Transport Infrastructure Act; and

(b) a public thoroughfare easement under either or both of the following provisions, if the easement is in favour of the State—

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(i) the *Land Act 1994*, chapter 6, part 4, division 8;

(ii) the *Land Title Act 1994*, part 6, division 4.

road works see the Transport Infrastructure Act, schedule 6.

sandalwood means a plant of the species *Santalum lanceolatum*.

screening ERA means an environmentally relevant activity, prescribed under a regulation for this definition, relating to screening, washing, crushing, grinding, milling, sizing or separating material extracted from earth or dredged.

***self-assessable development*—**

1 Generally, *self-assessable development* means development prescribed under a regulation for section 232(1) to be self-assessable development.

2 The term also includes development declared under a State planning regulatory provision to be self-assessable development.

3 For a planning scheme area, the term also includes other development not prescribed under a regulation to be self-assessable development, but declared to be self-assessable development under any of the following that applies to the area—

(a) the planning scheme for the area;

(b) a temporary local planning instrument;

(c) a preliminary approval to which section 242 applies.

SEQ region, for chapter 10, part 2, division 11, see section 864.

SEQ regional plan, for chapter 10, part 2, division 11, see section 864.

SEQ regional plan structure plan, for chapter 10, part 2, division 11, see section 864.

SEQ Water Act means the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

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serious environmental harm see the Environmental Protection Act, section 17.

show cause notice—

(a) generally—see section 588(2); or

(b) for chapter 8A—see section 680Q(1).

show cause period, for chapter 8A, see section 680Q(2)(d).

SPRP (adopted charges) see section 629(5).

stage of IDAS, means a stage of the IDAS process mentioned in section 257(1).

standard conditions see section 332(1).

standard planning scheme provisions see section 50.

State-controlled road see the Transport Infrastructure Act, schedule 6.

State infrastructure means any of the following—

(a) State schools infrastructure;

(b) public transport infrastructure;

(c) State-controlled roads infrastructure;

(d) emergency services infrastructure;

(e) health infrastructure, including hospitals and associated institutions infrastructure;

(f) freight rail infrastructure;

(g) State urban and rural residential water cycle management infrastructure, including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of water and flood mitigation;

(h) justice administration facilities, including court or police facilities.

State infrastructure agreement means an infrastructure agreement entered into by a public sector entity other than a local government.

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State infrastructure provider see section 627.

State interest means—

(a) an interest that the Minister considers affects an economic or environmental interest of the State or a part of the State, including sustainable development; or

Example of an interest the Minister might consider for paragraph (a)—

a tourism development involving broad economic benefits for the State or a part of the State

(b) an interest that the Minister considers affects the interest of ensuring there is an efficient, effective and accountable planning and development assessment system.

statement of intent, for a State-controlled road, means a statement about the State-controlled road, including proposals for the provision of transport infrastructure included in the roads implementation program under the Transport Infrastructure Act, section 11.

State planning instrument means—

(a) a State planning regulatory provision; or

(b) a regional plan; or

(c) a State planning policy; or

(d) the standard planning scheme provisions.

State planning policy see section 22.

State planning regulatory provision see section 16.

State-related condition see section 666(1).

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

subject premises see section 645(1).

submission, for chapter 8, see section 627.

submitter, for a development application, means a person who makes a properly made submission about the application.

submitter's appeal period see section 462(4).

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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, took effect; or

(b) the amendment, creating the superseded planning scheme, took effect.

technical report, for chapter 8A, see section 680G(2)(h).

temporary local planning instrument see section 101.

temporary State planning policy see section 28(1) and (2).

terms of reference, for an EIS, means the terms of reference prepared by the chief executive under section 692.

tidal area—

1 *Tidal area*, for a local government, means—

(a) to the extent both banks of a tidal river or estuarine delta are in the local government's area, the part of the river or delta below high-water mark that is—

(i) from the mouth of the river or delta as far up the river or delta as the spring tides ordinarily flow and reflow; and

(ii) adjacent to the local government's area; and

(b) to the extent 1 bank of a tidal river or estuarine delta is in the local government's area, the part of the river or delta between high-water mark and the middle of the river or delta that is—

(i) from the mouth of the river or delta as far up the river or delta as the spring tides ordinarily flow and reflow; and

(ii) adjacent to the local government's area; and

(c) if the boundary of the local government's area is the high-water mark or is seaward of the high-water mark—the area that is seaward and within 50m of the high-water mark.

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2 *Tidal area*, for a local government, does not include a tidal area for strategic port land.

3 *Tidal area*, for strategic port land, means—

(a) to the extent both banks of a tidal river or estuarine delta are part of the strategic port land, the part of the river or delta below high-water mark that is—

(i) from the mouth of the river or delta as far up the river or delta as the spring tides ordinarily flow and reflow; and

(ii) adjacent to the strategic port land; and

(b) to the extent 1 bank of a tidal river or estuarine delta is part of the strategic port land, the part of the river or delta between high-water mark and the middle of the river or delta that is—

(i) from the mouth of the river or delta as far up the river or delta as the spring tides ordinarily flow and reflow; and

(ii) adjacent to the strategic port land; and

(c) if the boundary of the strategic port land is the high-water mark or is seaward of the high-water mark—the area that is seaward and within 50m of the high-water mark.

tidal works see the *Coastal Protection and Management Act 1995*, schedule.

transitional regulation, for part 11, see section 990(1).

Transport Infrastructure Act means the *Transport Infrastructure Act 1994*.

trunk infrastructure see section 627.

unamended Act, for part 11, see section 975.

use, in relation to premises, includes any use incidental to and necessarily associated with the use of the premises.

Vegetation Management Act means the *Vegetation Management Act 1999*.

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vehicle, for schedule 1, item 5, includes any type of transport that moves on wheels but does not include a train or tram.

water approval see the SEQ Water Act, schedule.

water infrastructure see the SEQ Water Act, schedule.

water infrastructure facility means a measure, outcome, works or anything else that Queensland Water Infrastructure Pty Ltd ACN 119 634 427 is directed to carry out or achieve under—

(a) the *State Development and Public Works Organisation Act 1971*; or

(b) the *Water Act 2000*.

water service or wastewater service, in relation to a distributor-retailer, means a water service or a wastewater service under the SEQ Water Act.

waterway barrier works see the Fisheries Act, schedule.

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2 Key

Key to abbreviations in list of legislation and annotations

Key		Explanation	Key		Explanation
AIA	=	**Acts Interpretation Act 1954**	**(prev)**	=	**previously**
amd	=	**amended**	**proc**	=	**proclamation**
amdt	=	**amendment**	**prov**	=	**provision**
ch	=	**chapter**	**pt**	=	**part**
def	=	**definition**	**pubd**	=	**published**
div	=	**division**	**R[X]**	=	**Reprint No. [X]**
exp	=	**expires/expired**	**RA**	=	**Reprints Act 1992**
gaz	=	**gazette**	**reloc**	=	**relocated**
hdg	=	**heading**	**renum**	=	**renumbered**
ins	=	**inserted**	**rep**	=	**repealed**
lap	=	**lapsed**	**(retro)**	=	**retrospectively**
notfd	=	**notified**	**rv**	=	**revised version**
num	=	**numbered**	**s**	=	**section**

Key		Explanation	Key		Explanation
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
orig	=	original	SIA	=	Statutory Instruments Act 1992
p	=	page	SIR	=	Statutory Instruments Regulation 2012
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments included	Effective	Notes
1	2009 Act No. 43 2009 Act No. 51	18 December 2009	Revision notice issued for R1

Reprint No.	Amendments included	Effective	Notes
1A rv	2009 Act No. 42 2009 Act No. 51	1 January 2010	
1B rv	2010 Act No. 19	23 May 2010	
1C rv	2010 Act No. 20	1 July 2010	
1D rv	2010 Act No. 35	20 September 2010	
1E rv	2010 Act No. 53	1 December 2010	
1F rv	2011 Act No. 6	4 April 2011	
1G rv	2011 Act No. 11	14 April 2011	
1H rv	2011 Act No. 3	5 May 2011	
1I	2011 Act No. 8	3 June 2011	
1J	2011 Act No. 17	6 June 2011	
1K	2011 Act No. 33	28 October 2011	
1L	2011 Act No. 18	1 January 2012	
1M	2012 Act No. 3	17 February 2012	
1N	2010 Act No. 31	2 March 2012	R1N withdrawn, see R2
2	—	2 March 2012	
2A	2011 Act No. 45	1 September 2012	
2B	2012 Act No. 34	22 November 2012	

Current as at	Amendments included	Notes
1 February 2013	2012 Act No. 43	
31 March 2013	2012 Act No. 16 (amd 2012 Act No. 34)	RA s 44

Current as at	Amendments included	Notes
3 May 2013	2013 Act No. 19	
14 May 2013	2013 Act No. 23	
1 July 2013	2012 Act No. 34 (amd 2013 Act No. 23)	
23 September 2013 rv	2013 Act No. 39	
7 November 2013	2013 Act No. 60	
1 December 2013	2013 Act No. 38	
2 December 2013	2013 Act No. 24	
	2013 Act No. 60	
1 January 2014	2013 Act No. 60	RA s 44
20 February 2014	2013 Act No. 2	
31 March 2014	2013 Act No. 50	
28 May 2014	2014 Act No. 33	
1 July 2014	2014 Act No. 16	
	2014 Act No. 33	
4 July 2014	2014 Act No. 36	RA ss 35, 43, 44
1 October 2014	2014 Act No. 40	
7 November 2014	2014 Act No. 61	
5 December 2014	2014 Act No. 64	
19 December 2014	2014 Act No. 59	prov exp 18 December 2014
2 July 2015	—	provs exp 1 July 2015
		RA s 44

Current as at	Amendments included	Notes
5 July 2015	—	prov exp 4 July 2015 RA s 44
1 September 2015	2014 Act No. 61	
2 October 2015	—	provs exp 1 October 2015
20 November 2015	2015 Act No. 25 2015 Act No. 28	
24 March 2016	2016 Act No. 11	

4 List of legislation

Sustainable Planning Act 2009 No. 36
date of assent 22 September 2009
ss 1–2 commenced on date of assent
remaining provisions commenced 18 December 2009 (2009 SL No. 281)
amending legislation—

Great Barrier Reef Protection Amendment Act 2009 No. 42 pts 1, 4
date of assent 15 October 2009
ss 1–2 commenced on date of assent
remaining provisions commenced 1 January 2010 (2009 SL No. 273)

Vegetation Management and Other Legislation Amendment Act 2009 No. 43 pts 1, 7
date of assent 3 November 2009
commenced on date of assent (see s 2)

Building and Other Legislation Amendment Act 2009 No. 51 ss 1, 2(3), pt 10
date of assent 19 November 2009
ss 1–2, 78 commenced on date of assent (see s 2(3))
remaining provisions commenced 1 January 2010 (see s 2(3))

Transport and Other Legislation Amendment Act (No. 2) 2010 No. 19 s 1, ch 2 pt 16
date of assent 23 May 2010
commenced on date of assent

South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010 No. 20 ss 1, 2(1)(d), pt 8
date of assent 23 May 2010
ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2010 (see s 2(1)(d))

Geothermal Energy Act 2010 No. 31 ss 1–2(1), 585 sch 2 pt 4
date of assent 1 September 2010
ss 1–2 commenced on date of assent
remaining provisions commenced 2 March 2012 (automatic commencement under AIA s 15DA(2) (2011 SL No. 156 s 2))

Building and Other Legislation Amendment Act (No. 2) 2010 No. 35 pts 1, 8
date of assent 20 September 2010
commenced on date of assent (see s 2)

Water and Other Legislation Amendment Act 2010 No. 53 s 1, pt 12
date of assent 1 December 2010
commenced on date of assent

Environmental Protection and Other Acts Amendment Act 2011 No. 3 pts 1, 5
date of assent 4 April 2011
ss 1–2 commenced on date of assent
remaining provisions commenced 5 May 2011 (2011 SL No. 49)

Environmental Protection and Other Legislation Amendment Act 2011 No. 6 ss 1, 142 sch
date of assent 4 April 2011
commenced on date of assent

Revenue and Other Legislation Amendment Act 2011 No. 8 ss 1, 2(2)(c), pt 12
date of assent 8 April 2011
ss 1–2 commenced on date of assent
remaining provisions commenced 3 June (2011 SL No. 75)

North Stradbroke Island Protection and Sustainability Act 2011 No. 11 s 1, pt 4 div 3
date of assent 14 April 2011
commenced on date of assent

Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011 No. 17 s 1, pt 4
date of assent 6 June 2011
commenced on date of assent

Work Health and Safety Act 2011 No. 18 ss 1–2, 404 sch 4 pt 1
date of assent 6 June 2011
ss 1–2 commenced on date of assent
remaining provisions commenced 1 January 2012 (2011 SL No. 238)

Disaster Readiness Amendment Act 2011 No. 33 pts 1, 4
date of assent 28 October 2011
commenced on date of assent

Civil Proceedings Act 2011 No. 45 ss 1–2, 217 sch 1A
date of assent 6 December 2011
ss 1–2 commenced on date of assent
remaining provisions commenced 1 September 2012 (2012 SL No. 146)

Sustainable Planning and Other Legislation Amendment Act 2012 No. 3 s 1, pt 7
date of assent 17 February 2012
commenced on date of assent

Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012 No. 16 pts 1, 3, s 78 sch (this Act is amended, see amending legislation below)
date of assent 14 August 2012
ss 1–2 commenced on date of assent
remaining provisions commence 31 March 2013 (2013 SL No. 24)
amending legislation—

Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012 No. 34 s 1, pt 4 (amends 2012 No. 16 above)
date of assent 22 November 2012
commenced on date of assent

Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012 No. 34 pts 1, 7 (this Act is amended, see amending legislation below)
date of assent 22 November 2012
ss 1–2 commenced on date of assent
ss 35, 42(1), 43(1), 44(1), 51A, 63, 84A–84F, 111–118, 122 (to the extent it ins new ss 944, 944A), 123(2), (4), (4A), (29A) commenced 1 July 2013 (2013 SL No. 113)
remaining provisions commenced on date of assent
amending legislation—

Land, Water and Other Legislation Amendment Act 2013 No. 23 s 1, pt 15A (amends 2012 No. 34 above)
date of assent 14 May 2013
commenced on date of assent

Economic Development Act 2012 No. 43 ss 1–2, 221 sch 1
date of assent 11 December 2012
ss 1–2 commenced on date of assent
remaining provisions commenced 1 February 2013 (2013 SL No. 1)

Aboriginal and Torres Strait Islander Land Holding Act 2013 No. 2 ss 1–2, pt 12 div 8
date of assent 19 February 2013
ss 1–2 commenced on date of assent
remaining provisions commenced 20 February 2014 (automatic commencement under AIA s 15DA(2))

Queensland Rail Transit Authority Act 2013 No. 19 ss 1, 120 sch 1
date of assent 3 May 2013
commenced on date of assent

Land, Water and Other Legislation Amendment Act 2013 No. 23 s 1, pt 15 s 352 sch 1 pt 1
date of assent 14 May 2013
commenced on date of assent

Vegetation Management Framework Amendment Act 2013 No. 24 ss 1, 2(c), pt 4
date of assent 23 May 2013
ss 1–2 commenced on date of assent
remaining provisions commenced 2 December 2013 (2013 SL No. 255)

Queensland Building Services Authority Amendment Act 2013 No. 38 ss 1–2, 14 sch 1
date of assent 29 August 2013
ss 1–2 commenced on date of assent
remaining provisions commenced 1 December 2013 (2013 SL No. 240)

Treasury and Trade and Other Legislation Amendment Act 2013 No. 39 ss 1, 109 sch 2
date of assent 23 September 2013
commenced on date of assent

Nature Conservation (Protected Plants) and Other Legislation Amendment Act 2013 No. 50 pts 1, 3
date of assent 29 October 2013
ss 1–2 commenced on date of assent
remaining provisions commenced 31 March 2014 (2014 SL No. 31)

Nature Conservation and Other Legislation Amendment Act (No. 2) 2013 No. 55 pts 1, 4 div 5
date of assent 7 November 2013
ss 1–2 commenced on date of assent
pt 4 div 5 never commenced and om 2015 Act No. 15 s 95

Local Government and Other Legislation Amendment Act 2013 No. 60 pts 1, 5, s 33 sch 1
date of assent 7 November 2013
ss 1–2 commenced on date of assent
ss 25–29, 31 (to the extent it ins new ch 10 pt 8 div 1), 32(3)–(6) and 33 sch 1 commenced 2 December 2013 (2013 SL No. 242)
ss 31 (to the extent it ins new ch 10 pt 8 div 2), 32(1)–(2) commenced 1 January 2014 (see s 2(2))
remaining provisions commenced on date of assent

Water Supply Services Legislation Amendment Act 2014 No. 16 ss 1–2(1), ch 2 pt 2, s 101 sch 1
date of assent 13 May 2014
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2014 (2014 SL No. 79)

Environmental Offsets Act 2014 No. 33 pts 1, 23
date of assent 28 May 2014
ss 1–2 commenced on date of assent
ss 137–138 commenced on date of assent (see s 2)
remaining provisions commenced 1 July 2014 (2014 SL No. 144)

Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014 No. 36 pts 1–2, s 56 sch 1
date of assent 19 June 2014

ss 1–2 commenced on date of assent
remaining provisions commenced 4 July 2014 (2014 SL No. 147)

State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014 No. 40 chs 1, 2 pt 4, 4 pt 2 div 5, s 154 sch 1 pt 1
date of assent 15 August 2014
ss 1–2 commenced on date of assent
remaining provisions commenced 1 October 2014 (2014 SL No. 209)

Environmental Protection and Other Legislation Amendment Act 2014 No. 59 ss 1, 2(ba), pt 6A
date of assent 7 November 2014
ss 1–2 commenced on date of assent
remaining provisions commenced 19 December 2014 (2014 SL No. 302)

Queensland Heritage and Other Legislation Amendment Act 2014 No. 61 pts 1, 2A, s 82 sch 1
date of assent 7 November 2014
ss 1–2 commenced on date of assent
pt 2A commenced on date of assent (see s 2)
remaining provisions commenced 1 September 2015 (2015 SL No. 106)

Water Reform and Other Legislation Amendment Act 2014 No. 64 ss 1–2(1), pt 6B
date of assent 5 December 2014
ss 1–2 commenced on date of assent
remaining provisions commenced on date of assent (see s 2(1))

Local Government and Other Legislation Amendment Act (No. 2) 2015 No. 25 pts 1, 6
date of assent 20 November 2015
commenced on date of assent

Sustainable Ports Development Act 2015 No. 28 ss 1, 54 sch 2
date of assent 20 November 2015
commenced on date of assent

Plumbing and Drainage and Other Legislation Amendment Act 2016 No. 11 ss 1, 36 sch 1
date of assent 24 March 2016
commenced on date of assent

5 List of annotations

Definitions for terms used in development
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CHAPTER 2—STATE PLANNING INSTRUMENTS

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What is a State planning regulatory provision
s 16 amd 2012 No. 34 s 15

Power to make State planning regulatory provision
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Division 2—General matters about State planning policies
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amd 2013 No. 60 s 33 sch 1

Making temporary State planning policy
s 29 (prev s 47) renum 2013 No. 60 s 28(2)

Effect of temporary State planning policy
s 30 (prev s 48) renum 2013 No. 60 s 28(2)

Duration of temporary State planning policy
s 31 (prev s 49) renum 2013 No. 60 s 28(2)

PART 4—REGIONAL PLANS
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Division 1—Preliminary
div hdg (prev ch 2 pt 3 div 1 hdg) reloc 2013 No. 60 s 28(1)

What is a designated region
s 32 (prev s 22) renum 2013 No. 60 s 28(3)

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Subdivision 1—Preliminary
sdiv hdg (prev ch 2 pt 3 div 2 sdiv 1 hdg) reloc 2013 No. 60 s 28(1)

What is a regional plan
s 33 (prev s 23) renum 2013 No. 60 s 28(3)

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