Authorised Version No. 153

Planning and Environment Act 1987

No. 45 of 1987

Authorised Version incorporating amendments as at
24 February 2022

TABLE OF PROVISIONS

Section		*Page*
Part 1—Preliminary		**1**
1	Purpose	1
2	Commencement	1
3	Definitions	1
3AA	Meaning of *affordable housing*	20
3AB	Order in Council specifying income ranges	21
3A	Transport Integration Act 2010	21
4	Objectives	21
4AA	Obligations of Department Head in relation to Yarra River land	24
4AB	Obligations of Department Head in relation to declared areas	24
4AC	Obligations of Department Head in relation to the Great Ocean Road region	25
Part 1A—Victoria Planning Provisions		**27**
4A	Victoria Planning Provisions	27
4B	Amendment of Victoria Planning Provisions	27
4C	Approval of amendment	28
4D	Notice of approval	28
4E	Commencement	29
4F	Application of planning scheme provisions to amendments to VPPs	29
4G	Lodging of Victoria Planning Provisions and approved amendments	29
4H	Inspection and electronic publication of approved amendments	30
4I	Who must keep and make available a copy of the Victoria Planning Provisions?	30
4J	Amendment of planning schemes by Victoria Planning Provisions	31

Section		*Page*
Part 2—Planning schemes		**33**
5	What are the planning schemes to which this Act applies?	33
6	What can a planning scheme provide for?	33
6A	Easements, restrictions etc.	38
6B	Heritage buildings	40
7	Structure of planning schemes	41
8	Minister is planning authority	42
8A	Municipal council as planning authority for its municipal district	42
8B	Municipal council as planning authority for area adjoining municipal district	44
8C	Consent of the Suburban Rail Loop Minister required for authorisations of certain planning scheme amendments	45
8D	Applications for planning amendment authorisations received before applicable Suburban Rail Loop planning area declarations	45
9	Authorised Ministers and authorities are planning authorities	46
9A	Suburban Rail Loop Authority is a planning authority	47
10	Restrictions and powers relating to the preparation of amendments	47
12	What are the duties and powers of planning authorities?	48
12B	Review of planning schemes	50
13	Responsible authority	51
14	What are the duties of a responsible authority?	52
14A	What are the duties of a referral authority?	52
15	Changes in boundaries	53
16	Application of planning scheme	54
Part 3—Amendment of planning schemes		**55**
Division 1—Exhibition and notice of amendment		**55**
17	Copies of amendment to be given to certain persons	55
18	Availability of amendment	56
19	What notice of an amendment must a planning authority give?	57
20	Exemption from giving notice	59
20A	Minister may determine to prepare prescribed amendments—exception to sections 17, 18 and 19	61
Division 2—Public submissions about an amendment		**62**
21	Who may make a submission?	62
21A	Joint submissions	63
22	Planning authority to consider submissions	64

23	Decisions about submissions	65
24	Hearing by panel	66
25	Report by panel	66
25A	Recommendation by panel to Minister	67
26	Reports to be made public	67
27	Planning authority to consider panel's report	68
28	Abandonment of amendment	69
Division 3—Adoption and approval of amendment		**69**
29	Adoption of amendment	69
30	When does an amendment lapse?	70
31	Planning authority to submit amendment to Minister	71
32	More notice	72
33	Notice of changes	72
34	Submissions	72
34A	Amendments affecting land to which Suburban Rail Loop planning area declarations apply	73
35	Approval of amendment by Minister	74
36	Notice of approval	75
37	Commencement of amendment	76
38	Parliament may revoke an amendment	76
39	Defects in procedure	78
Division 4—Availability of approved amendments and schemes		**80**
40	Lodging of approved amendment	80
41	Who must keep a copy of an approved amendment for inspection?	80
42	Who must keep a copy of a planning scheme?	81
Division 5—Special provisions		**82**
43	Roads on Crown land	82
44	Roads on land other than Crown land	82
45	Effect on easements for public utilities	84
46	Planning schemes may apply to reserved land	84
Part 3AAA—Yarra River land protection		**85**
Division 1—Compliance with Yarra Strategic Plan		**85**
46AAA	Responsible public entities to comply with Yarra Strategic Plan	85
Division 2—Ratification by Parliament for amendments to planning schemes		**85**
46AAB	To which amendments does this Division apply?	85
46AAC	Ratification by Parliament required for amendments to which this Division applies	86
46AAD	Procedure for ratification	86

46AAE Notice of ratification 86
46AAF When does a ratified amendment commence? 87
46AAG When does an amendment lapse? 87
46AAH Application of sections 40, 41 and 42 87
46AAI Application of Division 5 of Part 4 87

Part 3AA—Metropolitan green wedge protection 89

Division 1—Introductory 89

46AA What is a metropolitan fringe planning scheme? 89
46AC What is green wedge land? 90

Division 3—Ratification by Parliament for amendments to planning schemes 90

46AF To which amendments does this Division apply? 90
46AG Ratification by Parliament required for amendments to which this Division applies 91
46AH Procedure for ratification 91
46AI Notice of ratification 92
46AJ When does a ratified amendment commence? 92
46AK When does an amendment lapse? 92
46AL Application of sections 40, 41 and 42 93
46AM Application of Division 5 of Part 4 93

Part 3AAB—Distinctive areas and landscapes 95

Division 1—Objects 95

46AN Objects 95

Division 2—Declaration of distinctive areas and landscapes 96

46AO Governor in Council may declare area to be a distinctive area and landscape 96
46AP Requirements for area to be declared as a distinctive area and landscape 97
46AQ Governor in Council may revoke declaration 98
46AR Procedure for ratification of revocation order 98
46AS When does a revocation order lapse? 99

Division 3—Statements of Planning Policy for distinctive areas and landscapes 99

Subdivision 1—Preparation and approval of Statement of Planning Policy 99

46AT Minister to develop Statement of Planning Policy for declared area 99
46AU Purpose of Statement of Planning Policy 100
46AV Contents of Statement of Planning Policy 100
46AW Consultation 101

46AX Endorsement of Statement of Planning Policy 101
46AY Approval of Statement of Planning Policy 102
46AZ Commencement of Statement of Planning Policy 103
46AZA Amendment of Statement of Planning Policy 103

Subdivision 2—Amendment of declared area planning scheme 103

46AZB Amendment of declared area planning scheme to give effect to Statement of Planning Policy 103
46AZC Amendment of declared area planning scheme 104

Subdivision 3—Protected settlement boundary amendments 104

46AZD Protected settlement boundary amendment 104
46AZE Procedure for ratification of protected settlement boundary amendment 105
46AZF When does a protected settlement boundary amendment lapse? 106
46AZG Application of Act provisions to protected settlement boundary amendment 107
46AZH Application of Division 5 of Part 4 to protected settlement boundary amendment 107

Subdivision 4—Review of Statement of Planning Policy 108

46AZI Review of Statement of Planning Policy 108

Division 4—Interaction between specific legislation and Statement of Planning Policy 108

46AZJ Specific legislation 108

Division 5—Duties of responsible public entities 111

46AZK Responsible public entities not to act inconsistently with Statement of Planning Policy 111
46AZL Principles 111

Division 6—Transitional provision 112

46AZM Transitional provision—Consultation in relation to Macedon Ranges Localised Planning Statement 112

Part 3AAC—Amendments in the Great Ocean Road region 113

Division 1—Compliance with Great Ocean Road strategic framework plan 113

46AZN Responsible entities to comply with Great Ocean Road strategic framework plan 113

Division 2—Ratification by Parliament for amendments to Great Ocean Road scenic landscapes area planning scheme 113

46AZO To which amendments does this Division apply? 113

46AZP	Ratification by Parliament required for amendments to which this Division applies	114
46AZQ	Procedure for ratification of amendment	114
46AZR	When does an amendment lapse?	116
46AZS	Application of Act provisions to amendment	116
46AZT	Application of Division 5 of Part 4 to amendment	116

Part 3A—Upper Yarra Valley and Dandenong Ranges—regional strategy plan **118**

46A	Definitions	118
46B	Saving of approved regional strategy plan and amending plans	119
46C	Amendment of strategy plan	121
46D	Approval of Parliament needed after appointed day	121
46E	Availability of amendment	122
46F	Planning schemes to comply with approved regional strategy plan	124
46G	Works to be in conformity with approved regional strategy plan	124

Part 3AB—Infrastructure contributions **125**

Division 1—Preliminary **125**

46GA	Definitions	125
46GB	Meaning of *ICP land contribution percentage*	128
46GC	Meaning of *infrastructure contribution*	128
46GD	Meaning of *monetary component*	129
46GE	Meaning of *land component*	129
46GF	Meaning of *land equalisation amount*	130

Division 2—Infrastructure contributions plans **130**

46GG	Infrastructure contributions plans	130
46GH	Infrastructure contributions plans not to apply to certain growth area land for provision of State infrastructure	131
46GI	Contents of infrastructure contributions plans	132

Division 3—Directions of Minister **135**

46GJ	Directions of Minister	135
46GK	Planning authorities must comply with directions of Minister	138

Division 4—Valuation and dispute resolution process for inner public purpose land **138**

46GL	Definitions	138
46GM	Application of Division	139

46GN	Planning authority must arrange for estimates of values of inner public purpose land	139
46GO	Planning authority must give notice to owners of certain inner public purpose land	140
46GP	Notice under section 46GO to be given to affected owners and collecting agency	141
46GQ	Affected owner may make submission on estimated value of inner public purpose land	141
46GR	Planning authority must consider submission	142
46GS	Decision about submissions	142
46GT	Valuer-general must hold conference to determine value of inner public purpose land	143
46GU	Infrastructure contributions plan must be consistent with estimated value of public purpose land	144
Division 5—Imposition and collection of infrastructure contribution		**145**
46GV	Imposition of infrastructure contribution	145
46GW	Payment of land credit amounts	147
46GX	Collecting agency may accept works, services or facilities in satisfaction of monetary component	148
Division 6—Responsibilities of collecting agencies and development agencies		**149**
46GY	Responsibilities of the collecting agency to keep proper accounts and records	149
46GZ	Other responsibilities of the collecting agency	150
46GZA	Responsibility of a development agency to keep accounts and records	152
46GZB	Other responsibilities of a development agency	153
Division 7—Responsibilities of collecting agencies and development agencies if infrastructure contributions not expended		**155**
46GZC	Application of Division	155
46GZD	Responsibility of collecting agency and development agency if monetary component not expended within life of a plan	155
46GZE	Responsibility of collecting agency and development agency if land equalisation amount not expended within life of a plan	157
46GZF	Responsibility of collecting agency and development agency if public purpose land is no longer required	158
Division 8—General		**160**
46GZG	Appropriation of Consolidated Fund	160
46GZH	Recovery of monetary component or land equalisation amount of infrastructure contribution as a debt	160

46GZI	Reporting requirements of collecting agencies and development agencies	161
46GZJ	Minister to report annually	162
46GZK	Collecting agency or development agency may deal with public purpose land under this Part	163
Part 3B—Development contributions		**164**
46H	Definitions	164
46I	Development contributions plan	165
46IA	Plans not to apply to certain growth area land for provision of State infrastructure	166
46J	What can a plan provide for?	166
46K	Contents of plan	166
46L	Community infrastructure levy not to exceed maximum	168
46LA	Adjusted maximum dwelling amount	169
46LB	Adjustment of dwelling amount specified in an approved development contributions plan	172
46LC	Adjusted payable dwelling amount	173
46M	Directions	175
46N	Collection of development infrastructure levy	176
46O	Collection of community infrastructure levy	178
46P	Provisions applying to collection of levies	179
46Q	Responsibilities of municipal councils	179
46QA	Responsibilities of collecting agencies	181
46QB	Responsibilities of development agencies	182
46QC	Recovery of levy as debt	184
46QD	Reporting requirements of collecting agencies and development agencies	184
Part 3C—Melbourne Airport Environs Strategy Plan		**185**
46R	Definitions	185
46S	Melbourne Airport Environs Area	185
46T	Preparation of strategy plan	186
46U	Approval of Parliament needed	186
46V	Availability of amendment	187
46W	Amendment of approved strategy plan	188
46X	Planning schemes to comply with approved strategy plan	188
46Y	Works to be in conformity with approved strategy plan	189
Part 3D—Williamstown Shipyard Site Strategy Plan		**190**
46Z	Purpose of Part	190
46ZA	Definitions	190
46ZB	Williamstown Shipyard Site	190
46ZC	Preparation of Williamstown Shipyard Site Strategy Plan	191

46ZD	Procedure for making of Williamstown Shipyard Site Strategy Plan	192
46ZE	Approval of Parliament needed	192
46ZF	Availability of approved strategy plan	193
46ZG	Amendments to approved strategy plan	194
46ZH	Amendment of planning schemes	194
Part 4—Permits		**196**
Division 1—Permits required by planning schemes		**196**
47	Applications for permits	196
48	What if the applicant is not the owner?	197
49	Responsible authority to keep register	198
50	Amendment to application at request of applicant before notice	198
50A	Amendment of application by responsible authority before notice	200
51	Applications to be made available to the public	201
52	Notice of application	201
53	What are the duties of applicants?	204
54	More information	205
54A	Applicant may apply for extension of time to provide more information	206
54B	When does an application lapse?	207
55	Application to go to referral authorities	208
56	Action by referral authority on application	209
56A	Referral authority to keep register	210
57	Objections to applications for permits	210
57A	Amendments to application after notice of application is given	211
57B	Notice of amended application	213
57C	Amended application may go to referral authorities	213
58	Responsible authority to consider all applications	214
58A	Responsible authority may request advice from Planning Application Committee	214
59	Time for decision	215
60	What matters must a responsible authority consider?	216
61	Decision on application	220
61A	Decisions where responsible authority is a council officer	221
62	What conditions can be put on permits?	222
63	Grant of permit if no objectors	227
64	Grant of permit if there are objectors	227
64A	Grant of permit—recommending referral authority objected or recommended condition that was not included	228
65	Refusal of permit	229

66	Notice to referral authority	229
67	When does a permit begin?	230
68	When does a permit expire?	230
68A	Expiration of permits for extractive industry	232
69	Extension of time	233
70	Availability of permit	234
71	Correction of mistakes	234
Division 1A—Amendment of permits by responsible authority		**235**
72	Application for amendment of permit	235
73	What is the procedure for the application?	236
74	Issue of amended permit if no objectors	236
75	Decision to amend permit if there are objectors	237
75A	Decision to amend permit if recommending referral authority objected to or recommended condition that was not included	237
76	Refusal of amendment	237
76A	Notice to referral authority	238
76B	When does an amendment to a permit begin?	239
76C	Review of decision on amendment	239
76D	Powers of Minister in relation to application	240
Division 2—Reviews by Tribunal		**241**
77	Applications for review of refusals to grant permits	241
78	Applications for review of requirements	241
79	Applications for review of failures to grant permits	242
80	Applications for review of conditions on permits	242
81	Applications for review relating to extensions of time	242
82	Applications for review where objectors	243
82AAA	Request for review by recommending referral authority	244
82AA	Applications for review—marine and coastal Crown land	244
82B	Affected person may seek leave to apply for review	245
83	Parties to review	246
83A	Objectors entitled to notice	247
83AB	Recommending referral authority entitled to notice	248
83B	Notice if permit application was made without notice	248
84	An application may be determined after an appeal has been lodged	249
84A	Parties not restricted to grounds previously notified	250
84AB	Tribunal may confine review with agreement	250
84B	Matters for Tribunal to take into account	251
85	Determination of applications	253
86	Issue of permit	256

Division 3—Cancellation and amendment of permits by Tribunal 256

87 What are the grounds for cancellation or amendment of permits? 256
87A Cancellation or amendment of permit issued at direction of Tribunal 258
88 What are the limits on the power to cancel or amend a permit? 259
89 Request for cancellation or amendment 259
90 Hearing by Tribunal 260
90A Matters which Tribunal must take into account 261
91 Determination by Tribunal 261
92 Notice of the cancellation or amendment 262
93 Order to stop development 262
94 Right to compensation 263

Division 4—Provisions relating to Ministers, government departments and responsible authorities 265

95 Permits required by Ministers or government departments 265
96 Land owned or permit required by responsible authorities 266

Division 5—Combined permit and amendment process 268

96A Application for permit when amendment requested 268
96B Application of provisions 270
96C Notice of amendment, application and permit 271
96D Hearing by panel 274
96E Report by panel on proposed permit 275
96F Planning authority to consider panel's report 275
96G Determination by planning authority 275
96H Recommendation by planning authority 276
96I Minister may grant permit on approval of amendment 277
96J Issue of permit 278
96K Notice of refusal 279
96L Cancellation of permit 279
96M Application of provisions 279
96N Who is to be the responsible authority? 281

Division 5A—Metropolitan Planning Levy 281

96O Imposition of levy 281
96P What is a *leviable planning permit application*? 281
96Q Amount of levy 282
96R CPI adjusted amount 282
96S Notification and payment of levy 285
96T Levy certificate 285
96U Revised levy certificate 286

96V No refund of levy except in cases of mathematical error 286
96W Commissioner's functions and powers 287
96X Prohibition on certain disclosures of information by Commissioner etc. 288
96Y Permitted disclosures 288
96Z Responsible authority or planning authority to keep levy certificate 289

Division 6—Powers of Minister in relation to applications 289

97B Call in power 289
97C Request by responsible authority 290
97D Referral of applications to Minister 290
97E Panel 291
97F Decision of Minister 292
97G Notice of availability 293
97H Effect of issue of permit 294
97I Application for amendment of permit 294
97J Decision on amendment 295
97K Notice of decision 295
97L Register 296
97M Provisions of Act not to apply 296

Part 4AA—Planning Application Committee 297

97MA Planning Application Committee 297
97MB Membership of Planning Application Committee 297
97MC Functions of the Planning Application Committee 298
97MD Proceedings of Planning Application Committee 298
97ME Subcommittees 299
97MF Delegation to subcommittee 299
97MG Payment of members of Committee and subcommittees 299
97MH Responsible authority to assist Planning Application Committee 299
97MI Responsible authority to contribute to costs of Planning Application Committee 300

Part 4A—Certificates of compliance 301

97N Application for certificate 301
97O Certificate of compliance 301
97P Review of failure or refusal to issue certificate 302
97Q Cancellation or amendment of certificate 303
97R Register 304

Part 5—Compensation 305

98AAA Part 5 to not apply to inner public purpose land 305
98AA Definitions 305

98	Right to compensation	305
99	When does the right to compensation arise?	307
100	Increased compensation for effect on residence	308
101	Claim for expenses	309
102	What if compensation has been previously paid?	309
103	Small claims	309
104	Maximum amount of compensation payable	310
104A	Actual zoning of land may be considered in determining compensation	310
105	Land Acquisition and Compensation Act 1986 to apply	311
106	Loss on sale	311
107	Compensation for removal or lapsing of reservation	312
108	Persons who are not eligible to claim compensation	313
109	When is compensation payable by other authorities?	314
110	Compensation paid to be noted on title	315
111	Recovery of compensation previously paid	316
112	Reimbursement of compensation paid	317
113	Declaration of proposed reservation	318

Part 6—Enforcement and legal proceedings **319**

Division 1—Enforcement orders **319**

114	Application for enforcement order	319
115	Notice of application	320
116	Determination of Tribunal where no objections	321
117	Determination of Tribunal where objections are received	321
119	What can an enforcement order provide for?	322
120	Interim enforcement orders	323
121	Cancellation of enforcement order or interim enforcement order	325
122	Offences	325
123	Responsible authority may carry out work	325
124	Orders to bind future owners and occupiers	326
125	Injunctions	326

Division 2—Offences and penalties **327**

126	Offence to contravene scheme, permit or agreement	327
127	General penalties	327
128	Criminal liability of officers of bodies corporate—failure to exercise due diligence	328
129	Penalties to be paid to prosecuting authority	329
130	Planning infringements	330

Division 2A—Order prohibiting the use or development of land under this Act and the Building Act 1993 for period of time **332**

131 Order prohibiting the use or development of land for period of time 332
132 Effect of Order 333
132A Nothing in Order prevents emergency order 334

Division 3—Powers of entry **334**

133 Powers of entry 334
134 What must be done before entry? 334
135 Powers of authorised persons who enter land 335
136 Police to assist authorised persons 335
137 Offence to obstruct 336
138 No legal proceedings against authorised persons 336

Division 4—Evidence and notices **336**

139 Evidence of ownership 336
140 Proof of existence and contents of planning scheme 337
141 Evidence of planning scheme provisions and permits 338
142 Evidence of agreements under section 173 339
143 Constitution and procedure of planning authority or responsible authority 340
144 Evidence of minutes 341
145 Notices and service of orders 341
146 Copies of schemes and amendments 343
147 General provisions 343

Division 5—Applications to Tribunal **345**

148 Definitions 345
149 Application for review 345
149A Application by certain persons for declarations 346
149B General application for declaration 347
150 Tribunal orders in relation to proceedings 348

Part 7—Advisory committees **349**

151 Advisory committees 349
152 Powers of advisory committee 350

Part 8—Panels **351**

Division 1—Appointment of panels **351**

153 Appointment of panels 351
154 Composition of panels 351
155 Chairperson 351
156 Costs and expenses of panel 351
157 Panels with more than one member 352
158 Planning authority to provide assistance 353

158AA Terms of reference for panels relating to Suburban Rail Loop program 353

Division 1A—Directions panel 354

158A Appointment of directions panel 354
158B Directions by directions panel 354

Division 2—Hearings 354

159 Directions about hearings 354
160 Hearings to be in public 355
160A Hearings may be conducted in person or by audio link or audio visual link 355
161 General procedure for hearings 356
162 Who may appear before a panel? 357
163 Effect of failure to attend hearing 357
164 Panel may hear two or more submissions together 357
165 Adjournment of hearings 357
166 Technical defects 358
167 Panel may regulate its own proceedings 358
168 Panel may take into account any relevant matter 358
169 Offences 358
170 Immunity for panel members 359

Part 9—Administration 360

Division 1—General powers 360

171 Powers of responsible authority 360
172 Powers of compulsory acquisition 361

Division 1A—Compulsory acquisition of public purpose land specified in infrastructure contributions plans 362

Subdivision 1—General 362

172A Definitions in this Division 362
172B Application of Land Acquisition and Compensation Act 1986 363

Subdivision 2—Acquisition of outer public purpose land 363

172C Development agency may acquire outer public purpose land 363

Subdivision 3—Acquisition of inner public purpose land 363

172D Collecting agency or development agency may acquire inner public purpose land 363

Subdivision 4—Compensation for acquisition of inner public purpose land 364

172E Application of this Subdivision 364

172F	Amount of compensation payable to owner of inner public purpose land	364
172G	Owner of inner public purpose land not entitled to compensation under the Land Acquisition and Compensation Act 1986	365
Division 2—Agreements		**366**
Subdivision 1—Making of agreements		**366**
173	Responsible authority may enter into agreements	366
174	Form and contents of agreement	366
175	Bonds and guarantees	367
176	When does an agreement begin?	368
Subdivision 2—Ending and amendment of agreements		**368**
177	When does an agreement end?	368
178	Amendment of agreements	369
178A	Proposal to amend or end agreement	369
178B	Matters to be considered in considering proposal to amend or end agreement	370
178C	Notice of proposal	371
178D	Objections and submissions to responsible authority	372
178E	Decision to amend or end agreement	372
178F	Notice of decision to amend or end agreement	373
178G	Copy of amended agreement to be given to parties	374
178H	Responsible authority may require payment of costs	375
178I	When does the amendment or ending of an agreement take effect?	375
Subdivision 3—General		**376**
179	Responsible authority to keep and make available a copy of agreement	376
180	Agreement may not breach planning scheme	376
181	Recording of agreement	376
182	Effect of recording	378
182A	New parties to an agreement	378
183	Cancellation or alteration of recording	378
184	Application to Tribunal	379
184A	Application to Tribunal by applicant in relation to decisions under Subdivision 2	380
184B	Application to Tribunal by party to agreement	381
184C	Application to Tribunal by objector	381
184D	Application to Tribunal by affected person	381
184E	Objectors entitled to notice	381
184F	Application to amend or end agreement may be determined after application for review lodged	382
184G	Determination of application	382

Division 3—Powers of Minister **383**

185 Inquiry powers 383
185A Expedition of planning process 383
185B Power to request contact details 384

Division 4—Delegation **385**

186AA Interpretation 385
186 Minister may delegate some powers 385
187 Secretary may delegate powers to employees 386
188 Planning authorities and responsible authorities may delegate powers 387
188A Victorian Planning Authority may delegate powers 388
189 Minister may delegate to advisory committees and regional planning authorities 390
190 Minister may delegate administration of planning schemes 390

Division 5—Hearings **391**

191 Appointment of committee 391
192 Who may be on the committee? 392
193 Who may attend the hearing? 392
194 Functions of committee 392
195 Effect of hearing 392
196 Fees and allowances 392

Division 6—Time **393**

197 Expedition 393

Division 6A—Publication and inspection of documents and register requirements **393**

197A Public availability requirements 393
197B In person inspection requirements 394
197C Electronic publication requirements 395
197D On request inspection requirements 395
197E Electronic register requirements 396
197F Electronic disclosure of certain personal information in permits and other documents 397
197G Electronic disclosure of certain personal information on registers 398
197H Exception to compliance with certain inspection requirements when an emergency declaration is in force 398

Division 7—Planning certificates **399**

198 Application for planning certificate 399
199 Planning certificates 400

200 Certificate to be proof of certain matters 400
201 Underlying zoning 401

Division 8—Change of responsible authority or area 402

201A What if the responsible authority changes? 402
201B What if area of planning scheme changes? 403
201C Changes to schemes arising from changes to municipal boundaries 404
201CA Change in boundary of Port of Melbourne Area 404

Division 9—Supreme Court—limitation of jurisdiction 405

201D Supreme Court—limitation of jurisdiction 405

Part 9A—Projects of State or regional significance 407

201E Definitions 407
201F Declaration of project 407
201G Delegation 408
201H Acquisition by agreement 408
201I Powers of compulsory acquisition 408
201J Secretary's powers to dispose of land 409
201K Recommendation of closure of roads 410
201L Order for closure of road 410
201M Temporary closure of road 411
201N Recommendation for removal of easements and restrictions 411
201O Order for removal of easement or restriction 412
201P Compensation 412
201Q Action by Registrar of Titles and Registrar-General 413

Part 9B—Growth areas infrastructure contribution 415

Division 1—Introductory 415

Subdivision 1—Definitions 415

201R Definitions 415

Subdivision 2—Other important terms 423

201RAA Minister may declare growth area 423
201RA GAIC events 423
201RB Excluded events 424
201RC Contribution area 425
201RD What is a sub-sale of dutiable property? 427
201RE What is a significant acquisition? 427

Subdivision 3—Excluded subdivisions and building work 428

201RF Excluded subdivisions of land 428
201RG Excluded building work 430

Subdivision 4—General **432**

201RH Taxation Administration Act 1997 432
201RI Part binds the Crown 432

Division 2—Imposition of growth areas infrastructure contribution **432**

Subdivision 1—Liability for GAIC **432**

201S Imposition of growth areas infrastructure contribution 432
201SA Circumstances where GAIC not imposed 434
201SB Liability for GAIC taken not to have arisen in certain circumstances 436
201SC Liability for GAIC arising when GAIC event occurs 437
201SD Liability for GAIC arising after GAIC event occurs 438
201SE Time of occurrence of GAIC event 439
201SF Persons liable to pay GAIC 440

Subdivision 2—Amount of GAIC and when payable **441**

201SG Amount of GAIC 441
201SGA Apportionment of GAIC on issue of statement of compliance 444
201SH Minister may fix lower increase in GAIC 444
201SI Governor in Council may fix lower GAIC 445
201SJ Instrument or statement must be lodged evidencing dutiable transaction 446
201SK Acquisition statement 447
201SL When and to whom the GAIC is payable 448
201SLA Refund of GAIC if land no longer in contribution area 449

Subdivision 2A—Work-in-kind agreements **450**

201SLB Minister may enter into agreements 450
201SLC Matters to be included in a work-in-kind agreement 452
201SLD Work-in-kind agreement may contain restriction on land dealings 453
201SLE Copy of work-in-kind agreement must be given to Commissioner and Victorian Planning Authority 454
201SLF Amendment of work-in-kind agreement 454
201SLG Ending of work-in-kind agreement 455
201SLH Work-in-kind agreements to be recorded by Registrar of Titles 455
201SLI Restrictions on dealings with land 457
201SLJ Entering into a work-in-kind agreement does not discharge GAIC 458
201SLK Person must notify the Victorian Planning Authority of performance of agreement 458
201SLL Victorian Planning Authority must determine whether agreement has been performed 459

201SLM	Performance of work-in-kind agreement taken to be payment of GAIC	459
201SLN	Person in default if work-in-kind agreement not performed by due date	460
Subdivision 3—Deferral of GAIC		**461**
201SM	Person may elect to defer payment of GAIC	461
201SMAA	Liability to pay deferred GAIC in relation to subsequent dutiable transactions	462
201SMA	Indexation and interest applying to deferred GAIC	466
201SN	Method of calculating indexation of deferred GAIC	470
201SO	Interest payable on deferred GAIC	470
201SOA	Remission of interest by Commissioner	471
201SOB	Removal of liability for GAIC if land ceases to be in contribution area	471
201SOC	Apportionment of GAIC on issue of statement of compliance	471
201SP	Deferred GAIC and interest must be paid to Commissioner by due date	472
201SPAA	Time for payment of apportioned and deferred GAIC on public purpose land subdivision	474
201SPA	Default on payment of deferred GAIC	476
201SQ	Deferred GAIC becomes a charge on the land	476
Subdivision 4—Staged payment of GAIC		**477**
201SR	Approval by Minister for staged payment of GAIC for subdivisions or building works	477
201SRA	Subsequent owner of land in respect of which approval granted liable to pay GAIC	479
201SS	Time for paying GAIC does not apply if approval for staged payment	481
201ST	Interest payable on GAIC subject to staged payment	481
201SU	Minister must give person notice of staged payment approval	482
201SV	Staged payment approval payments to be paid to Commissioner	483
201SW	GAIC subject to staged payment is a charge on land	483
Subdivision 5—Certificates and notice issued by Commissioner relating to GAIC		**484**
201SX	Commissioner to give certain certificates to persons relating to their GAIC liability	484
201SY	Certificate of release	484
201SZ	Certificate of deferral	486
201SZA	Certificate of staged payment approval	486
201SZB	Certificate of partial release	487
201SZC	Certificate of exemption	488

201SZD	Certificate of no GAIC liability	488
201SZE	Certificates issued under this Subdivision	488
201SZF	GAIC certificate	490
201SZG	Notice to Registrar regarding registration of subdivision or transfer of land	491
201SZH	Commissioner may seek assistance for issuing certificates	493
201SZI	Certificate not to be taken as an assessment	493
Subdivision 6—GAIC to be paid into Consolidated Fund		**493**
201SZJ	Commissioner to pay GAIC into Consolidated Fund	493
Division 3—Exemptions and reductions of GAIC liability		**494**
Subdivision 1—General		**494**
201T	Definition	494
Subdivision 2—Exemptions other than exemptions granted by Governor in Council or Board		**494**
201TA	Exemption from paying GAIC if no consideration	494
201TB	Exemption from paying GAIC if duties exemption would apply	494
201TC	Exemption from paying GAIC for land dealings involving public authorities and councils	495
201TD	Exemption for transfer of land by owner to superannuation fund or to beneficiaries	497
Subdivision 3—Reductions and exemptions granted by the Governor in Council or Minister		**498**
201TE	Governor in Council may grant reduction or exemption of GAIC in exceptional circumstances	498
201TF	Reduction of GAIC if agreement to provide State infrastructure or funds	499
201TG	Notice of determination of application	501
Subdivision 4—Growth Areas Infrastructure Contribution Hardship Relief Board		**503**
201TH	Person liable to pay GAIC may apply to Board for relief	503
201TI	Vendor of land subject to GAIC may apply to Board for relief	503
201TJ	Relief granted by Board	504
201TK	Board must give notice of determination	505
201TL	Determination of Board not to be taken as an assessment	507
201TM	Establishment and procedure of Board	507

Division 4—Powers and duties of Victorian Planning Authority, Commissioner and Registrar of Titles regarding GAIC **508**

201U Victorian Planning Authority to keep record of contribution area 508
201UA Access to records and information relating to GAIC 509
201UAA Victorian Planning Authority to inform Commissioner when precinct structure plan applies to contribution area land 509
201UAB Victorian Planning Authority may request council to provide information about contribution area land 510
201UB Victorian Planning Authority to notify the Registrar of land subject to GAIC 510
201UC Application to remove recording on land relating to GAIC 511
201UD Registrar to make a recording on land that may be subject to GAIC 511
201UE Registrar to remove recordings on land not subject to GAIC 512
201UF No entitlement to compensation in connection with Registrar's duties 512
201UG Registrar not to accept transfer unless accompanied by notice or application from Commissioner or Victorian Planning Authority 512

Division 5—Growth areas funds **513**

201V Establishment of growth areas funds 513
201VA Application of Growth Areas Public Transport Fund 513
201VB Application of Building New Communities Fund 514
201VC Department and Victorian Planning Authority to report on GAIC and growth area funds 515

Part 10—Regulations **517**

202 General regulation-making powers 517
203 Fees regulations 519

Part 11—Repeals, transitional and savings **522**

206 Savings generally 522
207 Schemes and orders 522
208 Permits 524
211 Savings for permits issued in accordance with revoked scheme or order 526
212 Savings for appeals determined in accordance with revoked scheme or order 526
213 Transitional provisions 527
214 Transitional provisions 527

215	Transitional—Planning and Environment (General Amendment) Act 2004	528
216	Transitional—Amendment of permits	529
217	Transitional—Planning and Environment Amendment Act 2007	529
218	Transitional provisions—Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2011	529
220	Transitional provisions—Duties Amendment (Landholder) Act 2012	530
220A	Transitional provision—Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Act 2013	530
220B	Transitional provision—Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Act 2013	531
221	Transitional provisions—Planning and Environment Amendment (General) Act 2013	531
222	Transitional provisions—State Taxation Acts Further Amendment Act 2016	533
223	Transitional provisions—Victorian Planning Authority Act 2017	534
225	Transitional provision—Project Development and Construction Management Amendment Act 2020	536
226	Transitional provisions about publication and inspection requirements—Planning and Environment Amendment Act 2021	537
227	Transitional provision about directions—Planning and Environment Amendment Act 2021	538

Schedules **540**

Schedule 1—Growth areas infrastructure contribution **540**

Schedule 2—Metropolitan Melbourne **548**

Endnotes **550**

1 General information 550

2 Table of Amendments 552

3 Explanatory details 565

Authorised Version No. 153

Planning and Environment Act 1987

No. 45 of 1987

Authorised Version incorporating amendments as at
24 February 2022

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians.

2 Commencement

(1) Part 1 and section 204 come into operation on the day on which this Act receives the Royal Assent.

(2) The rest of this Act comes into operation on a day or days to be proclaimed.

3 Definitions

(1) In this Act—

S. 3(1) amended by No. 46/1998 s. 7(Sch. 1) (ILA s. 39B(1)).

* * * * *

S. 3(1) def. of *Administrative Appeals Tribunal* repealed by No. 52/1998 s. 183(a).

S. 3(1) def. of *affordable housing* inserted by No. 47/2017 s. 3.

affordable housing has the meaning given by section 3AA;

amendment includes addition, deletion or substitution;

S. 3(1) def. of *approved development contributions plan* inserted by No. 7/2018 s. 4.

approved development contributions plan—see section 46H;

S. 3(1) def. of *approved Great Ocean Road strategic framework plan* inserted by No. 19/2020 s. 74.

approved Great Ocean Road strategic framework plan has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *approved infrastructure contributions plan* inserted by No. 7/2018 s. 4.

approved infrastructure contributions plan—see section 46GA;

area includes two or more areas of land that are not adjoining;

S. 3(1) def. of *audio link* inserted by No. 12/2021 s. 46.

audio link has the same meaning as in section 42C of the **Evidence (Miscellaneous Provisions) Act 1958**;

audio visual link has the same meaning as in section 42C of the **Evidence (Miscellaneous Provisions) Act 1958**;

S. 3(1) def. of *audio visual link* inserted by No. 12/2021 s. 46.

building includes—

(a) a structure and part of a building or a structure; and

(b) fences, walls, out-buildings, service installations and other appurtenances of a building; and

(c) a boat or a pontoon which is permanently moored or fixed to land;

building permit has the same meaning as in Part 3 of the **Building Act 1993**;

S. 3(1) def. of *building permit* inserted by No. 7/2018 s. 4.

building work has the same meaning as in section 3(1) of the **Building Act 1993**;

S. 3(1) def. of *building work* inserted by No. 7/2018 s. 4.

business day means a day other than—

(a) a Saturday or a Sunday; or

(b) a day appointed under the **Public Holidays Act 1993** as a public holiday or public half-holiday;

S. 3(1) def. of *business day* inserted by No. 3/2013 s. 75(1).

collecting agency—see section 46GA;

S. 3(1) def. of *collecting agency* inserted by No. 7/2018 s. 4.

S. 3(1) def. of *Commissioner* inserted by No. 40/2014 s. 30.

Commissioner means the Commissioner of State Revenue referred to in section 62 of the **Taxation Administration Act 1997**;

S. 3(1) def. of *committee of management* inserted by No. 86/1989 s. 4(1)(a).

committee of management means a committee of management of Crown lands appointed under an Act;

conservation includes preservation, maintenance, sustainable use, and restoration of the natural and cultural environment;

construct includes reconstruct or make structural changes;

S. 3(1) def. of *consumer price index* inserted by No. 40/2014 s. 30.

consumer price index means the all groups consumer price index for Melbourne in original terms published by the Australian Bureau of Statistics;

S. 3(1) def. of *Crown land* inserted by No. 86/1989 s. 4(1)(b).

Crown land means land which is or is deemed to be unalienated land of the Crown and includes—

(a) land of the Crown reserved permanently or temporarily by or under an Act; and

(b) land of the Crown occupied by a person under a lease licence or other right;

S. 3(1) def. of *declared area* inserted by No. 17/2018 s. 3(a).

declared area means an area to which an order under section 46AO applies;

S. 3(1) def. of *declared area framework plan* inserted by No. 17/2018 s. 3(a).

declared area framework plan means a plan described in section 46AV(2);

declared area planning scheme means a planning scheme applying to land that is wholly or partially within a declared area;

S. 3(1) def. of *declared area planning scheme* inserted by No. 17/2018 s. 3(a).

Department means the Department of Environment, Land, Water and Planning;

S. 3(1) def. of *Department* inserted by No. 35/1995 s. 11(1)(a), amended by No. 46/1998 s. 7(Sch. 1), substituted by No. 47/2007 s. 3(1), amended by Nos 70/2013 s. 4(Sch. 2 item 36.1), 49/2017 s. 61(1).

Department Head has the same meaning as in the **Public Administration Act 2004**;

S. 3(1) def. of *Department Head* inserted by No. 49/2017 s. 61(3).

determining referral authority means, in relation to an application for a permit or an amendment to a permit, a person or body that a planning scheme specifies as a determining referral authority for applications of that kind;

S. 3(1) def. of *determining referral authority* inserted by No. 3/2013 s. 14.

development includes—

(a) the construction or exterior alteration or exterior decoration of a building; and

(b) the demolition or removal of a building or works; and

(c) the construction or carrying out of works; and

S. 3(1) def. of *development* amended by No. 53/1988 s. 45(Sch. 2 item 29) (as amended by No. 47/1989 s. 19(w)(i)(ii)).

(d) the subdivision or consolidation of land, including buildings or airspace; and

(e) the placing or relocation of a building or works on land; and

(f) the construction or putting up for display of signs or hoardings;

S. 3(1) def. of *development agency* inserted by No. 7/2018 s. 4.

development agency—see section 46GA;

S. 3(1) def. of *Great Ocean Road coast and parks* inserted by No. 19/2020 s. 74.

Great Ocean Road coast and parks has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road coast and parks protection principles* inserted by No. 19/2020 s. 74.

Great Ocean Road coast and parks protection principles has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road region* inserted by No. 19/2020 s. 74.

Great Ocean Road region has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road scenic landscapes area* inserted by No. 19/2020 s. 74.

Great Ocean Road scenic landscapes area has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

Great Ocean Road scenic landscapes area planning scheme means a planning scheme applying to land that is wholly or partially within the Great Ocean Road scenic landscapes area;

S. 3(1) def. of *Great Ocean Road scenic landscapes area planning scheme* inserted by No. 19/2020 s. 74.

Great Ocean Road settlement boundary has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road settlement boundary* inserted by No. 19/2020 s. 74.

Great Ocean Road settlement boundary amendment means an amendment under this Act that alters a Great Ocean Road settlement boundary in a planning scheme;

S. 3(1) def. of *Great Ocean Road settlement boundary amendment* inserted by No. 19/2020 s. 74.

Great Ocean Road strategic framework plan has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road strategic framework plan* inserted by No. 19/2020 s. 74.

Greater Yarra Urban Parklands has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**;

S. 3(1) def. of *Greater Yarra Urban Parklands* inserted by No. 49/2017 s. 61(3).

S. 3(1) def. of *growth area* inserted by No. 33/2006 s. 4, amended by No. 11/2017 s. 55(b).

growth area means an area of land for the time being declared under section 201RAA;

S. 3(1) def. of *Growth Areas Authority* inserted by No. 33/2006 s. 4, repealed by No. 11/2017 s. 55(c).

* * * * *

S. 3(1) def. of *Head, Transport for Victoria* inserted by No. 3/2017 s. 50(Sch. 1 item 4.1).

Head, Transport for Victoria has the same meaning as it has in section 3 of the **Transport Integration Act 2010**;

S. 3(1) def. of *heritage building* inserted by No. 12/2021 s. 3.

heritage building means a building which is a place, or forms part of a place, that has been given heritage protection under a planning scheme;

S. 3(1) def. of *ICP plan area* inserted by No. 7/2018 s. 4.

ICP plan area—see section 46GA;

S. 3(1) def. of *infrastructure contributions plan* inserted by No. 7/2018 s. 4.

infrastructure contributions plan—see section 46GG;

S. 3(1) def. of *inner public purpose land* inserted by No. 7/2018 s. 4.

inner public purpose land—see section 46GA;

land includes—

(a) buildings and other structures permanently fixed to land; and

(b) land covered with water; and

(c) any estate, interest, easement, servitude, privilege or right in or over land;

land credit amount—see section 46GA;

S. 3(1) def. of *land credit amount* inserted by No. 7/2018 s. 4.

land equalisation amount—see section 46GF;

S. 3(1) def. of *land equalisation amount* inserted by No. 7/2018 s. 4.

leviable planning permit application has the meaning given in section 96P;

S. 3(1) def. of *leviable planning permit application* inserted by No. 40/2014 s. 30.

levy certificate means—

(a) a certificate issued under section 96T; or

(b) a revised certificate issued under section 96U;

S. 3(1) def. of *levy certificate* inserted by No. 40/2014 s. 30.

metropolitan Melbourne means the aggregate area consisting of—

(a) the area within the municipal districts of the municipal councils set out in Schedule 2; and

S. 3(1) def. of *metropolitan Melbourne* inserted by No. 40/2014 s. 30.

(b) the area within the urban growth boundary specified in the planning scheme that is in force in the municipal district of the Mitchell Shire Council;

S. 3(1) def. of *municipal council* repealed by No. 12/1989 s. 4(1)(Sch. 2 item 90.1).

* * * * *

S. 3(1) def. of *occupier* inserted by No. 86/1989 s. 4(1)(c).

occupier includes a committee of management of Crown land;

S. 3(1) def. of *owner* substituted by No. 86/1989 s. 4(1)(d), amended by Nos 85/1998 s. 24(Sch. item 45.1(a)(b)), 4/2013 s. 30.

owner—

(a) in relation to land which has been alienated in fee by the Crown and is under the operation of the **Transfer of Land Act 1958** (other than land in an identified folio under that Act), means the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land; and

(b) in relation to land which has been alienated in fee by the Crown and is land in an identified folio under the **Transfer of Land Act 1958** or land not under the operation of the **Transfer of Land Act 1958**, means the person who is the owner, or the persons who are the owners, of the fee or equity of redemption; and

(c) in relation to Crown land reserved under the **Crown Land (Reserves) Act 1978** and managed or controlled by a committee of management, means—

(i) in Part 3, if the land is agreement land within the meaning of the **Traditional Owner Settlement Act 2010**, each of the following—

(A) the traditional owner group entity within the meaning of **Traditional Owner Settlement Act 2010** for the land;

(B) the Minister administering the **Crown Land (Reserves) Act 1978**;

(ii) in any other case, the Minister administering the **Crown Land (Reserves) Act 1978**; and

(d) in relation to any other Crown land, means—

(i) in Part 3, if the land is agreement land within the meaning of the **Traditional Owner Settlement Act 2010**, each of the following—

(A) the traditional owner group entity within the meaning of **Traditional Owner Settlement Act 2010** for the land;

(B) the Minister or public authority that manages or controls the land;

(ii) in any other case, the Minister or public authority that manages or controls the land;

permit includes any plans, drawings or other documents approved under a permit;

S. 3(1) def. of *permit* inserted by No. 3/2013 s. 69.

S. 3(1) def. of *personal information* inserted by No. 12/2021 s. 13.

personal information has the same meaning as in section 3 of the **Privacy and Data Protection Act 2014**;

S. 3(1) def. of *Planning Application Committee* inserted by No. 3/2013 s. 8.

Planning Application Committee means the Planning Application Committee established under Part 4AA;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 124.1).

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *Port of Melbourne Area* inserted by No. 77/2003 s. 3(1), amended by No. 53/2017 s. 88(1).

Port of Melbourne Area means—

(a) the land shown red on plan numbered LEGL./02–023 and lodged in the Central Plan Office; and

(b) any area included in the Port of Melbourne Area under subsection (3)—

but excludes any area excluded from the Port of Melbourne Area under subsection (3);

S. 3(1) def. of *precinct structure plan* inserted by No. 35/2015 s. 3.

precinct structure plan in relation to land means a precinct structure plan which has been incorporated by the planning scheme applying to that land;

S. 3(1) def. of *principal registrar* inserted by No. 52/1998 s. 183(b).

principal registrar means principal registrar of the Tribunal;

protected settlement boundary means a settlement boundary in a declared area that is protected under a Statement of Planning Policy;

S. 3(1) def. of *protected settlement boundary* inserted by No. 17/2018 s. 3(a).

protected settlement boundary amendment means an amendment that alters a protected settlement boundary in a planning scheme;

S. 3(1) def. of *protected settlement boundary amendment* inserted by No. 17/2018 s. 3(a).

public authority means a body established for a public purpose by or under any Act but does not include a municipal council;

public availability requirements—see section 197A;

S. 3(1) def. of *public availability requirements* inserted by No. 12/2021 s. 13.

public entity has the same meaning as in the **Public Administration Act 2004**;

S. 3(1) def. of *public entity* inserted by No. 17/2018 s. 3(a).

public purpose includes any purpose for which land may be compulsorily acquired under any Act to which the **Land Acquisition and Compensation Act 1986** applies;

recommending referral authority means, in relation to an application for a permit or an amendment to a permit, a person or body that a planning scheme specifies as a recommending referral authority for applications of that kind;

S. 3(1) def. of *recommending referral authority* inserted by No. 3/2013 s. 14.

S. 3(1) def. of *referral authority* inserted by No. 3/2013 s. 14.

referral authority means a body or person specified in a planning scheme as—

(a) a determining referral authority; or

(b) a recommending referral authority;

S. 3(1) def. of *referred wind energy facility permit* inserted by No. 47/2017 s. 7.

referred wind energy facility permit means a permit required by a planning scheme to be obtained for the use or development of land as a wind energy facility, the application for which was referred to and determined by the Minister under Division 6 of Part 4;

S. 3(1) def. of *registered restrictive covenant* inserted by No. 100/2000 s. 4.

registered restrictive covenant means a restriction within the meaning of the **Subdivision Act 1988**;

S. 3(1) def. of *responsible entity* inserted by No. 19/2020 s. 74.

responsible entity has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *responsible public entity* inserted by No. 49/2017 s. 61(3), substituted by No. 17/2018 s. 3(b), amended by Nos 49/2019 s 186(Sch. 4 item 33.1), 48/2021 s. 147.

responsible public entity—

(a) in Part 3AAA, has the same meaning as it has in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**; and

(b) in Part 3AAB, means any of the following, in relation to a declared area—

(i) the Secretary (within the meaning of the **Conservation, Forests and Lands Act 1987**);

(ii) the water corporation responsible for the area in which the declared area is located;

(iii) a municipal council whose municipal district contains land in the declared area;

(iv) Parks Victoria established under Part 2 of the **Parks Victoria Act 1998**;

(v) the Victorian Planning Authority established under Part 2 of the **Victorian Planning Authority Act 2017**;

(vi) a Catchment Management Authority under the **Catchment and Land Protection Act 1994** for a catchment and land protection region that contains land in the declared area;

(vii) the Head, Transport for Victoria within the meaning of the **Transport Integration Act 2010**;

(viii) Victorian Rail Track continued under section 116 of the **Transport Integration Act 2010**;

(ix) any committee of management or trustees under the **Crown Land (Reserves) Act 1978** in relation to land in the declared area;

(x) any Traditional Owner Land Management Board established under Part 8A of the **Conservation, Forests and Lands Act 1987** in relation to land in the declared area;

(xi) any other public entity prescribed to be a responsible public entity in relation to the declared area;

S. 3(1) def. of *revocation order* inserted by No. 17/2018 s. 3(a).

revocation order means an order made under section 46AQ(1);

road includes highway, street, lane, footway, square, court, alley or right of way, whether a thoroughfare or not and whether accessible to the public generally or not;

S. 3(1) def. of *secretary* amended by Nos 125/1993 s. 20(10), 35/1995 s. 11(1)(b).

secretary in relation to a responsible authority or planning authority being—

(a) a Minister, means the Department Head of the Minister's department; and

(b) a municipal council, means the Chief Executive Officer of the council; and

(c) any other responsible authority or planning authority, means the Chief Executive Officer of the authority—

and includes any person for the time being authorised by the authority to exercise the powers and perform the duties of that office;

S. 3(1) def. of *settlement boundary* inserted by No. 17/2018 s. 3(a).

settlement boundary, in relation to a plan of an area, means the boundary marking the limit of urban development in that area;

S. 3(1) def. of *statement of compliance* inserted by No. 7/2018 s. 4.

statement of compliance means a statement of compliance issued under section 21 of the **Subdivision Act 1988**;

S. 3(1) def. of *Statement of Planning Policy* inserted by No. 17/2018 s. 3(a).

Statement of Planning Policy means a Statement of Planning Policy approved under Part 3AAB in relation to a declared area, as amended from time to time;

subdivision means the division of land into two or more parts which can be disposed of separately;

S. 3(1) def. of *subdivision* amended by No. 53/1988 s. 45(Sch. 2 item 30).

Suburban Rail Loop Authority means the Authority established by section 8 of the **Suburban Rail Loop Act 2021**;

S. 3(1) def. of *Suburban Rail Loop Authority* inserted by No. 43/2021 s. 116.

Suburban Rail Loop Minister means the Minister administering section 65 of the **Suburban Rail Loop Act 2021**;

S. 3(1) def. of *Suburban Rail Loop Minister* inserted by No. 43/2021 s. 116.

Suburban Rail Loop planning area declaration has the same meaning as in section 3 of the **Suburban Rail Loop Act 2021**;

S. 3(1) def. of *Suburban Rail Loop planning area declaration* inserted by No. 43/2021 s. 116.

Suburban Rail Loop program has the same meaning as in section 3 of the **Suburban Rail Loop Act 2021**;

S. 3(1) def. of *Suburban Rail Loop program* inserted by No. 43/2021 s. 116.

Suburban Rail Loop program objectives has the same meaning as in section 3 of the **Suburban Rail Loop Act 2021**;

S. 3(1) def. of *Suburban Rail Loop program objectives* inserted by No. 43/2021 s. 116.

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 3(1) def. of *Tribunal* inserted by No. 52/1998 s. 183(b).

S. 3(1) def. of *urban growth boundary* inserted by No. 23/2010 s. 3.

urban growth boundary means a boundary that is specified or is to be specified as an urban growth boundary in a planning scheme;

use in relation to land includes use or proposed use for the purpose for which the land has been or is being or may be developed;

S. 3(1) def. of *Victoria Planning Provisions* inserted by No. 77/1996 s. 4.

Victoria Planning Provisions means the Victoria Planning Provisions approved under Part 1A as amended from time to time[1];

S. 3(1) def. of *Victorian Planning Authority* inserted by No. 11/2017 s. 55(a).

Victorian Planning Authority means the Victorian Planning Authority established under section 4 of the **Victorian Planning Authority Act 2017**;

S. 3(1) def. of *water corporation* inserted by No. 17/2018 s. 3(a).

water corporation has the same meaning as in the **Water Act 1989**;

S. 3(1) def. of *wind energy facility* inserted by No. 47/2017 s. 7.

wind energy facility means an electricity generation facility that generates electricity by converting wind energy into electricity;

S. 3(1) def. of *works* amended by No. 49/2017 s. 61(2).

works includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil;

Yarra protection principles has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**;

S. 3(1) def. of *Yarra protection principles* inserted by No. 49/2017 s. 61(3).

Yarra River land has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**;

S. 3(1) def. of *Yarra River land* inserted by No. 49/2017 s. 61(3).

Yarra Strategic Plan has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**;

S. 3(1) def. of *Yarra Strategic Plan* inserted by No. 49/2017 s. 61(3).

Yarra Strategic Plan area has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**.

S. 3(1) def. of *Yarra Strategic Plan area* inserted by No. 49/2017 s. 61(3).

(2) If under the **Public Administration Act 2004** the name of the Department of Transport, Planning and Local Infrastructure is changed, the reference in the definition of ***Department*** in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 3(2) inserted by No. 46/1998 s. 7(Sch. 1), amended by Nos 108/2004 s. 117(1) (Sch. 3 item 155.1), 47/2007 s. 3(2), 70/2013 s. 4(Sch. 2 item 36.2).

(3) The Governor in Council may by order published in the Government Gazette—

S. 3(3) inserted by No. 77/2003 s. 3(2).

(a) include any area of land adjoining the Port of Melbourne Area in the Port of Melbourne Area; or

(b) exclude any area of land from the Port of Melbourne Area.

S. 3AA inserted by No. 47/2017 s. 4.

3AA Meaning of *affordable housing*

(1) For the purposes of this Act, ***affordable housing*** is housing, including social housing, that is appropriate for the housing needs of any of the following—

(a) very low income households;

(b) low income households;

(c) moderate income households.

(2) For the purposes of determining what is appropriate for the housing needs of very low income households, low income households and moderate income households, regard must be had to the matters specified by the Minister by notice published in the Government Gazette.

(3) Matters specified by the Minister by notice under subsection (2) cannot include price ranges or prices for the purchase or rent of housing.

(4) In this section—

S. 3AA(4) def. of *low income households* amended by No. 7/2018 s. 23.

low income households means households with a household income within the income range specified as a low income range by Order under section 3AB;

moderate income households means households with a household income within the income range specified as a moderate income range by Order under section 3AB;

social housing has the same meaning as in section 4(1) of the **Housing Act 1983**;

very low income households means households with a household income within the income range specified as a very low income range by Order under section 3AB.

3AB Order in Council specifying income ranges

S. 3AB inserted by No. 47/2017 s. 4.

(1) The Governor in Council, on the recommendation of the Minister, by Order published in the Government Gazette, may specify—

(a) a range of household income as a very low income range; and

(b) a range of household income as a low income range; and

(c) a range of household income as a moderate income range.

(2) An Order under this section may specify a range of household income as a very low income range, a low income range or a moderate income range by reference to statistical data published by the Australian Bureau of Statistics.

3A Transport Integration Act 2010

S. 3A inserted by No. 6/2010 s. 25(5)(Sch. 2 item 10.1) (as amended by No. 45/2010 s. 6).

This Act is interface legislation within the meaning of the **Transport Integration Act 2010**.

4 Objectives

(1) The objectives of planning in Victoria are—

(a) to provide for the fair, orderly, economic and sustainable use, and development of land;

(b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;

(c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;

(d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;

(e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;

(f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);

S. 4(1)(fa) inserted by No. 47/2017 s. 5.

(fa) to facilitate the provision of affordable housing in Victoria;

(g) to balance the present and future interests of all Victorians.

(2) The objectives of the planning framework established by this Act are—

(a) to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;

(b) to establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land;

(c) to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;

(d) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;

(e) to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes;

(f) to provide for a single authority to issue permits for land use or development and related matters, and to co-ordinate the issue of permits with related approvals;

(g) to encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities;

(h) to establish a clear procedure for amending planning schemes, with appropriate public participation in decision making;

(i) to ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice;

(j) to provide an accessible process for just and timely review of decisions without unnecessary formality;

(k) to provide for effective enforcement procedures to achieve compliance with planning schemes, permits and agreements;

(l) to provide for compensation when land is set aside for public purposes and in other circumstances.

S. 4AA inserted by No. 49/2017 s. 62.

4AA Obligations of Department Head in relation to Yarra River land

(1) The Department Head of the Department—

(a) must not act inconsistently with any part of a Yarra Strategic Plan that is expressed to be binding on the Department Head when performing a function or duty or exercising a power under this Act in relation to Yarra River land; and

(b) must have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan not expressed to be binding on the Department Head, when performing a function or duty or exercising a power under this Act in relation to the Yarra Strategic Plan area that may affect Yarra River land.

S. 4AA(2) substituted by No. 43/2021 s. 117.

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by the Department Head of the Department in relation to—

(a) a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or

(b) a Suburban Rail Loop project within the meaning of the **Suburban Rail Loop Act 2021**.

S. 4AB inserted by No. 17/2018 s. 5.

4AB Obligations of Department Head in relation to declared areas

(1) The Department Head of the Department, when performing a function or duty or exercising a power under this Act in relation to a declared area—

(a) must not act inconsistently with any part of a Statement of Planning Policy that is expressed to be binding on the Department Head; and

(b) must have regard to those parts of the Statement of Planning Policy not expressed to be binding on the Department Head; and

(c) must have regard to the principles set out in section 46AZL.

S. 4AB(2) substituted by No. 43/2021 s. 118.

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by the Department Head of the Department in relation to—

(a) a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or

(b) a Suburban Rail Loop project within the meaning of the **Suburban Rail Loop Act 2021**.

S. 4AC inserted by No. 19/2020 s. 75.

4AC Obligations of Department Head in relation to the Great Ocean Road region

(1) The Department Head of the Department, when performing a function or duty or exercising a power under this Act—

(a) must not act inconsistently with any part of an approved Great Ocean Road strategic framework plan that is expressed to be binding on the Department Head in relation to the Great Ocean Road scenic landscapes area; and

(b) must have regard to the Great Ocean Road coast and parks protection principles in relation to the Great Ocean Road coast and parks; and

(c) must have regard to those parts of an approved Great Ocean Road strategic framework plan not expressed to be binding on the Department Head in relation to the Great Ocean Road region.

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by the Department Head of the Department in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

Part 1A—Victoria Planning Provisions[2]

Pt 1A (Heading and ss 4A–4J) inserted by No. 77/1996 s. 5.

4A Victoria Planning Provisions

S. 4A inserted by No. 77/1996 s. 5.

(1) To assist in providing a consistent and co-ordinated framework for planning schemes in Victoria, the Minister may prepare and approve standard planning provisions to be called the Victoria Planning Provisions.

(2) The Victoria Planning Provisions may contain any matter which may be included in a planning scheme under section 6.

(3) The Minister must publish notice of the approval of the Victoria Planning Provisions in the Government Gazette.

4B Amendment of Victoria Planning Provisions

S. 4B inserted by No. 77/1996 s. 5.

(1) The Minister may at any time prepare an amendment to the Victoria Planning Provisions.

(2) The Minister may authorise any other Minister or any public authority or municipal council to prepare an amendment to the Victoria Planning Provisions.

(3) Subject to subsection (4), sections 17 to 34 and Part 8 apply to the preparation of an amendment to the Victoria Planning Provisions as if—

(a) the amendment were an amendment to a planning scheme prepared under Part 3; and

(b) the Minister or the authorised body or person were the planning authority.

(4) Sections 21(3), 22(3), 23(3) and 25(3) do not apply to the preparation of an amendment to the Victoria Planning Provisions.

S. 4C inserted by No. 77/1996 s. 5.

4C Approval of amendment

(1) The Minister may—

(a) approve an amendment or part of an amendment to the Victoria Planning Provisions prepared by the Minister or submitted to the Minister under section 4B—

(i) with or without changes; and

(ii) subject to any conditions the Minister wishes to impose; or

(b) refuse to approve the amendment or part of the amendment.

(2) If the Minister approves only part of an amendment to the Victoria Planning Provisions that part becomes a separate amendment.

(3) The Minister may approve further parts of an amendment to the Victoria Planning Provisions at any time.

S. 4D inserted by No. 77/1996 s. 5, substituted by No. 12/2021 s. 14.

4D Notice of approval

The Minister must publish notice of the approval of an amendment to the Victoria Planning Provisions in the Government Gazette—

(a) if the Minister intends to make a copy of the approved amendment available in person in accordance with the requirements set out in section 197B, specifying the places at which any person may inspect a copy of the approved amendment; or

(b) if the Minister intends to make a copy of the approved amendment available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the approved amendment will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the approved amendment.

4E Commencement

S. 4E inserted by No. 77/1996 s. 5.

An amendment to the Victoria Planning Provisions comes into operation—

(a) when the notice of approval of the amendment is published in the Government Gazette; or

(b) on any later day or days specified in the notice.

4F Application of planning scheme provisions to amendments to VPPs

S. 4F inserted by No. 77/1996 s. 5.

Sections 38 and 39 apply as if the amendment to the Victoria Planning Provisions were an amendment to a planning scheme.

4G Lodging of Victoria Planning Provisions and approved amendments

S. 4G inserted by No. 77/1996 s. 5.

(1) The Minister must lodge the prescribed documents and a copy of the Victoria Planning Provisions and every approved amendment to the Victoria Planning Provisions with—

(a) each responsible authority; and

(b) each municipal council; and

(c) any other person or persons whom the Minister specifies.

(2) An amendment must be lodged before notice of approval of the amendment is published in the Government Gazette.

S. 4H inserted by No. 77/1996 s. 5, substituted by No. 12/2021 s. 15.

4H Inspection and electronic publication of approved amendments

(1) During the inspection period, each relevant person must make a copy of an approved amendment to the Victoria Planning Provisions, and any documents lodged with it, available in accordance with the public availability requirements.

(2) After the inspection period ends, each relevant person must make a copy of the approved amendment and any documents lodged with it available—

(a) in person in accordance with the requirements set out in section 197B; and

(b) on payment of the prescribed fee.

(3) In this section—

inspection period means the period of 2 months beginning on the day on which the approved amendment comes into operation;

relevant person means the following persons—

(a) the Minister;

(b) a responsible authority;

(c) a person with whom a copy of an approved amendment is lodged under section 4G.

S. 4I inserted by No. 77/1996 s. 5, substituted by No. 12/2021 s. 16.

4I Who must keep and make available a copy of the Victoria Planning Provisions?

(1) Each relevant person must keep a copy of the Victoria Planning Provisions incorporating all amendments to them and all documents lodged with those amendments.

(2) Each relevant person must make a copy of the Victoria Planning Provisions incorporating all amendments to them, and all documents lodged with those amendments, available in accordance with the public availability requirements.

(3) In this section—

relevant person means the following persons—

(a) the Minister;

(b) a responsible authority;

(c) a person with whom a copy of an approved amendment is lodged under section 4G.

4J Amendment of planning schemes by Victoria Planning Provisions

S. 4J inserted by No. 77/1996 s. 5.

(1) An amendment to the Victoria Planning Provisions may also provide for an amendment to one or more specified planning schemes.

(2) On the approval of an amendment to the Victoria Planning Provisions which provides for an amendment to a planning scheme, the amendment to the planning scheme is deemed to be approved under Part 3.

(3) The notice of the approval of the amendment to the Victoria Planning Provisions given under section 4D is deemed also to be notice of the approval under Part 3 of each amendment of a planning scheme provided for in the amendment to the Victoria Planning Provisions.

(4) An amendment to a planning scheme provided for in an amendment to the Victoria Planning Provisions comes into operation—

(a) when the amendment to the Victoria Planning Provisions comes into operation; or

(b) on any later day or days specified in the notice of approval of the amendment to the Victoria Planning Provisions given under section 4D.

(5) Part 3 (except Divisions 1 and 2 and sections 29 to 37) applies to an amendment to a planning scheme provided for in an amendment to the Victoria Planning Provisions.

(6) Nothing in section 8 limits the power of a person authorised under section 4B to prepare an amendment to a planning scheme under this section.

Part 2—Planning schemes

5 What are the planning schemes to which this Act applies?

S. 5 amended by No. 86/1989 s. 25(a).

This Act applies to any planning scheme approved under this Act as in force from time to time under this Act.

6 What can a planning scheme provide for?

(1) A planning scheme for an area—

(a) must seek to further the objectives of planning in Victoria within the area covered by the scheme; and

* * * * *

S. 6(1)(aa) inserted by No. 77/1996 s. 6(1), repealed by No. 12/2021 s. 56.[3]

(b) may make any provision which relates to the use, development, protection or conservation of any land in the area.

(2) Without limiting subsection (1), a planning scheme may—

(a) set out policies and specific objectives;

(b) regulate or prohibit the use or development of any land;

(c) designate land as being reserved for public purposes;

(d) include strategic plans, policy statements, codes or guidelines relating to the use or development of land[4];

S. 6(2)(d) repealed by No. 35/1995 s. 4(a), new s. 6(2)(d) inserted by No. 77/1996 s. 6(2).

(e) regulate or prohibit any use or development in hazardous areas or in areas which are likely to become hazardous areas;

(f) set out requirements for the provision of public utility services to land;

S. 6(2)(fa) inserted by No. 3/2013 s. 56.

(fa) designate a Minister, public authority or municipal council as an acquiring authority for the purposes of this Act for land reserved for public purposes;

S. 6(2)(g) amended by No. 53/1988 s. 45(Sch. 2 item 30A) (as amended by No. 47/1989 s. 19(x)), substituted by No. 48/1991 s. 59(a).

(g) subject to section 6A, regulate or provide for the creation, variation or removal of easements or restrictions under section 23 of the **Subdivision Act 1988**;

S. 6(2)(ga) inserted by No. 48/1991 s. 59(a).

(ga) subject to section 6A, regulate or provide for the variation or removal of conditions in the nature of easements in Crown grants, under section 23 of the **Subdivision Act 1988**;

S. 6(2)(gb) inserted by No. 48/1991 s. 59(a).

(gb) subject to section 6A, regulate or provide for the creation or removal of easements or rights of way under section 36 of the **Subdivision Act 1988**;

S. 6(2)(h) amended by Nos 86/1989 s. 25(b), 12/2021 s. 65.

(h) require specified things to be done to the satisfaction of the responsible authority, a Minister, public authority, municipal council or referral authority;

S. 6(2)(ha) inserted by No. 35/1995 s. 3(1).

(ha) require specified information to be provided with an application for a permit;

S. 6(2)(hb) inserted by No. 53/2012 s. 3(1).

(hb) set out different procedures for particular classes of applications for permits;

(i) state the provisions of the planning scheme which would have applied to land reserved for a public purpose under the planning scheme if it had not been reserved for this purpose;

(j) apply, adopt or incorporate any document which relates to the use, development or protection of land;

(k) provide that any use or development of land is conditional on an agreement being entered into with the responsible authority or a referral authority;

S. 6(2)(k) amended by No. 53/1988 s. 45(Sch. 2 item 31).

(ka) set out classes of land, use or development exempted from section 96(1) or (2);

S. 6(2)(ka) inserted by No. 86/1989 s. 5(1).

(kb) make any provision in relation to any of the things listed in the Table in section 24A(1) of the **Subdivision Act 1988**;

S. 6(2)(kb) inserted by No. 48/1991 s. 59(b).

(kc) set out classes of applications for permits exempted wholly or in part from section 52(1) and set out notice requirements (if any) to apply in place of the requirements of that subsection;

S. 6(2)(kc) inserted by No. 128/1993 s. 4.

(kca) set out classes of applications for permits that are exempted from the requirements of section 54;

S. 6(2)(kca) inserted by No. 53/2012 s. 3(2).

(kcb) set out classes of applications for permits that are exempted wholly or in part from the requirements of section 60(1)(b) to (f), (1A) and (1B);

S. 6(2)(kcb) inserted by No. 53/2012 s. 3(2), amended by Nos 3/2013 s. 76(4), 30/2015 s. 3(1).

S. 6(2)(kd) inserted by No. 128/1993 s. 4.

(kd) set out classes of applications the decisions on which are exempted from the requirements of section 64(1), (2) and (3) and section 82(1);

S. 6(2)(kda) inserted by No. 53/2012 s. 3(3), amended by No. 30/2015 s. 3(2).

(kda) set out classes of applications for review that are exempted wholly or in part from the requirements of section 84B(2)(b) to (jb);

S. 6(2)(ke) inserted by No. 128/1993 s. 4.

(ke) subject to subsection (3), specify what effect (if any) the planning scheme will have on a use or development of land for which a permit or certificate of compliance has been issued;

S. 6(2)(kf) inserted by No. 47/2017 s. 8(1).

(kf) specify classes of applications to amend referred wind energy facility permits that are wholly exempted from the requirements under section 97E(1) or for which the requirements under section 97E(1) are modified so as to require referral of objections and submissions to an advisory committee established under section 151;

(l) provide for any other matter which this Act refers to as being included in a planning scheme.

S. 6(2A) inserted by No. 47/2017 s. 8(2).

(2A) For the purposes of subsection (2)(kf), a class of application to amend a referred wind energy facility permit may be specified by reference to any of the following characteristics of a wind energy facility—

(a) the total number of turbines;

(b) the maximum height of turbines;

(c) the location of turbines.

S. 6(3) amended by No. 86/1989 s. 6(1).

(3) Subject to subsections (4) and (4A), nothing in any planning scheme or amendment shall—

(a) prevent the continuance of the use of any land upon which no buildings or works are erected for the purposes for which it was being lawfully used before the coming into operation of the scheme or amendment (as the case may be); or

(b) prevent the use of any building which was erected before that coming into operation for any purpose for which it was lawfully being used immediately before that coming into operation; or

(c) prevent the use of any works constructed before that coming into operation for any purpose for which they were being lawfully used immediately before that coming into operation; or

(d) prevent the use of any building or work for any purpose for which it was being lawfully erected or carried out immediately before that coming into operation; or

(e) require the removal or alteration of any lawfully constructed building or works.

(4) Subsection (3) does not apply to a use of land—

(a) which has stopped for a continuous period of two years; or

(b) which has stopped for two or more periods which together total two years in any period of three years; or

(c) in the case of a use which is seasonal in nature, if the use does not take place for two years in succession.

S. 6(4A) inserted by No. 86/1989 s. 6(2).

(4A) A planning scheme may require a use to which subsection (3) applies to comply with—

S. 6(4A)(a) amended by No. 48/2004 s. 137(a)(b).

(a) a Code of Practice which has been incorporated or adopted in accordance with section 39 of the **Conservation, Forests and Lands Act 1987**; or

(b) a Code of Practice approved or ratified by Parliament under an Act.

(5) A provision of a planning scheme may operate for a specified period.

(6) A planning scheme may apply to—

(a) a municipal district; or

(b) a municipal district together with an area adjoining the municipal district which is not in any municipal district; or

(c) an area or areas which are not in any municipal district; or

(d) if the affected municipal councils consent, any part of a municipal district or any adjoining parts of two or more municipal districts.

S. 6A inserted by No. 48/1991 s. 60.

6A Easements, restrictions etc.

(1) In this section and in section 6(2)(g) ***restriction*** has the same meaning as in the **Subdivision Act 1988**.

(2) Subject to subsection (3), a planning scheme may require a permit to be obtained before a person proceeds under section 23, 24A or 36 of the **Subdivision Act 1988**.

(3) A planning scheme must not—

(a) prohibit or restrict—

(i) the creation, variation or removal of easements or restrictions by agreement, prescription, abandonment, or otherwise by operation of law; or

(ii) the creation, variation or removal of easements or restrictions by or under an Act other than the **Subdivision Act 1988**; or

(iii) a person from proceeding under the **Subdivision Act 1988** in relation to the creation, variation or removal of an easement or restriction referred to in subparagraph (i) or (ii); or

(b) regulate or provide for—

(i) the variation or removal of a covenant under Part 7 of the **Heritage Act 2017** or section 3A of the **Victorian Conservation Trust Act 1972**; or

S. 6A(3)(b)(i) amended by Nos 93/1995 s. 218(1) (Sch. 2 item 7.1), 7/2017 s. 305(1).

(ii) the variation or removal of an easement required to be created in favour of a public authority, Council, Minister or other person under an Act other than the **Subdivision Act 1988**, without the consent of that person; or

(c) allow a person to proceed under section 23 of the **Subdivision Act 1988** to create, vary or remove an easement or restriction over land that the person does not own.

(4) A provision included in a planning scheme under section 6(2)(ga) is in addition to section 362A of the **Land Act 1958**, and a person may choose

whether to proceed under that section or the provision of the planning scheme.

S. 6B inserted by No. 12/2021 s. 4.

6B Heritage buildings

(1) Without limiting section 6, a planning scheme may make provision for the additional matters set out in subsection (2) for any of the following purposes—

(a) to further the objectives of planning in Victoria within the area covered by the scheme;

(b) to deter persons from—

(i) unlawfully demolishing heritage buildings; or

(ii) allowing heritage buildings to fall into disrepair;

(c) to prevent persons from obtaining a benefit from—

(i) unlawfully demolishing heritage buildings; or

(ii) allowing heritage buildings to fall into disrepair.

(2) For the purposes of subsection (1), the additional matters are—

(a) to regulate or prohibit the development of land on which there is or was a heritage building that has been unlawfully demolished, in whole or in part, or fallen into disrepair; and

(b) to require that a permit must not be granted for the development of land on which there is or was a heritage building that has been unlawfully demolished, in whole or in part, or fallen into disrepair, unless the development is for or includes—

(i) the reconstruction or reinstatement of the building, in whole or in part; or

(ii) the repair of the building.

7 Structure of planning schemes[5]

S. 7 substituted by No. 77/1996 s. 7.

(1) A planning scheme for an area must include and must specify separately—

(a) State standard provisions; and

(b) local provisions.

(2) The State standard provisions must consist of provisions selected from the Victoria Planning Provisions.

(3) The local provisions—

(a) must include any provision which the Minister directs to be included in the planning scheme; and

S. 7(3)(a) substituted by No. 12/2021 s. 57(1).

(b) may include any other provision which applies only to the area of the planning scheme.

(3A) Subsection (3)(a)(i) does not apply to any part of a municipal district that is within the Port of Melbourne Area.

S. 7(3A) inserted by No. 77/2003 s. 5(1).

(4) If there appears to be an inconsistency between different provisions of a planning scheme—

(a) the scheme must, so far as practicable, be read so as to resolve the inconsistency; and

(b) subject to paragraph (a)—

(i) the State standard provisions prevail over the local provisions; and

(ii) a specific control over land prevails over any strategic plan, policy statement, code or guideline in the planning scheme.

S. 7(4)(b)(ii) amended by No. 12/2021 s. 57(2).

(5) The Minister may issue directions or guidelines as to the form and content of any planning scheme or planning schemes.

(6) A planning authority must comply with a direction of the Minister under subsection (5).

S. 8 amended by Nos 86/1989 ss 5(2), 25(c), 35/1995 s. 4(b), 77/1996 s. 8, 89/1997 s. 75(1), 77/2003 s. 4, substituted by No. 81/2004 s. 3.

8 Minister is planning authority

(1) The Minister may prepare—

(a) a planning scheme for any municipal district or other area of Victoria; or

(b) amendments to any provision of a planning scheme.

(2) The Minister is a planning authority under this Act.

(3) This Act applies to a planning scheme prepared by the Minister as if it were an amendment to a planning scheme.

S. 8A inserted by No. 47/2007 s. 4, substituted by No. 3/2013 s. 42.

8A Municipal council as planning authority for its municipal district

(1) A municipal council is a planning authority for any planning scheme in force in its municipal district.

(2) A municipal council must not prepare an amendment to the State standard provisions or the local provisions of a planning scheme in force in its municipal district unless it has applied to the Minister under this section and the Minister has authorised it to do so.

(3) An application under this section must be made in accordance with the regulations and contain the information required by the Minister.

(4) Subject to subsection (6A), the Minister, on the application of a municipal council under this section, may decide—

S. 8A(4) amended by No. 43/2021 s. 119(1).

(a) to authorise the municipal council to prepare the amendment; or

(b) that the application requires further review; or

(c) to refuse to authorise the municipal council to prepare the amendment.

(5) The Minister must notify the municipal council in writing of his or her decision.

(6) The Minister may authorise the preparation of an amendment subject to any conditions the Minister wishes to impose, including conditions relating to the giving of notice under the amendment.

S. 8A(6A) inserted by No. 43/2021 s. 119(2).

(6A) If an application is for the preparation of an amendment that will apply to land to which a Suburban Rail Loop planning area declaration applies, the Minister—

(a) must refer the application to the Suburban Rail Loop Minister; and

(b) must not authorise the preparation of the amendment without the consent of the Suburban Rail Loop Minister under section 8C.

S. 8A(7) amended by No. 43/2021 s. 119(3).

(7) Despite subsection (2) but subject to subsection (7A), a municipal council that has made an application under this section may prepare the amendment specified in the application without the authorisation after the end of the period of 10 business days after the Minister receives the application if the Minister has not notified the council of his or her decision within that period.

S. 8A(7A) inserted by No. 43/2021 s. 119(4).

(7A) Subsection (7) does not apply in relation to an application for the preparation of an amendment that will apply to land to which a Suburban Rail Loop planning area declaration applies.

(8) If the Minister decides that an application requires further review, the Minister may, following that review, decide to authorise or refuse to authorise the municipal council to prepare the amendment.

(9) Despite anything to the contrary in this section, a municipal council must not prepare an amendment to a planning scheme applying to the Port of Melbourne Area unless the amendment does not affect or apply to land in that Area.

S. 8B inserted by No. 3/2013 s. 42.

8B Municipal council as planning authority for area adjoining municipal district

(1) A municipal council is a planning authority for any planning scheme applying to an area adjoining its municipal district for which it is authorised under this section to prepare an amendment.

S. 8B(2) amended by No. 43/2021 s. 120(1).

(2) Subject to subsection (5A), the Minister, on the application of a municipal council under this section, may authorise that municipal council to prepare an amendment to any part of the State standard provisions and local provisions of a planning scheme applying to an area adjoining its municipal district.

(3) The authorisation must be in writing.

(4) An application under this section must be made in accordance with the regulations and contain the information required by the Minister.

(5) The Minister may authorise the preparation of an amendment subject to any conditions the Minister wishes to impose, including conditions relating to the giving of notice of the amendment.

(5A) If an application is for the preparation of an amendment that will apply to land to which a Suburban Rail Loop planning area declaration applies, the Minister—

S. 8B(5A) inserted by No. 43/2021 s. 120(2).

(a) must refer the application to the Suburban Rail Loop Minister; and

(b) must not authorise the preparation of the amendment without the consent of the Suburban Rail Loop Minister under section 8C.

(6) The Minister cannot authorise a municipal council to prepare an amendment to a planning scheme applying to the Port of Melbourne Area unless the amendment does not affect or apply to land in that Area.

8C Consent of the Suburban Rail Loop Minister required for authorisations of certain planning scheme amendments

S. 8C inserted by No. 43/2021 s. 121.

On being referred an application under section 8A(6A)(a) or 8B(5A)(a), the Suburban Rail Loop Minister must decide whether to give consent for the purposes of section 8A(6A)(b) or 8B(5A)(b). In doing so, the Minister must have regard to—

(a) the Suburban Rail Loop program objectives; and

(b) the Suburban Rail Loop Authority's object.

8D Applications for planning amendment authorisations received before applicable Suburban Rail Loop planning area declarations

S. 8D inserted by No. 43/2021 s. 121.

(1) This section applies if—

(a) a municipal council makes an application under section 8A or 8B for authorisation to prepare a planning scheme amendment; and

(b) before any of the following occur, a Suburban Rail Loop planning area declaration takes effect that applies to land which will be affected by the proposed planning scheme amendment or to which the proposed planning scheme amendment will apply—

(i) the Minister notifies the municipal council of the Minister's decision under section 8A(5) on the application;

(ii) section 8A(7) has effect in relation to the application;

(iii) the Minister makes a decision under section 8B(2) on the application.

(2) In the case of an application under section 8A, section 8A(6A) applies to the application.

(3) In the case of an application under section 8B, section 8B(5A) applies to the application.

(4) If the Minister does not comply with section 8A(6A) or 8B(5A), any relevant authorisation for the preparation of the planning scheme amendment is of no effect.

S. 9 substituted by Nos 81/2004 s. 3, 47/2007 s. 5.

9 Authorised Ministers and authorities are planning authorities

(1) The Minister may authorise any other Minister or public authority to prepare an amendment to any part of the State standard provisions and local provisions of a planning scheme.

(2) An authorisation must be in writing.

(3) The Minister may authorise the preparation of an amendment subject to any conditions the Minister wishes to impose, including conditions relating to the giving of notice of the amendment.

(4) A Minister or public authority that is authorised under this section to prepare an amendment to a planning scheme is a planning authority under this Act.

S. 9(4) amended by No. 12/2021 s. 66.

9A Suburban Rail Loop Authority is a planning authority

S. 9A inserted by No. 43/2021 s. 122.

(1) The Suburban Rail Loop Authority is a planning authority under this Act for any land to which a Suburban Rail Loop planning area declaration applies.

(2) The Suburban Rail Loop Authority may prepare amendments to any provision of a planning scheme that applies to land to which a Suburban Rail Loop planning area declaration applies.

10 Restrictions and powers relating to the preparation of amendments

S. 10 amended by Nos 59/1987 s. 38, 88/1991 s. 15, 16/1993 s. 20(d), 118/1994 ss 4(f), 9(f), 16/1995 s. 4(g), repealed by No. 35/1995 s. 4(c), new s. 10 inserted by No. 81/2004 s. 3.

(1) The power given to a planning authority to prepare an amendment to the State standard provisions of a planning scheme extends only to the inclusion of a provision in or deletion of a provision from the State standard provisions of the planning scheme.

S. 10(2) amended by No. 3/2013 s. 43.

(2) A planning authority (including the Minister) that is given power to amend more than one planning scheme may prepare amendments to two or more of those schemes in the one instrument.

(3) Only the Minister may include in an amendment a provision setting out the classes of land, use or development exempted from section 96(1) or 96(2).

S. 10(4) repealed by No. 47/2007 s. 6.

* * * * *

S. 11 amended by No. 77/1996 s. 9, substituted by No. 81/2004 s. 3, repealed by No. 3/2013 s. 70(1).

* * * * *

12 What are the duties and powers of planning authorities?

(1) A planning authority must—

(a) implement the objectives of planning in Victoria;

(b) provide sound, strategic and co-ordinated planning of the use and development of land in its area;

(c) review regularly the provisions of the planning scheme for which it is a planning authority;

(d) prepare amendments to a planning scheme for which it is a planning authority;

S. 12(1)(e) amended by No. 3/2013 s. 71(1)(a).

(e) prepare an explanatory report in respect of any proposed amendment to a planning scheme;

S. 12(1)(f) inserted by No. 3/2013 s. 71(1)(b).

(f) provide information and reports as required by the Minister.

S. 12(1A) inserted by No. 12/2021 s. 67.

(1A) The Minister may issue directions in relation to the preparation of an amendment to a planning scheme.

(2) In preparing a planning scheme or amendment, a planning authority—

(a) must have regard to the Minister's directions; and

(aa) must have regard to the Victoria Planning Provisions[6]; and

S. 12(2)(aa) inserted by No. 77/1996 s. 10.

(ab) in the case of an amendment, must have regard to any strategic plan, policy statement, code or guideline which forms part of the scheme[7]; and

S. 12(2)(ab) inserted by No. 77/1996 s. 10, amended by No. 12/2021 s. 58.

(b) must take into account any significant effects which it considers the scheme or amendment might have on the environment or which it considers the environment might have on any use or development envisaged in the scheme or amendment[8]; and

S. 12(2)(b) amended by No. 86/1989 s. 25(d).

(c) must take into account its social effects and economic effects.

S. 12(2)(c) amended by No. 3/2013 s. 71(2).

(3) A planning authority may—

(a) carry out studies and commission reports; and

(b) do all things necessary to encourage and promote the orderly and proper use, development and protection of land in the area for which it is a planning authority; and

(c) take any steps and consult with any other persons it considers necessary to ensure the co-ordination of the planning scheme with proposals by those other persons.

* * * * *

S. 12A inserted by No. 77/1996 s. 11, amended by Nos 77/2003 s. 5(2), 81/2004 s. 4, 47/2007 s. 7, 9/2020 s. 390(Sch. 1 item 77.1), repealed by No. 12/2021 s. 59.[9]

S. 12B inserted by No. 81/2004 s. 5.

12B Review of planning schemes

S. 12B(1) substituted by No. 47/2007 s. 8.

(1) A planning authority which is a municipal council must review its planning scheme—

S. 12B(1)(a) amended by No. 9/2020 s. 390(Sch. 1 item 77.1).

(a) no later than one year after each date by which it is required to approve a Council Plan under section 90 of the **Local Government Act 2020**; or

(b) within such longer period as is determined by the Minister.

(2) A planning authority which is a municipal council must also review its planning scheme at any other time that the Minister directs.

(3) The objective of a review under this section is to enhance the effectiveness and efficiency of the planning scheme in achieving—

(a) the objectives of planning in Victoria; and

(b) the objectives of the planning framework established by this Act.

(4) The review must evaluate the planning scheme to ensure that it—

(a) is consistent in form and content with the directions or guidelines issued by the Minister under section 7; and

(b) sets out effectively the policy objectives for use and development of land in the area to which the planning scheme applies; and

(c) makes effective use of State provisions and local provisions to give effect to State and local planning policy objectives.

(5) On completion of a review under this section, the planning authority must without delay report the findings of the review to the Minister.

13 Responsible authority

S. 13 substituted by No. 53/2012 s. 4.

(1) This section specifies who is the responsible authority for the administration and enforcement of—

(a) a planning scheme;

(b) a provision of a planning scheme;

(c) a planning scheme or a provision of a planning scheme in relation to an area of land covered by the planning scheme;

(d) a planning scheme or a provision of a planning scheme in relation to a type of use or development;

(e) a planning scheme or a provision of a planning scheme in relation to a class or classes of application.

(2) The person who is the responsible authority is—

(a) the municipal council, if the planning scheme applies to land which is wholly or partly in its municipal district, unless the

planning scheme specifies any other person as the responsible authority; or

(b) the Minister, if the planning scheme applies only to land outside a municipal district, unless the planning scheme specifies any other person as the responsible authority; or

(c) any person whom the planning scheme specifies as a responsible authority for that purpose.

14 What are the duties of a responsible authority?

The duties of a responsible authority are—

S. 14(a) amended by No. 81/2004 s. 6.

(a) to efficiently administer and enforce the planning scheme; and

S. 14(aa) inserted by No. 86/1989 s. 7(1).

(aa) to enforce any enforcement order or interim enforcement order relating to land covered by a planning scheme for which it is the responsible authority; and

(b) to implement the objectives of the planning scheme; and

(c) to comply with this Act and the planning scheme; and

S. 14(d) amended by No. 3/2013 s. 72.

(d) to provide information and reports as required by the Minister.

S. 14A inserted by No. 3/2013 s. 15.

14A What are the duties of a referral authority?

A referral authority must, in relation to any matter referred to it under this Act—

(a) have regard to the objectives of planning in Victoria in considering the matter; and

(b) have regard to the Minister's directions; and

(c) comply with this Act; and

(d) have regard to the planning scheme; and

(e) provide information and reports as required by the Minister.

15 Changes in boundaries

(1) If any land in a municipal district becomes the whole or part of a new or different municipal district under the **Local Government Act 2020**—

S. 15(1) amended by Nos 12/1989 s. 4(1)(Sch. 2 item 90.2), 125/1993 s. 35, 9/2020 s. 390(Sch. 1 item 77.2).

(a) any planning scheme applying to that land immediately before the alteration in the municipal district; and

(b) all things done under that scheme—

continue to have the same operation and effect as they would have had if the alteration had not been made except that the responsible authority for the subsequent administration and enforcement of the planning scheme is the council of the new or different municipal district unless the planning scheme specifies a person other than a municipal council as the responsible authority.

(2) If any land which is not in a municipal district becomes the whole or part of a municipal district under the **Local Government Act 2020**—

S. 15(2) amended by Nos 12/1989 s. 4(1)(Sch. 2 item 90.3), 125/1993 s. 35, 9/2020 s. 390(Sch. 1 item 77.2).

(a) any planning scheme applying to the land immediately before the land becomes a municipal district; and

(b) all things done under that scheme—

continue to have the same operation and effect as they would have had if the alteration had not been made except that the responsible authority for the subsequent administration and enforcement of the planning scheme is the council of the municipal district unless the planning scheme specifies a person other than a municipal council as the responsible authority.

16 Application of planning scheme

A planning scheme is binding on every Minister, government department, public authority and municipal council except to the extent that the Governor in Council, on the recommendation of the Minister, directs by Order published in the Government Gazette.

Part 3—Amendment of planning schemes

Division 1—Exhibition and notice of amendment

17 Copies of amendment to be given to certain persons

(1) A planning authority must give copies of any amendment it prepares to a planning scheme together with the explanatory report and any document applied, adopted or incorporated in the amendment—

(a) to a municipal council, if the amendment applies to its municipal district; and

* * * * *

S. 17(1)(b) repealed by No. 35/1995 s. 4(d).

(c) to the Minister; and

(d) to any other person whom the Minister specifies.

(2) A planning authority must also give a copy of any agreement entered into under section 173 to any person to whom it gives a copy of the amendment if the agreement or part of the agreement will not come into operation fully unless the amendment comes into operation.

(3) A planning authority must give copies of any amendment, explanatory report and any document applied, adopted or incorporated in the amendment to the Minister under subsection (1)(c) not less than 10 business days before it first gives a required notice of the amendment under section 19.

S. 17(3) inserted by No. 3/2013 s. 73.

S. 17(4) inserted by No. 3/2013 s. 73.

(4) Subsection (3) does not apply if—

(a) the planning authority is not required to give notice under section 19; or

(b) the Minister is the planning authority.

S. 18 amended by No. 35/1995 s. 4(e), substituted by No. 12/2021 s. 17.

18 Availability of amendment

(1) Each relevant person must make the documents specified in subsection (2) available in accordance with the public availability requirements.

(2) For the purposes of subsection (1), the documents are—

(a) a copy of a proposed amendment to a planning scheme prepared by a planning authority; and

(b) a copy of the explanatory report in respect of the proposed amendment; and

(c) a copy of any document that is applied, adopted or incorporated in the proposed amendment; and

(d) a copy of any accompanying agreement to the proposed amendment referred to in section 17(2).

(3) Each relevant person must make the documents available under subsection (1) until the proposed amendment is approved or lapses.

(4) In this section—

relevant person means the following persons—

(a) the planning authority that prepared the proposed amendment;

(b) a person who is given a copy of a proposed amendment under section 17(1)(a) or (c).

19 What notice of an amendment must a planning authority give?

(1) A planning authority must give notice of its preparation of an amendment to a planning scheme—

(a) to every Minister, public authority and municipal council that it believes may be materially affected by the amendment; and

(b) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land that it believes may be materially affected by the amendment; and

S. 19(1)(b) amended by No. 86/1989 s. 4(2)(a).

(c) to any Minister, public authority, municipal council or person prescribed; and

(ca) to owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land benefited by a registered restrictive covenant, if the amendment provides for the removal or variation of the covenant; and

S. 19(1)(ca) inserted by No. 100/2000 s. 5(1).

(d) to the Minister administering the **Land Act 1958** if the amendment provides for the closure of a road wholly or partly on Crown land.

(1A) Subject to subsection (1C), the planning authority is not required to give notice of an amendment under subsection (1)(b) if it considers the number of owners and occupiers affected makes it impractical to notify them all individually about the amendment.

S. 19(1A) inserted by No. 128/1993 s. 5.

S. 19(1B) inserted by No. 128/1993 s. 5.

(1B) A planning authority which does not give notice under subsection (1)(b) for the reasons set out in subsection (1A) must take reasonable steps to ensure that—

(a) public notice of the proposed amendment is given in the area affected by the amendment; and

(b) that notice states that owners and occupiers of land referred to in subsection (1)(b) are entitled to make submissions in accordance with sections 21 and 21A.

S. 19(1C) inserted by No. 128/1993 s. 5.

(1C) Subsection (1A) does not apply in relation to the giving of notice to an owner of land of an amendment which provides for—

(a) the reservation of that land for public purposes; or

(b) the closure of a road which provides access to that land.

(2) A planning authority must publish a notice of any amendment it prepares in a newspaper generally circulating in the area to which the amendment applies.

S. 19(2A) inserted by No. 100/2000 s. 5(2).

(2A) A planning authority must cause notice of an amendment providing for the removal or variation of a registered restrictive covenant to be given by placing a sign on the land which is the subject of the amendment.

S. 19(3) amended by Nos 86/1989 s. 25(e), 100/2000 s. 5(3).

(3) On the same day as it gives the last of the notices required under subsections (1), (2) and (2A) or after all other notices have been given under this section, the planning authority must publish a notice of the preparation of the amendment in the Government Gazette[10].

(4) Any notice must—

(a) be given in accordance with the regulations; and

(b) set a date for submissions to the planning authority which, if notice of the preparation of the amendment is given in the Government Gazette, must be not less than one month after the date that the notice is given in the Government Gazette.

S. 19(4)(b) amended by No. 48/1991 s. 66(1).

(5) The failure of a planning authority to give a notice under subsection (1) does not prevent the adoption or approval of the amendment by the planning authority or its submission to or approval by the Minister.

S. 19(5) amended by No. 81/2004 s. 7.

(6) Subsection (5) does not apply to a failure to notify an owner of land about the preparation of an amendment which provides for—

(a) the reservation of that land for public purposes; or

(b) the closure of a road which provides access to that land.

(7) A planning authority may take any other steps it thinks necessary to tell anyone who may be affected by the amendment about its preparation.

20 Exemption from giving notice

(1) A planning authority (other than the Suburban Rail Loop Authority) may apply to the Minister to exempt it from any of the requirements of section 19 or the regulations in respect of an amendment.

S. 20(1) amended by No. 43/2021 s. 123(1).

(2) If the Minister considers that compliance with any of those requirements is not warranted, or that the interests of Victoria or any part of Victoria make such an exemption appropriate, the Minister may—

S. 20(2) amended by No. 128/1993 s. 6(1)(a)(i)(ii).

S. 20(2)(a) amended by No. 43/2021 s. 123(1).

(a) exempt a planning authority (other than the Suburban Rail Loop Authority) from any of those requirements; and

(b) impose conditions on that exemption, including a condition which requires the planning authority to give notice of the amendment in any specified manner.

(3) The Minister cannot exempt a planning authority from the requirement to give notice—

(a) to the owner of any land, of an amendment which provides for—

(i) the reservation of that land for public purposes; or

(ii) the closure of a road which provides access to that land; or

(b) to any Minister prescribed under section 19(1)(c); or

S. 20(3)(ba) inserted by No. 53/1988 s. 45(Sch. 2 item 32).

(ba) under section 19(2) or (3), if the amendment proposes a change to provisions relating to land set aside or reserved as public open space; or

(c) to the Minister administering the **Land Act 1958** under section 19(1)(d).

S. 20(4) amended by No. 128/1993 s. 6(1)(b)(i)(ii).

(4) The Minister may exempt himself or herself from any of the requirements of sections 17, 18 and 19 and the regulations in respect of an amendment which the Minister prepares, if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.

S. 20(5) substituted by No. 128/1993 s. 6(2).

(5) The Minister may consult with the responsible authority or any other person before exercising the powers under subsection (2) or (4).

(6) The Minister may exempt the Suburban Rail Loop Authority from any of the requirements of sections 17, 18 and 19 and the regulations in respect of an amendment which the Suburban Rail Loop Authority prepares, if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.

S. 20(6) inserted by No. 66/2009 s. 3, substituted by No. 58/2010 s. 36, repealed by No. 3/2013 s. 3, new s. 20(6) inserted by No. 43/2021 s. 123(2).

(7) The Minister may impose conditions on an exemption under subsection (6), including a condition which requires the Suburban Rail Loop Authority to give notice of the amendment in any specified manner.

S. 20(7) inserted by No. 43/2021 s. 123(2).

20A Minister may determine to prepare prescribed amendments—exception to sections 17, 18 and 19

S. 20A inserted by No. 3/2013 s. 44.

(1) The regulations may prescribe a class or classes of amendment to a planning scheme for the purposes of this section.

(2) The Minister may determine to prepare an amendment in a prescribed class or classes in accordance with this section.

(3) If the Minister determines to prepare an amendment in a prescribed class or classes in accordance with this section, sections 17, 18 and 19 do not apply in respect of that amendment.

(4) In preparing an amendment referred to in subsection (3) to a planning scheme applying in a municipal district, the Minister must consult with the municipal council for the municipal district unless—

(a) the amendment is being prepared at the request of the municipal council; or

(b) the amendment is of a class exempted from this requirement by the regulations.

Division 2—Public submissions about an amendment

21 Who may make a submission?[11, 12]

S. 21 amended by Nos 86/1989 s. 25(f), 128/1993 s. 7(a).

(1) Any person may make a submission to the planning authority about an amendment of which notice has been given under section 19 or in accordance with a condition imposed under section 20(2)(b).

S. 21(2) inserted by No. 128/1993 s. 7(b), substituted by No. 12/2021 s. 18.

(2) The planning authority must make a copy of every submission available in accordance with the public availability requirements until the end of 2 months after the amendment comes into operation or lapses.

S. 21(3) inserted by No. 77/1996 s. 12(1).

(3) A person is not entitled to make a submission which requests a change to the terms of any State standard provision to be included in a planning scheme by the amendment.

S. 21(4) inserted by No. 77/1996 s. 12(1).

(4) Despite subsection (3), a person is entitled to make a submission which requests that a State standard provision be included in or deleted from the scheme.

S. 21(5) inserted by No. 7/2018 s. 5.

(5) Despite subsection (1), if an amendment is to incorporate an infrastructure contributions plan into a planning scheme, a person is not entitled to make a submission to the planning authority requesting a change to—

(a) any land credit amount or land equalisation amount specified in the plan; or

(b) any estimate of the value of public purpose land (within the meaning of Part 3AB) on which the amounts referred to in paragraph (a) are based.

Note

An affected owner may make a submission under Division 4 of Part 3AB objecting to the estimate of the value of inner public purpose land in the ICP plan area of an infrastructure contributions plan.

21A Joint submissions[13]

S. 21A inserted by No. 86/1989 s. 8.

(1) Two or more persons may make one submission to a planning authority under section 21 or the Minister under section 34.

(2) If a number of persons make one submission, they may give the planning authority or Minister (as the case requires)—

(a) the name and address of the person to whom the planning authority or Minister must give any notice required by this Act to be given to the maker of a submission; and

(b) the name and address of any person who is to represent them at any panel hearing.

(3) If a number of persons make one submission, it is sufficient compliance with—

(a) any requirement of this Act to give notice to the maker of a submission if the planning authority or Minister (as the case requires) gives the notice—

(i) to the person named under subsection (2)(a); or

(ii) if no name and address is given under subsection (2)(a), to one of the persons who made the submission; and

(b) any requirement of this Act to give an opportunity to be heard to the maker of a

submission if an opportunity to be heard is given—

(i) to the person named under subsection (2)(b); or

(ii) if no name and address is given under subsection (2)(b), to one of the persons who made the submission.

(4) If the planning authority or Minister gives notice under subsection (3)(a)(ii), the planning authority or Minister must also publish a copy of the notice in a newspaper generally circulating in the area to which the amendment applies.

S. 22 amended by No. 86/1989 s. 25(g).

22 Planning authority to consider submissions[14]

(1) A planning authority must consider all submissions made on or before the date set out in the notice.

(2) The planning authority may consider a late submission and must consider one if the Minister directs.

S. 22(3) inserted by No. 77/1996 s. 12(2).

(3) A planning authority must not consider a submission which requests a change to the terms of any State standard provision to be included in the planning scheme by the amendment.

S. 22(4) inserted by No. 77/1996 s. 12(2).

(4) Despite subsection (3), a planning authority may consider a submission which requests that a State standard provision be included in or deleted from the scheme.

S. 22(5) inserted by No. 7/2018 s. 6.

(5) Despite subsection (1), a planning authority must not consider a submission which requests a change to—

(a) any land credit amount or land equalisation amount specified in an infrastructure contributions plan that is to be incorporated into a planning scheme by the amendment; or

(b) any estimate of the value of public purpose land (within the meaning of Part 3AB) on which the amounts referred to in paragraph (a) are based.

Note

An affected owner may make a submission under Division 4 of Part 3AB objecting to the estimate of the value of inner public purpose land in the ICP plan area of an infrastructure contributions plan.

23 Decisions about submissions[15, 16]

S. 23 amended by No. 86/1989 s. 25(h)(i).

(1) After considering a submission which requests a change to the amendment, the planning authority must—

(a) change the amendment in the manner requested; or

(b) refer the submission to a panel appointed under Part 8; or

(c) abandon the amendment or part of the amendment.

S. 23(2) inserted by No. 86/1989 s. 25(h)(ii).

(2) A planning authority may refer to the panel submissions which do not require a change to the amendment.

S. 23(3) inserted by No. 77/1996 s. 12(3).

(3) Subsection (1) does not apply to a submission which requests a change to the terms of any State standard provision to be included in the planning scheme by the amendment.

S. 23(4) inserted by No. 77/1996 s. 12(3).

(4) Despite subsection (3), subsection (1) does apply to a submission which requests that a State standard provision be included in or deleted from the scheme.

S. 23(5) inserted by No. 7/2018 s. 7.

(5) Subsection (1) does not apply to a submission which requests a change to—

(a) any land credit amount or land equalisation amount specified in an infrastructure contributions plan that is to be incorporated

into a planning scheme by the amendment; or

(b) any estimate of the value of public purpose land (within the meaning of Part 3AB) on which the amounts referred to in paragraph (a) are based.

Note

An affected owner may make a submission under Division 4 of Part 3AB objecting to the estimate of the value of inner public purpose land in the ICP plan area of an infrastructure contributions plan.

24 Hearing by panel

The panel must consider all submissions referred to it and give a reasonable opportunity to be heard to—

(a) any person who has made a submission referred to it;

(b) the planning authority;

(c) any responsible authority or municipal council concerned;

S. 24(d) repealed by No. 35/1995 s. 4(f), new s. 24(d) inserted by No. 3/2013 s. 74.

(d) any person who asked the planning authority to prepare the amendment;

(e) any person whom the Minister or the planning authority directs the panel to hear.

25 Report by panel[17]

(1) The panel must report its findings to the planning authority.

(2) In its report, the panel may make any recommendation it thinks fit.

(3) A panel must not make a recommendation that an amendment be adopted with changes to the terms of any State standard provision to be included in the planning scheme.

S. 25(3) inserted by No. 77/1996 s. 12(4).

(4) Despite subsection (3), a panel may make a recommendation that an amendment provide for a State standard provision to be included in or deleted from the planning scheme.

S. 25(4) inserted by No. 77/1996 s. 12(4).

(5) A panel must not make a recommendation that an amendment be adopted with a change to—

S. 25(5) inserted by No. 7/2018 s. 8.

(a) any land credit amount or land equalisation amount specified in an infrastructure contributions plan that is to be incorporated into a planning scheme by the amendment; or

(b) any estimate of the value of public purpose land (within the meaning of Part 3AB) on which the amounts referred to in paragraph (a) are based.

Note

An affected owner may make a submission under Division 4 of Part 3AB objecting to the estimate of the value of inner public purpose land in the ICP plan area of an infrastructure contributions plan.

25A Recommendation by panel to Minister[18]

S. 25A inserted by No. 77/1996 s. 13.

(1) The panel may recommend to the Minister that an amendment be prepared to the Victoria Planning Provisions.

(2) Subsection (1) does not apply if the Minister is the planning authority.

26 Reports to be made public

S. 26 substituted by Nos 5/1988 s. 4, 12/2021 s. 19.

(1) At any time after the planning authority receives the panel's report, the planning authority may make the report available in person in accordance with the requirements set out in section 197B.

(2) During the inspection period, the planning authority must make the panel's report available in accordance with the public availability requirements.

(3) In this section—

inspection period means the period—

(a) beginning on the earlier of the following days—

(i) the day after the day on which the planning authority decides whether or not to adopt the amendment;

(ii) the day that is 10 business days after the day the planning authority received the panel's report; and

(b) ending on the day that is 2 months after the day on which either of the following occurs—

(i) the amendment comes into operation;

(ii) the amendment lapses.

S. 27 amended by No. 86/1989 s. 9(a).

27 Planning authority to consider panel's report

(1) The planning authority must consider the panel's report before deciding whether or not to adopt the amendment.

S. 27(2) inserted by No. 86/1989 s. 9(b).

(2) A planning authority may apply to the Minister to exempt it from subsection (1) if the planning authority has not received the panel's report at the end of—

(a) 6 months from the panel's appointment; or

(b) 3 months from the date on which the panel completed its hearing—

whichever is earlier.

(3) The Minister may exempt a planning authority from subsection (1) if the Minister considers that delay in considering whether or not to adopt the amendment would adversely affect the planning of the area, and may impose conditions to which the exemption is subject.

S. 27(3) inserted by No. 86/1989 s. 9(b).

28 Abandonment of amendment

(1) The planning authority must tell the Minister in writing if it decides to abandon an amendment or part of an amendment.

S. 28(1) amended by No. 12/2021 s. 68 (ILA s. 39B(1)).

(2) Within 10 business days after the day on which the planning authority tells the Minister about its decision under subsection (1), the planning authority must publish a notice of the decision on its Internet site.

S. 28(2) inserted by No. 12/2021 s. 68.

(3) A notice under subsection (2) must include—

(a) a statement of reasons for the decision; and

(b) any other prescribed matter.

S. 28(3) inserted by No. 12/2021 s. 68.

(4) A notice published under subsection (2) must be available on the planning authority's Internet site for a period of at least 2 months.

S. 28(4) inserted by No. 12/2021 s. 68.

Division 3—Adoption and approval of amendment

29 Adoption of amendment

(1) After complying with Divisions 1 and 2 in respect of an amendment or any part of it, the planning authority may adopt the amendment or that part with or without changes.

(2) If a planning authority adopts a part of an amendment that part becomes a separate amendment.

Note to s. 29 inserted by No. 7/2018 s. 9.

Note

Under section 46GU, the planning authority must not adopt an amendment to incorporate an infrastructure contributions plan into a planning scheme in certain circumstances.

30 When does an amendment lapse?

(1) An amendment or part of an amendment lapses—

(a) at the end of two years after the date of publication of the notice in the Government Gazette under section 19(3) unless—

(i) the planning authority adopts it within that period; or

(ii) the Minister allows a longer period for the adoption of the amendment; or

(b) at the end of any period which the Minister allows unless the planning authority adopts it within that period; or

(c) when the planning authority notifies the Minister in writing that it has abandoned the amendment or part; or

S. 30(1)(d) amended by No. 43/2003 s. 4(1).

(d) when the Minister refuses to approve it under this Act.

Note to s. 30(1) inserted by No. 43/2003 s. 4(2).

Note

An amendment may also lapse under Part 3AA.

(2) When an amendment has lapsed under subsection (1)(b), (c) or (d), the Minister must publish a notice in the Government Gazette setting out the date on which the amendment or part lapsed.

(3) The publication of the notice under subsection (2) is conclusive proof of the date that the amendment lapsed.

(4) If any person asks the Minister or a planning authority a question as to whether an amendment or part of an amendment has lapsed under subsection (1)(a), the Minister or planning authority must, without delay—

(a) tell the person—

(i) whether or not the amendment or part has lapsed; and

(ii) if relevant, of any longer period allowed under subsection (1)(a)(ii); and

(b) confirm the information in writing if so requested.

31 Planning authority to submit amendment to Minister

S. 31 amended by No. 128/1993 s. 8(a).

(1) A planning authority other than the Minister must submit an adopted amendment to the Minister together with the prescribed information.

S. 31(2) inserted by No. 128/1993 s. 8(b).

(2) If a planning authority did not give notice of the amendment under section 19(1)(b) for the reasons set out in section 19(1A), the planning authority must inform the Minister of this when submitting the adopted amendment under subsection (1) and give the Minister details of the steps taken under section 19(1B) in respect of the amendment.

* * * * *

S. 31(3) inserted by No. 81/2004 s. 8, repealed by No. 3/2013 s. 70(1).

32 More notice

(1) The Minister may direct the planning authority to give more notice of the amendment if the Minister thinks that the notice which the planning authority gave was inadequate, even if the planning authority has complied with section 19.

(2) The planning authority must give the notice of the amendment required by the Minister and comply again with sections 21 to 31 in relation to all matters after the giving of notice.

33 Notice of changes

(1) The Minister may direct the planning authority to give notice of any changes to the amendment which—

(a) the planning authority has made under section 29; or

(b) the Minister proposes to make.

(2) The direction may specify the manner and form in which the notice is to be given.

34 Submissions

(1) The Minister may allow any person affected by a change to an amendment to make a submission to the Minister on the change.

(2) The Minister may refer any submissions to a panel appointed under Part 8.

(3) The panel must consider the submissions and give any person who made a submission referred to it a reasonable opportunity to be heard.

(4) The panel may give any other person affected a reasonable opportunity to be heard.

(5) The panel must report its findings to the Minister setting out the panel's recommendations on the changes.

34A Amendments affecting land to which Suburban Rail Loop planning area declarations apply

S. 134A inserted by No. 43/2021 s. 124.

(1) This section applies if a planning authority other than the Minister submits an adopted amendment to the Minister under section 31 that—

(a) amends a provision of a planning scheme that applies to land to which a Suburban Rail Loop planning area declaration applies; or

(b) amends a planning scheme so that a provision of the planning scheme applies to land to which a Suburban Rail Loop planning area declaration applies.

(2) The Minister must refer to the Suburban Rail Loop Minister—

(a) the adopted amendment; and

(b) any findings reported to the Minister by a panel under section 34 on any changes to the adopted amendment.

(3) Within 28 days after receiving the adopted amendment (and any findings reported to the Minister by a panel under section 34 on any changes to the adopted amendment), the Suburban Rail Loop Minister must advise the Minister whether the Suburban Rail Loop Minister supports, or objects to, the adopted amendment, including the changes, if any.

(4) If the Suburban Rail Loop Minister objects to the adopted amendment, the Suburban Rail Loop Minister must set out the Suburban Rail Loop Minister's reasons for that objection in the advice.

(5) The Suburban Rail Loop Minister, in the Suburban Rail Loop Minister's advice to the Minister—

(a) may recommend changes to the adopted amendment whether or not the Suburban

Rail Loop Minister supports, or objects to, the adopted amendment; and

(b) if the Suburban Rail Loop Minister does so, must set out the reasons for the recommended changes.

S. 35 (Heading) inserted by No. 81/2004 s. 9.

35 Approval of amendment by Minister

S. 35(1) amended by No. 43/2021 s. 125(1).

(1) Subject to this section, the Minister may—

(a) approve an amendment or a part of an amendment prepared by the Minister or submitted to the Minister under section 31—

(i) with or without changes; and

(ii) subject to any conditions the Minister wishes to impose; or

S. 35(1)(b) amended by No. 128/1993 s. 9.

(b) refuse to approve the amendment or part of the amendment.

S. 35(1A) inserted by No. 43/2021 s. 125(2).

(1A) If the amendment or a part of an amendment applies to land to which a Suburban Rail Loop planning area declaration applies, the Minister must have regard to the advice of the Suburban Rail Loop Minister under section 34A in approving or refusing to approve the amendment or part of the amendment.

S. 35(1B) inserted by No. 43/2021 s. 125(2).

(1B) However, subsection (1A) does not apply if, before the Minister makes a decision on the amendment or part of an amendment, the Suburban Rail Loop planning area declaration ceases to apply to the land to which the amendment or part of an amendment applies.

(2) If the Minister approves only a part of an amendment that part becomes a separate amendment.

(3) The Minister may approve further parts of an amendment at any time.

(4) The Minister must not approve an amendment or part without the consent of—

(a) a Minister prescribed under section 19, if that Minister so requires for a prescribed reason; or

(b) the Minister administering the **Road Management Act 2004**, if the amendment or part provides for the closure of a freeway or an arterial road within the meaning of that Act.

S. 35(4)(b) amended by No. 12/2004 s. 166(a)(b).

* * * * *

Ss 35A, 35B inserted by No. 81/2004 s. 10, repealed by No. 3/2013 s. 70(1).

36 Notice of approval

(1) The Minister must publish notice of the approval of an amendment in the Government Gazette—

S. 36(1) substituted by No. 12/2021 s. 20.

(a) if the Minister intends to make a copy of the approved amendment available in person in accordance with the requirements set out in section 197B, specifying the places at which any person may inspect a copy of the approved amendment; or

(b) if the Minister intends to make a copy of the approved amendment available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the approved amendment will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the approved amendment.

(2) The planning authority must give notice of the approval of the amendment in a manner satisfactory to the Minister.

37 Commencement of amendment

An amendment comes into operation—

(a) when the notice of approval of the amendment is published in the Government Gazette; or

(b) on any later day or days specified in the notice.

38 Parliament may revoke an amendment

(1) The Minister must cause a notice in the prescribed form of the approval of every amendment to be laid before each House of the Parliament within 10 sitting days after it is approved.

S. 38(1AAA) inserted by No. 3/2013 s. 45(1).

(1AAA) A notice under subsection (1) must state whether the Minister prepared the amendment under section 20A.

S. 38(1AA) inserted by No. 81/2004 s. 11, repealed by No. 3/2013 s. 70(1).

* * * * *

S. 38(1A) inserted by No. 128/1993 s. 10.

(1A) A notice under subsection (1) must state whether the Minister has exempted the planning authority or himself or herself from any of the requirements of section 17, 18 or 19 or the regulations.

(1B) If an exemption referred to in subsection (1A) has been given, the notice must—

S. 38(1B) inserted by No. 128/1993 s. 10, amended by No. 3/2013 s. 45(2).

(a) state the nature of the exemption; and

(b) state the notice, if any, given of the amendment; and

(c) state whether the Minister consulted the responsible authority before giving the exemption; and

(d) if the responsible authority was consulted, include a summary of the authority's recommendations (if any) in relation to the exemption.

(2) An amendment may be revoked wholly or in part by a resolution passed by either House of the Parliament within 10 sitting days after the notice of approval of the amendment is laid before that House.

(3) If an amendment is revoked—

(a) any provision of a planning scheme that had been revoked by the amendment comes back into operation from the beginning of the day on which the amendment was revoked; and

(b) any provision of a planning scheme that had been directly amended by the amendment takes effect without that direct amendment from the beginning of the day on which the amendment was revoked as if the revoked amendment had not been made.

(4) The Minister must publish a notice of the revocation of an amendment or part of an amendment in the Government Gazette.

(5) The planning authority must give notice of the revocation of an amendment or part of an amendment in a manner satisfactory to the Minister.

S. 38(6) inserted by No. 43/2021 s. 126.

(6) Subsections (2) to (4) do not apply to an amendment to a planning scheme prepared by the Suburban Rail Loop Authority that applies to land to which a Suburban Rail Loop planning area declaration applies.

S. 39 substituted by No. 86/1989 s. 10.

39 Defects in procedure

S. 39(1) amended by No. 52/1998 s. 191(2)(a)(i).

(1) A person who is substantially or materially affected by a failure of the Minister, a planning authority or a panel to comply with Division 1 or 2 or this Division or Part 8 in relation to an amendment which has not been approved may, not later than one month after becoming aware of the failure refer the matter to the Tribunal for its determination.

S. 39(2) amended by No. 52/1998 s. 191(2)(a)(i) (ii).

(2) In addition to any other party to the proceeding the parties to a proceeding before the Tribunal under this section are—

(a) the person who referred the matter to the Tribunal; and

(b) the Minister; and

(c) the planning authority.

(3) If a matter referred to the Tribunal under this section involves a failure by a panel to comply with Division 2 or this Division or Part 8 the panel (or a member of the panel authorised by the panel to act on its behalf) is entitled to make a written or oral submission to the Tribunal before the Tribunal completes the hearing of the matter.

S. 39(4) amended by No. 52/1998 s. 191(2)(a)(i).

(4) The Tribunal may determine a matter referred to it under this section and may do any one or more of the following—

(a) make any declaration that it considers appropriate;

(b) direct that—

(i) the planning authority must not adopt the amendment or a specified part of the amendment; or

S. 39(4)(b)(i) amended by Nos 81/2004 s. 12, 3/2013 s. 70(2).

(ii) the Minister must not approve the amendment or a specified part of the amendment—

unless the Minister, planning authority or a panel takes action specified by the Tribunal.

(5) In exercising its jurisdiction under this section the Tribunal cannot vary a decision made in relation to a matter referred to it or set aside that decision and make a decision in substitution for the decision so set aside.

* * * * *

S. 39(6) repealed by No. 52/1998 s. 191(2)(a)(iii).

(7) An amendment which has been approved is not made invalid by any failure to comply with Division 1 or 2 or this Division or Part 8.

(8) Except for an application under this section, a person cannot bring an action in respect of a failure to comply with Division 1 or 2 or this Division or Part 8 in relation to an amendment which has not been approved.

(9) This section does not apply to a planning scheme prepared by the Suburban Rail Loop Authority that applies to land to which a Suburban Rail Loop planning area declaration applies.

S. 39(9) inserted by No. 43/2021 s. 127.

Division 4—Availability of approved amendments and schemes

40 Lodging of approved amendment

S. 40(1) amended by Nos 86/1989 s. 25(i)(i)(ii), 128/1993 s. 11(1), 35/1995 s. 4(g), substituted by No. 81/2004 s. 13(1).

(1) If the Minister approves an amendment to a planning scheme under section 35, the Minister, or if the Minister directs, the planning authority, must lodge the prescribed documents and a copy of the approved amendment with the relevant authorities.

S. 40(1A) inserted by No. 81/2004 s. 13(1), repealed by No. 3/2013 s. 70(1).

* * * * *

(2) The amendment must be lodged before notice of approval of the amendment is published in the Government Gazette.

S. 40(3) inserted by No. 81/2004 s. 13(2).

(3) In this section the relevant authorities are—

(a) the responsible authority; and

(b) the municipal council if the planning scheme applies to its municipal district and it is not the responsible authority; and

(c) any other person or persons whom the Minister specifies generally for the planning scheme or for the particular amendment.

41 Who must keep a copy of an approved amendment for inspection?

S. 41 amended by No. 128/1993 s. 11(2), substituted by No. 12/2021 s. 21.

(1) During the inspection period, each relevant person must make a copy of an approved amendment to a planning scheme, and any documents lodged with it, available in accordance with the public availability requirements.

(2) After the inspection period ends, each relevant person must make the copy of the approved amendment and any documents lodged with it available—

(a) in person in accordance with the requirements set out in section 197B; and

(b) on payment of the prescribed fee.

(3) In this section—

inspection period means the period of 2 months beginning on the day on which the amendment comes into operation;

relevant person means the following persons—

(a) the Minister;

(b) a responsible authority;

(c) a planning authority;

(d) any person with whom a copy of an approved amendment is lodged under section 40.

42 Who must keep a copy of a planning scheme?

S. 42 amended by Nos 128/1993 s. 11(3)(a)(b), 81/2004 s. 14, substituted by No. 12/2021 s. 22.

(1) Each relevant person must keep a copy of the planning scheme incorporating all amendments to it and all documents lodged with those amendments under section 40.

(2) Each relevant person must make a copy of the planning scheme incorporating all amendments to it, and all documents lodged with those amendments under section 40, available in accordance with the public availability requirements.

(3) In this section—

relevant person means the following persons—

(a) the Minister;

(b) the responsible authority;

(c) the municipal council, if it is not the responsible authority.

Division 5—Special provisions

43 Roads on Crown land

(1) Any unalienated Crown land forming the whole or part of a road which is closed by an amendment to a planning scheme vests in the Minister administering the **Land Act 1958** upon the publication of the notice of approval of the amendment in the Government Gazette if it is not already vested in that Minister.

(2) The Minister administering the **Land Act 1958** may alienate any land vested in the Minister under subsection (1) by public auction, private agreement or otherwise and subject to any terms and conditions the Minister thinks fit.

44 Roads on land other than Crown land

(1) Any land in a road which is closed by an amendment to a planning scheme vests in—

(a) the municipal council in whose municipal district the land is situated; or

(b) the Minister, if the land is not in a municipal district; or

S. 44(1)(c) amended by No. 12/2004 s. 166(a).

(c) the Minister administering the **Road Management Act 2004** despite anything to the contrary in paragraph (a) or (b), if the road was—

S. 44(1)(c)(i) amended by No. 12/2004 s. 166(b).

(i) a freeway or an arterial road within the meaning of that Act; or

(ii) vested in the Head, Transport for Victoria—

S. 44(1)(c)(ii) amended by Nos 44/1989 s. 41(Sch. 2 item 31), 49/2019 s 186(Sch. 4 item 33.2).

upon the publication of the notice of approval of the amendment in the Government Gazette unless the land is Crown land.

(2) The publication of the notice brings the land under the operation of the **Transfer of Land Act 1958** if it is not already under that Act.

(3) Any person in whom land is vested under subsection (1) may lease, sell or otherwise dispose of the land by public auction, private agreement or otherwise, subject to any terms and conditions the person thinks fit.

(4) If—

S. 44(4) amended by No. 18/1989 s. 13(Sch. 2 item 63(a)).

(a) a Minister or a council transfers land to any other person under subsection (3); and

(b) the instrument of transfer is lodged with the Registrar of Titles together with a copy from the Government Gazette of the notice of approval of the amendment to the planning scheme—

the Registrar of Titles must make any recordings in the Register that are necessary to give effect to the transfer, without the production of any other document.

(5) If a Minister or a council decides to keep the land in the road for any purpose, section 54 of the **Transfer of Land Act 1958** applies as if the Minister or the council had acquired the land compulsorily.

45 Effect on easements for public utilities

Unless the planning scheme provides otherwise, any right, power or interest which a municipal council or a public authority had in the road in connection with any drains, pipes, wires or cables laid or erected in, on or over the road—

(a) is not affected by the closure of the road by an amendment to a planning scheme; and

(b) continues in the land after it vests in any person or is sold under this Division; and

(c) may be noted by the Registrar of Titles as an encumbrance on every certificate of title issued as a result of this Division.

S. 46 substituted by No. 8/1995 s. 43.

46 Planning schemes may apply to reserved land

(1) Without limiting the operation of section 6, a planning scheme may regulate or prohibit the use or development of land which is permanently or temporarily reserved for any purpose under the **Crown Land (Reserves) Act 1978**.

(2) If a provision of a planning scheme is expressed or purports to deal with land that has been permanently reserved for any purpose under the **Crown Land (Reserves) Act 1978** or any part of that land in a manner which is inconsistent with the purpose of the reservation, the provision does not take effect until the reservation of that land or part is revoked by or pursuant to an Act of Parliament.

Part 3AAA—Yarra River land protection

Pt 3AAA (Headings and ss 46AAA–46AAI) inserted by No. 49/2017 s. 63.

Division 1—Compliance with Yarra Strategic Plan

46AAA Responsible public entities to comply with Yarra Strategic Plan

S. 46AAA inserted by No. 49/2017 s. 63.

A responsible public entity which is a planning authority must not prepare an amendment to a planning scheme that relates to Yarra River land that is inconsistent with anything in a Yarra Strategic Plan expressed to be binding on the responsible public entity.

Division 2—Ratification by Parliament for amendments to planning schemes

46AAB To which amendments does this Division apply?

S. 46AAB inserted by No. 49/2017 s. 63.

(1) This Division applies to an amendment to a planning scheme that—

(a) has been approved by the Minister under section 35 in relation to the use of land that is part of the Greater Yarra Urban Parklands; and

(b) removes, changes or replaces a zone under that planning scheme applying to that land so that the land may be used in a way that is inconsistent with a Yarra Strategic Plan.

(2) This Division does not apply to an amendment to a planning scheme if the amendment was approved by the Minister before the commencement of this section.

S. 46AAC inserted by No. 49/2017 s. 63.

46AAC Ratification by Parliament required for amendments to which this Division applies

(1) An amendment to which this Division applies does not take effect unless ratified by each House of the Parliament in accordance with this Division.

(2) Sections 36, 37 and 38 do not apply to an amendment to which this Division applies.

S. 46AAD inserted by No. 49/2017 s. 63.

46AAD Procedure for ratification

(1) The Minister must cause an amendment to which this Division applies to be laid before each House of the Parliament within 7 sitting days of that House after it is approved.

(2) If a permit has been granted under section 96I in respect of an amendment to which this Division applies, the Minister must cause a notice specifying that the permit has been granted to be laid before each House of the Parliament at the same time that the amendment is laid before that House under subsection (1).

(3) An amendment to which this Division applies does not take effect unless it is ratified by a resolution passed by each House of the Parliament within 10 sitting days after it is laid before that House.

S. 46AAE inserted by No. 49/2017 s. 63.

46AAE Notice of ratification

The Minister must publish a notice of the ratification under section 46AAD of an amendment in the Government Gazette specifying the place or places at which any person may inspect the amendment.

46AAF When does a ratified amendment commence?

S. 46AAF inserted by No. 49/2017 s. 63.

An amendment that has been ratified under this Division comes into operation—

(a) when the notice of ratification of the amendment is published in the Government Gazette; or

(b) on any later day or days specified in the notice.

46AAG When does an amendment lapse?

S. 46AAG inserted by No. 49/2017 s. 63.

(1) An amendment to which this Division applies that has not been ratified in accordance with section 46AAD lapses on the day immediately after the last day on which it could have been so ratified.

(2) When an amendment has lapsed under subsection (1), the Minister must publish a notice in the Government Gazette setting out the date on which the amendment lapsed.

(3) The publication of the notice under subsection (2) is conclusive proof of the date that the amendment lapsed.

46AAH Application of sections 40, 41 and 42

S. 46AAH inserted by No. 49/2017 s. 63.

Sections 40, 41 and 42 do not apply to an amendment to which this Division applies unless and until the amendment is ratified under this Division.

46AAI Application of Division 5 of Part 4

S. 46AAI inserted by No. 49/2017 s. 63.

If a permit has been granted under Division 5 of Part 4 and the amendment to which the permit applies is an amendment to which this Division applies—

(a) if the amendment lapses under section 46AAG(1), the permit is taken to be cancelled on that lapsing; and

(b) if the amendment is ratified under this Division, the notice under section 46AAE of ratification must also specify the places at which any person may inspect the permit.

Part 3AA—Metropolitan green wedge protection

Pt 3AA (Headings and ss 46AA–46AM inserted by No. 43/2003 s. 3.

Division 1—Introductory

46AA What is a metropolitan fringe planning scheme?

S. 46AA inserted by No. 43/2003 s. 3.

For the purposes of this Part, a metropolitan fringe planning scheme is a planning scheme applying to the municipal district of any of the following municipal councils—

(a) Brimbank City Council;

(b) Cardinia Shire Council;

(c) Casey City Council;

(d) Frankston City Council;

(e) Greater Dandenong City Council;

(f) Hobsons Bay City Council;

(g) Hume City Council;

(h) Kingston City Council;

(i) Knox City Council;

(j) Manningham City Council;

(k) Maroondah City Council;

(l) Melton City Council;

S. 46AA(l) amended by No. 21/2013 s. 19.

(m) Mornington Peninsula Shire Council;

(n) Nillumbik Shire Council;

(o) Whittlesea City Council;

(p) Wyndham City Council;

(q) Yarra Ranges Shire Council.

* * * * *

S. 46AB inserted by No. 43/2003 s. 3, repealed by No. 23/2010 s. 4.

S. 46AC inserted by No. 43/2003 s. 3.

46AC What is green wedge land?

For the purposes of this Part, green wedge land is land that is described in a metropolitan fringe planning scheme as being outside an urban growth boundary.

Pt 3AA Div. 2 (Heading and ss 46AD, 46AE) inserted by No. 43/2003 s. 3, repealed by No. 81/2004 s. 15.

* * * * *

Division 3—Ratification by Parliament for amendments to planning schemes

S. 46AF inserted by No. 43/2003 s. 3.

46AF To which amendments does this Division apply?

(1) This Division applies to an amendment to a metropolitan fringe planning scheme that has been approved by the Minister under section 35 and—

(a) that amends or inserts an urban growth boundary; or

S. 46AF(1)(b) substituted by No. 12/2021 s. 69.

(b) that, on its commencement, will have the effect of allowing green wedge land to be subdivided into more lots or into smaller lots than would have been allowed under the planning scheme as it was in force immediately before that commencement.

(2) This Division does not apply to an amendment to a metropolitan fringe planning scheme if the amendment was approved by the Minister before the commencement of the **Planning and Environment (Metropolitan Green Wedge Protection) Act 2003**.

46AG Ratification by Parliament required for amendments to which this Division applies

S. 46AG inserted by No. 43/2003 s. 3.

(1) An amendment to which this Division applies does not take effect unless ratified by Parliament in accordance with this Division.

(2) Sections 36, 37 and 38 do not apply to an amendment to which this Division applies.

46AH Procedure for ratification

S. 46AH inserted by No. 43/2003 s. 3.

(1) The Minister must cause an amendment to which this Division applies to be laid before each House of Parliament within 7 sitting days of that House after it is approved.

(2) If a permit has been granted under section 96I in respect of an amendment to which this Division applies, the Minister must cause a notice specifying that the permit has been granted to be laid before each House of Parliament at the same time that the amendment is laid before that House under subsection (1).

(3) An amendment to which this Division applies does not take effect unless it is ratified by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.

S. 46AI inserted by No. 43/2003 s. 3, substituted by No. 12/2021 s. 23.

46AI Notice of ratification

The Minister must publish notice of the ratification under section 46AG of an amendment in the Government Gazette—

(a) if the Minister intends to make a copy of the amendment available in person in accordance with the requirements set out in section 197B, specifying the places at which any person may inspect a copy of the amendment; or

(b) if the Minister intends to make a copy of the amendment available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the amendment will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the amendment.

S. 46AJ inserted by No. 43/2003 s. 3.

46AJ When does a ratified amendment commence?

An amendment that has been ratified under this Division comes into operation—

(a) when the notice of ratification of the amendment is published in the Government Gazette; or

(b) on any later day or days specified in the notice.

S. 46AK inserted by No. 43/2003 s. 3.

46AK When does an amendment lapse?

(1) An amendment to which this Division applies that has not been ratified in accordance with section 46AH lapses on the day immediately after

the last day on which it could have been so ratified.

(2) When an amendment has lapsed under subsection (1) the Minister must publish a notice in the Government Gazette setting out the date on which the amendment lapsed.

(3) The publication of the notice under subsection (2) is conclusive proof of the date that the amendment lapsed.

46AL Application of sections 40, 41 and 42

S. 46AL inserted by No. 43/2003 s. 3.

Sections 40, 41 and 42 do not apply to an amendment to which this Division applies unless and until the amendment is ratified under this Division.

46AM Application of Division 5 of Part 4

S. 46AM inserted by No. 43/2003 s. 3.

If a permit has been granted under Division 5 of Part 4 and the amendment to which the permit applies is an amendment to which this Division applies—

(a) if the amendment lapses under section 46AK(1), the permit is deemed to be cancelled on that lapsing;

(b) if the amendment is ratified under this Division, the notice under section 46AI must also— S. 46AM(b) substituted by No. 12/2021 s. 24.

(i) if the responsible authority intends to make a copy of the permit available in person in accordance with the requirements set out in section 197B, specify the places at which any person may inspect a copy of the permit; or

(ii) if the responsible authority intends to make a copy of the permit available electronically and on request in accordance with the requirements set

out in sections 197C and 197D, specify—

(A) the address of the responsible authority's Internet site at which a copy of the permit will be published; and

(B) the responsible authority's contact details for making a request to inspect a copy of the permit.

Note

The responsible authority must make a copy of the permit available in accordance with the public availability requirements—see section 70.

Part 3AAB—Distinctive areas and landscapes

Pt 3AAB (Headings and ss 46AN–46AZF) inserted by No. 33/2006 s. 5, amended by Nos 6/2010 s. 25(5)(Sch. 2 item 10.2) (as amended by No. 45/2010 s. 6), 23/2010 ss 5, 6, 21/2013 ss 3–6, repealed by No. 11/2017 s. 56, new Pt 3AAB (Headings and ss 46AN–46AZM) inserted by No. 17/2018 s. 4.

Division 1—Objects

46AN Objects

New s. 46AN inserted by No. 17/2018 s. 4.

The objects of this Part are—

(a) to recognise the importance of distinctive areas and landscapes to the people of Victoria and to protect and conserve the unique features and special characteristics of those areas and landscapes; and

(b) to enhance the conservation of the environment in declared areas including the unique habitats, ecosystems and biodiversity of declared areas; and

(c) to enable the integration of policy development, implementation and decision-making for declared areas under Statements of Planning Policy; and

(d) to recognise the connection and stewardship of traditional owners in relation to land in declared areas.

Division 2—Declaration of distinctive areas and landscapes

New s. 46AO inserted by No. 17/2018 s. 4.

46AO Governor in Council may declare area to be a distinctive area and landscape

(1) The Governor in Council, on the recommendation of the Minister, may declare an area of Victoria to be a distinctive area and landscape by order published in the Government Gazette.

(2) An order under subsection (1)—

(a) must include a description of the area declared, which may be by reference to an incorporated plan; and

(b) must specify the attributes under section 46AP(1) that qualify the area as a distinctive area and landscape; and

(c) must identify the relevant threat of significant or irreversible land use change to the area, as described in section 46AP(2); and

(d) may include a preamble setting out any of the following—

(i) the significance of the area to the people of Victoria;

(ii) statements recognising the significance of the area to traditional owners, including statements in traditional languages together with their English translations.

(3) Before making a recommendation under subsection (1), the Minister—

(a) must be satisfied that the area meets the requirements set out in section 46AP(1) and (2); and

(b) must consult the Premier and the Treasurer.

(4) An order under subsection (1) takes effect on the date of publication of the order in the Government Gazette or on a later date specified in the order.

46AP Requirements for area to be declared as a distinctive area and landscape

New s. 46AP inserted by No. 17/2018 s. 4.

(1) The Minister must be satisfied that an area has a majority of the following attributes in order to recommend that the area be declared as a distinctive area and landscape—

(a) outstanding environmental significance;

(b) significant geographical features, including natural landforms;

(c) heritage and cultural significance;

(d) natural resources or productive land of significance;

(e) strategic infrastructure or built form of significance;

(f) an attribute prescribed for the purposes of this section.

(2) The Minister must be satisfied that an area is under threat of significant or irreversible land use change that would affect the environmental, social or economic value of the area in order to recommend that the area be declared as a distinctive area and landscape, whether that threat arises from—

(a) land use conflicts; or

(b) multiple land use changes over time; or

(c) any other land use threat prescribed for the purposes of this section.

New s. 46AQ inserted by No. 17/2018 s. 4.

46AQ Governor in Council may revoke declaration

(1) The Governor in Council, on the recommendation of the Minister, may revoke a declaration under section 46AO by order published in the Government Gazette.

(2) A revocation order must include a statement that it does not take effect unless ratified by Parliament in accordance with this Division.

(3) The Minister must consult the Premier and the Treasurer before making a recommendation under subsection (1).

New s. 46AR inserted by No. 17/2018 s. 4.

46AR Procedure for ratification of revocation order

(1) The Minister must cause a revocation order to be laid before each House of Parliament within 7 sitting days of that House after the publication of the order.

(2) A revocation order does not take effect unless it is ratified by a resolution passed by each House of Parliament within 10 sitting days after the revocation order is laid before that House.

(3) The Minister must publish a notice of the ratification of a revocation order in the Government Gazette.

(4) A revocation order that has been ratified under this section comes into effect—

(a) when the notice of ratification is published in the Government Gazette; or

(b) on any later day specified in the notice of ratification.

46AS When does a revocation order lapse?

New s. 46AS inserted by No. 17/2018 s. 4.

(1) A revocation order that has not been ratified in accordance with section 46AR lapses on the day immediately after the last day on which it could have been so ratified.

(2) When a revocation order has lapsed under subsection (1), the Minister must publish a notice in the Government Gazette setting out the date on which the order lapsed.

(3) The publication of the notice under subsection (2) is conclusive proof of the date that the revocation order lapsed.

Division 3—Statements of Planning Policy for distinctive areas and landscapes

Subdivision 1—Preparation and approval of Statement of Planning Policy

46AT Minister to develop Statement of Planning Policy for declared area

New s. 46AT inserted by No. 17/2018 s. 4.

(1) The Minister must prepare a Statement of Planning Policy for a declared area.

(2) The declaration of the declared area lapses if the Statement of Planning Policy is not endorsed in accordance with section 46AX and approved in accordance with section 46AY within—

(a) one year after the declaration of the area under section 46AO takes effect; or

(b) a period approved by the Governor in Council under subsection (3).

(3) Before the end of the period specified in subsection (2)(a), the Governor in Council, by order published in the Government Gazette, may approve a period not exceeding 2 years after the declaration of the area under section 46AO takes effect for the preparation, endorsement and approval of the Statement of Planning Policy for the declared area.

New s. 46AU inserted by No. 17/2018 s. 4.

46AU Purpose of Statement of Planning Policy

The purpose of a Statement of Planning Policy for a declared area is to create a framework for the future use and development of land in the declared area to ensure the protection and conservation of the distinctive attributes of the declared area.

New s. 46AV inserted by No. 17/2018 s. 4.

46AV Contents of Statement of Planning Policy

(1) The Statement of Planning Policy for a declared area must—

(a) set a vision for a period of at least 50 years that identifies the values, priorities and preferences of the Victorian community in relation to the distinctive attributes of the declared area, including preferences for future land use, protection and development; and

(b) set out the long-term needs for the integration of decision-making and planning for the declared area; and

(c) state the parts of the Statement that are binding on responsible public entities and the parts that are in the nature of recommendations to which responsible public entities are only required to have regard; and

(d) include a declared area framework plan in accordance with subsection (2); and

(e) set out Aboriginal tangible and intangible cultural values, and other cultural and heritage values, in relation to the declared area.

(2) The declared area framework plan must provide a framework for decision-making in relation to the future use and development of land in the declared area that—

(a) integrates environmental, social, cultural and economic factors for the benefit of the community and encourages sustainable development and identifies areas for protection and conservation of the distinctive attributes of the declared area; and

(b) may specify settlement boundaries in the declared area or designate specific settlement boundaries in the declared area as protected settlement boundaries.

46AW Consultation

New s. 46AW inserted by No. 17/2018 s. 4.

The Minister must consult the following when preparing a Statement of Planning Policy for a declared area—

(a) each responsible public entity for the area;

(b) the local community;

(c) any other person or entity that the Minister considers may be affected by the Statement of Planning Policy.

46AX Endorsement of Statement of Planning Policy

New s. 46AX inserted by No. 17/2018 s. 4.

(1) The Minister must give a copy of the draft Statement of Planning Policy to each responsible public entity specified in the Statement for endorsement by the entity and the Minister responsible for that entity.

(2) The Minister responsible for a responsible public entity may give a written direction to the entity in relation to the endorsement of the draft Statement of Planning Policy.

New s. 46AY inserted by No. 17/2018 s. 4.

46AY Approval of Statement of Planning Policy

(1) The Governor in Council may approve a Statement of Planning Policy that has been endorsed in accordance with section 46AX.

S. 46AY(2) substituted by No. 12/2021 s. 25.

(2) The Minister must publish a notice of an approval under subsection (1) in the Government Gazette—

(a) if the Minister intends to make a copy of the Statement available in person in accordance with the requirements set out in section 197B, specifying a place at which any person may inspect a copy of the Statement; or

(b) if the Minister intends to make a copy of the Statement available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the Statement will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the Statement.

Note

A Statement of Planning Policy is taken to form part of the State standard provisions of the Victoria Planning Provisions—see section 46AZ(2). The Minister must make a copy of the Victoria Planning Provisions incorporating all amendments to them, and all documents lodged with those amendments, available in accordance with the public availability requirements—see section 4I.

46AZ Commencement of Statement of Planning Policy

New s. 46AZ inserted by No. 17/2018 s. 4.

(1) A Statement of Planning Policy takes effect—

(a) on the day the notice of approval is published in the Government Gazette; or

(b) on a later day specified in the notice.

(2) A Statement of Planning Policy is taken to form part of the State standard provisions of the Victoria Planning Provisions on the commencement of the Statement of Planning Policy.

46AZA Amendment of Statement of Planning Policy

New s. 46AZA inserted by No. 17/2018 s. 4.

(1) The Minister may prepare an amendment to a Statement of Planning Policy.

(2) Sections 46AV to 46AZ apply to an amendment to a Statement of Planning Policy as if a reference in those sections to a Statement of Planning Policy were a reference to an amendment to a Statement of Planning Policy.

(3) The Governor in Council, on the recommendation of the Minister, may make a minor or technical correction to a Statement of Planning Policy by order published in the Government Gazette.

Subdivision 2—Amendment of declared area planning scheme

46AZB Amendment of declared area planning scheme to give effect to Statement of Planning Policy

New s. 46AZB inserted by No. 17/2018 s. 4.

(1) The Minister must prepare an amendment to a declared area planning scheme to give effect to—

(a) a Statement of Planning Policy that has been approved under section 46AY; and

(b) an amendment to a Statement of Planning Policy that has been prepared under section 46AZA(1) and approved under section 46AY.

(2) Part 3 (except Divisions 1 and 2 and sections 39(1), 39(2), 39(3), 39(4) and 39(5)) applies to the preparation and approval of an amendment to a declared area planning scheme under this section.

New s. 46AZC inserted by No. 17/2018 s. 4.

46AZC Amendment of declared area planning scheme

(1) The Minister must not approve an amendment to a declared area planning scheme if the amendment is inconsistent with a Statement of Planning Policy for that declared area.

(2) A responsible public entity which is a planning authority must not prepare an amendment to a declared area planning scheme that is inconsistent with a Statement of Planning Policy for the declared area that is expressed to be binding on the responsible public entity.

Subdivision 3—Protected settlement boundary amendments

New s. 46AZD inserted by No. 17/2018 s. 4.

46AZD Protected settlement boundary amendment

(1) Sections 36, 37 and 38 do not apply to an amendment to a declared area planning scheme—

(a) that is approved after a Statement of Planning Policy has been approved in relation to that area; and

(b) that is or includes a protected settlement boundary amendment.

(2) A protected settlement boundary amendment does not take effect unless ratified by Parliament in accordance with this Subdivision.

46AZE Procedure for ratification of protected settlement boundary amendment

New s. 46AZE inserted by No. 17/2018 s. 4.

(1) The Minister must cause a protected settlement boundary amendment to be laid before each House of Parliament within 7 sitting days of that House after it is approved.

(2) If a permit has been granted under section 96I in respect of a protected settlement boundary amendment, the Minister must cause a notice specifying that the permit has been granted to be laid before each House of Parliament at the same time that the protected settlement boundary amendment is laid before that House.

(3) A protected settlement boundary amendment does not take effect unless it is ratified by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.

S. 46AZE(4) substituted by No. 12/2021 s. 26.

(4) The Minister must publish a notice of the ratification of the protected settlement boundary amendment in the Government Gazette—

(a) if the Minister intends to make a copy of the amendment available in person in accordance with the requirements set out in section 197B, specifying a place at which any person may inspect a copy of the amendment; or

(b) if the Minister intends to make a copy of the amendment available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the amendment will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the amendment.

Note

Section 41(1) provides that the Minister must make a copy of an approved amendment to a planning scheme, and any documents lodged with it, available in accordance with the public availability requirements.

(5) A protected settlement boundary amendment that has been ratified comes into operation—

(a) when the notice of ratification of the amendment is published in the Government Gazette; or

(b) on any later day specified in the notice.

New s. 46AZF inserted by No. 17/2018 s. 4.

46AZF When does a protected settlement boundary amendment lapse?

(1) A protected settlement boundary amendment that has not been ratified lapses on the day immediately after the last day on which it could have been ratified.

(2) When a protected settlement boundary amendment has lapsed, the Minister must publish a notice in the Government Gazette setting out the date on which the amendment lapsed.

(3) The publication of the notice of lapsing is conclusive proof of the date that the amendment lapsed.

(4) An amendment to a Statement of Planning Policy that requires the preparation of the protected settlement boundary amendment lapses if that protected settlement boundary amendment has lapsed under subsection (1).

46AZG Application of Act provisions to protected settlement boundary amendment

S. 46AZG inserted by No. 17/2018 s. 4.

Sections 4G, 4H, 4I, 40, 41 and 42 (as the case requires) do not apply to a protected settlement boundary amendment unless and until the amendment is ratified.

46AZH Application of Division 5 of Part 4 to protected settlement boundary amendment

S. 46AZH inserted by No. 17/2018 s. 4.

If a permit has been granted under Division 5 of Part 4 and the planning scheme amendment to which the permit applies is a protected settlement boundary amendment—

(a) if the amendment lapses, the permit is taken to be cancelled on that lapsing; and

(b) if the amendment is ratified, the notice of ratification must also—

S. 46AZH(b) substituted by No. 12/2021 s. 27.

(i) if the responsible authority intends to make a copy of the permit available in person in accordance with the requirements set out in section 197B, specify the places at which any person may inspect a copy of the permit; or

(ii) if the responsible authority intends to make a copy of the permit available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specify—

(A) the address of the responsible authority's Internet site at which a copy of the permit will be published; and

(B) the responsible authority's contact details for making a request to inspect a copy of the permit.

Note

Section 96M provides that sections 68 to 76D apply to permits granted under Division 5 of Part 4.
Section 70 provides that a responsible authority must make a copy of every permit it issues available in accordance with the public availability requirements.

Subdivision 4—Review of Statement of Planning Policy

S. 46AZI inserted by No. 17/2018 s. 4.

46AZI Review of Statement of Planning Policy

(1) The Minister must ensure that a review of the Statement of Planning Policy for a declared area is completed no later than 10 years after the commencement of the Statement.

(2) After a review, the Minister may prepare—

(a) a new Statement of Planning Policy; or

(b) an amendment to the existing Statement of Planning Policy in accordance with section 46AZA(1).

(3) Sections 46AV to 46AZ apply with any necessary modifications to the preparation of a new Statement of Planning Policy.

Division 4—Interaction between specific legislation and Statement of Planning Policy

S. 46AZJ inserted by No. 17/2018 s. 4.

46AZJ Specific legislation

(1) If a Statement of Planning Policy applies to any land to which a management plan under the **Heritage Rivers Act 1992** applies, the Statement of Planning Policy must not be inconsistent with—

(a) that Act; or

(b) the management plan under that Act that applies to the land, unless the Minister administering that Act, after consulting the

Minister administering the Act under which that land is controlled or managed, gives a specific written endorsement to the planning Minister authorising the inconsistency.

(2) If a Statement of Planning Policy applies to any land in a park within the meaning of the **National Parks Act 1975**, the Statement of Planning Policy must not be inconsistent with—

(a) that Act; or

(b) any management plan under that Act unless the Minister administering that Act gives a specific written endorsement to the planning Minister authorising the inconsistency.

(3) If a Statement of Planning Policy applies to any land that is reserved under the **Crown Land (Reserves) Act 1978**, the Statement of Planning Policy must not be inconsistent with—

(a) that Act; or

(b) the purpose for which that land is reserved; or

(c) any relevant recommendation of the Land Conservation Council under section 5(1) of the **Land Conservation Act 1970** (as in force immediately before its repeal) applying to the land, of which notice has been given by the Governor in Council under section 10(3) of that Act (as so in force); or

(d) any Government response (or amended Government response) under section 25, 26 or 26G of the **Victorian Environmental Assessment Council Act 2001** to any report under section 23 or 26E of that Act applying to the land.

(4) If a Statement of Planning Policy applies to any land that is reserved under the **Crown Land (Reserves) Act 1978**, and that land is subject to additional management requirements as a State Wildlife Reserve or a Nature Reserve under the **Wildlife Act 1975**, the Statement of Planning Policy must not be inconsistent with—

(a) the **Wildlife Act 1975**; or

(b) any plan of management under the **Wildlife Act 1975** unless the Minister administering that Act gives a specific written endorsement to the planning Minister authorising the inconsistency.

(5) If a Statement of Planning Policy applies to any land in a waterway management district for which a regional waterway strategy has been prepared under section 190 of the **Water Act 1989**, the Statement of Planning Policy must not be inconsistent with—

(a) that Act; or

(b) that strategy unless the water Minister and the environment Minister (within the meaning of the **Water Act 1989**) jointly give a specific written endorsement to the planning Minister authorising the inconsistency.

(6) If a Statement of Planning Policy applies to any land which is the subject of a joint management plan under Part 8A of the **Conservation, Forests and Lands Act 1987**, the Statement of Planning Policy must not be inconsistent with—

(a) that Act; or

(b) that joint management plan unless the Minister responsible for Part 8A of that Act and the Traditional Owner Land Management Board in relation to the land

jointly give a specific written endorsement to the planning Minister authorising the inconsistency.

(7) Notice of any endorsement under this section must be published in the Government Gazette by the entity giving the endorsement.

(8) In this section—

planning Minister means the Minister administering this Act;

water Minister means the Minister administering the **Water Act 1989**.

Division 5—Duties of responsible public entities

46AZK Responsible public entities not to act inconsistently with Statement of Planning Policy

S. 46AZK inserted by No. 17/2018 s. 4.

A responsible public entity must not act inconsistently with any provision of the Statement of Planning Policy that is expressed to be binding on the public entity when performing a function or duty or exercising a power in relation to the declared area.

46AZL Principles

S. 46AZL inserted by No. 17/2018 s. 4.

If a responsible public entity develops or implements policies or programs or makes decisions in relation to a declared area, the responsible public entity should—

(a) consult with all levels of government and government agencies that are relevant to the decision; and

(b) use best practice measures to protect and conserve the unique features and special characteristics of the declared area; and

(c) undertake continuous improvement to enhance the conservation of the environment in declared areas; and

(d) have regard to the principles prescribed to apply—

(i) to all declared areas; and

(ii) in relation to a particular declared area.

Division 6—Transitional provision

S. 46AZM inserted by No. 17/2018 s. 4.

46AZM Transitional provision—Consultation in relation to Macedon Ranges Localised Planning Statement

(1) This section applies if the Macedon Ranges area is declared to be a distinctive area and landscape by the Governor in Council under section 46AO.

(2) The consultation conducted by the Minister before the commencement date in relation to the Macedon Ranges Localised Planning Statement is taken to satisfy the requirements of section 46AW for the purposes of a Statement of Planning Policy in relation to the Macedon Ranges area.

(3) In this section—

commencement date means the day on which the **Planning and Environment Amendment (Distinctive Areas and Landscapes) Act 2018** comes into operation;

Macedon Ranges area means the policy area identified in the Macedon Ranges Localised Planning Statement;

Macedon Ranges Localised Planning Statement means the draft statement prepared by the Department in partnership with the Macedon Ranges Shire Council and the Victorian Planning Authority.

Part 3AAC—Amendments in the Great Ocean Road region

Part 3AAC (Headings and ss 46AZN–46AZT) inserted by No. 19/2020 s. 76.

Division 1—Compliance with Great Ocean Road strategic framework plan

46AZN Responsible entities to comply with Great Ocean Road strategic framework plan

S. 46AZN inserted by No. 19/2020 s. 76.

(1) A responsible entity which is a planning authority must not prepare an amendment to a Great Ocean Road scenic landscapes area planning scheme that is inconsistent with anything in a Great Ocean Road strategic framework plan expressed to be binding on the responsible entity.

(2) A responsible entity which is a planning authority must have regard to an approved Great Ocean Road strategic framework plan when preparing an amendment to a planning scheme applying to land that is wholly or partially within the Great Ocean Road region.

(3) A responsible entity which is a planning authority must have regard to the Great Ocean Road coast and parks protection principles when preparing an amendment to a planning scheme applying to land that is wholly or partially within the Great Ocean Road coast and parks.

Division 2—Ratification by Parliament for amendments to Great Ocean Road scenic landscapes area planning scheme

46AZO To which amendments does this Division apply?

S. 46AZO inserted by No. 19/2020 s. 76.

(1) This Division applies to an amendment to a Great Ocean Road scenic landscapes area planning scheme that has been approved by the Minister under section 35 and—

(a) is inconsistent with the approved Great Ocean Road strategic framework plan; or

(b) includes a Great Ocean Road settlement boundary amendment; or

(c) has the effect of altering or removing any controls over the subdivision of land outside a Great Ocean Road settlement boundary to allow the land to be subdivided into more lots or smaller lots than provided for in the Great Ocean Road scenic landscapes area planning scheme.

(2) This Division does not apply to an amendment to a Great Ocean Road scenic landscapes area planning scheme if the amendment was approved by the Minister before the commencement of this section.

S. 46AZP inserted by No. 19/2020 s. 76.

46AZP Ratification by Parliament required for amendments to which this Division applies

(1) Sections 36, 37 and 38 do not apply to an amendment to which this Division applies.

(2) An amendment to which this Division applies does not take effect unless ratified by Parliament in accordance with this Part.

S. 46AZQ inserted by No. 19/2020 s. 76.

46AZQ Procedure for ratification of amendment

(1) The Minister must cause an amendment to which this Division applies to be laid before each House of Parliament within 7 sitting days of that House after it is approved.

(2) If a permit has been granted under section 96I in respect of an amendment to which this Division applies, the Minister must cause a notice specifying that the permit has been granted to be laid before each House of Parliament at the same time that the amendment to which this Division applies is laid before that House.

(3) An amendment to which this Division applies does not take effect unless it is ratified by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.

S. 46AZQ(4) substituted by No. 12/2021 s. 28.

(4) The Minister must publish a notice of the ratification of an amendment to which this Division applies in the Government Gazette—

(a) if the Minister intends to make a copy of the amendment available in person in accordance with the requirements set out in section 197B, specifying a place at which any person may inspect a copy of the amendment; or

(b) if the Minister intends to make a copy of the amendment available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the amendment will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the amendment.

Note

Section 41(1) provides that the Minister must make a copy of an approved amendment to a planning scheme, and any documents lodged with it, available in accordance with the public availability requirements.

(5) An amendment to which this Division applies that has been ratified comes into operation—

(a) when the notice of ratification of the amendment is published in the Government Gazette; or

(b) on any later day specified in the notice.

S. 46AZR inserted by No. 19/2020 s. 76.

46AZR When does an amendment lapse?

(1) An amendment to which this Division applies that has not been ratified lapses on the day immediately after the last day on which it could have been ratified.

(2) When an amendment to which this Division applies has lapsed, the Minister must publish a notice in the Government Gazette setting out the date on which the amendment lapsed.

(3) The publication of the notice of lapsing is conclusive proof of the date that the amendment lapsed.

S. 46AZS inserted by No. 19/2020 s. 76.

46AZS Application of Act provisions to amendment

Sections 4G, 4H, 4I, 40, 41 and 42 (as the case requires) do not apply to an amendment to which this Division applies unless and until the amendment is ratified.

S. 46AZT inserted by No. 19/2020 s. 76.

46AZT Application of Division 5 of Part 4 to amendment

If a permit has been granted under Division 5 of Part 4 and the planning scheme amendment to which the permit applies is an amendment to which this Division applies—

(a) if the amendment lapses, the permit is taken to be cancelled on that lapsing; and

S. 46AZT(b) substituted by No. 12/2021 s. 29.

(b) if the amendment is ratified, the notice of ratification must also—

(i) if the responsible authority intends to make a copy of the permit available in person in accordance with the requirements set out in section 197B, specify the places at which any person may inspect a copy of the permit; or

(ii) if the responsible authority intends to make a copy of the permit available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specify—

(A) the address of the responsible authority's Internet site at which a copy of the permit will be published; and

(B) the responsible authority's contact details for making a request to inspect a copy of the permit.

Note

The responsible authority must make a copy of the permit available in accordance with the public availability requirements—see section 70.

Pt 3A (Heading and ss 46A–46G) inserted by No. 118/1994 s. 13.

Part 3A—Upper Yarra Valley and Dandenong Ranges—regional strategy plan

S. 46A inserted by No. 118/1994 s. 13.

46A Definitions

(1) In this Part—

appointed day means the day appointed by the Governor in Council by Order published in the Government Gazette as the appointed day for the purposes of this Part;

approved regional strategy plan means the regional strategy plan declared to be an approved regional strategy plan under section 17 of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** as amended under that Act and as amended from time to time under this Part;

region means—

(a) the area described in the Schedule to the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976**; and

(b) any area included in the region under subsection (2)—

but excludes any area excluded from the region under subsection (2).

(2) The Governor in Council may by order published in the Government Gazette—

(a) include any area of land in the region; or

(b) exclude any area of land from the region.

(3) An order must not be made under subsection (2) after the appointed day.

46B Saving of approved regional strategy plan and amending plans

S. 46B inserted by No. 118/1994 s. 13.

(1) The repeal of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** by section 12 of the **Planning Authorities Repeal Act 1994** does not affect the continuity, status or effect of the approved regional strategy plan or any amending regional strategy plan existing under that Act immediately before that repeal.

(2) An amending regional strategy plan prepared under the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** but not declared to be approved under that Act before the repeal of that Act is deemed to be an amendment to the approved regional strategy plan prepared by the Minister under section 46C(1).

(3) For the purposes of subsection (2) and section 46C(2)—

(a) an amending strategy plan adopted by the Authority under section 14(11) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** and for which notice has been given under section 14(13) of that Act is deemed to have complied with Division 1 of Part 3 of the **Planning and Environment Act 1987**;

(b) any representations made in relation to an amending regional strategy plan by a person under section 14(16) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** within the period specified under that section are deemed to be submissions made under Division 2 of Part 3 of the **Planning and Environment Act 1987**;

(c) a panel appointed under section 14(17) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** in relation to an amending regional strategy plan and existing immediately before the repeal of that Act is deemed to be a panel appointed under Part 8 of the **Planning and Environment Act 1987**;

(d) a report of a panel under section 14(29) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** in relation to an amending regional strategy plan is deemed to be a report of a panel under section 25 of the **Planning and Environment Act 1987**;

(e) a decision by the Minister under section 16(a) or (b) of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976** to proceed with a regional strategy plan is deemed to be an approval by the Minister under section 35(1)(a) or (b) (as the case requires) of the **Planning and Environment Act 1987**.

(4) Despite the repeal of the **Upper Yarra Valley and Dandenong Ranges Authority Act 1976**—

(a) section 19(2) of that Act continues to apply to any amending regional strategy plan laid before both Houses of Parliament under section 19(1) of that Act before that repeal; and

(b) if an amending regional strategy plan is revoked under section 19(2) it ceases to form part of the approved strategy plan for the purposes of this Part.

46C Amendment of strategy plan

S. 46C inserted by No. 118/1994 s. 13.

(1) The Minister may at any time prepare an amendment to the approved regional strategy plan.

(2) Subject to section 46D, Part 3 (except Division 4) applies to an amendment to the approved regional strategy plan as if—

(a) the amendment were an amendment to a planning scheme; and

(b) the Minister were the planning authority.

(3) An amendment to the approved regional strategy plan may make provision with respect to any matters referred to in section 6 and any other matters which the Minister considers necessary or desirable to be included in the amendment.

46D Approval of Parliament needed after appointed day

S. 46D inserted by No. 118/1994 s. 13.

(1) On and from the appointed day—

(a) sections 36, 37 and 38 cease to apply to an amendment to the approved regional strategy plan; and

(b) the Minister must cause each approved amendment to the approved regional strategy plan to be laid before each House of Parliament within 7 sitting days of that House after the amendment is approved under section 35; and

(c) an approved amendment does not take effect unless it is also approved by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.

S. 46D(2) substituted by No. 12/2021 s. 30.

(2) The Minister must publish a notice of an approval of an amendment under subsection (1) in the Government Gazette—

(a) if the Minister intends to make a copy of the amendment available in person in accordance with the requirements set out in section 197B, specifying a place at which any person may inspect a copy of the amendment; or

(b) if the Minister intends to make a copy of the amendment available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the amendment will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the amendment.

(3) An amendment approved under subsection (1) comes into operation—

(a) when the notice of approval of the amendment is published in the Government Gazette; or

(b) on any later day or days specified in the notice.

S. 46E inserted by No. 118/1994 s. 13.

46E Availability of amendment

(1) The Minister must lodge the prescribed documents and a copy of every approved amendment to the approved regional strategy plan with every municipal council whose municipal district is wholly or partly within the region.

(2) The amendment must be lodged before notice of the approval of the amendment is published in the Government Gazette.

S. 46E(3) substituted by No. 12/2021 s. 31.

(3) During the inspection period, each relevant person must make a copy of an approved amendment to the regional strategy plan, and any documents lodged with it, available in accordance with the public availability requirements.

S. 46E(4) substituted by No. 12/2021 s. 31.

(4) After the inspection period ends, each relevant person must make the copy and any documents lodged with it available—

(a) in person in accordance with the requirements set out in section 197B; and

(b) on payment of the prescribed fee.

S. 46E(5) inserted by No. 12/2021 s. 31.

(5) Each relevant person must keep a copy of the approved regional strategy plan incorporating all amendments to it.

S. 46E(6) inserted by No. 12/2021 s. 31.

(6) Each relevant person must make available a copy of the approved regional strategy plan incorporating all amendments to it in accordance with the public availability requirements.

S. 46E(7) inserted by No. 12/2021 s. 31.

(7) In this section—

inspection period means the period of 2 months beginning on the day on which the amendment comes into operation;

relevant person means the following persons—

(a) the Minister;

(b) a municipal council whose municipal district is wholly or partly within the region.

S. 46F inserted by No. 118/1994 s. 13, substituted by No. 81/2004 s. 16, amended by No. 3/2013 s. 70(3).

46F Planning schemes to comply with approved regional strategy plan

Despite anything to the contrary in this Act, an amendment to a planning scheme must not be approved under section 35 in relation to the region if the amendment is inconsistent with the approved regional strategy plan.

S. 46G inserted by No. 118/1994 s. 13.

46G Works to be in conformity with approved regional strategy plan

(1) Subject to subsection (3), a government department, public authority or municipal council must not carry out works in the region which are not in conformity with the approved regional strategy plan.

(2) If a government department, public authority or municipal council considers that any works or undertakings which are not in conformity with the approved regional strategy plan should be carried out, the department, authority or council may make submissions with respect to the proposed works and undertakings to the Premier.

(3) After considering any submission under subsection (2), the Premier, on the advice of the Minister, may, despite anything in any other Act, by Order prohibit, either absolutely or on such terms as he or she thinks fit, or restrict or regulate the carrying out of the works or undertakings or any part of them specified in the Order.

Part 3AB—Infrastructure contributions

Pt 3AB (Heading and ss 46GA–46GN) inserted by No. 35/2015 s. 4, amended by No. 11/2017 ss 57, 58, substituted as Pt 3AB (Headings and ss 46GA–46GZK) by No. 7/2018 s. 10.

Division 1—Preliminary

46GA Definitions

S. 46GA substituted by No. 7/2018 s. 10.

In this Part—

approved infrastructure contributions plan means an infrastructure contributions plan that—

(a) is incorporated into an approved planning scheme; or

(b) forms part of a precinct structure plan or strategic plan that is incorporated into an approved planning scheme;

collecting agency means a Minister, public authority or municipal council specified in an infrastructure contributions plan as the collecting agency;

contribution land means the land in the ICP plan area of an infrastructure contributions plan in respect of which an infrastructure contribution is to be imposed under the plan if any of that land is developed;

Note

See also section 46GI(1)(b).

development agency means a Minister, public authority or municipal council specified in an infrastructure contributions plan as a development agency;

development contribution levy means a development infrastructure levy or community infrastructure levy that is payable under Part 3B;

ICP land contribution percentage has the meaning given by section 46GB;

ICP plan area means the area specified in an infrastructure contributions plan as the area to which the plan applies;

Note

See also section 46GI(1)(a).

infrastructure contribution has the meaning given by section 46GC;

infrastructure contributions plan—see section 46GG;

inner public purpose land means land in the ICP plan area of an infrastructure contributions plan that is specified in that plan as land to be set aside for public purposes;

land component, of an infrastructure contribution, has the meaning given by section 46GE;

land credit amount, in relation to a parcel of land in an ICP plan area, means the amount specified in an approved infrastructure contributions plan as the land credit amount that relates to that parcel of land;

land equalisation amount has the meaning given by section 46GF;

Minister's direction means a direction issued by the Minister under section 46GJ;

monetary component, of an infrastructure contribution, has the meaning given by section 46GD;

outer public purpose land means land outside of the ICP plan area of an infrastructure contributions plan that is specified in that plan as land to be acquired for public purposes;

parcel contribution percentage, in relation to a parcel of land in the ICP plan area, means the percentage of the contribution land in that parcel of land that is to be set aside as inner public purpose land;

Example

$$PCP = \left(\frac{TIPPL}{TCL}\right) \times \frac{100}{1}$$

where—

PCP is the parcel contribution percentage;

TIPPL is the total area of the inner public purpose land to be set aside in the parcel;

TCL is the total area of contribution land in the parcel.

plan preparation costs means the costs and expenses referred to in section 46GG(1)(c);

public purpose land means any inner public purpose land or any outer public purpose land specified in the infrastructure contributions plan, or both;

public purposes means any of the following purposes—

(a) public open space;

(b) community and recreation facilities;

(c) transport infrastructure;

(d) other infrastructure that is essential to the development of the ICP plan area;

type of land, in relation to land in the ICP plan area of an infrastructure contributions plan, means a type of land or area that is identified according to certain characteristics or location and specified in a Minister's direction applying to the plan.

Note

An example of a type of land in the ICP plan area of an infrastructure contributions plan is metropolitan greenfield growth land.

S. 46GB substituted by No. 7/2018 s. 10.

46GB Meaning of *ICP land contribution percentage*

An ***ICP land contribution percentage*** is the total area of the public purpose land specified in an infrastructure contributions plan divided by the total area of the contribution land in the ICP plan area of the plan, expressed as a percentage, determined in respect of each class of development of land specified in the plan.

Example

$$\text{LCP} = \left(\frac{\text{TPPL}}{\text{TCL}}\right) \times \frac{100}{1}$$

where—

LCP is the ICP land contribution percentage;

TPPL is the total area of the public purpose land specified in the plan;

TCL is the total area of the contribution land in the ICP plan area of the plan.

S. 46GC substituted by No. 7/2018 s. 10.

46GC Meaning of *infrastructure contribution*

(1) An ***infrastructure contribution*** is a contribution imposed under an infrastructure contributions plan in relation to the development of land in the ICP plan area of the plan.

(2) An infrastructure contribution may consist of either or both of the following—

(a) a monetary component;

(b) a land component.

Note

See section 46GV for when and how an infrastructure contribution must be provided.

46GD Meaning of *monetary component*

S. 46GD substituted by No. 7/2018 s. 10.

(1) The ***monetary component*** of an infrastructure contribution is either or both of the following—

(a) the standard levy calculated in accordance with the standard levy rate specified in the plan;

(b) the supplementary levy calculated in accordance with the supplementary levy rate specified in the plan.

(2) The monetary component of an infrastructure contribution imposed under an infrastructure contributions plan may only be used to fund—

(a) the provision of works, services or facilities referred to in section 46GG(1)(a) in relation to the plan; and

(b) the plan preparation costs in relation to the plan.

46GE Meaning of *land component*

S. 46GE substituted by No. 7/2018 s. 10.

The ***land component*** of an infrastructure contribution in relation to a parcel of land in an ICP plan area is—

(a) any inner public purpose land that forms part of the parcel of land; and

(b) any land equalisation amount in relation to the parcel of land.

S. 46GF substituted by No. 7/2018 s. 10.

46GF Meaning of *land equalisation amount*

A ***land equalisation amount*** is an amount—

(a) specified in an approved infrastructure contributions plan as the land equalisation amount in relation to a parcel of land in the ICP plan area;

(b) that is payable to the collecting agency on the development of that parcel of land if the parcel contribution percentage of the land is less than the ICP land contribution percentage for that class of development.

Notes

1 A person must pay the land equalisation amount under section 46GV(3) to the collecting agency.

2 The method for calculating the land equalisation amount is specified in a Minister's direction applying to the approved infrastructure contributions plan.

Division 2—Infrastructure contributions plans

S. 46GG substituted by No. 7/2018 s. 10.

46GG Infrastructure contributions plans

(1) Without limiting section 6, a planning scheme may incorporate one or more infrastructure contributions plans for the purposes of imposing infrastructure contributions to fund—

(a) the provision of works, services or facilities—

(i) in the ICP plan area; and

(ii) outside of the ICP plan area, if the works, services or facilities are essential to, and the need for which is generated by, the development of land in the ICP plan area; and

Note

Works, services or facilities may also be provided on land outside the ICP plan area that is not outer public purpose land but which is land already owned by a development agency.

(b) the provision of land for public purposes—

(i) in the ICP plan area; and

(ii) outside of the ICP plan area that is essential to, and the need for which is generated by, the development of land in the ICP plan area; and

(c) the reasonable costs and expenses incurred by the planning authority in preparing the infrastructure contributions plan and the related precinct structure plan or strategic plan.

S. 46GG(1)(c) amended by No. 12/2021 s. 62.

Note

The planning authority that prepares the precinct structure plan or strategic plan and related infrastructure contributions plan may not be the same planning authority that subsequently prepares the amendment to the planning scheme to incorporate the infrastructure contributions plan.

(2) Subsection (1) is subject to section 46GH.

46GH Infrastructure contributions plans not to apply to certain growth area land for provision of State infrastructure

S. 46GH substituted by No. 7/2018 s. 10.

An infrastructure contributions plan must not be incorporated in a planning scheme if—

(a) under the plan an infrastructure contribution is to be imposed in relation to the development of land in the contribution area (within the meaning of Part 9B); and

(b) a development agency specified in the plan is not a municipal council.

S. 46GI substituted by No. 7/2018 s. 10.

46GI Contents of infrastructure contributions plans

(1) An infrastructure contributions plan must—

(a) specify the ICP plan area; and

(b) specify the contribution land in the ICP plan area; and

(c) specify any inner public purpose land to be provided under the plan (including any inner public purpose land forming part of each parcel of land in the ICP plan area); and

(d) specify any outer public purpose land to be funded through the plan and the development agency responsible for acquiring that land; and

(e) specify the types of public purposes for which inner public purpose land and outer public purpose land may be used and developed; and

(f) specify the classes of development of land in relation to which an infrastructure contribution is to be imposed under the plan; and

(g) specify, for each class of development, the ICP land contribution percentage; and

(h) specify the parcel contribution percentage for each parcel of land in the ICP plan area; and

(i) specify the land credit amount or land equalisation amount in respect of each parcel of land in the ICP plan area; and

(j) specify the timing and method of adjustment to be applied to the land credit amounts and land equalisation amounts specified in the plan, including by way of indexation or any other method of adjustment; and

(k) specify the plan preparation costs, works, services or facilities to be funded through the plan; and

(l) set out the staging of the provision of the works, services or facilities or public purpose land specified in the plan; and

(m) relate the need for the plan preparation costs, works, services or facilities to be funded through the plan to the proposed development of land in the ICP plan area; and

(n) relate the need for the provision of public purpose land under the plan to the proposed development of land in the ICP plan area; and

(o) specify the plan preparation costs, works, services or facilities to be funded from a standard levy; and

(p) specify a standard levy rate for each class of development of land according to the type of land to be developed; and

(q) specify the method and timing of annual indexation to be applied to a standard levy rate; and

(r) specify the following in relation to any supplementary levy imposed under the plan—

(i) the works, services or facilities to be funded from the supplementary levy;

(ii) the amount of the plan preparation costs and the estimated cost of each of the works, services or facilities to be funded from the supplementary levy;

(iii) the method and timing of annual indexation to be applied to the estimated cost of each of the works, services or facilities to be funded from the supplementary levy;

(iv) the proportion of the total of the costs referred to in subparagraph (ii) to be funded from the supplementary levy; and

(s) specify the supplementary levy rate for each class of development of land according to each type of land to be developed; and

(t) specify a Minister, public authority or municipal council as the entity that is the collecting agency for the purposes of this Part and the plan; and

(u) specify a Minister, public authority or municipal council as an entity that is a development agency for the purposes of this Part and the plan and the works, services, facilities or public purpose land for which the development agency is responsible under the plan; and

Note

There may be more than one development agency.

(v) provide for the procedures, including the timing, for the collection of an infrastructure contribution; and

(w) include any other matter required to be included in the plan by a Minister's direction.

(2) An infrastructure contributions plan may—

(a) provide for different rates for the monetary component of an infrastructure contribution to be provided in respect of different

classes of development for a type of land in the ICP plan area; and

(b) provide for a lower rate of standard levy for a class of development of a particular type of land than the rate specified in a Minister's direction if—

(i) the planning authority, the affected landowners, the municipal council of the municipal district in which the land is located and the development agency or agencies specified in the plan agree; or

(ii) the Minister consents.

(3) An infrastructure contributions plan may specify the same person to be both the collecting agency and a development agency.

Division 3—Directions of Minister

46GJ Directions of Minister

S. 46GJ substituted by No. 7/2018 s. 10.

(1) The Minister may issue written directions to planning authorities in relation to the preparation and content of infrastructure contributions plans.

(2) Without limiting subsection (1), a Minister's direction may specify any one or more of the following—

(a) the types of land to which an infrastructure contributions plan may, or must not, apply;

(b) the type of land which may be specified as public purpose land under an infrastructure contributions plan;

(c) the types of public purposes for which public purpose land may be used or developed;

(d) the method for calculating the estimated value of any inner public purpose land—

(i) for the purposes of calculating land credit amounts and land equalisation amounts; and

(ii) for the purposes of Division 4;

(e) the method for calculating the estimated value of any outer public purpose land to be acquired by a development agency;

(f) the timing, procedure and method of adjustment of the estimated land values referred to in paragraphs (d) and (e), including by way of indexation or any other method of adjustment;

(g) the method for calculating the land credit amount or land equalisation amount in respect of each parcel of land in the ICP plan area of an infrastructure contributions plan;

(h) the timing and method of adjustment to be applied to the land credit amounts and land equalisation amounts referred to in paragraph (g), including by way of indexation or any other method of adjustment;

(i) the classes of development of land in respect of which a standard levy or a supplementary levy or both of those levies may or must not be imposed under an infrastructure contributions plan;

(j) the types of plan preparation costs and works, services or facilities that may or must not be funded from a standard levy or a supplementary levy or both of those levies under an infrastructure contributions plan;

(k) the standard levy rates to be applied under an infrastructure contributions plan for each class of development of land according to the type of land to be developed;

(l) the method for determining the amount of standard levy payable in respect of a development of land according to the type of land to be developed;

(m) the method and timing of annual indexation to be applied to standard levy rates;

(n) the requirements that a planning authority must comply with, and the criteria that the authority must have regard to, when deciding whether to impose a supplementary levy for the development of land under an infrastructure contributions plan;

(o) the method for estimating the cost of the works, services or facilities to be funded from a supplementary levy under an infrastructure contributions plan;

(p) the method and timing of annual indexation to be applied to the estimated cost of each of the works, services or facilities to be funded from a supplementary levy under an infrastructure contributions plan;

(q) the method for determining the amount of supplementary levy payable in respect of any development of land in the ICP plan area;

(r) the maximum amount of any standard levy imposed under an infrastructure contributions plan that may be used for the provision of community and recreation works, services or facilities according to the type of land to be developed and the class of development of that land;

(s) the method and timing of annual indexation of the maximum amount referred to in paragraph (r);

(t) the maximum proportion of any standard levy or supplementary levy imposed under an infrastructure contributions plan that may be used to fund plan preparation costs in relation to that plan;

(u) the type of land in an ICP plan area of an infrastructure contributions plan to which section 18(1AB) of the **Subdivision Act 1988** applies;

(v) requirements for the staging and timing of the provision of the works, services or facilities or public purpose land to be funded through an infrastructure contributions plan;

(w) any requirements relating to a notice under section 46GO, including information to be included in the notice;

(x) any other information to be included in an infrastructure contributions plan.

(3) The Minister must publish in the Government Gazette notice of every Minister's direction as soon as is practicable after a direction is issued.

S. 46GK substituted by No. 7/2018 s. 10.

46GK Planning authorities must comply with directions of Minister

A planning authority must comply with a Minister's direction that applies to the authority.

Division 4—Valuation and dispute resolution process for inner public purpose land

S. 46GL substituted by No. 7/2018 s. 10.

46GL Definitions

In this Division—

affected owner—see section 46GO(1);

valuer-general means the valuer-general under the **Valuation of Land Act 1960** and includes any deputy valuer-general and any valuer nominated by the valuer-general to make valuations of land referred to in section 3 of that Act.

46GM Application of Division

S. 46GM substituted by No. 7/2018 s. 10.

This Division applies if a planning authority is preparing an infrastructure contributions plan that provides for an infrastructure contribution that includes a land component.

Note

This Division applies to an infrastructure contributions plan that includes a land component whether or not an amendment to a planning scheme to incorporate the plan is exempted from any of the requirements of sections 17, 18 and 19 and the regulations under section 20 or 20A. Any submissions about the estimated value of inner public purpose land in the ICP plan area of the infrastructure contributions plan must be made under this Division.

46GN Planning authority must arrange for estimates of values of inner public purpose land

S. 46GN substituted by No. 7/2018 s. 10.

(1) The planning authority must arrange for a valuer to prepare a report containing an estimate of the value of any inner public purpose land in a parcel of land in the ICP plan area of an infrastructure contributions plan if the parcel contribution percentage of the land is more than the ICP land contribution percentage for the class of development that may be carried out on that land.

(2) A valuer referred to in subsection (1) must use the methodology set out in a Minister's direction applying to the infrastructure contributions plan to calculate the estimate of the value of the inner public purpose land.

(3) A valuer referred to in subsection (1) must hold the qualifications and experience referred to in section 13DA(2) of the **Valuation of Land Act 1960**.

S. 46GO inserted by No. 7/2018 s. 10.

46GO Planning authority must give notice to owners of certain inner public purpose land

(1) The planning authority must give a notice to each owner of a parcel of land in the ICP plan area of an infrastructure contributions plan if the parcel contribution percentage of the land is more than the ICP land contribution percentage for the class of development that may be carried out on that land (an ***affected owner***).

(2) A notice under subsection (1) must—

(a) comply with any requirements for the notice in a Minister's direction applying to the infrastructure contributions plan; and

(b) include the following—

(i) the estimated value per hectare (or other appropriate unit of measurement) of the inner public purpose land in the parcel of land, according to the class of development that may be carried out on that land;

(ii) the estimated land credit amount, calculated in accordance with a Minister's direction applying to the infrastructure contributions plan, which the affected owner will be entitled to be paid under this Part;

(iii) a statement that the affected owner may make a submission under section 46GQ to the planning authority and the date by which the submission must be made;

(iv) any other information required to be included in the submission by a Minister's direction applying to the infrastructure contributions plan.

46GP Notice under section 46GO to be given to affected owners and collecting agency

S. 46GP inserted by No. 7/2018 s. 10.

A notice under section 46GO must be given to every affected owner and the collecting agency specified in the infrastructure contributions plan before the adoption of an amendment to the planning scheme to incorporate the infrastructure contributions plan.

46GQ Affected owner may make submission on estimated value of inner public purpose land

S. 46GQ inserted by No. 7/2018 s. 10.

(1) An affected owner who is given a notice under section 46GO may make a written submission to the planning authority objecting to the estimated value per hectare (or other appropriate unit of measurement) of the inner public purpose land included in that notice.

(2) A submission must—

(a) include the reasons for making the submission; and

(b) include an estimate of the value per hectare (or other appropriate unit of measurement) of the inner public purpose land, which is prepared by a valuer using the same methodology that was used to calculate the estimate of the value of the inner public purpose land included in the notice under section 46GO; and

(c) be accompanied by a copy of the valuer's report, which must include the estimate of the value of the inner public purpose land, and any other document stated in the notice

under section 46GO to accompany the submission; and

(d) include any other information stated in the notice under section 46GO to be included in the submission.

(3) A submission must be made to the planning authority no later than one month after the date on which the notice under section 46GO is given to the affected owner.

(4) A valuer referred to in subsection (2) must hold the qualifications and experience referred to in section 13DA(2) of the **Valuation of Land Act 1960**.

S. 46GR inserted by No. 7/2018 s. 10.

46GR Planning authority must consider submission

(1) The planning authority must consider every submission that is made to it under section 46GQ if the submission has been made by the closing date for submissions included in the notice under section 46GO.

(2) The planning authority may consider a late submission and must consider one if directed to do so by the Minister.

S. 46GS inserted by No. 7/2018 s. 10.

46GS Decision about submissions

(1) The planning authority may accept or reject the estimate of the value of the inner public purpose land in a submission made under section 46GQ.

(2) If the planning authority rejects the estimate of the value of the inner public purpose land in the submission, the planning authority must—

(a) refer the matter to the valuer-general; and

(b) notify the affected owner of that rejection and that the matter has been referred to the valuer-general.

46GT Valuer-general must hold conference to determine value of inner public purpose land

S. 46GT inserted by No. 7/2018 s. 10.

(1) If a matter is referred to the valuer-general under section 46GS(2), the valuer-general must arrange for a conference to be held at which the following persons must attend—

(a) the valuer-general;

(b) a valuer acting for or on behalf of the planning authority (the ***planning authority's valuer***);

(c) a valuer acting for or on behalf of the affected owner (the ***affected owner's valuer***).

(2) The valuer-general may fix a fee for arranging and attending the conference of which half must be paid by the affected owner and half must be paid by the planning authority.

(3) The valuer-general must use all reasonable efforts to achieve agreement between the planning authority's valuer and the affected owner's valuer as to the estimated value of the inner public purpose land.

(4) If the planning authority's valuer and the affected owner's valuer agree on the estimated value of the inner public purpose land, the valuer-general must give written confirmation of that agreement to the affected owner and the planning authority.

(5) If the planning authority's valuer and the affected owner's valuer cannot agree on the estimated value of the inner public purpose land, the valuer-general must make a determination as to the estimated value of that land within 15 business days after the date on which the conference ends.

(6) The valuer-general must give written notice of a determination under subsection (5) to the affected owner and the planning authority.

S. 46GU inserted by No. 7/2018 s. 10.

46GU Infrastructure contributions plan must be consistent with estimated value of public purpose land

(1) The planning authority must not adopt an amendment under section 29 to incorporate an infrastructure contributions plan that specifies a land credit amount or a land equalisation amount that relates to a parcel of land in the ICP plan area of the plan unless—

(a) in the case of the land credit amount—that amount is based on the estimated value of the inner public purpose land in that parcel of land; and

(b) in the case of the land equalisation amount—the component of the land equalisation amount that relates to any inner public purpose land is based on the estimated value of that inner public purpose land.

(2) For the purposes of this section, the estimated value of inner public purpose land is the value of that land—

(a) contained in the notice given to the affected owner under section 46GO if there are no submissions made under section 46GQ by the affected owner; or

(b) accepted by the planning authority under section 46GS(1); or

(c) confirmed by the valuer-general under section 46GT(4); or

(d) determined by the valuer-general under section 46GT(5).

Note

Any component of the land equalisation amount that relates to any outer public purpose land is to be based on the estimated value of the outer public purpose land calculated in accordance with the method specified in a Minister's direction applying to the plan.

Division 5—Imposition and collection of infrastructure contribution

46GV Imposition of infrastructure contribution

S. 46GV inserted by No. 7/2018 s. 10.

(1) This section applies if an approved infrastructure contributions plan provides that an infrastructure contribution is imposed in relation to the development of land in the ICP plan area of that plan.

(2) An infrastructure contribution is imposed in relation to the development of any of the land at the earlier time at which a person (the ***applicant***) makes an application for either of the following—

(a) a permit under this Act to develop the land;

(b) a building permit under the **Building Act 1993** to carry out building work on the land.

(3) The applicant must pay the monetary component and any land equalisation amount of the infrastructure contribution to the collecting agency in a manner specified by the collecting agency—

(a) before the earliest of the following—

(i) if the development of the land involves a plan under the **Subdivision Act 1988**—the issue of the statement of compliance in relation to that plan;

(ii) if the development of the land requires a building permit—the issue of the building permit;

(iii) a time specified in the approved infrastructure contributions plan; or

(b) before a time specified in an agreement entered into by the collecting agency and the applicant.

(4) Subject to subsection (8), if any land component of the infrastructure contribution includes any inner public purpose land, the applicant must ensure that the inner public purpose land is provided in accordance with subsections (5) and (6) to—

(a) in the case of inner public purpose land required for a road—the development agency responsible for the use and development of the land;

(b) in any other case—the collecting agency.

(5) The applicant must provide the inner public purpose land under subsection (4) by ensuring that—

(a) any inner public purpose land for a road is set aside on a plan under the **Subdivision Act 1988** to vest in the development agency responsible for the use and development of that land; and

(b) any other inner public purpose land is set aside on a plan under the **Subdivision Act 1988** to vest in the collecting agency.

(6) The applicant must lodge any plan referred to in subsection (5) for registration under section 22 of the **Subdivision Act 1988** within a time specified in a permit under this Act or an agreement entered

into by the collecting agency and the applicant (as the case requires).

(7) Without limiting section 62, if the applicant applies for a permit under this Act to develop the land in the ICP plan area, the responsible authority must impose the requirements set out in subsections (3) and (4) as conditions on that permit.

(8) If any part of the inner public purpose land required to be provided to a development agency or the collecting agency under subsection (4) is acquired by that development agency or collecting agency before the time that it is required to be provided under this section, that part of the inner public purpose land is taken to have been provided under subsection (4) at the time of the acquisition of the land.

(9) The collecting agency may require the payment of a monetary component or the provision of the land component of an infrastructure contribution under this section to be secured to its satisfaction.

46GW Payment of land credit amounts

S. 46GW inserted by No. 7/2018 s. 10.

(1) This section applies if on development of a parcel of land in the ICP plan area of an approved infrastructure contributions plan—

(a) a person must, in accordance with section 46GV(4), provide inner public purpose land forming part of that parcel of land to the collecting agency or a development agency; and

(b) the parcel contribution percentage of the parcel of land to be developed is more than the ICP land contribution percentage for that class of development.

(2) The person is entitled to be paid the land credit amount in relation to the parcel of land by the collecting agency.

Notes

1 The collecting agency must pay the land credit amount to the person under section 46GZ(7).

2 The method for calculating the land credit amount is specified in a Minister's direction applying to the approved infrastructure contributions plan.

S. 46GX inserted by No. 7/2018 s. 10.

46GX Collecting agency may accept works, services or facilities in satisfaction of monetary component

(1) Subject to subsection (2), the collecting agency may accept the provision of works, services or facilities by an applicant under section 46GV(3) in part or full satisfaction of the monetary component of an infrastructure contribution payable by the applicant to the collecting agency under that section.

(2) Before accepting the provision of works, services or facilities by an applicant under subsection (1), the collecting agency must obtain the agreement of the development agency or agencies specified in the approved infrastructure contributions plan, unless the collecting agency is the only development agency specified in that plan.

(3) Subsection (2) applies to works, services or facilities provided before or after an applicant is required to pay the monetary component of an infrastructure contribution under section 46GV(3).

Division 6—Responsibilities of collecting agencies and development agencies

46GY Responsibilities of the collecting agency to keep proper accounts and records

S. 46GY inserted by No. 7/2018 s. 10.

(1) The collecting agency under an approved infrastructure contributions plan must keep proper and separate accounts and records of the following—

(a) in relation to any monetary component—

(i) any monetary component paid to the collecting agency; and

(ii) any monetary component, the whole or part of which is forwarded to a planning authority or to a development agency by the collecting agency;

(b) in relation to any land component—

(i) any land equalisation amount paid to the collecting agency; and

(ii) any land equalisation amount, the whole or part of which is—

(A) expended by the collecting agency; or

(B) forwarded to a development agency by the collecting agency; and

(iii) any inner public purpose land that is vested in the collecting agency under the **Subdivision Act 1988**; and

Note

Inner public purpose land will only be vested as a road in a collecting agency if the collecting agency is also the development agency that has responsibility for that road.

(iv) any inner public purpose land that is acquired by the collecting agency before the time it is required to be provided to the collecting agency under section 46GV(4); and

(v) any inner public purpose land referred to in subparagraph (iii) or (iv) that is transferred to a development agency by the collecting agency;

(c) any land credit amount paid to a person by the collecting agency.

S. 46GY(2) amended by No. 9/2020 s. 390(Sch. 1 item 77.3).

(2) If the collecting agency is a municipal council, the accounts and records to be kept under subsection (1) must be kept in accordance with the **Local Government Act 2020**.

S. 46GZ inserted by No. 7/2018 s. 10.

46GZ Other responsibilities of the collecting agency

(1) This section applies to the collecting agency under an approved infrastructure contributions plan, whether or not the collecting agency is also a development agency under that plan.

(2) The collecting agency to which a monetary component is paid must forward any part of the monetary component that is imposed for—

(a) plan preparation costs—to the planning authority that incurred those costs, unless the agency is that planning authority; and

(b) the provision of works, services or facilities—to the development agency that is specified in the plan as responsible for those works, services or facilities.

(3) If the collecting agency is not a municipal council, the collecting agency must pay into the Consolidated Fund any part of a monetary component that is not forwarded to a planning

authority or a development agency under subsection (2).

Note

A collecting agency that is not a municipal council will only pay into the Consolidated Fund all or part of the monetary component under subsection (3) if the monetary component is imposed for plan preparation costs incurred by the collecting agency in its capacity as a planning authority or for the provision of works, services or facilities by or on behalf of the collecting agency in its capacity as a development agency.

(4) The collecting agency must use any land equalisation amounts that are paid to the collecting agency to pay land credit amounts under subsection (7), except any part of those amounts that are to be forwarded to a development agency under subsection (5).

(5) The collecting agency must forward any part of a land equalisation amount required for the acquisition of outer public purpose land by a development agency specified in the approved infrastructure contributions plan to that development agency.

(6) Subsections (2)(b) and (5) do not apply to the collecting agency if the collecting agency is the relevant development agency.

(7) The collecting agency must pay to each person who must provide an infrastructure contribution under the approved infrastructure contributions plan any land credit amount to which the person is entitled under section 46GW.

(8) If the collecting agency is not a municipal council, the collecting agency must pay into the Consolidated Fund any land equalisation amounts that are not immediately used by the collecting agency to pay land credit amounts under subsection (7).

(9) If any inner public purpose land is vested in the collecting agency under the **Subdivision Act 1988** or is acquired by the collecting agency before the time it is required to be provided to the collecting agency under section 46GV(4), the collecting agency must transfer the estate in fee simple in the land to the development agency specified in the approved infrastructure contributions plan as responsible for the use and development of that land, unless the collecting agency is that development agency.

S. 46GZA inserted by No. 7/2018 s. 10.

46GZA Responsibility of a development agency to keep accounts and records

(1) A development agency under an approved infrastructure contributions plan must keep proper and separate accounts and records of—

(a) any part of a monetary component or land equalisation amount forwarded to the development agency by the collecting agency; and

(b) any part of a monetary component or land equalisation amount expended by the development agency; and

(c) the following inner public purpose land (if any)—

(i) land vested as a road in the development agency under the **Subdivision Act 1988**;

(ii) land acquired by the development agency before the time it is required to be provided under section 46GV(4);

(iii) land transferred to the development agency by the collecting agency; and

(d) the use and development by the development agency of any inner public purpose land; and

(e) the acquisition and use and development by the development agency of any outer public purpose land.

(2) If the development agency is a municipal council, the accounts and records to be kept under subsection (1) must be kept in accordance with the **Local Government Act 2020**.

S. 46GZA(2) amended by No. 9/2020 s. 390(Sch. 1 item 77.3).

46GZB Other responsibilities of a development agency

S. 46GZB inserted by No. 7/2018 s. 10.

(1) This section applies to a development agency under an approved infrastructure contributions plan, whether or not the development agency is also the collecting agency.

(2) If the development agency is not a municipal council, the development agency must pay into the Consolidated Fund any part of a monetary component or land equalisation amount forwarded to the development agency by the collecting agency under this Part.

(3) Subject to subsection (4), the development agency must—

(a) apply the monetary component of an infrastructure contribution only—

(i) for the purpose of plan preparation costs if the development agency is the planning authority that incurred those costs; or

(ii) for the provision of works, services or facilities in respect of which the infrastructure contribution was imposed and for which the development agency is responsible under the approved infrastructure contributions plan; and

(b) in relation to any inner public purpose land—

(i) vested in the development agency under the **Subdivision Act 1988**—use and develop that land for a road specified in the approved infrastructure contributions plan; or

(ii) transferred to the development agency by the collecting agency—use and develop that land for a public purpose specified in the approved infrastructure contributions plan; or

(iii) acquired by the development agency before the time it was required to be provided under section 46GV(4)—use and develop that land for a public purpose specified in the approved infrastructure contributions plan; and

(c) in relation to any outer public purpose land to be acquired by the development agency—

(i) acquire that outer public purpose land by applying any part of a land equalisation amount imposed for acquiring that outer public purpose land; and

(ii) use and develop that outer public purpose land for a public purpose specified in the approved infrastructure contributions plan.

(4) If the Victorian Planning Authority is the collecting agency under an approved infrastructure contributions plan, a development agency under that plan to which any part of an infrastructure contribution is provided by the Authority under this Part must, in accordance with any requirements of the Authority—

(a) report on the use of the infrastructure contribution in the development agency's annual report; and

(b) provide reports on the use of the infrastructure contribution to the Authority.

Division 7—Responsibilities of collecting agencies and development agencies if infrastructure contributions not expended

46GZC Application of Division

S. 46GZC inserted by No. 7/2018 s. 10.

(1) This Division applies despite anything to the contrary in Division 6.

(2) This Division applies to the collecting agency or a development agency under an approved infrastructure contributions plan, whether or not the agency is a municipal council.

46GZD Responsibility of collecting agency and development agency if monetary component not expended within life of a plan

S. 46GZD inserted by No. 7/2018 s. 10.

(1) This section applies if—

(a) the whole or any part of a monetary component is forwarded or paid to a development agency specified in an approved infrastructure contributions plan for the provision by the development agency of works, services or facilities in the ICP plan area; and

(b) an amount of the monetary component has not been expended by the development agency before the date on which the plan expires.

(2) The development agency must, within 6 months after the date on which the approved infrastructure contributions plan expires—

(a) with the consent of the Minister and in the manner approved by the Minister—expend the remaining amount of the monetary component for the provision of other works, services or facilities in the ICP plan area; or

(b) if the development agency does not expend the remaining amount of the monetary component under paragraph (a)—pay that amount to the collecting agency, unless the development agency is the collecting agency.

(3) The collecting agency must—

(a) divide the remaining amount of the monetary component among the current owners of each parcel of land in the ICP plan area in respect of which a monetary component under the approved infrastructure contributions plan has been paid; and

(b) pay each current owner the divided amount.

(4) For the purposes of subsection (3), the divided amount must be in proportion to the area of contribution land in that current owner's parcel of land compared to the area of contribution land in the ICP plan area in respect of which a monetary component under the approved infrastructure contributions plan has been paid.

(5) The collecting agency must make the payments under subsection (3) as follows—

(a) if the collecting agency is not the development agency—within 12 months after the date on which the payment of the remaining monetary component under subsection (2)(b) is received;

(b) if the collecting agency is the development agency—within 12 months after the date on which the approved infrastructure contributions plan expires.

46GZE Responsibility of collecting agency and development agency if land equalisation amount not expended within life of a plan

S. 46GZE inserted by No. 7/2018 s. 10.

(1) This section applies if—

(a) any part of a land equalisation amount has been paid to the collecting agency or forwarded to a development agency specified in an approved infrastructure contributions plan; and

(b) any part of that amount has not been expended at the date on which the plan expires.

(2) If any part of a land equalisation amount paid or forwarded to a development agency for acquiring outer public purpose land has not been expended by the development agency to acquire that land at the date on which the approved infrastructure contributions plan expires, the development agency must forward the land equalisation amount back to the collecting agency within 6 months after that expiry date, unless the development agency is the collecting agency.

(3) The collecting agency must, within 12 months after the date on which the approved infrastructure contributions plan expires—

(a) with the consent of the Minister and in the manner approved by the Minister—expend the remainder of the land equalisation amount to acquire land in the municipal district in which the ICP plan area is situated for a public purpose specified in a Minister's direction applying to the plan; or

(b) if the collecting agency does not expend the remainder of the land equalisation amount under paragraph (a)—

(i) divide that amount among the current owners of each parcel of land in the ICP plan area in respect of which a land equalisation amount has been paid or inner public purpose land has been provided under the approved infrastructure contributions plan; and

(ii) pay each current owner the divided amount.

(4) For the purposes of subsection (3)(b), the divided amount must be in proportion to the area of contribution land in that current owner's parcel of land compared to the total area of contribution land in the ICP plan area in respect of which a land equalisation amount has been paid, or inner public purpose land has been provided, under the approved infrastructure contributions plan.

S. 46GZF inserted by No. 7/2018 s. 10.

46GZF Responsibility of collecting agency and development agency if public purpose land is no longer required

(1) This section applies if at the date on which an approved infrastructure contributions plan expires, all or part of the following public purpose land is no longer required for a public purpose specified in the plan—

(a) inner public purpose land that has vested under the **Subdivision Act 1988** in, been acquired by, or been transferred to, a development agency;

(b) outer public purpose land acquired by a development agency.

(2) The development agency must, within 12 months after the date on which the approved infrastructure contributions plan expires—

(a) use the public purpose land for a public purpose approved by the Minister; or

(b) sell the public purpose land.

(3) If land is sold under subsection (2)(b), the development agency must—

(a) pay the proceeds of the sale (less the sale expenses) within 3 months after the sale to the collecting agency, unless the development agency is also the collecting agency; or

(b) with the consent of the Minister and in the manner approved by the Minister—

(i) expend the proceeds of the sale (less the sale expenses) for the acquisition of other land in the municipal district in which the ICP plan area is situated; and

(ii) ensure the land acquired under subparagraph (i) is used for a public purpose specified in a Minister's direction applying to the approved infrastructure contributions plan.

(4) The collecting agency must—

(a) divide the proceeds of the public purpose land among the current owners of each parcel of land in the ICP plan area, in respect of which a land equalisation amount has been paid, or inner public purpose land has been provided, under the approved infrastructure contributions plan; and

(b) pay each current owner a portion of the proceeds in accordance with subsection (5).

(5) For the purposes of subsection (4), the portion of the proceeds must be in proportion to the area of contribution land in that current owner's parcel of land compared to the total area of contribution land in the ICP plan area in respect of which a land equalisation amount has been paid, or inner public purpose land has been provided, under the approved infrastructure contributions plan.

(6) The collecting agency must make the payments under subsection (4) as follows—

(a) if the collecting agency is not the development agency—within 6 months after being paid the proceeds of the sale of the public purpose land under subsection (3)(a);

(b) if the collecting agency is the development agency—within 18 months after the date on which the approved infrastructure contributions plan expires.

Division 8—General

S. 46GZG inserted by No. 7/2018 s. 10.

46GZG Appropriation of Consolidated Fund

The Consolidated Fund is appropriated to the extent necessary for the purposes of sections 46GZ(7), 46GZB(3), 46GZD(2) and (3), 46GZE(2) and (3) and 46GZF(3) and (4).

S. 46GZH inserted by No. 7/2018 s. 10.

46GZH Recovery of monetary component or land equalisation amount of infrastructure contribution as a debt

The collecting agency may recover the monetary component, or any land equalisation amount of the land component, of an infrastructure contribution payable to the collecting agency under this Part as a debt due to the collecting agency in any court of competent jurisdiction.

46GZI Reporting requirements of collecting agencies and development agencies

S. 46GZI inserted by No. 7/2018 s. 10.

(1) A collecting agency or development agency must prepare and give a report to the Minister, at the times required by the Minister, relating to—

(a) in the case of a collecting agency—

(i) any infrastructure contribution provided to the collecting agency under this Part; and

(ii) any works, services or facilities accepted by the collecting agency in part or full satisfaction of the monetary components of any infrastructure contributions to be provided to the collecting agency under this Part; and

(iii) any land credit amounts paid to persons under this Part; and

(b) in the case of a development agency—

(i) the expenditure of any monetary components of infrastructure contributions forwarded to the development agency under this Part; and

(ii) the use and development of any inner public purpose land that is part of the land component of any infrastructure contribution, which has vested in, been acquired by or been transferred to, the development agency under this Part; and

(iii) the use made by the development agency of any works, services or facilities referred to in paragraph (a)(ii); and

(iv) the expenditure of any land equalisation amounts paid or forwarded to the development agency under this Part; and

(v) the use and development of any outer public purpose land acquired by the development agency.

(2) A report under subsection (1) must be prepared in accordance with any requirements of the Minister.

S. 46GZJ inserted by No. 7/2018 s. 10.

46GZJ Minister to report annually

The Minister must cause to be tabled in each House of Parliament at intervals not exceeding 12 months a report setting out—

(a) the total infrastructure contributions provided, and the total amount of the development contribution levies paid, to a municipal council that is a collecting agency or a development agency during the period covered by the report; and

(b) the total infrastructure contributions provided, and the total amount of the development contribution levies paid, to a collecting agency or a development agency that is not a municipal council during the period covered by the report; and

(c) the total amount of the monetary components of infrastructure contributions, land equalisation amounts and development contribution levies paid into the Consolidated Fund during the period covered by the report; and

(d) the total amount of the monetary components of infrastructure contributions, land equalisation amounts and development contribution levies paid out of the

Consolidated Fund during the period covered by the report; and

(e) the total infrastructure contributions provided, and the total amount of the development contribution levies paid, during the period covered by the report.

46GZK Collecting agency or development agency may deal with public purpose land under this Part

S. 46GZK inserted by No. 7/2018 s. 10.

Despite any other Act (except the **Charter of Human Rights and Responsibilities Act 2006**), public purpose land which has vested under the **Subdivision Act 1988** in, been acquired by, or been transferred to, a collecting agency or a development agency under this Part may be dealt with by the collecting agency or development agency (as the case requires) in accordance with this Part and the relevant approved infrastructure contributions plan.

Part 3B—Development contributions

Pt 3B (Heading and ss 46H–46Q) inserted by No. 50/1995 s. 3.

S. 46H inserted by No. 50/1995 s. 3.

46H Definitions

In this Part—

approved development contributions plan means a development contributions plan which forms part of an approved planning scheme;

S. 46H def. of *collecting agency* inserted by No. 101/2004 s. 3(1).

collecting agency means a person specified in a development contributions plan as a person to whom a community infrastructure levy or development infrastructure levy is payable under this Part;

S. 46H def. of *development agency* inserted by No. 101/2004 s. 3(1), amended by No. 35/2015 s. 5(a).

development agency means a person specified in a development contributions plan as a person responsible for the provision of works, services or facilities or for the plan preparation costs for which a community infrastructure levy or development infrastructure levy or part of a levy is payable under this Part;

S. 46H def. of *dwelling* amended by Nos 10/2005 s. 3(Sch. 1 item 17.1), 35/2015 s. 5(b).

dwelling means a building that is used, or is intended, adapted or designed for use, as a separate residence, (including kitchen, bathroom and sanitary facilities) for an occupier who has a right to the exclusive use of it but does not include—

(a) a building that is attached to a shop, office, warehouse or factory and is used, or is intended, adapted or

designed for use, as a residence for an occupier or caretaker of the shop, office, warehouse or factory; or

(b) any part of a motel, residential club or residential hotel or residential part of licensed premises under the **Liquor Control Reform Act 1998**;

plan preparation costs means the costs and expenses referred to in section 46I(1)(b).

S. 46H def. of *plan preparation costs* inserted by No. 35/2015 s. 5(c).

* * * * *

S. 46H def of *relevant municipal council* repealed by No. 101/2004 s. 3(2).

46I Development contributions plan

S. 46I inserted by No. 50/1995 s. 3, amended by No. 23/2010 s. 7 (ILA s. 39B(1)).

(1) Without limiting section 6, a planning scheme may include one or more development contributions plans for the purposes of levying contributions to fund—

S. 46I(1) substituted by No. 35/2015 s. 6.

(a) the provision of works, services and facilities in relation to the development of land in the area to which the plan applies; and

(b) the reasonable costs and expenses incurred by the planning authority in preparing the plan and any strategic plan or precinct structure plan relating to, or required for, the preparation of the development contributions plan (the ***plan preparation costs***).

S. 46I(1)(b) amended by Nos 11/2017 s. 59, 12/2021 s. 63.

Note

The planning authority that prepares the development contributions plan and related plans may not be the same planning authority that subsequently prepares an amendment to the planning scheme to incorporate the development contributions plan.

S. 46I(2) inserted by No. 23/2010 s. 7.

(2) Subsection (1) is subject to section 46IA.

S. 46IA inserted by No. 23/2010 s. 8, substituted by No. 35/2015 s. 7.

46IA Plans not to apply to certain growth area land for provision of State infrastructure

A development contributions plan must not be included in a planning scheme if—

(a) the purpose of the plan is to impose a levy in relation to the development of land in the contribution area (within the meaning of Part 9B); and

S. 46IA(b) amended by No. 12/2021 s. 64.

(b) a development agency responsible for carrying out any of the works, services or facilities for which the levy is imposed is not a municipal council.

S. 46J inserted by No. 50/1995 s. 3.

46J What can a plan provide for?

A development contributions plan may provide for either or both of the following—

(a) the imposition of a development infrastructure levy;

(b) the imposition of a community infrastructure levy—

in relation to the development of land in the area to which the plan applies.

S. 46K inserted by No. 50/1995 s. 3.

46K Contents of plan

(1) A development contributions plan must—

(a) specify the area to which it applies; and

(b) set out the plan preparation costs, works, services and facilities to be funded through the plan, including the staging of the provision of the works, services or facilities; and

S. 46K(1)(b) amended by No. 35/2015 s. 8(a).

(c) relate the need for the plan preparation costs, works, services and facilities to the proposed development of land in the area; and

S. 46K(1)(c) amended by No. 35/2015 s. 8(b).

(d) specify in respect of each of the plan preparation costs, works, services and facilities—

S. 46K(1)(d) substituted by No. 101/2004 s. 4(1)(a), amended by No. 35/2015 s. 8(c)(i).

(i) the amount of the plan preparation costs and the estimated cost of the works, services or facilities; or

S. 46K(1)(d)(i) amended by No. 35/2015 s. 8(c)(ii).

(ii) the standard levy applicable to the plan preparation costs, works, services or facilities; and

S. 46K(1)(d)(ii) amended by No. 35/2015 s. 8(c)(i).

(e) unless a standard levy is applied, specify the proportion of the total estimated cost of the plan preparation costs, works, services and facilities which is to be funded by a development infrastructure levy or community infrastructure levy or both; and

S. 46K(1)(e) amended by Nos 101/2004 s. 4(1)(b), 35/2015 s. 8(d).

(f) specify the land in the area and the types of development in respect of which a levy is payable and the method for determining the amount of levy payable in respect of any development of land; and

(fa) specify the Minister, public authority or municipal council to whom or to which the community infrastructure levy or development infrastructure levy is payable under this Part (the ***collecting agency***); and

S. 46K(1)(fa) inserted by No. 101/2004 s. 4(1)(c).

S. 46K(1)(fb) inserted by No. 101/2004 s. 4(1)(c), amended by No. 35/2015 s. 8(e).

(fb) specify any Minister, public authority or municipal council that is to be responsible for the provision of the works, services or facilities or for the plan preparation costs for which the community infrastructure levy or development infrastructure levy or part of that levy is payable under this Part (the ***development agency***); and

(g) provide for the procedures for the collection of a development infrastructure levy in respect of any development for which a permit under this Act is not required.

(2) A development contributions plan may—

(a) exempt certain land or certain types of development from payment of a development infrastructure levy or community infrastructure levy or both; and

(b) provide for different rates or amounts of levy to be payable in respect of different types of development of land or different parts of the area.

S. 46K(3) inserted by No. 101/2004 s. 4(2).

(3) A development contributions plan may specify the same person to be both a collecting agency and a development agency.

S. 46L inserted by No. 50/1995 s. 3.

46L Community infrastructure levy not to exceed maximum

(1) An approved development contributions plan must not in respect of a development of land require payment of an amount of community infrastructure levy which is greater than—

S. 46L(1)(a) amended by Nos 101/2004 s. 5, 7/2018 s. 24(1).

(a) in the case of the construction of a dwelling, the maximum dwelling amount for each dwelling to be constructed; and

(b) in any other case, 0·25 cents in the dollar of the cost of the building work for the development.

(2) The Governor in Council may from time to time by Order published in the Government Gazette vary the maximum amount which may be collected under subsection (1).

(3) The ***maximum dwelling amount*** is—

S. 46L(3) inserted by No. 7/2018 s. 24(2).

(a) for the financial year beginning on 1 July 2018, $1150; and

(b) for the financial year beginning on 1 July 2019 and each subsequent financial year, the adjusted maximum dwelling amount determined in accordance with section 46LA for that financial year.

(4) The Secretary must cause to be published on the Department's Internet site the maximum dwelling amount for a financial year on or before 1 July of each financial year for which the amount is adjusted in accordance with section 46LA.

S. 46L(4) inserted by No. 7/2018 s. 24(2).

46LA Adjusted maximum dwelling amount

S. 46LA inserted by No. 7/2018 s. 25.

(1) The adjusted maximum dwelling amount for a financial year is to be determined in accordance with the following formula—

$$AMDA = \frac{PMDA \times A}{B}$$

where—

AMDA is the adjusted maximum dwelling amount being determined;

PMDA is the maximum dwelling amount for the previous financial year;

Example

For the purposes of determining the maximum dwelling amount—

- for the financial year beginning on 1 July 2019, "PMDA" is the maximum dwelling amount for the financial year beginning on 1 July 2018, which is $1150—see section 46L(3)(a); and
- for the financial year beginning on 1 July 2020, "PMDA" is the maximum dwelling amount for the financial year beginning on 1 July 2019, which is the adjusted maximum dwelling amount calculated in accordance with this section for that financial year—see section 46L(3)(b).

A is the sum of the producer price index numbers for—

(a) the last reference period in the financial year 2 years earlier than the financial year in respect of which the adjusted maximum dwelling amount is being determined; and

(b) each of the reference periods (other than the last) in the financial year immediately preceding the financial year in respect of which the adjusted maximum dwelling amount is being determined;

B is the sum of the producer price index numbers for—

(a) the last reference period in the financial year 3 years earlier than the financial year in respect of which the adjusted maximum dwelling amount is being determined; and

(b) each of the reference periods (other than the last) in the financial year 2 years earlier than the financial year in respect of which the adjusted maximum dwelling amount is being determined.

Example

In the case that the reference periods are the quarterly periods of a financial year, the variables "A" and "B" for the determination of the adjusted maximum dwelling amount for the financial year beginning on 1 July 2020 are as follows—

- "A" is the sum of the producer price index numbers for the June quarter in the financial year beginning on 1 July 2018 and the September, December and March quarters in the financial year beginning on 1 July 2019;
- "B" is the sum of the producer price index numbers for the June quarter in the financial year beginning on 1 July 2017 and the September, December and March quarters in the financial year beginning on 1 July 2018.

(2) The adjusted maximum dwelling amount determined under subsection (1) is to be rounded up or down to the nearest $10 (and, if the amount by which the amount to be rounded is $5, is to be rounded up).

(3) In this section—

maximum dwelling amount has the same meaning as in section 46L(3);

producer price index means—

(a) the producer price index for non-residential building construction in Victoria as published by the Australian Bureau of Statistics; or

(b) any other index specified by the Governor in Council by Order published in the Government Gazette.

S. 46LB inserted by No. 7/2018 s. 25.

46LB Adjustment of dwelling amount specified in an approved development contributions plan

(1) This section applies if an approved development contributions plan provides that an amount of a community infrastructure levy is payable in respect of each dwelling to be constructed (a ***payable dwelling amount***).

(2) The payable dwelling amount is to be adjusted in accordance with section 46LC for—

(a) the financial year after the first financial year; and

(b) each subsequent financial year.

(3) The relevant collecting agency must publish on its Internet site the payable dwelling amount for a financial year on or before 1 July of each financial year for which the amount is adjusted under subsection (2).

(4) The ***first financial year***, in relation to an approved development contributions plan, is—

(a) if the plan is approved on or before 30 June 2019, the financial year beginning on 1 July 2018; and

Example

The first financial year for a development contributions plan approved on 1 February 2016 is the financial year beginning on 1 July 2018.

(b) in any other case, the financial year in which the plan is approved.

Example

The first financial year for a development contributions plan approved on 1 December 2019 is the financial year beginning on 1 July 2019.

46LC Adjusted payable dwelling amount

S. 46LC inserted by No. 7/2018 s. 25.

(1) The adjusted payable dwelling amount for a financial year is to be determined in accordance with the following formula—

$$APDA = \frac{PPDA \times A}{B}$$

where—

APDA is the adjusted payable dwelling amount being determined;

PPDA is the payable dwelling amount or the adjusted payable dwelling amount determined (as the case requires) for the previous financial year;

Example

A development contributions plan approved on 1 December 2018 specifies a dwelling amount of $1000. For the purposes of determining the adjusted payable dwelling amount—

- for the financial year beginning on 1 July 2019, "PPDA" is the payable dwelling amount for the financial year beginning on 1 July 2018, which is $1000; and
- for the financial year beginning on 1 July 2020, "PPDA" is the adjusted payable dwelling amount for the financial year beginning on 1 July 2019.

A is the sum of the producer price index numbers for—

(a) the last reference period in the financial year 2 years earlier than the financial year in respect of which the adjusted payable dwelling amount is being determined; and

(b) each of the reference periods (other than the last) in the financial year immediately preceding the

financial year in respect of which the adjusted payable dwelling amount is being determined;

B is the sum of the producer price index numbers for—

(a) the last reference period in the financial year 3 years earlier than the financial year in respect of which the adjusted payable dwelling amount is being determined; and

(b) each of the reference periods (other than the last) in the financial year 2 years earlier than the financial year in respect of which the adjusted payable dwelling amount is being determined.

(2) The adjusted payable dwelling amount determined under subsection (1) is to be rounded up or down to the nearest $10 (and, if the amount by which the amount to be rounded is $5, is to be rounded up).

(3) In this section—

adjusted payable dwelling amount means a payable dwelling amount adjusted in accordance with section 46LB(2);

payable dwelling amount—see section 46LB(1);

producer price index means—

(a) the producer price index for non-residential building construction in Victoria as published by the Australian Bureau of Statistics; or

(b) any other index specified by the Governor in Council by Order published in the Government Gazette.

46M Directions

S. 46M inserted by No. 50/1995 s. 3.

(1) The Minister may issue written directions to planning authorities in relation to the preparation and content of development contributions plans.

(2) Without limiting subsection (1), the Minister's directions may—

S. 46M(2)(aa) inserted by No. 35/2015 s. 9(1)(a).

(aa) specify the types of land to which a development contributions plan may or may not apply; and

S. 46M(2)(a) amended by No. 35/2015 s. 9(1)(b).

(a) set out the types of plan preparation costs, works, services or facilities for which a levy may or may not be imposed under a development contributions plan;

S. 46M(2)(b) amended by No. 35/2015 s. 9(1)(b).

(b) set out the types of plan preparation costs, works, services and facilities which may or may not be funded from a development infrastructure levy;

S. 46M(2)(c) amended by No. 35/2015 s. 9(1)(b).

(c) set out the types of plan preparation costs, works, services and facilities which may or may not be funded from a community infrastructure levy;

(d) specify the means by which or the factors in relation to which the estimated cost of the works, services or facilities may or may not be calculated;

(e) specify the means by which or the factors in relation to which the estimated total amount of a levy may or may not be calculated or determined;

(f) specify the means by which or the factors in relation to which the amount of levy payable in respect of any development of land may or may not be calculated or determined;

S. 46M(2)(fa) inserted by No. 101/2004 s. 6, amended by No. 35/2015 s. 9(1)(b).

(fa) subject to section 46L(1), specify standard levies for specified types or classes of types of plan preparation costs, works, services or facilities;

(g) specify requirements for the staging and timing of the provision of works, services and facilities funded by a development contributions plan;

S. 46M(2)(ga) inserted by No. 35/2015 s. 9(2).

(ga) specify the maximum proportion of any development infrastructure levy or community infrastructure levy imposed under a development contributions plan that may be used to fund plan preparation costs in relation to that plan;

(h) specify any other information to be included in a development contributions plan.

(3) The Minister must cause notice to be published in the Government Gazette of all directions issued under this section.

S. 46N inserted by No. 50/1995 s. 3.

46N Collection of development infrastructure levy

(1) Without limiting section 62, if—

(a) an approved development contributions plan provides that a development infrastructure levy is payable in respect of the development of any land; and

(b) an application is made under this Act for a permit to carry out that development on that land—

the responsible authority must include a condition in the permit that the applicant—

(c) pay the amount of the levy to the relevant collecting agency within a specified time or within a time specified by the collecting agency; or

S. 46N(1)(c) amended by No. 101/2004 s. 7.

(d) enter into an agreement with the relevant collecting agency to pay the amount of the levy within a time specified in the agreement.

S. 46N(1)(d) amended by No. 101/2004 s. 7.

(2) If—

(a) an approved development contributions plan provides that a development infrastructure levy is payable in respect of the development of any land; and

(b) a permit is not required under this Act for the development—

a person who proposes to carry out that development of the land must—

(c) pay the amount of the levy to the relevant collecting agency within a time and in a manner specified by the collecting agency in accordance with the approved development contributions plan; or

S. 46N(2)(c) amended by No. 101/2004 s. 7.

(d) enter into an agreement with the relevant collecting agency to pay the amount of the levy within a time specified in the agreement.

S. 46N(2)(d) amended by No. 101/2004 s. 7.

S. 46O inserted by No. 50/1995 s. 3.

46O Collection of community infrastructure levy

(1) If—

(a) an approved development contributions plan provides that a community infrastructure levy is payable in respect of the development of any land; and

(b) an application is made under the **Building Act 1993** for a building permit to carry out building work in respect of that development—

the applicant must, before the building permit is issued—

S. 46O(1)(c) amended by No. 101/2004 s. 7.

(c) pay the amount of the levy to the relevant collecting agency; or

S. 46O(1)(d) amended by No. 101/2004 s. 7.

(d) enter into an agreement with the relevant collecting agency to pay the amount of the levy within a time specified in the agreement.

(2) If—

(a) an approved development contributions plan provides that a community infrastructure levy is payable in respect of the development of any land; and

(b) a building permit under the **Building Act 1993** is not required for the building work for that development—

a person who proposes to carry out that development of the land must, before commencing the development—

S. 46O(2)(c) amended by No. 101/2004 s. 7.

(c) pay the amount of the levy to the relevant collecting agency; or

(d) enter into an agreement with the relevant collecting agency to pay the amount of the levy within a time specified in the agreement.

S. 46O(2)(d) amended by No. 101/2004 s. 7.

46P Provisions applying to collection of levies

S. 46P inserted by No. 50/1995 s. 3.

(1) The relevant collecting agency may require the payment of an amount of levy referred to in section 46N or 46O to be secured to its satisfaction.

S. 46P(1) amended by No. 101/2004 s. 7.

(2) The relevant collecting agency may accept the provision of land, works, services or facilities by the applicant in part or full satisfaction of the amount of levy payable.

S. 46P(2) amended by No. 101/2004 s. 7.

(3) Subsection (2) applies to land, works, services or facilities provided before or after the application for the permit was made or the development is carried out.

(4) Subsection (2) does not apply to land provided in accordance with any requirement of the **Subdivision Act 1988** or any corresponding previous enactment.

46Q Responsibilities of municipal councils

S. 46Q inserted by No. 50/1995 s. 3.

(1) A municipal council must, in accordance with the **Local Government Act 2020**, keep proper accounts of any amount of levy paid to it as a collecting agency or a development agency under this Part.

S. 46Q(1) substituted by No. 101/2004 s. 8(1), amended by No. 9/2020 s. 390(Sch. 1 item 77.4).

S. 46Q(1A) inserted by No. 101/2004 s. 8(1), amended by No. 35/2015 s. 10(1).

(1A) A municipal council to which an amount of levy is paid as a collecting agency under this Part must forward to a development agency any part of the levy that is imposed for plan preparation costs incurred by the development agency or for the carrying out of works, services or facilities by or on behalf of that development agency.

S. 46Q(2) substituted by No. 101/2004 s. 8(1).

(2) Subject to this section, a municipal council to which an amount of levy is paid as a development agency under this Part must apply that amount only—

S. 46Q(2)(a) amended by No. 35/2015 s. 10(2).

(a) for a purpose relating to plan preparation costs or the provision of works, services and facilities in respect of which the levy was imposed; and

(b) in accordance with the approved development contributions plan.

S. 46Q(3) amended by No. 101/2004 s. 8(2).

(3) A municipal council may refund any amount of levy paid to it as a development agency under this Part in respect of a development if it is satisfied that the development is not to proceed.

S. 46Q(4) amended by No. 101/2004 s. 8(3)(b).

(4) If—

S. 46Q(4)(a) amended by No. 101/2004 s. 8(3)(a), substituted by No. 35/2015 s. 10(3).

(a) an amount of levy has been paid to a municipal council as a development agency under this Part for plan preparation costs incurred by the council or for the provision by the council of works, services or facilities in an area; and

(b) that amount has not been expended within the period required by the approved development contributions plan—

the municipal council must within 6 months after the end of that period—

(c) with the consent of the Minister and in the manner approved by the Minister, pay that amount to the current owners of land in the area; or

(d) in accordance with Part 3, submit to the Minister an amendment to the approved development contributions plan to provide for the expenditure of that amount; or

(e) with the consent of the Minister and in the manner approved by the Minister, expend that amount for the provision of other works, facilities or services in that area.

* * * * *

S. 46Q(5) repealed by No. 101/2004 s. 8(4).

46QA Responsibilities of collecting agencies

S. 46QA inserted by No. 101/2004 s. 9.

(1) In this section ***collecting agency*** does not include a municipal council.

(2) A collecting agency must keep proper accounts of any amount of levy paid to it under this Part.

S. 46QA(3) amended by No. 35/2015 s. 11.

(3) A collecting agency to which an amount of levy is paid under this Part must forward to a development agency any part of the levy that is imposed for plan preparation costs incurred by the development agency or for the carrying out of works, services or facilities by or on behalf of that development agency.

(4) A collecting agency to which an amount of levy is paid under this Part must pay any part of that amount that it does not forward to a development agency under subsection (3) into the Consolidated Fund.

Note

A collecting agency will pay an amount of levy into the Consolidated Fund under subsection (4) if it is also the development agency in respect of that levy.

S. 46QB inserted by No. 101/2004 s. 9.

46QB Responsibilities of development agencies

(1) In this section ***development agency*** does not include a municipal council.

(2) A development agency to which an amount of levy is paid under this Part must pay that amount into the Consolidated Fund.

(3) A development agency must keep proper accounts of any amount of levy paid to it under this Part.

S. 46QB(3A) inserted by No. 33/2006 s. 6, amended by No. 11/2017 s. 60.

(3A) If the Victorian Planning Authority is a collecting agency under this Part, a development agency to which an amount of levy is paid by the Authority under this Part must, in accordance with any requirements of the Authority—

(a) report on the use of the amount in the development agency's annual report; and

(b) provide reports on the use of the amount to the Authority.

(4) Subject to this section, if a development agency pays an amount of levy into the Consolidated Fund under this Part, the development agency must apply that amount only—

S. 46QB(4)(a) amended by No. 35/2015 s. 12(1).

(a) for a purpose relating to plan preparation costs or the provision of works, services or facilities in respect of which the levy was imposed; and

(b) in accordance with the approved development contributions plan.

(5) A development agency may refund any amount of levy paid to it under this Part in respect of a development if it is satisfied that the development is not to proceed.

(6) If—

S. 46QB(6)(a) substituted by No. 35/2015 s. 12(2).

(a) an amount of levy has been paid to a development agency under this Part for plan preparation costs incurred by the development agency or for the provision by the development agency of works, services or facilities in an area; and

(b) that amount has not been expended within the period required by the approved development contributions plan—

the development agency must within 6 months after the end of that period—

(c) with the consent of the Minister and in the manner approved by the Minister, pay that amount to the current owners of land in the area; or

(d) in accordance with Part 3, submit to the Minister an amendment to the approved development contributions plan to provide for the expenditure of that amount; or

(e) with the consent of the Minister and in the manner approved by the Minister, expend that amount for the provision of other works, facilities or services in that area.

(7) The Consolidated Fund is appropriated to the extent necessary for the purposes of subsections (4), (5) and (6).

S. 46QC inserted by No. 101/2004 s. 9.

46QC Recovery of levy as debt

A collecting agency may recover any amount of levy payable to it under this Part as a debt due to that collecting agency in any court of competent jurisdiction.

S. 46QD inserted by No. 35/2015 s. 13.

46QD Reporting requirements of collecting agencies and development agencies

(1) A collecting agency or development agency must prepare and give a report to the Minister, at the times required by the Minister, relating to—

(a) any amount of levy paid to it as a collecting agency under this Part; and

(b) any land, works, services or facilities accepted by it as a collecting agency in part or full satisfaction of an amount of levy payable under this Part; and

(c) the use of any amount of levy paid to it as a development agency under this Part; and

(d) the use made by it as a development agency of any land, works, services or facilities referred to in paragraph (b).

(2) A report required under subsection (1) must be prepared in accordance with any requirements of the Minister.

Part 3C—Melbourne Airport Environs Strategy Plan

Pt 3C (Heading and ss 46R–46Y) inserted by No. 72/1998 s. 3.

46R Definitions

S. 46R inserted by No. 72/1998 s. 3.

(1) In this Part—

approved strategy plan means the Melbourne Airport Environs Strategy Plan approved under section 46U(2) as that plan is amended from time to time under this Part;

Melbourne Airport Environs Area means—

(a) the Melbourne Airport Environs Area declared by order under section 46S(1); and

(b) any area included in the Melbourne Airport Environs Area under section 46S(2)—

but excludes any area excluded from the Melbourne Airport Environs Area under section 46S(2).

46S Melbourne Airport Environs Area

S. 46S inserted by No. 72/1998 s. 3.

(1) The Governor in Council may by order published in the Government Gazette declare an area of land to be the Melbourne Airport Environs Area.

(2) The Governor in Council may by order published in the Government Gazette—

(a) include any area of land in the Melbourne Airport Environs Area; or

(b) exclude any area of land from the Melbourne Airport Environs Area.

S. 46T inserted by No. 72/1998 s. 3.

46T Preparation of strategy plan

(1) The Minister may at any time prepare a strategy plan for the Melbourne Airport Environs Area or any part of that area.

(2) The strategy plan is to be known as the Melbourne Airport Environs Strategy Plan.

(3) Subject to section 46U, Part 3 (except sections 36 to 39 and Division 4) applies to the preparation of the strategy plan as if—

(a) the plan were an amendment to a planning scheme; and

(b) the Minister were the planning authority.

(4) The strategy plan may make provision with respect to any matters referred to in section 6 and any other matters which the Minister considers necessary or desirable to be included in the plan.

S. 46U inserted by No. 72/1998 s. 3.

46U Approval of Parliament needed

(1) The Minister must cause the Melbourne Airport Environs Strategy Plan to be laid before each House of Parliament within 7 sitting days of that House after the plan is approved under section 35.

(2) The strategy plan does not take effect unless it is also approved by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.

S. 46U(3) substituted by No. 12/2021 s. 32.

(3) The Minister must publish a notice of the approval of the strategy plan under subsection (2) in the Government Gazette—

(a) if the Minister intends to make a copy of the plan available in person in accordance with the requirements set out in section 197B, specifying a place at which any person may inspect a copy of the plan; or

(b) if the Minister intends to make a copy of the plan available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the plan will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the plan.

(4) The approved strategy plan comes into operation—

(a) when the notice of approval of the plan is published in the Government Gazette; or

(b) on any later day or days specified in the notice.

46V Availability of amendment

S. 46V inserted by No. 72/1998 s. 3.

(1) The Minister must lodge the prescribed documents and a copy of the approved strategy plan with every municipal council whose municipal district is wholly or partly within the Melbourne Airport Environs Area.

(2) The approved strategy plan must be lodged before notice of the approval of the plan is published in the Government Gazette.

S. 46V(3) substituted by No. 12/2021 s. 33(1).

(3) During the inspection period, each relevant person must make a copy of the approved strategy plan, and any documents lodged with it, available in accordance with the public availability requirements.

S. 46V(4) substituted by No. 12/2021 s. 33(1).

(4) After the inspection period ends, each relevant person must make the copy of the approved strategy plan, and any documents lodged with it, available—

(a) in person in accordance with the requirements set out in section 197B; and

(b) on payment of the prescribed fee.

S. 46V(5) inserted by No. 12/2021 s. 33(1).

(5) Each relevant person must keep a copy of the approved strategy plan incorporating all amendments to it.

S. 46V(6) inserted by No. 12/2021 s. 33(1).

(6) Each relevant person must make a copy of the approved strategy plan incorporating all amendments to it available in accordance with the public availability requirements.

S. 46V(7) inserted by No. 12/2021 s. 33(1).

(7) In this section—

inspection period means the period of 2 months beginning on the day on which the approved strategy plan comes into operation;

relevant person means the following persons—

(a) the Minister;

(b) a municipal council whose municipal district is wholly or partly within the Melbourne Airport Environs Area.

S. 46W inserted by No. 72/1998 s. 3.

46W Amendment of approved strategy plan

(1) The Minister may at any time prepare an amendment to the approved strategy plan.

S. 46W(2) amended by No. 12/2021 s. 33(2).

(2) Sections 46S to 46U and section 46V(1), (2), (3) and (4) apply to the preparation and approval of an amendment to the approved strategy plan as if the amendment were a strategy plan.

S. 46X inserted by No. 72/1998 s. 3, substituted by No. 81/2004 s. 17, amended by No. 3/2013 s. 70(4).

46X Planning schemes to comply with approved strategy plan

Despite anything to the contrary in this Act, an amendment to a planning scheme must not be approved under section 35 in relation to the Melbourne Airport Environs Area if the

amendment is inconsistent with the approved strategy plan.

46Y Works to be in conformity with approved strategy plan

S. 46Y inserted by No. 72/1998 s. 3.

(1) Subject to subsection (3), a government department, public authority or municipal council must not carry out works in the Melbourne Airport Environs Area which are not in conformity with the approved strategy plan.

(2) If a government department, public authority or municipal council considers that any works or undertakings which are not in conformity with the approved strategy plan should be carried out, the department, authority or council may make submissions with respect to the proposed works and undertakings to the Premier.

(3) After considering any submission under subsection (2), the Premier, on the advice of the Minister, may, despite anything in any other Act, by order prohibit, either absolutely or on such terms as he or she thinks fit, or restrict or regulate the carrying out of the works or undertakings or any part of them specified in the order.

Pt 3D (Heading and ss 46Z–46ZH) inserted by No. 44/2005 s. 3.

Part 3D—Williamstown Shipyard Site Strategy Plan

S. 46Z inserted by No. 44/2005 s. 3.

46Z Purpose of Part

The purpose of this Part is to ensure that the Williamstown Shipyard Site continues to be used for industrial and marine engineering purposes and ancillary purposes.

S. 46ZA inserted by No. 44/2005 s. 3.

46ZA Definitions

In this Part—

approved strategy plan means the Williamstown Shipyard Site Strategy Plan approved under section 46ZE(2) as that plan is amended from time to time under this Part;

Williamstown Shipyard Site means the land shown on the plan approved by the Governor in Council under section 46ZB.

S. 46ZB inserted by No. 44/2005 s. 3.

46ZB Williamstown Shipyard Site

S. 46ZB(1) amended by Nos 70/2013 s. 4(Sch. 2 item 36.3), 53/2017 s. 88(2).

(1) On receiving a plan approved by the Surveyor-General of the land described as the Williamstown Shipyard Site on the plan numbered LEGL./05–344 in the Central Plan Office, or that land as nearly as practicable, the Minister may recommend that the Governor in Council approve the plan.

(2) On the Minister's recommendation, the Governor in Council, by Order published in the Government Gazette, may approve the plan.

46ZC Preparation of Williamstown Shipyard Site Strategy Plan

S. 46ZC inserted by No. 44/2005 s. 3.

(1) The Minister may at any time prepare a strategy plan for the Williamstown Shipyard Site.

(2) The strategy plan is to be known as the Williamstown Shipyard Site Strategy Plan.

(3) The strategy plan—

(a) must give effect to the purposes of this Part by providing for the Williamstown Shipyard Site to continue to be used for industrial and marine engineering purposes and ancillary purposes; and

(b) may make provision with respect to any matters referred to in section 6 and any other matters which the Minister considers necessary or desirable to be included in the strategy plan.

(4) The strategy plan must not prevent—

(a) the continued use by the public of—

(i) the Crown Land described in folio of the Register Volume 1212 Folio 522; and

(ii) any land in the Williamstown Shipyard Site that was reserved for public purposes by Order published in the Government Gazette on 1 April 1999 page 790; or

(b) the continued use by the public, or for navigation, of the waters of Hobsons Bay.

S. 46ZD inserted by No. 44/2005 s. 3.

46ZD Procedure for making of Williamstown Shipyard Site Strategy Plan

Subject to section 46ZE, Part 3 (except sections 36 to 39 and Division 4) applies to the preparation of the Williamstown Shipyard Site Strategy Plan as if—

(a) the plan were an amendment to a planning scheme; and

(b) the Minister were the planning authority.

S. 46ZE inserted by No. 44/2005 s. 3.

46ZE Approval of Parliament needed

(1) The Minister must cause the Williamstown Shipyard Site Strategy Plan to be laid before each House of Parliament within 7 sitting days of that House after the strategy plan is approved under section 35.

(2) The strategy plan does not take effect unless it is also approved by a resolution passed by each House of Parliament within 10 sitting days after it is laid before that House.

S. 46ZE(3) substituted by No. 12/2021 s. 34.

(3) The Minister must publish a notice of the approval of the strategy plan under subsection (2) in the Government Gazette—

(a) if the Minister intends to make a copy of the plan available in person in accordance with the requirements set out in section 197B, specifying a place at which any person may inspect a copy of the plan; or

(b) if the Minister intends to make a copy of the plan available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specifying—

(i) the address of the Department's Internet site at which a copy of the plan will be published; and

(ii) the Department's contact details for making a request to inspect a copy of the plan.

(4) The approved strategy plan comes into operation—

(a) when the notice of approval of the strategy plan is published in the Government Gazette; or

(b) on any later day or days specified in the notice.

46ZF Availability of approved strategy plan

S. 46ZF inserted by No. 44/2005 s. 3.

(1) The Minister must lodge the prescribed documents and a copy of the approved strategy plan with the municipal council in the municipal district of which the Williamstown Shipyard Site is situated.

(2) The approved strategy plan must be lodged before notice of the approval of the strategy plan is published in the Government Gazette.

(3) During the inspection period, each relevant person must make a copy of the approved strategy plan, and any documents lodged with it, available in accordance with the public availability requirements.

S. 46ZF(3) substituted by No. 12/2021 s. 35(1).

(4) After the inspection period ends, each relevant person must make the copy and any documents lodged with it available—

S. 46ZF(4) substituted by No. 12/2021 s. 35(1).

(a) in person in accordance with the requirements set out in section 197B; and

(b) on payment of the prescribed fee.

(5) Each relevant person must keep a copy of the approved strategy plan incorporating all amendments to it.

S. 46ZF(5) inserted by No. 12/2021 s. 35(1).

S. 46ZF(6) inserted by No. 12/2021 s. 35(1).

(6) Each relevant person must make a copy of the approved strategy plan incorporating all amendments to it available in accordance with the public availability requirements.

S. 46ZF(7) inserted by No. 12/2021 s. 35(1).

(7) In this section—

inspection period means the period of 2 months beginning on the day on which the approved strategy plan comes into operation;

relevant person means the following persons—

(a) the Minister;

(b) the municipal council in the municipal district of which the Williamstown Shipyard Site is situated.

S. 46ZG inserted by No. 44/2005 s. 3.

46ZG Amendments to approved strategy plan

(1) The Minister may at any time prepare an amendment to the approved strategy plan.

S. 46ZG(2) amended by No. 12/2021 s. 35(2).

(2) Sections 46ZC to 46ZE and sections 46ZF(1), 46ZF(2), 46ZF(3) and 46ZF(4) apply to the preparation and approval of an amendment to the approved strategy plan as if the amendment were a strategy plan.

S. 46ZH inserted by No. 44/2005 s. 3.

46ZH Amendment of planning schemes

(1) The Minister must prepare an amendment to any planning scheme that applies to the Williamstown Shipyard Site to give effect to the approved strategy plan.

(2) An amendment under subsection (1) must be prepared as soon as practicable after the approval of the Williamstown Shipyard Site Strategy Plan under section 46ZE(2).

(3) An amendment under subsection (1) may also make any consequential amendments to the planning scheme that are necessary to remove or modify any provisions which are inconsistent with the approved strategy plan.

(4) Sections 12(1)(a), 12(1)(e), 12(2) and 12(3), Divisions 1 and 2 of Part 3 and sections 39(1), 39(2), 39(3), 39(4) and 39(5) and any regulations made for the purposes of those provisions do not apply to the preparation and approval of amendments under subsection (1).

(5) The Minister must not authorise the preparation of, or approve, an amendment to a planning scheme applying to the Williamstown Shipyard Site if the amendment is inconsistent with the approved strategy plan.

Part 4—Permits

Division 1—Permits required by planning schemes

47 Applications for permits

S. 47 amended by No. 48/1991 s. 61(1)(a)(b).

(1) If a planning scheme requires a permit to be obtained for a use or development of land or in any of the circumstances mentioned in section 6A(2) or for any combination of use, development and any of those circumstances, the application for the permit must—

(a) be made to the responsible authority in accordance with the regulations; and

S. 47(1)(ab) inserted by No. 40/2014 s. 31(1).

(ab) if the permit is required to undertake development, state the estimated cost of the development for which the permit is required; and

S. 47(1)(b) amended by No. 35/1995 s. 3(2).

(b) be accompanied by the prescribed fee; and

S. 47(1)(c) inserted by No. 35/1995 s. 3(2), amended by No. 100/2000 s. 6.

(c) be accompanied by the information required by the planning scheme; and

S. 47(1)(d) inserted by No. 100/2000 s. 6.

(d) if the land is burdened by a registered restrictive covenant, be accompanied by a copy of the covenant; and

S. 47(1)(e) inserted by No. 100/2000 s. 6.

(e) if the application is for a permit to allow the removal or variation of a registered restrictive covenant or if anything authorised by the permit would result in a breach of a registered restrictive covenant, be accompanied by—

(i) information clearly identifying each allotment or lot benefited by the registered restrictive covenant; and

(ii) any other information that is required by the regulations.

(1A) If the application is a leviable planning permit application, the applicant must, at the same time as making the application, give the responsible authority a current levy certificate in respect of the development for which the permit is required that states an estimated cost of the development that is equal to or greater than the estimated cost of the development stated in the application.

S. 47(1A) inserted by No. 40/2014 s. 31(2).

(1B) If an applicant fails to comply with subsection (1A), the application is void.

S. 47(1B) inserted by No. 40/2014 s. 31(2).

(2) Sections 52 and 55 do not apply to an application for a permit to remove a restriction (within the meaning of the **Subdivision Act 1988**) over land if the land has been used or developed for more than 2 years before the date of the application in a manner which would have been lawful under this Act but for the existence of the restriction.

S. 47(2) inserted by No. 48/1991 s. 61(1)(c).

48 What if the applicant is not the owner?

(1) If the applicant is not the owner of the land for which the permit is needed, an application must—

(a) be signed by the owner of the land; or

(b) include a declaration by the applicant that the applicant has notified the owner about the application.

S. 48(2) amended by No. 28/2000 s. 3.

(2) A person must not obtain or attempt to obtain a permit by wilfully making or causing to be made any false representation or declaration either orally or in writing.

Penalty: 60 penalty units.

Note to s. 48(2) inserted by No. 21/2013 s. 18(1).

Note

Section 128 applies to an offence against this subsection.

S. 49 (Heading) inserted by No. 3/2013 s. 16.

49 Responsible authority to keep register

S. 49(1) amended by No. 47/2007 s. 9.

(1) The responsible authority must keep a register containing the prescribed information in respect of—

(a) all applications for permits; and

(b) all decisions and determinations relating to permits.

S. 49(2) substituted by No. 12/2021 s. 36.

(2) The responsible authority must make the register available in accordance with the public availability requirements.

S. 49(3) inserted by No. 53/2012 s. 5.

(3) If the responsible authority in relation to an application for a permit is an officer of the municipal council, the responsible authority in relation to the application for the purposes of this section is the municipal council.

S. 50 substituted by No. 81/2004 s. 18.

50 Amendment to application at request of applicant before notice

(1) An applicant may ask the responsible authority to amend an application before notice of the application is first given under section 52.

(2) An amendment to an application may include—

(a) an amendment to the use or development mentioned in the application; and

(b) an amendment to the description of land to which the application applies; and

(c) an amendment to any plans and other documents forming part of or accompanying the application.

(3) A request under this section must—

(a) be accompanied by the prescribed fee (if any); and

(b) be accompanied by any information or document referred to in section 47(1)(c) to 47(1)(e) that relates to the proposed amendment to the application and that was not provided with the original application; and

(c) if the applicant is not the owner of the land to which the application applies, be signed by the owner or include a declaration by the applicant, that the applicant has notified the owner about the request.

(4) Subject to subsection (5), the responsible authority must amend the application in accordance with the request.

(5) The responsible authority may refuse to amend the application if it considers that the amendment is so substantial that a new application for a permit should be made.

(6) The responsible authority must make a note in the register if any amendment is made to an application under this section.

(7) On the amendment of an application under this section, the amended application is to be taken—

(a) to be the application for the purposes of this Act; and

(b) to have been received on the day that the request for amendment was received by the responsible authority.

S. 50A inserted by No. 81/2004 s. 18.

50A Amendment of application by responsible authority before notice

(1) With the agreement of the applicant and after giving notice to the owner, the responsible authority may make any amendments to an application that it thinks necessary before notice of the application is first given under section 52.

(2) An amendment to an application may include—

(a) an amendment to the use or development mentioned in the application; and

(b) an amendment to the description of land to which the application applies; and

(c) an amendment to any plans and other documents forming part of or accompanying the application.

(3) The responsible authority may require the applicant—

(a) to notify the owner under subsection (1); and

(b) to make a declaration that that notice has been given.

(4) The responsible authority must make a note in the register if any amendment is made to an application under this section.

(5) On the amendment of an application under this section, the amended application is to be taken—

(a) to be the application for the purposes of this Act; and

(b) to have been received on the day that the applicant agreed to the amendment.

51 Applications to be made available to the public

S. 51 substituted by No. 128/1993 s. 12, amended by No. 52/1998 s. 191(2)(b)(c), substituted by No. 12/2021 s. 37.

(1) The responsible authority must make a copy of every application, and the prescribed information supplied in respect of it, available in accordance with the public availability requirements.

(2) The responsible authority must make the application and prescribed information available under subsection (1) until—

(a) the last day on which an application for review may be made under section 77, 79, 80 or 82 in relation to the application or the permit; or

(b) if an application for review is made to the Tribunal before the day referred to in paragraph (a), the application is determined by the Tribunal or withdrawn.

52 Notice of application

(1) Unless the responsible authority requires the applicant to give notice, the responsible authority must give notice of an application in a prescribed form—

(a) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of allotments or lots adjoining the land to which the application applies unless the responsible authority is satisfied that the grant of the permit would

S. 52(1)(a) amended by Nos 53/1988 s. 45(Sch. 3 item 57) (as amended by No. 47/1989 s. 23(2)), 86/1989 s. 4(2)(a), 128/1993 s. 13(1).

not cause material detriment to any person; and

(b) to a municipal council, if the application applies to or may materially affect land within its municipal district; and

(c) to any person to whom the planning scheme requires it to give notice; and

S. 52(1)(ca) inserted by No. 100/2000 s. 7(1).

(ca) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land benefited by a registered restrictive covenant, if anything authorised by the permit would result in a breach of the covenant; and

S. 52(1)(cb) inserted by No. 100/2000 s. 7(1), amended by No. 10/2005 s. 3(Sch. 1 item 17.2).

(cb) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land benefited by a registered restrictive covenant, if the application is to remove or vary the covenant; and

(d) to any other persons, if the responsible authority considers that the grant of the permit may cause material detriment to them.

S. 52(1AA) inserted by No. 100/2000 s. 7(2).

(1AA) If an application is made for a permit to remove or vary a registered restrictive covenant or for a permit which would authorise anything which would result in a breach of a registered restrictive covenant, then unless the responsible authority requires the applicant to give notice, the responsible authority must give notice of the application in a prescribed form—

(a) by placing a sign on the land which is the subject of the application; and

(b) by publishing a notice in a newspaper generally circulating in the area in which that land is situated.

(1A) The responsible authority may refuse an application and, if it does so, it does not have to comply with subsections (1) and (1AA)[19].

S. 52(1A) inserted by No. 86/1989 s. 13, amended by No. 100/2000 s. 7(3).

(1B) Sections 55 to 57 do not apply if the responsible authority decides under subsection (1A) to refuse to grant the permit[20].

S. 52(1B) inserted by No. 86/1989 s. 13.

(1C) Section 65(1) applies to a decision to refuse to grant a permit under subsection (1A) as if the words "and each objector" were deleted[21].

S. 52(1C) inserted by No. 86/1989 s. 13.

(2) A notice under subsection (1)(d) may be given—

(a) in all or any of the following ways—

(i) by placing a sign on the land concerned;

(ii) by publishing a notice in newspapers generally circulating in the area in which the land is situated;

(iii) by giving the notice personally or sending it by post; or

(b) in any other way that the responsible authority considers appropriate.

(2A) An applicant may give notice under this section, if, within 10 business days after receiving the application, the responsible authority has not told the applicant—

S. 52(2A) inserted by No. 128/1993 s. 13(2), amended by No. 3/2013 s. 75(2).

(a) whether or not the applicant is required to give notice under this section; and

(b) the persons (if any) it requires to be notified under subsection (1)(d).

S. 52(2B) inserted by No. 128/1993 s. 13(2).

(2B) It is sufficient notice for the purposes of this section if an applicant to whom subsection (2A) applies—

S. 52(2B)(a) amended by No. 100/2000 s. 7(4).

(a) gives the notice required by subsection (1)(a), (b), (c) (ca) and (cb) and subsection (1AA); and

(b) gives notice in accordance with subsection (2)(a)(i) and (ii).

(3) The responsible authority may give any further notice that it considers appropriate of an application for a use or development which is likely to be of interest or concern to the community.

S. 52(4) inserted by No. 128/1993 s. 13(3), amended by No. 100/2000 s. 7(5).

(4) A planning scheme may exempt any class or classes of applications from all or any of the requirements of subsection (1) except paragraphs (ca) and (cb).

S. 52(5) inserted by No. 128/1993 s. 13(3).

(5) An exemption may be made subject to any other requirements as to notice that are set out in the planning scheme in respect of that class of applications.

S. 52(6) inserted by No. 128/1993 s. 13(3).

(6) If an application for a permit could fall within more than one class of applications under subsection (4), the notice requirements relating to each class of applications must be complied with.

53 What are the duties of applicants?

(1) The responsible authority may require the applicant to give the notice under section 52(1) to the persons specified by the responsible authority.

S. 53(1A) inserted by No. 100/2000 s. 7(6).

(1A) The responsible authority may require the applicant to give the notice under section 52(1AA).

(1B) A requirement of the responsible authority to the applicant under subsection (1) must be given in writing.

S. 53(1B) inserted by No. 100/2000 s. 7(6).

(2) The applicant must satisfy the responsible authority that the applicant has given the notice.

(3) The applicant must pay the cost of the notice.

(4) If the responsible authority gives the notice under section 52(1) or 52(1AA), the applicant must pay the costs to the responsible authority.

S. 53(4) amended by No. 100/2000 s. 7(7).

(5) If the applicant gives the notice to the persons specified under subsection (1), the applicant is not required to give any further notice of the application under section 52(1).

54 More information

(1) A responsible authority may require the applicant to provide it or a referral authority with more information before it deals with the application.

(1A) A requirement under subsection (1) must be made by giving notice in writing setting out the information to be provided.

S. 54(1A) inserted by No. 81/2004 s. 19.

(1B) If a requirement is made under subsection (1) within the prescribed time, the notice must also state that the application will lapse on the lapse date specified in the notice if the required information is not given before that date.

S. 54(1B) inserted by No. 81/2004 s. 19.

Note

Section 54A allows an extension of time to be sought.

(1C) The lapse date must be a day not less than 30 days after the date of the notice.

S. 54(1C) inserted by No. 81/2004 s. 19.

S. 54(2) amended by No. 52/1998 s. 191(2)(d).

(2) If the responsible authority requires the applicant after the prescribed time to provide it with more information, that requirement does not affect the time after which an application for review may be made under section 79.

S. 54(3) inserted by No. 53/2012 s. 6.

(3) If an application for a permit is of a class that is exempted by a planning scheme from the requirements of this section, the responsible authority must not require the applicant to provide it or the referral authority with more information under this section before it deals with the application.

S. 54A inserted by No. 81/2004 s. 20.

54A Applicant may apply for extension of time to provide more information

(1) An applicant may apply to the responsible authority for an extension of time to give the information required under section 54 if the requirement was made within the prescribed time under that section.

(2) An application for an extension of time must be made before the lapse date specified in the requirement notice.

(3) The responsible authority may decide to extend the time to give the required information or refuse to extend that time.

(4) The responsible authority must give the applicant written notice of its decision under subsection (3).

(5) If the responsible authority decides to extend the time, the notice must set out a new lapse date for the application.

(6) If the responsible authority decides to refuse to extend the time and, at the date of the decision, the lapse date has passed or will occur within the next 14 days, the notice must set out a new lapse date that is 14 days from the date of the decision.

54B When does an application lapse?

S. 54B inserted by No. 81/2004 s. 20.

(1) An application for a permit lapses if the information required under section 54(1) within the prescribed time under that section (or that requirement as changed by the Tribunal under section 78(b)) is not given by the final lapse date for the application.

(2) The final lapse date for an application is the last of the following to occur—

(a) the lapse date specified in the notice under section 54(1A);

(b) the new lapse date set out in a notice under section 54A, if applicable;

(c) if the applicant has made an application to the Tribunal under section 78(b) in respect of the requirement for more information and the Tribunal has confirmed or changed the requirement, the new lapse date determined by the Tribunal under section 85(3);

(d) if the applicant has made an application to the Tribunal under section 81(2) in respect of the refusal or failure of the responsible authority to extend the time to give the information and the Tribunal extends the time, the day after the end of the extended time;

(e) if the applicant has made an application to the Tribunal under section 81(2) in respect of the refusal or failure of the responsible authority to extend the time to give the information and the Tribunal refuses to extend the time, the day that is 14 days after the day on which the Tribunal makes its determination.

55 Application to go to referral authorities

S. 55(1) amended by No. 3/2013 s. 17(1).

(1) A responsible authority must give a copy of an application, together with the prescribed information, to every person or body that the planning scheme specifies as a referral authority for applications of that kind without delay unless the applicant satisfies the responsible authority that the referral authority has—

(a) considered the proposal for which the application is made within the past three months; and

(b) stated in writing that it does not object to the granting of the permit for the proposal.

(2) The referral authority must tell the responsible authority in writing within the prescribed time after getting the application if it needs any more information.

S. 55(3) inserted by No. 3/2013 s. 17(2).

(3) The referral authority must give to the applicant, without delay, a copy of any request that it makes to the responsible authority under subsection (2) in respect of the application.

S. 55(4) inserted by No. 3/2013 s. 17(2).

(4) A planning scheme may specify that a referral authority is—

(a) a determining referral authority; or

(b) a recommending referral authority.

S. 55A inserted by No. 97/1987 s. 176(1), repealed by No. 94/1998 s. 183(Sch. 4 item 3).

* * * * *

56 Action by referral authority on application

(1) A referral authority must consider every application referred to it and may tell the responsible authority in writing that—

(a) it does not object to the granting of the permit; or

(b) it does not object if the permit is subject to the conditions specified by the referral authority; or

(c) it objects to the granting of the permit on any specified ground.

(2) The conditions specified by the referral authority may include a condition that something be done to the satisfaction of the responsible authority or a Minister, public authority, municipal council or referral authority.

S. 56(2) amended by No. 86/1989 s. 25(j).

(3) The referral authority may also give the responsible authority its comments on the application.

(3A) The referral authority must give to the applicant, without delay, a copy of any decision and comments it gives to the responsible authority in respect of the application.

S. 56(3A) inserted by No. 3/2013 s. 18.

(4) A referral authority may apply to the Minister for an extension of the prescribed period or periods under section 59.

(5) The Minister must inform the referral authority concerned and the responsible authority without delay of any extension of a prescribed period that the Minister grants under subsection (4).

S. 56A inserted by No. 3/2013 s. 19.

56A Referral authority to keep register

(1) The referral authority must keep a register containing the prescribed information in respect of all applications referred to it under sections 55 and 57C.

S. 56A(2) substituted by No. 12/2021 s. 38.

(2) The referral authority must make the register available in accordance with the public availability requirements.

57 Objections to applications for permits

(1) Any person who may be affected by the grant of the permit may object to the grant of a permit.

S. 57(1A) inserted by No. 100/2000 s. 8.

(1A) If the permit would allow the removal or variation of a registered restrictive covenant or if anything authorised by the permit would result in a breach of a registered restrictive covenant, an owner or occupier of any land benefited by the covenant is deemed to be a person affected by the grant of the permit.

S. 57(2) amended by No. 128/1993 s. 14(1).

(2) An objection must be made to the responsible authority in writing stating the reasons for the objection and stating how the objector would be affected by the grant of the permit.

S. 57(2A) inserted by No. 128/1993 s. 14(2).

(2A) The responsible authority may reject an objection which it considers has been made primarily to secure or maintain a direct or indirect commercial advantage for the objector.

S. 57(2B) inserted by No. 128/1993 s. 14(2).

(2B) If an objection has been rejected under subsection (2A) this Act applies as if the objection had not been made.

(3) If a number of persons make one objection, they may give the responsible authority the name and address of the person to whom the responsible authority is to give notice of the decision.

(4) If a number of persons make one objection, it is sufficient compliance with sections 64(1) and 65(1) if the responsible authority gives the notice—

(a) to the person named under subsection (3); or

(b) if no name and address is given under subsection (3) to one of the persons who made the objection.

(5) The responsible authority must make a copy of every objection available in accordance with the public availability requirements.

S. 57(5) amended by No. 52/1998 s. 191(2)(e), substituted by No. 12/2021 s. 39.

(6) The responsible authority must make a copy of every objection available under subsection (5) until the end of the period during which an application may be made for review of a decision on the application.

S. 57(6) inserted by No. 12/2021 s. 39.

57A Amendments to application after notice of application is given

S. 57A inserted by No. 81/2004 s. 21.

(1) An applicant may ask the responsible authority to amend an application after notice of the application is given under section 52.

(2) An amendment to an application may include—

(a) an amendment to the use or development mentioned in the application; and

(b) an amendment to the description of land to which the application applies; and

(c) an amendment to any plans and other documents forming part of or accompanying the application.

(3) A request under this section must—

(a) be accompanied by the prescribed fee (if any); and

(b) be accompanied by any information or document referred to in section 47(1)(c) to 47(1)(e) that relates to the proposed amendment to the application and that was not provided with the original application; and

(c) if the applicant is not the owner of the land to which the application applies, be signed by the owner or include a declaration by the applicant that the applicant has notified the owner about the request.

(4) Subject to subsection (5), the responsible authority must amend the application in accordance with the request.

(5) The responsible authority may refuse to amend the application if it considers that the amendment is so substantial that a new application for a permit should be made.

(6) The responsible authority must make a note in the register if any amendment is made to an application under this section.

(7) On the amendment of an application under this section—

(a) the amended application is to be taken—

(i) to be the application for the purposes of this Act; and

(ii) to have been received on the day that the request for amendment was received by the responsible authority; and

(b) all objections made in relation to the original application are to be taken to be objections to the amended application.

(8) Nothing in this section affects any right a person may have to make a request under section 87 or 89 in respect of anything done or not done in relation to the original application.

(9) Sections 52 and 55 do not apply to an amended application.

57B Notice of amended application

S. 57B inserted by No. 81/2004 s. 21.

(1) If an application is amended under section 57A, the responsible authority must determine—

(a) whether and to whom notice should be given in respect of the amended application; and

(b) if notice is to be given, the nature and extent of that notice.

(2) In determining whether or not notice should be given of an amended application, the responsible authority must consider whether, as a result of the amendments made to the application, the grant of the permit would cause material detriment to any person.

(3) Section 53 applies to a notice under this section as if it were a notice under section 52(1).

57C Amended application may go to referral authorities

S. 57C inserted by No. 81/2004 s. 21.

(1) The responsible authority must give a copy of an amended application, together with the prescribed information, to every person or body that the planning scheme specifies as a referral authority for applications of that kind without delay unless the responsible authority considers that the

S. 57C(1) amended by No. 3/2013 s. 20(1).

amendment to the application would not adversely affect the interests of the referral authority.

(2) A referral authority must tell the responsible authority in writing within the prescribed time after getting the amended application if it needs any more information in respect of the amendment.

S. 57C(3) inserted by No. 3/2013 s. 20(2).

(3) A referral authority must give to the applicant, without delay, a copy of any request that it makes to the responsible authority under subsection (2) in respect of the amended application.

S. 58 amended by No. 66/2009 s. 4 (ILA s. 39B(1)).

58 Responsible authority to consider all applications

S. 58(1) amended by No. 3/2013 s. 4(1).

(1) The responsible authority must consider every application for a permit.

S. 58(2) inserted by No. 66/2009 s. 4(2), repealed by No. 3/2013 s. 4(2).

* * * * *

S. 58A inserted by No. 3/2013 s. 9.

58A Responsible authority may request advice from Planning Application Committee

A responsible authority, with the consent of the Minister, may ask the Planning Application Committee for advice in relation to an application for a permit or a class of applications for permits.

59 Time for decision

(1) The responsible authority may decide on an application without delay if—

S. 59(1) amended by No. 100/2000 s. 7(8)(a), substituted by No. 81/2004 s. 22(1).

(a) the responsible authority is not required to give notice under section 52(1) or 52(1AA); or

(b) the responsible authority does not require notice to be given under section 57B; or

(c) the application is not required to be referred to a referral authority under section 55 or 57C.

(2) The responsible authority may decide on an application as soon as it gets the last of the replies from referral authorities—

(a) if the responsible authority gets all of the replies before the end of the prescribed period or periods or any extended period allowed by the Minister under section 56; and

(b) 14 days have elapsed after the giving of the last notice under sections 52(1), 52(1AA) and 57B.

S. 59(2)(b) amended by Nos 100/2000 s. 7(8)(b), 81/2004 s. 22(2).

(3) In any other case, the responsible authority must not decide on the application until the later of—

(a) the end of the prescribed period or periods or any extended period allowed by the Minister under section 56 if the application is referred to a referral authority; or

(b) 14 days after the giving of the last notice under sections 52(1), 52(1AA) and 57B.

S. 59(3)(b) amended by Nos 100/2000 s. 7(8)(b), 81/2004 s. 22(2).

S. 60 amended by No. 48/1991 s. 61(2)(a).

60 What matters must a responsible authority consider?

S. 60(1) amended by Nos 86/1989 s. 25(k), 35/1995 s. 5, substituted by No. 81/2004 s. 23(1).

(1) Before deciding on an application, the responsible authority must consider—

(a) the relevant planning scheme; and

(b) the objectives of planning in Victoria; and

(c) all objections and other submissions which it has received and which have not been withdrawn; and

(d) any decision and comments of a referral authority which it has received; and

S. 60(1)(e) amended by No. 3/2013 s. 76(1).

(e) any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development; and

S. 60(1)(f) inserted by No. 3/2013 s. 76(2).

(f) any significant social effects and economic effects which the responsible authority considers the use or development may have.

S. 60(1A) inserted by No. 81/2004 s. 23(1).

(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider—

S. 60(1A)(a) repealed by No. 3/2013 s. 76(3).

* * * * *

(b) the approved regional strategy plan under Part 3A; and

(c) any amendment to the approved regional strategy plan under Part 3A adopted under this Act but not, as at the date on which the application is considered, approved by the Minister; and

(d) the approved strategy plan under Part 3C; and

S. 60(1A)(d) amended by No. 44/2005 s. 4(a).

(e) any amendment to the approved strategy plan under Part 3C adopted under this Act but not, as at the date on which the application is considered, approved by the Minister; and

S. 60(1A)(e) amended by No. 44/2005 s. 4(a).

(ea) the approved strategy plan under Part 3D; and

S. 60(1A)(ea) inserted by No. 44/2005 s. 4(b).

(eb) any amendment to the approved strategy plan under Part 3D adopted under this Act but not, as at the date on which the application is considered, approved by the Minister; and

S. 60(1A)(eb) inserted by No. 44/2005 s. 4(b).

(f) any relevant environment reference standard within the meaning of the **Environment Protection Act 2017**; and

S. 60(1A)(f) substituted by No. 39/2018 s. 49(1).

(fa) any Order made by the Governor in Council under section 156 of the **Environment Protection Act 2017**; and

S. 60(1A)(fa) inserted by No. 39/2018 s. 49(1).

(g) any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council; and

(h) any amendment to the planning scheme which has been adopted by a planning authority but not, as at the date on which the application is considered, approved by the Minister or a planning authority; and

(i) any agreement made pursuant to section 173 affecting the land the subject of the application; and

(j) any other relevant matter.

S. 60(1B) inserted by No. 30/2015 s. 4(1).

(1B) For the purposes of subsection (1)(f), the responsible authority must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.

S. 60(2) inserted by No. 48/1991 s. 61(2)(b).

(2) The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the **Subdivision Act 1988**) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer—

(a) financial loss; or

(b) loss of amenity; or

(c) loss arising from change to the character of the neighbourhood; or

(d) any other material detriment—

as a consequence of the removal or variation of the restriction.

(3) Despite subsection (1)(c), if no notice is required to be given under section 52(1) or 57B or the planning scheme of an application, the responsible authority is not required to consider any objection or submission received in respect of the application before deciding the application.

S. 60(3) inserted by No. 128/1993 s. 15, amended by No. 81/2004 s. 23(2)(a)(b).

(3A) If an application for a permit is of a class that is exempted by a planning scheme wholly or in part from the requirements of subsections (1)(b) to (f), (1A) and (1B), the responsible authority is not required to consider the exempted matters before deciding the application.

S. 60(3A) inserted by No. 53/2012 s. 7, amended by Nos 3/2013 s. 76(5), 30/2015 s. 4(2).

(4) Subsection (2) does not apply to any restriction which was—

S. 60(4) inserted by No. 128/1993 s. 15.

(a) registered under the **Subdivision Act 1988**; or

(b) lodged for registration or recording under the **Transfer of Land Act 1958**; or

(c) created—

before 25 June 1991.

(5) The responsible authority must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that—

S. 60(5) inserted by No. 128/1993 s. 15.

(a) the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and

(b) if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.

S. 60(6) inserted by No. 128/1993 s. 15, amended by No. 52/1998 s. 191(1).

(6) If an application for a permit to remove or vary a restriction referred to in subsection (4) was made on or after 25 June 1991 and the responsible authority had made a decision in respect of the application before the commencement of section 15 of the **Planning and Environment (Amendment) Act 1993**, the Tribunal must determine in accordance with subsection (5) any appeal under this Act in respect of that decision.

S. 60(7) inserted by No. 128/1993 s. 15.

(7) Nothing in subsection (4), (5) or (6) affects the validity of a permit to remove or vary a restriction issued under this Act before the commencement of section 15 of the **Planning and Environment (Amendment) Act 1993**.

61 Decision on application

(1) The responsible authority may decide—

(a) to grant a permit; or

(b) to grant a permit subject to conditions; or

(c) to refuse to grant a permit on any ground it thinks fit.

Note to s. 61(1) inserted by No. 12/2021 s. 5.

Note

The responsible authority must refuse to grant a permit if an Order under section 131 is in effect and applies to the land to which the permit application relates unless the permit is for a use or development that is specified in the Order as an exception—see section 132(1)(c) and (2).

S. 61(2) amended by No. 3/2013 s. 21(1).

(2) The responsible authority must decide to refuse to grant the permit if a relevant determining referral authority objects to the grant of the permit.

S. 61(2A) inserted by No. 3/2013 s. 21(2).

(2A) The responsible authority may decide to refuse to grant a permit if a relevant recommending referral authority objects to the grant of the permit.

(3) The responsible authority—

S. 61(3) inserted by No. 8/1995 s. 44.

(a) must not decide to grant a permit to use or develop marine and coastal Crown land within the meaning of the **Marine and Coastal Act 2018** unless the Minister administering that Act has consented under that Act to the use or development; and

S. 61(3)(a) amended by No. 26/2018 s. 96(1).

(b) must refuse to grant the permit if the Minister administering that Act has refused or is deemed to have refused under that Act to consent to that use or development.

(4) If the grant of a permit would authorise anything which would result in a breach of a registered restrictive covenant, the responsible authority must refuse to grant the permit unless a permit has been issued, or a decision made to grant a permit, to allow the removal or variation of the covenant.

S. 61(4) inserted by No. 100/2000 s. 9.

61A Decisions where responsible authority is a council officer

S. 61A inserted by No. 53/2012 s. 8.

(1) This section applies if a council officer has a power, duty or function as a responsible authority.

(2) Section 130 of the **Local Government Act 2020** applies to the council officer in relation to the power, duty or function as if he or she were a member of Council staff who has been delegated the power, duty or function by the municipal council.

S. 61A(2) amended by No. 9/2020 s. 390(Sch. 1 item 77.5).

(3) The council officer must delegate the power, duty or function to another council officer of the municipal council if, under section 130 of the **Local Government Act 2020**, the council officer is prohibited from exercising that power or

S. 61A(3) amended by No. 9/2020 s. 390(Sch. 1 item 77.6).

discharging that duty or function because he or she has a conflict of interest.

(4) Any permit issued by the council officer is taken to be a permit issued by the municipal council as the responsible authority (except for the purposes of a review under section 80).

(5) In this section—

S. 61A(5) def. of *council officer* amended by No. 9/2020 s. 390(Sch. 1 item 77.7).

council officer means—

(a) a Chief Executive Officer within the meaning of section 3(1) of the **Local Government Act 2020**; or

(b) a member of Council staff within the meaning of section 3(1) of the **Local Government Act 2020**.

62 What conditions can be put on permits?

(1) In deciding to grant a permit, the responsible authority must—

S. 62(1)(a) amended by No. 3/2013 s. 22(1).

(a) include any condition which the planning scheme or a relevant determining referral authority requires to be included; and

S. 62(1)(aa) inserted by No. 100/2000 s. 10(1).

(aa) if the grant of the permit would authorise anything which would result in a breach of a registered restrictive covenant, include a condition that the permit is not to come into effect until the covenant is removed or varied; and

S. 62(1)(b) amended by No. 100/2000 s. 10(2).

(b) not include additional conditions which conflict with any condition included under paragraph (a) or (aa).

(2) The responsible authority may include any other condition that it thinks fit including—

(a) a condition that specified things are to be done to the satisfaction of the responsible authority a Minister, public authority, municipal council or referral authority; and

S. 62(2)(a) amended by No. 86/1989 s. 25(b).

(ab) a condition recommended by a recommending referral authority; and

S. 62(2)(ab) inserted by No. 3/2013 s. 22(2).

(b) a condition that the permit is not to come into effect unless a specified permit is cancelled or amended; and

(c) in relation to a permit for a use for a specified time, a condition that—

(i) any development carried out on the land under the permit is to be removed at the end of the specified time; or

(ii) the land is to be restored to a specified state at the end of the specified time; and

(d) a condition that the development is to be carried out in stages over the periods specified in or under the permit; and

(e) a condition providing that no compensation is payable under Part 5 in respect of anything done under the permit or setting out—

(i) the circumstances in which compensation will be paid for anything done under the permit; and

(ii) the amount, or the method of determining the amount, of compensation payable; and

S. 62(2)(f) amended by No. 53/1988 s. 45(Sch. 2 item 32A) (as amended by No. 47/1989 s. 13(2)).

(f) a condition that the owner of the land or applicant for the permit in anticipation of the applicant becoming owner of the land is to enter into an agreement with the responsible authority under section 173 within a specified period or before the use or development or a specified part of it starts; and

S. 62(2)(g) amended by Nos 53/1988 s. 45(Sch. 2 item 32B) (as amended by No. 47/1989 s. 13(2)), 93/1995 s. 218(1)(Sch. 2 item 7.2), 7/2017 s. 305(2).

(g) a condition that the owner of the land or, if the applicant for the permit is not the owner of the land, the applicant on the applicant becoming the owner of the land is to enter into a covenant with the relevant Minister under Part 7 of the **Heritage Act 2017** for the conservation of a registered place; and

S. 62(2)(h) amended by Nos 53/1988 s. 45(Sch. 2 item 32C) (as amended by No. 47/1989 s. 13(2)), 86/1989 s. 25(l), repealed by No. 50/1995 s. 4(1).

* * * * *

(i) a condition that plans, drawings or other documents be prepared by the applicant and lodged with the responsible authority for approval before the use or development or a specified part of it starts; and

(j) a condition requiring changes to be made to any plan or drawing forming part of the application for the permit; and

S. 62(2)(j) amended by No. 53/1988 s. 45(Sch. 2 item 33) (as amended by No. 47/1989 s. 6(3)(f)).

* * * * *

S. 62(2)(k) inserted by No. 53/1988 s. 45(Sch. 2 item 33) (as amended by No. 47/1989 s. 6(3)(f)), repealed by No. 48/1991 s. 62(a).

(l) a condition stating that it considers that the economical and efficient subdivision, consolidation or servicing of, or access to, land requires the holder of the permit to acquire or remove—

(i) a right of way over the land covered by the permit; or

(ii) an easement over land not covered by the permit but in the vicinity of that land—

using the procedure in section 36 of the **Subdivision Act 1988** and that the acquisition or removal will not result in an unreasonable loss of amenity in the area affected by the acquisition or removal;

S. 62(2)(l) inserted by No. 53/1988 s. 45(Sch. 3 item 33) (as amended by No. 47/1989 s. 6(3)(f)), substituted by No. 48/1991 s. 62(b), amended by No. 72/1998 s. 4.

(m) a condition requiring or authorising any of the things listed in the Table in section 24A(1) of the **Subdivision Act 1988**.

S. 62(2)(m) inserted by No. 48/1991 s. 62(b).

* * * * *

S. 62(3) substituted by Nos 28/2000 s. 4, 100/2000 s. 11(1), repealed by No. 81/2004 s. 24.

S. 62(4) inserted by No. 126/1993 s. 264(Sch. 5 item 17.1).

(4) The responsible authority must not include in a permit a condition which is inconsistent—

(a) with the **Building Act 1993**; or

(b) the building regulations under that Act; or

(c) a relevant determination of the Building Appeals Board under that Act in respect of the land to which the permit applies.

S. 62(5) inserted by No. 50/1995 s. 4(2), substituted by No. 101/2004 s. 10.

(5) In deciding to grant a permit, the responsible authority may—

S. 62(5)(a) substituted by Nos 35/2015 s. 14(1), 7/2018 s. 11(1).

(a) include a condition to implement an approved development contributions plan or an approved infrastructure contributions plan; or

(b) include a condition requiring specified works, services or facilities to be provided or paid for in accordance with an agreement under section 173; or

(c) include a condition that specified works, services or facilities that the responsible authority considers necessary to be provided on or to the land or other land as a result of the grant of the permit be—

(i) provided by the applicant; or

(ii) paid for wholly by the applicant; or

(iii) provided or paid for partly by the applicant where the remaining cost is to be met by any Minister, public authority or municipal council providing the works, services or facilities.

(6) The responsible authority must not include in a permit a condition requiring a person to pay an amount for or provide works, services or facilities except—

S. 62(6) inserted by No. 50/1995 s. 4(2), substituted by No. 101/2004 s. 10.

(a) in accordance with subsection (5), section 46N(1) or 46GV(7); or

S. 62(6)(a) amended by Nos 35/2015 s. 14(2), 7/2018 s. 11(2).

(b) a condition that a planning scheme requires to be included as referred to in subsection (1)(a); or

(c) a condition that a determining referral authority requires to be included as referred to in subsection (1)(a).

S. 62(6)(c) amended by No. 3/2013 s. 22(3).

63 Grant of permit if no objectors

S. 63 amended by Nos 128/1993 s. 16(1), 3/2013 s. 23(1).

Subject to section 64A, once it has decided in favour of an application, the responsible authority must issue the permit to the applicant if no one has objected under section 57 or if notice of the decision to grant the permit is not required to be given to objectors under section 64.

64 Grant of permit if there are objectors

(1) The responsible authority must give the applicant and each person who objected under section 57 a notice in the prescribed form of its decision to grant a permit.

S. 64(1) amended by No. 3/2013 s. 23(2).

(2) The notice must set out any conditions to which the permit will be subject.

S. 64(3) amended by No. 128/1993 s. 16(2), substituted by No. 52/1998 s. 191(3).

(3) The responsible authority must not issue the permit to the applicant—

S. 64(3)(a) amended by No. 3/2013 s. 23(3).

(a) until the end of the period within which a person who objected under section 57 may apply to the Tribunal for a review of the decision to grant the permit; or

(b) if an application for review is made within that period, until the application is determined by the Tribunal or withdrawn.

S. 64(4) inserted by No. 128/1993 s. 16(3).

(4) A planning scheme may set out classes of applications the decisions on which are exempted from the requirements of subsections (1), (2) and (3).

S. 64(5) inserted by No. 128/1993 s. 16(3), amended by No. 3/2013 s. 23(4).

(5) If a planning scheme exempts a decision on an application from the requirements of subsections (1), (2) and (3), the responsible authority must give a copy of the decision to each person who objected under section 57.

S. 64A inserted by No. 3/2013 s. 24.

64A Grant of permit—recommending referral authority objected or recommended condition that was not included

If a relevant recommending referral authority has objected to the grant of a permit, or recommended a condition on the permit that the responsible authority has decided not to include on the permit, the responsible authority must not issue the permit to the applicant—

(a) until the end of the period within which a recommending referral authority may apply to the Tribunal for review of the decision to grant the permit; or

(b) if an application for review is made within that period, until the application is determined by the Tribunal or withdrawn.

65 Refusal of permit

(1) The responsible authority must give the applicant and each person who objected under section 57, a notice in the prescribed form of its decision to refuse to grant a permit.

S. 65(1) amended by No. 3/2013 s. 25(1).

(2) The notice must set out the specific grounds on which the application is refused and state whether the grounds were those of the responsible authority or a determining referral authority.

S. 65(2) amended by No. 3/2013 s. 25(2).

66 Notice to referral authority

S. 66 amended by No. 3/2013 s. 26 (ILA s. 39B(1)).

(1) The responsible authority must give each relevant determining referral authority a copy of any permit which it decides to grant and a copy of any notice given under section 64 or 65.

S. 66(2) inserted by No. 3/2013 s. 26(2).

(2) The responsible authority must give a recommending referral authority a notice in the prescribed form of its decision to grant a permit if—

(a) the recommending referral authority objected to the grant of the permit; or

(b) the responsible authority decided not to include a condition on the permit recommended by the recommending referral authority.

S. 66(3) inserted by No. 3/2013 s. 26(2).

(3) A notice of a decision given under subsection (2) must set out any conditions to which the permit will be subject.

S. 66(4) inserted by No. 3/2013 s. 26(2).

(4) The responsible authority must give a recommending referral authority a notice in the prescribed form of its decision to refuse to grant a permit if—

(a) the recommending referral authority objected to the grant of the permit; or

(b) the recommending referral authority recommended that a condition be included on the permit.

S. 66(5) inserted by No. 3/2013 s. 26(2).

(5) A notice given under subsection (4) must set out the specific grounds on which the permit is refused and state whether the grounds were those of the responsible authority or a determining referral authority.

S. 66(6) inserted by No. 3/2013 s. 26(2).

(6) The responsible authority must give a recommending referral authority a copy of any permit which it decides to grant and a copy of any notice given under section 64 or 65 if—

(a) the recommending referral authority did not object to the grant of the permit; or

(b) the recommending referral authority did not recommend a condition be included on the permit.

67 When does a permit begin?

A permit operates—

(a) from the date specified in the permit; or

(b) if no date is specified, from—

S. 67(b)(i) amended by No. 52/1998 s. 191(1).

(i) the date of the decision of the Tribunal, if the permit was issued at the direction of the Tribunal; or

(ii) the day on which it is issued, in any other case.

68 When does a permit expire?

(1) A permit for the development of land expires if—

(a) the development or any stage of it does not start within the time specified in the permit; or

(aa) the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or

S. 68(1)(aa) inserted by No. 128/1993 s. 17.

(b) the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.

S. 68(1)(b) amended by No. 53/1988 s. 45(Sch. 2 item 34) (as amended by No. 47/1989 s. 19(zj)).

(2) A permit for the use of land expires if—

(a) the use does not start within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or

(b) the use is discontinued for a period of two years.

(3) A permit for the development and use of land expires if—

(a) the development or any stage of it does not start within the time specified in the permit; or

(b) the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or

(c) the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or

(d) the use is discontinued for a period of two years.

S. 68(3A) inserted by No. 53/1988 s. 45(Sch. 2 item 35), amended by No. 48/1991 s. 61(3)(a).

(3A) If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2), or to any combination of use, development or any of those circumstances, requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—

(a) the use or development of any stage is to be taken to have started when the plan is certified; and

(b) the permit expires if the plan is not certified within two years of the issue of the permit.

(4) The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

S. 68A inserted by No. 12/2021 s. 55.

68A Expiration of permits for extractive industry

(1) Despite section 68(2)(b) and (3)(d), a permit that authorises the use of land for extractive industry expires if the use authorised by the permit is discontinued for a period of 10 years.

(2) Subsection (1) does not apply to a permit that authorises the use of land for extractive industry if the permit also authorises another use of land.

(3) In this section—

applicable purpose means—

(a) the sale of stone; or

(b) the commercial use of stone; or

(c) the use of stone in construction, building, road or manufacturing works;

extractive industry means the extraction or removal of stone for an applicable purpose and includes any of the following—

(a) the treatment (including crushing and processing) of the stone that occurs on, or adjacent to, land from which the stone was extracted or removed;

(b) the manufacture of bricks, tiles, pottery, cement or asphalt products that occurs on, or adjacent to, land from which the stone was extracted or removed;

(c) rehabilitation of land following the extraction or removal of stone for an applicable purpose.

69 Extension of time

(1) Before the permit expires or within 6 months afterwards, the owner or the occupier of the land to which it applies, or another person with the written consent of the owner, may ask the responsible authority for an extension of time.

S. 69(1) amended by Nos 3/2013 s. 77(1), 12/2021 s. 70(1).

(1A) The owner or occupier of land to which a permit for a development applies, or another person with the written consent of the owner, may ask the responsible authority for an extension of time to complete the development or a stage of the development if—

S. 69(1A) inserted by No. 3/2013 s. 77(2), amended by No. 12/2021 s. 70(2).

(a) the request for an extension of time is made within 12 months after the permit expires; and

(b) the development or stage started lawfully before the permit expired.

(1B) A request under subsection (1) or (1A) by a person who is not the owner or occupier of the land must be accompanied by a copy of the written consent of the owner.

S. 69(1B) inserted by No. 12/2021 s. 70(3).

S. 69(2) amended by No. 48/1991 s. 61(3)(b).

(2) The responsible authority may extend the time within which the use or development or any stage of it is to be started or the development or any stage of it is to be completed or within which a plan under the **Subdivision Act 1988** is to be certified.

S. 69(3) amended by No. 3/2013 s. 77(3).

(3) If the time is extended after the permit has expired the extension operates from the day the permit expired.

S. 70 substituted by No. 12/2021 s. 40.

70 Availability of permit

The responsible authority must make a copy of every permit that it issues available in accordance with the public availability requirements.

71 Correction of mistakes

S. 71(1) amended by No. 81/2004 s. 25(1).

(1) A responsible authority may correct a permit issued by the responsible authority (including a permit issued at the direction of the Tribunal) if the permit contains—

(a) a clerical mistake or an error arising from any accidental slip or omission; or

(b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the permit.

(2) The responsible authority must note the correction in the register.

S. 72 amended by No. 86/1989 s. 4(2)(b), repealed by No. 81/2004 s. 25(2).

* * * * *

* * * * *

S. 73 amended by Nos 128/1993 s. 18(a)(b), 52/1998 s. 191(1), 28/2000 s. 5, 100/2000 s. 11(2) (ILA s. 39B(1)), repealed by No. 81/2004 s. 25(2).

* * * * *

Ss 74–76 repealed by No. 81/2004 s. 25(2).

Division 1A—Amendment of permits by responsible authority

Pt 4 Div. 1A (Heading and ss 72–76D) inserted by No. 81/2004 s. 26.

72 Application for amendment of permit

New s. 72 inserted by No. 81/2004 s. 26.

(1) A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.

(2) This section does not apply to—

(a) a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or

S. 72(2)(a) substituted by No. 3/2013 s. 60.

(b) a permit issued under Division 6.

* * * * *

S. 72(3) repealed by No. 3/2013 s. 78.

New s. 73 inserted by No. 81/2004 s. 26.

73 What is the procedure for the application?

(1) Subject to this section, sections 47 to 62 (with any necessary changes) apply to an application to the responsible authority to amend a permit as if—

(a) the application were an application for a permit; and

(b) any reference to a permit were a reference to the amendment to the permit.

S. 73(1A) inserted by No. 40/2014 s. 32.

(1A) Section 47(1)(ab), (1A) and (1B) do not apply to an application to the responsible authority to amend a permit.

(2) If the responsible authority decides to grant an amendment to a permit subject to conditions, the conditions must relate to the amendment to the permit; and

(3) Any conditions to which an amendment to a permit is subject form part of the permit when it is issued.

Note

An application may be made under section 69 to extend the time within which a use or development or any stage of it is to be started or a development or any stage of it is to be completed.

New s. 74 inserted by No. 81/2004 s. 26, amended by No. 3/2013 s. 27.

74 Issue of amended permit if no objectors

Subject to section 75A, once it has decided in favour of an application to amend a permit, the responsible authority must issue an amended permit to the applicant if no one has objected under section 57 or if notice of the decision to grant the amendment to the permit is not required to be given to objectors under section 64.

75 Decision to amend permit if there are objectors

New s. 75 inserted by No. 81/2004 s. 26.

Section 64 (with any necessary changes) applies to a decision to grant an amendment to a permit as if—

(a) a reference to a decision to grant a permit were a reference to the decision to grant the amendment; and

(b) a reference to the issue of a permit were a reference to the issue of an amended permit.

75A Decision to amend permit if recommending referral authority objected to or recommended condition that was not included

S. 75A inserted by No. 3/2013 s. 28.

Section 64A (with any necessary changes) applies to a decision to grant an amendment to a permit as if—

(a) a reference to a decision to grant a permit were a reference to the decision to grant the amendment; and

(b) a reference to the issue of a permit were a reference to the issue of an amended permit.

76 Refusal of amendment

New s. 76 inserted by No. 81/2004 s. 26.

(1) The responsible authority must give the applicant and each person who objected under section 57 a notice in the prescribed form of its decision to refuse to grant an amendment to a permit.

S. 76(1) amended by No. 3/2013 s. 29(1).

(2) The notice must set out the specific grounds on which the application is refused and state whether the grounds were those of the responsible authority or a determining referral authority.

S. 76(2) amended by No. 3/2013 s. 29(2).

76A Notice to referral authority

S. 76A inserted by No. 81/2004 s. 26, amended by No. 3/2013 s. 30 (ILA s. 39B(1)).

(1) The responsible authority must give each relevant determining referral authority a copy of the amended permit, if it decides to grant an amendment to the permit, and a copy of any notice given under section 64 or 76.

S. 76A(2) inserted by No. 3/2013 s. 30.

(2) The responsible authority must give a recommending referral authority a notice in the prescribed form of its decision to grant an amendment to a permit if—

(a) the recommending referral authority objected to the grant of the amendment to the permit; or

(b) the responsible authority decided not to include a condition on the amended permit recommended by the recommending referral authority.

S. 76A(3) inserted by No. 3/2013 s. 30.

(3) A notice given under subsection (2) must set out any conditions to which the permit will be subject.

S. 76A(4) inserted by No. 3/2013 s. 30.

(4) The responsible authority must give a recommending referral authority a notice in the prescribed form of its decision to refuse to grant an amendment to a permit if—

(a) the recommending referral authority objected to the grant of the amendment to the permit; or

(b) the recommending referral authority recommended that a condition be included on the amended permit.

S. 76A(5) inserted by No. 3/2013 s. 30.

(5) A notice given under subsection (4) must set out the specific grounds on which the application is refused and state whether the grounds were those of the responsible authority or a determining referral authority.

(6) The responsible authority must give a recommending referral authority a copy of any amended permit, if it decides to grant an amendment to the permit, and a copy of any notice given under section 64 or 76 if—

S. 76A(6) inserted by No. 3/2013 s. 30.

(a) the recommending referral authority did not object to the grant of the amendment to the permit; or

(b) the recommending referral authority did not recommend a condition be included on the amended permit.

76B When does an amendment to a permit begin?

S. 76B inserted by No. 81/2004 s. 26.

An amendment to a permit under this Division operates—

(a) from the date specified in the amended permit; or

(b) if no date is specified, from—

(i) the date of the decision of the Tribunal if the amended permit was issued at the direction of the Tribunal; or

(ii) the day on which the amended permit is issued, in any other case.

76C Review of decision on amendment

S. 76C inserted by No. 81/2004 s. 26.

Division 2 (with any necessary changes) applies to an application for an amendment of a permit and an amendment of a permit as if—

(a) a reference to an application for a permit were a reference to an application for the amendment; and

(b) a reference to the grant of a permit were a reference to the grant of the amendment; and

(c) a reference to the issue of a permit were a reference to the issue of an amended permit.

76D Powers of Minister in relation to application

S. 76D inserted by No. 81/2004 s. 26.

S. 76D(1) amended by No. 21/2013 s. 8(a).

(1) Sections 97B, 97C, 97D(1) and (3), 97E, 97F(1), 97G(1) to (5) (with any necessary changes) apply to an application for an amendment to a permit under this Division as if—

(a) a reference to an application for a permit were a reference to an application for the amendment; and

(b) a reference to the grant of a permit were a reference to the grant of the amendment.

(2) Subject to subsections (3) and (6), this Division applies to an application referred to the Minister under this section as if—

(a) the Minister were the responsible authority; and

S. 76D(2)(b) amended by No. 21/2013 s. 8(b).

(b) all steps taken under this Division by the referring responsible authority (within the meaning of section 97D(3)) had been taken by the Minister.

S. 76D(3) amended by No. 3/2013 s. 31.

(3) Sections 59, 61, 64, 64A, 65, 66 and 74 do not apply to an application referred to the Minister under this section.

S. 76D(4) amended by No. 21/2013 s. 8(c).

(4) Once the Minister has decided in favour of an application, the Minister must direct the responsible authority specified in the planning scheme to issue an amended permit to the applicant.

S. 76D(5) amended by No. 21/2013 s. 8(c).

(5) The responsible authority specified in the planning scheme must comply with a direction under subsection (4).

(6) Section 76C and Division 3 of this Part do not apply in relation to—

(a) an application referred to the Minister under this section; or

(b) an amendment of a permit granted under this section.

(7) Division 5 of Part 6 does not apply in respect of a matter that an amendment to a permit under this Division specifies is to be done by, approved by or done to the satisfaction of the Minister.

Division 2—Reviews by Tribunal

Pt 4 Div. 2 (Heading) substituted by No. 52/1998 s. 191(4)(a).

77 Applications for review of refusals to grant permits

S. 77 (Heading) inserted by No. 3/2013 s. 68(1).

An applicant for a permit may apply to the Tribunal for review of a decision by a responsible authority to refuse to grant the permit.

S. 77 amended by No. 52/1998 s. 191(4)(b).

78 Applications for review of requirements

S. 78 (Heading) inserted by No. 3/2013 s. 68(2).

An applicant for a permit may apply to the Tribunal for review of—

S. 78 amended by No. 52/1998 s. 191(4)(b).

(a) a requirement by the responsible authority to give notice under section 52(1)(d) or 57B; or

S. 78(a) amended by No. 81/2004 s. 27.

(b) a requirement by the responsible authority for more information under section 54.

S. 79 (Heading) inserted by No. 3/2013 s. 68(3).
S. 79 amended by No. 52/1998 s. 191(4)(b).

79 Applications for review of failures to grant permits

An applicant for a permit may apply to the Tribunal for review of the failure of the responsible authority to grant the permit within the prescribed time.

S. 80 (Heading) inserted by No. 3/2013 s. 68(4).
S. 80 amended by Nos 52/1998 s. 191(4)(b), 100/2000 s. 11(3) (ILA s. 39B(1)).

80 Applications for review of conditions on permits

(1) An applicant for a permit may apply to the Tribunal for review of any condition in a permit which the responsible authority has issued or decided to grant to the person.

S. 80(2) inserted by No. 100/2000 s. 11(3).

(2) This section does not apply to a condition included in a permit under section 62(1)(aa).

S. 81 (Heading) inserted by No. 3/2013 s. 68(5).
S. 81 amended by Nos 52/1998 s. 191(4)(b), 81/2004 s. 28 (ILA s. 39B(1)).

81 Applications for review relating to extensions of time

(1) Any person affected may apply to the Tribunal for review of—

(a) a decision of the responsible authority refusing to extend the time within which any development or use is to be started or any development completed; or

S. 81(1)(aa) inserted by No. 48/1991 s. 61(3)(c).

(aa) a decision of the responsible authority refusing to extend the time within which a plan under the **Subdivision Act 1988** is to be certified, in the case of a permit relating to any of the circumstances mentioned in section 6A(2); or

(b) the failure of the responsible authority to extend the time within one month after the request for extension is made.

(2) An applicant for a permit may apply to the Tribunal for a review of a decision of a responsible authority under section 54A to refuse to extend the time within which information must be given by the applicant under section 54.

S. 81(2) inserted by No. 81/2004 s. 28.

(3) Despite subsection (1) and clause 62 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, an application cannot be made to the Tribunal for review of a decision referred to in subsection (1)(a) or (aa) or a failure referred to in subsection (1)(b) unless the request to the responsible authority for the extension of time was made within the time specified under section 69(1) or (1A) (as the case requires).

S. 81(3) inserted by No. 3/2013 s. 61(1).

82 Applications for review where objectors

S. 82 (Heading) inserted by No. 3/2013 s. 68(6).

(1) An objector may apply to the Tribunal for review of a decision of the responsible authority to grant a permit.

S. 82(1) amended by No. 52/1998 s. 191(4)(b).

(2) A planning scheme may set out classes of applications for permits the decisions on which are exempted from subsection (1).

S. 82(2) substituted by No. 128/1993 s. 19, amended by No. 52/1998 s. 191(4)(c).

(3) If a planning scheme exempts a decision of an application for a permit from subsection (1), an application for review cannot be made under that subsection in respect of that decision.

S. 82(3) inserted by No. 128/1993 s. 19, substituted by No. 52/1998 s. 191(5).

S. 82AAA inserted by No. 3/2013 s. 32.

82AAA Request for review by recommending referral authority

A recommending referral authority may apply to the Tribunal for review of a decision of the responsible authority—

(a) to grant a permit, if the recommending referral authority objected to the grant of the permit; or

(b) not to include a condition on the permit that the recommending referral authority recommended.

S. 82A inserted by No. 97/1987 s. 176(2), amended by Nos 86/1989 s. 29(9), 52/1998 s. 191(4)(b), repealed by No. 47/2007 s. 10.

* * * * *

S. 82AA (Heading) inserted by No. 3/2013 s. 68(7), amended by No. 26/2018 s. 96(2).

S. 82AA inserted by No. 8/1995 s. 45, amended by Nos 52/1998 s. 191(4)(d), 26/2018 s. 96(3).

82AA Applications for review—marine and coastal Crown land

Despite anything to the contrary in section 77 or 79, an applicant for a permit for the use or development of marine and coastal Crown land within the meaning of the **Marine and Coastal Act 2018**, has no right to apply to the Tribunal for review of—

(a) a decision by a responsible authority to refuse to grant the permit, if the Minister administering that Act has refused or is deemed to have refused to consent to that use or development under that Act; or

(b) the failure of the responsible authority to grant the permit within the prescribed time, if the Minister administering that Act has not consented to that use or development under that Act.

82B Affected person may seek leave to apply for review

S. 82B inserted by No. 128/1993 s. 20.

(1) Any person who is affected may apply to the Tribunal for leave to apply for review of a decision of the responsible authority to grant the permit in any case in which a written objection to the grant of the permit was received by the responsible authority.

S. 82B(1) amended by No. 52/1998 s. 191(4)(e)(i).

(2) Subject to subsection (3), the Tribunal must give the applicant for the permit, the responsible authority and the affected person an opportunity to be heard before making a decision.

S. 82B(2) amended by No. 52/1998 s. 191(4)(e)(ii).

(3) The Tribunal is not required to hold a hearing under subsection (2) if the applicant for the permit consents to the request for leave to apply for review.

S. 82B(3) substituted by No. 52/1998 s. 191(6).

(4) The Tribunal may grant the leave to apply for review if it believes it would be just and fair in the circumstances to do so.

S. 82B(4) amended by Nos 72/1998 s. 8(b), 101/1998 s. 27.

(5) If leave is granted by the Tribunal, the person affected may apply to the Tribunal for review of the decision of the responsible authority to grant the permit.

S. 82B(5) substituted by No. 52/1998 s. 191(7).

(6) This section does not apply if—

S. 82B(6)(a) amended by No. 52/1998 s. 191(8).

(a) the decision on the application for a permit is exempted from section 82(1); or

S. 82B(6)(b) amended by No. 52/1998 s. 191(8).

(b) a permit has been issued under section 63 in respect of the application for a permit.

S. 83 amended by No. 86/1989 s. 11, substituted by No. 52/1998 s. 184.

83 Parties to review

S. 83(1) substituted by No. 3/2013 s. 33(1) (as amended by No. 34/2013 s. 36).

(1) In addition to any other party to a proceeding for review under this Act, a determining referral authority is a party to a proceeding for review—

(a) of a refusal to grant a permit if—

(i) the determining referral authority had objected to the grant of the permit; or

(ii) it was refused because a condition required by the determining referral authority conflicted with a condition recommended by a recommending referral authority or required by another determining referral authority; and

(b) of a permit condition if the determining referral authority had required that the condition be included on the permit.

(2) In addition to any other party to a proceeding for review under this Act, an objector is a party to a proceeding for review if the objector—

(a) is given notice of the application for review under this Act; and

(b) in accordance with the **Victorian Civil and Administrative Tribunal Act 1998**, lodges with the Tribunal a statement of the grounds on which the objector intends to rely at the hearing of the proceeding.

(2A) Subsection (2) does not apply if the objector lodges notice under clause 56(5) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 83(2A) inserted by No. 62/2014 s. 53(1).

(3) In addition to any other party to a proceeding for review under this Act, a recommending referral authority is a party to a proceeding for review if the recommending referral authority is given notice of the application for review under this Act.

S. 83(3) inserted by No. 3/2013 s. 33(2) (as amended by No. 34/2013 s. 36).

(4) In addition to any other party to a proceeding for review under section 82, the applicant for the permit is a party to the proceeding.

S. 83(4) inserted by No. 62/2014 s. 53(2).

83A Objectors entitled to notice

S. 83A inserted by No. 52/1998 s. 184.

(1) A person who objected to the grant of a permit under section 57 is entitled to notice of an application by the applicant for the permit for review of—

S. 83A(1) amended by No. 3/2013 s. 34.

(a) a decision refusing to grant the permit; or

(b) a failure to grant the permit; or

(c) a decision imposing a condition on the permit.

(2) Subsection (1) does not apply to a person if under a planning scheme the person is not entitled to apply to the Tribunal under section 82 for a review of a decision to grant the permit.

S. 83AB inserted by No. 3/2013 s. 35.

83AB Recommending referral authority entitled to notice

A recommending referral authority is entitled to notice of an application by the applicant for the permit for a review of a decision by the responsible authority to refuse to grant a permit or for review of a condition in a permit if that recommending referral authority had—

(a) objected to the grant of a permit or to the amendment of the permit; or

(b) recommended that the condition that is the subject of the application be included in the permit.

S. 83B inserted by No. 52/1998 s. 184.

83B Notice if permit application was made without notice

(1) If the President of the Tribunal is satisfied that notice of an application for a permit was not given or that notice is not adequate, he or she may direct—

(a) an applicant for review of a decision to grant or to refuse to grant, or a failure to grant, the permit—

(i) to serve a copy of the application for review on any specified person; or

(ii) to publish a notice of the application for review in the manner and within the time specified by the President; or

(iii) to do both (i) and (ii); or

S. 83B(1)(b) amended by No. 3/2013 s. 62(1).

(b) the responsible authority, at the expense of the applicant for review, to give or publish notice of the application for review to the persons, in the manner and within the time specified by the President; or

(c) the applicant for a permit to give or publish notice of the application for review to the persons, in the manner and within the time specified by the President.

S. 83B(1)(c) inserted by No. 3/2013 s. 62(2).

(2) The President may give a direction under subsection (1) whether or not the Tribunal has begun to hear the review.

(3) If an applicant for review of a decision to refuse to grant, or a failure to grant, a permit fails to comply with a direction under subclause (1)(a) the application for review lapses.

(4) A notice given or published under this section is to be in the form and contain the matters—

(a) specified by the rules of the Tribunal; or

(b) as directed by the President.

(5) This section does not permit the Tribunal to require notice to be given to a person if under a planning scheme the person is not entitled to apply to the Tribunal under section 82 for a review of a decision to grant the permit.

84 An application may be determined after an appeal has been lodged

(1) A responsible authority may decide on an application for a permit at any time after an application is made for review of the failure of the responsible authority to grant the permit.

S. 84(1) amended by No. 52/1998 s. 185(1).

(2) Except in accordance with the advice of the principal registrar under subsection (4), the responsible authority must not issue or give a permit, notice of decision or notice of refusal to the applicant, a referral authority or any objector after an application is made to the Tribunal for review of a failure to grant a permit.

S. 84(2) repealed by No. 62/1991 s. 33, new s. 84(2) inserted by No. 52/1998 s. 185(2).

S. 84(3) substituted by No. 52/1998 s. 185(2).

(3) The responsible authority must inform the principal registrar if the responsible authority decides to grant a permit with or without conditions after an application is made for the review of its failure to grant the permit.

S. 84(4) substituted by No. 52/1998 s. 185(2).

(4) The principal registrar must refer the decision of the responsible authority to a presidential member of the Tribunal for consideration.

S. 84(5) inserted by No. 52/1998 s. 185(2).

(5) If the presidential member of the Tribunal so directs, the principal registrar must advise the responsible authority that a permit in accordance with the responsible authority's decision may be issued.

S. 84(6) inserted by No. 52/1998 s. 185(2), amended by No. 3/2013 s. 75(3).

(6) The responsible authority must issue the permit within 3 business days after receiving that advice.

S. 84A inserted by No. 52/1998 s. 186.

84A Parties not restricted to grounds previously notified

A party in a proceeding for review under this Act is not restricted at the hearing of the proceeding to any grounds previously notified to the other parties (whether in the course of or before the proceeding) or the Tribunal.

S. 84AB inserted by No. 3/2013 s. 63, amended by No. 3/2013 s. 36.

84AB Tribunal may confine review with agreement

The Tribunal may confine a review in respect of an application made under section 77, 78, 79, 80, 81, 82, 82AAA or 82B to particular matters in dispute if all the parties agree, and for this purpose section 84B applies as if the reference to an application for review were a reference to an application for review as so confined.

84B Matters for Tribunal to take into account

S. 84B inserted by No. 52/1998 s. 186, amended by Nos 72/1998 s. 5, 28/2000 s. 6, substituted by No. 81/2004 s. 29.

(1) In determining an application for review under this Act, the Tribunal must—

(a) take account of any matter which the person or body in respect of whose decision the application for review is made—

(i) properly took account of in making its decision; or

(ii) was required to take account of in making its decision; and

(b) have regard to any matter which the person or body in respect of whose decision the application for review is made—

(i) properly had regard to in making its decision; or

(ii) is required to have regard to in making its decision.

(2) In determining an application for review under this Act, in addition to the matters referred to in subsection (1), the Tribunal—

(a) must take into account any relevant planning scheme;

(b) must have regard to the objectives of planning in Victoria;

(c) must (where appropriate) take account of the approved regional strategy plan under Part 3A;

(d) must (where appropriate) take account of the approved strategy plan under Part 3C;

(da) must (where appropriate) take account of the approved strategy plan under Part 3D;

S. 84B(2)(da) inserted by No. 44/2005 s. 5(a).

S. 84B(2)(e) substituted by No. 39/2018 s. 49(2).

(e) must take account of any relevant environment reference standard within the meaning of the **Environment Protection Act 2017**;

S. 84B(2)(ea) inserted by No. 39/2018 s. 49(2).

(ea) must take account of any Order made by the Governor in Council under section 156 of the **Environment Protection Act 2017**;

(f) must (where appropriate) take account of the extent to which persons residing or owning land in the vicinity of the land which is the subject of the application for review were able to and in fact did participate in the procedures required to be followed under this Act before the responsible authority could make a decision in respect of the application for a permit;

(g) must (where appropriate) have regard to any amendment to a planning scheme which has been adopted by the planning authority but not, as at the date on which the application for review is determined, approved by the Minister or the planning authority;

(h) must (where appropriate) have regard to any agreement made pursuant to section 173 affecting the land the subject of the application for review;

(i) must (where appropriate) have regard to any amendment to the approved regional strategy plan under Part 3A adopted under this Act but not, as at the date on which the application for review is determined, approved by the Minister;

(j) must (where appropriate) have regard to any amendment to the approved strategy plan under Part 3C adopted under this Act but not, as at the date on which the application for

review is determined, approved by the Minister;

(ja) must (where appropriate) have regard to any amendment to the approved strategy plan under Part 3D adopted under this Act but not, as at the date on which the application for review is determined, approved by the Minister;

S. 84B(2)(ja) inserted by No. 44/2005 s. 5(b).

(jb) must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect;

S. 84B(2)(jb) inserted by No. 30/2015 s. 5(1).

(k) must take account of any other matter which the Tribunal is required by the provisions of this Act or any other Act to take account of in determining the application for review.

(3) If an application for review is of a class that is exempted by a planning scheme wholly or in part from the requirements of subsection (2)(b) to (jb), the Tribunal is not required to take into account or have regard to the exempted matters in determining the application.

S. 84B(3) inserted by No. 53/2012 s. 9, amended by No. 30/2015 s. 5(2).

85 Determination of applications

S. 85 (Heading) inserted by No. 3/2013 s. 68(8).

(1) After hearing an application for review, the Tribunal may—

S. 85(1) amended by No. 52/1998 s. 191(9)(a)(i).

(a) direct that a permit must not be granted; or

(b) in the case of an application for review of a refusal or failure to grant or a decision to grant a permit—

S. 85(1)(b) substituted by No. 86/1989 s. 14(1), amended by No. 52/1998 s. 191(9)(a)(ii).

(i) grant the permit and direct the responsible authority to issue it; or

(ii) grant the permit, direct that the permit must or must not contain any specified conditions and direct the responsible authority to issue the permit; or

S. 85(1)(c) amended by Nos 52/1998 s. 191(9)(a)(ii), 81/2004 s. 30(1).

(c) in the case of an application for review of a requirement under section 52(1)(d) or 57B—

(i) confirm the requirement; or

(ii) change the requirement; or

S. 85(1)(d) amended by No. 52/1998 s. 191(9)(a)(ii).

(d) in the case of an application for review of a requirement for more information under section 54—

S. 85(1)(d)(i) amended by No. 52/1998 s. 191(9)(a)(iii).

(i) direct the responsible authority to consider the application for a permit as made under section 47; or

(ii) confirm the requirement; or

(iii) change the requirement; or

S. 85(1)(da) inserted by No. 81/2004 s. 30(2).

(da) direct that the time within which information is to be given under section 54 must be extended for a specified period or must not be extended, in the case of an application for review of the refusal or failure of the responsible authority to extend the time under section 54A; or

(e) direct that a permit must or must not contain any specified condition; or

S. 85(1)(f) amended by Nos 48/1991 s. 61(3)(d), 52/1998 s. 191(9)(a)(ii).

(f) direct that the time within which a development or use is to be started or the development is completed or within which a plan under the **Subdivision Act 1988** is to be certified must be extended for a specified period or must not be extended, in the case of an application for review of the refusal or failure of the responsible authority to extend the time; or

(g) cancel a permit if—

S. 85(1)(g) amended by No. 52/1998 s. 191(9)(a)(ii).

(i) it upholds an application for review of a condition specified in a permit on the ground that the responsible authority had no power to impose the condition; and

(ii) it considers that the permit should not or would not have been granted without the condition.

S. 85(1A) inserted by No. 3/2013 s. 64.

(1A) If the Tribunal directs the responsible authority to issue a permit under subsection (1)(b) or directs that a permit contain specified conditions under subsection (1)(e), the Tribunal may direct that the permit or a specified part of the permit must not be amended by the responsible authority under Division 1A.

S. 85(2) substituted by No. 52/1998 s. 191(10).

(2) If the Tribunal gives a direction under subsection (1)(d)(i), the prescribed period for the purpose of making an application for review under section 79 begins on the day on which the direction is given.

S. 85(3) inserted by No. 86/1989 s. 14(2), amended by No. 52/1998 s. 191(9)(b), substituted by No. 81/2004 s. 30(3).

(3) If the Tribunal gives a direction under subsection (1)(d)(ii) or (1)(d)(iii) in respect of a requirement for more information which was made within the prescribed time under section 54, the Tribunal must determine a new lapse date for the application which must permit a period for compliance that is not less than the period allowed for in the notice of the requirement.

S. 86 repealed by No. 86/1989 s. 15, new s. 86 inserted by No. 62/1991 s. 34, repealed by No. 35/1995 s. 11(2), new s. 86 inserted by No. 52/1998 s. 187.

86 Issue of permit

If an order made by the Tribunal requires a responsible authority to issue a permit, the responsible authority must issue that permit—

S. 86(a) amended by No. 3/2013 s. 75(4).

(a) if the responsible authority is a Minister, within 3 business days after the day on which the responsible authority receives a copy of the order; or

S. 86(b) amended by No. 3/2013 s. 75(4).

(b) in any other case, within 3 business days after the first ordinary meeting of the responsible authority held after it receives a copy of the order.

Pt 4 Div. 3 (Heading) amended by No. 81/2004 s. 31.

Division 3—Cancellation and amendment of permits by Tribunal

87 What are the grounds for cancellation or amendment of permits?

S. 87(1) amended by Nos 86/1989 s. 16(1), 52/1998 s. 191(11).

(1) The Tribunal may cancel or amend any permit if it considers that there has been—

(a) a material mis-statement or concealment of fact in relation to the application for the permit; or

(b) any substantial failure to comply with the conditions of the permit; or

(c) any material mistake in relation to the grant of the permit; or

(d) any material change of circumstances which has occurred since the grant of the permit; or

(e) any failure to give notice in accordance with this Act; or

S. 87(1)(e) amended by No. 81/2004 s. 32(1).

(f) any failure to comply with section 55, 61(2) or 62(1).

(2) The Tribunal may amend any permit to comply with the building regulations made under the **Building Act 1993** if a building permit cannot be obtained under that Act for the development for which the permit under this Act was issued because the development does not comply with those regulations.

S. 87(2) amended by No. 86/1989 s. 16(1), substituted by No. 126/1993 s. 264(Sch. 5 item 17.2), amended by No. 52/1998 s. 191(11).

(3) The Tribunal may cancel or amend a permit at the request of—

S. 87(3) amended by No. 52/1998 s. 191(11).

(a) the responsible authority; or

(b) any person under section 89; or

(c) a referral authority; or

(d) the owner or occupier of the land concerned; or

S. 87(3)(d) amended by No. 81/2004 s. 32(2).

(e) any person who is entitled to use or develop the land concerned.

S. 87(3)(e) inserted by No. 81/2004 s. 32(2).

(4) Nothing in this Division affects the power of a responsible authority to amend a permit under Division 1A.

S. 87(4) amended by No. 86/1989 s. 16(2), substituted by No. 81/2004 s. 32(3).

S. 87(5) inserted by No. 86/1989 s. 16(3), amended by No. 52/1998 s. 191(11).

(5) The Tribunal cannot cancel or amend a permit granted by the Governor in Council under section 95.

S. 87(6) inserted by No. 86/1989 s. 16(3), amended by No. 52/1998 s. 191(11), substituted by Nos 52/1998 s. 191(12), 47/2007 s. 11.

(6) Without limiting the powers of the Tribunal, the Tribunal may, under this section, cancel or amend a permit that has been issued at its direction.

S. 87(7) inserted by No. 86/1989 s. 16(3), amended by No. 52/1998 s. 191(11), substituted by No. 52/1998 s. 191(12).

(7) The Tribunal must not cancel or amend a permit on a ground mentioned in subsection (1)(a), (c) or (f) unless there has been no application under Division 2 on that ground for review of the decision to grant the permit or of a condition of the permit.

S. 87A inserted by No. 47/2007 s. 12.

87A Cancellation or amendment of permit issued at direction of Tribunal

(1) In addition to the powers conferred by section 87, the Tribunal may cancel or amend a permit that has been issued at its direction if it considers it appropriate to do so.

(2) The Tribunal may only cancel or amend a permit under this section at the request of—

(a) the owner or occupier of the land concerned; or

(b) any person who is entitled to use or develop the land concerned.

88 What are the limits on the power to cancel or amend a permit?

S. 88 amended by No. 47/2007 s. 13.

The power to cancel or amend a permit under section 87 may be exercised—

(a) if the permit relates to the construction of buildings or the carrying out of other works, at any time before those operations have been completed; or

(b) if the permit relates to any other development of land, at any time before that development is substantially carried out; or

(c) at any time, if the permit relates to the use of land.

89 Request for cancellation or amendment

S. 89(1) amended by No. 52/1998 s. 191(1).

(1) Any person who objected or would have been entitled to object to the issue of a permit may ask the Tribunal to cancel or amend the permit if—

(a) the person believes that the person should have been given notice of the application for the permit and was not given that notice; or

(b) the person believes that the person has been adversely affected by—

(i) a material mis-statement or concealment of fact in relation to the application for the permit; or

(ii) any substantial failure to comply with the conditions of the permit; or

(iii) any material mistake in relation to the grant of the permit.

(2) The request must be made in writing in accordance with the regulations.

(3) The Tribunal may refuse to consider a request under this section or section 87 unless it is satisfied that the request has been made as soon as practicable after the person making it had notice of the facts relied upon in support of the request.

90 Hearing by Tribunal

S. 90(1) amended by No. 52/1998 s. 191(1).

(1) The Tribunal must give the following persons a reasonable opportunity to be heard at the hearing of any request—

(a) the responsible authority;

(b) the owner and the occupier of the land concerned;

(c) any person who asked for the cancellation or amendment of the permit under section 87;

S. 90(1)(d) repealed by No. 3/2013 s. 65.

* * * * *

S. 90(1)(e) repealed by No. 35/1995 s. 4(h), new s. 90(1)(e) inserted by No. 47/2007 s. 14.

(e) any person who asked for the amendment of the permit under section 87A;

(f) any relevant referral authority.

(2) The Tribunal may give any other person who appears to it to have a material interest in the outcome of the request an opportunity to be heard at the hearing of the request.

90A Matters which Tribunal must take into account

S. 90A inserted by No. 28/2000 s. 7.

(1) In determining a request, the Tribunal must take into account the matters set out in section 84B(2) as if the request were an application for review.

S. 90A(1) amended by No. 81/2004 s. 33.

(2) The matters set out in section 84B(2) are in addition to any other matters which the Tribunal can properly take account of or have regard to or is required to take account of or have regard to in determining a request.

S. 90A(2) amended by No. 81/2004 s. 33.

91 Determination by Tribunal

(1) After hearing a request, the Tribunal may direct the responsible authority to cancel or amend the permit and to take any action required in relation to the permit.

S. 91(1) amended by No. 52/1998 s. 191(1).

(2) The responsible authority must comply with the directions of the Tribunal without delay.

S. 91(2) amended by No. 52/1998 s. 191(1).

(2A) If the Tribunal directs the responsible authority to amend a permit, the responsible authority must issue an amended permit to the owner of land to which the permit relates.

S. 91(2A) inserted by No. 81/2004 s. 34.

(3) The Tribunal must not direct a responsible authority to cancel or amend a permit on a request under section 89(1) unless it is satisfied that—

S. 91(3) amended by No. 52/1998 s. 191(1).

(a) in the case of a request under section 89(1)(a) the person—

(i) could not reasonably be expected to have been aware of the application for the permit in time to lodge an objection under Division 1; and

(ii) was substantially disadvantaged by the issue of the permit; and

(b) in the case of a request under section 89(1)(b), the person was substantially disadvantaged by the matter set out in the request; and

(c) it would be just and fair in the circumstances to do so.

S. 91(3A) inserted by No. 100/2000 s. 12.

(3A) The Tribunal must not direct a responsible authority to amend a permit if the amendment would authorise anything which would result in a breach of a registered restrictive covenant.

S. 91(4) inserted by No. 53/1988 s. 45(Sch. 2 item 36) (as amended by No. 47/1989 s. 19(zj)).

(4) If a cancelled permit relates to a subdivision or consolidation any plan certified under the **Subdivision Act 1988** must be surrendered to the responsible authority.

S. 91(5) inserted by No. 53/1988 s. 45(Sch. 2 item 36) (as amended by No. 47/1989 s. 19(zj)).

(5) A permit which relates to a subdivision or consolidation cannot be cancelled if the plan of subdivision or consolidation has been registered under the **Subdivision Act 1988**.

S. 92 amended by No. 52/1998 s. 191(1).

92 Notice of the cancellation or amendment

The responsible authority must give notice in accordance with the regulations of the cancellation or amendment of a permit under this Division to any person who was entitled to be heard by the Tribunal under section 90.

S. 93 amended by No. 52/1998 s. 191(1).

93 Order to stop development

(1) The Tribunal may, if it considers it appropriate, order that pending the hearing of a request no development other than that specified in the order is to be carried out or continued on the land.

(1A) Before making an order, the Tribunal must consider whether the person making the request should give any undertaking as to damages.

S. 93(1A) inserted by No. 128/1993 s. 21(1).

(2) The responsible authority must give notice of the order without delay to the persons and in the manner the Tribunal directs or (if no direction is given) as are prescribed.

(3) Any person to whom the notice is given who fails to comply with the notice is guilty of an offence.

Note

Section 128 applies to an offence against this subsection.

Note to s. 93(3) inserted by No. 21/2013 s. 18(2).

94 Right to compensation

S. 94(1) amended by No. 128/1993 s. 21(2).

(1) If a permit is not cancelled or amended after a notice is given under section 93, the responsible authority or a person who has given an undertaking under section 93 is liable to pay compensation to the owner of the land and the occupier of the land and any other person who had an interest in the land for any loss or damage they suffer as a result of the giving of notice.

(2) If a permit is cancelled or amended under this Division the responsible authority is liable to pay compensation to any person who has incurred expenditure or liability for expenditure as a result of the issue of the permit in respect of—

(a) any of that expenditure which is wasted because the permit is cancelled or amended; and

(b) any additional expenditure or liability necessarily incurred in purchasing other land to use or develop in the required manner because the permit is cancelled or amended.

S. 94(2A) inserted by No. 3/2013 s. 37.

(2A) A referral authority is liable to pay the compensation referred to in subsection (2) instead of the responsible authority if the permit is cancelled or amended under this Division because of a material mistake in relation to the issue of the permit that arose from an act or omission of the referral authority.

(3) There must be deducted from the amount of the additional expenditure or liability—

(a) the market value of the land in respect of which the permit was cancelled or amended at the date when the claimant for compensation sold it; or

(b) if the land has not been sold, the market value of that land at the date when the claimant bought the other land.

(4) Compensation is not payable if the permit is cancelled or amended—

(a) on the ground that there has been a substantial failure to comply with the conditions of the permit; or

(b) on the ground that the permit was granted following an application in relation to which a material mis-statement or concealment of fact was made; or

S. 94(4)(c) amended by No. 52/1998 s. 191(1).

(c) on the ground of any material mistake in relation to the grant of a permit if the Tribunal considers that the mistake arose from any act or omission by or on behalf of the applicant for the permit; or

(d) on the ground referred to in section 87(2).

(5) Parts 10 and 11 and section 37 of the **Land Acquisition and Compensation Act 1986** with any necessary changes apply to the determination of compensation under this section as if a claim for compensation were a claim under section 37 of that Act.

Division 4—Provisions relating to Ministers, government departments and responsible authorities

95 Permits required by Ministers or government departments

(1) Subject to subsections (2) and (3), an application for a permit by or on behalf of a Minister or government department must be made and dealt with in accordance with this Part.

(2) The Governor in Council may by Order published in the Government Gazette declare that a responsible authority must refer all applications in a specified class of applications for permits by Ministers or government departments to the Minister.

(3) The Minister may direct the responsible authority to refer to the Minister an application for a permit by or on behalf of a Minister or government department if—

(a) not less than 21 days have elapsed since lodgment of the application; and

(b) the Minister has consulted with the responsible authority; and

(c) the Governor in Council considers that the over-riding interests of the State required that the application be so referred.

(4) The responsible authority must comply with an Order or direction and must not proceed further with the application.

(5) The Governor in Council may determine any application referred to the Minister under subsection (2) or (3).

(6) A determination by the Governor in Council under subsection (5) is final and is not subject to review or appeal except in the Supreme Court on a question of law.

(7) If the Governor in Council determines that a permit is to be granted, with or without conditions, the Minister is to be the responsible authority for the purpose of issuing, administering and enforcing the permit.

(8) The Governor in Council may by Order published in the Government Gazette change or revoke an Order under subsection (2).

96 Land owned or permit required by responsible authorities

S. 96(1) amended by No. 86/1989 s. 5(3)(a).

(1) A responsible authority must obtain a permit from the Minister before carrying out any use or development for which a permit is required under the planning scheme for which it is the responsible authority unless the planning scheme exempts the land, use or development from this subsection.

S. 96(2) amended by No. 86/1989 ss 4(2)(c), 5(3)(b).

(2) A person other than the responsible authority must obtain the consent of the responsible authority and a permit from the Minister before carrying out any use or development on any land managed (whether as committee of management or otherwise) occupied or owned by the responsible authority for which a permit is required under the planning scheme for which it is the responsible

authority unless the planning scheme exempts the land, use or development from this subsection.

(3) The consent of the responsible authority under subsection (2) may be subject to any specified conditions to be included in the permit.

(4) Divisions 1, 1A, 2, 3 and 5 apply to an application or permit under this section as if the Minister were the responsible authority.

S. 96(4) amended by No. 81/2004 s. 35.

(5) The Minister may exercise the powers of a responsible authority under this Act in relation to the administration and enforcement of any permit granted under this section to a person other than a responsible authority as if the Minister were the responsible authority.

(6) If a responsible authority ceases to manage occupy or own the land for which a permit has been granted under this section—

S. 96(6) amended by No. 86/1989 s. 4(2)(d).

(a) the Minister must cease to act as the responsible authority in relation to the permit for the purposes of subsections (4) and (5)—

(i) if the responsible authority is carrying out the use or development, upon the completion of that use or development; or

(ii) in any other case, immediately; and

(b) once the Minister ceases to act, the responsible authority must carry out its functions in relation to the permit as if it had granted the permit.

(7) If a permit is granted under this section to use or develop any land a further permit is not needed under Division 1 for the use or development.

* * * * *

S. 96(8) substituted by No. 86/1989 s. 4(2)(e), repealed by No. 89/1997 s. 75(2).

Pt 4 Div. 5 (Heading and ss 96A–96N) inserted by No. 77/1996 s. 14.

Division 5—Combined permit and amendment process[22]

S. 96A inserted by No. 77/1996 s. 14.

96A Application for permit when amendment requested

S. 96A(1) substituted by No. 100/2000 s. 13(1).

(1) A person who requests a planning authority to prepare an amendment to a planning scheme may also apply to the planning authority for—

(a) a permit for any purpose for which the planning scheme as amended by the proposed amendment would require a permit to be obtained; or

(b) if the amendment provides for the removal or variation of a registered restrictive covenant, a permit for a use or development which would, if the restrictive covenant were not removed or varied, result in a breach of that registered restrictive covenant.

(2) The planning authority may agree to consider the application for the permit concurrently with the preparation of the proposed amendment.

(3) An application may be made for a permit under this section even if it could not be granted under the existing planning scheme.

(4) The application for the permit must—

(aa) if the permit is required to undertake development, state the estimated cost of the development for which the permit is required; and

S. 96A(4)(aa) inserted by No. 40/2014 s. 34(1).

(a) be accompanied by the prescribed fee; and

(b) be accompanied by the information required by the planning scheme; and

S. 96A(4)(b) amended by No. 100/2000 s. 13(2).

(c) if the land is burdened by a registered restrictive covenant, be accompanied by a copy of the covenant; and

S. 96A(4)(c) inserted by No. 100/2000 s. 13(2).

(d) if the application is for a permit to allow the removal or variation of a registered restrictive covenant or if the grant of the permit would authorise anything which would result in a breach of a registered restrictive covenant, be accompanied by—

S. 96A(4)(d) inserted by No. 100/2000 s. 13(2).

(i) information clearly identifying each allotment or lot benefited by the registered restrictive covenant; and

(ii) any other information that is required by the regulations.

(4A) If the application for the permit is a leviable planning permit application, the applicant must, at the same time as making the application, give the planning authority a current levy certificate in respect of the development for which the permit is required that states an estimated cost of the development that is equal to or greater than the estimated cost of the development stated in the application.

S. 96A(4A) inserted by No. 40/2014 s. 34(2).

(4B) If an applicant fails to comply with subsection (4A), the application for the permit is void.

S. 96A(4B) inserted by No. 40/2014 s. 34(2).

(5) An application cannot be made under this section after the notice of the proposed amendment to the planning scheme has been given under section 19.

S. 96A(6) amended by No. 81/2004 s. 36(a).

(6) Sections 48, 49, 50 and 50A apply to an application under this section as if—

(a) it were an application under Division 1; and

S. 96A(6)(b) amended by No. 81/2004 s. 36(b).

(b) in sections 50 and 50A a reference—

(i) to the responsible authority were a reference to the planning authority; and

(ii) to section 52 were a reference to section 96C(1).

S. 96B inserted by No. 77/1996 s. 14.

96B Application of provisions

(1) Subject to this Division, if a planning authority has agreed to consider an application for a permit concurrently with the preparation of a proposed amendment—

(a) sections 17, 18 and 20 to 25 and Part 8 apply to the application as if—

(i) except in section 23, the application were an amendment to a planning scheme; and

(ii) any reference in those sections to section 19 were a reference to section 96C; and

(iii) any reference in section 23 to an amendment were a reference to the proposed permit; and

(b) Parts 3 and 5 apply to the proposed amendment as if any reference in those Parts to section 19 were a reference to section 96C.

(2) Sections 166 and 185A apply to an application for a permit under this Division as if it were an amendment to a planning scheme and as if any reference in those sections to Part 3 included a reference to this Division.

96C Notice of amendment, application and permit

S. 96C inserted by No. 77/1996 s. 14.

(1) A planning authority must give notice of its preparation of an amendment to a planning scheme and notice of an application being considered concurrently with the amendment under this Division—

S. 96C(1) amended by No. 28/2000 s. 8(a).

(a) to every Minister, public authority and municipal council that it believes may be materially affected by the amendment or application; and

S. 96C(1)(a) amended by No. 28/2000 s. 8(b).

(b) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land that it believes may be materially affected by the amendment or application; and

(c) to any Minister, public authority, municipal council or person prescribed; and

(d) to the Minister administering the **Land Act 1958** if the amendment provides for the closure of a road wholly or partly on Crown land; and

(e) to the responsible authority, if it is not the planning authority; and

S. 96C(1)(f) amended by No. 100/2000 s. 14(1).

(f) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of allotments or lots adjoining the land to which the application applies unless the planning authority is satisfied that the grant of the permit would not cause material detriment to any person; and

S. 96C(1)(g) inserted by No. 100/2000 s. 14(1).

(g) to the owners (except persons entitled to be registered under the **Transfer of Land Act 1958** as proprietor of an estate in fee simple) and occupiers of land benefited by a registered restrictive covenant, if—

(i) the amendment or the permit would allow the removal or variation or the covenant; or

(ii) anything authorised by the permit would result in a breach of the covenant.

(2) A planning authority must publish a notice of the amendment and the application in a newspaper generally circulating in the area to which the amendment applies.

S. 96C(2A) inserted by No. 100/2000 s. 14(2).

(2A) A planning authority must cause notice of an amendment providing for the removal or variation of a registered restrictive covenant to be given by placing a sign on the land which is the subject of the amendment.

S. 96C(2B) inserted by No. 100/2000 s. 14(2), substituted by No. 12/2021 s. 41(1).

(2B) A sign under subsection (2A) must—

(a) if the planning authority intends to make a copy of the proposed permit available in person in accordance with the requirements set out in section 197B, state the place where a copy of the proposed permit under this Division may be inspected; or

(b) if the planning authority intends to make a copy of the proposed permit available electronically and on request in accordance with the requirements set out in sections 197C and 197D, state—

(i) the address of the planning authority's Internet site at which a copy of the proposed permit will be published; and

(ii) the planning authority's contact details for making a request to inspect the proposed permit.

S. 96C(3) amended by No. 100/2000 s. 14(3).

(3) On the same day that it gives the last of the notices under subsections (1), (2) and (2A) or after that day, the planning authority must publish a notice of the preparation of the amendment and of the application in the Government Gazette.

(4) Any notice must—

(a) be given in accordance with the regulations; and

(b) set a date for submissions to the planning authority which, if notice of the preparation of the amendment and the application is given in the Government Gazette, must be not less than one month after the date that the notice is given in the Government Gazette.

(5) The failure of a planning authority to give a notice under subsection (1) does not prevent—

(a) the adoption of the amendment by the planning authority or its submission to or approval by the Minister; or

(b) the grant of a permit under this Division.

(6) Subsection (5)(a) does not apply to a failure to notify an owner of land about the preparation of an amendment which provides for—

(a) the reservation of that land for public purposes; or

(b) the closure of a road which provides access to that land.

(7) A planning authority may take any other steps it thinks necessary to tell anyone who may be affected by the amendment about its preparation.

(8) The planning authority must give a copy of the proposed permit under this Division to each person to whom the notice of the amendment and application is given under subsection (1).

S. 96C(8A) inserted by No. 100/2000 s. 14(4), substituted by No. 12/2021 s. 41(2).

(8A) The planning authority must make a copy of the proposed permit under this Division available in accordance with the public availability requirements.

S. 96C(8B) inserted by No. 12/2021 s. 41(2).

(8B) The planning authority must make a copy of the proposed permit available under subsection (8A) until the amendment to which the proposed permit applies is approved or lapses.

(9) The applicant for a permit under this Division must pay to the planning authority the cost of any notice of the amendment and the application given under this section.

(10) Section 19 does not apply to an amendment of which notice is given under this section.

S. 96D inserted by No. 77/1996 s. 14.

96D Hearing by panel

Section 24 applies in respect of an application under this Division as if it also required the panel to give a reasonable opportunity to be heard to the applicant.

96E Report by panel on proposed permit

S. 96E inserted by No. 77/1996 s. 14.

(1) Without limiting section 25(2), if a panel recommends under that section that an amendment be adopted, the panel may also recommend—

(a) that a permit be granted under this Division for any purpose for which the planning scheme as amended by the proposed amendment would require a permit to be obtained; and

(b) the conditions to which the permit should be subject.

(2) Subsection (1) applies whether or not an application has been made under this Division for the permit.

96F Planning authority to consider panel's report

S. 96F inserted by No. 77/1996 s. 14.

The planning authority must consider the panel's report under section 96E before deciding whether or not to recommend the granting of a permit.

96G Determination by planning authority

S. 96G inserted by No. 77/1996 s. 14.

(1) A planning authority may determine to recommend to the Minister that a permit be granted under this Division with or without changes if—

(a) an application for a permit has been made under this Division and sections 96A to 96F have been complied with; or

(b) a panel has recommended the grant of a permit under this Division and section 96F has been complied with; or

(c) as a result of changes made to an amendment under Part 3, the planning authority considers it appropriate that a permit be granted under this Division for any purpose

for which the planning scheme as amended by the proposed amendment would require a permit to be obtained.

(2) A planning authority may only make a determination under subsection (1) if it has adopted the amendment or the part of the amendment to which the permit applies.

(3) If an amendment or the part of the amendment to which the permit applies lapses under Part 3, the permit application also lapses.

(4) If a planning authority determines to refuse to recommend to the Minister that a permit be granted under this Division for which an application has been made, the planning authority must notify the applicant in writing of the determination and the reasons for the determination.

S. 96H inserted by No. 77/1996 s. 14.

96H Recommendation by planning authority

(1) If the planning authority has determined under section 96G to recommend the granting of a permit, the planning authority must submit the recommendation and the proposed permit to the Minister at the same time as it submits the adopted amendment to which the permit applies.

(2) The Minister may direct the planning authority to give more notice of the application for the permit if the Minister thinks that the notice which the planning authority gave was inadequate, even if the planning authority has complied with section 96C.

(3) The planning authority must give the notice of the application required by the Minister and comply again with sections 21 to 26 and sections 96D to 96H (so far as applicable).

(4) Sections 33 and 34 apply to a proposed permit submitted under this section as if it were an amendment.

96I Minister may grant permit on approval of amendment

S. 96I inserted by No. 77/1996 s. 14.

(1) If a planning authority has recommended the grant of a permit under section 96H, the Minister may—

(a) grant the permit; or

(b) grant the permit subject to conditions the Minister thinks fit; or

(c) refuse to grant the permit on any ground the Minister thinks fit.

S. 96I(1A) inserted by No. 100/2000 s. 15.

(1A) If the grant of a permit would authorise anything which would result in a breach of a registered restrictive covenant, the Minister must refuse to grant the permit unless—

(a) the amendment to which the permit applies provides for the variation or removal of the covenant; or

(b) a permit has been issued, or a decision made to grant a permit, to allow the removal or variation of the covenant.

S. 96I(1B) inserted by No. 100/2000 s. 15.

(1B) If the grant of the permit would authorise anything which would result in a breach of a registered restrictive covenant, the permit must be granted subject to a condition that the permit is not to come into effect until the covenant is removed or varied.

(2) In addition to subsection (1), the Minister may grant a permit under this section subject to any conditions the Minister thinks fit, if the Minister considers that, as a result of changes made to an amendment under Part 3, it is appropriate that a permit be granted under this section for any purpose for which the planning scheme as

amended by the proposed amendment would require a permit to be obtained.

(3) The permit must be granted at the same time as the approval of the amendment to which the permit applies.

(4) The permit must state that it operates from a day specified in the permit being a day on or after the day on which the amendment to which the permit applies comes into operation.

(5) Section 60(2), (4) and (5) apply to the consideration of a decision to grant a permit under this section as if any reference to the responsible authority were a reference to the Minister.

(6) Section 62(2) to (6) apply to a permit granted under this section by the Minister as if a reference to the responsible authority in section 62(2) (where first occurring), 62(4), 62(5) and 62(6) were a reference to the Minister.

S. 96J inserted by No. 77/1996 s. 14.

96J Issue of permit

(1) If the Minister grants a permit under section 96I, the Minister must direct the responsible authority to issue the permit.

(2) The responsible authority must issue the permit within 7 days after a direction is given under subsection (1).

(3) The permit must be issued to—

(a) the applicant; or

(b) if there was no application for the permit under this Division, to the owner of the land.

(4) The responsible authority must comply with a direction of the Minister under this section.

96K Notice of refusal

S. 96K inserted by No. 77/1996 s. 14.

(1) The Minister may direct the responsible authority to give notice of the refusal of the permit to any person or body specified by the Minister.

(2) The direction and the notice by the responsible authority must set out the specific grounds on which the permit is refused.

(3) The responsible authority must comply with a direction of the Minister under this section.

96L Cancellation of permit

S. 96L inserted by No. 77/1996 s. 14.

If a permit is granted under this Division and the amendment to which the permit applies is revoked under section 38, the permit is deemed to be cancelled on that revocation.

96M Application of provisions

S. 96M inserted by No. 77/1996 s. 14.

(1) Sections 68 to 76D apply to a permit granted under this Division.

S. 96M(1) amended by No. 81/2004 s. 37(a).

(2) Sections 81(1) and (3) and 85(1)(f) apply to a permit under this Division.

S. 96M(2) amended by Nos 81/2004 s. 37(b), 3/2013 s. 61(2).

(3) Except as provided in this Division, Divisions 1 and 2 do not apply to an application or permit under this Division.

(4) Division 3 applies to a permit issued under this Division as if—

S. 96M(4)(a) amended by No. 100/2000 s. 14(5).

(a) for section 87(1)(e) there were substituted—

"(e) in the case of an application for a permit under section 96A, any failure to give notice in accordance with section 96C; or"; and

(b) section 87(1)(f) were omitted.

(5) If a permit is granted under this Division—

S. 96M(5)(a) substituted by No. 12/2021 s. 42.

(a) the notice under section 36(1) of approval of the amendment to which the permit applies must also—

(i) if the responsible authority intends to make a copy of the permit available in person in accordance with the requirements set out in section 197B, specify the places at which any person may inspect a copy of the permit; or

(ii) if the responsible authority intends to make a copy of the permit available electronically and on request in accordance with the requirements set out in sections 197C and 197D, specify—

(A) the address of the responsible authority's Internet site at which a copy of the permit will be published; and

(B) the responsible authority's contact details for making a request to inspect a copy of the permit; and

Note

The responsible authority must make a copy of the permit available in accordance with the public availability requirements—see section 70.

(b) the notice under section 38 of approval of the amendment to which the permit applies must specify that the permit has been granted.

96N Who is to be the responsible authority?

S. 96N inserted by No. 77/1996 s. 14, amended by No. 21/2013 s. 9.

Once a permit is granted under this Division, the responsible authority specified in the planning scheme becomes the responsible authority in respect of the permit.

* * * * *

Pt 4 Div. 5 (Heading) repealed by No. 72/1998 s. 8(a).

* * * * *

S. 97 amended by No. 31/1989 s. 13(4), repealed by No. 67/1995 s. 57(2).[23]

Division 5A—Metropolitan Planning Levy

Pt 4 Div. 5A (Heading and ss 96O–96Z) inserted by No. 40/2014 s. 35.

96O Imposition of levy

S. 96O inserted by No. 40/2014 s. 35.

(1) This Division imposes a levy, known as the Metropolitan Planning Levy, for the privilege of making a leviable planning permit application.

(2) The levy is payable by the person who intends to make the application.

96P What is a *leviable planning permit application*?

S. 96P inserted by No. 40/2014 s. 35.

(1) A ***leviable planning permit application*** is an application under section 47 or 96A for a permit required for the development of land in metropolitan Melbourne if the estimated cost of the development for which the permit is required exceeds the threshold amount.

Note

See section 3(1) and Schedule 2 for the meaning of ***metropolitan Melbourne***.

(2) The ***threshold amount*** is—

(a) in the financial year beginning on 1 July 2015, $1 million; and

(b) in the financial year beginning on 1 July 2016 and each subsequent financial year, the CPI adjusted amount calculated in accordance with section 96R.

S. 96Q inserted by No. 40/2014 s. 35.

96Q Amount of levy

(1) The amount of the levy is $1.30 for every $1000 of the estimated cost of the development for which the permit is required.

(2) For the purposes of subsection (1), if the estimated cost of the development for which the permit is required is not a multiple of $1000, the estimated cost is to be rounded up or down to the nearest $1000 (and, if the amount by which it is to be rounded is $500, is to be rounded up).

S. 96R inserted by No. 40/2014 s. 35.

96R CPI adjusted amount

S. 96R(1) amended by No. 40/2016 s. 44.

(1) The CPI adjusted amount for a financial year is to be determined in accordance with the following formula—

$$C = \frac{T \times A}{B}$$

where—

C is the CPI adjusted amount being determined;

T is—

(a) for the financial year beginning on 1 July 2016, $1 million; and

(b) for each subsequent financial year, the CPI adjusted amount determined in accordance with this section for the previous financial year;

A is the sum of the consumer price index numbers for the consecutive reference periods in the period—

(a) commencing on 1 January in the financial year 2 years earlier than the financial year in respect of which the CPI adjusted amount is being determined; and

(b) ending on the next following 31 December in the financial year immediately preceding the financial year in respect of which the CPI adjusted amount is being determined—

last published by the Australian Bureau of Statistics as at 15 April immediately preceding the financial year in respect of which the CPI adjusted amount is being determined;

B is the sum of the consumer price index numbers for the consecutive reference periods in the period—

(a) commencing on 1 January in the financial year 3 years earlier than the financial year in respect of which the CPI adjusted amount is being determined; and

(b) ending on the next following 31 December in the financial year 2 years earlier than the financial year in respect of which the CPI adjusted amount is being determined.

Example

In the case of a determination of the CPI adjusted amount for the financial year beginning on 1 July 2018 the variables are as follows—

- "T" is the CPI adjusted amount for the financial year beginning on 1 July 2017;
- "A" is the sum of the consumer price index numbers for the consecutive reference periods in the period commencing on 1 January 2017 and ending on 31 December 2017;
- "B" is the sum of the consumer price index numbers for the consecutive reference periods in the period commencing on 1 January 2016 and ending on 31 December 2016.

S. 96R(1A) inserted by No. 28/2017 s. 79.

(1A) The CPI adjusted amount determined under subsection (1) is to be rounded up or down to the nearest $1000 (and, if the amount by which the amount to be rounded is $500, is to be rounded up).

(2) On or before 31 May each year, the Commissioner must—

(a) notify each responsible authority and planning authority in metropolitan Melbourne of the CPI adjusted amount for the following financial year; and

(b) publish the CPI adjusted amount for the following financial year on an appropriate website.

(3) A failure to comply with subsection (2) in respect of a financial year does not affect the operation of section 96P and this section in respect of a levy payable in that year.

96S Notification and payment of levy

S. 96S inserted by No. 40/2014 s. 35.

(1) A person who intends to make a leviable planning permit application must, before making it—

(a) give notice to the Commissioner; and

(b) pay the amount of the levy for the application to the Commissioner.

(2) Notice under subsection (1) must—

(a) be in the form approved by the Commissioner; and

(b) state the estimated cost of the development; and

(c) contain the information required by the Commissioner.

96T Levy certificate

S. 96T inserted by No. 40/2014 s. 35.

(1) If a person pays the levy and the Commissioner is satisfied that the whole of the amount of the levy has been paid in respect of the estimated cost of the development, the Commissioner must issue a certificate to that person.

(2) A levy certificate must include the following information—

(a) the estimated cost of the development;

(b) the amount of the levy paid;

(c) a statement that the whole of the amount of the levy has been paid in respect of the estimated cost of the development;

(d) the date on which the certificate was issued;

(e) the date on which the certificate will expire;

(f) the name and address of the person who paid the levy;

(g) any other information the Commissioner considers appropriate.

(3) Subject to section 96U(3), a levy certificate expires 90 days after the day on which it is issued.

S. 96U inserted by No. 40/2014 s. 35.

96U Revised levy certificate

(1) Subsection (2) applies if—

(a) the Commissioner has issued a certificate under section 96T in respect of a leviable planning permit application; and

(b) the estimated cost of the development increases before the application is made; and

(c) the certificate has not expired.

(2) If a person pays any additional levy and the Commissioner is satisfied that the whole of the amount of the levy has been paid in respect of the increased estimated cost of the development, the Commissioner must issue a revised certificate to that person.

(3) The Commissioner may also issue a revised certificate—

(a) to correct any error in the information included in the certificate under section 96T(2)(b), (d), (e), (f) or (g); or

(b) if the estimated cost of the development stated in the certificate is different from the estimated cost of the development stated in the notice given under section 96S(1)(a).

(4) A revised certificate expires 90 days after the day on which it is issued.

S. 96V inserted by No. 40/2014 s. 35.

96V No refund of levy except in cases of mathematical error

(1) A person who has paid a levy under this Division is not entitled to a refund of the whole or any part of the levy except where there has been a mathematical error in calculating the amount of the levy by reference to the estimated cost of the

development stated in the notice given to the Commissioner under section 96S(1)(a).

(2) Without limiting subsection (1), a person who has paid a levy under this Division is not entitled to a refund of the whole or any part of the levy—

(a) if the estimated cost of the development decreases after the levy is paid; or

(b) if the permit application to which the levy relates is not subsequently made, lapses or is refused or withdrawn; or

(c) if, at the time the permit application is made, the threshold amount has increased from the threshold amount at the time the levy was paid; or

(d) if the permit application to which the levy relates is granted and the permit is subsequently cancelled.

(3) Any refund under subsection (1) is to be paid from the Consolidated Fund which is appropriated by this section to the necessary extent.

96W Commissioner's functions and powers

S. 96W inserted by No. 40/2014 s. 35.

(1) The Commissioner has the general administration of this Division and may do all things that are necessary or convenient to give effect to this Division.

(2) For the purpose of performing a function under this Division, the Commissioner may request in writing a responsible authority or planning authority to provide the Commissioner with any information relating to an application made to the authority for a permit under section 47 or 96A (as the case requires) or relating to any permit granted on such an application.

(3) A responsible authority or planning authority must as soon as practicable provide the Commissioner with the information requested under subsection (2).

S. 96X inserted by No. 40/2014 s. 35.

96X Prohibition on certain disclosures of information by Commissioner etc.

(1) A person who is or was the Commissioner or another person engaged in the administration of this Division must not disclose any information obtained under, or in relation to the administration of, this Division, except as permitted by this Division.

Penalty: 60 penalty units.

(2) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.

S. 96Y inserted by No. 40/2014 s. 35.

96Y Permitted disclosures

A person who is or was the Commissioner or another person engaged in the administration of this Division may disclose information obtained under, or in relation to the administration of, this Division—

(a) with the consent of the person to whom the information relates or at the request of a person acting on behalf of that person; or

(b) in connection with the administration of this Division; or

(c) in accordance with a requirement imposed under an Act; or

(d) to an authorised recipient, being—

(i) the Secretary to the Department of Treasury and Finance; or

(ii) the Secretary to the Department of Transport, Planning and Local Infrastructure; or

(iii) a relevant responsible authority; or

(iv) a relevant planning authority; or

(v) a person prescribed to be an authorised recipient for the purposes of this section; or

(e) if the information will not, or is not likely to, identify a particular person.

96Z Responsible authority or planning authority to keep levy certificate

S. 96Z inserted by No. 40/2014 s. 35.

A responsible authority or a planning authority must keep each levy certificate given to it under section 47 or 96A (as the case requires) for not less than 5 years after the levy certificate is given to it.

Division 6—Powers of Minister in relation to applications

Pt 4 Div. 6 (Heading and ss 97A–97M) inserted by No. 128/1993 s. 22.

* * * * *

S. 97A inserted by No. 128/1993 s. 22, repealed by No. 21/2013 s. 10.

97B Call in power

S. 97B inserted by No. 128/1993 s. 22.

(1) Before a responsible authority makes a decision in respect of an application for a permit in accordance with section 61, the Minister may direct the responsible authority to refer the application to the Minister if it appears to the Minister—

(a) that the application raises a major issue of policy and that the determination of the application may have a substantial effect on the achievement or development of planning objectives; or

S. 97B(1)(b) amended by No. 35/1995 s. 6.

(b) that the decision on the application has been unreasonably delayed to the disadvantage of the applicant; or

S. 97B(1)(c) inserted by No. 35/1995 s. 6.

(c) that the use or development to which the application relates is also required to be considered by the Minister under another Act or regulation and that consideration would be facilitated by the referral of the application to the Minister.

(2) The responsible authority must comply with the direction without delay and must not proceed further with the application.

S. 97C inserted by No. 128/1993 s. 22.

97C Request by responsible authority

(1) Before a responsible authority makes a decision in respect of an application for a permit in accordance with section 61, the responsible authority may request the Minister to decide the application.

(2) If the Minister agrees to the request, the responsible authority must refer the application to the Minister and must not proceed further with the application.

S. 97D inserted by No. 128/1993 s. 22.

97D Referral of applications to Minister

S. 97D(1) amended by No. 21/2013 s. 11(1).

(1) The referring responsible authority and its officers and employees must comply with any directions of the Minister with respect to—

(a) the provision to the Minister of any document relating to the application; and

(b) the provision to the Minister of assistance with respect to any steps to be taken under this Part with respect to the application.

(2) Division 1 (except sections 59, 61, 63, 64, 64A, 65, 66 and 70) applies to any application referred to the Minister under this Division as if— S. 97D(2) amended by No. 3/2013 s. 38.

(a) the Minister were the responsible authority; and

(b) all steps taken under Division 1 by the referring responsible authority had been taken by the Minister. S. 97D(2)(b) amended by No. 21/2013 s. 11(1).

(3) In this section ***referring responsible authority*** means the responsible authority that referred an application to the Minister under section 97B or 97C. S. 97D(3) inserted by No. 21/2013 s. 11(2).

97E Panel

S. 97E inserted by No. 128/1993 s. 22.

(1) Subject to subsection (5), the Minister—

(a) must refer to a panel appointed under Part 8 any objections and submissions received in respect of an application within 2 weeks after the giving of the last notice required to be given under Division 1 in respect of the application; and

(b) may refer to a panel appointed under Part 8 any late objections and submissions.

(2) The panel must consider the objections and submissions referred to it and give any person who made an objection or submission referred to it a reasonable opportunity to be heard.

(2A) The panel must give the applicant a reasonable opportunity to be heard. S. 97E(2A) inserted by No. 3/2013 s. 79.

(3) The panel may give any other person affected a reasonable opportunity to be heard.

(4) The panel must report its findings to the Minister setting out the panel's recommendations on the application.

(5) The Minister is not required—

(a) to refer submissions to a panel if no objections have been received in respect of the application; or

S. 97E(5)(b) amended by No. 81/2004 s. 38(1).

(b) to refer objections or submissions to a panel if no notice of the application is required to be given under section 52(1) or 57B or the planning scheme and the decision on the application is exempt from sections 64(1), (2) and (3) and 82(1); or

(c) to consider the report of a panel if—

(i) the Minister has not received the panel's report at the end of 3 months from the panel's appointment or 1 month from the date on which the panel completed its hearing, whichever is the earlier; and

(ii) the Minister considers that delay in considering whether to grant the permit may adversely affect the applicant.

S. 97E(6) inserted by No. 72/1998 s. 6.

(6) The Minister may ask the applicant for the permit or the owner of the land to which the application relates to contribute an amount specified by the Minister to the costs of the panel.

S. 97F inserted by No. 128/1993 s. 22.

97F Decision of Minister

(1) After considering the report of the panel (if any), the planning scheme and any matters to be considered under section 60, the Minister may—

(a) grant the permit; or

(b) grant the permit subject to conditions; or

(c) refuse to grant the permit on any ground he or she thinks fit.

(2) Once the Minister has decided in favour of an application, the Minister must issue the permit to the applicant.

97G Notice of availability

S. 97G inserted by No. 128/1993 s. 22.

(1) The Minister must give the applicant a notice in the prescribed form of his or her decision to refuse to grant a permit under this Division.

S. 97G(2) amended by No. 3/2013 s. 39.

(2) The notice under subsection (1) must set out the specific grounds on which the application is refused and state whether the grounds were those of the Minister or the determining referral authority.

S. 97G(3) amended by No. 21/2013 s. 12.

(3) The Minister must give the responsible authority specified in the planning scheme and each referral authority a copy of any permit which he or she decides to grant and a copy of a notice given under subsection (1).

(4) The Minister must give notice of the decision under section 97F to the persons who made objections or submissions in respect of the application.

(5) A notice under subsection (4) may be given by notice published in a newspaper circulating generally in the area to which the relevant planning scheme applies.

S. 97G(6) amended by No. 21/2013 s. 12, substituted by No. 12/2021 s. 43.

(6) The Minister and the responsible authority specified in the planning scheme must make a copy of every permit issued under section 97F available in accordance with the public availability requirements.

S. 97H inserted by No. 128/1993 s. 22, amended by No. 21/2013 s. 13.

97H Effect of issue of permit

Once a permit is issued under section 97F, the responsible authority specified in the planning scheme becomes the responsible authority for the administration and enforcement of this Act and the relevant planning scheme in respect of the permit (whether or not the permit is amended) except that the Minister remains the responsible authority in respect of—

(a) any matters which the permit specifies to be done by, approved by or done to the satisfaction of the Minister; and

S. 97H(b) repealed by No. 81/2004 s. 38(2).

* * * * *

(c) any extension of time under section 69 in relation to the permit; and

(d) the correction of the permit under section 71(1); and

S. 97H(e) repealed by No. 81/2004 s. 38(3).

* * * * *

(f) the amendment of the permit under section 97J.

S. 97I inserted by No. 128/1993 s. 22.

97I Application for amendment of permit

(1) A person who is entitled to use or develop land in accordance with a permit issued under this Division may apply to the Minister for an amendment to the permit.

* * * * *

S. 97I(1A) inserted by No. 81/2004 s. 38(4), repealed by No. 3/2013 s. 80.

(2) Sections 97D and 97E (with any necessary changes) apply to an application for an amendment to a permit as if it were an application for a permit referred to the Minister under section 97B or 97C.

S. 97I(3) repealed by No. 81/2004 s. 38(5), new s. 97I(3) inserted by No. 47/2017 s. 9.

(3) Without limiting subsection (2), if an application for an amendment of a referred wind energy facility permit is of a class of application specified in a planning scheme for which objections and submissions must be referred to an advisory committee, section 97E applies to the application for the amendment of the permit as if a reference to a panel were a reference to the advisory committee.

97J Decision on amendment

S. 97J inserted by No. 128/1993 s. 22.

After considering the report of a panel (if any), the planning scheme and any matters to be considered under section 60, the Minister may—

(a) amend the permit; or

(b) amend the permit subject to conditions; or

(c) refuse to amend the permit on any ground he or she thinks fit.

97K Notice of decision

S. 97K inserted by No. 128/1993 s. 22.

(1) The Minister must give notice—

(a) of the decision under section 97J to the applicant; and

S. 97K(1)(b) amended by Nos 81/2004 s. 38(6), 21/2013 s. 14.

(b) of the correction of a permit under section 71 or the amendment of a permit under section 97J to the responsible authority specified in the planning scheme; and

(c) of the amendment of a permit under section 97J to any person who made objections or submissions in respect of the amendment to the permit.

(2) A notice under subsection (1)(c) may be given by notice published in a newspaper circulating generally in the area to which the relevant planning scheme applies.

S. 97L inserted by No. 128/1993 s. 22, amended by No. 21/2013 s. 15.

97L Register

The responsible authority specified in the planning scheme must include in the register kept by that responsible authority under section 49 details of—

(a) any decision made under section 97F of which the responsible authority is notified under section 97G; and

(b) any correction or amendment of which the responsible authority is notified under section 97K.

S. 97M inserted by No. 128/1993 s. 22.

97M Provisions of Act not to apply

Divisions 2 and 3 of this Part and section 149A do not apply in relation to—

(a) an application referred to the Minister under this Division; or

(b) a permit issued under this Division; or

(c) an amendment of a permit issued under this Division.

Part 4AA—Planning Application Committee

Pt 4AA (Headings and ss 97MA–97MZT) inserted by No. 66/2009 s. 5, amended by No. 58/2010 ss 37–42, repealed by No. 3/2013 s. 5, new Pt 4AA (Heading and ss 97MA–97MI) inserted by No. 3/2013 s. 10.

97MA Planning Application Committee

New s. 97MA inserted by No. 3/2013 s. 10.

The Minister may establish a Planning Application Committee.

97MB Membership of Planning Application Committee

New s. 97MB inserted by No. 3/2013 s. 10.

(1) The Planning Application Committee is to consist of—

(a) a chairperson appointed by the Minister from the list of persons prepared under subsection (2); and

(b) at least 4 other members appointed by the Minister.

(2) The Minister must prepare a list of names of persons available for appointment as a chairperson of the Planning Application Committee.

(3) The Minister must consult with the following bodies in respect of the list before making any appointment from that list—

(a) the Municipal Association of Victoria established under the **Municipal Association Act 1907**;

(b) the Victorian Local Governance Association;

(c) 2 bodies that the Minister considers represent the planning and development industry.

(4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Planning Application Committee in respect of the office of member.

New s. 97MC inserted by No. 3/2013 s. 10.

97MC Functions of the Planning Application Committee

The Planning Application Committee has the following functions—

(a) to advise the Minister on any matters which the Minister refers to it in relation to an application for a permit or class of applications for permits;

(b) to advise a responsible authority on any matters which the authority, with the consent of the Minister, refers to it in relation to an application for a permit or class of applications for permits;

(c) to carry out, as delegate, any function delegated to it by the Minister under section 190;

(d) to carry out, as delegate, any function delegated to it by a responsible authority under section 188.

New s. 97MD inserted by No. 3/2013 s. 10.

97MD Proceedings of Planning Application Committee

Subject to the regulations (if any), the Planning Application Committee may regulate its own proceedings.

97ME Subcommittees

New s. 97ME inserted by No. 3/2013 s. 10.

(1) The Planning Application Committee may appoint one or more subcommittees for the purposes of carrying out any of its functions.

(2) A subcommittee may consist of—

(a) members of the Planning Application Committee; or

(b) one or more members of the Planning Application Committee and co-opted members appointed by the Committee.

(3) The Planning Application Committee must appoint a member of the Planning Application Committee to be the chairperson of a subcommittee.

97MF Delegation to subcommittee

New s. 97MF inserted by No. 3/2013 s. 10.

The Planning Application Committee may, by instrument, delegate to the members of a subcommittee any of its functions, including any function delegated to it, but not including this power of delegation.

97MG Payment of members of Committee and subcommittees

New s. 97MG inserted by No. 3/2013 s. 10.

A member of the Planning Application Committee or a subcommittee of that Committee is entitled to be paid the fees and allowances (if any) fixed in respect of the member by the Minister.

97MH Responsible authority to assist Planning Application Committee

New s. 97MH inserted by No. 3/2013 s. 10.

A responsible authority, which has requested the advice of the Planning Application Committee or delegated a function to the Committee, must provide the Committee with any information or assistance that the Committee requires in order to provide the advice or carry out the function.

S. 97MI inserted by No. 3/2013 s. 10.

97MI Responsible authority to contribute to costs of Planning Application Committee

A responsible authority must, on the request of the Minister, contribute an amount specified by the Minister towards the costs of the Planning Application Committee or a subcommittee of that Committee that are incurred in providing advice to, or carrying out a function under delegation from, that authority.

Part 4A—Certificates of compliance

Pt 4A (Heading and ss 97N–97R) inserted by No. 128/1993 s. 23.

97N Application for certificate

S. 97N inserted by No. 128/1993 s. 23.

(1) Any person may apply to the responsible authority for—

(a) a certificate stating that an existing use or development of land complies with the requirements of the planning scheme at the date of the certificate; or

(b) a certificate stating that a proposed use or development (or part of a use or development) of land would comply with the requirements of the planning scheme at the date of the certificate.

(2) The application must be accompanied by the prescribed fee.

97O Certificate of compliance

S. 97O inserted by No. 128/1993 s. 23.

(1) The responsible authority must consider the application and must—

(a) issue to the applicant a certificate of compliance in accordance with section 97N(1)(a) or (b); or

(b) refuse to issue the certificate on a ground set out in subsection (4) or (5).

(2) A certificate of compliance must be in the prescribed form and contain the prescribed information.

(3) The responsible authority may specify in a certificate referred to in section 97N(1)(b) any part of the use or development which would require a permit or is prohibited under the planning scheme at the date of the certificate.

(4) The responsible authority must refuse to issue a certificate applied for under section 97N(1)(a) if the use or development or any part of the use or development would require a permit or is prohibited under the planning scheme.

(5) The responsible authority must refuse to issue a certificate applied for under section 97N(1)(b) if the whole of the use or development would require a permit or is prohibited under the planning scheme.

S. 97P (Heading) inserted by No. 3/2013 s. 66(1).

S. 97P inserted by No. 128/1993 s. 23.

97P Review of failure or refusal to issue certificate

S. 97P(1) amended by No. 52/1998 s. 191(13)(a)(i).

(1) An applicant for a certificate may apply to the Tribunal for review of—

(a) a decision by the responsible authority to refuse to issue a certificate of compliance; or

(b) the failure of the responsible authority to issue the certificate within the prescribed time.

S. 97P(1A) inserted by No. 3/2013 s. 66(2).

(1A) In reviewing a decision or failure to issue a certificate under this section, the Tribunal may confine its review to particular matters in dispute if all parties agree, and for this purpose section 84B applies as if the reference to an application for review were a reference to an application for review as so confined.

S. 97P(2) amended by No. 52/1998 s. 191(13)(a)(ii).

(2) After hearing an application, the Tribunal may—

(a) direct that a certificate must not be issued; or

(b) direct the responsible authority to issue the certificate.

(3) The responsible authority must comply with the directions of the Tribunal.

S. 97P(3) amended by No. 52/1998 s. 191(13)(a)(iii).

97Q Cancellation or amendment of certificate

S. 97Q inserted by No. 128/1993 s. 23.

(1) Any person may request the Tribunal to cancel or amend a certificate of compliance issued under this Part if the person believes that the person has been adversely affected by a material mis-statement or concealment of fact in relation to the application for the certificate or a material mistake in relation to the issue of the certificate.

S. 97Q(1) amended by No. 52/1998 s. 191(1).

(2) The Tribunal must give the following persons the opportunity to be heard at the hearing of any request—

S. 97Q(2) amended by No. 52/1998 s. 191(1).

(a) the responsible authority;

(b) the owner and occupier of the land concerned;

(c) the person who made the request;

(d) the Minister.

(3) After hearing a request, the Tribunal may direct the responsible authority to cancel or amend the certificate and to take any action required in relation to the certificate, if it is satisfied that—

S. 97Q(3) amended by No. 52/1998 s. 191(1).

(a) there has been a material mis-statement or concealment of fact in relation to the application for the certificate or a material mistake in relation to the issue of the certificate; and

(b) the person who made the request was substantially disadvantaged by the mis-statement, concealment or mistake; and

(c) it would be just and fair in the circumstances to do so.

S. 97Q(4) amended by No. 52/1998 s. 191(1).

(4) The responsible authority must comply with the directions of the Tribunal.

S. 97Q(5) substituted by No. 3/2013 s. 40.

(5) The following provisions (with any necessary changes) apply to a request and direction under this section as if any reference in those provisions to a permit were a reference to a certificate of compliance under this Part—

(a) section 88;

(b) section 89(2) and (3);

(c) section 92;

(d) section 93;

(e) section 94 (except subsection (2A)).

S. 97R inserted by No. 128/1993 s. 23.

97R Register

The responsible authority must include in the register kept under section 49 details of—

(a) all applications for certificates under this Part; and

(b) all decisions and determinations relating to those certificates.

Part 5—Compensation

98AAA Part 5 to not apply to inner public purpose land

S. 98AAA inserted by No. 12/2021 s. 8.

This Part does not apply to inner public purpose land (within the meaning of section 46GA).

98AA Definitions

S. 98AA inserted by No. 86/1989 s. 17.

In this Part—

occupier does not include a committee of management;

owner does not include an owner within the meaning of paragraph (c) or (d) of the definition of ***owner*** in section 3.

98 Right to compensation

(1) The owner or occupier of any land may claim compensation from the planning authority for financial loss suffered as the natural, direct and reasonable consequence of—

(a) subject to subsection (1A), the land being reserved for a public purpose under a planning scheme; or

S. 98(1)(a) amended by No. 12/2021 s. 9(1)(a).

(b) subject to subsection (1B), the land being shown as reserved for a public purpose in a proposed amendment to a planning scheme of which notice has been published in the Government Gazette under section 19; or

S. 98(1)(b) amended by No. 12/2021 s. 9(1)(b).

(c) a declaration of the Minister under section 113 that the land is proposed to be reserved for a public purpose; or

(d) access to the land being restricted by the closure of a road by a planning scheme.

(1A) Subsection (1)(a) only applies if the provision of the planning scheme that has been applied to and reserves the land expressly states as a purpose "to reserve land for a public purpose".

S. 98(1A) inserted by No. 12/2021 s. 9(2).

S. 98(1B) inserted by No. 12/2021 s. 9(2).

(1B) Subsection (1)(b) only applies if the provision of the planning scheme that is to be applied to and reserve the land (as a result of the proposed amendment) expressly states as a purpose "to reserve land for a public purpose".

S. 98(2) amended by No. 12/2021 s. 9(3).

(2) Subject to subsection (2A), the owner or occupier of any land may claim compensation from a responsible authority for financial loss suffered as the natural, direct and reasonable consequence of a refusal by the responsible authority to grant a permit to use or develop the land on the ground that the land is or will be needed for a public purpose.

S. 98(2A) inserted by No. 12/2021 s. 9(4).

(2A) Subsection (2) does not apply if the planning scheme prohibits or otherwise prevents the type of use or development that has been applied for in the permit application.

(3) A person cannot claim compensation under subsection (1) if—

(a) the planning authority has purchased or compulsorily acquired the land or part of the land; or

S. 98(3)(b) amended by Nos 7/2018 s. 12(1), 12/2021 s. 9(5).

(b) a condition on the permit provides that compensation is not payable.

S. 98(3)(c)(d) inserted by No. 7/2018 s. 12(2), repealed by No. 12/2021 s. 9(6).

* * * * *

(4) The responsible authority must inform any person who asks it to do so of the person or body from whom the first-mentioned person may claim compensation under this Part.

(5) In subsection (1)—

S. 98(5) inserted by No. 7/2018 s. 12(3), substituted by No. 12/2021 s. 9(7).

planning authority means—

(a) in relation to a claim under subsection (1)(a), the planning authority that prepared the planning scheme or amendment that reserved the land for a public purpose; or

(b) in relation to a claim under subsection (1)(b), the planning authority that prepared the proposed amendment to the planning scheme that shows the land as being reserved for a public purpose; or

(c) in relation to a claim under subsection (1)(c), the Minister, public authority or municipal council specified in the declaration as responsible for the proposal; or

(d) in relation to a claim under subsection (1)(d), the planning authority that prepared the planning scheme or amendment that restricted access to the land by the closure of a road.

99 When does the right to compensation arise?

A right to compensation and the liability of a planning authority or responsible authority to pay compensation arises—

(a) under section 98(1)(a), (b) or (c) after—

(i) the responsible authority has refused to grant a permit for the use or development of the land on the ground that it is or may be required for a public purpose; or

S. 99(a)(ii) amended by No. 52/1998 s. 191(13)(b)(i).

(ii) the Tribunal directs that a permit must not be granted on the ground that the land is or may be required for a public purpose; or

S. 99(a)(iii) amended by No. 52/1998 s. 191(13)(b)(i)(ii).

(iii) the responsible authority—

(A) fails to grant a permit within the period prescribed for the purposes of section 79; or

(B) grants a permit subject to any condition which is not acceptable to the applicant—

and the Tribunal disallows any application for review of the failure or condition on the ground that the land is or may be required for a public purpose; or

(b) under section 98(1)(a), (b) or (c), on the sale of the land concerned under section 106; or

(c) under section 98(1)(d), on the coming into operation of the relevant provision of the planning scheme; or

(d) under section 98(2), on the refusal of the permit.

100 Increased compensation for effect on residence

(1) The amount of compensation payable under section 98 in respect of a residence may be increased by an amount which is reasonable to compensate the claimant for any intangible and non-financial disadvantages arising from the circumstances which gave rise to the claim under section 98.

(2) The amount paid under this section must not exceed 10% of the amount of compensation which would have been payable except for this section.

(3) All relevant circumstances must be taken into account in assessing the amount payable under this section including—

(a) the interest of the claimant in the residence;

(b) the length of time during which the claimant has occupied the residence;

(c) the age of the claimant;

(d) the number, age and circumstances of any other people living with the claimant;

(e) the amount of compensation payable arising from a sale of the residence compared with the value of the land at the date of the sale.

101 Claim for expenses

If compensation is payable under section 98, the owner or occupier of any land may also claim from the planning authority or responsible authority any legal, valuation or other expenses reasonably incurred in preparing and submitting the claim.

102 What if compensation has been previously paid?

In determining the compensation to be paid under this Part, regard must be had to any amount already paid or payable in respect of the land by way of compensation under—

(a) this Part, or any corresponding previous enactment; and

(b) any other Part of this Act or any other Act.

103 Small claims

A planning authority or responsible authority may reject a claim for compensation under this Part if the financial loss is less than the greater of—

(a) $500 or any greater amount prescribed by the regulations; or

(b) 0·1% of the value that the land would have had if the land had not been affected by any circumstance set out in section 98(1) or (2) or 107.

104 Maximum amount of compensation payable

The compensation payable for financial loss under section 98 must not exceed the difference between—

(a) the value of the land at the date on which the liability to pay compensation first arose; and

(b) the value that the land would have had at the date if the land had not been affected by any circumstance set out in section 98(1) or (2) or 107.

S. 104A inserted by No. 81/2006 s. 60.

104A Actual zoning of land may be considered in determining compensation

(1) In assessing compensation under this Part for the financial loss suffered by the owner or occupier of land, if—

(a) the land is reserved or is proposed to be reserved for a public purpose; and

(b) the reservation or proposed reservation forms or will form the boundary of a zone in a planning scheme or an amendment to a planning scheme; and

(c) the decision to impose the zoning boundary was not related to the purpose for which the land is or is proposed to be reserved—

regard may be had to the actual zoning of the land as at the date when the liability to pay compensation first arose and, where relevant, to the actual zoning boundary at that date.

(2) Nothing in this section applies in relation to a right to compensation or a liability to pay compensation arising under this Part before the commencement of section 60 of the **Road Legislation (Projects and Road Safety) Act 2006** and this Part continues to apply to the determination of that compensation as if section 60 of that Act had not been enacted.

105 Land Acquisition and Compensation Act 1986 to apply

Parts 10 and 11 and section 37 of the **Land Acquisition and Compensation Act 1986**, with any necessary changes, apply to the determination of compensation under this Part as if the claim were a claim under section 37 of that Act.

106 Loss on sale

(1) The owner of land may claim compensation under section 98 after the sale of the land if—

(a) the owner of the land sold it at a lower price than the owner might reasonably have expected to get if the land or part of the land had not been reserved or proposed to be reserved; and

(b) before selling the land, the owner gave the relevant authority not less than 60 days notice in writing of the owner's intention to sell the land.

S. 106(1)(b) amended by No. 3/2013 s. 57(1).

(2) The owner is not required to give notice under subsection (1)(b) if—

(a) the owner and the relevant authority have agreed that the owner does not have to give notice; or

S. 106(2)(a) amended by No. 3/2013 s. 57(1).

(b) before or after the sale, the Minister exempts the owner from giving notice on the ground that the requirement to give notice would cause hardship to the owner.

S. 106(3) inserted by No. 3/2013 s. 57(2).

(3) In this section ***relevant authority*** means—

(a) the Minister, public authority or municipal council designated in the planning scheme as the acquiring authority for the purposes of this Act in respect of the land; or

(b) if there is no acquiring authority, the planning authority.

107 Compensation for removal or lapsing of reservation

(1) The owner of land may claim compensation from the planning authority for any financial loss suffered as the natural, direct and reasonable consequence of—

S. 107(1)(a) amended by No. 12/2021 s. 10(1)(a).

(a) subject to subsection (1A), the amendment of a planning scheme to remove any reservation over the land; or

S. 107(1)(b) amended by No. 12/2021 s. 10(1)(b).

(b) subject to subsection (1B), the lapsing of an amendment which proposed to reserve the land for public purposes; or

(c) the cancellation of a declaration under section 113 affecting the land.

S. 107(1A) inserted by No. 12/2021 s. 10(2).

(1A) Subsection (1)(a) only applies if the provision of the planning scheme that reserved the land and has been removed (by the amendment) expressly states as a purpose "to reserve land for a public purpose".

S. 107(1B) inserted by No. 12/2021 s. 10(2).

(1B) Subsection (1)(b) only applies if the provision of the planning scheme that was to be applied to and reserve the land (as a result of the proposed amendment which has lapsed) expressly states as a purpose "to reserve land for a public purpose".

(2) A claim for compensation under this section must be made within two years after the removal of the reservation or the cancellation of the declaration or the lapsing of the amendment.

(3) The time within which a claim must be made may be extended—

(a) by the Minister after consultation with the Minister administering the **Land Acquisition and Compensation Act 1986**; or

(b) by agreement between the claimant and the planning authority.

108 Persons who are not eligible to claim compensation

(1) A person does not have a claim for compensation in respect of any land if that person was not the owner or occupier of the land at the time the right to claim compensation arose.

(2) A person does not have a claim for compensation in respect of the sale of land which the person acquired after—

(a) notice is published in the Government Gazette under section 19 of a proposed planning scheme or amendment to a planning scheme which shows the land as being reserved for a public purpose; or

(b) the approval of a planning scheme or amendment reserving the land for public purposes; or

(c) a declaration under section 113 that the land is proposed to be reserved for public purposes—

unless a subsequent amendment to the planning scheme provides or proposes more stringent planning controls over the use or development of the land.

109 When is compensation payable by other authorities?

S. 109(1) amended by No. 3/2013 s. 58(1).

(1) Subject to subsection (1A), a Minister, public authority or municipal council is liable to pay any compensation payable under this Part which arises from the reservation or proposed reservation of land for public purposes if the Minister, public authority or municipal council had asked—

S. 109(1)(a) amended by No. 12/2021 s. 11(a).

(a) the planning authority in writing to prepare a planning scheme or amendment to reserve the land for a public purpose.

S. 109(1)(b) repealed by No. 12/2021 s. 11(b).

* * * * *

S. 109(1A) inserted by No. 3/2013 s. 58(2).

(1A) If the planning scheme designates a Minister, public authority or municipal council as an acquiring authority for the purposes of this Act for land reserved for public purposes, the acquiring authority is liable to pay any compensation payable under this Part which arises from that reservation.

(2) A referral authority is liable to pay compensation under this Part which arises from a refusal to grant a permit if the responsible authority refused to grant the permit because the referral authority objected.

S. 109(3) amended by No. 3/2013 s. 58(3).

(3) The claimant must claim the compensation from the Minister, the public authority, the relevant municipal council or the referral authority instead of the planning authority.

S. 109(4) amended by No. 3/2013 s. 58(4).

(4) Despite anything to the contrary in any Act, a public authority or municipal council may pay out of its funds any amount it is required to pay because of this section.

(5) Any land which was reserved under the Melbourne Metropolitan Planning Scheme before the commencement of section 21(2) of the **Town and Country Planning (Transfer of Functions) Act 1985** for the purposes of the Melbourne and Metropolitan Board of Works (except planning purposes) is to be treated under this section as having been reserved at the request of the Melbourne and Metropolitan Board of Works.

(6) The Governor in Council may determine any question arising under subsection (5) as to whether any land had been reserved for planning purposes or for other purposes of the Board of Works.

110 Compensation paid to be noted on title

S. 110(1) substituted by No. 85/1998 s. 24(Sch. item 45.2).

(1) Any person who has paid compensation under this Act or a corresponding previous enactment to the owner or occupier of any land and who has not already done so under that enactment must lodge a statement with the Registrar of Titles without delay.

(2) The statement must in the prescribed manner—

(a) describe the land for which the compensation was paid; and

(b) give the prescribed particulars of the compensation.

S. 110(3) amended by No. 18/1989 s. 13(Sch. 2 item 63(b)), substituted by No. 85/1998 s. 24(Sch. item 45.3).

(3) On receiving a statement, the Registrar of Titles must make any recordings in the Register which are necessary to bring the statement to the notice of anyone searching the Register.

S. 110(4) substituted by Nos 18/1989 s. 13(Sch. 2 item 63(c)), 85/1998 s. 24(Sch. item 45.3).

(4) At the request of any person who lodged a statement under subsection (1) or a corresponding previous enactment, the Registrar of Titles must delete from the Register a recording made under subsection (3).

111 Recovery of compensation previously paid

(1) Any person who has paid compensation under this Part in respect of land as a result of a reservation or proposed reservation may recover the amount of compensation which is set out in a statement lodged under section 110(1) in respect of the land from the present owner of the land if—

(a) the planning scheme is amended to remove the reservation; or

(b) the amendment which proposed to reserve the land lapses; or

(c) the declaration under section 113 is cancelled.

(2) The owner must pay the amount—

(a) on getting a demand in writing; or

(b) within any further period—

(i) agreed with the person entitled to demand payment; or

(ii) which the Minister allows under subsection (3).

(3) The Minister administering the **Land Acquisition and Compensation Act 1986** may allow the amount owing to be paid—

(a) by a day later than the demand; or

(b) on the sale or transfer of the land—

if the Minister thinks that it would cause hardship to the owner to pay the amount on demand.

(4) Any compensation which is repayable to any person under this section is a charge on the land.

112 Reimbursement of compensation paid

(1) If—

(a) any person has lodged a statement under section 110(1); and

(b) another person— S. 112(1)(b) substituted by No. 3/2013 s. 59(1).

(i) acquires the land or part of the land in respect of which the statement was lodged; or

(ii) is designated under the planning scheme as the acquiring authority for the purposes of this Act for the land or part of the land in respect of which the statement was lodged—

the second person must pay to the first person an amount equal to—

(c) the compensation set out in the statement; or

(d) if only part of the land is acquired, the proportion of the compensation which is attributable to that part; or S. 112(1)(d) amended by No. 3/2013 s. 59(2).

(e) if the acquiring authority is designated under the planning scheme in respect of only part of the land, the proportion of the compensation which is attributable to that part. S. 112(1)(e) inserted by No. 3/2013 s. 59(3).

(2) Despite anything to the contrary in any Act, a public authority or municipal council may pay out of its funds any amount which it is required to pay under this section.

113 Declaration of proposed reservation

S. 113 amended by No. 12/2021 s. 12 (ILA s. 39B(1)).

(1) The Minister administering the **Land Acquisition and Compensation Act 1986** may declare land to be proposed to be reserved for public purposes if the Minister—

(a) is satisfied that the value of the land may be substantially affected by a proposal to reserve or which could lead to the reservation of land for public purposes; and

(b) considers that it is appropriate that the land should be so declared.

S. 113(2) inserted by No. 12/2021 s. 12.

(2) If a declaration under subsection (1) is made at the request of a Minister, public authority or municipal council, the declaration must specify the requesting Minister, public authority or municipal council as responsible for the proposal.

Part 6—Enforcement and legal proceedings

Division 1—Enforcement orders

114 Application for enforcement order

(1) A responsible authority or any person may apply to the Tribunal for an enforcement order against any person specified in subsection (3) if a use or development of land contravenes or has contravened, or, unless prevented by the enforcement order, will contravene this Act, a planning scheme, a condition of a permit or an agreement under section 173.

S. 114(1) amended by Nos 5/1988 s. 5(a), 62/1991 s. 35(1), 52/1998 s. 188(1)(a).

* * * * *

S. 114(2) repealed by No. 52/1998 s. 188(1)(b).

(3) An enforcement order may be made against one or more of the following persons—

(a) the owner of the land;

(b) the occupier of the land;

(c) any other person who has an interest in the land;

(d) any other person by whom or on whose behalf the use or development was, is being, or is to be carried out.

* * * * *

S. 114(4) inserted by No. 62/1991 s. 35(2), repealed by No. 52/1998 s. 188(1)(b).

115 Notice of application

S. 115(1) substituted by No. 52/1998 s. 188(2).

The following persons are entitled to notice of an application for an enforcement order—

(a) the responsible authority if it is not the applicant;

(b) any person against whom the enforcement order is sought;

(c) the owner of the land;

(d) the occupier of the land;

(e) any other person whom the Tribunal considers may be adversely affected by the enforcement order.

S. 115(2) amended by No. 86/1989 s. 25(m), repealed by No. 52/1998 s. 188(3).

* * * * *

S. 115(3) amended by No. 62/1991 ss 25(3), 35(3), repealed by No. 52/1998 s. 188(3).

* * * * *

S. 115(4) inserted by No. 62/1991 s. 35(4), repealed by No. 52/1998 s. 188(3).

* * * * *

S. 115(5) inserted by No. 62/1991 s. 35(4), repealed by No. 52/1998 s. 188(3).

* * * * *

116 Determination of Tribunal where no objections

S. 116 amended by No. 52/1998 s. 188(4)(a).

If the Tribunal receives no objections to an application within the period specified in the notice, the Tribunal may—

(a) make any enforcement order it thinks fit in accordance with section 119 in respect of the land; or

(b) reject the application.

117 Determination of Tribunal where objections are received

S. 117(1) amended by No. 52/1998 s. 188(4)(a).

(1) If the Tribunal receives an objection to the application within the period specified in the notice, the Tribunal must give the following persons a reasonable opportunity to be heard or to make written submissions in respect of the application—

(a) the responsible authority;

(b) any person against whom the enforcement order is sought;

(c) the owner of the land;

(d) the occupier of the land;

(e) the applicant for the enforcement order;

(f) any other person whom it considers may be adversely affected by the enforcement order;

(g) any person whom it considers has been or may be adversely affected by the contravention.

(2) After hearing any person under subsection (1) and considering any written submissions made under that subsection, the Tribunal may—

(a) make any enforcement order it thinks fit in accordance with section 119 in respect of the land; or

(b) reject the application.

S. 118 amended by No. 62/1991 s. 35(5), repealed by No. 52/1998 s. 188(4)(b).

* * * * *

S. 119 amended by No. 52/1998 s. 188(4)(c).

119 What can an enforcement order provide for?

An enforcement order made by the Tribunal—

(a) must specify—

S. 119(a)(i) amended by No. 62/1991 s. 35(6).

(i) the use or development which contravenes or has contravened or will contravene this Act or the planning scheme, permit condition or agreement; and

(ii) any other prescribed information; and

S. 119(b) amended by No. 86/1989 s. 25(n).

(b) may direct any person against whom it is made to do any one or more of the following—

S. 119(b)(i) amended by No. 29/2011 s. 3(Sch. 1 item 70.1).

(i) to stop the use or development within a specified period; or

(ii) not to start the use or development; or

(iii) to maintain a building in accordance with the order; or

(iv) to do specified things within a specified period—

S. 119(b)(iv)(A) amended by Nos 62/1991 s. 35(7)(a)(b), 128/1993 s. 24.

(A) to restore the land as nearly as practicable to its condition immediately before the use or development started or to any

condition specified in the order or to any other condition to the satisfaction of the responsible authority, a Minister, public authority, municipal council, referral authority or other person or body specified in the Order; or

(B) to otherwise ensure compliance with this Act, or the planning scheme, permit condition or agreement under section 173.

120 Interim enforcement orders

S. 120(1) amended by No. 52/1998 s. 191(1).

(1) Any responsible authority or person who has applied under section 114 for an enforcement order may apply to the Tribunal in an urgent case for an interim enforcement order against any person or persons in relation to whom the application under section 114 was made.

(2) The Tribunal may consider an application under this section without notice to any person.

(3) Before making an interim enforcement order, the Tribunal must consider—

(a) what the effect of not making the interim enforcement order would be; and

(b) whether the applicant should give any undertaking as to damages; and

(c) whether it should hear any other person before the interim enforcement order is made.

(4) After complying with subsection (3), the Tribunal may make an interim enforcement order directing any person against whom the order is made—

(a) to stop the use or development immediately or within the period specified in the order; or

(b) not to start the use or development; or

(c) to do specified things to ensure compliance with this Act or a planning scheme, permit condition or agreement under section 173.

S. 120(5) repealed by No. 52/1998 s. 188(4)(d).

* * * * *

(6) An interim enforcement order does not have any operation after the earlier of—

(a) the date or the happening of an event specified in the order; or

(b) the determination of the application under section 114.

S. 120(7)(8) repealed by No. 52/1998 s. 188(4)(d).

* * * * *

(9) If an application for an interim enforcement order was made without notice to any person, the Tribunal must give any person affected by the interim enforcement order a reasonable opportunity to be heard by it with respect to the interim enforcement order within seven days after making the order.

(10) After hearing any person under subsection (9) the Tribunal may continue, amend, or cancel the interim enforcement order.

S. 120(11) repealed by No. 86/1989 s. 7(2).

* * * * *

121 Cancellation of enforcement order or interim enforcement order

S. 121 amended by Nos 62/1991 s. 35(8), 52/1998 s. 191(1).

The Tribunal may cancel or amend any enforcement order or interim enforcement order.

122 Offences

* * * * *

S. 122(1)–(3) repealed by No. 52/1998 s. 188(4)(e).

* * * * *

S. 122(4) amended by No. 52/1998 s. 188(4)(f), repealed by No. 28/2000 s. 9.

(5) In any proceedings for a contravention of an enforcement order or interim enforcement order, it is not relevant whether or not the use or development affected by the order contravened or may have contravened this Act, a planning scheme, a permit condition or an agreement under section 173.

123 Responsible authority may carry out work

S. 123(1) amended by No. 52/1998 s. 191(1).

(1) The responsible authority, or, with the consent of the Tribunal, any other person may—

(a) carry out any work which an enforcement order or interim enforcement order required to be carried out and which was not carried out within the period specified in the order; and

(b) recover the costs of the work from the person in default in any court of competent jurisdiction as a debt.

S. 123(2) amended by No. 86/1989 s. 25(o)(i)(ii).

(2) The responsible authority or other person carrying out any work under subsection (1) may sell any building, equipment or other materials salvaged in carrying out that work if the authority or person is satisfied that the building equipment or materials is or are the property of the land owner or the person against whom the order is made and apply the proceeds of the sale toward payment of the expenses incurred in carrying out the work.

S. 123(3) inserted by No. 86/1989 s. 4(2)(f).

(3) Subsection (2) does not authorise the sale of Crown property including Crown land.

124 Orders to bind future owners and occupiers

Any enforcement order or interim enforcement order served on an owner or occupier of land is binding on every subsequent owner or occupier to the same extent as if the order had been served on that subsequent owner or occupier.

S. 125 amended by No. 62/2014 s. 54 (ILA s. 39B(1)).

125 Injunctions

(1) Whether or not proceedings are instituted for an offence against this Act, a responsible authority or any other person may apply to any court of competent jurisdiction or to the Tribunal for an injunction restraining any person from contravening an enforcement order or interim enforcement order.

S. 125(2) inserted by No. 62/2014 s. 54(2).

(2) Section 123 of the **Victorian Civil and Administrative Tribunal Act 1998** applies on an application to the Tribunal under subsection (1).

Division 2—Offences and penalties

126 Offence to contravene scheme, permit or agreement

(1) Any person who uses or develops land in contravention of or fails to comply with a planning scheme, or a permit, or an agreement under section 173 is guilty of an offence.

(2) The owner of any land is guilty of an offence if—

(a) the land is used or developed in contravention of a planning scheme, a permit or an agreement under section 173; or

(b) there is any failure to comply with any planning scheme, permit or agreement under section 173 applying to the land.

(3) The occupier of any land, is guilty of an offence if—

S. 126(3) amended by No. 86/1989 s. 4(2)(g).

(a) the land is used or developed in contravention of a planning scheme, a permit or an agreement under section 173; or

(b) there is any failure to comply with any planning scheme, permit or agreement under section 173 applying to the land.

S. 126(3)(b) amended by No. 86/1989 s. 25(p).

(4) This section does not apply to the owner of Crown land.

S. 126(4) inserted by No. 86/1989 s. 4(2)(h).

Note

Section 128 applies to an offence against subsection (1), (2) or (3).

Note to s. 126 inserted by No. 21/2013 s. 18(3).

127 General penalties

Any person who is guilty of an offence against this Act for which a penalty is not expressly provided is liable to—

S. 127(a) substituted by No. 28/2000 s. 10(1).

(a) a penalty of not more than 1200 penalty units; and

S. 127(b) amended by No. 28/2000 s. 10(2).

(b) if the contravention or failure is of a continuing nature, a further penalty of not more than 60 penalty units for each day during which the contravention or failure continues after conviction.

S. 128 substituted by No. 21/2013 s. 17.

128 Criminal liability of officers of bodies corporate—failure to exercise due diligence

(1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

(2) For the purposes of subsection (1), the following provisions are specified—

(a) section 48(2);

(b) section 93(3);

(c) section 126(1), (2) and (3);

(d) section 137.

(3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—

(a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and

(b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and

(c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and

(d) any other relevant matter.

(4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

(5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(6) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

officer in relation to a body corporate means—

(a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or

(b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

129 Penalties to be paid to prosecuting authority

If an offence against this Act has been prosecuted by a responsible authority, all penalties recovered in relation to the offence must be paid to it.

130 Planning infringements

S. 130(1) amended by No. 86/1989 s. 18(1).

(1) An authorised officer of a responsible authority may serve a planning infringement notice on any person, if the authorised officer has reason to believe that the person has committed an offence against section 126 in an area for which the authority is responsible.

S. 130(2) amended by No. 86/1989 s. 18(2)(a)(b), substituted by No. 32/2006 s. 94(Sch. item 37(1)).

(2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 130(2A) inserted by No. 32/2006 s. 94(Sch. item 37(1)).

(2A) In addition to the details required under section 13 of the **Infringements Act 2006**, the details of the additional steps (if any) required to expiate the offence must be included in an infringement notice served under subsection (1).

S. 130(3) amended by No. 86/1989 s. 18(3), substituted by No. 28/2000 s. 10(3).

(3) The penalty for the purposes of this section for an offence against section 126 is—

(a) in the case of a natural person, 5 penalty units; and

(b) in the case of a body corporate, 10 penalty units.

S. 130(4) amended by No. 86/1989 s. 18(4).

(4) Additional steps required to expiate an offence may include, but are not limited to, the following—

(a) stopping the development or use of land that constituted the offence;

(b) modifying the development or use of land that constituted the offence;

(c) removing the development that constituted the offence;

(d) acting to prevent or minimise any adverse impact of the development or use of land that constituted the offence;

(e) entering into an agreement under section 173;

(f) doing or omitting to do anything in order to remedy a contravention of a planning scheme, permit or agreement under section 173.

(5) If a planning infringement notice requires additional steps to be taken to expiate an offence and, before the end of the remedy period set out in the notice or, if the responsible authority allows, at any time before the service of a summons in respect of the offence, the person served with the notice informs the responsible authority that those steps have been taken, an authorised officer of the authority must, without delay, find out whether or not those steps have been taken, and serve on the person a notice stating whether or not those steps have been taken.

S. 130(5) inserted by No. 86/1989 s. 18(4).

(6) A statement in a notice under subsection (5) that additional steps have been taken is for all purposes conclusive proof of that fact.

S. 130(6) inserted by No. 86/1989 s. 18(4).

* * * * *

S. 131 amended by No. 86/1989 s. 18(5)(6), repealed by No. 32/2006 s. 94(Sch. item 37(2)).

* * * * *

S. 132 amended by Nos 57/1989 s. 3(Sch. item 153), 86/1989 s. 18(7)(8), repealed by No. 32/2006 s. 94(Sch. item 37(2)).

Pt 6 Div. 2A (Heading and ss 131–132A) inserted by No. 12/2021 s. 6.

Division 2A—Order prohibiting the use or development of land under this Act and the Building Act 1993 for period of time

New s. 131 inserted by No. 12/2021 s. 6.

131 Order prohibiting the use or development of land for period of time

(1) The Governor in Council, by Order published in the Government Gazette, may declare any one or more of the following—

(a) that land must not be developed or continue to be developed;

(b) that land must not be developed or continue to be developed, except as specified in the Order;

(c) that land must not be used, except as specified in the Order.

(2) An Order may only be made under subsection (1) if a person has been found guilty of an offence under section 126(1), (2) or (3) in relation to the unlawful demolition of a heritage building, or part of a heritage building, on the land that is to be the subject of the Order.

(3) An Order under subsection (1)—

(a) must specify the period of time for which the Order has effect; and

(b) must not be made more than once in relation to the same conduct.

(4) The Governor in Council, by Order published in the Government Gazette, may amend an Order under subsection (1).

(5) An amendment to an Order may extend the period of time for which the Order has effect, but the total period of time for which the Order has effect must not exceed 10 years.

132 Effect of Order

New s. 132 inserted by No. 12/2021 s. 6.

(1) While an Order under section 131 is in effect—

(a) a permit that was granted under this Act before the Order took effect in relation to the land the subject of the Order is of no force or effect; and

(b) a building permit that was issued before the Order took effect in relation to the land the subject of the Order is of no force or effect; and

(c) a responsible authority must refuse to grant a permit under this Act in relation to the land the subject of the Order; and

(d) a relevant building surveyor must refuse a building permit in relation to the land the subject of the Order.

(2) Subsection (1)(a) and (c) do not apply in relation to a permit or the grant of a permit under this Act for a use or development that is specified in the Order under section 131(1)(b) or (c) as an exception.

(3) Subsection (1)(b) and (d) do not apply in relation to a building permit or the issue of a building permit for building work in respect of a development that is specified in the Order under section 131(1)(b) as an exception.

(4) A permit granted in contravention of subsection (1)(c) is invalid and of no force or effect.

(5) A building permit issued in contravention of subsection (1)(d) is invalid and of no force or effect.

S. 132A inserted by No. 12/2021 s. 6.

132A Nothing in Order prevents emergency order

Nothing in an Order under section 131 prevents the making or otherwise affects the operation of an emergency order under Division 1 of Part 8 of the **Building Act 1993**.

Division 3—Powers of entry

133 Powers of entry

The following persons are authorised to enter any land at any reasonable time to carry out and enforce this Act, the regulations, a planning scheme, a permit condition, an enforcement order or an agreement under section 173 or, if the person has a reasonable suspicion, to find out whether any of them has been or is being contravened—

S. 133(a) amended by No. 35/1995 s. 11(1)(c).

(a) any authorised officer of the Department;

(b) any authorised officer of the responsible authority;

(c) any other person whom the Minister authorises to assist an authorised officer of the Ministry or authority.

S. 134 substituted by No. 86/1989 s. 19(1).

134 What must be done before entry?

(1) Before entering any land an authorised person must—

(a) get the consent of the occupier; or

(b) give two clear days' notice to any occupier; or

(c) obtain a warrant in accordance with this section.

(2) An authorised person may apply to the Magistrates' Court for a warrant to enter land.

(3) The warrant is to be directed to an authorised person named in the warrant and authorises that person to enter the land named or described in the warrant without notice to the occupier, and to do the things authorised to be done by sections 133 and 135.

(4) The provisions of the **Magistrates' Court Act 1989** relating to application for, and issue and execution of, search warrants apply with any necessary modifications to warrants under this section.

135 Powers of authorised persons who enter land

On entering any land, an authorised person may take any action that is necessary to find out if any person has contravened the Act, the regulations, a planning scheme, a permit condition, an enforcement order or an agreement under section 173 including—

(a) taking photographs or measurements; and

(b) making sketches or recordings; and

(c) taking and removing samples.

136 Police to assist authorised persons

S. 136 amended by Nos 46/1998 s. 7(Sch. 1), 37/2014 s. 10(Sch. item 124.2).

All police officers are required to assist an authorised officer of a responsible authority, at the request of that authorised officer in the execution of his or her powers under section 133 to enter any land.

S. 137 amended by Nos 28/2000 s. 10(4), 37/2014 s. 10(Sch. item 124.3).

137 Offence to obstruct

Any person who without lawful excuse obstructs an authorised person or a police officer in taking any action which is authorised under this Division is guilty of an offence.

Penalty: 60 penalty units.

Note to s. 137 inserted by No. 21/2013 s. 18(4).

Note

Section 128 applies to an offence against this section.

S. 138 amended by No. 37/2014 s. 10(Sch. item 124.3).

138 No legal proceedings against authorised persons

A person is not entitled to bring an action against an authorised person or a police officer or the Crown or the employer of an authorised person in respect of any entry on land or other action done or in good faith purportedly done in the course of an investigation or the performance of any other duty under this Division.

Division 4—Evidence and notices

139 Evidence of ownership

(1) In any proceedings under this Act in addition to any other method of proof available—

(a) evidence that the person proceeded against is rated in respect of any land to any general rate for the municipal district in which the land is situated; or

S. 139(1)(b) amended by No. 18/1989 s. 13(Sch. 2 item 63(d)).

(b) evidence by a certificate as to any recording in the Register or by a certified reproduction of a registered instrument given under section 114(2) of the **Transfer of Land Act 1958** that any person is the registered proprietor of an estate in fee-simple or of a leasehold estate held of the Crown in any land; or

(c) evidence by the certificate of the Registrar-General or a Deputy Registrar-General authenticated by the seal of the Registrar-General that any person appears from the memorial of any deed, conveyance or instrument to be the last registered owner of any land—

is evidence that the person is the owner or the occupier (as the case may be) of the land.

(2) The Registrar-General must provide a certificate under subsection (1)(c) upon the written application of an authorised officer of the responsible authority who must certify that it is required for legal proceedings under this Act.

140 Proof of existence and contents of planning scheme

(1) In any proceedings under this Act or in which the existence of a planning scheme or part of a planning scheme at a specified date is in question, the production of a copy of the planning scheme or the relevant part of it kept by the Minister or a responsible authority under section 42 which appears to be certified by or on behalf of the Secretary to the Department or the secretary of the responsible authority (as the case requires) to be a true copy of the planning scheme or part in force at that date is evidence of the existence and contents of the planning scheme or of the relevant part at that date.

S. 140(1) amended by No. 35/1995 s. 11(1)(d).

(2) In any proceedings under this Act or in which the existence of an approved amendment to a planning scheme is in question, the production of—

S. 140(2) amended by No. 43/2003 s. 5(c).

(a) the Government Gazette containing notice of the approval, or the ratification under Part 3AA, of the amendment; and

S. 140(2)(a) amended by No. 43/2003 s. 5(a).

S. 140(2)(b) amended by Nos 128/1993 s. 25, 43/2003 s. 5(b).

(b) a copy of the amendment appearing to be certified by or on behalf of the Minister, the planning authority, the responsible authority or the municipal council with whom the amendment is lodged under section 40, to be a true copy of the amendment as approved or as approved and ratified (as the case may be)—

is evidence of the valid making and publication of the amendment and of the contents of the amendment.

(3) In any proceedings under this Act, the production of any instrument, document, map or plan—

(a) appearing to be an instrument, document, map or plan made or issued in connection with a planning scheme or an amendment to a planning scheme or a true copy of one of those things; and

(b) appearing to be certified as such by the secretary of the responsible authority—

is evidence until the contrary is proved of the proper making, existence and approval of the instrument, document, map or plan and of all preliminary steps necessary to give full effect to it and of its contents.

141 Evidence of planning scheme provisions and permits

(1) In any proceedings under this Act a statement in writing appearing to be signed by the secretary of a responsible authority to the effect that at a specified date—

(a) the land described in the statement or any specified part of the land was in an area in which land was to be used for specified purposes under a specified planning scheme; or

(b) under a specified planning scheme any specified use or development of land in that area was prohibited or was a use or development for which a permit was required; or

(c) no permit was in force in respect of the use or development described in the statement; or

(d) a permit or permits identified in the statement were in force in respect of the use or development described in the statement—

is evidence of the matters stated.

(2) In any proceedings under this Act, the production of a document which appears to be—

(a) a copy of a permit issued by a responsible authority; and

(b) certified by the secretary of the responsible authority to be a true copy—

is to be accepted as a true copy of the permit until the contrary is proved.

142 Evidence of agreements under section 173

(1) In any proceedings under this Act a statement in writing appearing to be signed by the secretary of the responsible authority to the effect that at a specified date an agreement or agreements entered into by a responsible authority under section 173 and identified in the statement were in operation in respect of the land described in the statement is evidence of the matters stated.

(2) In any proceedings, the production of a document purporting to be a true copy of an agreement entered into by the responsible authority under section 173 and appearing to be certified by the secretary of the authority to be a true copy of the

agreement is to be treated as a true copy until the contrary is proved.

143 Constitution and procedure of planning authority or responsible authority

Until evidence is given to the contrary, no proof is required in any proceedings under this Act—

(a) of the proper constitution of a planning authority or responsible authority or of its membership; or

(b) that a planning authority is the relevant planning authority for the purposes of this Act; or

(c) that a responsible authority is the relevant responsible authority for the purposes of this Act; or

(d) of any order or direction to prosecute or of the particular or general appointment of an officer of a responsible authority to take proceedings against any person; or

(e) of the power of any officer of a responsible authority to prosecute; or

(f) of the appointment of the chairperson or deputy chairperson or any officer of a planning authority or responsible authority; or

(g) of the presence of a quorum at any meeting at which any order or direction is made or given or any act or matter is done or dealt with by a planning authority or responsible authority.

144 Evidence of minutes

In any proceedings under this Act—

(a) any minutes appearing to be—

(i) minutes of the proceedings of any meeting of the planning authority or responsible authority; and

(ii) signed by the chairperson of the authority or the chairperson of a meeting of the authority either at the meeting at which the proceedings took place or at the next meeting; or

(b) a copy of or an extract from the minutes appearing to be certified to be a true copy by a person appearing to be the secretary of the authority—

is evidence—

(c) as to the meeting to which they refer having been duly convened or held; or

(d) of the persons attending the meeting having been members of the authority; or

(e) of the signature of the secretary or the chairperson or of the fact of his or her having been the secretary or chairperson.

145 Notices and service of orders

(1) Unless this Act or the regulations authorise or require a notice or order to be given in any other way, every notice or order which this Act authorises or requires a planning authority or responsible authority to give to or serve on the owner or the occupier of any land must be addressed to the owner or to the occupier of the land and—

S. 145(1)(aa) inserted by No. 86/1989 s. 4(2)(i).

(aa) in the case of a Minister, public authority or committee of management—

(i) may be given to a person authorised by that Minister, public authority or committee to accept service of documents on his, her or its behalf; or

(ii) may be left at the principal office of the Minister, public authority or committee; or

(a) if the residence of the owner or occupier is known to the authority, may be given to or served on the owner or occupier or left with an adult person apparently living there; or

(b) if the owner's residence is not known to the authority—

(i) may be served on the occupier of the land or left with an adult person apparently living there; or

(ii) if there is no occupier, may be put up on a conspicuous part of the land; or

(c) if the occupier's residence is not known to the authority, may be put up on a conspicuous part of the land.

(2) Unless this Act or the regulations authorise or require a notice or order to be given in any other way, a notice or order may also be served by post by prepaid letter addressed to the owner or occupier, and in proving service it is sufficient to prove that the notice or order was addressed to the usual or last-known place of residence or of business of the owner or occupier and was put into the post.

(3) A notice or order under this Act may be addressed by the description of "the owner" or "the occupier" of the land (naming it) in

respect of which the notice is given, without further name or description.

146 Copies of schemes and amendments

If a person is required to give, serve, lodge or make available a copy of a planning scheme or an amendment to a planning scheme, it is sufficient if the person gives, serves, lodges or makes available a document which reproduces in substance the provisions of the scheme or amendment if—

(a) the document contains all the information contained in the scheme or amendment; and

(b) the form of the document is certified by the Secretary to the Department or, if the Minister directs, by the planning authority.

S. 146(b) amended by No. 35/1995 s. 11(1)(e).

147 General provisions

(1) If this Act requires a person to give, serve or publish any notice or document—

(a) the person may cause that notice or document to be given, served or published; and

(b) the person is not required to give or serve the notice or document to or on himself, herself or itself; and

S. 147(1)(b) amended by No. 86/1989 s. 25(q).

(c) the person may give or serve the document personally, by post, or in any other prescribed way.

S. 147(1)(c) inserted by No. 86/1989 s. 25(q), amended by No. 81/2004 s. 39.

(2) If this Act requires the Minister to keep any document at the Minister's office, the document may be kept at any office or offices of the Department that the Minister specifies.

S. 147(2) amended by No. 35/1995 s. 11(1)(f).

(3) If a Minister is the planning authority or the responsible authority under this Act any reference in this Act to—

(a) the chairperson of the planning authority or responsible authority is a reference to the Minister; and

(b) a member or officer of the planning authority or responsible authority is a reference to—

S. 147(3)(b)(i) amended by No. 35/1995 s. 11(1)(g).

(i) the Department Head of the Minister's department; or

S. 147(3)(b)(ii) amended by Nos 35/1995 s. 11(1)(h), 46/1998 s. 7(Sch. 1).

(ii) any employee of the Minister's department.

S. 147(4) amended by Nos 35/1995 s. 11(1)(i)(i)–(iii), 46/1998 s. 7(Sch. 1).

(4) Any reference in this Act to an authorised officer of a responsible authority or of the Department is a reference to an officer or employee of the authority or employee of the Department whom the authority or the Secretary to the Department (as the case requires) authorises in writing generally or in a particular case to carry out the duty or function or to exercise the power in connection with which the expression is used.

Division 5—Applications to Tribunal

Pt 6 Div. 5 (Heading) substituted by No. 52/1998 s. 189.

148 Definitions

S. 148 amended by Nos 86/1989 s. 12(a)–(c), 62/1991 s. 36(1)(a) (b)(2), substituted by No. 52/1998 s. 190.

In this Division—

specified body means—

(a) a Minister; or

(b) the responsible authority; or

(c) a public authority; or

(d) a municipal council; or

(e) a referral authority;

specified person means in relation to a matter—

(a) the owner, user or developer of the land directly affected by the matter; or

(b) a specified body; or

(c) if the matter affects Crown land, the occupier of the Crown land.

149 Application for review

S. 149 substituted by No. 52/1998 s. 190.

(1) A specified person may apply to the Tribunal for the review of—

(a) a decision of a specified body in relation to a matter if a planning scheme specifies or a permit contains a condition that the matter must be done to the satisfaction, or must not be done without the consent or approval, of the specified body; or

(b) a decision of a specified body in relation to a matter if an agreement under section 173 provides that the matter must be done to the satisfaction, or must not be done without the consent, of the specified body and makes no

provision for settling disputes in relation to the matter; or

(c) a decision of a specified body or of a person or body specified in an enforcement order in relation to a matter if the order requires that the matter must be done to the satisfaction of that person or body; or

(d) if there is no prescribed time for a decision of a kind referred to in paragraph (a), (b) or (c), a failure of a person or body to make that decision within a reasonable time after the matter is referred to it.

(2) An application for review of a decision referred to in subsection (1)(a), (b) or (c) must be made within 28 days after the day on which the decision is made.

(3) The responsible authority is a party to any proceedings under this section.

S. 149A (Heading) inserted by No. 3/2013 s. 68(9).
S. 149A inserted by No. 86/1989 s. 20(1), amended by Nos 62/1991 s. 36(3)(4), 128/1993 s. 24, 35/1995 s. 7, substituted by No. 52/1998 s. 190.

149A Application by certain persons for declarations

(1) A specified person may apply to the Tribunal for the determination of a matter if—

(a) the matter relates to the interpretation of the planning scheme or a permit in relation to land or a particular use or development of land;

(b) the matter relates to whether section 6(3) applies to a particular use or development of land; or

(c) the matter relates to a provision of a planning scheme or amendment permitting the continuation of a use lawfully existing before the coming into operation of the planning scheme or amendment, or permitting the use of buildings or works for a purpose for which they were lawfully erected or carried

out before the coming into operation of the planning scheme or amendment.

S. 149A(1A) inserted by No. 3/2013 s. 67.

(1A) A specified person or a party to the agreement may apply to the Tribunal for the determination of a matter relating to the interpretation of an agreement under section 173.

(2) The Tribunal may determine the matter and may do one or both of the following—

(a) make any declaration that it considers appropriate;

(b) direct a specified body to take, or refrain from taking, action specified by the Tribunal.

(3) The responsible authority is a party to any proceedings under this section.

S. 149A(4) amended by Nos 18/2005 s. 18(Sch. 1 item 81), 17/2014 s. 160(Sch. 2 item 71).

(4) The Tribunal's power under this section is exercisable only by a presidential member of the Tribunal or a member of the Tribunal who is an Australian lawyer.

149B General application for declaration

S. 149B inserted by No. 52/1998 s. 190.

(1) A person may apply to the Tribunal for a declaration concerning—

(a) any matter which may be the subject of an application to the Tribunal under this Act; or

(b) anything done by a responsible authority under this Act.

(2) On an application under subsection (1), the Tribunal may make any declaration it thinks appropriate in the circumstances.

(3) The Tribunal's power under this section is exercisable only by a presidential member of the Tribunal.

150 Tribunal orders in relation to proceedings

S. 150(1)–(3) repealed by No. 86/1989 s. 20(2).

* * * * *

S. 150(4) amended by No. 52/1998 s. 191(1).

(4) If any proceedings are brought before the Tribunal under this Act and the Tribunal is satisfied that—

S. 150(4)(a) amended by No. 128/1993 s. 26(1).

(a) the proceedings have been brought vexatiously or frivolously or primarily to secure or maintain a direct or indirect commercial advantage for the person who brought the proceedings; and

(b) any other person has suffered loss or damage as a result of the proceedings—

the Tribunal may order the person who brought the proceedings to pay to that other person an amount assessed by the Tribunal as compensation for the loss or damage and an amount for costs.

S. 150(5) amended by No. 5/1988 s. 5(b).

(5) If the Tribunal is satisfied that a third party (being a person other than the person who brought proceedings to which subsection (4) applies) sponsored the bringing of the proceedings, the Tribunal after giving the third party an opportunity to be heard, may order the third party to pay the whole or any part of the compensation and costs referred to in subsection (4) either jointly with or in place of the person who brought the proceedings.

S. 150(6) inserted by No. 128/1993 s. 26(2).

(6) The Tribunal may make an order under subsection (4) whether or not the responsible authority has under section 57 rejected an objection by the person bringing the proceedings on the ground that it was made primarily to secure or maintain a direct or indirect commercial advantage for the objector.

Part 7—Advisory committees

151 Advisory committees

(1) Subject to subsection (1A), the Minister may establish committees to advise on any matters which the Minister refers to them.

S. 151(1) amended by No. 43/2021 s. 128(1).

(1A) The Minister must consult the Suburban Rail Loop Minister before establishing a committee to advise the Minister on any matter relating to the preparation of an amendment to any provision of a planning scheme that applies to land to which a Suburban Rail Loop planning area declaration applies.

S. 151(1A) inserted by No. 43/2021 s. 128(2).

(1B) The establishment of a committee under subsection (1) is not invalid or ineffective merely because the Minister did not comply with subsection (1A).

S. 151(1B) inserted by No. 43/2021 s. 128(2).

(2) The Minister may appoint one of the members of a committee to be the chairperson of the committee.

(3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of a committee in respect of the office of member.

S. 151(3) amended by No. 46/1998 s. 7(Sch. 1), substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 155.2), 80/2006 s. 26(Sch. item 82).

(4) The Governor in Council may fix fees and allowances for all members of a committee or for particular members or classes of members.

(5) A member of a committee is entitled to be paid any fees and allowances which the Governor in Council fixes.

(6) Subject to the regulations, a committee may regulate its own proceedings.

S. 151(7) inserted by No. 72/1998 s. 7.

(7) If the Minister establishes a committee under this section to consider a request for the preparation of an amendment to a planning scheme, the Minister may ask the person who requested the amendment to contribute an amount specified by the Minister to the costs of the advisory committee.

S. 151(8) inserted by No. 72/1998 s. 7.

(8) If the Minister establishes a committee under this section to consider a matter in a proceeding which has been referred to the Governor in Council for determination under clause 58 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, the Minister may ask the following person to contribute an amount specified by the Minister to the costs of the advisory committee—

(a) if the proceeding relates to an application for a permit, the applicant for the permit; or

(b) if the proceeding is for the review of a decision referred to in section 149(1)(a), (b) or (c), the applicant for the review.

S. 152 repealed by No. 35/1995 s. 4(i), new s. 152 inserted by No. 3/2013 s. 81.

152 Powers of advisory committee

(1) This section applies if an advisory committee conducts a hearing into a matter.

(2) The following sections (with any necessary changes) apply to the advisory committee as if it were a panel appointed under Part 8—

(a) section 159; and

(b) section 161(1), (3) and (5); and

(c) section 161(2) as if the reference to a planning authority were omitted; and

(d) sections 162 to 165 and 169.

Part 8—Panels

Division 1—Appointment of panels

153 Appointment of panels

S. 153 amended by No. 43/2021 s. 129(1)(2) (ILA s. 39B(1)).

(1) Subject to this section, the Minister must appoint a panel to consider submissions to be referred to a panel under this Act.

S. 153(2) inserted by No. 43/2021 s. 129(2).

(2) The Minister must consult the Suburban Rail Loop Minister before appointing a panel to consider submissions relating to the preparation of an amendment to any provision of a planning scheme that applies to land to which a Suburban Rail Loop planning area declaration applies.

S. 153(3) inserted by No. 43/2021 s. 129(2).

(3) The appointment of a panel under subsection (1) is not invalid or ineffective merely because the Minister did not comply with subsection (2).

154 Composition of panels

S. 154 substituted by No. 128/1993 s. 27.

A panel may consist of one or more persons.

155 Chairperson

S. 155 substituted by No. 128/1993 s. 27.

If a panel consists of more than one member, the Minister must appoint one of the members to be chairperson.

156 Costs and expenses of panel

S. 156 (Heading) inserted by No. 47/2007 s. 15(1).

(1) Each member of a panel is entitled to receive any fees and allowances fixed by the Minister in respect of that member unless the person is employed by or on behalf of the Crown.

S. 156(2) substituted by No. 35/1995 s. 8(1).

(2) The relevant planning authority must pay the fees or allowances unless the Minister otherwise directs.

S. 156(2A) inserted by No. 22/1996 s. 17(1).

(2A) If any member of a panel is a person employed by or on behalf of the Crown, the relevant planning authority must pay to the Crown the amount fixed by the Minister in respect of the costs of remuneration and expenses of that person for the period he or she is a member of the panel.

S. 156(2B) inserted by No. 47/2007 s. 15(2).

(2B) The relevant planning authority must pay for, or reimburse, any reasonable costs and expenses incurred for or by a panel in carrying out its functions under this Part unless the Minister otherwise directs.

S. 156(3) substituted by No. 86/1989 s. 21(1), amended by No. 35/1995 s. 8(2), substituted by No. 22/1996 s. 17(2), amended by No. 47/2007 s. 15(3).

(3) A planning authority required to pay an amount under subsection (2), (2A) or (2B) may ask any person who has requested the amendment of the planning scheme to agree to contribute to that amount.

S. 156(4) inserted by No. 86/1989 s. 21(1), amended by No. 22/1996 s. 17(3).

(4) If, when asked, a person does not agree to contribute to the amount required to be paid by the planning authority, the planning authority may abandon the amendment or a part of it without referring submissions to a panel.

S. 157 substituted by No. 128/1993 s. 28.

157 Panels with more than one member

The following provisions apply to panels with more than one member—

(a) in the case of a panel of 2 members, the chairperson constitutes a quorum;

(b) in the case of a panel of more than 2 members, a quorum is half the number of members constituting the panel and, if this would not be a whole number, the next highest whole number;

(c) the members of a panel of more than 2 members may appoint a member to act as chairperson at a meeting of the panel if the chairperson is unable to attend;

(d) the chairperson has an additional or casting vote if there is an equality of votes at a meeting of the panel;

(e) if there is a quorum, the panel may act despite a vacancy in its membership;

(f) the Minister may appoint another member to a panel if there is a vacancy.

158 Planning authority to provide assistance

The relevant planning authority must provide a panel with any secretarial and other assistance that the panel requires to carry out its functions under this Part.

158AA Terms of reference for panels relating to Suburban Rail Loop program

S. 158AA inserted by No. 43/2021 s. 130.

(1) On appointing a panel under section 153 to consider submissions relating to the preparation of an amendment to any provision of a planning scheme that applies to land to which a Suburban Rail Loop planning area declaration applies, the Minister must give the panel the terms of reference under which the panel will consider the submissions.

(2) The terms of reference given to the panel may specify—

(a) the scope of the matters that the panel may consider; or

(b) timeframes in relation to the conduct of panel processes under this Part.

(3) Subsection (2) does not limit what may be included in the terms of reference.

Division 1A—Directions panel

Pt 8 Div. 1A (Heading and ss 158A, 158B) inserted by No. 3/2013 s. 82.

S. 158A inserted by No. 3/2013 s. 82.

158A Appointment of directions panel

(1) The Minister may appoint a directions panel to give directions under section 159 in respect of hearings to be conducted by a panel appointed under Division 1.

(2) A directions panel may consist of one or more members.

(3) A member of a directions panel is not required to be a member of a panel appointed under Division 1.

(4) Sections 155 to 158 (with any necessary changes) apply to a panel appointed under this Division as if it were a panel appointed under Division 1.

S. 158B inserted by No. 3/2013 s. 82.

158B Directions by directions panel

(1) A directions panel may give any directions in relation to a hearing that a panel may give under section 159.

(2) Any direction given by a directions panel has effect as if it were a direction of a panel under section 159.

Division 2—Hearings

159 Directions about hearings

(1) A panel may give directions about—

(a) the times and places of hearings; and

(b) matters preliminary to hearings; and

(c) the conduct of hearings, including the manner by which hearings are conducted, whether in person or by audio link or audio visual link.

S. 159(1)(c) amended by No. 12/2021 s. 47.

(2) The panel may refuse to hear any person who fails to comply with—

S. 159(2) substituted by No. 3/2013 s. 83.

(a) a direction of the panel; or

(b) a direction of the directions panel.

160 Hearings to be in public

(1) A panel must conduct its hearings publicly.

S. 160(1) substituted by No. 12/2021 s. 48.

(1A) Despite subsection (1), the panel is not required to conduct a hearing, or part of a hearing, publicly if—

S. 160(1A) inserted by No. 12/2021 s. 48.

(a) a person making a submission objects to making the submission publicly; and

(b) the panel is satisfied that the submission is of a confidential nature.

(2) A panel may by order exclude from its proceedings a person who does an act referred to in section 169.

160A Hearings may be conducted in person or by audio link or audio visual link

S. 160A inserted by No. 12/2021 s. 49.

(1) A hearing may be conducted—

(a) in person; or

(b) by audio link or audio visual link.

(2) For the purposes of section 160(1), a hearing that is conducted publicly by audio link must be available to be heard by members of the public by audio link—

(a) while the hearing is being held; or

(b) as soon as reasonably practicable afterwards.

(3) For the purposes of section 160(1), a hearing that is conducted publicly by audio visual link must be available to be viewed and heard by members of the public by audio visual link—

(a) while the hearing is being held; or

(b) as soon as reasonably practicable afterwards.

161 General procedure for hearings

(1) In hearing submissions, a panel—

(a) must act according to equity and good conscience without regard to technicalities or legal forms; and

(b) is bound by the rules of natural justice; and

(c) is not required to conduct the hearing in a formal manner; and

(d) is not bound by the rules or practice as to evidence but may inform itself on any matter—

(i) in any way it thinks fit; and

(ii) without notice to any person who has made a submission.

S. 161(2) substituted by No. 77/1996 s. 15.

(2) A panel may require a planning authority or other body or person to produce any documents relating to any matter being considered by the panel under this Act which it reasonably requires[24].

(3) A panel may prohibit or regulate cross-examination in any hearing.

(4) A panel may hear evidence and submissions from any person whom this Act requires it to hear.

(5) Submissions and evidence may be given to the panel orally or in writing or partly orally and partly in writing.

(6) A panel may require a person or the person's representative to appear and be heard—

S. 161(6) inserted by No. 12/2021 s. 50.

(a) at a specified time; and

(b) in a specified manner, being—

(i) in person at a specified location; or

(ii) by audio link or audio visual link.

162 Who may appear before a panel?

A person who has a right to be heard by a panel or who is called by a panel may—

(a) be self-represented; or

S. 162(a) substituted by No. 12/2021 s. 51.

(b) be represented by any other person.

163 Effect of failure to attend hearing

S. 163 substituted by No. 12/2021 s. 52.

A panel may report and make recommendations on a submission without hearing the person who made the submission if the person does not appear or is not represented—

(a) at the specified time for the hearing; or

(b) in the specified manner for the hearing.

164 Panel may hear two or more submissions together

A panel may consider two or more submissions together if the submissions concern the same land or the same or a related matter.

165 Adjournment of hearings

A panel may from time to time adjourn a hearing to any times and places and for any purposes it thinks necessary and on any terms as to costs or otherwise which it thinks just in the circumstances.

166 Technical defects

S. 166(1) amended by No. 86/1989 s. 25(r).

(1) A panel may continue to hear submissions and make its report and recommendations despite any defect, failure or irregularity in the preparation of a planning scheme or amendment or any failure to comply with Division 1, 2 or 3 of Part 3 in relation to the preparation of the planning scheme or amendment.

S. 166(2) amended by No. 86/1989 s. 25(r).

(2) A panel may adjourn the hearing of submissions and make an interim report to the planning authority if it thinks there has been a substantial defect, failure or irregularity in the preparation of a planning scheme or amendment or any failure to comply with Division 1, 2 or 3 of Part 3 in relation to the preparation of the planning scheme or amendment.

(3) The interim report may recommend that the planning authority give notice of the planning scheme or amendment to a specified person or body.

167 Panel may regulate its own proceedings

A panel may regulate its own proceedings.

168 Panel may take into account any relevant matter

A panel may take into account any matter it thinks relevant in making its report and recommendations.

S. 169 amended by No. 28/2000 s. 10(5).

169 Offences

A person who—

(a) insults, assaults or obstructs a member of a panel while the member is performing functions or exercising powers as a member; or

(b) insults, assaults or obstructs any person attending a hearing before a panel; or

(c) misbehaves at a hearing before a panel; or

(d) repeatedly interrupts a hearing before a panel; or

(e) without lawful excuse disobeys a direction of a panel—

is guilty of an offence.

Penalty: 60 penalty units.

170 Immunity for panel members

S. 170 substituted by No. 3/2013 s. 84.

(1) A member of a panel is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a duty under this Act or the regulations; or

(b) in the reasonable belief that the action or omission was in the exercise of the power or the performance of the duty under this Act or the regulations.

(2) Any liability resulting from an act or omission that would but for subsection (1) attach to a member of a panel, attaches instead to the State.

Part 9—Administration

Division 1—General powers

171 Powers of responsible authority

(1) A responsible authority has all the powers necessary for the purpose of—

(a) carrying out its functions and duties under this Act; and

(b) carrying into effect the objectives of a planning scheme for which it is the responsible authority.

(2) The powers under subsection (1) include the power to—

(a) enter into agreements; and

(b) purchase, hold, lease and dispose of land by public auction, private treaty or otherwise on terms and conditions satisfactory to the authority; and

(c) exchange land for other land and make any financial adjustment required as a result; and

(d) consolidate, subdivide, re-subdivide and develop land for any purpose consistent with the planning scheme for which it is the responsible authority; and

(e) in the case of a responsible authority other than a municipal council, enter into arrangements with other persons with respect to the development of land within the area of the planning scheme for which it is the responsible authority; and

(f) carry out studies and commission reports; and

(g) grant and reserve easements; and

(h) conserve, restore and enhance areas, buildings and objects of community significance; and

(i) carry out any other use or development necessary for the orderly and proper development of the area covered by the planning scheme for which it is the responsible authority.

(2A) Despite subsection (2), the Victorian Planning Authority does not have power to purchase, hold or dispose of land.

S. 171(2A) inserted by No. 11/2017 s. 61.

(3) Nothing in subsection (2)(e) affects any power of a municipal council under the **Local Government Act 1989** or the **Local Government Act 2020** (as the case requires) to enter into any arrangement with respect to the development of land.

S. 171(3) amended by Nos 62/1991 s. 38, 9/2020 s. 390(Sch. 1 item 77.8).

172 Powers of compulsory acquisition

(1) The Minister or the responsible authority may compulsorily acquire—

(a) any land which is required for the purposes of any planning scheme even if the scheme or an amendment to the scheme including the requirement has not been adopted or approved by the relevant planning authority or approved by the Minister; or

S. 172(1)(a) amended by No. 81/2004 s. 40.

(b) any land which—

(i) is used for any purpose not in conformity with, whether or not actually prohibited by, the planning scheme; or

(ii) is vacant and unoccupied—

if in the opinion of the Minister or the responsible authority to achieve the proper development of any area in accordance with

the planning scheme it is desirable that the use should not be continued or (as the case requires) that the land should be put to appropriate use; or

(c) any land in an area in respect of which a declaration under subsection (2) is in force.

(2) If the Governor in Council is satisfied that to enable the better use, development or planning of an area, it is desirable that the Minister or a responsible authority compulsorily acquire land in the area, the Governor in Council may, by notice published in the Government Gazette, declare the area to be an area to which subsection (1)(c) applies.

S. 172(3) amended by No. 5/1988 s. 5(c).

(3) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—

(a) the **Planning and Environment Act 1987** is the special Act; and

(b) the Minister or the responsible authority is the Authority.

Pt 9 Div. 1A (Headings and ss 172A–172G) inserted by No. 7/2018 s. 13.

Division 1A—Compulsory acquisition of public purpose land specified in infrastructure contributions plans

Subdivision 1—General

S. 172A inserted by No. 7/2018 s. 13.

172A Definitions in this Division

The terms used in this Division include the terms defined for the purposes of Part 3AB.

172B Application of Land Acquisition and Compensation Act 1986

S. 172B inserted by No. 7/2018 s. 13.

The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—

(a) the **Planning and Environment Act 1987** is the special Act; and

(b) the collecting agency or the development agency referred to in section 172C or 172D is the Authority.

Subdivision 2—Acquisition of outer public purpose land

172C Development agency may acquire outer public purpose land

S. 172C inserted by No. 7/2018 s. 13.

A development agency specified in an approved infrastructure contributions plan may compulsorily acquire any outer public purpose land that is specified in that plan to be acquired by the development agency.

Subdivision 3—Acquisition of inner public purpose land

172D Collecting agency or development agency may acquire inner public purpose land

S. 172D inserted by No. 7/2018 s. 13.

(1) A collecting agency specified in an approved infrastructure contributions plan may compulsorily acquire any inner public purpose land that is specified in the plan before the time that the land is required to be provided to the collecting agency under section 46GV(4).

(2) A development agency specified in an approved infrastructure contributions plan may compulsorily acquire any inner public purpose land, the use and development of which is to be

the responsibility of the development agency under the plan, before the time that the land is required to be provided under section 46GV(4).

Subdivision 4—Compensation for acquisition of inner public purpose land

S. 172E inserted by No. 7/2018 s. 13.

172E Application of this Subdivision

This Subdivision applies if—

(a) inner public purpose land forms part of a parcel of land in an ICP plan area of an approved infrastructure contributions plan; and

(b) either of the following applies—

(i) the collecting agency compulsorily acquires any part of the inner public purpose land before the time that part of the inner public purpose land is required to be provided to the collecting agency under section 46GV(4);

(ii) a development agency compulsorily acquires any part of the inner public purpose land (the use and development of which is to be the responsibility of the development agency under the plan) before the time that part of the inner public purpose land is required to be provided under section 46GV(4).

S. 172F inserted by No. 7/2018 s. 13.

172F Amount of compensation payable to owner of inner public purpose land

(1) This section applies if the parcel contribution percentage relating to the parcel of land is more than the ICP land contribution percentage for the land in the ICP plan area for the class of development that may be carried out on that land.

(2) Part 4 of the **Land Acquisition and Compensation Act 1986** does not apply for the purposes of calculating any amount of compensation payable to the owner of the parcel of land by the collecting agency or the development agency (as the case requires).

(3) However, the owner of the parcel of land is entitled to be paid an amount of compensation under the **Land Acquisition and Compensation Act 1986** that equates to the land credit amount relating to the parcel of land that the owner would have been entitled to be paid by the collecting agency under section 46GZ(7) as at 30 June before the date of acquisition of the inner public purpose land as if an application referred to in section 46GV(2) had been made in relation to the parcel of land on that date of acquisition.

(4) For the purposes of subsection (3), if only part of the inner public purpose land has been acquired by the collecting agency or a development agency, the amount of compensation payable is the proportion of the land credit amount that equates to the proportion of the inner public purpose land that has been acquired.

172G Owner of inner public purpose land not entitled to compensation under the Land Acquisition and Compensation Act 1986

S. 172G inserted by No. 7/2018 s. 13.

(1) This section applies if the parcel contribution percentage relating to the parcel of land is equal to or less than the ICP land contribution percentage for the land in the ICP plan area for the class of development that may be carried out on that land.

(2) The owner of the parcel of land is not entitled to make a claim for compensation under Part 3 of the **Land Acquisition and Compensation Act 1986** in respect of the acquisition of the inner public purpose land.

Division 2—Agreements[25]

Pt 9 Div. 2 Subdiv. 1 (Heading) inserted by No. 3/2013 s. 46(1).

Subdivision 1—Making of agreements

173 Responsible authority may enter into agreements

(1) A responsible authority may enter into an agreement with an owner of land in the area covered by a planning scheme for which it is a responsible authority.

S. 173(1A) inserted by No. 47/2017 s. 6(1).

(1A) Without limiting subsection (1), a responsible authority may enter into an agreement with an owner of land for the development or provision of land in relation to affordable housing.

(2) A responsible authority may enter into the agreement on its own behalf or jointly with any other person or body.

S. 173(3) amended by No. 47/2017 s. 6(2).

(3) A responsible authority may enter into an agreement under subsection (1) or (1A) with a person in anticipation of that person becoming the owner of the land.

S. 173(4) substituted by No. 48/1991 s. 63(1), amended by No. 3/2013 s. 51(6).

(4) Despite anything in this Division, if an agreement entered into with a purchaser in anticipation of the purchaser becoming owner is recorded by the Registrar of Titles, it does not bind the vendor unless the vendor assumes the purchaser's rights and obligations under the agreement.

S. 173(5) repealed by No. 86/1989 s. 4(2)(j).

* * * * *

174 Form and contents of agreement

(1) An agreement must be under seal and must bind the owner to the covenants specified in the agreement.

(2) An agreement may provide for any one or more of the following matters—

(a) the prohibition, restriction or regulation of the use or development of the land;

(b) the conditions subject to which the land may be used or developed for specified purposes;

(c) any matter intended to achieve or advance—

(i) the objectives of planning in Victoria; or

(ii) the objectives of the planning scheme or any amendment to the planning scheme of which notice has been given under section 19;

(d) any matter incidental to any one or more of the above matters.

175 Bonds and guarantees

(1) An agreement may include a condition that the owner is to deposit with the responsible authority—

S. 175(1) amended by Nos 86/1989 s. 4(2)(k), 3/2013 s. 47(1).

(a) a sum of money fixed by or determined in accordance with the agreement; or

(b) an undertaking to pay that sum together with security in a form determined by or in accordance with the agreement.

S. 175(1)(b) amended by No. 86/1989 s. 22.

(2) The agreement may provide that the sum or part of the sum is forfeited if there is any failure by the owner to carry out the agreement to the satisfaction of the responsible authority.

(3) Any money paid must be returned to the owner on a date or dates specified in the agreement to the extent that it has not been forfeited.

(4) Any money payable under this section is a charge on the land which is the subject of the agreement.

S. 175(5) inserted by No. 3/2013 s. 47(2).

(5) An agreement must not include a condition requiring a Minister to provide a bond or guarantee to the responsible authority.

176 When does an agreement begin?

An agreement may provide that the agreement or any specified provision of the agreement comes into effect on or after—

(a) the coming into operation of a specified amendment to a planning scheme; or

(b) the granting of a permit permitting the use or development of the land or part of the land for a specified purpose; or

(c) the happening of a specified event; or

(d) a specified time; or

(e) the start or completion of a use or development or a specified part of a use or development.

Pt 9 Div. 2 Subdiv. 2 (Heading) inserted by No. 3/2013 s. 46(2).

Subdivision 2—Ending and amendment of agreements

177 When does an agreement end?

S. 177(1) amended by No. 35/1995 s. 9(1)(a).

(1) An agreement may provide that the agreement ends wholly or in part or as to any part of the land on or after—

(a) the happening of any specified event; or

(b) a specified time; or

(c) the cessation of the use or the development of the land or any part of the land for a specified purpose.

(2) An agreement may be ended wholly or in part or as to any part of the land—

S. 177(2) amended by No. 35/1995 s. 9(1)(b), substituted by No. 3/2013 s. 48.

(a) by agreement between the responsible authority and all persons who are bound by any covenant in the agreement; or

(b) otherwise in accordance with this Division.

178 Amendment of agreements

S. 178 substituted by No. 3/2013 s. 49.

An agreement may be amended—

(a) by agreement between the responsible authority and all persons who are bound by any covenant in the agreement; or

(b) otherwise in accordance with this Division.

Note

Section 180 provides that an agreement must not require or allow anything to be done which would breach a planning scheme or permit.

178A Proposal to amend or end agreement

S. 178A inserted by No. 3/2013 s. 49.

(1) An owner of land, or a person who has entered into an agreement under section 173 in anticipation of becoming the owner of the land, may apply to the responsible authority for agreement to a proposal—

(a) to amend an agreement in respect of that land; or

(b) to end an agreement in respect of that land, wholly or in part or as to any part of that land.

(2) An application under subsection (1) must—

(a) be made in accordance with the regulations; and

(b) be accompanied by the information required by the regulations; and

(c) be accompanied by the prescribed fee.

(3) The responsible authority must notify the owner as to whether it agrees in principle to the proposal under subsection (1).

(4) If an application under subsection (1) was made by a person who has entered into an agreement under section 173 in anticipation of becoming the owner of the land, the responsible authority must notify the owner and that person as to whether it agrees in principle to the proposal.

(5) The responsible authority may, on its own initiative, propose to amend or end an agreement.

S. 178B inserted by No. 3/2013 s. 49.

178B Matters to be considered in considering proposal to amend or end agreement

(1) In considering a proposal under section 178A to amend an agreement, the responsible authority must consider—

(a) the purpose of the agreement; and

(b) the purpose of the amendment; and

(c) whether any change in circumstances necessitates the amendment; and

(d) whether the amendment would disadvantage any person, whether or not a party to the agreement; and

(e) the reasons why the responsible authority entered into the agreement; and

(f) if the amendment is to remove land from the application of the agreement, whether the land is subject to any further liability under the agreement; and

(g) any relevant permit or other requirements the land is subject to under the **Subdivision Act 1988**; and

(h) any other prescribed matter.

(2) In considering a proposal under section 178A to end an agreement, the responsible authority must consider—

(a) the purpose of the agreement; and

(b) whether and why the agreement is no longer required; and

(c) whether the ending of the agreement would disadvantage any person, whether or not a party to the agreement; and

(d) the reasons why the responsible authority entered into the agreement; and

(e) any relevant permit or other requirements the land is subject to under the **Subdivision Act 1988**; and

(f) any other prescribed matter.

178C Notice of proposal

S. 178C inserted by No. 3/2013 s. 49.

(1) This section applies if—

(a) an application is made under section 178A and the responsible authority agrees with the proposal in principle; or

(b) the responsible authority proposes to amend or end an agreement.

(2) The responsible authority must give notice of the proposal to—

(a) all parties to the agreement; and

(b) any other persons, if the responsible authority considers that the decision to amend or end the agreement may cause material detriment to them.

(3) Subsection (2)(a) is subject to any provision of the agreement that specifies the parties to the agreement to be notified of a proposal to amend or end an agreement.

(4) The responsible authority may also give notice of the proposal—

(a) in all or any of the following ways—

(i) by placing a sign on the land concerned;

(ii) by publishing a notice in newspapers generally circulating in the area in which the land is situated;

(iii) by giving the notice personally or sending it by post; or

(b) in any other way that the responsible authority considers appropriate.

(5) A notice under this section is to include the prescribed information.

S. 178D inserted by No. 3/2013 s. 49.

178D Objections and submissions to responsible authority

Any person who was given or ought to have been given notice under section 178C of a proposal to amend or end an agreement may object to, or make any other submission in relation to, the proposal.

S. 178E inserted by No. 3/2013 s. 49.

178E Decision to amend or end agreement

(1) If the responsible authority is required under section 178C to give notice of a proposal to amend or end an agreement, the responsible authority must not make a decision on the proposal until at least 14 days after the giving of the last notice under section 178C.

(2) If no objections are made under section 178D, the responsible authority may, after considering the matters in section 178B—

(a) amend or end the agreement in accordance with the proposal; or

(b) amend or end the agreement in a manner that is not substantively different from the proposal; or

(c) refuse to amend or end the agreement.

(3) The responsible authority, after considering any objections or other submissions and the matters in section 178B, may—

(a) decide to amend or end the agreement in accordance with the proposal; or

(b) decide to amend or end the agreement in a manner that is not substantively different from the proposal; or

(c) propose to amend or end the agreement in a manner that is substantively different from the proposal; or

(d) refuse to amend or end the agreement.

(4) Sections 178C, 178D and this section apply to a proposal under subsection (3)(c) as if it were a new proposal.

178F Notice of decision to amend or end agreement

S. 178F inserted by No. 3/2013 s. 49.

(1) If the responsible authority decides under section 178E(3)(a) or (b) to amend or end an agreement, it must give notice of its decision to—

(a) any person who applied to amend or end the agreement under section 178A; and

(b) each person who made an objection or a submission.

(2) If the responsible authority decides under section 178E(2)(c) or (3)(d) to refuse to amend or end an agreement, it must give notice of its decision to—

(a) any person who applied to amend or end the agreement under section 178A; and

(b) each person who made an objection or a submission.

(3) A notice under subsection (2) must set out the grounds on which the responsible authority refused to amend or end the agreement.

(4) The responsible authority must not proceed to amend or end an agreement under section 178E—

(a) subject to paragraph (b), until at least 21 days after the giving of notice under subsection (1); or

(b) if an application for review is made in respect of the decision within that period, until the application is determined by the Tribunal or withdrawn.

S. 178G inserted by No. 3/2013 s. 49.

178G Copy of amended agreement to be given to parties

(1) This section applies if the responsible authority amends an agreement in accordance with this Subdivision or section 184F or 184G.

(2) The responsible authority must, without delay—

(a) sign the amended agreement; and

(b) give a copy of the signed amended agreement to each other party to the agreement.

(3) It is not necessary for the amended agreement to be signed or otherwise agreed to by any other party to the agreement.

(4) A party to an agreement is bound by the agreement as amended and signed by the responsible authority even though the party did not sign the amended agreement.

178H Responsible authority may require payment of costs

S. 178H inserted by No. 3/2013 s. 49.

A responsible authority may require a person who applies to amend or end an agreement under this Subdivision to pay the costs of—

(a) giving the required notices under section 178C; and

(b) preparing the amended agreement.

178I When does the amendment or ending of an agreement take effect?

S. 178I inserted by No. 3/2013 s. 49.

(1) Subject to this section, an amendment or the ending of an agreement under this Subdivision or under section 184F or 184G comes into effect on the day on which the Registrar of Titles—

(a) cancels in whole or part the recording of the agreement in the Register under section 183(2); or

(b) makes a recording in the Register of the matters notified under section 183(1).

(2) An amendment to an agreement relating to Crown land under this Subdivision or under section 184F or 184G comes into effect on the day on which it is signed under section 178G.

(3) If an agreement relating to Crown land ends under this Subdivision or under section 184F or 184G, the responsible authority must notify, in writing, each party to the agreement of the ending of the agreement.

(4) The ending of an agreement relating to Crown land comes into effect on the day the responsible authority notifies the last party to the agreement of the ending of that agreement under subsection (3).

(5) A reference to the ending of an agreement in this section is a reference to the ending of the agreement wholly or in part or as to any part of the land.

Pt 9 Div. 2 Subdiv. 3 (Heading) inserted by No. 3/2013 s. 46(3).

Subdivision 3—General

S. 179 amended by No. 3/2013 s. 50, substituted by No. 12/2021 s. 44.

179 Responsible authority to keep and make available a copy of agreement

(1) A responsible authority must keep a copy of each agreement indicating any amendment made to it.

(2) A responsible authority must make a copy of each agreement indicating any amendment made to it available in accordance with the public availability requirements.

180 Agreement may not breach planning scheme

An agreement must not require or allow anything to be done which would breach a planning scheme or a permit.

S. 181 (Heading) inserted by No. 3/2013 s. 51(1).

181 Recording of agreement

S. 181(1) amended by Nos 85/1998 s. 24(Sch. item 45.4), 3/2013 s. 51(2).

(1) A responsible authority must apply to the Registrar of Titles, without delay, to record an agreement relating to land other than Crown land.

S. 181(1A) inserted by No. 3/2013 s. 51(3).

(1A) Despite subsection (1), where the responsible authority has entered into an agreement under section 173 with a person in anticipation of that person becoming the owner of the land—

(a) if that person is not the owner of the land—the responsible authority may, with the consent of the owner of the land, apply to the Registrar of Titles to record the agreement; or

(b) if that person becomes the owner of the land—the responsible authority must apply to the Registrar of Titles, without delay, to record the agreement.

(2) An application must include a copy of the agreement to which it relates and the prescribed particulars.

(3) The Registrar of Titles must make a recording of the agreement in the Register.

S. 181(3) amended by Nos 18/1989 s. 13(Sch. 2 item 63(e)), 85/1998 s. 24(Sch. item 45.5).

(4) The amendment of this Act by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of a covenant in an agreement registered under the **Property Law Act 1958** before the commencement of that section 24 and existing immediately before that commencement.

S. 181(4) amended by No. 86/1989 s. 4(2)(l), substituted by No. 85/1998 s. 24(Sch. item 45.6).

* * * * *

S. 181(5) repealed by No. 85/1998 s. 24(Sch. item 45.6).

S. 182 (Heading) inserted by No. 3/2013 s. 51(4).
S. 182 amended by Nos 18/1989 s. 13(Sch. 2 item 63(f)), 85/1998 s. 24(Sch. item 45.7).

182 Effect of recording

After the making of a recording in the Register—

(a) the burden of any covenant in the agreement runs with the land affected; and

(b) the responsible authority may enforce the covenant against any person deriving title from any person who entered into the covenant as if it were a restrictive covenant despite the fact that it may be positive in nature or that it is not for the benefit of any land of the responsible authority.

S. 182A inserted by No. 3/2013 s. 52.

182A New parties to an agreement

(1) If the land or any part of the land which is subject to an agreement between the owner and the responsible authority is transferred or otherwise disposed of to another person, that other person becomes a party to that agreement.

(2) Subsection (1) is subject to any provision to the contrary in the agreement.

(3) An agreement may specify the extent to which any party to an agreement is to be treated as a party for the purposes of a proposed amendment of the agreement.

S. 183 (Heading) inserted by No. 3/2013 s. 51(5).

183 Cancellation or alteration of recording

S. 183(1) amended by No. 35/1995 s. 9(1)(c).

(1) The responsible authority must tell the Registrar of Titles in the prescribed manner without delay of the ending of any agreement wholly or in part or as to any part of the land or any amendment to an agreement.

(2) The Registrar of Titles must, as appropriate, cancel in whole or in part or alter the recording of the agreement in the Register or make a recording in the Register of the matters notified under subsection (1).

S. 183(2) amended by No. 48/1991 s. 63(2), substituted by No. 35/1995 s. 9(2), amended by No. 85/1998 s. 24(Sch. item 45.8).

(3) This section does not apply to an agreement in respect of Crown land.

S. 183(3) amended by No. 86/1989 s. 4(2)(l), substituted by No. 85/1998 s. 24(Sch. item 45.9).

* * * * *

S. 183(4) repealed by No. 85/1998 s. 24(Sch. item 45.9).

184 Application to Tribunal

(1) An owner of land may apply to the Tribunal for an amendment to a proposed agreement if—

S. 184(1) amended by No. 52/1998 s. 191(1).

(a) under a planning scheme or a permit the use or development of land for specified purposes is conditional upon an agreement being entered into under this Division; and

(b) the owner objects to any provision of the agreement.

(2) The Tribunal may approve the proposed agreement with or without amendments.

* * * * *

S. 184(3) inserted by No. 48/1991 s. 63(3), amended by No. 52/1998 s. 191(1), repealed by No. 3/2013 s. 53.

* * * * *

S. 184(4) inserted by No. 48/1991 s. 63(3), repealed by No. 3/2013 s. 53.

S. 184A inserted by No. 3/2013 s. 54.

184A Application to Tribunal by applicant in relation to decisions under Subdivision 2

(1) A person who applied to amend or end an agreement under Subdivision 2 may apply to the Tribunal for review of a decision by the responsible authority under section 178E—

(a) to amend the agreement in a manner that is different from the proposal; or

(b) to end the agreement in a manner that is different from the proposal; or

(c) to refuse—

(i) to amend the agreement; or

(ii) to end the agreement, wholly or in part or as to any part of the land subject to the agreement.

(2) If the responsible authority—

(a) fails to give notice of a proposal under section 178C for the amendment of an agreement or the ending of an agreement within the prescribed time after the responsible authority gives notice that it agrees in principle under section 178A(3) or (4); or

(b) fails to decide on an application under section 178E within the prescribed time after the responsible authority gives notice that it agrees in principle under section 178A(3) or (4)—

the applicant may apply to the Tribunal for review of the failure to make a decision on the matter.

184B Application to Tribunal by party to agreement

S. 184B inserted by No. 3/2013 s. 54.

A party to an agreement (other than a person referred to in section 184A) may apply to the Tribunal for review of a decision by a responsible authority under section 178E to amend or end the agreement.

184C Application to Tribunal by objector

S. 184C inserted by No. 3/2013 s. 54.

An objector may apply to the Tribunal for review of a decision by a responsible authority under section 178E to amend or end an agreement.

184D Application to Tribunal by affected person

S. 184D inserted by No. 3/2013 s. 54.

Any person who was entitled to object to a proposal to amend or end an agreement but did not object because the person was not given notice under section 178C, may apply to the Tribunal for review of a decision by the responsible authority under section 178E to amend or end the agreement.

184E Objectors entitled to notice

S. 184E inserted by No. 3/2013 s. 54.

An objector to the proposal to amend or end an agreement is entitled to notice of an application by the applicant for review of—

(a) a decision under Subdivision 2 to amend or end an agreement; or

(b) a decision under Subdivision 2 to refuse to amend or end an agreement; or

(c) a failure of a responsible authority under Subdivision 2 to amend or end an agreement.

S. 184F inserted by No. 3/2013 s. 54.

184F Application to amend or end agreement may be determined after application for review lodged

(1) A responsible authority may decide to amend or end an agreement at any time after an application is made for review of the failure of the responsible authority to make a decision.

(2) Except in accordance with the advice of the principal registrar under subsection (5), the responsible authority must not amend or end the agreement, or give notice of the decision to the applicant or any objector after an application is made to the Tribunal for review of a failure to amend or end an agreement.

(3) The responsible authority must inform the principal registrar if the responsible authority decides to amend or end an agreement after an application is made for the review of its failure to end or amend the agreement.

(4) The principal registrar must refer the decision of the responsible authority to a presidential member of the Tribunal for consideration.

(5) If the presidential member of the Tribunal so directs, the principal registrar must advise the responsible authority that the agreement may be amended or ended in accordance with the responsible authority's decision.

S. 184G inserted by No. 3/2013 s. 54.

184G Determination of application

(1) The Tribunal may decide the matter by—

(a) directing the responsible authority to amend or end the agreement in accordance with the direction; or

(b) determine that the agreement should not be amended or ended.

(2) If the Tribunal directs the responsible authority to amend or end an agreement, the responsible authority must comply with that direction without delay.

(3) If the application is for the failure of the responsible authority to make a decision, the Tribunal may direct the responsible authority to give notice in accordance with section 178C or to give notice in the manner the Tribunal directs.

(4) Section 84B(2) does not apply to the determination of a matter under subsection (1).

Division 3—Powers of Minister

185 Inquiry powers

S. 185(1) amended by No. 126/1993 s. 264(Sch. 5 item 17.3).

(1) The provisions of Division 1 of Part 13 of the **Building Act 1993** with such changes as are necessary apply to and in respect of powers and duties conferred or imposed on any municipal council by or under this Act.

(2) Subsection (1) does not affect any other proceeding or remedy against or liability of the municipal council or the municipality concerned.

185A Expedition of planning process

S. 185A inserted by No. 128/1993 s. 29.

(1) The Minister may by notice in writing direct a planning authority (***the first planning authority***) to take any steps required to be taken under Part 3 in respect of an amendment to a planning scheme within the time (being not less than 6 weeks) specified in the notice.

(2) If the planning authority fails to take a required step within the specified time, the Minister may take that step and all other steps required to be taken under Part 3 in respect of that amendment.

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

(a) the Minister becomes the planning authority in respect of the amendment; and

(b) anything done in respect of the amendment by the first planning authority is to be taken to have been done by the Minister.

(4) The first planning authority and its officers and employees must comply with any directions of the Minister with respect to—

(a) the provision to the Minister of any document relating to the amendment; and

(b) the provision to the Minister of assistance with respect to any steps to be taken under Part 3 with respect to the amendment.

S. 185B inserted by No. 12/2021 s. 71.

185B Power to request contact details

(1) For the purposes of giving notice under this Act, the Minister may in writing request any of the following to provide the name, address, email address and telephone number of any person to whom the Minister is required to give notice—

(a) a municipal council;

(b) a public authority;

(c) a public entity.

(2) A municipal council, public authority or public entity must comply with a request under subsection (1).

Division 4—Delegation

186AA Interpretation

S. 185AA inserted by No. 128/1993 s. 30, renumbered as S. 186AA by No. 12/2021 s. 72.

(1) In this Division, ***Act*** includes any regulation, planning scheme, permit or agreement made under an Act.

(2) Nothing in subsection (1) limits or affects the meaning of "Act" in any other provision of this Act (other than this Division).

186 Minister may delegate some powers

S. 186 (Heading) inserted by No. 33/2006 s. 7(1).

(1) The Minister may by instrument delegate any of his or her powers, discretions or functions under this Act or any other Act to—

(a) the Secretary to the Department; or

S. 186(1)(a) substituted by No. 35/1995 s. 11(1)(j).

(b) a committee of employees of the Department; or

S. 186(1)(b) substituted by No. 35/1995 s. 11(1)(j), amended by No. 46/1998 s. 7(Sch. 1).

(c) any employee of the Department; or

S. 186(1)(c) substituted by No. 35/1995 s. 11(1)(j), amended by Nos 46/1998 s. 7(Sch. 1), 33/2006 s. 7(2)(a).

(d) the Victorian Planning Authority.

S. 186(1)(d) inserted by No. 33/2006 s. 7(2)(b), substituted by No. 11/2017 s. 62(1).

* * * * *

S. 186(1)(e) inserted by No. 33/2006 s. 7(2)(b), repealed by No. 11/2017 s. 62(1).

S. 186(2) amended by Nos 103/1997 s. 4, 11/2017 s. 62(2).

(2) Subsection (1) includes the Minister's powers under section 35, but does not include the Minister's powers under section 172 or section 201F.

Note to s. 186(2) inserted by No. 11/2017 s. 62(3).

Note

A power to delegate does not include the power to delegate that power of delegation unless the contrary intention appears (see section 42A(1) of the **Interpretation of Legislation Act 1984**).

S. 186(3) inserted by No. 11/2017 s. 62(4).

(3) The Victorian Planning Authority, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a power, discretion or function delegated to it under subsection (1) to the chief executive officer of the Authority if the instrument of delegation authorises its sub-delegation.

S. 186(4) inserted by No. 11/2017 s. 62(4).

(4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

S. 187 amended by Nos 35/1995 s. 11(1)(k)(i)(ii), 46/1998 s. 7(Sch. 1), 11/2017 s. 63(1).

187 Secretary may delegate powers to employees

The Secretary to the Department may by instrument delegate to any employee of the Department any of the powers, discretions or functions which this Act gives to the Secretary.

Note. to s. 187 inserted by No. 11/2017 s. 63(2).

Note

A power to delegate does not include the power to delegate that power of delegation unless the contrary intention appears (see section 42A(1) of the **Interpretation of Legislation Act 1984**).

188 Planning authorities and responsible authorities may delegate powers

(1) A planning authority or responsible authority other than the Minister or the Victorian Planning Authority may by instrument delegate any of its powers, discretions or functions under this Act to—

S. 188(1) amended by No. 11/2017 s. 64(1)(a).

(a) a committee of the authority; or

(b) an officer of the authority; or

(c) the Victorian Planning Authority.

S. 188(1)(c) repealed by No. 89/1997 s. 75(3), new s. 188(1)(c) inserted by No. 33/2006 s. 8, substituted by No. 11/2017 s. 64(1)(b).

* * * * *

S. 188(1)(d) inserted by No. 33/2006 s. 8, repealed by No. 11/2017 s. 64(1)(b).

(2) Subsection (1) does not apply to—

(a) the powers of a planning authority under sections 28, 29 and 191; and

S. 188(2)(a) amended by No. 11/2017 s. 64(2)(a).

(b) the powers of a responsible authority under sections 125, 171(2)(b), (c), (d) and (e), 172 and 191; and

S. 188(2)(b) substituted by No. 35/1995 s. 10, amended by No. 11/2017 s. 64(2)(b).

(c) the power of a responsible authority to authorise any officer to carry out a duty or function or to exercise a power.

Note to s. 188(2) inserted by No. 11/2017 s. 64(3).

Note

A power to delegate does not include the power to delegate that power of delegation unless the contrary intention appears (see section 42A(1) of the **Interpretation of Legislation Act 1984**).

S. 188(3) inserted by No. 3/2013 s. 11.

(3) A responsible authority, with the consent of the Minister, may by instrument delegate to the Planning Application Committee any of its powers, discretions or functions under sections 58, 59, 60, 61 and 62 in relation to an application for a permit or an amendment to a permit, or a class of applications for permits or amendments to permits.

S. 188(4) inserted by No. 11/2017 s. 64(4).

(4) The Victorian Planning Authority, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a power, discretion or function delegated to it under subsection (1) to the chief executive officer of the Authority if the instrument of delegation authorises its sub-delegation.

S. 188(5) inserted by No. 11/2017 s. 64(4).

(5) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

S. 188A inserted by No. 11/2017 s. 65.

188A Victorian Planning Authority may delegate powers

(1) The Victorian Planning Authority may by instrument delegate any of its powers, discretions or functions under this Act to—

(a) the chief executive officer of the Authority; or

(b) an employee of the Authority; or

(c) a seconded staff member within the meaning of the **Victorian Planning Authority Act 2017**.

(2) Subsection (1) does not apply—

(a) if the Authority is a planning authority, to the powers of a planning authority under sections 28, 29 and 191; and

(b) if the Authority is a responsible authority—

(i) to the powers of a responsible authority under sections 125, 171(2)(b), (c), (d) and (e), 172 and 191; and

(ii) to the power of a responsible authority to authorise any officer to carry out a duty or function or to exercise a power.

(3) The chief executive officer of the Authority, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a power, discretion or function delegated to the chief executive officer under subsection (1) to a person specified in subsection (4) if the instrument of delegation authorises its sub-delegation.

(4) For the purposes of subsection (3), the following persons are specified—

(a) an employee of the Authority;

(b) a seconded staff member within the meaning of the **Victorian Planning Authority Act 2017**.

(5) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

189 Minister may delegate to advisory committees and regional planning authorities

S. 189(1) amended by No. 35/1995 s. 4(j).

(1) The Minister may by instrument delegate to an advisory committee any of the powers, discretions and functions under a planning scheme in relation to applications for permits which must be—

(a) referred to the Minister under the scheme; or

(b) considered by the Minister under Division 4 of Part 4.

(2) The Minister must publish a notice of the delegation in the Government Gazette.

(3) The delegation has effect from the later of—

(a) a date specified in the instrument of delegation; or

(b) the date of publication of the notice.

190 Minister may delegate administration of planning schemes

(1) The Minister may by instrument delegate any of his or her powers, discretions and functions under this Act as a responsible authority to—

(a) any other responsible authority; or

S. 190(1)(b) amended by No. 33/2006 s. 9(a).

(b) any municipal council; or

S. 190(1)(c) inserted by No. 33/2006 s. 9(b), substituted by No. 11/2017 s. 66(1).

(c) the Victorian Planning Authority.

S. 190(1A) inserted by No. 3/2013 s. 12.

(1A) The Minister may, by instrument, delegate to the Planning Application Committee any of the Minister's powers, discretions or functions as the

responsible authority under sections 58, 59, 60, 61 and 62 in relation to an application for a permit or an amendment to a permit, or a class of applications for permits or amendments to permits.

S. 190(1B) inserted by No. 11/2017 s. 66(2).

(1B) The Victorian Planning Authority, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a power, discretion or function delegated to it under subsection (1) to the chief executive officer of the Authority if the instrument of delegation authorises its sub-delegation.

S. 190(1C) inserted by No. 11/2017 s. 66(2).

(1C) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

(2) The Minister must publish a notice of the delegation in the Government Gazette.

(3) The delegation has effect from the later of—

(a) a date specified in the instrument of delegation; or

(b) the date of publication of the notice.

Division 5—Hearings

191 Appointment of committee

A planning authority or responsible authority may nominate a committee of two or more persons to hear any person—

(a) whom the authority is authorised or required to hear before it makes a decision; or

(b) to whom the authority must give an opportunity to be heard before it makes a decision.

192 Who may be on the committee?

The committee may include a member of the planning authority or responsible authority.

193 Who may attend the hearing?

A person who has a right to be heard may appear before the committee in person or be represented by any other person.

194 Functions of committee

The committee must—

(a) hear the person on behalf of the planning authority or responsible authority; and

(b) report on the hearing and make recommendations to the authority.

195 Effect of hearing

A hearing by a committee under this Division has effect as if it were a hearing by the planning authority or responsible authority.

196 Fees and allowances

(1) The planning authority or responsible authority may agree with a prospective member of a committee under this Division to pay reasonable fees and allowances in respect of that person's services on the committee.

(2) Subsection (1) does not apply—

(a) to a person who is an officer or full-time member of the planning authority or responsible authority; or

(b) if the responsible authority is a municipal council, to a councillor of that municipal council.

Division 6—Time

197 Expedition

S. 197 amended by No. 3/2013 s. 41.

Where the Minister or any responsible authority, planning authority, referral authority, public authority, municipal council, panel, committee or officer is required to do any act, including making any decision or forming any opinion, that act must be done as promptly as is reasonably practicable, in any event within the time limits prescribed or any extension of those time limits allowed by or under this Act, so that loss or damage to any person from unreasonable or unnecessary delay is avoided.

Division 6A—Publication and inspection of documents and register requirements

Pt 9 Div. 6A (Heading and ss 197A–197H) inserted by No. 12/2021 s. 45.

197A Public availability requirements

S. 197A inserted by No. 12/2021 s. 45.

(1) For the purposes of this Act, a person or body makes a document available in accordance with the ***public availability requirements*** if the person or body makes the document available—

(a) in person in accordance with the requirements set out in section 197B; or

(b) both—

(i) electronically in accordance with the requirements set out in section 197C; and

(ii) on request, in accordance with the requirements set out in section 197D.

(2) For the purposes of this Act, a responsible authority or referral authority makes a register available in accordance with the ***public***

availability requirements if the authority makes the register available—

(a) in person in accordance with the requirements set out in section 197B; or

(b) both—

(i) electronically in accordance with the requirements set out in section 197E; and

(ii) on request, in accordance with the requirements set out in section 197D.

S. 197B inserted by No. 12/2021 s. 45.

197B In person inspection requirements

(1) The requirements for making a document or register available in person are that a person (other than the Minister) or body makes the document or register available for inspection—

(a) at the person's or body's office; and

(b) at any time during the person's or body's office hours.

(2) For the Minister, the requirements for making a document or register available in person are that the Minister makes a document or register available for inspection—

(a) at any office of the Department that the Minister specifies; and

(b) at any time during the office hours of that specified office.

(3) A document or register made available in accordance with the requirements set out in this section must be made available free of charge unless otherwise provided by this Act.

197C Electronic publication requirements

S. 197C inserted by No. 12/2021 s. 45.

(1) For the Minister, the requirements for making a document available electronically are that the Minister publishes and makes the document available, free of charge—

(a) if the Minister has published a notice specifying an address of an Internet site at which a copy of the document is published, at that address; or

(b) in any other case, on the Department's Internet site.

(2) For any other person or body, the requirements for making a document available electronically are—

(a) that the person or body publishes and makes a document available, free of charge, on an Internet site maintained by or for the person or body; or

(b) if the Minister publishes and makes a document available electronically, that the person or body publishes, on an Internet site maintained by or for the person or body, the address of the Internet site at which a copy of the document is published and made available by the Minister.

197D On request inspection requirements

S. 197D inserted by No. 12/2021 s. 45.

(1) The requirements for making a document or register available on request are that a person (other than the Minister) or body makes the document or register available for inspection—

(a) on the request of any person who wants to inspect the document or register; and

(b) at the person's or body's office; and

(c) at a time that is—

(i) agreed with the person who requests to inspect the document or register; and

(ii) during the person's or body's office hours; and

(d) free of charge.

(2) For the Minister, the requirements for making a document or register available on request are that the Minister makes the document or register available for inspection—

(a) on the request of any person who wants to inspect the document or register; and

(b) at any office of the Department that the Minister specifies; and

(c) at a time that is—

(i) agreed with the person who requests to inspect the document or register; and

(ii) during the office hours of the specified office; and

(d) free of charge.

S. 197E inserted by No. 12/2021 s. 45.

197E Electronic register requirements

The requirements for making a register available electronically are that a responsible authority or referral authority makes—

(a) the register searchable, free of charge, on an Internet site maintained by or for the authority; and

(b) any information on the register available, free of charge, on an Internet site maintained by or for the authority.

197F Electronic disclosure of certain personal information in permits and other documents

S. 197F inserted by No. 12/2021 s. 45.

(1) The Minister, a responsible authority or planning authority that makes any of the following available electronically in accordance with the requirements set out in section 197C must not disclose personal information about an individual, other than the information specified in subsection (2), without the individual's consent—

(a) a copy of a submission referred to in section 21(2);

(b) a copy of an application and the information referred to in section 51;

(c) a copy of an objection referred to in section 57(5);

(d) a copy of a permit referred to in section 70;

(e) a copy of a proposed permit referred to in section 96C(8A);

(f) a copy of a permit referred to in section 97G(6);

(g) a copy of an agreement referred to in section 179(2).

(2) For the purposes of subsection (1), the following information is specified—

(a) for a copy of a submission referred to in section 21(2), the address of land to which the proposed amendment to a planning scheme relates;

(b) for an application and the information referred to in section 51, the address of land to which the application applies;

(c) for a copy of an objection referred to in section 57(5), the address of land to which the application being objected to applies;

(d) for a copy of a permit referred to in section 70 or 97G(6), the address of land to which the permit applies;

(e) for a copy of a proposed permit referred to in section 96C(8A), the address of land to which the permit would apply if it were granted under section 96I;

(f) for a copy of an agreement referred to in section 179(2), the address of the land to which the agreement relates.

S. 197G inserted by No. 12/2021 s. 45.

197G Electronic disclosure of certain personal information on registers

A responsible authority or referral authority that makes a register available electronically under section 49 or 56A in accordance with the requirements set out in section 197E, must not disclose personal information about an individual, other than the address of land to which an application for a permit applies, without the individual's consent.

S. 197H inserted by No. 12/2021 s. 45.

197H Exception to compliance with certain inspection requirements when an emergency declaration is in force

(1) A person or body is not required to make a document available in person under section 4H(2), 41(2), 46E(4), 46V(4) or 46ZF(4) in accordance with the requirements set out in section 197B if, at the time a request to inspect the document is made—

(a) there is an emergency declaration in force; and

(b) it is not reasonably practicable for the person or body to do so because of a fact or circumstance arising out of the emergency or serious risk to public health in respect of which the declaration has been made.

(2) A person or body is not required to make a document or register available on request in accordance with the requirements set out in section 197D if, at the time a request to inspect a document or register is made—

(a) there is an emergency declaration in force; and

(b) it is not reasonably practicable for the person or body to do so because of a fact or circumstance arising out of the emergency or serious risk to public health in respect of which the declaration has been made.

(3) In this section—

emergency declaration means—

S. 197H(3) def. of *emergency declaration* amended by No. 53/2021 s. 32.

(a) a declaration of a state of disaster under section 23 of the **Emergency Management Act 1986**; or

(ab) a pandemic declaration under section 165AB of the **Public Health and Wellbeing Act 2008**; or

(b) a declaration of a state of emergency under section 198 of the **Public Health and Wellbeing Act 2008**.

Division 7—Planning certificates

198 Application for planning certificate

(1) Any person may apply—

(a) to the person nominated in the planning scheme for that purpose; or

(b) if no person is nominated, to the responsible authority—

for a planning certificate in respect of land.

(2) The application must be accompanied by the prescribed fee.

199 Planning certificates

(1) The responsible authority or nominated person must give or send the applicant without delay a planning certificate setting out the prescribed information about the effect of the relevant planning scheme on the land at the date of the certificate.

S. 199(2) substituted by No. 128/1993 s. 31(1).

(2) The planning certificate—

S. 199(2)(a) repealed by No. 81/2004 s. 41.

* * * * *

(b) must indicate that it is produced by authority of an authorised officer of the responsible authority or by authority of the nominated person, whether by being initialled, signed or sealed by the authorised officer or person or by bearing a facsimile of those initials or that signature or seal or in any other manner prescribed; and

(c) may be produced in any manner the responsible authority or nominated person considers appropriate.

200 Certificate to be proof of certain matters

S. 200(1) amended by No. 128/1993 s. 31(2).

(1) A planning certificate which appears to be produced by authority of an officer of the responsible authority or by a nominated person is conclusive proof that at the date specified in the certificate the facts set out in it were true and correct.

(2) Any person acting on the basis of a planning certificate who suffers financial loss because of an error or mis-statement in the certificate may recover damages for that loss from the responsible authority or the nominated person (as the case requires).

201 Underlying zoning

(1) If—

S. 201(1) amended by No. 86/1989 s. 25(s).

(a) a planning certificate states that the land is wholly or partly reserved for public purposes under the planning scheme; and

(b) the certificate does not indicate the provisions of the scheme which would have applied to the land if the land had not been reserved—

the applicant for the certificate may apply for the purpose of valuing the land for compensation—

(c) if the land is controlled, whether as committee of management or otherwise, occupied or owned or to be acquired by the responsible authority, to the Minister; or

S. 201(1)(c) inserted by No. 86/1989 s. 25(s), amended by No. 128/1993 s. 32(1).

(d) in the case of any other land, to the person nominated for the purpose of section 198 or, if no person is nominated, to the responsible authority—

S. 201(1)(d) inserted by No. 86/1989 s. 25(s).

for a declaration setting out the provisions of the scheme which would have applied to the land if it had not been reserved.

(2) The application must be in the prescribed form and may request that the declaration set out the provisions of the scheme as in force at a date specified in the application.

S. 201(2) amended by No. 86/1989 s. 25(t).

S. 201(2A) inserted by No. 128/1993 s. 32(2).

(2A) An application cannot be made under this section in respect of land which is owned by the Crown or a public authority.

(3) If the responsible authority or nominated person fails to make a declaration within the prescribed time, the applicant may refer the matter to the Minister.

(4) The Minister may make the declaration.

(5) No fee shall be charged for an application or declaration under this section.

(6) Any declaration under this section is to be treated as forming part of the planning certificate for the purposes of section 200.

Pt 9 Div. 8 (Heading and s. 201A) inserted by No. 86/1989 s. 23, amended by No. 128/1993 s. 33.

Division 8—Change of responsible authority or area

S. 201A inserted by No. 86/1989 s. 23.

201A What if the responsible authority changes?

If because of—

S. 201A(a) amended by Nos 77/2003 s. 6, 21/2013 s. 16.

(a) the operation of section 15, 96, 97H or 201CA; or

(b) an amendment to a planning scheme; or

S. 201A(ba) inserted by No. 53/2012 s. 10.

(ba) an amendment to an application for a permit; or

S. 201A(c) amended by No. 39/2004 s. 261.

(c) revocation of an order under section 95; or

(ca) the operation of any Act—

S. 201A(ca) inserted by No. 39/2004 s. 261.

a person (in this section called ***the old authority***) ceases to be or to have the powers and duties of a responsible authority for a planning scheme and another person (in this section called ***the new authority***) becomes, or acquires the powers of, the responsible authority for the scheme—

(d) anything of a continuing nature (including a contract, agreement or proceeding) done or commenced by or in relation to the old authority under the scheme or this Act may be done enforced or completed by or in relation to the new authority; and

(e) the old authority must give to the new authority any document it holds that is relevant to anything done by it; and

(f) anything done by or in relation to the old authority that concerns a matter of a continuing nature has effect as if done by or in relation to the new authority.

201B What if area of planning scheme changes?

S. 201B inserted by No. 128/1993 s. 34.

If an amendment to a planning scheme or the making of a new planning scheme causes the area or part of the area included in an existing planning scheme (the old scheme) to be included in another planning scheme (the new scheme) then in relation to each area included in the new scheme and previously covered by the old scheme—

(a) anything of a continuing nature done or commenced under or in relation to the old scheme has effect on and from the inclusion of the area in the new scheme as if done or

commenced under or in relation to the new scheme and may be continued and completed accordingly; and

(b) anything of a continuing nature done or commenced under this Act in relation to the old scheme has effect on and from the inclusion of the area in the new scheme as if done or commenced under this Act in relation to the new scheme and may be continued and completed accordingly.

S. 201C inserted by No. 128/1993 s. 34, amended by No. 9/2020 s. 390(Sch. 1 item 77.9).

201C Changes to schemes arising from changes to municipal boundaries

(1) In addition to any other powers of the Minister under this Act, the Minister may prepare and approve amendments to any planning scheme for the purpose of any consequential matter relating to the restructuring of municipal boundaries by or under the **Local Government Act 2020** or any Act relating to local government.

(2) This Act (except sections 12(1)(a) and (e), 12(2), 12(3), Divisions 1 and 2 of Part 3 and sections 39(1), 39(2), 39(3), 39(4), 39(5) and 39(6) and any regulations made for the purpose of those provisions) applies to the preparation and approval of amendments under subsection (1).

S. 201CA inserted by No. 77/2003 s. 7.

201CA Change in boundary of Port of Melbourne Area

(1) If any land in the Port of Melbourne Area is excluded from that Area by order under section 3(3)—

(a) any planning scheme applying to the excluded land immediately before the commencement of that order; and

(b) all things done under that scheme—

continue to have the same operation and effect as they would have had if the order had not been

made except that the responsible authority for the subsequent administration and enforcement of the planning scheme to the extent that it applies to the excluded land is the council of the municipal district in which the excluded land is situated.

(2) If any land in a municipal district is included in the Port of Melbourne Area by order under section 3(3)—

(a) any planning scheme applying to the included land immediately before the commencement of that order; and

(b) all things done under that scheme—

continue to have the same operation and effect as they would have had if the order had not been made except that the responsible authority for the subsequent administration and enforcement of the planning scheme to the extent that it applies to the included land is the Minister.

Division 9—Supreme Court—limitation of jurisdiction

Pt 9 Div. 9 (Heading and s. 201D) inserted by No. 128/1993 s. 35.

201D Supreme Court—limitation of jurisdiction[26]

S. 201D inserted by No. 128/1993 s. 35, amended by No. 77/1996 s. 16(1).

* * * * *

S. 201D(1) repealed by No. 52/1998 s. 191(13)(c).

(2) It is the intention of sections 4F and 4J to alter or vary section 85 of the **Constitution Act 1975**.

S. 201D(2) inserted by No. 77/1996 s. 16(2).

* * * * *

S. 201D(3) inserted by No. 77/1996 s. 16(2), repealed by No. 52/1998 s. 191(13)(c).

Part 9A—Projects of State or regional significance

Pt 9A (Heading and ss 201E–201Q) inserted by No. 103/1997 s. 3.

201E Definitions

S. 201E inserted by No. 103/1997 s. 3.

In this Part—

declared project means a development or proposed development declared by notice under section 201F to be of State or regional significance;

restriction means—

S. 201E def. of *restriction* amended by No. 7/2017 s. 305(3).

(a) a restriction within the meaning of the **Subdivision Act 1988**; or

(b) a covenant under Part 7 of the **Heritage Act 2017**; or

(c) a covenant under section 3A of the **Victorian Conservation Trust Act 1972**;

Secretary means Secretary, Project Development within the meaning of section 3(1) of the **Project Development and Construction Management Act 1994**.

S. 201E def. of *Secretary* substituted by No. 27/2009 s. 24(1), amended by No. 27/2009 s. 24(2), substituted by Nos 29/2011 s. 3(Sch. 1 item 70.2), 30/2020 s. 26.

201F Declaration of project

S. 201F inserted by No. 103/1997 s. 3.

The Minister may, by notice published in the Government Gazette, declare a development or proposed development to be of State or regional significance.

S. 201G inserted by No. 103/1997 s. 3, amended by No. 27/2009 s. 25.

201G Delegation

The Secretary may, by instrument, delegate to any person employed in the Department or the holder of any office or position in the Department any of the powers conferred on the Secretary under this Part except—

(a) this power of delegation; and

(b) the Secretary's powers under section 201I.

S. 201H inserted by No. 103/1997 s. 3.

201H Acquisition by agreement

For the purposes of a declared project, the Secretary may acquire land by agreement on any terms (including consideration) that the Secretary considers appropriate.

S. 201I inserted by No. 103/1997 s. 3.

201I Powers of compulsory acquisition

(1) The Secretary may compulsorily acquire land for the purposes of a declared project.

(2) The **Land Acquisition and Compensation Act 1986** applies to this Part and for that purpose—

(a) Part 9A of the **Planning and Environment Act 1987** is the special Act; and

(b) the Secretary is the Authority.

(3) The Minister may, by notice published in the Government Gazette, declare specified land required for a declared project to be special project land for the purposes of section 5 of the **Land Acquisition and Compensation Act 1986**.

201J Secretary's powers to dispose of land

S. 201J inserted by No. 103/1997 s. 3.

(1) The Secretary may—

(a) grant a lease, licence, easement or privilege over land vested in or acquired by the Secretary pursuant to this Part; or

(b) sell or dispose of the Secretary's interest in fee simple in any land vested in or acquired by the Secretary pursuant to this Part—

on any terms (including consideration) that the Secretary considers appropriate.

(2) The Secretary may enter into an agreement with another person concerning the use or development of land—

(a) on disposing of the whole of its interest in the land to that person; or

(b) in anticipation of disposing of the whole of its interest in the land to that person.

(3) Division 2 of Part 9 applies to an agreement under subsection (2) as if—

(a) it was an agreement under that Division;

(b) it referred to the Secretary instead of the responsible authority for the planning scheme;

(c) section 174(2)(c) were omitted.

S. 201J(3)(c) amended by No. 3/2013 s. 55(a).

* * * * *

S. 201J(3)(d) repealed by No. 3/2013 s. 55(b).

S. 201K inserted by No. 103/1997 s. 3.

201K Recommendation of closure of roads

(1) For the purposes of a declared project, the Secretary may recommend to the Governor in Council to close any road or part of a road.

(2) Before making a recommendation to close a road or part of a road, the Secretary must—

(a) serve notice of the proposed closure on the owner of any property which the Secretary, after making inquiry into the matter, considers is likely to be substantially affected by the closure of the road or part of the road; and

(b) give each of those owners an opportunity to object to the closure; and

(c) consider all objections so made.

(3) Before making a recommendation to close a road or part of a road, the Secretary must ensure that provision is made—

(a) with respect to pipes, wires, apparatus, sewers, drains, tunnels, conduits, poles, posts and fixtures lawfully on over under or across the road or part of the road; and

(b) for access to any land likely to be prejudicially affected by the closure.

(4) The Secretary may only recommend the closure of a road or part of a road under this section if the Secretary is satisfied that the closure will not substantially injure the public or any person objecting under subsection (2).

S. 201L inserted by No. 103/1997 s. 3.

201L Order for closure of road

(1) On a recommendation under section 201K, the Governor in Council, by order published in the Government Gazette, may close the road or part of the road.

(2) On the publication of the order—

(a) the land over which the closed road ran (whether the property of the Crown or not) ceases to be a road; and

(b) all rights, easements and privileges existing or claimed in the land either in the public or by any body or person as incident to any express or implied grant, or past dedication or by user or operation of law or otherwise, cease; and

(c) the land vests in the Secretary without transfer or conveyance freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests.

201M Temporary closure of road

S. 201M inserted by No. 103/1997 s. 3.

For the purposes of a declared project, the Secretary may temporarily close a road or part of a road to traffic if the Secretary considers it necessary to do so so that works on the road or neighbouring land can be carried out.

201N Recommendation for removal of easements and restrictions

S. 201N inserted by No. 103/1997 s. 3.

(1) For the purposes of a declared project, the Secretary may recommend to the Governor in Council to remove an easement, or restriction applying to any land.

(2) Before making a recommendation under subsection (1), the Secretary must—

(a) serve notice of the proposed removal on the owner of any property which the Secretary, after making inquiry into the matter, considers is likely to be substantially affected by the removal; and

(b) give each of those owners an opportunity to object to the removal; and

(c) consider all objections so made.

(3) Before making a recommendation under subsection (1), the Secretary must ensure that provision is made for access to any land likely to be prejudicially affected by the removal.

(4) The Secretary may only recommend the removal of an easement or restriction under this section if the Secretary is satisfied that the removal will not substantially injure the public or any person objecting under subsection (2).

S. 201O inserted by No. 103/1997 s. 3.

201O Order for removal of easement or restriction

(1) On a recommendation under section 201N, the Governor in Council, by order published in the Government Gazette, may remove the easement or restriction.

(2) On the publication of the order, the easement or restriction is extinguished.

S. 201P inserted by No. 103/1997 s. 3.

201P Compensation

(1) If an order is made under section 201L or section 201O, the Secretary must make provision for the payment of compensation—

(a) to any person in whom the land comprised in the road or part of the road is vested; and

(b) to any owner of property which in the opinion of the Secretary is likely to be substantially affected by the closure of the road or the removal of the easement or restriction.

(2) The Minister may certify that, having regard to the extent to which a person referred to in subsection (1) is or is likely to be affected by the closure of the road or the removal of the easement or restriction, the compensation payable to that person should not exceed the amount stated in the certificate (not being less than $400).

(3) If the Minister so certifies under subsection (2), the amount stated in the certificate in respect of that person shall be the full amount payable to him or her under subsection (1) by the Secretary by way of compensation.

(4) If the Minister is satisfied that a person who might be entitled to compensation under subsection (1) cannot be found, the Minister may direct that no provision, or such provision as the Minister specifies, shall be made for payment of compensation to that person.

(5) If neither subsection (3) nor (4) applies, the compensation payable under subsection (1) to a person—

(a) shall be as agreed between the Secretary and the person; or

(b) if agreement is not reached, shall be determined in accordance with Part 10 of the **Land Acquisition and Compensation Act 1986** as if the amount of compensation payable were a disputed claim.

201Q Action by Registrar of Titles and Registrar-General

S. 201Q inserted by No. 103/1997 s. 3.

(1) The publication of an order under section 201L brings the land under the operation of the **Transfer of Land Act 1958** if it is not already under that Act.

(2) If an order is made under section 201L in relation to land, the Registrar of Titles, on being requested to do so and on production of the relevant order—

(a) must make any recordings in the Register that are necessary because of the order; and

(b) may create a folio of the Register recording the Secretary as the registered proprietor of the land.

(3) If an order under section 201L or 201O affects the right, estate or interest of the registered proprietor of land in a folio of the Register under the **Transfer of Land Act 1958** in respect of an easement or restriction recorded on that folio or implied by statute appurtenant to the land, the Registrar of Titles on being requested to do so and on production of the relevant order, must delete from the folio the recording of that easement or restriction to the extent to which it has been extinguished.

(4) If the description of any land under the operation of the **Transfer of Land Act 1958** or a folio of the Register is or may be affected by any order made under this Part closing a road or part of a road or removing an easement or restriction, the Registrar of Titles may make any amendment in that description or folio which is in his or her opinion necessary or desirable.

S. 201Q(5) repealed by No. 85/1998 s. 24(Sch. item 45.10).

* * * * *

Part 9B—Growth areas infrastructure contribution

Pt 9B (Headings and ss 201R–201VC) inserted by No. 23/2010 s. 9.

Division 1—Introductory

Subdivision 1—Definitions

201R Definitions

S. 201R inserted by No. 23/2010 s. 9.

In this Part—

associated person has the same meaning as in section 3(1) of the **Duties Act 2000**;

* * * * *

S. 201R def. of *building permit* repealed by No. 7/2018 s. 14.

* * * * *

S. 201R def. of *building work* repealed by No. 7/2018 s. 14.

* * * * *

S. 201R def. of *Central Plan Office* amended by No. 70/2013 s. 4(Sch. 2 item 36.4(a)), repealed by No. 53/2017 s. 88(3).

certificate of deferral has the meaning set out in section 201SZ;

certificate of exemption has the meaning set out in section 201SZC;

certificate of no GAIC liability has the meaning set out in section 201SZD;

certificate of partial release has the meaning set out in section 201SZB;

certificate of release has the meaning set out in section 201SY;

certificate of staged payment approval has the meaning set out in section 201SZA;

commencement day means the day on which section 9 of the **Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010** comes into operation;

S. 201R def. of *Commissioner* repealed by No. 40/2014 s. 36.

* * * * *

S. 201R def. of *construction* inserted by No. 2/2012 s. 3.

construction has the meaning that it has in the **Building Act 1993**;

S. 201R def. of *consumer price index* substituted by No. 44/2014 s. 33(Sch. item 18(1)), repealed by No. 40/2014 s. 36.

* * * * *

contract for the sale of land includes an agreement granting an option to purchase or sell land, which creates a contingent or executory equitable estate or interest in the land;

contribution area has the meaning set out in section 201RC;

* * * * *

S. 201R def. of *Director of Public Transport* substituted by No. 6/2010 s. 203(1) (Sch. 6 item 35.1) (as amended by No. 45/2010 s. 22), repealed by No. 61/2011 s. 25(Sch. 1 item 7.1).

dutiable transaction relating to land means—

(a) a dutiable transaction within the meaning of section 7(2) of the **Duties Act 2000** relating to dutiable property referred to in sections 10(1)(a) and 10(1)(ab) of that Act; or

(b) a sub-sale of dutiable property referred to in section 10(1)(a) of the **Duties Act 2000**; or

(c) a significant acquisition;

excluded building work has the meaning set out in section 201RG;

excluded event has the meaning set out in section 201RB;

excluded subdivision of land has the meaning set out in section 201RF;

first announcement day means 2 December 2008;

Note

2 December 2008 was the day on which the Minister gave public notice of the proposal to implement a scheme for the imposition of contributions towards the provision of State infrastructure in respect of certain growth area land.

GAIC means growth areas infrastructure contribution;

GAIC event means an event described under section 201RA;

GAIC certificate means a certificate issued under section 201SZF;

GAIC recording in relation to land in the contribution area, means a recording made by the Registrar of Titles under section 201UD of a notification on a folio of the Register relating to the land indicating that a growth areas infrastructure contribution may be payable in respect of that land;

S. 201R def. of *growth area* inserted by No. 21/2013 s. 7, repealed by No. 11/2017 s. 67(a).

* * * * *

growth areas infrastructure contribution means a contribution imposed under section 201S;

investigation area means an area of land described in Part 2 of Schedule 1;

S. 201R def. of *land rich landholder* substituted as *landholder* by No. 38/2012 s. 16(a).

landholder has the same meaning as in section 71 of the **Duties Act 2000**;

lot has the same meaning as in section 3(1) of the **Subdivision Act 1988**;

S. 201R def. of *plan of subdivision* inserted by No. 31/2011 s. 4(2).

plan of subdivision has the same meaning as in section 3(1) of the **Subdivision Act 1988**;

* * * * *

S. 201R def. of *precinct structure plan* repealed by No. 35/2015 s. 15.

precinct structure plan area means an area or areas of land to which a precinct structure plan applies;

private landholder has the same meaning as in section 71(3) of the **Duties Act 2000**;

S. 201R def. of *private landholder* inserted by No. 38/2012 s. 16(b).

public landholder has the same meaning as in section 71(4) of the **Duties Act 2000**;

S. 201R def. of *public landholder* inserted by No. 38/2012 s. 16(b).

public purpose land means land specified in a plan of subdivision of land as a lot, parcel or other area of land for any of the following purposes—

S. 201R def. of *public purpose land* inserted by No. 66/2016 s. 8.

(a) a utility installation;

(b) transport infrastructure;

(c) any other public purpose other than a purpose referred to in section 201RF;

relevant building surveyor has the same meaning as in section 3(1) of the **Building Act 1993**;

relevant day means—

(a) in the case of type A land or type B-1 land, the first announcement day;

(b) in the case of type B-2 land, the second announcement day;

(c) in the case of type C land, the day on which the land became type C land;

S. 201R def. of *school* inserted by No. 2/2012 s. 3.

school has the same meaning as in section 1.1.3 of the **Education and Training Reform Act 2006**;

second announcement day means 19 May 2009;

Note

19 May 2009 was the day on which the Minister gave public notice of the proposal for the scheme announced on the first announcement day to apply in respect of certain additional growth area land.

S. 201R def. of *Secretary to the Department of Transport* inserted by No. 6/2010 s. 203(1) (Sch. 6 item 35.2) (as amended by No. 45/2010 s. 22), repealed by No. 70/2013 s. 4(Sch. 2 item 36.4(b)).

* * * * *

Secretary to the Department of Economic Development, Jobs, Transport and Resources means the Secretary within the meaning of the **Transport Integration Act 2010**;

S. 201R def. of *Secretary to the Department of Transport, Planning and Local Infrastructure* inserted by No. 70/2013 s. 4(Sch. 2 item 36.4(c)), substituted as *Secretary to the Department of Economic Development, Jobs, Transport and Resources* by No. 11/2017 s. 67(b).

settlement in relation to a contract for the sale of land, means the time at which the purchaser becomes entitled to possession or to the receipt of rents and profits;

significant acquisition has the meaning set out in section 201RE;

single dwelling has the same meaning as in section 188A(4) of the **Building Act 1993**;

* * * * *

S. 201R def. of *statement of compliance* repealed by No. 7/2018 s. 14.

sub-sale of dutiable property has the meaning set out in section 201RD;

type A land is the land described in section 201RC(2);

type B-1 land is the land described in section 201RC(3);

type B-2 land is the land described in section 201RC(4);

type C land is the land described in section 201RC(5);

urban development area means land that is within a growth area and that is zoned under a planning scheme—

(a) for residential, industrial or business purposes; or

(b) as a Comprehensive Development Zone, a Priority Development Zone or an Urban Growth Zone;

S. 201R def. of *utility installation* amended by No. 31/2011 s. 4(1).

utility installation means an installation for the purposes of any of the following—

(a) the provision of telecommunication services;

(b) the transmission or distribution of gas, oil or power;

(c) the collection, treatment, transmission, storage or distribution of water;

(d) the collection, treatment or disposal of storm or flood water, sewage or sullage;

S. 201R def. of *work-in-kind agreement* inserted by No. 31/2011 s. 4(2).

work-in-kind agreement means an agreement entered into in accordance with Subdivision 2A of Division 2 and includes that agreement as amended in accordance with that Subdivision.

Subdivision 2—Other important terms

201RAA Minister may declare growth area

S. 201RAA inserted by No. 11/2017 s. 68.

(1) The Minister, by order published in the Government Gazette, may—

(a) declare an area of land in the municipal district of one or more municipal councils specified in subsection (2) to be a growth area; and

(b) add land to that declared area; and

(c) remove land from that declared area.

(2) For the purposes of subsection (1), the following municipal councils are specified—

(a) Cardinia Shire Council;

(b) Casey City Council;

(c) Hume City Council;

(d) Melton City Council;

(e) Mitchell Shire Council;

(f) Whittlesea City Council;

(g) Wyndham City Council.

(3) An order under subsection (1) may specify a growth area by reference to a map, description or document.

201RA GAIC events

S. 201RA inserted by No. 23/2010 s. 9.

For the purposes of this Part, a GAIC event means any of the following—

(a) the issue of a statement of compliance relating to a plan of subdivision of land in the contribution area;

(b) the making of an application for a building permit to carry out building work on land in the contribution area;

(c) the occurrence of a dutiable transaction relating to land in the contribution area—

but does not include an excluded event.

Note

Sections 201SC and 201SD set out when liability to pay a growth areas infrastructure contribution in respect of a GAIC event arises. In the case of type C land, GAIC events that occur before the commencement day will not attract GAIC liability but in the case of type A land, type B-1 land and type B-2 land, a GAIC event that occurs before the commencement day may attract GAIC liability.

S. 201RB inserted by No. 23/2010 s. 9.

201RB Excluded events

For the purposes of section 201RA, an ***excluded event*** means—

(a) the issue of a statement of compliance relating to a plan of subdivision of land in the contribution area that is an excluded subdivision of land; or

(b) the making of an application for a building permit to carry out building work on land in the contribution area that relates to excluded building work; or

(c) a dutiable transaction relating to land that is all or partly in the contribution area that involves the granting, transfer or assignment of a lease described in section 7(1)(b)(v) or 7(1)(b)(va) of the **Duties Act 2000** over that land; or

(d) in the case of any land in the contribution area—

(i) the issue of a statement of compliance relating to a plan of subdivision of the land, if a planning permit relating to the subdivision was granted before the relevant day and had not expired at the time of the issue of the statement of compliance; or

(ii) the making of an application for a building permit to carry out building work on the land, if a planning permit relating to that building work was granted before the relevant day and had not expired at the time of the making of the application; or

(iii) a dutiable transaction relating to the land (other than a significant acquisition), if a contract relating to that transaction was entered into before the relevant day; or

(iv) a significant acquisition of an interest in a landholder, if the acquisition occurred, or a contract for the acquisition was entered into, before the commencement day.

S. 201RB (d)(iv) amended by No. 38/2012 s. 17.

201RC Contribution area

S. 201RC inserted by No. 23/2010 s. 9.

(1) For the purposes of this Part, the contribution area consists of all type A land, type B-1 land, type B-2 land and type C land.

(2) Type A land is any land that—

(a) was brought within an urban growth boundary between 28 November 2005 and 31 December 2006 (inclusive of those days); and

(b) is within an urban development area on or after the first announcement day.

(3) Type B-1 land is any land in investigation areas 1 to 6 that is brought within a growth area, an urban growth boundary and an Urban Growth Zone on or after the first announcement day.

Note

The 3 criteria needed for the investigation area land to become type B-1 land do not have to occur at the same time.

(4) Type B-2 land is any land in investigation area 7 that is brought within a growth area, an urban growth boundary and an Urban Growth Zone on or after the second announcement day.

Note

The 3 criteria needed for the investigation area land to become type B-2 land do not have to occur at the same time.

(5) Type C land is any land (that is not type A land, type B-1 land or type B-2 land) that is brought within a growth area and an Urban Growth Zone on or after the commencement day.

Note

The 2 criteria needed for the land to become type C land do not have to occur at the same time.

S. 201RC(6) substituted by No. 31/2011 s. 5.

(6) If type A land ceases to be in an urban development area, that land ceases to be in the contribution area.

S. 201RC(6A) inserted by No. 31/2011 s. 5.

(6A) If type B-1 land, type B-2 land or type C land ceases to be in an Urban Growth Zone, that land ceases to be in the contribution area.

(7) In this section ***Urban Growth Zone*** means land that is designated in a planning scheme as an Urban Growth Zone.

201RD What is a sub-sale of dutiable property?

S. 201RD inserted by No. 23/2010 s. 9.

For the purposes of this Part, a sub-sale of dutiable property occurs if dutiable property referred to in section 10(1)(a) of the **Duties Act 2000** is transferred to a subsequent purchaser (within the meaning of Part 4A of Chapter 2 of that Act) as described in section 32B(1)(d), 32I(1)(d) or 32P(1)(d) of that Act.

201RE What is a significant acquisition?

S. 201RE inserted by No. 23/2010 s. 9.

(1) For the purposes of this Part, a person makes a significant acquisition if—

(a) the person acquires an interest in a landholder that is a relevant acquisition; or

S. 201RE(1)(a) amended by No. 38/2012 s. 18(1).

(b) after the relevant acquisition is made, that person or another person acquires any part of the remaining interest in the landholder.

S. 201RE(1)(b) amended by No. 38/2012 s. 18(1).

(1A) Subsection (1)(b) does not apply to a landholder that is a public landholder.

S. 201RE(1A) inserted by No. 38/2012 s. 18(2).

(2) In this section—

acquire in relation to an interest in a landholder has the same meaning as in section 80 of the **Duties Act 2000**;

S. 201RE(2) def. of *acquire* amended by No. 38/2012 s. 18(3)(a).

interest in relation to a landholder has the same meaning as in section 79(1) of the **Duties Act 2000**;

S. 201RE(2) def. of *interest* amended by No. 38/2012 s. 18(3)(b).

S. 201RE(2) def. of *relevant acquisition* amended by No. 38/2012 s. 18(3)(c).

relevant acquisition means a relevant acquisition within the meaning of section 78 (other than subsection (1)(b)), 81 or 82 of the **Duties Act 2000** in respect of which duty is chargeable under Part 2 of Chapter 3 of that Act and which is not an exempt acquisition within the meaning of that Part.

Examples

Example 1 to s. 201RE amended by No. 38/2012 s. 18(4).

1 B acquires a 60% interest in company XYZ Pty Ltd, which is a private landholder that owns land subject to GAIC. This acquisition is a relevant acquisition under section 78(1)(a)(i) of the **Duties Act 2000** and is a significant acquisition. B would be liable to pay 60% of the GAIC imposed in respect of the land subject to GAIC owned by XYZ. If C, after that significant acquisition, were to acquire 10% of the remaining interest in XYZ, C would be liable to pay 10% of the GAIC (indexed if applicable) imposed in respect of the land subject to GAIC owned by XYZ. Any further acquisitions of the remaining 30% interest in XYZ would also attract the imposition of GAIC in proportion to the interest acquired.

Example 2 to s. 201RE substituted as Example by No. 38/2012 s. 18(5), amended as Example 2 by No. 21/2013 s. 22.

2 RST Pty Ltd is a company that is a public landholder. In October 2012, Y acquires a 70% interest in RST. This is not a significant acquisition. In 2017, T obtains a 25% interest in RST. As Y and T are associated persons there has now been a significant acquisition made up of 95% of the interest in RST, therefore Y and T are jointly and severally liable to pay 95% of the indexed amount of GAIC payable in relation to land subject to GAIC owned by RST.

Subdivision 3—Excluded subdivisions and building work

S. 201RF inserted by No. 23/2010 s. 9.

201RF Excluded subdivisions of land

For the purposes of this Part, a subdivision of land is an excluded subdivision of land if—

S. 201RF(a)(b) repealed by No. 66/2016 s. 9(a).

* * * * *

(ba) the purpose of the subdivision is solely to provide a lot for a school or a proposed school; or

S. 201RF(ba) inserted by No. 2/2012 s. 4.

(c) the subdivision is carried out by a public authority or a municipal council and no additional lots are created; or

(d) the subdivision is carried out by a public authority or a municipal council and the following apply—

(i) the subdivision has resulted in the creation of additional lots, some of which no longer have a right of access to an existing road; and

(ii) each additional lot created by the subdivision that has no right of access to a road is retained by the public authority or a municipal council or sold to the owner of abutting land on condition that the lot is consolidated with that land; or

(e) the purpose of the subdivision is solely to realign the common boundary between 2 lots and the area of either lot after the realignment is reduced by no more than 5% of its original area; or

S. 201RF(e) amended by No. 66/2016 s. 9(b).

Example

The realignment of boundaries to accord with existing fence lines.

S. 201RF(f) amended by No. 66/2016 s. 9(b).

(f) the purpose of the subdivision is solely to create a lot not exceeding 2 hectares for the purposes of excising an existing dwelling on the land; or

Example

A land owner subdivides a 40 hectare parcel of land with an existing house into 2 lots—one lot is 38 hectares in area and the other lot is 2 hectares in area and the house is situated on that smaller lot.

S. 201RF(g) amended by No. 66/2016 s. 9(b).

(g) the land to be subdivided is not wholly in the contribution area and the purpose of the subdivision is solely to create 2 lots, one lot being land entirely in the contribution area and the other lot being land that is not in the contribution area.

S. 201RG inserted by No. 23/2010 s. 9.

201RG Excluded building work

(1) For the purposes of this Part, excluded building work is—

(a) the demolition of a building or part of a building; or

(b) the construction of a single dwelling; or

(c) the repair or reinstatement of an existing building; or

S. 201RG (1)(ca) inserted by No. 2/2012 s. 5.

(ca) building work relating to a school or proposed school including purposes ancillary to a school; or

(d) any other building work with a value of less than the threshold amount.

(2) In this section—

threshold amount means—

(a) for building permits issued before or during the 2010/2011 financial year, $1 million; or

(b) for building permits issued in subsequent financial years, the amount determined in accordance with Part 3 of Schedule 1;

value in relation to building work means the cost of the building work on which the building permit levy is calculated under Subdivision 4 of Division 2 of Part 12 of the **Building Act 1993**.

S. 201RG(2) def. of *value* amended by No. 34/2013 s. 35(Sch. 2 item 7).

(3) The Growth Areas Authority must publish the threshold amount calculated under Part 3 of Schedule 1 for the 2011/2012 financial year and each succeeding financial year until and including the 2017/2018 financial year before 1 June in the financial year immediately preceding that financial year—

S. 201RG(3) amended by No. 11/2017 s. 69.

(a) in the Government Gazette; and

(b) on the Growth Areas Authority's Internet site.

(4) The Victorian Planning Authority must publish the threshold amount calculated under Part 3 of Schedule 1 for the 2018/2019 financial year and each succeeding financial year before 1 June in the financial year immediately preceding that financial year—

S. 201RG(4) inserted by No. 11/2017 s. 69(2).

(a) in the Government Gazette; and

(b) on the Victorian Planning Authority's Internet site.

Subdivision 4—General

S. 201RH inserted by No. 23/2010 s. 9.

201RH Taxation Administration Act 1997

(1) This Part is to be read together with the **Taxation Administration Act 1997** which provides for the administration and enforcement of this Part and other taxation laws.

S. 201RH(2) amended by No. 11/2017 s. 70.

(2) Despite subsection (1), nothing in the **Taxation Administration Act 1997** makes a director, officer or employee of the Victorian Planning Authority or the Department a tax officer within the meaning of that Act.

S. 201RI inserted by No. 23/2010 s. 9.

201RI Part binds the Crown

This Part binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Division 2—Imposition of growth areas infrastructure contribution

Subdivision 1—Liability for GAIC

S. 201S inserted by No. 23/2010 s. 9.

201S Imposition of growth areas infrastructure contribution

S. 201S(1) amended by No. 66/2016 s. 10(1).

(1) Subject to this section and section 201SA, a growth areas infrastructure contribution is imposed in respect of the first GAIC event to occur in relation to any land in the contribution area unless the person liable to pay the contribution is exempted from that liability, in which case a growth areas infrastructure contribution is imposed in respect of the next GAIC event that occurs in relation to that land.

Note

Exemptions and reductions of liability to pay growth areas infrastructure contributions are set out in Division 3.

(2) Subject to this section and section 201SLA, a growth areas infrastructure contribution may be imposed once only in respect of any land in the contribution area.

S. 201S(2) amended by No. 66/2016 s. 10(1).

(3) Where a dutiable transaction relating to land in the contribution area has occurred in relation to less than the whole of the interest in the land or in a landholder that owns the land and a growth areas infrastructure contribution was imposed in respect of that transaction, any further GAIC event that occurs in relation to a remaining interest in that land or landholder is a first GAIC event relating to that interest.

S. 201S(3) amended by No. 38/2012 s. 19(1).

Examples

1 Where land is jointly owned and one owner transfers his or her 30% interest in the land, that transfer will be the first GAIC event in relation to that 30% interest in the land. The purchaser will be liable to pay 30% of the GAIC payable in respect of the land. If the land is then subdivided, the subdivision will be a first GAIC event relating to the remaining 70% interest in the land and the remaining 70% of the GAIC will be payable in respect of that GAIC event by the owners of that 70% interest.

2 XYZ Pty Ltd is a private landholder that owns land subject to GAIC. A, B and C each hold respectively 30%, 30% and 40% interests in XYZ. D acquires the interests of A and B which is a significant acquisition, and is the first GAIC event relating to those interests. D will be liable to pay 60% of the GAIC payable in respect of the land. E then acquires D's 60% interest in XYZ but as GAIC has already been paid in respect of that interest, E is not liable to pay any GAIC on the acquisition. XYZ then transfers the land to IPL Pty Ltd. This dutiable transaction relating to land is a first GAIC event relating to the remaining interest in XYZ, and IPL will be liable to pay the remaining 40% of the GAIC (as indexed if applicable) payable in respect of the land.

Example 2 to s. 201S amended by No. 38/2012 s. 19(2).

S. 201S(4) inserted by No. 66/2016 s. 10(2).

(4) If the first GAIC event that occurs in relation to any land in the contribution area is the issue of a statement of compliance relating to a plan of subdivision of land and the sole purpose of the plan of subdivision of land is to provide for public purpose land—

(a) the growth areas infrastructure contribution is not imposed in respect of that GAIC event to the extent that the plan of subdivision of land relates to any part of the land that is not public purpose land (the ***balance land***); and

(b) the next GAIC event that occurs in relation to any part of the balance land is a first GAIC event for the purposes of this section.

Example

The owner of land in the contribution area applies to subdivide the land for the sole purpose of providing for the construction of a road. The issue of the statement of compliance relating to the plan of subdivision of land is a first GAIC event to the extent that the plan relates to public purpose land. A GAIC is imposed under subsection (1) and is payable under section 201SL within 3 months after the date of issue of the statement of compliance. The amount of the GAIC is calculated under section 201SG by reference to the area of the public purpose land. A GAIC is not imposed under subsection (1) on the issue of the statement of compliance to the extent that the plan of subdivision relates to the balance land. A GAIC will be imposed on the next GAIC event that occurs in relation to any part of the balance land.

S. 201SA inserted by No. 23/2010 s. 9.

201SA Circumstances where GAIC not imposed

Section 201S does not apply in respect of the following land—

(a) any land or part of any land that is the subject of a dutiable transaction relating to that land, if the land or part—

(i) has a total lot area of between 0·41 hectares and 10 hectares, or is part of a lot (the other part of the lot not being in the contribution area) and that part of the lot has a total lot area of between 0·41 hectares and 10 hectares; and

(ii) immediately before the commencement day had a habitable dwelling on it; or

(b) any land or part of any land that is the subject of a dutiable transaction relating to that land, if the land or part—

(i) has a total lot area of between 0·41 hectares and 5 hectares; or

(ii) is part of a lot (the other part of the lot not being in the contribution area) and that part of the lot has a total lot area of between 0·41 hectares and 5 hectares; or

(c) any land or part of any land that is the subject of a dutiable transaction relating to that land, if there is at the time of the occurrence of the transaction and on the relevant day—

(i) a registered restrictive covenant, or an agreement made under section 173, prohibiting subdivision of that land or part; or

(ii) a registered restrictive covenant, or an agreement made under section 173, limiting the use of that land or part to residential purposes and to the erection of a single dwelling; or

(d) any land or part of any land that is the subject of a GAIC event, if—

(i) the land or part on the relevant day and at the time of the occurrence of the event had a total lot area of 0·41 hectares or less; or

S. 201SA(d)(ii) substituted by No. 31/2011 s. 6.

(ii) the land or part—

(A) was specified as a lot having an area of 0·41 hectares or less in a plan of subdivision authorised by a planning permit referred to in section 201RB(d)(i) and registration of the plan had taken effect before the time of the occurrence of the GAIC event; and

(B) is a lot having an area of 0·41 hectares or less at the time of the occurrence of the GAIC event; or

(iii) the land or part—

(A) was a lot created by an excluded subdivision of land referred to in section 201RF(f) or (g); and

(B) is a lot having an area of 0·41 hectares or less at the time of the occurrence of the GAIC event.

S. 201SB inserted by No. 23/2010 s. 9.

201SB Liability for GAIC taken not to have arisen in certain circumstances

Any liability to pay a growth areas infrastructure contribution that arises in respect of a GAIC event that occurs in relation to land in the contribution area is taken never to have arisen if—

(a) in the case of the issue of a statement of compliance relating to a plan of subdivision, the Registrar of Titles does not register the plan for any reason other than the reason that the requirements of section 22(1)(g) of the **Subdivision Act 1988** have not been complied with; or

(b) in the case of an application for a building permit—

(i) the application is withdrawn; or

(ii) the relevant building surveyor refuses to issue the building permit for any reason other than the reason that the requirements of section 24(4) of the **Building Act 1993** have not been complied with; or

(c) in the case of a dutiable transaction relating to land, the instrument that was intended to effect the transaction failed to give effect to the transaction within the meaning of section 260 of the **Duties Act 2000**.

201SC Liability for GAIC arising when GAIC event occurs

S. 201SC inserted by No. 23/2010 s. 9.

Liability to pay a growth areas infrastructure contribution arises when the relevant GAIC event occurs if the event—

(a) occurs on or after the commencement day; and

(b) relates to land that at the time of the event is in the contribution area.

Notes

1 See section 201SE for the time at which a GAIC event occurs.

2 See section 201RC for descriptions of the 4 types of contribution area land.

S. 201SD inserted by No. 23/2010 s. 9.

201SD Liability for GAIC arising after GAIC event occurs

(1) This section sets out the circumstances in which liability to pay a growth areas infrastructure contribution may arise after a GAIC event has occurred.

(2) In the case of type A land, liability to pay a growth areas infrastructure contribution arises on the commencement day if—

(a) a GAIC event occurred on or after the first announcement day and before the commencement day; and

(b) the land was brought within an urban development area before the commencement day.

(3) In the case of type B-1 land or type B-2 land, liability to pay a growth areas infrastructure contribution arises—

(a) if the GAIC event occurred on or after the first announcement day (in the case of type B-1 land) or on or after the second announcement day (in the case of type B-2 land) and before the commencement day—

(i) on the commencement day if the land was brought within a growth area, an urban growth boundary and an Urban Growth Zone before that day; or

(ii) on any later day within the 12 month period after the commencement day when the last of the following things has occurred—

(A) the land is brought within a growth area;

(B) the land is brought within an urban growth boundary;

(C) the land is brought within an Urban Growth Zone;

(b) if the GAIC event occurs after the commencement day and within the 12 month period after that day, on any later day after the event within that period when the last of the following things has occurred—

(i) the land is brought within a growth area;

(ii) the land is brought within an urban growth boundary;

(iii) the land is brought within an Urban Growth Zone;

Note

See section 201SE for the time at which a GAIC event occurs.

201SE Time of occurrence of GAIC event

S. 201SE inserted by No. 23/2010 s. 9.

For the purposes of this Part, a GAIC event occurs—

(a) in the case of a plan of subdivision of land, when the statement of compliance relating to the plan of subdivision is issued;

(b) in the case of an application for a building permit, when the application is made;

(c) in the case of a dutiable transaction relating to land other than a significant acquisition, at the time at which the transaction would be taken to have occurred under Chapter 2 of the **Duties Act 2000**;

(d) in the case of a significant acquisition—

(i) if the acquisition occurs on a particular day, on that day; or

(ii) if the acquisition occurs over a period of time, on the last day of that period.

S. 201SF inserted by No. 23/2010 s. 9.

201SF Persons liable to pay GAIC

(1) Subject to subsections (3) and (4), the person who is liable to pay a growth areas infrastructure contribution imposed in respect of a dutiable transaction relating to land in the contribution area is the person who would be taken to be the transferee in respect of that transaction under Part 1 of Chapter 2 of the **Duties Act 2000**.

Notes

1 In the case of a transfer of land, this would be the purchaser of the land.

2 Purchasers of land under certain contracts for the sale of land may deduct the amount of the GAIC payable at settlement from the purchase price of the land under section 50 of the **Sale of Land Act 1962**.

(2) The person who is liable to pay a growth areas infrastructure contribution imposed in respect of the issue of a statement of compliance relating to a plan of subdivision of, or an application for a building permit to carry out building work on, land in the contribution area is the person who owns the land immediately after the statement is issued or the application is made (as the case may be).

(3) In the case of a sub-sale of dutiable property referred to in section 10(1)(a) of the **Duties Act 2000**, a person who is liable to pay a growth areas infrastructure contribution imposed in respect of that sub-sale is the subsequent purchaser to whom the property is transferred.

(4) In the case of a significant acquisition, the following persons are jointly and severally liable to pay the growth areas infrastructure contribution imposed in respect of the acquisition—

(a) the person who makes the acquisition; and

(b) the landholder, or if the landholder is a unit trust scheme (within the meaning of the **Duties Act 2000**), the trustee of the landholder; and

S. 201SF(4)(b) amended by No. 38/2012 s. 20.

(c) if the significant acquisition results from an aggregation of acquisitions by the person referred to in paragraph (a) and other persons—each of those other persons.

(5) For the purpose of assessing a growth areas infrastructure contribution under this Act in relation to land in the contribution area, joint tenants of that land are taken to hold the land as tenants in common in equal shares.

Note

Other persons may be liable to pay a growth areas infrastructure contribution under section 201SMAA or 201SRA.

Note to s. 201SF(5) amended by No. 31/2011 s. 7.

Subdivision 2—Amount of GAIC and when payable

201SG Amount of GAIC

S. 201SG inserted by No. 23/2010 s. 9.

(1) The amount of a growth areas infrastructure contribution payable in respect of a GAIC event that occurs in a financial year is based on the growth areas infrastructure contribution payable per hectare for that financial year under this section.

(2) In calculating the amount of growth areas infrastructure contribution under subsection (1) the area of land in hectares will be rounded off to the fifth decimal point.

Example

If the area of the land is 93·675897 hectares, the growth areas infrastructure contribution will be calculated on 93·67590 hectares.

(3) Subject to section 201SI, the amount of the growth areas infrastructure contribution that is payable in the 2010/2011 financial year is—

(a) for type A land—$80 000 per hectare;

(b) for type B-1 land or type B-2 land—$95 000 per hectare;

(c) for type C land—$95 000 per hectare.

Examples

1 A person sells a parcel of land in October 2010 that has a total area of 10 hectares consisting of 3 lots of land on separate titles. Lot 1 is 3 hectares in area and is not in the contribution area and lot 2 is 3 hectares in area and is in the contribution area but GAIC does not apply to that land under section 201SA because it is subject to a registered restrictive covenant that prohibits subdivision. However lot 3 is 4 hectares in area and is type A land. In this case the purchaser will be liable to pay a GAIC of $320 000 in relation to the lot 3 land only.

2 A person who co-owns a 5 hectare lot of type A land as a tenant in common sells his or her 20% interest in the land in October 2010. The purchaser of the land will be liable to pay a GAIC of $80 000. If any of the co-owners, who hold the remaining 80% interest in the land, disposes of his or her interest in the land, the relevant purchaser will be liable to pay the GAIC (indexed if applicable) in proportion to that interest.

Example 3 to s. 201SG(3) amended by No. 38/2012 s. 21.

3 A person obtains a 50% interest in a private landholder company which owns 2 hectares of type A land (a significant acquisition). The person would be liable to pay 50% of the GAIC in respect of the type A land based on the relevant contribution rate for that financial year. If the rate was $84 000 per hectare for type A land in that year, the amount payable would be $84 000.

(4) Subject to section 201SI, the amount of the growth areas infrastructure contribution payable in the 2011/2012 financial year and in each subsequent financial year is—

(a) for type A land—the adjusted contribution for that financial year for that type of land per hectare;

(b) for type B-1 land or type B-2 land—the adjusted contribution for that financial year for that type of land per hectare;

(c) for type C land—the adjusted contribution for that financial year for that type of land per hectare.

(5) The Minister must publish the amount of the adjusted contribution for each type of land for the 2011/2012 financial year and each succeeding financial year before 1 June in the financial year immediately preceding that financial year—

(a) in the Government Gazette; and

(b) on the Department's Internet site.

(6) In this section the ***adjusted contribution*** for each type of land is—

(a) an amount of growth areas infrastructure contribution fixed by the Minister under section 201SH for that type of land; or

(b) if no amount is fixed under section 201SH, the maximum adjusted growth areas infrastructure contribution calculated in accordance with Part 4 of Schedule 1 for that type of land and approved by the Minister.

S. 201SG(7) amended by No. 11/2017 s. 71.

(7) The Victorian Planning Authority must calculate the maximum adjusted growth areas infrastructure contribution amounts for type A land, type B-1 land, type B-2 land and type C land in accordance with Part 4 of Schedule 1 and submit those calculations to the Minister for approval.

S. 201SGA inserted by No. 66/2016 s. 11.

201SGA Apportionment of GAIC on issue of statement of compliance

(1) A growth areas infrastructure contribution imposed in respect of the issue of a statement of compliance relating to a plan of subdivision of any land in the contribution area (a ***parent lot***) must be apportioned between each lot, parcel or other area of land referred to in the plan (a ***child lot***) so that the apportionment meets the requirement under subsection (2).

(2) For the purposes of subsection (1), the requirement is that the proportion of the growth areas infrastructure contribution that is apportioned to a child lot is the same as the proportion that the area of the child lot bears to the area of the parent lot.

S. 201SH inserted by No. 23/2010 s. 9.

201SH Minister may fix lower increase in GAIC

(1) The Minister, with the agreement of the Treasurer, may fix the adjusted growth areas infrastructure contribution for type A land, type B-1 land, type B-2 land or type C land at a lower amount than the maximum adjusted growth areas infrastructure contribution calculated in accordance with section 201SG for that type of land in a particular financial year.

(2) An amount of growth areas infrastructure contribution fixed by the Minister under subsection (1) for a type of land in a particular financial year must not be less than the amount of growth areas infrastructure contribution payable in

respect of that type of land in the financial year immediately preceding that financial year.

201SI Governor in Council may fix lower GAIC

S. 201SI inserted by No. 23/2010 s. 9.

(1) The Governor in Council, on the recommendation of the Minister, may, by order, fix an amount of growth areas infrastructure contribution payable for any financial year in respect of any one or more of the types of land referred to in section 201SG that are in a particular growth area that is lower than the amount that would have otherwise applied under section 201SG in respect of that land.

(2) The Minister may make a recommendation under this section only with the agreement of the Treasurer.

(3) An order made under this section in respect of a financial year—

(a) must be published in the Government Gazette before 1 June in the financial year immediately preceding that financial year; and

(b) has effect from the beginning of the financial year in respect of which the amount is fixed.

Note

The Governor in Council may fix a lower amount of growth areas infrastructure contribution in respect of any one or more of the types of land referred to in section 201SG that are in a particular growth area for the 2010/2011 financial year under section 218.

S. 201SJ inserted by No. 23/2010 s. 9.

201SJ Instrument or statement must be lodged evidencing dutiable transaction

(1) Subject to this section, a person who is liable to pay a growth areas infrastructure contribution in respect of a dutiable transaction relating to land must, within 3 months after the liability to pay the contribution arises, lodge with the Commissioner any written instrument that effects the transaction.

(2) If the dutiable transaction is not effected by a written instrument, the person must, within 3 months after the liability to pay the growth areas infrastructure contribution arises, lodge with the Commissioner a written statement.

(3) The statement must be in a form approved by the Commissioner.

(4) Subsection (1) does not apply to a person who has lodged with the Commissioner under section 15 of the **Duties Act 2000** an instrument or instruments effecting the dutiable transaction relating to land within that 3 month period.

(5) Subsection (2) does not apply to a person who has lodged with the Commissioner under section 14 of the **Duties Act 2000** a written statement relating to the dutiable transaction relating to land within that 3 month period.

(6) This section does not apply in respect of—

(a) a dutiable transaction relating to land that is effected electronically in accordance with the **Electronic Transactions (Victoria) Act 2000**; or

(b) a significant acquisition, if an acquisition statement has been lodged in respect of that significant acquisition in accordance with section 201SK.

201SK Acquisition statement

S. 201SK inserted by No. 23/2010 s. 9.

(1) A person who makes a significant acquisition of an interest in a landholder must prepare an acquisition statement in accordance with subsection (3) and lodge it with the Commissioner within 3 months after the date of the acquisition.

S. 201SK(1) amended by No. 38/2012 s. 22(1).

(2) If the landholder prepares and lodges the acquisition statement in accordance with this section, the person who makes the significant acquisition need not comply with subsection (1).

S. 201SK(2) amended by No. 38/2012 s. 22(1).

(3) The acquisition statement must be in a form approved by the Commissioner and must contain the following information—

(a) a description of the land of the landholder to which the acquisition relates as at the date of the acquisition, including the size of the land;

(b) the name and address of the person who has acquired the interest;

(c) the amount of interest in the landholder that has been acquired;

(d) the date on which the interest was acquired;

(e) if the significant acquisition results from the aggregation of the interests of associated persons, particulars of the interests acquired by the person and any associated persons;

S. 201SK(3)(e) amended by No. 38/2012 s. 22(2)(a).

(f) if the significant acquisition results from the aggregation of the interests of persons who acquired interests because of section 78(1)(a)(ii) of the **Duties Act 2000**, particulars of the interests acquired by the person and all other persons involved;

S. 201SK(3)(f) amended by No. 38/2012 s. 22(2)(b).

(g) any other information that the Commissioner may require.

S. 201SL inserted by No. 23/2010 s. 9.

201SL When and to whom the GAIC is payable

S. 201SL(1) amended by No. 66/2016 s. 12.

(1) Subject to sections 201SMAA, 201SP, 201SPAA and 201SS, if liability to pay a growth areas infrastructure contribution arises on the day on which the relevant GAIC event occurs, the contribution (whether in whole or in part) must be paid to the Commissioner—

(a) in the case of liability arising from issue of a statement of compliance, within 3 months after the liability arises;

(b) in the case of liability arising from an application for a building permit, before the permit is issued;

(c) in the case of liability arising from a dutiable transaction relating to land, within 3 months after the liability arises.

S. 201SL(2) amended by Nos 31/2011 s. 8(1), 66/2016 s. 12.

(2) Subject to sections 201SMAA, 201SP, 201SPAA and 201SS, if liability to pay a growth areas infrastructure contribution arises after the relevant GAIC event occurs, the person liable to pay the contribution (whether in whole or in part) must pay the contribution to the Commissioner within 3 months after the liability arises.

Note

The circumstances in which liability may arise later than the time at which a GAIC event occurs are set out in section 201SD.

(3) In subsections (1) and (2), a reference to a growth areas infrastructure contribution does not include any part of a growth areas infrastructure contribution that is deferred under section 201SM.

(4) Nothing in this section prevents a person paying to the Commissioner a growth areas infrastructure contribution that the person may be liable to pay in respect of a GAIC event that has not yet occurred.

S. 201SL(5) inserted by No. 31/2011 s. 8(2).

(5) Despite subsections (1) and (2), if an application is made under section 201TE, 201TF, 201TH or 201TI for a reduction of, or an exemption from, the whole or part of a person's liability to pay a growth areas infrastructure contribution, the contribution must be paid to the Commissioner by the later of the following—

(a) the day by which the contribution must be paid under subsection (1) or (2) (as the case requires);

(b) within 14 days after the person who made the application receives a notice under section 201TG or 201TK of the determination of the application.

Note

The period within which a growth areas infrastructure contribution must be paid can also be extended by the Growth Areas Infrastructure Contribution Hardship Relief Board under section 201TJ(4)(d).

S. 201SLA inserted by No. 23/2010 s. 9.

201SLA Refund of GAIC if land no longer in contribution area

(1) Subject to subsection (2), if land in respect of which a growth areas infrastructure contribution has been paid ceases to be in the contribution area within 3 years after the liability to pay the contribution arose, the person who paid the contribution is entitled to a refund by the Commissioner under Part 4 of the **Taxation Administration Act 1997** of that contribution including any indexation of that contribution.

(2) If the person who paid the growth areas infrastructure contribution under subsection (1) was a purchaser of land under a contract for the sale of land of a class referred to in section 50(1) of the **Sale of Land Act 1962** and that purchaser deducted the amount of the contribution from the purchase price under section 50(2) of that Act, the taxpayer is taken to be the vendor of that land under that contract for the sale of land for the purposes of Part 4 of the **Taxation Administration Act 1997**.

(3) If land referred to in subsection (1) subsequently becomes land that is in the contribution area, section 201S(1) applies as if the next GAIC event, which occurs in relation to that land after it becomes land that is in the contribution area, is the first GAIC event that occurs in relation to that land.

(4) Nothing in this section entitles a person who has been given approval under Subdivision 4 for the staged payment of a growth areas infrastructure contribution to a refund of that contribution.

Pt 9B Div. 2 Subdiv. 2A (Heading and ss 201SLB–201SLN) inserted by No. 31/2011 s. 9.

Subdivision 2A—Work-in-kind agreements

S. 201SLB inserted by No. 31/2011 s. 9.

201SLB Minister may enter into agreements

(1) The Minister may, in accordance with this Subdivision, enter into an agreement with a person for the provision by that person of land or works or a combination of land and works to meet the whole or part of that person's liability or expected liability to pay a growth areas

infrastructure contribution (a ***work-in-kind agreement***).

(2) A work-in-kind agreement may be entered into with other parties in addition to the person liable to pay the growth areas infrastructure contribution.

Note

Other parties may include another Minister or a public authority or an owner of land affected by the work-in-kind agreement.

(3) The land or works to be provided under a work-in-kind agreement must be—

(a) situated in a growth area; and

(b) of a type that may be funded from the Growth Areas Public Transport Fund under section 201VA or from the Building New Communities Fund under section 201VB.

(4) A work-in-kind agreement relating to a growth areas infrastructure contribution must be entered into before the day on which the contribution is payable.

(5) A work-in-kind agreement relating to a growth areas infrastructure contribution may be entered into whether or not the liability to pay the contribution arose before the commencement of this Subdivision.

(6) A work-in-kind agreement relating to a growth areas infrastructure contribution may be entered into in conjunction with the deferral of that contribution under Subdivision 3 or an approval for staged payment of that contribution under Subdivision 4.

(7) Before agreeing to enter into a work-in-kind agreement, the Minister must—

(a) consult with any other Minister that the Minister considers has a relevant interest in the subject matter of the agreement; and

(b) if the value of the work-in-kind agreement (within the meaning of section 201SLC(1)(e)) exceeds $2 million, obtain the approval of the Treasurer.

S. 201SLC inserted by No. 31/2011 s. 9.

201SLC Matters to be included in a work-in-kind agreement

(1) A work-in-kind agreement must include the following matters—

(a) a description of any works to be carried out under the agreement;

(b) a description of the land on which any works are to be carried out under the agreement;

(c) a description of any land to be transferred under the agreement;

(d) the due date by which the agreement or any stage of the agreement is to be performed;

(e) the agreed value of any land to be transferred under the agreement or the agreed value of any works to be carried out under the agreement or the agreed value of the combination of both of those things (as the case requires) (the ***value of the work-in-kind agreement***);

(f) the method or methods for calculating the value of works to be carried out under the agreement if they are only partly carried out;

(g) dispute resolution procedures;

(h) any other matters that the Minister thinks appropriate.

(2) A work-in-kind agreement may include provisions setting out the circumstances in which the agreement is ended wholly or as to any part of the land affected by the agreement.

201SLD Work-in-kind agreement may contain restriction on land dealings

S. 201SLD inserted by No. 31/2011 s. 9.

(1) A work-in-kind agreement may contain a term that restricts a person, who has entered into the agreement to meet a liability to pay a growth areas infrastructure contribution or another person who is a party to the agreement, from any dealing or dealings with the following land unless the person has obtained the consent of the Minister—

(a) land that is to be transferred under the agreement;

(b) land on which works are to be carried out under the agreement (other than Crown land);

(c) the whole or part of the land in respect of which the growth areas infrastructure contribution is imposed.

(2) In this section, ***dealing***, in relation to land, includes entering into any sale, transaction or arrangement, or obtaining or granting any lease, licence or approval, with respect to the land, or making any improvements of a durable nature to the land, but does not include any of the following—

(a) a sale of any of the land to the person to whom the land is to be transferred under the work-in-kind agreement;

(b) any approvals relating to a plan of subdivision of the land to enable a sale of land for the purposes of paragraph (a);

(c) any works required to be carried out on the land under the work-in-kind agreement or approvals relating to those works;

(d) any approvals relating to the plan of subdivision of the land or building works to be carried out on the land in respect of which the growth areas infrastructure contribution is imposed;

(e) the discharging of the whole or any part of the land from any mortgage affecting that land.

S. 201SLE (Heading) amended by No. 11/2017 s. 72(1).

S. 201SLE inserted by No. 31/2011 s. 9, amended by No. 11/2017 s. 72(2).

201SLE Copy of work-in-kind agreement must be given to Commissioner and Victorian Planning Authority

The Minister must give the Commissioner and the Victorian Planning Authority a copy of a work-in-kind agreement entered into under this Subdivision.

S. 201SLF inserted by No. 31/2011 s. 9.

201SLF Amendment of work-in-kind agreement

(1) The Minister may, with the agreement of the person who has entered into a work-in-kind agreement to meet a liability to pay a growth areas infrastructure contribution and all other parties to the agreement, amend the agreement to vary the terms of, or the parties to, the agreement.

S. 201SLF(2) amended by No. 11/2017 s. 73.

(2) The Minister must give to the Commissioner and the Victorian Planning Authority a copy of a work-in-kind agreement amended under subsection (1).

201SLG Ending of work-in-kind agreement

S. 201SLG inserted by No. 31/2011 s. 9.

(1) The Minister may, with the agreement of the person who has entered into a work-in-kind agreement to meet a liability to pay a growth areas infrastructure contribution and all other parties to the agreement, end a work-in-kind agreement.

S. 201SLG(2) amended by No. 11/2017 s. 74.

(2) The Minister must notify, in writing, the Commissioner and the Victorian Planning Authority of the ending of a work-in-kind agreement under subsection (1).

(3) The power to end a work-in-kind agreement under subsection (1) is in addition to any other right that the Minister has to end a work-in-kind agreement in accordance with the agreement or at law.

201SLH Work-in-kind agreements to be recorded by Registrar of Titles

S. 201SLH inserted by No. 31/2011 s. 9.

(1) The Minister must apply to the Registrar of Titles to record a work-in-kind agreement on any folio of the Register relating to the following land (the ***land affected by the work-in-kind agreement***)—

(a) land that is to be transferred under the agreement;

(b) land on which works are to be carried out under the agreement (other than Crown land);

(c) the whole or part of the land in respect of which the growth areas infrastructure contribution relating to the agreement is imposed.

(2) An application must—

(a) be in a form approved by the Registrar of Titles; and

(b) be accompanied by a copy of the work-in-kind agreement.

(3) The Registrar of Titles, on receiving an application that complies with subsection (2), may make a recording on each folio of the Register relating to land affected by the work-in-kind agreement.

(4) After the making of a recording in the Register—

(a) the burden of any covenant in the work-in-kind agreement runs with the land affected by that burden; and

(b) the Minister may enforce the covenant against any person deriving title from any person who entered into the covenant as if it were a restrictive covenant despite the fact that it may be positive in nature or that it is not for the benefit of any land of the Crown.

(5) The Minister must apply to the Registrar of Titles—

(a) if an amendment is made to the work-in-kind agreement, for the Registrar of Titles to remove the existing agreement from each folio of land on which the agreement is recorded and record the amended agreement on each folio of the Register relating to land affected by the work-in-kind agreement; or

(b) if a work-in-kind agreement is ended wholly or as to any part of the land, for the Registrar of Titles to, as appropriate, remove in whole or in part the recording of the agreement from any folio of the Register on which the agreement is recorded.

(6) An application under subsection (5) must—

(a) be in a form approved by the Registrar of Titles; and

(b) in the case of a work-in-kind agreement that has been amended, be accompanied by a copy of the agreement in its amended form.

(7) The Registrar of Titles, on receiving an application that complies with subsection (6), may (as the case requires)—

(a) remove the existing agreement from each folio of land on which the agreement is recorded and record the amended agreement on each folio of the Register relating to land affected by the work-in-kind agreement; or

(b) as appropriate, remove in whole or in part the recording of the agreement from any folio of the Register on which the agreement is recorded.

201SLI Restrictions on dealings with land

S. 201SLI inserted by No. 31/2011 s. 9.

(1) A person, who is subject to a restriction on dealing with land that has been specified in a work-in-kind agreement in accordance with section 201SLD, must not, without the consent of the Minister, enter into or effect such a dealing with that land (within the meaning of section 201SLD) while the agreement is in force.

(2) Nothing in this section prevents—

(a) a mortgagee from exercising a power of foreclosure or sale in respect of the whole or any part of land that is subject to a restriction referred to in subsection (1); or

(b) an application to the Registrar of Titles for the registration of a charge in respect of unpaid tax (within the meaning of the **Taxation Administration Act 1997**) over the whole or any part of land that is subject to a restriction referred to in subsection (1).

S. 201SLJ inserted by No. 31/2011 s. 9.

201SLJ Entering into a work-in-kind agreement does not discharge GAIC

The entering into a work-in-kind agreement by a person to meet the whole or part of a liability to pay a growth areas infrastructure contribution does not discharge the person from that liability.

Note

It is not until the person performs their obligations in accordance with the work-in-kind agreement that the value of the land or works provided can be taken to be a payment towards the growth areas infrastructure contribution owed (see section 201SLM).

S. 201SLK (Heading) amended by No. 11/2017 s. 75(1).

S. 201SLK inserted by No. 31/2011 s. 9, amended by No. 11/2017 s. 75(2).

201SLK Person must notify the Victorian Planning Authority of performance of agreement

A person who has entered into a work-in-kind agreement to meet a liability to pay a growth areas infrastructure contribution must, without delay, notify the Victorian Planning Authority in writing of the following—

(a) the performance of the agreement;

(b) the performance of any stage of the agreement that must be performed by a due date specified in the agreement;

(c) if the agreement is not wholly performed by the due date for performance, how much of the agreement has been performed.

201SLL Victorian Planning Authority must determine whether agreement has been performed

S. 201SLL (Heading) amended by No. 11/2017 s. 76(1).

S. 201SLL inserted by No. 31/2011 s. 9.

(1) The Victorian Planning Authority acting on behalf of the Minister must, after receiving notification under section 201SLK, determine the following—

S. 201SLL(1) amended by No. 11/2017 s. 76(2).

(a) whether a work-in-kind agreement or a stage of a work-in-kind agreement, which has an agreed value under the agreement, has been performed by the due date for performance;

(b) if a work-in-kind agreement has only been partly performed by the due date for performance or before it has been ended in accordance with section 201SLG(1), the value of the land or works provided in accordance with the agreement.

(2) The Victorian Planning Authority must, without delay, notify the Commissioner in writing of any determination made under subsection (1).

S. 201SLL(2) amended by No. 11/2017 s. 76(2).

201SLM Performance of work-in-kind agreement taken to be payment of GAIC

S. 201SLM inserted by No. 31/2011 s. 9.

(1) A person who has entered into a work-in-kind agreement to meet the whole or part of a liability to pay a growth areas infrastructure contribution is taken to have paid to the Commissioner an amount of that contribution that is equivalent to—

(a) if the agreement is wholly performed, the agreed value of the agreement; or

(b) if a stage of the agreement is wholly performed, the agreed value of that stage; or

S. 201SLM (1)(c) amended by No. 11/2017 s. 77.

(c) if the agreement is partly performed, the value of the land or works provided under the agreement as determined by the Victorian Planning Authority.

S. 201SLM(2) amended by No. 11/2017 s. 77.

(2) A person is taken to have paid an amount of a growth areas infrastructure contribution under subsection (1) at the time at which the Commissioner receives a notice from the Victorian Planning Authority under section 201SLL(2) of its determination of the relevant matter referred to in subsection (1)(a), (b) or (c).

S. 201SLN inserted by No. 31/2011 s. 9.

201SLN Person in default if work-in-kind agreement not performed by due date

(1) If—

(a) a person liable to pay a growth areas infrastructure contribution has entered into a work-in-kind agreement to meet the whole or part of that liability and fails to perform that agreement or a stage of that agreement in accordance with the terms of the agreement by the due date for performance; and

(b) the contribution has been deferred under Subdivision 3 or is subject to an approval for staged payment under Subdivision 4—

the whole of the contribution becomes immediately payable as if the contribution had never been deferred or the approval had never been given.

Note

If the whole of the contribution is treated as never having been deferred or being subject to an approval for staged payment, a tax default within the meaning of the **Taxation Administration Act 1997** will occur in respect of payment of the whole of the contribution that the person would have had to pay if the person had not deferred the contribution or been given the approval for staged payment. Under Part 5 of that Act the person will then be liable to pay interest and

penalty tax from what would have been the last day for payment of the whole of the contribution under section 201SL or 201SMAA(6).

(2) Despite subsection (1), a person remains liable under the work-in-kind agreement to perform the obligations under the agreement.

Subdivision 3—Deferral of GAIC

201SM Person may elect to defer payment of GAIC

S. 201SM inserted by No. 23/2010 s. 9.

(1) Subject to subsection (2), a person who is liable to pay a growth areas infrastructure contribution imposed in respect of a dutiable transaction relating to land may elect to defer the payment of up to 100% of that contribution.

S. 201SM(1) substituted by No. 31/2011 s. 10(1).

(2) A person who is liable to pay a growth areas infrastructure contribution under section 201SMAA may elect to defer the payment of the whole of that contribution.

S. 201SM(2) amended by No. 31/2011 s. 10(2).

(3) An election must be made to the Commissioner—

(a) in a form approved by the Commissioner; and

(b) before the day on which the contribution is payable.

(4) An election to defer the payment of the whole or part of a growth areas infrastructure contribution under subsection (1) takes effect from the time that the liability to pay the contribution arises.

(5) An election to defer the payment of a growth areas infrastructure contribution under subsection (2) takes effect from the time the liability to pay the contribution arises in accordance with section 201SMAA(5).

S. 201SM(5) amended by Nos 31/2011 s. 10(3), 11/2017 s. 78.

(6) A person who has deferred the payment of part of a growth areas infrastructure contribution under this section must pay the part of the contribution that has not been deferred in accordance with section 201SL.

(7) If a part of a growth areas infrastructure contribution that has not been deferred under this section is not paid in accordance with section 201SL, the whole of the contribution becomes immediately payable as if the election of the deferral had never been made.

Note

If the non-deferred part of a growth areas infrastructure contribution is not paid within the period for payment under section 201SL, a tax default within the meaning of the **Taxation Administration Act 1997** will occur in respect of payment of the whole of the contribution that the person would have had to pay if the person had not deferred part of the contribution. Under Part 5 of that Act, the person will then be liable to pay interest and penalty tax from what would have been the last day for payment of the whole of the contribution under section 201SL.

S. 201SMAA inserted by No. 23/2010 s. 9.

201SMAA Liability to pay deferred GAIC in relation to subsequent dutiable transactions

(1) This section applies if—

(a) a person (the ***relevant person***) who is liable to pay a growth areas infrastructure contribution in relation to land has deferred the payment of the whole or part of that contribution under section 201SM(1); and

S. 201SMAA (1)(b) amended by No. 31/2011 s. 11(1).

(b) a subsequent dutiable transaction relating to land occurs in relation to the whole or part of the land in respect of which the contribution is imposed.

(2) Subject to this section, on the occurrence of that subsequent dutiable transaction—

(a) except in the case of a significant acquisition, the person who would be taken to be the transferee in respect of the subsequent dutiable transaction under Part 1 of Chapter 2 of the **Duties Act 2000** becomes liable to pay the amount of deferred growth areas infrastructure contribution; or

(b) in the case of a subsequent dutiable transaction that is a sub-sale of dutiable property referred to in section 10(1)(a) of the **Duties Act 2000**, the subsequent purchaser to whom the property is transferred becomes liable to pay the amount of deferred growth areas infrastructure contribution; or

(c) in the case of a subsequent dutiable transaction that is a significant acquisition, the following persons are jointly and severally liable to pay the amount of deferred growth areas infrastructure contribution—

(i) the person who makes the acquisition; and

(ii) the landholder, or if the landholder is a unit trust scheme (within the meaning of the **Duties Act 2000**), the trustee of the landholder; and

S. 201SMAA (2)(c)(ii) amended by No. 38/2012 s. 23(1).

(iii) if the significant acquisition results from an aggregation of acquisitions by the person referred to in subparagraph (i) and other persons—each of those other persons.

(3) Subject to subsection (4), the liability of the relevant person to pay the deferred growth areas infrastructure contribution is extinguished.

S. 201SMAA (3) amended by No. 66/2016 s. 25.

S. 201SMAA (4) amended by No. 38/2012 s. 23(2).

(4) If the subsequent dutiable transaction occurred in relation to less than the whole of the interest in the land or in a landholder that owns the land—

S. 201SMAA (4)(a) amended by No. 38/2012 s. 23(2).

(a) the liability of the subsequent transferee to pay the growth areas infrastructure contribution will be in proportion to the proportion of the interest in the land or landholder that was the subject of the subsequent dutiable transaction; and

(b) the relevant person remains liable to pay the remaining part of that deferred growth areas infrastructure contribution.

Example

ABC Pty Ltd bought type B land in 2011. The GAIC liability for the land was $600,000. ABC Pty Ltd paid 30% GAIC liability ($180,000) and deferred 70% of the liability. In 2012, ABC Pty Ltd sold 50% of its interest in the land to XYZ Pty Ltd.

XYZ Pty Ltd is liable to pay 50% of the deferred 70% GAIC plus interest and can elect to defer that amount of assumed liability. ABC Pty Ltd's deferral continues in respect of the remaining 50% of the deferred 70% GAIC plus interest. There is a charge on the land for the whole deferred GAIC plus interest when it comes due.

The relevant person is relieved of the liability to pay their deferred GAIC liability upon occurrence of the subsequent dutiable transaction relating to the land. The relief from liability can be partial or in full, depending on the extent of the disposed interest in the land or landholder by the relevant person.

(5) The liability under this section to pay a growth areas infrastructure contribution arises from the time the subsequent dutiable transaction relating to the land occurs.

S. 201SMAA (6) substituted by No. 31/2011 s. 11(2), amended by No. 66/2016 s. 13.

(6) Subject to sections 201SP, 201SPAA and 201SS, a growth areas infrastructure contribution for which a subsequent transferee is liable under this section must be paid to the Commissioner—

(a) if an application is made under section 201TE, 201TF or 201TH for a reduction of, or an exemption from, the whole or part of the liability to pay the contribution, by the later of the following—

(i) within 3 months after the liability arises;

(ii) within 14 days after the person who made the application receives a notice under section 201TG or 201TK of the determination of the application; or

(b) in any other case, within 3 months after the liability arises.

Note

The period within which a growth areas infrastructure contribution must be paid can be extended by the Growth Areas Infrastructure Contribution Hardship Relief Board under section 201TJ(4)(d).

(7) This section also applies to succeeding subsequent dutiable transactions relating to the land.

(8) In this section a dutiable transaction relating to land occurs—

(a) in the case of a dutiable transaction relating to land other than a significant acquisition, at the time at which the transaction would be taken to have occurred under Chapter 2 of the **Duties Act 2000**; and

(b) in the case of a significant acquisition—

(i) if the acquisition occurs on a particular day, on that day; or

(ii) if the acquisition occurs over a period of time, on the last day of that period.

(9) In this section ***subsequent transferee*** means a person referred to in subsection (2).

Note to s. 201SMAA inserted by No. 31/2011 s. 11(3).

Note

A reference to an amount of deferred growth areas infrastructure contribution in this section includes that contribution as indexed under section 201SMA and includes interest payable under this Subdivision in respect of that contribution under section 201SMA (see section 201SMA(8)).

S. 201SMA inserted by No. 23/2010 s. 9.

201SMA Indexation and interest applying to deferred GAIC

(1) A growth areas infrastructure contribution that is deferred in whole or in part under section 201SM—

(a) is to be indexed in accordance with section 201SN for the period specified in this section (if any) from the time that the liability to pay the contribution arose before the first deferral of payment of the contribution under section 201SM(1); and

(b) is subject to the payment of interest calculated at the rate set out in section 201SO for the period specified in this section (if any).

(2) In the case of type A land, if the dutiable transaction relating to that land occurs before the commencement day, the deferred contribution is to be indexed until the earlier of the following—

S. 201SMA (2)(a) amended by No. 31/2011 s. 12(1).

(a) the contribution is paid in accordance with section 201SP or 201SMAA(6);

(b) approval is given for staged payment of the contribution under Subdivision 4.

(3) In the case of type A land, if the dutiable transaction relating to that land occurs on or after the commencement day and before the land becomes part of a precinct structure plan area—

(a) the deferred contribution is to be indexed until the earlier of the following—

(i) the land becomes part of that area;

(ii) the contribution is paid in accordance with section 201SP or 201SMAA(6); and

S. 201SMA (3)(a)(ii) amended by No. 31/2011 s. 12(1).

(b) if the deferred contribution is not paid under paragraph (a)(ii), the deferred contribution (as indexed) is subject to the payment of interest from the time that the land becomes part of a precinct structure plan area until the earlier of the following—

(i) the contribution is paid in accordance with section 201SP or 201SMAA(6);

S. 201SMA (3)(b)(i) amended by No. 31/2011 s. 12(1).

(ii) approval is given for staged payment of the contribution under Subdivision 4.

(4) In the case of type A land, if the dutiable transaction relating to that land occurs on or after the commencement day and after the land becomes part of a precinct structure plan area, the deferred contribution is subject to the payment of interest from the time that the liability to pay the contribution arose before the first deferral of payment of the contribution under section 201SM(1) until the earlier of the following—

S. 201SMA (4)(a) amended by No. 31/2011 s. 12(1).

(a) the contribution is paid in accordance with section 201SP or 201SMAA(6);

(b) approval is given for staged payment of the contribution under Subdivision 4.

(5) In the case of type B-1 land, type B-2 land or type C land, if the dutiable transaction relating to that land occurs before the land becomes part of a precinct structure plan area—

(a) the deferred contribution is to be indexed until the earlier of the following—

(i) the land becomes part of that area;

S. 201SMA (5)(a)(ii) amended by No. 31/2011 s. 12(1).

(ii) the contribution is paid in accordance with section 201SP or 201SMAA(6); and

(b) if the deferred contribution is not paid under paragraph (a)(ii), the deferred contribution (as indexed) is subject to the payment of interest from the time that the land becomes part of a precinct structure plan area until the earlier of the following—

S. 201SMA (5)(b)(i) amended by No. 31/2011 s. 12(1).

(i) the contribution is paid in accordance with section 201SP or 201SMAA(6);

(ii) approval is given for staged payment of the contribution under Subdivision 4.

(6) In the case of type B-1 land, type B-2 land or type C land, if the dutiable transaction relating to that land occurs on or after the land becomes part of a precinct structure plan area, the deferred contribution is subject to the payment of interest

from the time that the liability to pay the contribution arose before the first deferral of payment of the contribution under section 201SM(1) until the earlier of the following—

(a) the contribution is paid in accordance with section 201SP or 201SMAA(6);

S. 201SMA (6)(a) amended by No. 31/2011 s. 12(1).

(b) approval is given for staged payment of the contribution under Subdivision 4.

(7) In this section, type A land will be taken to have become part of a precinct structure plan area if the land—

(a) is zoned under an planning scheme as a Comprehensive Development Zone and is subject to a Comprehensive Development Plan incorporated by that planning scheme; or

(b) is within an urban development area and is subject to a Development Plan approved by the responsible authority in accordance with the planning scheme that applies to that land.

S. 201SMA(8) substituted by No. 31/2011 s. 12(2).

(8) If, under this section—

(a) a growth areas infrastructure contribution is to be indexed in accordance with section 201SN for the period specified in this section, a reference in this Part to that contribution is taken to be a reference to that contribution as so indexed; and

(b) a growth areas infrastructure contribution is subject to the payment of interest calculated at the rate set out in section 201SO for the period specified in this section, a reference in this Part to that contribution is taken to include the amount of interest payable under

this Subdivision in respect of that contribution.

S. 201SN inserted by No. 23/2010 s. 9.

201SN Method of calculating indexation of deferred GAIC

(1) If the whole or part of a growth areas infrastructure contribution has been deferred under section 201SM and is subject to indexation under section 201SMA, the deferred amount of growth areas infrastructure contribution is indexed in accordance with this section.

(2) Indexation of a deferred amount of growth areas infrastructure contribution is to be calculated at the end of each financial year after the liability to pay the contribution arose before the first deferral of payment of the contribution under section 201SM(1).

(3) The indexation of a deferred amount of growth areas infrastructure contribution for the 2011/2012 financial year and each subsequent financial year is calculated in accordance with Part 5 of Schedule 1.

(4) The deferred amount of a growth areas infrastructure contribution, after indexation, for a financial year is the adjusted deferred amount of the contribution for that financial year within the meaning of Part 5 of Schedule 1.

S. 201SO inserted by No. 23/2010 s. 9.

201SO Interest payable on deferred GAIC

S. 201SO(1) amended by No. 31/2011 s. 13.

(1) If the whole or part of a growth areas infrastructure contribution has been deferred under section 201SM and is subject to the payment of interest under section 201SMA, the amount of interest is calculated at the 10-year bond rate applying from time to time.

(2) The interest is calculated on a daily basis for the period that the interest is payable under section 201SMA and is calculated on the deferred amount of the growth areas infrastructure contribution.

(3) In this section the ***10-year bond rate*** in respect of any day is the average of the daily yields for the 10-year Treasury Corporation of Victoria bond (published from time to time by the Treasury Corporation of Victoria established under Part 2 of the **Treasury Corporation of Victoria Act 1992**) for the month of May in the financial year preceding the financial year in which the day occurs.

201SOA Remission of interest by Commissioner

S. 201SOA inserted by No. 23/2010 s. 9.

The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit interest payable under this Subdivision by any amount.

201SOB Removal of liability for GAIC if land ceases to be in contribution area

S. 201SOB inserted by No. 23/2010 s. 9.

If land, in respect of which a growth areas infrastructure contribution has been deferred, ceases to be in the contribution area within 3 years after the liability to pay the contribution arose, the liability to pay that deferred contribution is extinguished to the extent that it relates to the land that has ceased to be in the contribution area.

201SOC Apportionment of GAIC on issue of statement of compliance

S. 201SOC inserted by No. 66/2016 s. 14.

(1) This section applies if—

(a) a growth areas infrastructure contribution is imposed in respect of a dutiable transaction relating to land in the contribution area (a ***parent lot***); and

(b) the whole or a part of the contribution is deferred under section 201SM; and

(c) a statement of compliance relating to a plan of subdivision of the parent lot is issued.

(2) On the issue of the statement of compliance, the growth areas infrastructure contribution must be apportioned between each lot, parcel or other area of land referred to in the plan of subdivision (a ***child lot***) so that the apportionment meets the requirement under subsection (3).

(3) For the purposes of subsection (2), the requirement is that the proportion of the growth areas infrastructure contribution that is apportioned to a child lot is the same as the proportion that the area of the child lot bears to the area of the parent lot.

S. 201SP inserted by No. 23/2010 s. 9.

201SP Deferred GAIC and interest must be paid to Commissioner by due date

S. 201SP(1) amended by Nos 31/2011 s. 14(1), 66/2016 s. 15.

(1) Subject to sections 201SPAA and 201SS, a person who under this Subdivision has deferred the payment of the whole or part of a growth areas infrastructure contribution imposed in respect of a dutiable transaction relating to land (other than a significant acquisition) must pay to the Commissioner that deferred contribution on or before the first of the following to occur—

S. 201SP(1)(a) amended by No. 31/2011 s. 14(2).

(a) the issue of a statement of compliance relating to a plan of subdivision of all or any part of that land (other than a subdivision of land solely to enable land to be transferred in accordance with a work-in-kind agreement); or

(b) the making of an application for a building permit to carry out building work on all or any part of that land.

(2) Subject to sections 201SPAA and 201SS, a person who under this Subdivision has deferred the whole or part of a growth areas infrastructure contribution imposed in respect of a significant acquisition of an interest in a landholder must pay to the Commissioner that deferred contribution on or before the first of the following to occur—

S. 201SP(2) amended by Nos 31/2011 s. 14(1)(3), 38/2012 s. 24(1), 66/2016 s. 15.

(a) the issue of a statement of compliance relating to a plan of subdivision of all or part of the land held by the landholder in respect of which the liability to pay the deferred contribution is imposed;

S. 201SP(2)(a) amended by No. 38/2012 s. 24(1).

(b) the making of an application for a building permit to carry out building work on all or any part of the land held by the landholder in respect of which the liability to pay the contribution is imposed.

S. 201SP(2)(b) amended by No. 38/2012 s. 24(1).

Example

Example to s. 201SP(2) substituted by No. 31/2011 s. 14(4), amended by No. 38/2012 s. 24(2).

RST Pty Ltd is a private landholder that owns land subject to GAIC. X holds 60% of the interest in RST and disposes of that interest to Y. Y has made a significant acquisition and is liable to pay 60% of the GAIC payable in respect of the land. Y defers the payment of the GAIC under this Subdivision. RST applies for a building permit to carry out work on the land. Y and RST are jointly and severally liable to pay the deferred GAIC together with the interest relating to the GAIC on or before the application for the building permit is made by RST. RST is also liable to pay 40% of the GAIC payable in respect of the land (indexed if applicable) arising from the building works. However, the time for paying both GAIC payments does not apply if RST applies for approval of the staged payment of the GAIC under Subdivision 4.

(3) The time for payment of a growth areas infrastructure contribution under section 201SL does not apply in respect of the whole or part of a growth areas infrastructure contribution deferred under this Subdivision.

(4) In this section—

building work does not include excluded building work;

subdivision of land does not include an excluded subdivision of land.

S. 201SPAA inserted by No. 66/2016 s. 16.

201SPAA Time for payment of apportioned and deferred GAIC on public purpose land subdivision

(1) This section applies if—

(a) a growth areas infrastructure contribution imposed in respect of a dutiable transaction relating to land is deferred in whole or in part under section 201SM; and

(b) a statement of compliance relating to a plan of subdivision of all or any part of that land is issued and the sole purpose of that plan is to provide for public purpose land.

(2) The time for payment under section 201SP(1)(a) or (2)(a) (as the case requires) does not apply in respect of the whole or part of the growth areas infrastructure contribution deferred under section 201SM.

(3) In addition—

(a) the proportion of the growth areas infrastructure contribution that is apportioned under section 201SOC to public purpose land (a ***PPL proportion***) must be paid within 3 months after the day on which the statement of compliance is issued; and

(b) the proportion of the growth areas infrastructure contribution that is apportioned under section 201SOC to any part of the land that is not public purpose land continues to be a deferred contribution (a ***deferred proportion***).

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

(a) a reference in this Subdivision (other than section 201SM or 201SP) to a growth areas infrastructure contribution that is deferred in whole or in part under section 201SM includes a reference to a PPL proportion; and

(b) a reference in this Subdivision (other than section 201SM) to a growth areas infrastructure contribution that is deferred in whole or in part under section 201SM includes a reference to a deferred proportion.

Example

ABC Pty Ltd purchases 15 hectares of land in the contribution area in June 2017. The dutiable transaction in relation to the land is the first GAIC event in relation to the land and a GAIC is imposed. ABC Pty Ltd is liable to pay the GAIC and elects under section 201SM to defer 100% of the amount payable. In December 2017, ABC Pty Ltd applies to subdivide the land for the sole purpose of providing 1·5 hectares of land for the construction of a road. On the issue of the statement of compliance relating to the plan of subdivision of land, the GAIC is apportioned between the two child lots based on the area of land each child lot bears to the parent lot. Accordingly, 10% of the GAIC is apportioned to the public purpose land (the ***PPL proportion***). This amount, as indexed under section 201SMA, and any accrued interest on this amount is payable within 3 months after the date of the issue of the statement of compliance. The remaining 90% is apportioned to the balance land (the ***deferred proportion***) and this amount continues to be deferred and subject to indexation and interest under section 201SMA until the amount becomes payable under this Subdivision.

S. 201SPA inserted by No. 23/2010 s. 9, amended by Nos 31/2011 s. 15, 66/2016 s. 17(1).

201SPA Default on payment of deferred GAIC

If a person does not pay the deferred growth areas infrastructure contribution when due for payment under section 201SP or 201SPAA, the amount of the contribution deferred under section 201SM becomes immediately payable as if the election of the deferral had never been made.

Note to s. 201SPA amended by Nos 31/2011 s. 27(1), 66/2016 s. 17(2).

Note

If the deferred growth areas infrastructure contribution, including any indexation and interest, is not paid when due under section 201SP or 201SPAA, a tax default within the meaning of the **Taxation Administration Act 1997** will occur in respect of payment of the whole of the contribution that the person would have had to pay if the person had not deferred part of the contribution. Under Part 5 of that Act, the person will then be liable to pay interest and penalty tax from what would have been the last day for payment of the whole of the contribution under section 201SL or 201SMAA(6).

S. 201SQ inserted by No. 23/2010 s. 9.

201SQ Deferred GAIC becomes a charge on the land

S. 201SQ(1) substituted by No. 31/2011 s. 16(1), amended by No. 66/2016 s. 18.

(1) A growth areas infrastructure contribution that has been deferred under this Subdivision and that has not been paid by the due date for payment under section 201SP or 201SPAA is a charge on the land in respect of which the contribution is imposed.

(2) The charge has priority over all other encumbrances to which the land is subject.

S. 201SQ(3) amended by No. 31/2011 s. 16(2).

(3) If a bona fide purchaser for value of the land subject to the charge obtains a GAIC certificate from the Commissioner in respect of the land, the charge does not secure any amount of growth areas infrastructure contribution in respect of the land in excess of the amount set out in the certificate.

(4) The Commissioner may register a charge on land under subsection (1) by depositing with the Registrar of Titles a certificate describing the land charged and stating that there is an unpaid growth areas infrastructure contribution in respect of the land.

(5) The Registrar of Titles must, without charge, make a recording of a certificate under subsection (4) in the Register.

(6) If a growth areas infrastructure contribution subject to a charge under this section is paid or the liability to pay the contribution is extinguished, the Commissioner must request the Registrar of Titles—

(a) to remove or delete the charge; or

(b) to make a recording in the Register of the discharge of the charge.

(7) The Registrar of Titles must, without charge, comply with a request made by the Commissioner under subsection (6).

Subdivision 4—Staged payment of GAIC

201SR Approval by Minister for staged payment of GAIC for subdivisions or building works

S. 201SR inserted by No. 23/2010 s. 9.

S. 201SR(1) amended by No. 66/2016 s. 19(1).

(1) Subject to subsection (8), a person who is or may be liable to pay a growth areas infrastructure contribution in respect of—

(a) the issue of a statement of compliance relating to a plan of subdivision of land; or

(b) an application for a building permit to carry out work on land—

may apply to the Minister in writing for approval of the staged payment of the contribution.

S. 201SR(2) amended by No. 66/2016 s. 19(1).

(2) Subject to subsection (8), a person who is liable to pay a growth areas infrastructure contribution imposed in respect of a dutiable transaction relating to land, the whole or part of which has been deferred under Subdivision 3, may apply to the Minister in writing for approval of the staged payment of the deferred contribution if—

(a) a statement of compliance relating to a plan of subdivision of all or part of that land is to be issued; or

(b) an application for a building permit to carry out work on all or part of that land is to be made.

(3) An application under subsection (1) or (2) must be made before the day on which the contribution is payable.

(4) The Minister may give an approval to a person under this section if the person has applied in accordance with this section.

(5) The approval is subject to the following conditions—

(a) the growth areas infrastructure contribution is to be paid in stages;

(b) in the case of an approval relating to a plan of subdivision, each stage must relate to a specified part of the land that is to be subdivided;

(c) the amount of the payment for each stage must be specified in the approval;

(d) the payment for each stage must be paid by a specified date;

(e) there must be a final date specified for the payment of the whole contribution;

(f) if there is a failure to make a payment for any stage by the due date for that stage, the whole amount of the growth areas infrastructure contribution for which the person is liable will become payable immediately as if the approval had never been given;

(g) any other condition that is agreed between the Minister and the person applying for the approval.

(6) If the approval relates to a plan of subdivision, any stage that is not approved under the original approval requires a further approval by the Minister in accordance with this section.

(7) Any amendment to an approval given under this section to change the due date for a payment or the amount of a payment specified in that approval requires a further approval by the Minister in accordance with this section.

(8) If the sole purpose of a plan of subdivision of land to which a statement of compliance referred to in subsection (1)(a) or (2)(a) relates is to provide for public purpose land, a person cannot apply to the Minister for approval of the staged payment of the proportion of the growth areas infrastructure contribution that is apportioned under section 201SGA or 201SOC (as the case requires) to public purpose land.

S. 201SR(8) repealed by No. 31/2011 s. 17, new s. 201SR(8) inserted by No. 66/2016 s. 19(2).

201SRA Subsequent owner of land in respect of which approval granted liable to pay GAIC

S. 201SRA inserted by No. 23/2010 s. 9.

(1) If an approval is granted under section 201SR for the staged payment of a growth areas infrastructure contribution and the ownership of the whole of the land in respect of which the contribution is imposed is transferred to a person (the ***subsequent owner***) other than the person

granted the approval (the ***former owner***) as a result of the occurrence of a dutiable transaction relating to land—

(a) the liability to pay the contribution is imposed on the subsequent owner from the time of the occurrence of the transaction; and

(b) the liability of the former owner to pay the contribution is extinguished from the time of the occurrence of the transaction; and

(c) the subsequent owner is taken to have been granted an approval for the staged payment of the contribution that the subsequent owner is liable to pay under paragraph (a); and

(d) the approval taken to have been granted under paragraph (c) is subject to the same conditions as the approval granted to the former owner; and

(e) the approval taken to have been granted under paragraph (c) is taken to take effect from the date the dutiable transaction relating to land occurs.

(2) Within 10 days of the date of occurrence of the dutiable transaction referred to in subsection (1), the former owner must give the Minister written notice of the transaction setting out the contact details for the subsequent owner.

(3) The Minister, on the application of the subsequent owner, must give to the subsequent owner a notice in the same form as the notice in section 201SU(1) subject to paragraph (c) of that section being read as if the reference to "the GAIC event" were a reference to "the dutiable transaction relating to land".

S. 201SRA(4) amended by No. 11/2017 s. 79.

(4) The Minister must forward a copy of the notice under subsection (3) to the Commissioner and to the Victorian Planning Authority.

(5) In this section a dutiable transaction relating to land occurs at the time at which the transaction would be taken to have occurred under Chapter 2 of the **Duties Act 2000**.

201SS Time for paying GAIC does not apply if approval for staged payment

S. 201SS inserted by No. 23/2010 s. 9.

(1) The time for payment of a growth areas infrastructure contribution under section 201SL does not apply in respect of a growth areas infrastructure contribution which is subject to an approval under this Subdivision.

(2) If an approval under this Subdivision relates to a growth areas infrastructure contribution the whole or part of which was deferred under Subdivision 3, the time for payment of that deferred contribution under section 201SP does not apply.

(3) If a person given the approval does not comply with a condition of the approval the contribution becomes immediately payable as if the approval had never been given.

201ST Interest payable on GAIC subject to staged payment

S. 201ST inserted by No. 23/2010 s. 9.

(1) A growth areas infrastructure contribution payable in accordance with an approval under this Subdivision is subject to the payment of interest calculated at the rate that applies for the purposes of section 201SO.

(2) Subject to subsection (3), the interest is calculated on a daily basis from the time by which the contribution would have been payable under section 201SL had the approval not been given until the day that the contribution is paid.

(3) If an approval under this Subdivision relates to a growth areas infrastructure contribution the whole or part of which was deferred under Subdivision 3, the interest is calculated from the day the approval is given.

S. 201SU inserted by No. 23/2010 s. 9.

201SU Minister must give person notice of staged payment approval

(1) The Minister, on giving a person an approval under this Subdivision for or relating to the staged payment of a growth areas infrastructure contribution, must give a notice to the person which—

(a) states that the Minister has given the person the approval; and

(b) describes the whole of the land in respect of which the contribution is imposed; and

(c) describes the GAIC event in respect of which the contribution is imposed; and

(d) in the case of an approval relating to a plan of subdivision, describes the land relating to each stage that is the subject of the approval; and

(e) states the due date and amount of the payment for any stage specified in the approval; and

(f) states the final date for the payment of the whole contribution; and

(g) contains the name and contact details of the person; and

(h) contains any other information that the Minister thinks appropriate.

S. 201SU(2) amended by No. 11/2017 s. 80.

(2) The Minister must forward a copy of the notice to the Commissioner and to the Victorian Planning Authority.

201SV Staged payment approval payments to be paid to Commissioner

S. 201SV inserted by No. 23/2010 s. 9.

An amount required to be paid in accordance with an approval given under this Subdivision and the interest payable under section 201ST relating to that amount must be paid to the Commissioner by the due date for the payment of that amount specified under the approval.

201SW GAIC subject to staged payment is a charge on land

S. 201SW inserted by No. 23/2010 s. 9.

(1) A growth areas infrastructure contribution subject to an approval under this Subdivision that has not been paid by the due date for payment is a charge on the land in respect of which the contribution is imposed.

(2) The charge has priority over all other encumbrances to which the land is subject.

(3) If a bona fide purchaser for value of the land subject to the charge obtains a GAIC certificate from the Commissioner in respect of the land, the charge does not secure any amount of growth areas infrastructure contribution in respect of the land in excess of the amount set out in the certificate.

(4) The Commissioner may register a charge on land under subsection (1) by depositing with the Registrar of Titles a certificate describing the land charged and stating that there is an unpaid growth areas infrastructure contribution in respect of the land.

(5) The Registrar of Titles must, without charge, make a recording of a certificate under subsection (4) in the Register.

(6) When a growth areas infrastructure contribution subject to a charge under this section is paid, the Commissioner must request the Registrar of Titles—

(a) to remove or delete the charge; or

(b) to make a recording in the Register of the discharge of the charge.

(7) The Registrar of Titles must, without charge, comply with a request made by the Commissioner under subsection (6).

(8) In this section a growth areas infrastructure contribution includes any interest payable under Subdivision 3, and the interest payable under section 201SV, relating to that contribution.

Subdivision 5—Certificates and notice issued by Commissioner relating to GAIC

S. 201SX inserted by No. 23/2010 s. 9.

201SX Commissioner to give certain certificates to persons relating to their GAIC liability

(1) A person may apply to the Commissioner for a certificate under this Subdivision other than a certificate of deferral.

(2) The application must be in the form approved by the Commissioner.

S. 201SY inserted by No. 23/2010 s. 9.

201SY Certificate of release

The Commissioner must issue to a person who is or may be liable to pay a growth areas infrastructure contribution a certificate of release of that liability if the person has applied in accordance with section 201SX and—

(a) the Commissioner is satisfied that the person has paid the whole contribution and any applicable interest or penalty tax imposed under Part 5 of the **Taxation Administration Act 1997**; or

S. 201SY(a) amended by No. 40/2016 s. 48.

(b) if the person has deferred the payment of the whole or part of the contribution under Subdivision 3, the Commissioner is satisfied that—

(i) the person has paid the deferred contribution and any interest under Subdivision 3 relating to that contribution and any applicable interest or penalty tax imposed under Part 5 of the **Taxation Administration Act 1997**; or

(ii) the person has been granted a reduction under Division 3 of the whole or part of the liability to pay the contribution and the interest under Subdivision 3 relating to that contribution, and the person has paid, in the case of a part reduction, any part of the contribution and related interest remaining after the reduction and any applicable interest or penalty tax imposed under Part 5 of the **Taxation Administration Act 1997**; or

(iii) the liability of the person to pay the contribution has been extinguished under section 201SMAA or 201SOB; or

S. 201SY(b)(iii) amended by No. 31/2011 s. 27(2).

(c) if the person has been given an approval under Subdivision 4 for the staged payment of the contribution and—

(i) the Commissioner is satisfied that person has paid the whole contribution, the interest payable under section 201SV and any applicable interest or penalty tax imposed under Part 5 of the **Taxation Administration Act 1997**; or

(ii) the liability of the person to pay the contribution has been extinguished under section 201SRA; or

(d) the Commissioner is satisfied that the person has been granted a reduction under Division 3 of the whole or part of the liability to pay the contribution and the person has paid, in the case of a part reduction, any part of the contribution remaining after the reduction and any applicable interest or penalty tax imposed under Part 5 of the **Taxation Administration Act 1997**.

S. 201SZ inserted by No. 23/2010 s. 9.

201SZ Certificate of deferral

The Commissioner must issue to a person whose liability to pay the whole or part of a growth areas infrastructure contribution has been deferred under Subdivision 3, a certificate of deferral of GAIC liability.

S. 201SZA inserted by No. 23/2010 s. 9.

201SZA Certificate of staged payment approval

The Commissioner must issue to a person who is or may be liable to pay a growth areas infrastructure contribution a certificate of staged payment approval if—

(a) the person has applied in accordance with section 201SX; and

(b) the Commissioner is satisfied that the person has been given an approval under Subdivision 4 for staged payment of the whole of the contribution.

201SZB Certificate of partial release

S. 201SZB inserted by No. 23/2010 s. 9, amended by No. 66/2016 s. 20 (ILA s. 39B(1)).

(1) The Commissioner must issue to a person who is or may be liable to pay a growth areas infrastructure contribution a certificate of partial release of that liability if—

(a) the person has applied in accordance with section 201SX; and

(b) the Commissioner is satisfied that the person has been given an approval under Subdivision 4 relating to a plan of subdivision for payment of the contribution in stages and the person has paid the amount for any one of the stages and the interest payable under section 201SV relating to that stage.

S. 201SZB(2) inserted by No. 66/2016 s. 20.

(2) The Commissioner must issue to a person who is or may be liable to pay a PPL proportion within the meaning of section 201SPAA(3)(a) a certificate of partial release of that liability if—

(a) the person has applied in accordance with section 201SX; and

(b) the Commissioner is satisfied that the person has paid the PPL proportion, any interest under Subdivision 3 relating to the PPL proportion and any applicable interest or penalty tax imposed under Part 5 of the **Taxation Administration Act 1997**.

S. 201SZC inserted by No. 23/2010 s. 9.

201SZC Certificate of exemption

The Commissioner must issue to a person who is or may be liable to pay a growth areas infrastructure contribution a certificate of exemption of liability if—

(a) the person has applied in accordance with section 201SX; and

(b) the Commissioner is satisfied that the liability to pay the contribution has been exempted or is otherwise exempt under Division 3.

S. 201SZD inserted by No. 23/2010 s. 9.

201SZD Certificate of no GAIC liability

The Commissioner must issue to a person a certificate stating that there is, or there will be, no liability to pay a growth areas infrastructure contribution in respect of an event described in paragraph (a), (b) or (c) of section 201RA that has occurred or is to occur in relation to land in the contribution area if—

(a) the person has applied in accordance with section 201SX; and

(b) the Commissioner is satisfied that—

(i) the event is an excluded event; or

(ii) the land will not be or is not subject to a growth areas infrastructure contribution under section 201SA in respect of the event.

S. 201SZE inserted by No. 23/2010 s. 9.

201SZE Certificates issued under this Subdivision

(1) A certificate issued to a person under this Subdivision relating to their liability to pay a growth areas infrastructure contribution, other than a GAIC certificate, must—

(a) show the date of issue of the certificate; and

(b) describe the land in respect of which the contribution is imposed; and

(c) describe the GAIC event in respect of which the contribution is imposed; and

(d) in the case of a certificate of release, state that the person's liability to pay the contribution has been released; and

(e) in the case of a certificate of deferral state—

(i) that the person's liability to pay the contribution has been deferred under Subdivision 3 and the percentage of the contribution that has been deferred; and

(ii) the date the person elected to defer; and

(f) in the case of a certificate of staged payment approval, state that the person has been given approval under section 201SR for staged payment of the whole of the contribution; and

(g) in the case of a certificate of partial release, state—

(i) that the person's liability to pay the contribution has been partially released; and

(ii) describe the land that relates to the stage in respect of which payment has been made and liability has been partially released; and

(h) in the case of a certificate of exemption, state that the person is exempt from the liability to pay the contribution; and

(i) contain the person's name and contact details; and

(j) contain any other information that the Commissioner thinks appropriate.

S. 201SZE(2) amended by No. 11/2017 s. 81.

(2) The Commissioner must give to the Victorian Planning Authority a copy of any certificate issued under this Subdivision, other than a GAIC certificate.

S. 201SZF inserted by No. 23/2010 s. 9.

201SZF GAIC certificate

(1) The Commissioner must issue to a person who has applied in accordance with section 201SX, a certificate in respect of land in the contribution area—

(a) describing the land; and

(b) showing the amount of a growth areas infrastructure contribution—

(i) that is due and unpaid in respect of the land; or

S. 201SZF (1)(b)(ii) substituted by No. 31/2011 s. 18(1).

(ii) imposed in respect of the land that has been deferred under Subdivision 3 or is subject to an approval for staged payment under Subdivision 4; or

(iii) that would be imposed in respect of a GAIC event if it occurred in relation to the land in the financial year of the issue of the certificate; and

S. 201SZF (1)(ba) inserted by No. 31/2011 s. 18(2).

(ba) if a growth areas infrastructure contribution has been imposed in respect of the land, stating whether a work-in-kind agreement has been entered into by the person liable to pay that contribution to meet the whole or part of that liability; and

Note to s. 201SZF (1)(ba) inserted by No. 31/2011 s. 18(2).

Note

Land may be affected by the work-in-kind agreement because it may contain an obligation to transfer part of the land or to carry out works on part of the land.

(c) showing the date of issue of the certificate; and

(d) containing the name and contact details of the person; and

(e) containing any other information that the Commissioner thinks appropriate.

(2) The information contained in a certificate issued under this section relates only to the following matters as at the date of the issue of the certificate—

(a) matters affecting the land;

(b) matters that are relevant to the amount of the growth areas infrastructure contribution that may be imposed in respect of a GAIC event.

201SZG Notice to Registrar regarding registration of subdivision or transfer of land

S. 201SZG inserted by No. 23/2010 s. 9.

(1) This section applies if the Commissioner issues to a person any of the following certificates that relate to the liability to pay a growth areas infrastructure contribution in respect of a transfer of land or a subdivision of land in the contribution area—

(a) a certificate of release;

(ab) a certificate of partial release issued under section 201SZB(2);

S. 201SZG (1)(ab) inserted by No. 66/2016 s. 21.

(b) a certificate of exemption;

(c) a certificate of no GAIC liability;

(d) in the case of a transfer of land that is a GAIC event or a transfer of land described in section 201SMAA(1)(b), a certificate of deferral;

S. 201SZG (1)(d) amended by No. 31/2011 s. 19(1).

S. 201SZG (1)(e) amended by No. 31/2011 s. 19(2).

(e) in the case of a plan of subdivision of land that is a GAIC event or a transfer of land described in section 201SRA(1), a certificate of staged payment approval.

Note to s. 201SZG (1)(e) inserted by No. 31/2011 s. 19(3).

Note

A subsequent owner who is liable to pay GAIC under section 201SRA due to a transfer of land can apply under section 201SX to the Commissioner for the issue of a certificate of staged payment approval under section 201SZA. In addition, under section 201SRA(3), the subsequent owner may apply to the Minister for a notice of staged payment approval in substantially the same form as under section 201SU(1).

S. 201SZG(2) amended by No. 31/2011 s. 19(4).

(2) Subject to subsection (2A), the Commissioner must give a notice to the person, which notifies the Registrar of Titles that (as the case requires)—

(a) an instrument of transfer relating to the land may be accepted for lodgment; or

(b) the requirement under section 22(1)(g) of the **Subdivision Act 1988** has been met.

S. 201SZG (2A) inserted by No. 31/2011 s. 19(5).

(2A) If there is a work-in-kind agreement in force relating to the growth areas infrastructure contribution, the Commissioner must not give a notice under subsection (2) unless the Minister has advised the Commissioner that the notice may be given.

Note to s. 201SZG(2A) inserted by No. 31/2011 s. 19(5).

Note

If a work-in-kind agreement relating to the growth areas infrastructure contribution contains a restriction on transferring or subdividing the land under section 201SLD, the transfer or subdivision will require the consent of the Minister before it can be registered.

(3) A notice under this section must be in a form approved by the Registrar of Titles.

201SZH Commissioner may seek assistance for issuing certificates

S. 201SZH inserted by No. 23/2010 s. 9, amended by No. 11/2017 s. 82.

The Commissioner may seek the assistance of the Victorian Planning Authority for the purposes of deciding whether to issue a certificate under this Subdivision.

201SZI Certificate not to be taken as an assessment

S. 201SZI inserted by No. 23/2010 s. 9.

A certificate issued by the Commissioner under this Subdivision is not to be taken to be an assessment for the purposes of Part 10 of the **Taxation Administration Act 1997**.

Subdivision 6—GAIC to be paid into Consolidated Fund

201SZJ Commissioner to pay GAIC into Consolidated Fund

S. 201SZJ inserted by No. 23/2010 s. 9, amended by No. 31/2011 s. 20 (ILA s. 39B(1)).

(1) The Commissioner must transfer to the Consolidated Fund as soon as is practicable any money received in respect of a growth areas infrastructure contribution, including any interest paid under section 201SP, 201SPAA or 201SV and any interest or penalty tax imposed under Part 5 of the **Taxation Administration Act 1997**.

S. 201SZJ(1) amended by No. 66/2016 s. 22.

(2) Any amount taken to be paid to the Commissioner under section 201SLM(1) is not required to be paid into, or transferred to, the Consolidated Fund and subsection (1) does not apply to that amount.

S. 201SZJ(2) inserted by No. 31/2011 s. 20.

Division 3—Exemptions and reductions of GAIC liability

Subdivision 1—General

S. 201T inserted by No. 23/2010 s. 9.

201T Definition

In this Division, ***Board*** means the Growth Areas Infrastructure Contribution Hardship Relief Board established under Subdivision 4.

Subdivision 2—Exemptions other than exemptions granted by Governor in Council or Board

S. 201TA inserted by No. 23/2010 s. 9.

201TA Exemption from paying GAIC if no consideration

(1) No growth areas infrastructure contribution is payable in respect of a dutiable transaction relating to land that is made for no consideration.

(2) In this section ***consideration*** has the same meaning as in section 32A of the **Duties Act 2000**.

S. 201TB inserted by No. 23/2010 s. 9.

201TB Exemption from paying GAIC if duties exemption would apply

(1) No growth areas infrastructure contribution is payable in respect of a dutiable transaction relating to land if duty would not be chargeable in respect of such a transaction under a provision of the **Duties Act 2000** specified in subsection (2).

(2) For the purposes of subsection (1), the provisions of the **Duties Act 2000** are sections 32, 33(2), 33(3), 33(5), 34(1)(a), 34(1)(b), 35(1)(a), 35(1)(b), 35(1)(c), 40, 41, 42(1), 42(2), 42(3), 43(3), 44(1), 44(2), 44(3), 44(4), 45, 45A, 46(1), 46(2)(a), 46(2)(b), 46(2)(c), 47(2), 48(a), 48(b), 48(c), 48(ca), 48(d), 48A, 50A, 51, 52, 54(a), 54(b), 55 and 56(1).

201TC Exemption from paying GAIC for land dealings involving public authorities and councils

S. 201TC inserted by No. 23/2010 s. 9.

(1) No growth areas infrastructure contribution is payable in respect of the following dutiable transactions relating to land—

(a) if land vested in or held by a public authority or a municipal council—

(i) is surrendered by that authority or council to the Crown; or

(ii) is transferred by that authority or council to another public authority or municipal council; or

(iii) is exchanged by that authority or council for land vested in or held by another public authority or municipal council;

S. 201TC (1)(aa) inserted by No. 3/2017 s. 50(Sch. 1 item 4.2).

(aa) if land vested in or held by the Head, Transport for Victoria on behalf of the Crown—

(i) is transferred by the Head, Transport for Victoria on behalf of the Crown to a public authority or to a municipal council; or

(ii) is exchanged by the Head, Transport for Victoria on behalf of the Crown for land vested in or held by a public authority or a municipal council;

S. 201TC (1)(ab) inserted by No. 3/2017 s. 50(Sch. 1 item 4.2).

(ab) if land vested in or held by the Secretary on behalf of the Crown—

(i) is transferred by the Secretary on behalf of the Crown to the Head, Transport for Victoria on behalf of the Crown; or

(ii) is exchanged by the Secretary on behalf of the Crown for land vested in or held by the Head, Transport for Victoria on behalf of the Crown;

S. 201TC (1)(ac) inserted by No. 43/2021 s. 131.

(ac) if land vested in or held by the Suburban Rail Loop Authority (or a subsidiary of the Authority) on behalf of the Crown—

(i) is transferred by the Suburban Rail Loop Authority (or a subsidiary of the Authority) on behalf the Crown to a Minister or Secretary to a Department on behalf of the Crown, a public authority or to a municipal council; or

(ii) is exchanged by the Suburban Rail Loop Authority (or a subsidiary of the Authority) on behalf of the Crown for land vested in or held by a Minister or Secretary to a Department on behalf of the Crown, a public authority or a municipal council;

S. 201TC(1)(b) amended by Nos 6/2010 s. 203(1) (Sch. 6 item 35.3) (as amended by No. 45/2010 s. 22), 61/2011 s. 25(Sch. 1 item 7.2(a)), 70/2013 s. 4(Sch. 2 item 36.5), 11/2017 s. 83.

(b) if land vested in or held by the Secretary to the Department of Economic Development, Jobs, Transport and Resources—

(i) is transferred by the Secretary to the Department of Economic Development, Jobs, Transport and Resources on behalf of the Crown to a public authority or to a municipal council; or

S. 201TC(1)(b)(i) amended by Nos 6/2010 s. 203(1) (Sch. 6 item 35.4) (as amended by No. 45/2010 s. 22), 61/2011 s. 25(Sch. 1 item 7.2(b)), 70/2013 s. 4(Sch. 2 item 36.5), 11/2017 s. 83.

(ii) is exchanged by the Secretary to the Department of Economic Development, Jobs, Transport and Resources on behalf of the Crown for land vested in or held by a public authority or a municipal council.

S. 201TC(1)(b)(ii) amended by Nos 6/2010 s. 203(1) (Sch. 6 item 35.4) (as amended by No. 45/2010 s. 22), 61/2011 s. 25(Sch. 1 item 7.2(b)), 70/2013 s. 4(Sch. 2 item 36.5), 11/2017 s. 83.

* * * * *

S. 201TC(2) repealed by No. 66/2016 s. 23.

201TD Exemption for transfer of land by owner to superannuation fund or to beneficiaries

S. 201TD inserted by No. 23/2010 s. 9.

(1) No growth areas infrastructure contribution is payable in respect of land that is—

(a) transferred to the trustee of a complying superannuation fund by the owner of the land; or

(b) transferred from the trustee of that fund to the beneficiaries of the fund.

(2) In this section ***complying superannuation fund*** has the same meaning as in section 3(1) of the **Duties Act 2000**.

Subdivision 3—Reductions and exemptions granted by the Governor in Council or Minister

S. 201TE inserted by No. 23/2010 s. 9, substituted by No. 31/2011 s. 21.

201TE Governor in Council may grant reduction or exemption of GAIC in exceptional circumstances

(1) The Governor in Council, on the recommendation of the Minister, may grant a reduction of the whole or part, or an exemption from the whole, of the liability of a person to pay a growth areas infrastructure contribution if—

(a) the person has applied in accordance with this section; and

(b) the Governor in Council is satisfied that exceptional circumstances exist.

(2) Despite subsection (1), the Governor in Council must not grant a reduction or exemption in respect of liability to pay a growth areas infrastructure contribution the whole or part of which has been deferred under Subdivision 3 of Division 2.

(3) Subject to this section, an application under this section may be made to the Minister by a person on whom a growth areas infrastructure contribution is imposed in relation to land in the contribution area.

(4) An application must be made before the day on which the contribution is payable.

(5) A person may not apply under this section for a reduction or exemption in respect of a growth areas infrastructure contribution the whole or part of which has been deferred under Subdivision 3 of Division 2.

(6) Before recommending the grant of a reduction or exemption under this section, the Minister must consult with the Victorian Planning Authority and the Treasurer.

S. 201TE(6) amended by No. 11/2017 s. 84.

(7) The Governor in Council may impose conditions on a reduction or exemption granted under this section.

(8) If a person fails to comply with a condition imposed on the grant of a reduction or exemption under this section, the reduction or exemption is taken never to have been granted.

201TF Reduction of GAIC if agreement to provide State infrastructure or funds

S. 201TF inserted by No. 23/2010 s. 9.

(1) Subject to subsection (2), a person on whom a growth areas infrastructure contribution is imposed in relation to land in the contribution area may apply to the Minister for a reduction of the whole or part of the liability to pay that contribution if—

(a) the person or a former owner of the land has entered into an agreement of a class described in subsection (3); and

S. 201TF(1)(a) amended by No. 31/2011 s. 27(3).

(b) the agreement relates to the provision of State infrastructure on any part of the land in respect of which the contribution is imposed or on any other land in the growth area in which that land is located.

(2) An application under subsection (1) must be made before the day on which the contribution is payable.

(3) For the purposes of subsection (1), the classes of agreements are—

(a) an agreement that was entered into before the first announcement day between the person,

or a former owner of the land, and an agency for the person or former owner to provide—

(i) State infrastructure; or

(ii) land for State infrastructure; or

(iii) a combination of State infrastructure and the payment of money to the agency to provide State infrastructure; or

(b) an agreement between the person, or a former owner of the land, and an agency, to pay money to the agency to provide State infrastructure or land for State infrastructure that was entered into—

(i) in the case of type A land, type B-1 land or type B-2 land, on or after the relevant day for that land and ending immediately before the commencement day;

(ii) in the case of type C land, before the relevant day.

(4) The Minister may grant a reduction of the whole or part of the liability of a person to pay a growth areas infrastructure contribution if the person has applied in accordance with this section.

(5) Despite subsection (4), if the agreement entered into by a person is of a class described in subsection (3)(b) and the contribution amount exceeds $2 million, the Minister may grant a reduction of the person's liability to pay a growth areas infrastructure contribution only with the agreement of the Treasurer.

(6) In this section ***agency*** means a public authority or the Secretary to the Department of Economic Development, Jobs, Transport and Resources.

S. 201TF(6) amended by No. 6/2010 s. 203(1) (Sch. 6 item 35.5) (as amended by No. 45/2010 s. 22), substituted by No. 61/2011 s. 25(Sch. 1 item 7.3), amended by Nos 70/2013 s. 4(Sch. 2 item 36.6), 11/2017 s. 85.

201TG Notice of determination of application

S. 201TG (Heading) substituted by No. 31/2011 s. 22(1).

S. 201TG inserted by No. 23/2010 s. 9.

(1) If the Governor in Council or the Minister grants a reduction to a person under this Subdivision of the person's liability to pay a growth areas infrastructure contribution, the Minister must give the person a notice which states—

(a) that the reduction has been granted; and

(b) the proportion of the liability that is reduced; and

(c) that the person is no longer liable to pay the proportion of the contribution that is subject to the reduction.

(2) If the Governor in Council grants an exemption to a person under this Subdivision relating to the person's liability to pay a growth areas infrastructure contribution, the Minister must give the person a notice which states that the person—

(a) has been granted an exemption from the liability to pay the contribution; and

(b) is no longer liable to pay the contribution.

Note

If a person is exempted from the liability to pay a growth areas infrastructure contribution in respect of a GAIC event, liability may be imposed in respect of the next GAIC event (see section 201S(1)).

S. 201TG(2A) inserted by No. 31/2011 s. 22(2).

(2A) If the Governor in Council or the Minister refuses a person's application under this Subdivision, the Minister must give the person a notice which states that the application is refused.

(3) A notice given to a person under this section must—

(a) specify any conditions of any reduction or exemption from the liability to pay a growth areas infrastructure contribution that has been granted; and

(b) describe the land in respect of which the contribution is imposed; and

(c) describe the GAIC event in respect of which the contribution is imposed; and

(d) contain the name and contact details of the person; and

(e) contain any other information that the Governor in Council or the Minister determines to be appropriate.

S. 201TG(4) amended by No. 11/2017 s. 86.

(4) The Minister must forward a copy of a notice given under this section to the Commissioner and to the Victorian Planning Authority.

Subdivision 4—Growth Areas Infrastructure Contribution Hardship Relief Board

201TH Person liable to pay GAIC may apply to Board for relief

S. 201TH inserted by No. 23/2010 s. 9.

(1) Subject to subsection (2), a person on whom a growth areas infrastructure contribution is imposed in relation to land in the contribution area may apply to the Board for relief from that the liability to pay that contribution.

(2) A person may not apply under subsection (1) for an exemption in respect of a growth areas infrastructure contribution the whole or part of which has been deferred under Subdivision 3 of Division 2.

(3) An application for relief must—

(a) be in writing; and

(b) be made before the day on which the contribution is payable.

(4) Despite subsection (3)(b), if the growth areas infrastructure contribution is imposed in relation to the issue of a statement of compliance relating to a plan of subdivision or an application for a building permit, the Board may accept an application for relief made after the date on which the contribution is payable if the Board is satisfied this is warranted in the circumstances.

201TI Vendor of land subject to GAIC may apply to Board for relief

S. 201TI inserted by No. 23/2010 s. 9.

(1) The vendor of land that is to be transferred after the commencement day under a contract for sale of land in the contribution area that—

(a) was entered into on or after the relevant day and before 1 December 2009; and

(b) contains a term requiring the vendor to pay any growth areas infrastructure contribution that may be imposed in respect of the transfer—

may apply to the Board to relieve the purchaser of the land from the liability to pay a growth areas infrastructure contribution in respect of the transfer of the land.

Note

Under section 50 of the **Sale of Land Act 1962**, the purchaser has a right to deduct from the purchase price of the land transferred under such a contract the amount of the GAIC that is imposed in respect of the transfer of the land.

(2) An application for relief must—

(a) be in writing; and

(b) be made before the settlement of the contract of sale.

S. 201TJ inserted by No. 23/2010 s. 9.

201TJ Relief granted by Board

(1) The Board may grant relief to a person from the liability to pay a growth areas infrastructure contribution if a person or vendor has applied in accordance with section 201TH or 201TI.

(2) In deciding whether to grant relief on an application under section 201TH, the Board must take into account any financial hardship to the applicant arising from the imposition of the growth areas infrastructure contribution.

(3) In deciding whether to grant relief on an application under section 201TI, the Board must take into account any financial hardship to the vendor arising from the right of the purchaser under section 50 of the **Sale of Land Act 1962** to deduct from the purchase price the amount of the growth areas infrastructure contribution imposed on the purchaser.

(4) The Board may make any one of the following determinations—

(a) to refuse the application; or

(b) to reduce the liability of the person to pay the growth areas infrastructure contribution wholly or in part; or

(c) to exempt the person from the whole of the liability to pay the growth areas infrastructure contribution; or

(d) to extend the period within which the growth areas infrastructure contribution must be paid.

(5) Despite subsection (4)(c), the Board must not grant an exemption in respect of a growth areas infrastructure contribution the whole or part of which has been deferred under Subdivision 3 of Division 2.

(6) Despite subsection (4), the Board must not grant relief in respect of an application under section 201TI if there has been settlement of the contract for sale of the land in respect of which the growth areas infrastructure contribution is imposed.

(7) The Board may grant relief subject to any conditions that the Board considers appropriate.

(8) If a person granted relief under this section fails to comply with any condition imposed on that grant, the relief is taken never to have been granted.

201TK Board must give notice of determination

S. 201TK inserted by No. 23/2010 s. 9.

(1) If the Board refuses an application under section 201TJ, the Board must give the person a notice which states that the application is refused.

(2) If the Board grants a reduction under section 201TJ of a person's liability to pay a

growth areas infrastructure contribution, the Board must give the person a notice which states—

(a) that the reduction has been granted; and

(b) the proportion of the liability that is reduced; and

(c) that the person is no longer liable to pay the proportion of the contribution that is subject to the reduction.

(3) If the Board grants an exemption under section 201TJ relating to a person's liability to pay a growth areas infrastructure contribution, the Board must give the person a notice which states that—

(a) the exemption has been granted; and

(b) the person is no longer liable to pay the contribution.

Note

If a person is exempted from the liability to pay a growth areas infrastructure contribution in respect of a GAIC event, liability may be imposed in respect of the next GAIC event (see section 201S(1)).

(4) If the Board grants an extension of the time within which a person must pay a growth areas infrastructure contribution, the Board must give the person a notice stating that the extension has been granted.

(5) A copy of any notice given under subsection (1), (2), (3) or (4) to a person in respect of their liability to pay a growth areas infrastructure contribution must also be given to a vendor who applied under section 201TI to relieve the person from the liability.

(6) A notice given to a person under this section must—

(a) specify any conditions of a grant of relief; and

(b) describe the land in respect of which the growth areas infrastructure contribution is imposed; and

(c) describe the GAIC event in respect of which the growth areas infrastructure contribution is imposed; and

(d) contain the name and contact details of the person; and

(e) contain any other information that the Board thinks appropriate.

(7) The Board must forward a copy of a notice given under this section to the Commissioner and to the Victorian Planning Authority.

S. 201TK(7) amended by No. 11/2017 s. 87.

201TL Determination of Board not to be taken as an assessment

S. 201TL inserted by No. 23/2010 s. 9.

A determination of the Board under section 201TJ is not to be taken to be an assessment for the purposes of Part 10 of the **Taxation Administration Act 1997**.

201TM Establishment and procedure of Board

S. 201TM inserted by No. 23/2010 s. 9.

(1) There is to be a Growth Areas Infrastructure Contribution Hardship Relief Board.

S. 201TM(1) amended by No. 31/2011 s. 27(4).

(2) The Board consists of the following members—

(a) the Secretary to the Department or his or her nominee;

(b) the Commissioner or his or her nominee;

(c) a person appointed by the Governor in Council on the recommendation of the Minister.

(3) Before making a recommendation under subsection (2)(c), the Minister must consult with organisations that, in the Minister's opinion, represent persons engaged in the practice of law or accountancy or the valuation of land.

(4) The Board may regulate its own proceedings.

Pt 9B Div. 4 (Heading) amended by No. 11/2017 s. 88.

Division 4—Powers and duties of Victorian Planning Authority, Commissioner and Registrar of Titles regarding GAIC

S. 201U (Heading) amended by No. 11/2017 s. 89(1).

S. 201U inserted by No. 23/2010 s. 9.

201U Victorian Planning Authority to keep record of contribution area

S. 201U(1) amended by No. 11/2017 s. 89(2).

(1) The Victorian Planning Authority must keep a record, in accordance with the regulations (if any), of—

(a) all land that is in the contribution area from time to time; and

(b) any land that is removed from the contribution area from time to time.

(2) Records kept under subsection (1) may be in the form of a map or a plan.

201UA Access to records and information relating to GAIC

S. 201UA inserted by No. 23/2010 s. 9, amended by No. 11/2017 s. 90.

The Victorian Planning Authority, in accordance with the regulations (if any), may make any record kept under section 201U and any information kept in connection with the performance of its functions under this Part available—

(a) to the Commissioner for the purposes of exercising or performing his or her functions, powers and duties relating to growth areas infrastructure contributions under this Part or the **Taxation Administration Act 1997**; or

(b) to the Secretary to the Department for the purposes of administering this Part; or

(c) in connection with the administration of this Part, including for the purposes of any legal proceedings arising out of the imposition of a growth areas infrastructure contribution or a report of those proceedings; or

(d) in accordance with a requirement imposed under an Act.

201UAA Victorian Planning Authority to inform Commissioner when precinct structure plan applies to contribution area land

S. 201UAA (Heading) amended by No. 11/2017 s. 91(1).

S. 201UAA inserted by No. 23/2010 s. 9, amended by No. 11/2017 s. 91(2).

The Victorian Planning Authority must, within 10 days of any land in the contribution area becoming part of a precinct structure plan area, give to the Commissioner in writing the following information—

(a) a description of the land;

(b) the date that the notice of approval of the amendment to the planning scheme, which made the land part of the precinct structure plan area, was published in the Government Gazette.

S. 201UAB (Heading) amended by No. 11/2017 s. 92(1).

S. 201UAB inserted by No. 23/2010 s. 9.

201UAB Victorian Planning Authority may request council to provide information about contribution area land

S. 201UAB(1) amended by No. 11/2017 s. 92(2).

(1) The Victorian Planning Authority may, for the purposes of carrying out any function conferred on it under this Part, make a written request to a municipal council to provide the Authority with information relating to any land within the municipal district of that council that is within a growth area.

S. 201UAB(2) amended by No. 11/2017 s. 92(2).

(2) A municipal council must as soon as possible provide the Victorian Planning Authority with the information requested under subsection (1).

S. 201UB (Heading) amended by No. 11/2017 s. 93(1).

S. 201UB inserted by No. 23/2010 s. 9.

201UB Victorian Planning Authority to notify the Registrar of land subject to GAIC

S. 201UB(1) amended by No. 11/2017 s. 93(2).

(1) The Victorian Planning Authority must lodge with the Registrar of Titles, an application to record a notification on a folio of the Register relating to land in respect of which a growth areas infrastructure contribution may be payable.

(2) An application under this section must be in a form approved by the Registrar of Titles.

201UC Application to remove recording on land relating to GAIC

S. 201UC inserted by No. 23/2010 s. 9.

(1) An application to remove a recording of a notification described under section 201UB must be lodged with the Registrar of Titles by the Victorian Planning Authority if—

S. 201UC(1) amended by No. 11/2017 s. 94.

(a) the land is no longer in the contribution area; or

(b) the application under section 201UB to record the notification was made in error; or

(c) the land is not subject to liability for a growth areas infrastructure contribution.

(2) An application to remove a recording of a notification described under section 201UB must be lodged with the Registrar of Titles by the Commissioner if he or she—

(a) issues a certificate of partial release or a certificate of release relating to the land; and

(b) is satisfied that the growth areas infrastructure contribution that may be imposed in respect of the land has been fully discharged.

(3) An application under this section must be in a form approved by the Registrar of Titles.

201UD Registrar to make a recording on land that may be subject to GAIC

S. 201UD inserted by No. 23/2010 s. 9.

The Registrar of Titles, on receiving an application under section 201UB relating to land, must, without charge, record a notification on each folio of the Register relating to that land indicating that a growth areas infrastructure contribution may be payable in respect of the land.

S. 201UE inserted by No. 23/2010 s. 9.

201UE Registrar to remove recordings on land not subject to GAIC

The Registrar of Titles must amend the Register to remove any recording of a notification on a folio of the Register made under section 201UD relating to land on receipt of an application under section 201UC relating to that land.

S. 201UF inserted by No. 23/2010 s. 9.

201UF No entitlement to compensation in connection with Registrar's duties

A person is not entitled to receive from the Registrar of Titles any damages or compensation for anything done by the Registrar of Titles in compliance with section 201UD or 201UE or anything arising from that compliance.

S. 201UG (Heading) amended by No. 11/2017 s. 95(1).

S. 201UG inserted by No. 23/2010 s. 9.

201UG Registrar not to accept transfer unless accompanied by notice or application from Commissioner or Victorian Planning Authority

(1) This section applies if there is a recording on a folio of the Register made under section 201UD relating to land indicating that a growth areas infrastructure contribution may be payable in respect of that land.

(2) The Registrar of Titles must not accept the lodgment of an instrument of transfer of the whole or any part of the land unless the instrument of transfer is accompanied by—

(a) a notice relating to that land issued by the Commissioner under section 201SZG; or

S. 201UG(2)(b) amended by No. 11/2017 s. 95(2).

(b) an application relating to that land made under section 201UC by the Victorian Planning Authority or the Commissioner.

Division 5—Growth areas funds

201V Establishment of growth areas funds

S. 201V inserted by No. 23/2010 s. 9.

(1) There must be established in the Public Account as part of the Trust Fund—

(a) an account to be known as the Growth Areas Public Transport Fund; and

(b) an account to be known as the Building New Communities Fund.

(2) There must be paid into each Fund—

(a) 50% of all money received by the Commissioner in respect of growth areas infrastructure contributions; and

(b) interest received from the investment of money in the Fund.

S. 201V(3) inserted by No. 31/2011 s. 23.

(3) Subsection (2) does not apply to any amount taken to be paid to the Commissioner under section 201SLM(1).

S. 201V(4) inserted by No. 31/2011 s. 23.

(4) The Consolidated Fund is appropriated to the extent necessary for the purposes of subsection (2)(a).

201VA Application of Growth Areas Public Transport Fund

S. 201VA inserted by No. 23/2010 s. 9.

There must be paid out of the Growth Areas Public Transport Fund amounts authorised by the Minister with the approval of the Treasurer—

(a) to be used to provide financial assistance for or with respect to the following matters—

(i) capital works for State funded public transport infrastructure in any growth area;

(ii) the acquisition of land and other infrastructure necessary or required for the establishment, operation or

maintenance of infrastructure referred to in subparagraph (i); and

(b) for the payment of any recurrent costs relating to the provision of a new public transport service in a growth area for a maximum of 5 years after the commencement of that service; and

(c) for the payment of the costs and expenses incurred by the Commissioner as a result of exercising or performing his or her functions, powers and duties relating to growth areas infrastructure contributions.

S. 201VB inserted by No. 23/2010 s. 9.

201VB Application of Building New Communities Fund

S. 201VB(1) amended by No. 31/2011 s. 24.

(1) There must be paid out of the Building New Communities Fund amounts authorised by the Minister to be used to provide financial assistance for or with respect to capital works for State funded infrastructure in any growth area including the following—

(a) transport infrastructure including walking and cycling but excluding major public transport infrastructure;

(b) community infrastructure including health facilities, education facilities, regional libraries, neighbourhood houses and major recreation facilities;

(c) environmental infrastructure including regional open space, trails and creek protection;

(d) economic infrastructure including providing access to information and technology and infrastructure supporting the development of commerce and industry;

(e) the acquisition of land and other infrastructure necessary or required for the establishment or maintenance of any infrastructure referred to in this subsection.

(2) The Minister must not authorise the payment of an amount of $2 million or more from the Building New Communities Fund for the purpose of particular capital works, except with the approval of the Treasurer.

201VC Department and Victorian Planning Authority to report on GAIC and growth area funds

S. 201VC (Heading) amended by No. 11/2017 s. 96(1).

S. 201VC inserted by No. 23/2010 s. 9.

(1) The Department must include in its annual report of operations under section 45 of the **Financial Management Act 1994**—

(a) details of the income and expenditure of the Growth Areas Public Transport Fund and the Building New Communities Fund including—

(i) details of projects funded from each Fund; and

(ii) separate details of the income and expenditure of each Fund in respect of each growth area; and

(b) the proportion of all money, received by the Commissioner in respect of growth areas infrastructure contributions relating to each growth area since the commencement day, that has been paid out in relation to that growth area since that day; and

(c) the balance of each Fund; and

S. 201VC(1)(c) amended by No. 31/2011 s. 25(1).

S. 201VC(1)(d) inserted by No. 31/2011 s. 25(2), amended by No. 11/2017 s. 96(2).

(d) the value of all work-in-kind agreements (within the meaning of section 201SLC(1)(e)), determined to have been performed or partly performed by the Victorian Planning Authority under section 201SLL, in respect of each growth area; and

S. 201VC(1)(e) inserted by No. 31/2011 s. 25(2).

(e) details of the projects completed or contributed to under work-in-kind agreements in each growth area.

S. 201VC(2) amended by No. 11/2017 s. 96(2).

(2) The Victorian Planning Authority must include in its annual report of operations under section 45 of the **Financial Management Act 1994** information on the operation of the GAIC scheme under this Part.

S. 201VC(3) inserted by No. 31/2011 s. 25(3).

(3) Subsection (1)(b) does not apply to any amount taken to be paid to the Commissioner under section 201SLM(1).

Part 10—Regulations

202 General regulation-making powers

S. 202 amended by No. 47/2007 s. 16 (ILA s. 39B(1)).

(1) The Governor in Council may make regulations with respect to—

S. 202(a) amended by No. 81/2004 s. 42(1).

(a) prescribing any manner or form of giving notice of a planning scheme or an amendment or an application for a permit or an amendment of a permit; and

(b) permitting any notice under this Act to be given jointly with or as part of any notice given under any other Act; and

S. 202(ba) inserted by No. 81/2004 s. 42(2).

(ba) providing for matters to be covered in a review of a planning scheme; and

S. 202(c) substituted by No. 52/1998 s. 191(13)(d).

(c) prescribing—

(i) the time after which an application may be made to the Tribunal for review of a failure by a responsible authority to determine an application;

(ii) the times from which the periods for other applications for review begin to run;

(iii) the times within which applications to the Tribunal may be made under this Act;

(iv) different times under this paragraph for different classes of applications;

* * * * *

S. 202(ca) inserted by No. 62/1991 s. 37, repealed by No. 52/1998 s. 191(13)(d).

(d) prescribing any event after which or any time within which anything for the purposes of this Act must or may be done; and

(e) prescribing regions for the purposes of this Act; and

(f) prescribing forms for the purposes of this Act; and

S. 202(g) substituted by No. 81/2004 s. 42(3).

(g) prescribing the information to be included in or to accompany any application, notice, permit, certificate, or request; and

(h) prescribing the manner of keeping a register; and

(i) requiring any information in a prescribed form or required to be given to a responsible authority to be verified by statutory declaration or otherwise; and

S. 202(1)(ia) inserted by No. 23/2010 s. 10.

(ia) matters relating to the administration of growth areas infrastructure contributions imposed under Part 9B including—

(i) the manner of keeping records relating to growth areas infrastructure contributions including land in the contribution area; and

(ii) access to, or provision of information contained in, records relating to growth areas infrastructure contributions and the contribution area; and

(iii) access to, or the provision of information contained in, GAIC certificates that have been issued to persons; and

(j) any other matter which is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.

(2) The regulations may—

S. 202(2) inserted by No. 47/2007 s. 16.

(a) be of limited or general application; and

(b) differ according to differences in time, place or circumstance; and

(c) leave any matter or thing to be decided by a responsible authority or a planning authority; and

(d) may confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and

(e) may apply, adopt or incorporate any matter contained in any document whether—

(a) wholly or partially or as amended by the regulations; or

(b) as in force at a particular time or as in force from time to time.

203 Fees regulations

(1) The Governor in Council may make regulations prescribing fees for—

(a) planning certificates; and

S. 203(1)(ab) inserted by No. 23/2010 s. 11.

(ab) certificates relating to growth areas infrastructure contributions issued under Subdivision 5 of Division 2 of Part 9B; and

S. 203(1)(ac) inserted by No. 23/2010 s. 11.

(ac) any matter relating to a function or duty performed by the Registrar of Titles under Part 9B; and

(b) considering applications for permits; and

S. 203(1)(ba) inserted by No. 128/1993 s. 36(a).

(ba) considering applications for certificates of compliance; and

S. 203(1)(c) amended by No. 86/1989 s. 21(2).

(c) amendments to planning schemes including but not limited to—

(i) considering proposals for amendment; and

(ii) any stage in the amendment process; and

(iii) considering whether or not to approve the amendment; and

(d) giving notice of permit applications; and

S. 203(1)(e) amended by No. 128/1993 s. 36(b).

(e) determining whether anything has been done to the satisfaction of a responsible authority, Minister, public authority, municipal council or a referral authority; and

(f) providing maps showing the location of boundaries in a planning scheme; and

(g) any other thing for which fees are authorised or required to be prescribed under this Act.

(2) A regulation under subsection (1) may—

S. 203(2)(a) amended by No. 86/1989 s. 21(3)(a).

(a) prescribe different fees for different cases or classes of cases; and

(b) prescribe composite fees payable to the responsible authority for consideration of applications by responsible authorities and referral authorities; and

(c) require a responsible authority to give referral authorities the fees collected on their behalf; and

S. 203(2)(d) amended by No. 86/1989 s. 21(3)(b).

(d) empower the Minister, or a planning authority or responsible authority to waive or rebate the payment of a fee in specified circumstances.

(3) Despite anything in the regulations a planning authority does not have to pay a fee to itself in relation to an amendment of a planning scheme.

S. 203(3) inserted by No. 86/1989 s. 21(4).

* * * * *

Pt 10A (Headings and ss 204–205C) inserted by No. 11/2020 s. 58, amended by No. 27/2020 s. 40, repealed by No. 12/2021 s. 53.

Part 11—Repeals, transitional and savings

S. 204 repealed by No. 86/1989 s. 25(u).

* * * * *

S. 205 repealed by No. 86/1989 s. 24.

* * * * *

206 Savings generally

Except as in this Act expressly or by necessary implication provided all persons, things and circumstances appointed or created by or under any Act which is amended or repealed by this Act or existing or continuing under that Act immediately before the commencement of the item in the Schedule amending or repealing that Act continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if that Act had not been so amended or repealed.

207 Schemes and orders

(1) On the commencement of item 131 in the Schedule—

(a) all planning schemes and interim development orders under the **Town and Country Planning Act 1961**; and

(b) all orders under section 32(5) of that Act; and

(c) all by-laws made under section 197(1)(xxxviii)(a) of the **Local Government Act 1958**—

in force immediately before that commencement are revoked.

(2) All acts, matters and things of a continuing nature made, done or commenced under or in relation to a revoked scheme or order that could have been made, done or commenced under or in relation to the relevant new planning scheme as in force on the commencement of item 131 in the Schedule, are to be taken, so far as relates to any period after that commencement, to have been made, done or commenced under or in relation to the new planning scheme.

S. 207(2) substituted by No. 5/1988 s. 6.

(3) On and from the commencement of item 131 in the Schedule—

S. 207(3) substituted by No. 5/1988 s. 6.

(a) all proceedings commenced by or against a responsible authority under or in relation to a revoked scheme or order may be continued by or against the responsible authority for the relevant new planning scheme; and

(b) any arrangement, contract or agreement entered into by or on behalf of a responsible authority in relation to a revoked scheme or order that could be so entered into under this Act in relation to the relevant new planning scheme may be enforced by or against the responsible authority for the new planning scheme; and

(c) all rights and liabilities existing under or in relation to a revoked scheme or order immediately before that commencement continue under or in relation to the relevant new planning scheme, insofar as the new scheme contains provisions to the like effect as provisions of the revoked scheme or order, and may be enforced by or against—

(i) the Minister, if they were rights and liabilities of or enforceable against the Minister immediately before that commencement; or

(ii) the Geelong Regional Commission, if they were rights and liabilities of or enforceable against the Geelong Regional Commission immediately before that commencement; or

(iii) a person or body that was liable to pay compensation under section 42(5B) or section 43(4) of the **Town and Country Planning Act 1961** immediately before that commencement, in the case of that liability; or

(iv) the responsible authority for the new planning scheme, in any other case.

S. 207(4) inserted by No. 5/1988 s. 6.

(4) A notice in force under section 44 of the **Town and Country Planning Act 1961** before the commencement of item 131 in the Schedule in relation to a revoked scheme or order continues to have effect in relation to the relevant new planning scheme, insofar as the new scheme contains provisions to the like effect as provisions of the revoked scheme or order, as if it were an enforcement order made under Part 6 of this Act.

208 Permits

(1) All permits in force under the **Town and Country Planning Act 1961** immediately before the commencement of item 131 in the Schedule continue in force under this Act and, subject to subsections (2) and (3), have the same effect and are subject to the same provisions as if they had been issued under this Act.

(2) A permit referred to in subsection (1) is cancelled at the end of three years after the commencement of item 131 in the Schedule if no action was taken before that commencement or within that three

year period to carry out the use or development for which the permit was granted unless—

(a) the permit specifies a later time for carrying out the use or development; or

(b) the time for carrying out the use or development under the permit is extended under section 69 beyond that three-year period; or

(c) the permit specifies an earlier time for carrying out the use or development.

(3) A permit referred to in subsection (1)—

(a) expires on the commencement of item 131 in the Schedule if the use for which it was issued was discontinued for the period of two years immediately preceding that commencement; or

(b) expires if the use for which it was issued was discontinued for any period of two years beginning within the period of two years immediately preceding the commencement of item 131 in the Schedule or beginning after that commencement.

* * * * * **S. 209 amended by No. 5/1988 s. 7(1)–(3), repealed by No. 52/1998 s. 192.**

* * * * * **S. 210 amended by No. 5/1988 s. 8(1)(2), repealed by No. 52/1998 s. 192.**

S. 211 inserted by No. 5/1988 s. 10.

211 Savings for permits issued in accordance with revoked scheme or order

(1) If, on or after the commencement of item 131 in the Schedule and before the enactment of the **Planning and Environment (Amendment) Act 1988**, an application for a permit was determined—

(a) in accordance with the **Town and Country Planning Act 1961**; and

(b) a planning scheme or order in force before that commencement—

any permit issued as a result of such a determination that, if issued before that commencement, would have been a permit in force under the **Town and Country Planning Act 1961**—

(c) continues in force under this Act; and

(d) subject to section 208(2) and (3), has the same effect and is subject to the same provisions as if it had been issued under this Act.

(2) Section 208(2) and (3) has effect for the purposes of subsection (1) as if a reference to the commencement of item 131 in the Schedule were a reference to the enactment of the **Planning and Environment (Amendment) Act 1988**.

S. 212 inserted by No. 5/1988 s. 10.

212 Savings for appeals determined in accordance with revoked scheme or order

If, on or after the commencement of item 131 in the Schedule and before the enactment of the **Planning and Environment (Amendment) Act 1988**, an appeal was determined by the Administrative Appeals Tribunal in accordance with the **Town and Country Planning Act 1961** and a planning scheme or order in force before

that commencement, the determination, and any thing done as a result of the determination, is not invalid or ineffective by reason only that the determination was made in accordance with a revoked scheme or order.

213 Transitional provisions

S. 213 inserted by No. 28/2000 s. 11.

(1) This Act as amended by the **Planning and Environment (Amendment) Act 2000** applies to—

(a) a request or an application for an amendment to a permit that was lodged but not determined by the responsible authority or the Tribunal before the commencement day; and

(b) an application for review relating to a permit application that was made to the Tribunal but not determined before the commencement day; and

(c) an application for review made to the Tribunal after the commencement day in respect of a determination made before the commencement day by a responsible authority in respect of a permit application.

(2) In this section ***commencement day*** means the date of commencement of section 11 of the **Planning and Environment (Amendment) Act 2000**.

214 Transitional provisions

S. 214 inserted by No. 100/2000 s. 16.

(1) This Act as amended by the **Planning and Environment (Restrictive Covenants) Act 2000** applies to—

(a) an application for a permit that was made but not determined by the responsible authority or planning authority or Minister before the commencement day; and

(b) a request or an application for an amendment to a permit that was made but not determined by the responsible authority or the Tribunal before the commencement day; and

(c) an application for review relating to a permit application that was made to the Tribunal but not determined before the commencement day; and

(d) an application for review made to the Tribunal on or after the commencement day in respect of a determination made before the commencement day by a responsible authority or planning authority or Minister in respect of a permit application.

(2) In this section ***commencement day*** means the date of commencement of the **Planning and Environment (Restrictive Covenants) Act 2000**.

S. 215 inserted by No. 81/2004 s. 43.

215 Transitional—Planning and Environment (General Amendment) Act 2004

The amendment of this Act by sections 3 and 7 to 17 of the **Planning and Environment (General Amendment) Act 2004** does not affect—

(a) an amendment to a planning scheme if notice of that amendment was given under section 19 of this Act before the commencement of those sections of that 2004 Act; or

(b) an amendment to a metropolitan fringe planning scheme within the meaning of Part 3AA of this Act if notice of that amendment was given under section 19 before 12 June 2003.

216 Transitional—Amendment of permits

S. 216 inserted by No. 81/2004 s. 44.

Despite the repeal of section 62(3) by the **Planning and Environment (General Amendment) Act 2004**, that provision continues to apply to any permit granted before or within 3 months after the commencement of section 24 of that Act.

217 Transitional—Planning and Environment Amendment Act 2007

S. 217 inserted by No. 47/2007 s. 17.

An authorisation given to a municipal council under section 9(2) of this Act as in force immediately before the commencement of section 5 of the **Planning and Environment Amendment Act 2007** is taken on and after that commencement to be an authorisation of that municipal council under section 8A(3).

218 Transitional provisions—Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2011

S. 218 inserted by No. 23/2010 s. 12, substituted by No. 31/2011 s. 26.

(1) Despite the amendment made to section 201SM(1) by section 10(1) of the **Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2011**, section 201SM(1) continues to apply to a person whose liability to pay a growth areas infrastructure contribution arose under Part 9B immediately before the commencement of that section 10(1) as if the amendment had not been made.

(2) An application made under section 201TE to, and not finally determined by, the Governor in Council immediately before the commencement of section 21 of the **Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2011** is taken to be an

application made to the Minister under section 201TE as substituted by that section 21

S. 219 inserted by No. 58/2010 s. 43, repealed by No. 3/2013 s. 6.

* * * * *

S. 220 inserted by No. 38/2012 s. 25.

220 Transitional provisions—Duties Amendment (Landholder) Act 2012

(1) For the purposes of the definition of ***relevant acquisition*** in section 201RE(2), an interest within the meaning of that section must not be aggregated with any other interest acquired in a landholder if the interest is excluded from the application of section 78(1)(a)(ii) of the **Duties Act 2000** because of the application of clause 31 of Schedule 2 of that Act.

(2) Section 201S does not apply in respect of any land or part of land that is the subject of an interest within the meaning of section 201RE(2) if the interest is not chargeable with duty under the **Duties Act 2000** because of the application of clause 31 of Schedule 2 of that Act.

S. 220A inserted by No. 21/2013 s. 20.

220A Transitional provision—Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Act 2013

Section 97H, as amended by section 13 of the **Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Act 2013**, applies in relation to a permit issued under section 97F before or after the commencement of section 13.

220B Transitional provision—Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Act 2013

S. 220B inserted by No. 21/2013 s. 20.

(1) For the avoidance of doubt, section 128 applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 17 of the **Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Act 2013**.

(2) This section does not limit section 14 of the **Interpretation of Legislation Act 1984**.

221 Transitional provisions—Planning and Environment Amendment (General) Act 2013

S. 221 inserted by No. 3/2013 s. 85.

(1) Section 56A does not apply to an application referred to an authority under section 55 or 57C before the commencement of section 19 of the 2013 Act.

(2) An authorisation for a municipal council to prepare an amendment to a planning scheme in force in its municipal district given under section 8A before the commencement of section 42 of the 2013 Act is taken to be an authorisation under section 8A as in force after that commencement.

(3) An authorisation for a municipal council to prepare an amendment to a planning scheme applying to an area adjoining its municipal district given under section 8A before the commencement of section 42 of the 2013 Act is taken to be an authorisation under section 8B.

(4) Despite the amendments made to section 181 by section 51 of the 2013 Act, section 181 as in force before the commencement of section 51 of the 2013 Act continues to apply to an agreement entered into before that commencement.

(5) Despite subsection (4), section 181 as in force after the commencement of section 51 of the 2013 Act applies to an agreement entered into before that commencement, if the agreement is amended after that commencement.

(6) Section 184 as in force immediately before the commencement of section 53 of the 2013 Act continues to apply to an application made to the Tribunal before that commencement.

(7) The amendments made to section 109 by section 58 of the 2013 Act apply to a Minister, public authority or municipal council designated under a planning scheme as an acquiring authority whether the Minister, public authority or municipal council was designated as an acquiring authority before or after the commencement of section 58 of the 2013 Act.

(8) Despite the amendment of section 81 by section 61 of the 2013 Act, section 81(3) does not apply to an application for review that was made before the commencement of section 61 of the 2013 Act.

(9) Despite the amendment of this Act by section 70 of the 2013 Act, this Act continues to apply to an amendment adopted by a municipal council before the commencement of section 70 of the 2013 Act as if section 70 of the 2013 Act had not been enacted.

(10) Subsection (9) ceases to apply at the end of 6 months after the commencement of section 70 of the 2013 Act.

(11) Despite the amendment of section 52(2A) by section 75 of the 2013 Act, section 52(2A) as in force immediately before the commencement of section 75 of the 2013 Act continues to apply to an application made to the responsible authority before that commencement.

(12) Subsection (11) ceases to apply at the end of 6 months after the commencement of section 75 of the 2013 Act.

(13) In this section ***2013 Act*** means the **Planning and Environment Amendment (General) Act 2013**.

222 Transitional provisions—State Taxation Acts Further Amendment Act 2016

S. 222 inserted by No. 66/2016 s. 24.

(1) Part 9B, as in force immediately before the commencement day, applies in respect of a plan of subdivision of land that has been submitted for certification under the **Subdivision Act 1988** before 12 October 2016 and for which a statement of compliance is issued on or after that date.

(2) Part 9B, as in force immediately before the commencement day, applies in respect of a plan of subdivision of land that has been submitted for certification under the **Subdivision Act 1988** on or after 12 October 2016 but before the commencement day and for which a statement of compliance is issued before the commencement day.

(3) In this section—

commencement day means the day on which section 10 of the **State Taxation Acts Further Amendment Act 2016** comes into operation.

S. 223 inserted by No. 11/2017 s. 97.

223 Transitional provisions—Victorian Planning Authority Act 2017

(1) A development agency (other than a municipal council) to which an amount of infrastructure levy was paid by the Growth Areas Authority as a collecting agency under Part 3AB, as it was in force from time to time before the commencement day, that did not provide the Growth Areas Authority with reports under section 46GK on the use of the amount, must provide the Victorian Planning Authority with the reports after the commencement day.

(2) A development agency (other than a municipal council) to which an amount of levy was paid by the Growth Areas Authority as a collecting agency under Part 3B, as it was in force from time to time before the commencement day, that did not provide the Growth Areas Authority with reports under section 46QB on the use of the amount, must provide the Victorian Planning Authority with the reports after the commencement day.

(3) An order published in the Government Gazette by the Minister under section 46AO that is in force immediately before the commencement day is taken on that day to be an order published in the Government Gazette by the Minister under section 201RAA.

(4) If the Growth Areas Authority received a notification under section 201SLK and made a determination under section 201SLL(1) before the commencement day but did not notify the Commissioner under section 201SLL(2) of the determination before that day, the Victorian Planning Authority must notify the Commissioner of that determination on or after that day.

(5) If the Growth Areas Authority received a notification under section 201SLK but did not make a determination under section 201SLL(1) before the commencement day, the Victorian Planning Authority—

(a) must make a determination under section 201SLL(1) in respect of the work-in-kind agreement, or stage of the work-in-kind agreement, to which the notification relates on or after that day; and

(b) must notify the Commissioner of that determination on or after that day.

(6) For the purposes of section 201SLM—

(a) a determination of the value of land or works made by the Growth Areas Authority under section 201SLL(1) before the commencement day is taken on that day to be a determination made by the Victorian Planning Authority; and

(b) a notification given by the Growth Areas Authority under section 201SLL(2) before the commencement day is taken on that day to be a notification given by the Victorian Planning Authority.

(7) A record kept by the Growth Areas Authority under section 201U as in force from time to time before the commencement day is taken on that day to be a record kept by the Victorian Planning Authority.

(8) A municipal council that received a request for information from the Growth Areas Authority under section 201UAB(1) as in force from time to time before the commencement day and did not provide the Growth Areas Authority with that information before that day must provide that

information to the Victorian Planning Authority as soon as possible on or after that day.

(9) Section 201UG as in force immediately before the commencement day continues to apply to an instrument of transfer which is accompanied by an application made by the Growth Areas Authority under section 201UC before that day.

(10) The Department must include in its annual report of operations for the 2016/2017 financial year, the value of all work-in-kind agreements (within the meaning of section 201SLC(1)(e)) determined by the Growth Areas Authority under section 201SLL (as in force from time to time before the commencement day) to have been performed or partly performed in respect of each growth area.

(11) In this section—

commencement day means the day on which section 56 of the **Victorian Planning Authority Act 2017** comes into operation;

Growth Areas Authority means the Growth Areas Authority established by section 46AQ as in force immediately before the commencement day.

S. 224 inserted by No. 7/2018 s. 15, expired by force of No. 45/1987 s. 224(6).

* * * * *

S. 225 inserted by No. 30/2020 s. 27.

225 Transitional provision—Project Development and Construction Management Amendment Act 2020

(1) On the commencement day, the following projects cease to be declared projects within the meaning of section 201E—

(a) the Clifton Hill Rail Project, declared by notice published in the Government Gazette on 8 March 2007 under section 201F;

(b) the Country Passenger Rail Services (CPRS) Project, declared by notice published in the Government Gazette on 5 June 2003 under section 201F;

(c) the Regional Fast Rail Project, declared by notice published in the Government Gazette on 18 October 2001 under section 201F.

(2) In this section—

commencement day has the same meaning as in section 47 of the **Project Development and Construction Management Act 1994**.

226 Transitional provisions about publication and inspection requirements—Planning and Environment Amendment Act 2021

S. 226 inserted by No. 12/2021 s. 54.

(1) A provision specified in subsection (2), as in force immediately before the commencement of Part 4 of the amending Act (including as modified by Part 10A), continues to apply in respect of any document or information required to be made available for inspection free of charge under the provision if the document or information is required to be made available for a period—

(a) that begins before that commencement; and

(b) that ends on or after that commencement.

(2) For the purposes of subsection (1), the following provisions are specified—

(a) section 4H;

(b) section 18;

(c) section 21(2);

(d) section 41;

(e) section 46E(3);

(f) section 46V(3);

(g) section 46ZF(3);

(h) section 51;

(i) section 57(5);

(j) section 96C(8A).

(3) Sections 46E(4), 46V(4), 46W(2), 46ZF(4) and 46ZG(2), as in force immediately before the commencement of Part 4 of the amending Act (including as modified by Part 10A), continue to apply in respect of any plan that was—

(a) approved before that commencement; and

(b) required to be made available for inspection free of charge under those sections before that commencement.

(4) Section 26, as in force immediately before the commencement of Part 4 of the amending Act (including as modified by Part 10A), continues to apply in respect of any report—

(a) that was received by a planning authority before that commencement; and

(b) that is required under that section to be made available for inspection for a period ending on or after that commencement.

(5) In this section—

amending Act means the **Planning and Environment Amendment Act 2021**.

S. 227 inserted by No. 12/2021 s. 73.

227 Transitional provision about directions—Planning and Environment Amendment Act 2021

(1) A direction issued under section 12(2)(a) that was in force immediately before the commencement of section 67 of the amending Act is taken, on that

commencement, to have been issued under section 12(1A).

(2) In this section—

amending Act means the **Planning and Environment Amendment Act 2021**.

Schedules

Schedules (Heading) inserted by No. 40/2014 s. 37(1).

Sch. amended by Nos 5/1988 s. 9(a)–(c), 53/1988 s. 45(Sch. 3 item 58) (as amended by No. 47/1989 s. 23(2)), 86/1989 s. 29(8), repealed by No. 86/1989 s. 24, new Sch. inserted as Sch. 1 by No. 23/2010 s. 13.

Schedule 1—Growth areas infrastructure contribution

Part 1—General

1 Definitions

In this Schedule, words and expressions have the same meanings as they have in Part 9B.

Part 2—Investigation areas

Section 201R

2 Investigation areas

For the purposes of Part 9B, the following areas of land are investigation areas—

(a) investigation area 1—the area of land in the municipal district of Casey City Council shown as the investigation area on the plan lodged in the Central Plan Office and numbered LEGL./09-311;

(b) investigation area 2—the area of land in the municipal district of Hume City Council shown as the investigation area on the plan lodged in the Central Plan Office and numbered LEGL./09-312;

Sch. 1 cl. 2(c) amended by No. 21/2013 s. 21.

(c) investigation area 3—the area of land in the municipal district of Melton City Council shown as the investigation area on the plan lodged in the Central Plan Office and numbered LEGL./09-313;

(d) investigation area 4—the area of land in the municipal district of Mitchell Shire Council shown as the investigation area on the plan lodged in the Central Plan Office and numbered LEGL./09-314;

(e) investigation area 5—the area of land in the municipal district of Whittlesea City Council shown as the investigation area on the plan lodged in the Central Plan Office and numbered LEGL./09-315;

(f) investigation area 6—the area of land in the municipal district of Wyndham City Council shown as the investigation area on the plan lodged in the Central Plan Office and numbered LEGL./09-316;

Sch. 1 cl. 2(g) amended by No. 21/2013 s. 21.

(g) investigation area 7—the area of land in the municipal district of Melton City Council shown as the investigation area on the plan lodged in the Central Plan Office and numbered LEGL./09-317.

Part 3—Indexation of threshold amount for excluded building work

Section 201RG(2)(b)

3 Indexation of threshold amount for excluded building work

Sch. 1 cl. 3(1) amended by Nos 44/2014 s. 33(Sch. item 18(2)), 40/2016 s. 45.

(1) The threshold amount that is to apply for the purposes of section 201RG(2)(b) in any financial year subsequent to the 2010/2011 financial year is to be determined in accordance with the following formula—

$$TA = \frac{PTA \times A}{B}$$

where—

TA is the threshold amount to be determined, rounded down to the nearest 2 decimal places;

PTA is the threshold amount determined in accordance with this clause that applied in the previous financial year;

A is the sum of the consumer price index numbers for—

(a) the last reference period in the financial year 2 years earlier than the financial year in respect of which the threshold amount is being determined; and

(b) each of the reference periods (other than the last) in the financial year immediately preceding the financial year in respect of which the threshold amount is being determined;

B is the sum of the consumer price index numbers for—

(a) the last reference period in the financial year 3 years earlier than the financial year in respect of which the threshold amount is being determined; and

(b) each of the reference periods (other than the last) in the financial year 2 years earlier than the financial year in respect of which the threshold amount is being determined.

Example

In the case that the reference periods are the quarterly periods of a financial year, the variables for the determination of the threshold amount for the 2016/2017 financial year are as follows—

- "PTA" is the threshold amount that applied in the 2015/2016 financial year;
- "A" is the sum of the consumer price index numbers for the June quarter in the 2014/2015 financial year and the September, December and March quarters in the 2015/2016 financial year;
- "B" is the sum of the consumer price index numbers for the June quarter in the 2013/2014 financial year and the September, December and March quarters in the 2014/2015 financial year.

Example to Sch. 1 cl. 3(1) repealed by No. 44/2014 s. 33(Sch. item 18(2)), new example to Sch. 1 cl. 3(1) inserted by No. 40/2016 s. 45(b).

(2) The threshold amount determined under subclause (1) is to be rounded up or down to the nearest $10 (and, if the amount by which the amount to be rounded is $5, is to be rounded up).

Part 4—Maximum adjusted growth areas infrastructure contribution

Section 201SG(6)(b)

4 Maximum adjusted growth areas infrastructure contribution

(1) The maximum adjusted growth areas infrastructure contribution for the 2011/2012 financial year and each subsequent financial year for type A land, type B-1 land, type B-2 land or type C land is to be determined in accordance with the following formula—

Sch. 1 cl. 4(1) amended by Nos 44/2014 s. 33(Sch. item 18(3)), 40/2016 s. 46.

$$C = \frac{PC \times A}{B}$$

where—

C is the maximum adjusted contribution to be determined, rounded down to the nearest 2 decimal places;

PC is the amount of the adjusted contribution within the meaning of section 201SG(5) determined in accordance with this clause for that type of land for the previous financial year;

A is the sum of the consumer price index numbers for—

(a) the last reference period in the financial year 2 years earlier than the financial year in respect of which the maximum adjusted contribution is being determined; and

(b) each of the reference periods (other than the last) in the financial year immediately preceding the financial year in respect of which the maximum adjusted contribution is being determined;

B is the sum of the consumer price index numbers for—

(a) the last reference period in the financial year 3 years earlier than the financial year in respect of which the maximum adjusted contribution is being determined; and

(b) each of the reference periods (other than the last) in the financial year 2 years earlier than the financial year in respect of which the maximum adjusted contribution is being determined.

Example

In the case that the reference periods are the quarterly periods of a financial year, the variables for the determination of the maximum adjusted contribution for the 2016/2017 financial year are as follows—

- "PC" is the amount of the adjusted contribution for that type of land for the 2015/2016 financial year;
- "A" is the sum of the consumer price index numbers for the June quarter in the 2014/2015 financial year and the September, December and March quarters in the 2015/2016 financial year;
- "B" is the sum of the consumer price index numbers for the June quarter in the 2013/2014 financial year and the September, December and March quarters in the 2014/2015 financial year.

Example to Sch. 1 cl. 4(1) amended by No. 43/2012 s. 3(Sch. item 39), repealed by No. 44/2014 s. 33(Sch. item 18(3)), new example to Sch. 1 cl. 4(1) inserted by No. 40/2016 s. 46(b).

(2) The maximum adjusted growth areas infrastructure contribution for any type of land determined under subclause (1) is to be rounded up or down to the nearest $10 (and, if the amount by which the contribution to be rounded is $5, is to be rounded up).

Part 5—Indexation of deferred growth areas infrastructure contribution

Section 201SN

5 Adjusted deferred amount of growth areas infrastructure contribution

(1) The adjusted deferred amount of growth areas infrastructure contribution for the 2011/2012 financial year and each subsequent financial year is to be determined in accordance with the following formula—

Sch. 1 cl. 5(1) amended by Nos 44/2014 s. 33(Sch. item 18(4)), 40/2016 s. 47.

$$ADA = \frac{PDA \times A}{B}$$

where—

ADA is the adjusted deferred amount of the contribution to be determined, rounded down to the nearest 2 decimal places;

PDA is the deferred amount or the adjusted deferred amount (as the case may be) of the contribution determined in accordance with this clause for the previous financial year;

A is the sum of the consumer price index numbers for—

(a) the last reference period in the financial year 2 years earlier than the financial year in respect of which the adjusted deferred amount is being determined; and

(b) each of the reference periods (other than the last) in the financial year immediately preceding the financial year in respect of which the adjusted deferred amount is being determined;

B is the sum of the consumer price index numbers for—

(a) the last reference period in the financial year 3 years earlier than the financial year in respect of which the adjusted deferred amount is being determined; and

(b) each of the reference periods (other than the last) in the financial year 2 years earlier than the financial year in respect of which the adjusted deferred amount is being determined.

Example

Example to Sch. 1 cl. 5(1) repealed by No. 44/2014 s. 33(Sch. item 18(4)), new example to Sch. 1 cl. 5(1) inserted by No. 40/2016 s. 47(b).

In the case that the reference periods are the quarterly periods of a financial year, the variables for the determination of the adjusted deferred amount for the 2016/2017 financial year are as follows—

- "PDA" is the adjusted deferred amount of the contribution for the 2015/2016 financial year;
- "A" is the sum of the consumer price index numbers for the June quarter in the 2014/2015 financial year and the September, December and March quarters in the 2015/2016 financial year;
- "B" is the sum of the consumer price index numbers for the June quarter in the 2013/2014 financial year and the September, December and March quarters in the 2014/2015 financial year.

(2) The adjusted deferred amount of growth areas infrastructure contribution under subclause (1) is to be rounded up or down to the nearest $10 (and, if the amount by which the contribution to be rounded is $5, is to be rounded up).

Sch. 2 inserted by No. 40/2014 s. 37(2).

Schedule 2—Metropolitan Melbourne

Section 3(1)

Banyule City Council

Bayside City Council

Boroondara City Council

Brimbank City Council

Cardinia Shire Council

Casey City Council

Darebin City Council

Frankston City Council

Glen Eira City Council

Greater Dandenong City Council

Hobsons Bay City Council

Hume City Council

Kingston City Council

Knox City Council

Manningham City Council

Maribyrnong City Council

Maroondah City Council

Melbourne City Council

Melton City Council

Monash City Council

Moonee Valley City Council

Moreland City Council

Mornington Peninsula Shire Council

Nillumbik Shire Council

Port Phillip City Council

Stonnington City Council

Whitehorse City Council

Whittlesea City Council

Wyndham City Council

Yarra City Council

Yarra Ranges Shire Council

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 26 February 1987

Legislative Council: 24 March 1987

The long title for the Bill for this Act was "A Bill to establish a framework for planning the use and development of land in Victoria and for other purposes.".

The **Planning and Environment Act 1987** was assented to on 27 May 1987 and came into operation as follows:

Part 1, section 204 on 27 May 1987: section 2(1); rest of Act (*except* Schedule items 118, 119) on 16 February 1988: Government Gazette 10 February 1988 page 218.

Schedule items 118, 119 were repealed unproclaimed by No. 86/1989.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Planning and Environment Act 1987** by Acts and subordinate instruments.

Planning and Environment Act 1987, No. 45/1987

Assent Date:	27.5.87
Commencement Date:	S. 224(6) on 2.7.18: Special Gazette (No. 305) 26.6.18 p. 1
Note:	S. 224(6) provided that s. 224 expired on 1.9.20
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Loddon–Campaspe Regional Planning Authority Act 1987, No. 59/1987

Assent Date:	27.10.87
Commencement Date:	S. 14 on 16.2.88: s. 2(2); rest of Act on 15.2.88: Government Gazette 10.2.88 p. 218
Current State:	All of Act in operation

Liquor Control Act 1987, No. 97/1987 (as amended by No. 70/1988)

Assent Date:	1.12.87
Commencement Date:	S. 176(1)(2) on 3.5.88: Government Gazette 27.4.88 p. 1044; s. 176(3) uncommenced, later repealed by No. 122/1993
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Amendment) Act 1988, No. 5/1988

Assent Date:	15.4.88
Commencement Date:	Ss 1–3, 5–9, 11 on 16.2.88: s. 2(1); ss 4, 10 on 15.4.88: s. 2(2)
Current State:	All of Act in operation

Subdivision Act 1988, No. 53/1988 (as amended by No. 47/1989)

Assent Date:	31.5.88
Commencement Date:	30.10.89: Government Gazette 4.10.89 p. 2532
Current State:	All of Act in operation

Local Government (Consequential Provisions) Act 1989, No. 12/1989

Assent Date:	9.5.89
Commencement Date:	S. 4(1)(Sch. 2 item 90.1) on 1.11.89: Government Gazette 1.11.89 p. 2798; s. 4(1)(Sch. 2 items 90.2, 90.3) on 1.10.92: Government Gazette 23.9.92 p. 2789
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Transfer of Land (Computer Register) Act 1989, No. 18/1989

Assent Date:	16.5.89
Commencement Date:	3.2.92: Government Gazette 18.12.91 p. 3488
Current State:	All of Act in operation

Extractive Industries (Amendment) Act 1989, No. 31/1989

Assent Date:	6.6.89
Commencement Date:	S. 13(4) on 16.2.88: s. 2(4); s. 13(5) on 30.8.89: Government Gazette 30.8.89 p. 2211—See **Interpretation of Legislation Act 1984**
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Transport (Amendment) Act 1989, No. 44/1989

Assent Date:	6.6.89
Commencement Date:	S. 41(Sch. 2 item 31) on 1.7.89: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date:	14.6.89
Commencement Date:	S. 3(Sch. item 153) on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Amendment) Act 1989, No. 86/1989 (as amended by No. 48/1991)

Assent Date:	5.12.89
Commencement Date:	S. 24 on 6.12.89: s. 2(1); s. 26(2) on 30.9.92: s. 2(2); s. 29(1)–(4)(6)(10) on 16.2.88: s. 2(3); s. 29(8) immediately before 16.2.88: s. 2(4); s. 29(9) on 3.5.88: s. 2(5); rest of Act on 5.12.89: s. 2(6)
Current State:	All of Act in operation

Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991

Assent Date:	25.6.91
Commencement Date:	Ss 59–66 on 25.6.91: s. 2(4)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Administrative Appeals Tribunal (Planning) Act 1991, No. 62/1991

Assent Date:	12.11.91
Commencement Date:	S. 39 on 29.5.90: s. 2(2); rest of Act on 8.1.92: Government Gazette 8.1.92 p. 2
Current State:	All of Act in operation

Albury–Wodonga Agreement (Amendment) Act 1991, No. 88/1991

Assent Date:	10.12.91
Commencement Date:	17.2.92: Government Gazette 12.2.92 p. 314
Current State:	All of Act in operation

City of Greater Geelong Act 1993, No. 16/1993

Assent Date:	18.5.93
Commencement Date:	All of Act (*except* s. 24) on 18.5.93: s. 2(1); s. 24 on 3.12.93: Special Gazette (No. 92) 2.12.93 p. 2
Current State:	All of Act in operation

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date:	7.12.93
Commencement Date:	Ss 4(2), 6, 9 on 1.10.95: s. 2(1); s. 37(2) on 3.12.91: s. 2(2); s. 37(3) on 1.6.93: s. 2(3); rest of Act on 7.12.93: s. 2(4)
Current State:	All of Act in operation

Building Act 1993, No. 126/1993

Assent Date:	14.12.93
Commencement Date:	S. 264(Sch. 5 items 17.1–17.3) on 1.7.94: Special Gazette (No. 42) 1.7.94 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Amendment) Act 1993, No. 128/1993

Assent Date:	14.12.93
Commencement Date:	14.12.93
Current State:	All of Act in operation

Planning Authorities Repeal Act 1994, No. 118/1994

Assent Date:	20.12.94
Commencement Date:	S. 13 on 1.7.95: Special Gazette (No. 63) 29.6.95 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Coastal Management Act 1995, No. 8/1995

Assent Date:	26.4.95
Commencement Date:	Ss 43–45 on 26.4.97: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Latrobe Regional Commission (Repeal) Act 1995, No. 16/1995

Assent Date:	9.5.95
Commencement Date:	All of Act (*except* s. 7) on 9.5.95: s. 2(1); s. 7 on 15.8.95: Government Gazette 27.7.95 p. 1880
Current State:	All of Act in operation

Planning and Environment (Miscellaneous Amendments) Act 1995, No. 35/1995

Assent Date:	6.6.95
Commencement Date:	All of Act (*except* s. 4) on 6.6.95: s. 2(1); s. 4 on 6.12.95: s. 2(3)
Current State:	All of Act in operation

Planning and Environment (Development Contributions) Act 1995, No. 50/1995

Assent Date:	14.6.95
Commencement Date:	S. 3 on 30.11.95: Government Gazette 30.11.95 p. 3303; s. 4 on 30.5.97: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Extractive Industries Development Act 1995, No. 67/1995

Assent Date:	17.10.95
Commencement Date:	Pt 1 (ss 1–7), s. 60(1)(2) on 17.10.95: s. 2(1); rest of Act on 1.6.96: Special Gazette (No. 60) 31.5.96 p. 4
Current State:	All of Act in operation

Heritage Act 1995, No. 93/1995

Assent Date:	5.12.95
Commencement Date:	S. 218(1)(Sch. 2 item 7) on 23.5.96: Government Gazette 23.5.96 p. 1248
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996

Assent Date:	2.7.96
Commencement Date:	S. 17 on 2.7.96: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Planning Schemes) Act 1996, No. 77/1996

Assent Date:	17.12.96
Commencement Date:	17.12.96: s. 2
Current State:	All of Act in operation

Alpine Resorts (Management) Act 1997, No. 89/1997

Assent Date:	9.12.97
Commencement Date:	S. 75 on 30.4.98: Government Gazette 30.4.98 p. 926
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Amendment) Act 1997, No. 103/1997

Assent Date:	16.12.97
Commencement Date:	16.12.97: s. 2
Current State:	All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date:	26.5.98
Commencement Date:	S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date:	2.6.98
Commencement Date:	Ss 182–192 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Amendment) Act 1998, No. 72/1998

Assent Date:	4.11.98
Commencement Date:	Ss 3–8 on 3.12.98: Government Gazette 26.11.98 p. 2851
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date:	17.11.98
Commencement Date:	S. 24(Sch. item 45) on 1.1.99: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Liquor Control Reform Act 1998, No. 94/1998

Assent Date:	24.11.98
Commencement Date:	S. 183(Sch. 4 item 3) on 17.2.99: Special Gazette (No. 22) 16.2.99 p. 3
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date:	1.12.98
Commencement Date:	S. 27 on 1.2.99: Government Gazette 24.12.98 p. 3204
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Amendment) Act 2000, No. 28/2000

Assent Date:	30.5.00
Commencement Date:	Ss 3–11 on 31.5.00: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Restrictive Covenants) Act 2000, No. 100/2000

Assent Date:	12.12.00
Commencement Date:	13.12.00: s. 2
Current State:	All of Act in operation

Planning and Environment (Metropolitan Green Wedge Protection) Act 2003, No. 43/2003

Assent Date:	11.6.03
Commencement Date:	12.6.03: s. 2
Current State:	All of Act in operation

Planning and Environment (Port of Melbourne) Act 2003, No. 77/2003

Assent Date:	21.10.03
Commencement Date:	22.10.03: s. 2
Current State:	All of Act in operation

Road Management Act 2004, No. 12/2004

Assent Date:	11.5.04
Commencement Date:	S. 166 on 1.7.04: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Mitcham-Frankston Project Act 2004, No. 39/2004

Assent Date:	8.6.04
Commencement Date:	S. 261 on 1.7.04: Special Gazette (No. 148) 25.6.04 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Sustainable Forests (Timber) Act 2004, No. 48/2004

Assent Date:	16.6.04
Commencement Date:	S. 137 on 17.6.04: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (General Amendment) Act 2004, No. 81/2004

Assent Date:	16.11.04
Commencement Date:	23.5.05: Government Gazette 19.5.05 p. 930
Current State:	All of Act in operation

Planning and Environment (Development Contributions) Act 2004, No. 101/2004

Assent Date:	14.12.04
Commencement Date:	15.12.04: s. 2
Current State:	All of Act in operation

Public Administration Act 2004, No. 108/2004

Assent Date:	21.12.04
Commencement Date:	S. 117(1)(Sch. 3 item 155) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Statute Law Revision Act 2005, No. 10/2005

Assent Date:	27.4.05
Commencement Date:	S. 3(Sch. 1 item 17) on 28.4.05: s. 2
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date:	24.5.05
Commencement Date:	S. 18(Sch. 1 item 81) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Williamstown Shipyard) Act 2005, No. 44/2005

Assent Date:	16.8.05
Commencement Date:	17.8.05: s. 2
Current State:	All of Act in operation

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date:	13.6.06
Commencement Date:	S. 94(Sch. item 37) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment (Growth Areas Authority) Act 2006, No. 33/2006

Assent Date:	13.6.06
Commencement Date:	Ss 4–9 on 1.9.06: Government Gazette 31.8.06 p. 1816
Current State:	All of Act in operation

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date:	10.10.06
Commencement Date:	S. 26(Sch. item 82) on 11.10.06: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Road Legislation (Projects and Road Safety) Act 2006, No. 81/2006

Assent Date:	10.10.06
Commencement Date:	S. 60 on 11.10.06: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment Act 2007, No. 47/2007

Assent Date:	25.9.07
Commencement Date:	Ss 3–8, 10–17 on 26.9.07: s. 2(1); s. 9 on 1.9.08: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Public Administration Amendment Act 2009, No. 27/2009

Assent Date:	17.6.09
Commencement Date:	Ss 24(1), 25 on 18.6.09: s. 2(1); s. 24(2) on 30.6.09: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning Legislation Amendment Act 2009, No. 66/2009

Assent Date:	17.11.09
Commencement Date:	Ss 3–5 on 18.11.09: s. 2
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date:	2.3.10
Commencement Date:	Ss 25(5)(Sch. 2 item 10), 203(1)(Sch. 6 item 35) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010, No. 23/2010

Assent Date:	1.6.10
Commencement Date:	Ss 3–5 on 8.6.10: Special Gazette (No. 212) 8.6.10 p. 1; ss 6–13 on 1.7.10: Special Gazette (No. 242) 25.6.10 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Local Government and Planning Legislation Amendment Act 2010, No. 58/2010

Assent Date:	14.9.10
Commencement Date:	Ss 36–43 on 24.9.10: Government Gazette 23.9.10 p. 2186
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Statute Law Revision Act 2011, No. 29/2011

Assent Date:	21.6.11
Commencement Date:	S. 3(Sch. 1 item 70) on 22.6.11: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2011, No. 31/2011

Assent Date:	29.6.11
Commencement Date:	Ss 4, 5, 7–27 on 30.6.11: s. 2(1); s. 6 on 1.7.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Transport Legislation Amendment (Public Transport Development Authority) Act 2011, No. 61/2011

Assent Date:	15.11.11
Commencement Date:	S. 25 on 15.12.11: Special Gazette (No. 407) 13.12.11 p. 1; Sch. 1 item 7 on 2.4.12: Special Gazette (No. 101) 27.3.12 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (Schools) Act 2012, No. 2/2012

Assent Date:	14.2.12
Commencement Date:	15.2.12: s. 2
Current State:	All of Act in operation

Duties Amendment (Landholder) Act 2012, No. 38/2012

Assent Date:	27.6.12
Commencement Date:	Ss 16–25 on 1.7.12: s. 2
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Statute Law Revision Act 2012, No. 43/2012

Assent Date:	27.6.12
Commencement Date:	S. 3(Sch. item 39) on 28.6.12: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (VicSmart Planning Assessment) Act 2012, No. 53/2012

Assent Date:	18.9.12
Commencement Date:	Ss 3–10 on 20.5.13: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (General) Act 2013, No. 3/2013
(as amended by No. 34/2013)

Assent Date:	19.2.13
Commencement Date:	Ss 3–6, 8–12, 15, 16, 37, 41, 47, 50, 56–69, 71(1), 72, 74, 75, 77–85 on 22.7.13: Special Gazette (No. 250) 2.7.13 p. 1; ss 14, 17–36, 38–40, 42–46, 48, 49, 51–55, 70, 71(2), 73, 76 on 28.10.13: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Traditional Owner Settlement Amendment Act 2013, No. 4/2013

Assent Date:	19.2.13
Commencement Date:	S. 30 on 8.3.13: Special Gazette (No. 70) 5.3.13 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Act 2013, No. 21/2013

Assent Date:	23.4.13
Commencement Date:	Ss 3–22 on 22.7.13: Special Gazette (No. 250) 2.7.13 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013, No. 34/2013

Assent Date:	18.6.13
Commencement Date:	S. 35(Sch. 2 item 7) on 1.7.13: s. 2
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Statute Law Revision Act 2013, No. 70/2013

Assent Date:	19.11.13
Commencement Date:	S. 4(Sch. 2 item 36) on 1.12.13: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date:	25.3.14
Commencement Date:	S. 160(Sch. 2 item 71) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date:	3.6.14
Commencement Date:	S. 10(Sch. item 124) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Building a Better Victoria (State Tax and Other Legislation Amendment) Act 2014, No. 40/2014

Assent Date:	17.6.14
Commencement Date:	Ss 30–37 on 1.7.15: s. 2(4)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014

Assent Date:	27.6.14
Commencement Date:	S. 33(Sch. item 18) on 30.6.14: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Courts Legislation Miscellaneous Amendments Act 2014, No. 62/2014

Assent Date:	9.9.14
Commencement Date:	Ss 53, 54 on 10.9.14: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (Recognising Objectors) Act 2015, No. 30/2015

Assent Date:	11.8.15
Commencement Date:	Ss 3–5 on 12.10.15: Special Gazette (No. 294) 6.10.15 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (Infrastructure Contributions) Act 2015, No. 35/2015

Assent Date:	1.9.15
Commencement Date:	Ss 3–15 on 1.6.16: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

State Taxation and Other Acts Amendment Act 2016, No. 40/2016

Assent Date:	28.6.16
Commencement Date:	Ss 45–47 on 30.6.14: s. 2(2); s. 44 on 1.7.15: s. 2(4); s. 48 on 29.6.16: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

State Taxation Acts Further Amendment Act 2016, No. 66/2016

Assent Date:	15.11.16
Commencement Date:	Ss 8–25 on 16.11.16: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Act 2017, No. 3/2017

Assent Date:	14.2.17
Commencement Date:	S. 50(Sch. 1 item 4) on 12.4.17: Special Gazette (No. 117) 12.4.17 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Heritage Act 2017, No. 7/2017

Assent Date:	15.3.17
Commencement Date:	S. 305 on 1.11.17: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Victorian Planning Authority Act 2017, No. 11/2017

Assent Date:	27.3.17
Commencement Date:	Ss 55–97 on 1.7.17: Special Gazette (No. 150) 16.5.17 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

State Taxation Acts Amendment Act 2017, No. 28/2017

Assent Date:	27.6.17
Commencement Date:	S. 79 on 28.6.17: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Act 2017, No. 47/2017

Assent Date:	26.9.17
Commencement Date:	Ss 7–9 on 15.11.17: Special Gazette (No. 388) 15.11.17 p. 1; ss 3–6 on 1.6.18: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Yarra River Protection (Wilip-gin Birrarung murron) Act 2017, No. 49/2017

Assent Date:	26.9.17
Commencement Date:	Ss 61, 62 on 1.12.17: s. 2(3); s. 63 on 24.2.22: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Parks and Crown Land Legislation Amendment Act 2017, No. 53/2017

Assent Date:	24.10.17
Commencement Date:	S. 88 on 15.12.17: Special Gazette (No. 433) 12.12.17 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (Public Land Contributions) Act 2018, No. 7/2018

Assent Date:	27.2.18
Commencement Date:	Ss 4–15, 23–25 on 2.7.18: Special Gazette (No. 305) 26.6.18 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment (Distinctive Areas and Landscapes) Act 2018, No. 17/2018

Assent Date:	29.5.18
Commencement Date:	Ss 3–5 on 30.5.18: s. 2
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Marine and Coastal Act 2018, No. 26/2018

Assent Date:	26.6.18
Commencement Date:	S. 96 on 1.8.18: Special Gazette (No. 337) 17.7.18 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Environment Protection Amendment Act 2018, No. 39/2018 (as amended by No. 11/2020)

Assent Date:	28.8.18
Commencement Date:	S. 49 on 1.7.21: Special Gazette (No. 124) 16.3.21 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Transport Legislation Amendment Act 2019, No. 49/2019

Assent Date:	3.12.19
Commencement Date:	S. 186(Sch. 4 item 33) on 1.1.20: Special Gazette (No. 514) 10.12.19 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Local Government Act 2020, No. 9/2020

Assent Date:	24.3.20
Commencement Date:	S. 390(Sch. 1 items 77.2–77.4, 77.7–77.9) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1; s. 390(Sch. 1 items 77.1, 77.5, 77.6) on 24.10.20: s. 2(3)(f)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

COVID-19 Omnibus (Emergency Measures) Act 2020, No. 11/2020

Assent Date:	24.4.20
Commencement Date:	S. 58 on 25.4.20: s. 2
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Great Ocean Road and Environs Protection Act 2020, No. 19/2020

Assent Date:	23.6.20
Commencement Date:	Ss 74−76 on 1.12.20: s. 2(2)
Current State:	This information relates only to the provisions amending the **Planning and Environment Act 1987**

COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020, No. 27/2020

Assent Date:	20.10.20
Commencement Date:	S. 40 on 21.10.20: s. 2
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Project Development and Construction Management Amendment Act 2020, No. 30/2020

Assent Date:	27.10.20
Commencement Date:	Ss 26, 27 on 22.12.20: Special Gazette (No. 685) 22.12.20 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Planning and Environment Amendment Act 2021, No. 12/2021

Assent Date:	23.3.21
Commencement Date:	Ss 13–59, 62–73 on 24.3.21: s. 2(1); ss 3–6, 8–12 on 7.7.21: Special Gazette (No. 372) 6.7.21 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Suburban Rail Loop Act 2021, No. 43/2021

Assent Date:	19.10.21
Commencement Date:	Ss 116–131 on 1.12.21: Special Gazette (No. 649) 23.11.21 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Water and Catchment Legislation Amendment Act 2021, No. 48/2021

Assent Date:	3.11.21
Commencement Date:	S. 147 on 1.1.22: Special Gazette (No. 717) 14.12.21 p. 1
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

Public Health and Wellbeing Amendment (Pandemic Management) Act 2021, No. 53/2021

Assent Date:	7.12.21
Commencement Date:	S. 32 on 8.12.21: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Planning and Environment Act 1987**

3 Explanatory details

[1] S. 3(1) def. of ***Victoria Planning Provisions***: Part 3 (ss 16A–27) of the **Planning and Environment (Planning Schemes) Act 1996**, No. 77/1996 reads as follows:

Part 3—Transitional

S. 16A inserted by No. 77/2003 s. 8.

16A Definition of Port of Melbourne Area

In this Part ***Port of Melbourne Area*** has the same meaning as it has in the **Planning and Environment Act 1987**.

17 Existing Act to continue to apply to existing schemes

Despite the amendment of the Principal Act by this Act, the Principal Act as in force immediately before the commencement of this Act continues to apply in relation to—

(a) any planning scheme existing immediately before that commencement; and

(b) any amendment to a planning scheme of which notice was given under section 19 of the Principal Act but which had not been approved before that commencement; and

(c) any amendment to a planning scheme referred to in paragraph (a) prepared on or after that commencement.

18 Municipal councils to prepare new schemes

(1) As soon as practicable after the commencement of this Act, each municipal council must prepare a planning scheme for its municipal district and for any area adjoining its municipal district for which it is a planning authority.

(2) Subject to this Part, the Principal Act as amended by this Act and the regulations under the Principal Act apply to the preparation of a planning scheme

under this section as if it were an amendment to a planning scheme and the municipal council were the planning authority.

(3) Sections 96A to 96D do not apply in respect of a planning scheme prepared under this section.

S. 18(4) inserted by No. 77/2003 s. 9.

(4) This section does not apply to any part of a municipal district that is within the Port of Melbourne Area.

19 Municipal councils to prepare municipal strategic statements

(1) The municipal council must prepare a municipal strategic statement for inclusion in the planning scheme prepared under section 18 on or before the date specified by the Minister in respect of that planning scheme.

(2) If a municipal council has not prepared a municipal strategic statement for inclusion in a planning scheme on or before the date specified by the Minister under subsection (1), the Minister may prepare a municipal strategic statement for inclusion in that planning scheme.

(3) Section 12A of the Principal Act as amended by this Act applies to the preparation of a municipal strategic statement under this section.

20 Submission of planning scheme for approval

(1) The municipal council must submit a planning scheme prepared under section 18 to the Minister for approval under section 31 of the Principal Act on or before the date specified by the Minister in respect of that planning scheme.

(2) If the municipal council does not submit a planning scheme by the date specified by the Minister, the Minister may prepare and approve a planning scheme for that municipal district.

(3) The Principal Act (except sections 12(1)(a) and (e), 12(2), 12(3), Divisions 1 and 2 of Part 3 and section 39 and any regulations made for the purpose of those provisions) applies to the preparation and approval of a planning scheme by the Minister under subsection (2).

(4) A planning scheme approved under this section is deemed to be approved under the Principal Act.

(5) The municipal council must pay to the Crown the costs determined by the Governor in Council to be incurred by the Minister in preparing a planning scheme under this section for the council's municipal district.

21 Minister may prepare planning scheme

(1) The Minister may prepare and approve a planning scheme under this Part for any part of Victoria outside a municipal district.

S. 21(1A) inserted by No. 77/2003 s. 10.

(1A) The Minister may prepare and approve a planning scheme under this Part for the Port of Melbourne Area.

(2) Subject to this Part, the Principal Act as amended by this Act and the regulations under the Principal Act apply to the preparation of a planning scheme under this section as if it were an amendment to a planning scheme and the Minister were the planning authority.

(3) Sections 96A to 96D do not apply in respect of a planning scheme prepared under this section.

22 Validity of schemes

(1) A planning scheme prepared under this Part and approved or purporting to have been approved is deemed to have been duly approved in accordance with all of the requirements of this Part and the

Principal Act and to be valid and effective in all respects.

(2) A planning scheme referred to in subsection (1) must not be called into question in any proceeding in any court or tribunal or in any proceeding by way of review under the Principal Act or this Part.

(3) Nothing in this section applies to an amendment to a planning scheme referred to in subsection (1).

23 Issue of permits with schemes

(1) If—

(a) a municipal council prepares a planning scheme under this Part for an area; and

(b) the municipal council determines under section 96G(1)(c) of the Principal Act to recommend to the Minister that a permit be granted under Division 5 of Part 4 of the Principal Act—

the municipal council must give the owner and the occupier of land to which the proposed permit would apply at least 30 days notice of its intention to recommend to the Minister that a permit be granted under that Division in respect of the land.

(2) The notice must be accompanied by a copy of the proposed permit.

(3) The Principal Act applies in relation to a planning scheme prepared under this Part as if—

(a) in section 96E(1)(a) the words "as amended by the proposed amendment" were **omitted**; and

(b) for section 96G(1)(c) there were **substituted**—

"(c) the planning authority considers it appropriate that a permit be granted under this Division for any purpose for which the planning scheme would require a permit to be obtained.".

(4) Section 96I of the Principal Act applies in relation to a planning scheme prepared under this Part as if that section permitted the Minister—

(a) to grant a permit subject to any conditions the Minister thinks fit, if the Minister considers that it is appropriate that a permit be granted under that section for any purpose for which the planning scheme would require the permit to be obtained; and

(b) to grant any permit under that section within 3 months after the date of approval of the planning scheme.

S. 23(5) inserted by No. 72/1998 s. 10.

(5) If, in relation to a planning scheme prepared under this Part, the Minister grants a permit under section 96I of the Principal Act for the use of land or the development and use of land for an extractive industry, the permit may specify that the permit expires if the use is discontinued for a period (being not less than 2 years) specified in the permit.

S. 23(6) inserted by No. 72/1998 s. 10.

(6) If a permit specifies a period for expiry in accordance with subsection (5)—

(a) the permit expires if the use is discontinued for the period specified in the permit; and

(b) sections 68(2)(b) and 68(3)(d) of the Principal Act do not apply to that permit.

24 Effect of new scheme

(1) On the commencement of a new planning scheme prepared under this Part in respect of an area, any planning scheme in force in that area immediately before that commencement is revoked.

(2) All acts matters or things of a continuing nature made, done or commenced under or in relation to a revoked scheme that could have been made, done or commenced under or in relation to the new planning scheme are to be taken, so far as relates to any period after the commencement of the new planning scheme, to have been made, done or commenced in relation to the new planning scheme.

(3) On and from the commencement of the new planning scheme—

(a) all proceedings commenced by or against a responsible authority under or in relation to the revoked scheme may be continued by or against the responsible authority for the new planning scheme; and

(b) any arrangement, contract or agreement entered into by or on behalf of a responsible authority in relation to the revoked scheme that could be entered into under the Principal Act in relation to the new planning scheme may be enforced by or against the responsible authority for the new planning scheme; and

(c) all rights and liabilities existing under or in relation to the revoked scheme immediately before the commencement of the new planning scheme continue under or in relation to the new planning scheme, to the extent that the new planning scheme has provisions to the like effect as provisions of

the revoked scheme, and may be enforced by or against—

(i) the Minister, if they were rights and liabilities of or enforceable against the Minister immediately before that commencement; or

(ii) the responsible authority for the new planning scheme, if they were rights and liabilities of or enforceable against the responsible authority under or in relation to the revoked scheme immediately before that commencement.

25 Applications for permits

(1) Any application for a permit in respect of land which was made under the Principal Act but which had not been decided before the commencement of a new planning scheme prepared under this Part and applying to that land must be decided in accordance with the provisions of the new planning scheme as in force at the date of the decision.

(2) Subject to subsection (3), Part 4 of the Principal Act as amended by this Act applies to an application referred to in subsection (1) as if a reference in that Part to a planning scheme were a reference to the new planning scheme.

(3) If notice had been given of an application under section 52 of the Principal Act before the commencement of the new planning scheme—

(a) any exemption in the new planning scheme from the giving of that notice does not apply; and

(b) any additional requirements for notice in the new planning scheme do not apply.

26 Appeals

(1) If before the commencement of a new planning scheme prepared under this Part—

(a) the responsible authority had decided an application for a permit under the Principal Act in respect of land to which the new planning scheme applies; and

(b) an appeal against the decision had not been lodged before that commencement and the time for lodging had not expired; and

(c) an appeal is made to the Administrative Appeals Tribunal against that decision after that commencement—

the new planning scheme as in force at the date of the determination by the Tribunal applies to the hearing and determination of the appeal.

(2) If before the commencement of a new planning scheme prepared under this Part—

(a) the responsible authority had decided an application for a permit under the Principal Act in respect of land to which the new planning scheme applies; and

(b) an appeal had been lodged but not determined before that commencement—

the new planning scheme as in force at the date of the determination by the Tribunal applies to the hearing and determination of the appeal.

(3) If on an appeal referred to in this section, the Tribunal determines that a permit should be granted, the new planning scheme as in force for the time being applies to the grant of the permit and anything done under or in relation to the permit.

S. 27 amended by No. 77/2003 s. 11 (ILA s. 39B(1)).

27 Supreme Court—limitation of jurisdiction

(1) It is the intention of section 22(2) to alter or vary section 85 of the **Constitution Act 1975**.

S. 27(2) inserted by No. 77/2003 s. 11.

(2) Without limiting subsection (1), it is the intention of section 22(2) (to the extent that it applies to any planning scheme prepared and approved by the Minister under section 21(1A) for the Port of Melbourne Area) to alter or vary section 85 of the **Constitution Act 1975**.

[2] Pt 1A (ss 4A–4J): See note 1.

[3] S. 6(1)(aa): See note 1.

[4] S. 6(2)(d): See note 1.

[5] S. 7: See note 1.

[6] S. 12(2)(aa): See note 1.

[7] S. 12(2)(ab): See note 1.

[8] S. 12(2)(b): Section 32(8) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

32 Transitional provisions: Amendment to planning schemes

(8) The amendment made to the Principal Act by section 25(d) applies only to an amendment of a planning scheme prepared on or after the date of commencement of this section.

[9] S. 12A: See note 1.

[10] S. 19(3): Section 32(3) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

32 Transitional provisions: Amendment to planning schemes

(3) The amendment made to the Principal Act by section 25(e) of this Act applies whether any notice required by section 19 of the Principal Act

is given before on or after the date of commencement of this section.

[11] S. 21: Section 32(4) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

32 Transitional provisions: Amendment to planning schemes

(4) The amendment made to the Principal Act by section 25(f) of this Act applies only where a condition requiring notice is imposed under the Principal Act on or after the date of commencement of this section.

[12] S. 21: See note 1.

[13] S. 21A: Section 32(5) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

32 Transitional provisions: Amendment to planning schemes

(5) The amendments made to the Principal Act by section 8 of this Act apply to—

(a) a submission received on or after the date of commencement of this section; and

(b) a submission received before that date of commencement if at that date of commencement—

(i) the submission has not been referred to a panel; and

(ii) no notice under the Principal Act has been given to the makers of the submission.

[14] S. 22: See note 1.

[15] S. 23: Section 32(6) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

32 Transitional provisions: Amendment to planning schemes

(6) The amendment made to the Principal Act by section 25(h) of this Act applies to a submission whether received before on or after the date of commencement of this section.

[16] S. 23: See note 1.

[17] S. 25: See note 1.

[18] S. 25A: See note 1.

[19] S. 52(1A): Section 33(1) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

33 Transitional provisions: Application for permits

(1) The amendment made to the Principal Act by section 13 of this Act applies only to an application for a permit received on or after the date of commencement of this section.

[20] S. 52(1B): See note 19.

[21] S. 52(1C): See note 19.

[22] Pt 4 Div. 5 (ss 96A–96N): See note 1.

[23] S. 97 (*repealed*): Section 29(6) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

29 Statute law revision

(6) On and from 16 February 1988 until the coming into operation of section 43 of the **Extractive Industries Act 1966**, section 97(2)(a) of the Principal Act has effect and must be taken always to have had effect as if it referred to the Extractive Industries Advisory Committee instead of to the Extractive Industries Board.

[24] S. 161(2): See note 1.

[25] Pt 9 Div. 2: Section 31(3) of the **Planning and Environment (Amendment) Act 1989**, No. 86/1989 reads as follows:

> **31 Transitional provisions: Crown land owners and occupiers**
>
> (3) Division 2 of Part 9 of the Principal Act continues to apply to an agreement entered into between a responsible authority and the occupier of Crown land before the date of commencement of this section, as if section 4 of this Act had not been enacted.

[26] S. 201D: See note 1.