



Queensland

## **Planning and Development Bill 2014**

**Consultation Draft - Not Govt Policy**

## Contents

---

		Page
<b>Chapter 1</b>	<b>Preliminary</b>	
1	Short title .....	14
2	Commencement .....	14
3	Purpose of the Act .....	14
4	Definitions .....	16
5	Act binds all persons .....	16
<b>Chapter 2</b>	<b>Planning</b>	
<b>Part 1</b>	<b>Introduction</b>	
6	What this chapter is about .....	16
7	Planning instruments .....	17
<b>Part 2</b>	<b>State planning instruments</b>	
8	What this part is about .....	18
9	Making or amending State planning instruments .....	18
10	Minor amendments to State planning instruments .....	20
11	Making temporary State planning policies .....	20
12	Repealing State planning instruments .....	21
13	Advice to Minister about regional plans .....	22
<b>Part 3</b>	<b>Local planning instruments</b>	
<b>Division 1</b>	<b>Introduction</b>	
14	What this part is about .....	23
15	Required contents for local planning instruments .....	23
16	Minister's guidelines and rules .....	24
<b>Division 2</b>	<b>Making, amending, suspending or repealing local planning instruments</b>	
17	Making planning schemes .....	24
18	Amending planning schemes .....	26
19	Making or amending planning scheme policies .....	27
20	Making or amending TLPs .....	27
21	Repealing TLPs or planning scheme policies .....	28
<b>Division 3</b>	<b>State powers for local planning instruments</b>	
22	Power of Minister to direct action be taken .....	29
23	Power of Minister to take urgent action .....	31

<b>Part 4</b>	<b>Superseded planning schemes</b>	
24	Request to apply superseded planning scheme . . . . .	32
<b>Part 5</b>	<b>Planning changes that adversely affect land values</b>	
25	When this part applies . . . . .	34
26	Entitlement to compensation . . . . .	36
27	Deciding compensation claim. . . . .	37
28	Amount of compensation payable . . . . .	38
<b>Part 6</b>	<b>Designation of land for development of infrastructure</b>	
29	What this part is about . . . . .	39
30	When a designation may be made or amended. . . . .	40
31	Making or amending designation . . . . .	41
32	Process after making or amending designation . . . . .	42
33	Duration of designation . . . . .	42
34	Repealing designation . . . . .	43
35	Noting designation in planning scheme . . . . .	44
<b>Chapter 3</b>	<b>Development assessment</b>	
<b>Part 1</b>	<b>Introduction</b>	
36	What this chapter is about . . . . .	45
<b>Part 2</b>	<b>Categories of development and assessment</b>	
37	Categories of development. . . . .	45
38	Categories of assessment for assessable development . . . . .	46
39	Categorising instruments . . . . .	47
40	Exemption certificate for particular assessable development. . . . .	47
<b>Part 3</b>	<b>Development applications</b>	
<b>Division 1</b>	<b>Making development applications</b>	
41	What this part is about . . . . .	48
42	Meaning of assessment manager . . . . .	48
43	Meaning of development approval . . . . .	49
<b>Division 2</b>	<b>Making or changing application</b>	
44	Right to apply . . . . .	51
45	Making a development application . . . . .	51
46	Notice to prescribed assessment manager for some applications . . . . .	52
47	Changing or withdrawing an application. . . . .	53
48	Assessment manager's role . . . . .	53
49	Public notification for merit assessment . . . . .	54

Contents

---

50	Effect on development assessment process if action taken under Native Title Act (Cwlth) . . . . .	55
<b>Division 3</b>	<b>Referral agency assessment</b>	
51	Copy of application to referral agency . . . . .	55
52	Referral agency's assessment . . . . .	57
53	Referral agency response . . . . .	57
54	Response before application . . . . .	59
55	Effect of no response . . . . .	59
56	Changing response . . . . .	60
<b>Part 4</b>	<b>Assessing and deciding development applications</b>	
<b>Division 1</b>	<b>Assessment and decision</b>	
57	Application of division. . . . .	60
58	Assessment benchmarks . . . . .	61
59	Assessing development applications generally . . . . .	61
60	Deciding development applications generally . . . . .	63
61	Assessing variation requests . . . . .	63
62	Deciding variation requests . . . . .	64
63	Declaratory provisions . . . . .	65
64	Compliance with referral agency responses. . . . .	65
65	Notice of decision . . . . .	65
66	Restriction on decision if owner's consent required . . . . .	66
67	Deemed approval for particular applications . . . . .	67
<b>Division 2</b>	<b>Development conditions</b>	
68	Conditions must be relevant or reasonable . . . . .	68
69	Permitted conditions. . . . .	69
70	Prohibited conditions . . . . .	70
71	Agreements . . . . .	71
<b>Part 5</b>	<b>Development assessment rules</b>	
72	Development assessment rules . . . . .	71
73	Amending the rules . . . . .	73
74	Access to and evidence of the rules. . . . .	73
<b>Part 6</b>	<b>Development approvals</b>	
<b>Division 1</b>	<b>Effect of development approval</b>	
75	Effect of variation approval on local planning instrument . . . . .	74
76	When development approval has effect . . . . .	74
77	Attachment to the land . . . . .	76

<b>Division 2</b>	<b>Changing development approvals</b>	
<b>Subdivision 1</b>	<b>Changes during appeal period</b>	
78	What this division is about . . . . .	77
79	Seeking change to development approval . . . . .	77
80	Decision on changing development approval . . . . .	78
<b>Subdivision 2</b>	<b>Changes after appeal period</b>	
81	What this division is about . . . . .	79
82	Making change application . . . . .	79
83	Requirements for change applications . . . . .	80
84	Notifying affected entities of minor change application . . . . .	82
85	Assessing and deciding application for minor changes . . . . .	83
86	Assessing and deciding application for other changes . . . . .	85
<b>Subdivision 3</b>	<b>Notice of decision</b>	
87	Notice of decision . . . . .	86
<b>Division 3</b>	<b>Cancelling development approvals</b>	
88	Application to cancel development approval . . . . .	87
<b>Division 4</b>	<b>Lapsing and extending development approval</b>	
89	Lapsing at end of currency period . . . . .	88
90	Extension applications . . . . .	89
91	Deciding extension applications . . . . .	91
92	Lapsing for failing to complete . . . . .	92
<b>Division 5</b>	<b>Noting development approvals on planning scheme</b>	
93	Particular approvals to be noted . . . . .	93
<b>Part 7</b>	<b>Ministerial powers</b>	
<b>Division 1</b>	<b>Limit on Ministerial powers</b>	
94	Limit on Ministerial powers . . . . .	94
<b>Division 2</b>	<b>Ministerial powers for directions</b>	
<b>Subdivision 1</b>	<b>Directions generally</b>	
95	Directions generally . . . . .	94
<b>Subdivision 2</b>	<b>Directions to assessment managers</b>	
96	Direction to give copies of future applications . . . . .	95
97	Directions about particular applications . . . . .	95
98	Direction to impose conditions . . . . .	96
99	Ministerial report about decision to direct . . . . .	97
<b>Subdivision 3</b>	<b>Directions to referral agencies</b>	
100	Application of subdivision . . . . .	97

Contents

---

101	Directions to referral agency . . . . .	97
102	Effect of direction . . . . .	98
<b>Subdivision 4</b>	<b>Miscellaneous</b>	
103	Distribution to interested entities . . . . .	98
<b>Division 3</b>	<b>Ministerial powers for calling in development applications</b>	
104	Call in power . . . . .	99
105	Ministerial action on calling in . . . . .	100
106	Effect of call in . . . . .	100
107	Provisions for Minister to decide application . . . . .	101
108	Process for any undecided part . . . . .	102
109	Report about Minister's decision on application . . . . .	102
<b>Division 4</b>	<b>Ministerial powers for change, extension or cancellation applications</b>	
110	Step in power . . . . .	103
<b>Part 8</b>	<b>Miscellaneous</b>	
111	Restriction on use or preservation covenants . . . . .	104
112	Regulation prevails over local categorising instruments whenever made 105	
113	Power to refund or waive fees . . . . .	105
<b>Chapter 4</b>	<b>Infrastructure</b>	
<b>Part 1</b>	<b>Introduction</b>	
114	What this chapter is about . . . . .	105
115	Extension of chapter to change and extension applications and approvals . . . . .	106
116	References in ch 4 . . . . .	108
<b>Part 2</b>	<b>Provisions for local governments</b>	
<b>Division 1</b>	<b>Charges for trunk infrastructure</b>	
<b>Subdivision 1</b>	<b>Power to adopt charges</b>	
117	Regulation prescribing charges . . . . .	109
118	Power to adopt charges by resolution . . . . .	110
<b>Subdivision 2</b>	<b>Charges resolutions</b>	
119	Contents—general . . . . .	111
120	Provisions for participating local governments and distributor-retailers 112	
121	Working out cost of infrastructure for offset or refund . . . . .	113
122	Criteria for deciding conversion application . . . . .	113
123	Steps after making charges resolution . . . . .	113

<b>Subdivision 3</b>	<b>Levying charges</b>	
124	When charge may be levied and recovered . . . . .	114
125	Limitation of levied charge . . . . .	115
126	Requirements for infrastructure charges notice . . . . .	116
<b>Subdivision 4</b>	<b>Payment</b>	
127	Payment triggers generally . . . . .	117
128	Agreements about payment or provision instead of payment . . . . .	117
<b>Subdivision 5</b>	<b>Changing charges during relevant appeal period</b>	
129	Application of sdiv 5 . . . . .	118
130	Representations about infrastructure charges notice . . . . .	118
131	Suspension of relevant appeal period . . . . .	119
<b>Division 2</b>	<b>Development approval conditions about trunk infrastructure</b>	
<b>Subdivision 1</b>	<b>Conditions for necessary trunk infrastructure</b>	
132	Application and operation of sdiv 1 . . . . .	119
133	Necessary infrastructure condition for LGIP-identified infrastructure . . . . .	120
134	Necessary infrastructure condition for other infrastructure . . . . .	120
135	Deemed compliance with necessary or reasonable requirements . . . . .	121
136	Offset or refund requirements . . . . .	121
<b>Subdivision 2</b>	<b>Conditions for additional trunk infrastructure costs</b>	
137	Power to impose . . . . .	123
138	Content of additional payment condition . . . . .	124
139	Restriction if development completely in PIA . . . . .	125
140	Other area restrictions . . . . .	125
141	Refund if development in PIA . . . . .	126
142	Refund if development approval ceases . . . . .	126
143	Additional payment condition does not affect other powers . . . . .	127
<b>Subdivision 3</b>	<b>Working out cost for required offset or refunds</b>	
144	Process . . . . .	127
<b>Division 3</b>	<b>Miscellaneous provisions about trunk infrastructure</b>	
<b>Subdivision 1</b>	<b>Conversion of particular non-trunk infrastructure before construction starts</b>	
145	Application of sdiv 1 . . . . .	128
146	Application to convert infrastructure to trunk infrastructure . . . . .	128
147	Deciding conversion application . . . . .	129
148	Notice of decision . . . . .	129

Contents

---

149	Effect of and action after conversion . . . . .	130
<b>Subdivision 2</b>	<b>Other provisions</b>	
150	Financial provisions . . . . .	131
151	Levied charge taken to be rates . . . . .	131
<b>Division 4</b>	<b>Non-trunk infrastructure</b>	
152	Conditions local governments may impose . . . . .	131
<b>Part 3</b>	<b>Provisions for State infrastructure providers</b>	
153	Power to impose conditions about infrastructure . . . . .	132
154	Content requirements for condition . . . . .	133
155	Refund if State-related condition ceases . . . . .	134
156	Reimbursement by local government for replacement infrastructure	134
<b>Part 4</b>	<b>Infrastructure agreements</b>	
157	Infrastructure agreement . . . . .	135
158	Obligation to negotiate in good faith . . . . .	135
159	Content of infrastructure agreement . . . . .	136
160	Copy of infrastructure agreement to be given to local government	137
161	Copy of particular infrastructure agreements to be given to distributor-retailers . . . . .	137
162	When infrastructure agreement binds successors in title . . . . .	137
163	Exercise of discretion unaffected by infrastructure agreement . . . . .	138
164	Infrastructure agreement prevails over approval and charges notice	138
165	Agreement for infrastructure partnerships . . . . .	139
<b>Part 5</b>	<b>Miscellaneous</b>	
166	Sale of particular local government land held on trust . . . . .	139
<b>Chapter 5</b>	<b>Offences and enforcement</b>	
<b>Part 1</b>	<b>Introduction</b>	
167	What this chapter is about . . . . .	140
<b>Part 2</b>	<b>Development offences</b>	
168	What this part is about . . . . .	141
169	Carrying out prohibited development . . . . .	141
170	Carrying out assessable development without approval . . . . .	141
171	Compliance with development approval . . . . .	142
172	Unlawful use of premises . . . . .	142
173	Exemptions if emergency causing safety concern . . . . .	142
<b>Part 3</b>	<b>Enforcement notices</b>	
174	Show cause notices . . . . .	145



175	Enforcement notices . . . . .	146
176	Consulting private certifier about enforcement notice . . . . .	148
177	Notifying local government about enforcement notice . . . . .	149
178	Stay of enforcement notice . . . . .	149
179	Application required by show cause or enforcement notice . . . . .	150
180	Assessing authority may remedy contravention . . . . .	150
<b>Part 4</b>	<b>Offence proceedings in Magistrates Court</b>	
181	Proceeding for offences . . . . .	151
182	Proceeding brought in a representative capacity . . . . .	151
183	Responsibility for act or omission of representative . . . . .	152
184	Order for remedial action . . . . .	152
185	Order for compensation . . . . .	153
186	Order for investigation expenses . . . . .	154
187	When fine is payable to local government . . . . .	154
<b>Part 5</b>	<b>Enforcement orders in P&amp;E Court</b>	
188	Enforcement orders . . . . .	155
189	P&E Court's powers about enforcement orders . . . . .	156
<b>Part 6</b>	<b>Miscellaneous</b>	
190	Application of other Acts . . . . .	157
191	False or misleading documents . . . . .	158
192	Executive officer must ensure corporation complies with Act. . . . .	159
<b>Chapter 6</b>	<b>Dispute resolution</b>	
<b>Part 1</b>	<b>Introduction</b>	
193	What this chapter is about . . . . .	160
<b>Part 2</b>	<b>Appeal rights</b>	
194	Appeal rights . . . . .	160
<b>Part 3</b>	<b>Building and development dispute resolution committees</b>	
<b>Division 1</b>	<b>General</b>	
195	Committees registrar and other officers . . . . .	162
196	Appointment of referees . . . . .	162
197	Referee with conflict of interest . . . . .	163
198	Establishing committees . . . . .	164
199	Remuneration . . . . .	165
200	Committee proceedings . . . . .	165
<b>Division 2</b>	<b>Applications for declarations</b>	
201	Application for declaration about making of development application	166

Contents

---

202	Application for declaration about change to development approval	167
<b>Division 3</b>	<b>Committee proceedings</b>	
203	How committee proceeding are started . . . . .	167
204	Action when proceeding starts . . . . .	168
205	Power of chief executive to excuse irregularities . . . . .	169
206	Power to establish new committee or end committee proceeding	170
207	Further material for committee proceeding . . . . .	171
208	Minister entitled to be party if State interest involved . . . . .	171
209	Right to representation at hearing . . . . .	171
210	Conduct of proceeding . . . . .	171
211	Proceedings about development applications and approvals. . . . .	173
212	Appeal about development application. . . . .	173
213	Deciding no jurisdiction for proceeding . . . . .	173
214	Deciding committee proceeding . . . . .	174
215	No costs orders . . . . .	175
216	Committee may extend period to take action . . . . .	175
217	Recipient's notice of compliance with direction or order. . . . .	176
218	Publication of committee decisions . . . . .	176
<b>Chapter 7</b>	<b>Miscellaneous</b>	
<b>Part 1</b>	<b>Existing uses and rights protected</b>	
<b>Division 1</b>	<b>General</b>	
219	Lawful uses of premises when Act commences. . . . .	176
220	Prospective categorising regulations unaffected . . . . .	176
<b>Division 2</b>	<b>Protections from planning instrument changes</b>	
221	Existing lawful uses, work and approvals . . . . .	177
222	Implied and uncommenced right to use . . . . .	177
<b>Part 2</b>	<b>Power to take or purchase land for planning purposes</b>	
223	Local government may take or purchase land . . . . .	178
<b>Part 3</b>	<b>Public access to information</b>	
<b>Division 1</b>	<b>General</b>	
224	Rules to ensure appropriate public access . . . . .	179
225	Access rules—powers for documents and registers . . . . .	180
226	Public access rights [227]. . . . .	181
<b>Division 2</b>	<b>Planning and development certificates</b>	
227	Applying for certificate . . . . .	183
228	Effect of certificate . . . . .	183

229	Compensation for erroneous planning and development certificates .....	183
<b>Division 3</b>	<b>Miscellaneous</b>	
230	Provision for Information Privacy Act 2009. ....	184
<b>Part 4</b>	<b>Other provisions</b>	
231	Application of P&E Court Act evidentiary provisions .....	184
232	Electronic service .....	184
233	References in Act to particular terms .....	186
234	Applied laws apply with necessary changes .....	189
235	Delegation .....	189
236	Approved forms .....	189
237	Regulation-making power .....	189
<b>Chapter 8</b>	<b>Repeal, savings and transitional provisions</b>	
<b>Part 1</b>	<b>Repeal provision</b>	
238	Act repealed .....	190
<b>Part 2</b>	<b>Savings and transitional provisions</b>	
<b>Division 1</b>	<b>Introduction</b>	
239	Definitions for part .....	191
<b>Division 2</b>	<b>General</b>	
240	Application of division .....	193
241	Migration of SPA-related instruments to this Act .....	194
242	References in instruments of corresponding type or Acts .....	194
243	Saving of repealed Act for undecided applications .....	195
244	Statutory instruments .....	196
245	Migration of positions .....	196
246	Saving of particular provisions of repealed Act .....	197
247	Operation of continued provisions .....	197
248	References to SPA-related instruments .....	198
249	References to repealed Act .....	198
250	Transitional regulation-making power .....	198
<b>Division 3</b>	<b>Planning</b>	
251	Cessation of State planning regulatory and standard planning scheme provisions .....	199
252	Limited fast-track amendment of local planning instruments—code assessment .....	199
253	SPA compensation claims and rights .....	200

Contents

---

<b>Division 4</b>	<b>Development assessment</b>	
254	Entities for migrated development approval . . . . .	200
<b>Division 5</b>	<b>Infrastructure</b>	
255	Particular notices about charges for infrastructure continue in effect under repealed Act. . . . .	201
256	Existing payable charges . . . . .	202
257	Sunsetting of charges resolutions and adopted charges saved under repealed Act, s 979 . . . . .	202
258	Regulation prescribing charges may identify PIA's . . . . .	203
259	Approval of chief executive not required for some infrastructure agreements . . . . .	203
<b>Division 6</b>	<b>SPA proceedings and related matters</b>	
260	Existing SPA proceedings and proceeding rights . . . . .	203
261	Interim provision for committees and proceedings . . . . .	204
<b>Division 7</b>	<b>Miscellaneous</b>	
262	Deeming of LGP&E Act approvals for compliance offence . . . . .	204
263	Urban encroachment . . . . .	205
264	Access and information provisions . . . . .	205
265	Limited saving of master planning provisions . . . . .	205
266	Continued provisions for compliance assessment of documents or work 206	
267	Compliance assessment of subdivision plans . . . . .	206
268	Delayed commencement of provisions . . . . .	207
<b>Schedule 1</b>	<b>Appeal rights</b> . . . . .	208
<b>Part 1</b>	<b>Appeals to P&amp;E Court</b>	
1	Appeals to P&E Court . . . . .	208
<b>Part 2</b>	<b>Appeals to committee</b>	
2	Appeals to committee . . . . .	210
<b>Schedule 2</b>	<b>Dictionary</b> . . . . .	214

**2014**

---

**A Bill**

for

**An Act to facilitate Queensland's prosperity by providing for an efficient, effective, transparent, integrated and accountable system of land use planning and development assessment**

---

The Parliament of Queensland enacts—

## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Planning and Development Act 2014*.

### 2 Commencement

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

### 3 Purpose of the Act

- (1) The purpose of this Act is to facilitate Queensland's prosperity, including by balancing economic growth, environmental protection and community wellbeing.
- (2) The purpose is to be mainly achieved by providing for an efficient, effective, transparent, integrated and accountable system for planning and development assessment.
- (3) The system includes the following—
  - (a) *State planning policies* (including temporary ones) that set out planning and development assessment policies about matters of State interest;
  - (b) *regional plans* that set out planning and development assessment policies about matters of State interest for particular regions of the State;
  - (c) *planning schemes* that set out integrated State, regional and local planning and development assessment policies for particular local government areas;
  - (d) *temporary local planning instruments (TLPis)* that set out planning and development assessment policies to

- 
- protect all or part of a local government area from adverse impacts under urgent or emergent circumstances;
- (e) ***planning scheme policies*** that set out policies, for all or part of a local government's planning scheme area, that support—
    - (i) planning and development assessment policies under planning schemes; and
    - (ii) action by a local government in making or amending local planning instruments; and
    - (iii) action by a local government under the development assessment system;
  - (f) a ***development assessment system*** for implementing planning instruments and other policies and requirements about development by—
    - (i) categorising development; and
    - (ii) categorising types of assessment for particular development; and
    - (iii) making, receiving, assessing and deciding development applications; and
    - (iv) establishing rights and responsibilities in relation to development approvals;
  - (g) arrangements to expeditiously identify and authorise the development of key infrastructure;
  - (h) planning, development assessment, charging and other arrangements for infrastructure, to promote—
    - (i) integrated land use and infrastructure planning; and
    - (ii) the cost-effective provision of infrastructure to service development;
  - (i) a variety of enforcement arrangements that are relevant to the nature and scale of offences;

[s 4]

---

- (j) Ministerial powers to protect, or give effect to, the State's interests relating to planning and development assessment;
- (k) dispute resolution (including appeals and declarations) for administrative decisions, other than those made under Ministerial powers.

#### **4 Definitions**

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

*Note—*

For the meanings of some defined words used in particular contexts, see also section 233 (References in Act to particular terms).

#### **5 Act binds all persons**

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Commonwealth permits, the Commonwealth and the other States.
- (2) However the Commonwealth or a State can not be prosecuted for an offence against this Act.
- (3) Subsection (1) does not apply to the Coordinator-General's functions and powers under the State Development Act.

## **Chapter 2 Planning**

### **Part 1 Introduction**

#### **6 What this chapter is about**

- (1) This chapter is about planning instruments.



- 
- (2) Part 2 is about making, amending, suspending or repealing State planning instruments.
  - (3) Part 3 is about making, amending, suspending or repealing local planning instruments.
  - (4) Part 4 is about superseded planning schemes.
  - (5) Part 5 is about changes to planning schemes that affect land values.
  - (6) Part 6 is about designations and how they interact with planning schemes.

## 7 Planning instruments

- (1) A *planning instrument* is a document that sets out policies for planning and development assessment.
- (2) A *State planning instrument* is a planning instrument made by the Minister, about matters of State interest, and is either—
  - (a) a State planning policy (including a temporary State planning policy); or
  - (b) a regional plan.
- (3) A *local planning instrument* is a planning instrument made by a local government, and is either—
  - (a) a planning scheme; or
  - (b) a TLPI; or
  - (c) a planning scheme policy.
- (4) To the extent of any inconsistency between planning instruments—
  - (a) a State planning policy applies instead of a regional plan or local planning instrument; and
  - (b) a regional plan applies instead of a local planning instrument; and
  - (c) a planning scheme applies instead of a planning scheme policy; and

[s 8]

---

- (d) a TLPI applies instead of a planning scheme policy.
- (5) State planning instruments are not the only way of protecting, or giving effect to, State interests.

## Part 2 State planning instruments

### 8 What this part is about

- (1) This part sets out the process for making, amending or repealing a State planning instrument.
- (2) A State planning instrument that is made or amended substantially in compliance with that process is valid, as long as any noncompliance does not—
  - (a) restrict the public's opportunity to properly make submissions about the proposed instrument under that process; or
  - (b) adversely affect public awareness of the existence and nature of the proposed instrument.

### 9 Making or amending State planning instruments

- (1) If the Minister proposes to make or amend a State planning instrument, the Minister must publish a public notice that states—
  - (a) where copies of the proposed State planning instrument, or proposed amendment, (the *instrument*) are available for inspection and purchase; and
  - (b) a phone number or email address to contact for information about the instrument; and
  - (c) a person may make a written submission about any aspect of the instrument to the Minister; and
  - (d) the requirements for properly making a submission; and

- 
- (e) the period within which a submission may be made, which must be at least—
    - (i) if the Minister proposes to make a State planning instrument—40 business days after the gazette notice is published; and
    - (ii) if the Minister proposes to amend a State planning instrument—20 business days after the gazette notice is published.
  - (2) The Minister must give each affected local government a copy of—
    - (a) the public notice; and
    - (b) the instrument;
  - (3) After the Minister considers all submissions that are made in accordance with the requirements set out in the public notice, the Minister must decide—
    - (a) to make the instrument; or
    - (b) to make the instrument with the amendments that the Minister considers appropriate; or
    - (c) not to make the instrument.
  - (4) If the Minister decides to make the instrument (with or without amendments), the Minister must—
    - (a) publish the decision in a public notice that states—
      - (i) the day when the instrument was made; and
      - (ii) where a copy of the instrument is available for inspection and purchase; and

*Note—*

An access rule may provide for the State planning instrument to be kept available in a particular way.

    - (b) give a copy of the notice to each affected local government.
  - (5) The instrument starts to have affect on—

[s 10]

---

- (a) the day after the notice mentioned in subsection (4) is published; or
  - (b) a later day stated in the instrument.
- (6) If the Minister decides not to make the instrument, the Minister must publish the decision in a gazette notice.

## **10 Minor amendments to State planning instruments**

- (1) The Minister may make a minor amendment to a State planning instrument without complying with section 9.
- (2) If the Minister makes a minor amendment to a State planning instrument, the Minister must publish a public notice that states—
  - (a) the date when the amendment was made; and
  - (b) where a copy of the amended State planning instrument is available for inspection and purchase.

*Note—*

An access rule may provide for the State planning instrument to be kept available in a particular way.

- (3) The amendment starts to have effect on—
  - (a) the day after the public notice is published; or
  - (b) a later day stated in the amendment.

## **11 Making temporary State planning policies**

- (1) If the Minister considers a State planning policy is urgently required in order to protect or give effect to a State interest, the Minister may make a temporary State planning policy.
- (2) A temporary State planning policy may suspend or otherwise affect the operation of a State planning policy, but does not amend or repeal a State planning policy.

- 
- (3) Instead of complying with section 9, the Minister may make a temporary State planning policy by publishing a public notice that states—
    - (a) the name of the temporary State planning instrument; and
    - (b) if the temporary State planning policy suspends or otherwise affects the operation of another State planning policy—the name of the other State planning policy; and
    - (c) if the temporary State planning policy has effect only in a part of the State—the name, or a description, of the part of the State; and
    - (d) where a copy of the temporary State planning policy may be inspected and purchased.
  - (4) The temporary State planning policy starts to have effect on—
    - (a) the day after the public notice is published; or
    - (b) a later day stated in the temporary State planning policy.
  - (5) The temporary State planning policy continues to have effect for 2 years or a shorter period stated in the policy.

## **12 Repealing State planning instruments**

- (1) The Minister may repeal a State planning instrument by—
  - (a) making another State planning instrument that specifically repeals the instrument; or
  - (b) publishing a public notice that states—
    - (i) the name of the State planning instrument; and
    - (ii) if the State planning instrument has effect only in a region of the State—the name, or a description, of the region of the State; and
    - (iii) that the State planning instrument is repealed.
- (2) The State planning instrument is repealed on—

[s 13]

---

- (a) if the instrument is repealed by another State planning instrument—the day when the other State planning instrument starts to have effect; or
- (b) if the instrument is repealed by a public notice—
  - (i) the day after the public notice is published; or
  - (ii) a later day stated in the public notice.
- (3) The Minister must give a copy of the public notice to each affected local government.

**13 Advice to Minister about regional plans**

- (1) When developing and implementing a regional plan, the Minister must consider the advice of the regional planning committee established by the Minister for the region.
- (2) The Minister must consult the local governments and interest groups that the Minister considers appropriate about the following, before establishing a regional planning committee—
  - (a) the membership of the proposed committee;
  - (b) the extent of the proposed participation in, and support for, the proposed committee by—
    - (i) the local governments or interest groups; and
    - (ii) the Commonwealth; and
    - (iii) the State.
- (3) The Minister establishes a regional planning committee for a region by a gazette notice that states—
  - (a) the committee's name; and
  - (b) the membership of the committee.
- (4) The regional planning committee for a region must conduct meetings in the way, and at the times and places, decided by the Minister.

---

## **Part 3                    Local planning instruments**

### **Division 1                Introduction**

#### **14        What this part is about**

- (1) This part sets out the process for making, amending or repealing a local planning instrument.
- (2) A local planning instrument that is made or amended substantially in compliance with that process is valid, as long as any noncompliance does not—
  - (a) for the making or amending of a local planning instrument—restrict the Minister’s opportunity to consider whether the proposed instrument would adversely affect State interests; or
  - (b) if the process provides for public consultation about the proposed instrument—
    - (i) restrict the public’s opportunity to properly make submissions about the proposed instrument under that process; or
    - (ii) adversely affect public awareness of the existence and nature of the proposed instrument.

#### **15        Required contents for local planning instruments**

- (1) A regulation may prescribe requirements for the contents (the *required contents*) of local planning instruments.
- (2) To the extent of any inconsistency between the required contents and a local planning instrument, the required contents apply instead of the local planning instrument.

[s 16]

---

**16 Minister's guidelines and rules**

- (1) The Minister must make guidelines that set out matters that the chief executive must have regard to when preparing a notice about making or amending a planning scheme under section 17 or 18.
- (2) The Minister must make rules that set out processes for—
  - (a) making amendments, of a type stated in the rules, to planning schemes; and
  - (b) making or amending planning scheme policies; and
  - (c) making or amending TLPIs.
- (3) The Minister's guidelines or rules start to have effect when the guidelines or rules are adopted by regulation.

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

**17 Making planning schemes**

- (1) If a local government proposes to make a planning scheme, the local government must give a notice of the proposal to the chief executive.
- (2) After consulting with the local government, the chief executive—
  - (a) must give a notice about the process for making the proposed planning scheme to the local government; and
  - (b) may give an amended notice about the process for making the proposed planning scheme to the local government.
- (3) The chief executive must have regard to the Minister's guidelines when preparing the notice or any amended notice.
- (4) The notice or amended notice must state—



- (a) the requirements for public consultation about the proposed planning scheme, such as how any submissions about the proposed planning scheme must be dealt with; and
  - (b) that the local government must publish a public notice about the making of the planning scheme after the planning scheme is made.
- (5) The chief executive must publish the notice, and any amended notice, on the department's website.
- (6) The local government must make the planning scheme by following the process stated in the notice or amended notice.
- (7) A local government may apply a planning scheme for assessing tidal work (*prescribed tidal work*) of a kind prescribed by regulation in its non-port tidal area to the extent prescribed by regulation.
- (8) The Minister may approve the planning scheme only if the Minister is satisfied the planning scheme—
  - (a) appropriately integrates State, regional and local planning and development assessment policies, including policies under any applicable State planning instruments; and
  - (b) includes a local government infrastructure plan.
- (9) The planning scheme starts to have affect on—
  - (a) the day after the local government publishes the public notice about the making of the planning scheme in the gazette; or
  - (b) a later day stated in the planning scheme.
- (10) The planning scheme replaces any other planning scheme made by the local government.

[s 18]

---

## **18 Amending planning schemes**

- (1) If a local government proposes to amend a planning scheme, the local government must give a notice of the proposal to the chief executive.
- (2) If the Minister's rules apply to that type of amendment, the notice must state whether the local government chooses to amend the planning scheme in accordance with the process in the rules.
- (3) If the Minister's rules do not apply to that type of amendment, or the local government chooses not to follow the process in the rules, the chief executive, after consulting with the local government, must give a notice about the process for amending the planning scheme to the local government.
- (4) The chief executive may amend the notice after further consultation with the local government.
- (5) The chief executive must have regard to the Minister's guidelines when preparing the notice or any amended notice.
- (6) The chief executive must publish the notice, and any amended notice, on the department's website.
- (7) The notice or amended notice must state that the local government must publish a public notice about the amendment of the planning scheme after the planning scheme is amended.
- (8) The local government must amend the planning scheme by following the process set out in—
  - (a) if the Minister's rules apply to the type of amendment—the rules; or
  - (b) if the Minister's rules do not apply to the type of amendment or the local government chooses not to follow the process in the rules—the notice or amended notice.
- (9) The amendment starts to have effect on—

- (a) the day after the local government publishes the public notice about the amendment of the planning scheme in the gazette; or
- (b) a later day stated in the amendment.

**19 Making or amending planning scheme policies**

- (1) A local government may make or amend a planning scheme policy by following the process set out in the Minister's rules.
- (2) The rules must provide for the local government to publish a public notice about the making of a planning scheme policy or amendment.
- (3) The planning scheme policy or amendment starts to have effect on—
  - (a) the day after the local government publishes the public notice about the making of a planning scheme policy or amendment in the gazette; or
  - (b) a later day stated in the policy or amendment.

**20 Making or amending TLPIs**

- (1) A local government may make a TLPI if the local government and the Minister are satisfied that—
  - (a) there is significant risk of serious adverse cultural, economic, environmental or social conditions happening in local government's planning scheme area; and
  - (b) the risk would be increased by the delay involved in using the process set out in section 18 to amend the local planning instrument; and
  - (c) the making of the TLPI would not adversely affect State interests.
- (2) A local government may amend a TLPI if the local government and the Minister are satisfied the amendment of the TLPI would not adversely affect State interests.

[s 21]

---

- (3) A TLPI may suspend or otherwise affect the operation of a local planning instrument, but does not amend or repeal a local planning instrument.
- (4) The local government may make or amend a TLPI by following the process set out in the Minister's rules.
- (5) The rules must provide for—
  - (a) the Minister to approve a TLPI or amendment before the TLPI or amendment is made; and
  - (b) the local government to publish a public notice about the making of a TLPI or amendment.
- (6) The TLPI or amendment starts to have affect on—
  - (a) the day after the local government publishes the public notice about the making of a TLPI or amendment in the gazette; or
  - (b) a later day stated in the TLPI or amendment; or
  - (c) with the Minister's written approval given at the same time as the Minister's approval mentioned in subsection (5)(a), the day on which the local government at a public meeting resolves to give the TLPI or amendment to the Minister for approval.
- (7) The TLPI, with or without an amendment, continues to have effect for 2 years or a shorter period stated in the TLPI.
- (8) A TLPI—
  - (a) does not create a superseded planning scheme; and
  - (b) is not an adverse planning change.

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

- (1) A local government may repeal a TLPI, or planning scheme policy, (the *instrument*) by resolution.
- (2) However, if the TLPI or planning scheme policy was made by or on the direction of the Minister, the local government must

---

get the Minister's written approval before making the resolution.

- (3) As soon as practicable after the local government makes the resolution, the local government must publish a public notice that states—
  - (a) the name of the local government; and
  - (b) the name of the instrument that is to be repealed; and
  - (c) the date when the resolution was made.
- (4) The instrument is repealed on—
  - (a) the day after the local government publishes the public notice in the gazette; or
  - (b) a later day stated in the public notice.
- (5) The local government must give a copy of the public notice to the chief executive.
- (6) A local government may repeal a TLPI by making or amending a planning scheme that specifically repeals the TLPI.
- (7) The TLPI is repealed on the day when the planning scheme or amendment starts to have effect.
- (8) The planning scheme policies for a planning scheme area are repealed by making (but not amending) a planning scheme for the planning scheme area.
- (9) The planning scheme policy is repealed on the day when the planning scheme starts to have effect.

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

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

- (1) This section applies if the Minister considers a local government should take an action in relation to an existing or

[s 22]

---

proposed local planning instrument, or a proposed amendment of a local planning instrument, (the *instrument*)—

- (a) to ensure the instrument is consistent with the required contents; or
  - (b) to protect, or give effect to, a State interest.
- (2) The Minister must give the local government a notice that states—
  - (a) the action that the Minister considers should be taken; and
  - (b) the reasons for taking the action; and
  - (c) the reasonable period within which the local government may make submissions to the Minister about the action.
- (3) After the Minister considers all submissions that are made in accordance with the notice, the Minister may decide—
  - (a) to direct the local government to take the action mentioned in the notice; or
  - (b) to direct the local government to take other action; or
  - (c) not to direct the local government to action.
- (4) The Minister must give the local government a notice of—
  - (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) if the local government is directed to take action—
    - (i) the nature of the action; and
    - (ii) a reasonable period within which the local government must take the action.
- (5) Without limiting subsection (3), the Minister may direct the local government to make, amend or repeal a local planning instrument in accordance with—
  - (a) the relevant process set out in sections 17 to 21; or

- (b) the process set out in the Minister's notice.
- (6) If the local government does not take the action as directed by the notice, the Minister may take the action in accordance with the process stated in the Minister's rules.
- (7) The action taken by the Minister has the same effect as if the local government had taken the action.
- (8) Any expense reasonably incurred by the Minister in taking the action may be recovered from the local government as a debt owing to the State.

**23 Power of Minister to take urgent action**

- (1) This section applies if the Minister considers—
  - (a) an action should be taken for a reason mentioned in section 22(1); and
  - (b) the action must be taken urgently.
- (2) The Minister may give the local government a notice that states—
  - (a) the action that the Minister intends to take; and
  - (b) the reasons for taking the action.
- (3) After giving the notice, the Minister may take the action in accordance with the process stated in the Minister's rules without—
  - (a) giving a direction to the local government under section 22; or
  - (b) consulting with anyone before taking the action.
- (4) The action taken by the Minister has the same effect as if the local government had taken the action.
- (5) Any expense reasonably incurred by the Minister in taking the action may be recovered from the local government as a debt owing to the State.

## Part 4                      Superseded planning schemes

### 24      Request to apply superseded planning scheme

- (1) This section applies if a person wants the requirements of a superseded planning scheme to apply to a proposed development application or development.
- (2) A *superseded planning scheme* is a planning scheme, together with any related planning scheme policies, that was in effect immediately before—
  - (a) the planning scheme was amended or replaced; or
  - (b) any of the planning scheme policies were amended, replaced or repealed.
- (3) The person may, within 1 year after the planning scheme becomes a superseded planning scheme, make a superseded scheme request.
- (4) A *superseded scheme request* is a written request to a local government—
  - (a) to accept, assess and decide a development application (a *superseded scheme development application*) under a superseded planning scheme; or
  - (b) to apply a superseded scheme to the carrying out of development that was accepted development under the superseded planning scheme.
- (5) A regulation may prescribe the following in relation to a superseded scheme request—
  - (a) that the request must be made in an approved form;
  - (b) information that must be given with the request;
  - (c) how the local government may set a fee for considering the request;
  - (d) the period for deciding the request, and how the period may be extended;



- (e) when and how a local government must notify the person making the request of the local government's decision;
  - (f) any other matter for deciding the request.
- (6) The local government must decide whether or not to agree to a superseded scheme request within the period that is prescribed by, or is extended in accordance with, the regulation.
- (7) If, within that period, the local government does not give notice of the decision to the person who made the request, the local government is taken to have agreed to the request.
- (8) If the local government decides to agree to a request under subsection (4)(a)—
- (a) the superseded scheme development application must be made within 6 months after the local government gives notice of the decision to the person who made the request; and
  - (b) a superseded scheme development application may be made for prohibited development, despite section 44(2).
- (9) If the local government decides to agree to a request under subsection (4)(b)—
- (a) chapter 3, part 6, division 5; and
  - (b) schedule 1, table 1, items 13 and 14;

apply to the decision as if the decision were a development approval, given by the local government as the assessment manager, that took effect on the day when notice of the decision was given or taken to have been given.

[s 25]

---

## **Part 5                      Planning changes that    adversely affect land values**

### **25        When this part applies**

- (1) This part applies if a local government makes an adverse planning change.
- (2) An ***adverse planning change***, for premises, is the amendment, replacement or repeal of a local planning instrument (other than a TLPI) affecting the premises that—
  - (a) creates a superseded planning scheme in relation to the premises; and
  - (b) reduces the value of an interest in the premises.
- (3) An adverse planning change includes a change (a ***public purpose change***) that limits the use of premises to either or both of the following—
  - (a) the purpose for which the premises were lawfully being used when the change was made;
  - (b) a public purpose.
- (4) However, an adverse planning change does not include a change that—
  - (a) has the same effect as another planning instrument, other than a TLPI, for which compensation is not payable; or
  - (b) is made to include required contents; or
  - (c) removes or changes the infrastructure shown in the planning scheme; or
  - (d) is about matters included in an LGIP; or
  - (e) affects development that, had the development happened before the change was made, would have resulted in—
    - (i) a significant risk to persons or property from natural events (such as flooding, landslide or

erosion) that could not have been significantly reduced by development conditions; or

- (ii) serious environmental harm under the Environmental Protection Act that could not have been significantly reduced by development conditions; or

Possible alternative provision for paragraph (e)(i)—

(ea) is made—

(i) to reduce the risk to persons or property from natural processes, including flooding, bushfires, landslides, or coastal erosion; and

(ii) in good faith, having regard to an assessment of the risk to the persons or property carried out by a person appropriately qualified in relation to the relevant natural process on the best available information.

(f) is about the relationships between, the location of, or the physical characteristics of buildings, works or lots, but the yield achievable is substantially the same as the yield would have been before the change.

(5) The yield achievable is substantially the same as the yield would have been before the change, in relation to residential building work, if the gross floor area of the residential building—

(a) is not more than 2000m<sup>2</sup>; and

(b) is reduced by not more than 15%.

(6) In this section—

**gross floor area** means the sum of the floor areas (inclusive of all walls, columns and balconies, whether roofed or not) of all stories of every building located on a site, other than—

(a) the areas (if any) used for building services, a ground floor public lobby or a public mall in a shopping centre; or

[s 26]

---

- (b) the areas associated with the parking, loading and manoeuvring of motor vehicles.

*yield* means—

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

## 26 Entitlement to compensation

- (1) This section sets out when a person (an *affected owner*) who has an interest in premises is entitled to reasonable compensation because a local government makes an adverse planning change.
- (2) An affected owner is entitled to reasonable compensation if the adverse planning change is a public purpose change.
- (3) An affected owner is entitled to reasonable compensation in relation to development that is assessable development after the adverse planning change if—
  - (a) the local government refuses a superseded scheme request in relation to the development; and
  - (b) a development application has been made for the development; and
  - (c) the development application is—
    - (i) refused; or
    - (ii) approved with development conditions; or
    - (iii) approved in part, with or without development conditions.
- (4) An affected owner is entitled to reasonable compensation in relation to development that is prohibited development after the adverse planning change if the local government refuses a superseded scheme request in relation to the development.

- 
- (5) Compensation is payable only if a claim is made for compensation to the local government within—
    - (a) for subsection (2)—2 years after the adverse planning change came into effect; or
    - (b) for subsections (3) or (4)—6 months after the affected owner is given notice of the decision under subsections (3)(c) and (4).

**27 Deciding compensation claim**

- (1) If a compensation claim is made to the local government, the local government must decide—
  - (a) to approve all or part of the claim; or
  - (b) to refuse the claim; or
  - (c) if the claim relates to a public purpose change—
    - (i) to give a notice of intention to resume the affected owner's interest in the land, under the Acquisition Act, section 7; or
    - (ii) to amend the planning scheme, in accordance with part 3, division 2, to enable the land to be used for the purposes that the land was able to be used for under the relevant superseded planning scheme.
- (2) The local government's chief executive officer must, within 70 business days after the claim is made, give the affected owner a notice that states—
  - (a) the local government's decision; and
  - (b) if the local government decides to approve all or part of the claim—the amount of compensation to be paid; and
  - (c) all relevant appeal rights.
- (3) The local government must pay any compensation that is payable within 30 business days after—
  - (a) if no appeal is made—the appeal period ends; or

[s 28]

---

- (b) if an appeal is made—the appeal ends.

**28 Amount of compensation payable**

- (1) Subject to subsection (3), the amount of compensation that is payable to the affected owner is the difference between—
  - (a) the market value of the owner’s interest immediately before the adverse planning change; and
  - (b) the market value of the owner’s interest immediately after the adverse planning change.
- (2) However, any TLPI must be disregarded.
- (3) The amount of compensation must be adjusted having regard to any of the following that are relevant—
  - (a) any benefit to the owner’s interest because of the adverse planning change;

*Example—*

- the likelihood of improved amenity in the land’s locality
  - (b) if the owner has an interest in land adjacent to the land that is the subject of the compensation claim—
    - (i) any benefit to the adjacent land because the adverse planning change, or any other change, came into effect before the compensation claim was made; or
    - (ii) any benefit to the adjacent land because infrastructure on that land, other than infrastructure funded by the owner, was constructed or improved before the compensation claim was made;
  - (c) any limitations or conditions that might reasonably have applied to the development of the land had the land been developed under the superseded planning scheme;
  - (d) the effect of any other changes to the planning scheme or related planning scheme policies made after the



[s 30]

---

- (a) the works for the infrastructure, such as the height, shape, bulk, landscaping, or location for the works; and
- (b) the use of the premises, such as—
  - (i) vehicular and pedestrian access to, and circulation on, the premises; and
  - (ii) operating times for the use; and
  - (iii) ancillary uses; and
- (c) lessening the impact of the works or use, such as environmental management procedures.

**30 When a designation may be made or amended**

- (1) The Minister may make or amend a designation only if the Minister—
  - (a) in relation to making a designation, is satisfied—
    - (i) the infrastructure will satisfy statutory requirements, or budgetary commitments, for the supply of the infrastructure; or
    - (ii) there is or will be a planning need for the efficient and timely supply of the infrastructure; and
  - (b) is satisfied—
    - (i) adequate environmental assessment has been carried out in relation to the development that is the subject of the making or amendment; and
    - (ii) there was adequate consultation in carrying out the environmental assessment; and
  - (c) has considered—
    - (i) all relevant planning instruments; and
    - (ii) if the land is in a State development area under the State Development Act—any approved development scheme for the land under that Act; and



- 
- (iii) any properly made submissions made as part of the consultation under paragraph (b)(ii) or section 31(4).
  - (2) The Minister is taken to be satisfied of the matters under subsection (1)(b) if the process set out in guidelines made by the Minister, and adopted by regulation, has been followed.
  - (3) However, the Minister may be satisfied of those matters in another way.

### **31 Making or amending designation**

- (1) This section applies if a Minister proposes—
  - (a) to make a designation; or
  - (b) to amend a designation, including by amending—
    - (i) the area of premises; or
    - (ii) the type of infrastructure.
- (2) The Minister must give notice of the proposal to the following entities (the *affected parties*)—
  - (a) each local government that the Minister considers will be affected by the designation;
  - (b) each owner of land to which the designation will apply.
- (3) However, the Minister need not give the notice to an owner of land if—
  - (a) the notice has already been given to the owner as part of the consultation for the environmental assessment carried out in relation to the development of the infrastructure; or
  - (b) the Minister is unable to notify the owner after making reasonable efforts.
- (4) The notice must invite the affected parties to make submissions about the proposal within a period of not less than 15 business days after the notice is given.

[s 32]

---

- (5) If the Minister decides not to proceed with the proposal, the Minister must give notice of the decision to the affected parties.

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

- (1) If the Minister makes or amends a designation, the Minister must publish a gazette notice that states—
  - (a) that the designation has been made or amended; and
  - (b) a description of the land that is designated; and
  - (c) the type of infrastructure for which the land is designated; and
  - (d) for an amendment—the nature of the amendment.
- (2) The Minister must give the following to the affected parties and the chief executive—
  - (a) a copy of the notice;
  - (b) a notice of any requirements included in the designation under section 29.
- (3) The designation, or the amendment, starts to have effect on—
  - (a) the day after the notice is gazetted; or
  - (b) a later day stated in the notice.

### **33 Duration of designation**

- (1) A designation stops having effect on the day (the *end day*) that is 6 years after when the designation starts to have effect, unless—
  - (a) on the end day—
    - (i) a local government or public sector entity owns, or has a public utility easement for the same purpose as the designation over, the designated land; or
    - (ii) another entity owns, or has a public utility easement over, the designated land and

---

construction of the infrastructure for which the land was designated started before the end day; or

- (b) before the end day—
  - (i) a local government or public sector entity gave a notice of intention to resume the designated land under the Acquisition Act, section 7; or
  - (ii) a local government or public sector entity signed an agreement to take designated land under the Acquisition Act or to otherwise buy the land; or
  - (iii) the Minister gave each local government whose local government area included the designated land a notice under subsection (2).
- (2) The Minister may extend the duration of a designation for up to a further 6 years by publishing a gazette notice about the extension before the designation stops having effect.
- (3) The Minister must give notice of the extension of the designation to each of the affected parties.
- (4) If a local government or public sector entity discontinues proceedings to resume designated land, whether before or after the end day, the designation stops having effect on the day when the proceedings are discontinued.

### **34 Repealing designation**

- (1) The Minister may repeal a designation in relation to land by publishing a gazette notice that states—
  - (a) that the designation is repealed; and
  - (b) a description of the premises that was designated; and
  - (c) the infrastructure for which the premises was designated; and
  - (d) the reasons for the decision.
- (2) The Minister must give a copy of the notice to—
  - (a) the affected parties; and

[s 35]

---

- (b) the chief executive.
- (3) The repeal has effect on the day after the notice is published.

**35 Noting designation in planning scheme**

- (1) If a local government receives a notice about the making, amendment or repeal of a designation, the local government must include a note about the making, amendment or repeal in—
  - (a) the local government’s planning scheme (if any); and
  - (b) any planning scheme that the local government makes before the designation stops having effect.
- (2) The note must state—
  - (a) a description of the land that was designated; and
  - (b) the infrastructure for which the land was designated; and
  - (c) the day when the designation, amendment or repeal started to have effect; and
  - (d) any provisions or requirements under section 29(3).
- (3) The local government must include the note in the planning scheme in a way that ensures the other provisions of the planning scheme that apply to the designated land remain effective.
- (4) To remove any doubt, it is declared that—
  - (a) the note is not an amendment of a planning scheme; and
  - (b) a designation is part of a planning scheme; and
  - (c) a designation is not the only way that infrastructure may be identified in the planning scheme; and
  - (d) the provisions of the planning scheme that apply to designated land, other than the provision that notes the designation, are unaffected by the designation including after the designation stops having effect.

---

## Chapter 3 Development assessment

### Part 1 Introduction

#### 36 What this chapter is about

- (1) This chapter is about the development assessment system.
- (2) Part 2 is about categorising types of development and types of assessment for particular development.
- (3) Part 3 is about making and changing development applications.
- (4) Part 4 is about assessing and deciding development applications.
- (5) Part 5 is about the development assessment rules.
- (6) Part 6 establishes rights and responsibilities in relation to development approvals.
- (7) Part 7 is about Ministerial powers in relation to the development assessment system.
- (8) Part 8 contains miscellaneous provisions.

### Part 2 Categories of development and assessment

#### 37 Categories of development

- (1) There are 3 categories of development.
- (2) *Prohibited development* is development that a categorising instrument states is prohibited development.
- (3) However, a local instrument can only state that development is prohibited if a regulation allows a local instrument to do so.

[s 38]

---

- (4) **Assessable development** is development, or an aspect of development, that a categorising instrument states is assessable development.

*Note—*

See section 170 for the offence of carrying out assessable development without all necessary development permits.

- (5) However, a local instrument can not state that development is assessable development if a regulation prohibits a local instrument from doing so.
- (6) **Accepted development** is—
- (a) development, or an aspect of development, that a categorising instrument categorises as accepted development; or
  - (b) any other development, or aspect of development, that is not categorised by a categorising instrument as prohibited development or assessable development.
- (7) Despite subsections (4) and (6), development under a designation is—
- (a) to the extent the development is building work that is building assessment work under the Building Act—assessable development; or
  - (b) otherwise—accepted development.

### **38 Categories of assessment for assessable development**

- (1) There are 2 categories of assessment for assessable development.
- (2) **Standard assessment** is the assessment of development under section 59(2).
- (3) **Merit assessment** is the assessment of development under section 59(3).
- (4) A categorising instrument sets out the category of assessment required for assessable development, or an aspect of assessable development.

---

**39 Categorising instruments**

- (1) A *categorising instrument* is—
- (a) a regulation; or
  - (b) one of the following instruments (a *local instrument*)—
    - (i) a planning scheme;
    - (ii) a TLPI;
    - (iii) a variation approval.
- (2) To the extent of any inconsistency between categorising instruments, a regulation applies instead of a local instrument.

*Note—*

This subsection operates regardless of when the local categorising instrument and regulation were made: see section 112.

**40 Exemption certificate for particular assessable development**

- (1) Each of the following entities may give each owner of an interest in land a certificate (an *exemption certificate*) in the approved form that states a development approval is not required for assessable development stated in the certificate for the land—
- (a) development for which, if the development and no other development were the subject of a development application, the local government would be the assessment manager—the local government;
  - (b) otherwise—the chief executive.
- (2) However, the entity may only give the certificate if—
- (a) for development for which there is a referral agency—each referral agency has agreed in writing to the exemption certificate being given; and
  - (b) one or more of the following apply—

[s 41]

---

- (i) the effects of the development are minor or inconsequential, having regard to all the circumstances under which the development was categorised as assessable development;
  - (ii) the circumstances under which the development was categorised as assessable development no longer apply;
  - (iii) the development was categorised as assessable development under the relevant instrument in error.
- (3) An exemption certificate has effect for 2 years after the certificate is given, or until the entity gives the owner notice withdrawing the certificate, whichever is the earlier.
- (4) Despite subsection (3), any development started under an exemption certificate may be completed as if the certificate had not lapsed or been withdrawn.

## **Part 3                      Development applications**

### **Division 1                      Making development applications**

#### **41            What this part is about**

This part is about making a development application to an assessment manager for development approval to carry out assessable development.

#### **42            Meaning of *assessment manager***

- (1) Generally, the *assessment manager* for a development application is the entity prescribed by regulation for the type of application.
- (2) The regulation may—



- 
- (a) identify the assessment manager as any person with the qualifications or other characteristics stated in the regulation in relation to the development application; or
  - (b) provide for the Minister to decide—
    - (i) the assessment manager for a particular development application; and
    - (ii) that an entity that could have been an assessment manager for the application is instead to be a referral agency for the application; or
  - (c) provide for the Minister to require a development application to be split into 2 or more applications.
- (3) If—
- (a) a categorising instrument requires standard assessment only for development; and
  - (b) the entity prescribed under subsection (1) is a local government or the chief executive; and
  - (c) the entity keeps a list of other entities who are appropriately qualified to be an assessment manager for the development or an aspect of the development for which the entity is the assessment manager; and
  - (d) the applicant makes a development application to the other entity only for the development or aspect; and
  - (e) the other entity accepts the application;
- the other entity is the *assessment manager* for the application.

**43 Meaning of *development approval***

- (1) A *development approval* is—
- (a) a preliminary approval; or
  - (b) a development permit; or
  - (c) a combination of a preliminary approval and development permit.

[s 43]

---

- (2) A **preliminary approval** is all or part of a decision notice for a development application—
- (a) that approves stated development; but
  - (b) does not authorise the carrying out of any assessable development.

*Notes—*

- 1 'Decision notice' includes any negotiated decision notice. See the definition in schedule 2.
- 2 Obtaining a preliminary approval before a development permit is only optional.
- 3 For a preliminary approval's effect, including the effect of some types of preliminary approval on a planning scheme, see sections 62(4) and (5) and 75.

- (3) A **development permit** is all or part of a decision notice for a development application that authorises the carrying out of stated assessable development.
- (4) A reference to a development approval means the development approval as changed from time to time under this Act.

*Note—*

Also see the *Environmental Offsets Act 2014*, section 16 which provides for deemed conditions on development approvals.

- (5) A reference to a development approval includes the development conditions imposed on the approval.
- (6) **Development conditions** are conditions that are—
- (a) imposed by the assessment manager under section 60; or
  - (b) directed to be imposed under section 53 or 98; or
  - (c) taken to have been imposed under section 67.
- (7) Subject to section 70(1) and (2), a preliminary approval prevails over a development permit for development to the extent of any inconsistency.

---

## **Division 2                    Making or changing application**

### **44        Right to apply**

- (1) Any person may make a development application, including for a preliminary approval.
- (2) However, a development application may not include prohibited development.
- (3) A development application for a preliminary approval may also include a variation request.
- (4) This section is subject to section 24(8).

*Note—*

Section 24(8) imposes a time limit on superseded scheme development applications and permits certain superseded scheme development applications for prohibited development.

### **45        Making a development application**

- (1) A development application must be—
  - (a) made in the approved form to the assessment manager; and
  - (b) accompanied by the required fee (if any).
- (2) Also, to the extent that a development application relates to land for which the applicant is not the owner, the application must be accompanied by the consent, or evidence of the consent, of the owner of the land, if the application is for—
  - (a) a material change of use of premises or reconfiguring a lot; or
  - (b) work on land below high-water mark and outside a canal as defined under the Coastal Act.
- (3) However, subsection (2)(a) does not apply if—
  - (a) the State is the owner; or

[s 46]

---

- (b) the owner is the owner of a servient tenement for an easement, and the development is not inconsistent with the easement's terms; or
  - (c) the land is acquisition land and the application relates to the purpose for which the land, or an interest in the land, is to be taken or acquired.
- (4) An application that complies with subsections (1) and (2) is ***properly made*** and must be accepted by the assessment manager.
- (5) Despite subsections (1) and (2) and the *Acts Interpretation Act 1954*, section 48A(2), the assessment manager may decide to accept an application if any or all of the following apply—
- (a) the assessment manager considers the application does not include particular supporting information;
  - (b) the application is not accompanied by the consent, or evidence of the consent, of the owner of the land, if required under subsection (2);
  - (c) the assessment manager decides to waive all or part of the required fee under section 113.

*Note—*

See section 66 for how a decision may be delayed because of failure to get the owner's consent.

- (6) If the assessment manager accepts a development application under subsection (5), the application is also ***properly made***.

#### **46 Notice to prescribed assessment manager for some applications**

An assessment manager (the ***chosen assessment manager***) chosen by an applicant under section 42(2) must give a notice to the assessment manager prescribed under section 42(1) (the ***prescribed assessment manager***) about the application, in the approved form as soon as practicable after the assessment manager accepts the application.

---

**47 Changing or withdrawing an application**

- (1) An applicant may change or withdraw a development application, before the application is decided, by a notice to—
  - (a) the assessment manager; and
  - (b) each referral agency.
- (2) If a change is, or includes, a change of applicant, the applicant is—
  - (a) the person who made the application, with the consent of the new applicant; or
  - (b) the new applicant, with the consent of the person who made the application.
- (3) The owner's consent requirement applies for making the change as if the change were an application if—
  - (a) the applicant no longer owns the land or the change is to include land not owned by the applicant; and
  - (b) were the application to be remade with the change, the owner's consent requirement would apply to the application.
- (4) However, an application may not be changed to include prohibited development.

**48 Assessment manager's role**

- (1) The assessment manager must administer, assess and decide a properly made development application under this chapter.

*Note—*

See also section 51(3) for when the assessment manager also has referral agency functions.

- (2) However, the assessment manager must not assess any part of the application for which, were it the subject of a separate application, there would be a different assessment manager.

[s 49]

---

- (3) If the assessment manager is the local government and the development is not completely within the local government's planning scheme area—
  - (a) the local government is the assessment manager, despite the *City of Brisbane Act 2010*, section 11 or the *Local Government Act 2009*, section 9; and
  - (b) to the extent the development is prescribed tidal work, the local government functions as assessment manager apply as well as any other functions the local government has for the application.
- (4) In this section—

*planning scheme area*, for a local government—

  - (a) means the local government's area; and
  - (b) if a local government applies its planning scheme for assessing prescribed tidal work in its non-port tidal area under section 17(7)—includes the local government's tidal area.

#### **49 Public notification for merit assessment**

- (1) This section applies if merit assessment is required for a development application.
- (2) A categorising instrument may require an applicant to give notification of an application for development of a type stated in the instrument, other than development of a type that is prescribed by regulation as development for which a local instrument may not require notification.
- (3) The notification must be given in the way set out in the development assessment rules.
- (4) However, the assessment manager may assess and decide an application even if some of the requirements of the development assessment rules about notification have not been complied with, if the assessment manager is satisfied any noncompliance has not—

- 
- (a) adversely affected the public's awareness of the existence and nature of the application; or
  - (b) restricted the public's opportunity to make properly made submissions.
- (5) If notification is required for a development application, anyone may make submissions about the application.
  - (6) Any submissions made for a development application remain effective even if the notification is carried out again under the development assessment rules.
  - (7) This section applies even if a referral agency has directed refusal of all or part of the application.
  - (8) The assessment manager may, if asked by the applicant, carry out the notification on behalf of the applicant, for a fee of no more than the reasonable costs of doing so.

**50 Effect on development assessment process if action taken under Native Title Act (Cwlth)**

- (1) This section applies to a development application if the assessment manager takes action under the *Native Title Act 1993* (Cwlth), part 2, division 3.
- (2) The development assessment process stops on the day after the action is taken.
- (3) If the action is completed within 10 days before a decision must be made under the development assessment rules, the decision need not be made until 10 days after the action is completed, despite the development assessment rules.

**Division 3 Referral agency assessment**

**51 Copy of application to referral agency**

- (1) The applicant must give a copy of the development application, and the required fee, to each referral agency.

[s 51]

---

- (2) A *referral agency*, for a development application, is—
  - (a) the entity prescribed as a referral agency for applications of that type; or
  - (b) if the prescribed entity's functions have been devolved or delegated to another entity—the other entity; or
  - (c) if the Minister has decided a referral agency under section 42(3)—the entity decided by the Minister.
- (3) However, if—
  - (a) an entity is the assessment manager for a development application; and
  - (b) the entity would be a referral agency for the application, other than for this section (whether or not devolved or delegated);

the entity is not a referral agency for the application and the entity's functions and powers as assessment manager include those the entity would have had as a referral agency.
- (4) The applicant must give the copy of the application to the referral agency within the period provided for under the development assessment rules.
- (5) However, the applicant need not give a referral agency the copy if—
  - (a) the applicant gave the assessment manager the referral agency response mentioned in section 54(3) with the application; and
  - (b) the referral agency response states that—
    - (i) the referral agency does not require the applicant to give a copy under this section to the agency; or
    - (ii) the referral agency does not require the applicant to give a copy to the agency if stated conditions, including a time limit within which the application must be made, are satisfied; and



- 
- (c) any conditions mentioned in paragraph (b)(ii) are satisfied.
  - (6) The assessment manager may, if asked by the applicant, give the referral agency material to a referral agency on behalf of the applicant, for a fee of no more than the reasonable costs of doing so.

## **52 Referral agency's assessment**

- (1) For a referral agency decided by the Minister under section 42(3), the referral agency must assess the application in accordance with the provisions of section 59, as if the agency were the assessment manager.
- (2) For any other referral agency, the referral agency—
  - (a) must assess the application against, or having regard to the matters prescribed by regulation; and
  - (b) may assess the application against, or having regard to the matters prescribed by regulation.
- (3) If the regulation refers to the following (the *instrument*)—
  - (a) a statutory instrument;
  - (b) another document applied, adopted or incorporated (with or without modification) by a statutory instrument.

the reference is a reference to the instrument as in effect when the application was properly made.
- (4) However, the referral agency may give the weight that the referral agency is satisfied is appropriate, in all the circumstances, to another instrument or an amendment of the instrument that came into effect after the application was properly made but before the application is decided.

## **53 Referral agency response**

- (1) After assessing a properly made application, the referral agency must decide—

[s 53]

---

- (a) that the agency has no requirements for the application;
  - (b) to direct the assessment manager to do any or all of the following—
    - (i) to give development approval subject to stated conditions;
    - (ii) to give development approval for only a stated part of the development;
    - (iii) to give only a preliminary approval;
    - (iv) to require a stated currency period for any development approval given;
  - (c) to direct the assessment manager to refuse the application.
- (2) However, to any extent that the application is a variation request, the referral agency must decide—
- (a) that the agency has no requirements for the part;
  - (b) to direct the assessment manager to do any or all of the following—
    - (i) to approve only some of the variations sought;
    - (ii) subject to section 62(4)—to approve different variations from those sought;
  - (c) to direct the assessment manager to refuse the variations.
- (3) The referral agency may also offer advice to the assessment manager about the application.
- (4) To the extent the response complies with this section, the response is a ***referral agency response***.
- (5) The referral agency response must include reasons for any actions that the referral agency requires or directs.
- (6) The referral agency must give, at the same time, a copy of the referral agency response to—
- (a) the applicant; and

- (b) the assessment manager.
- (7) The powers of a referral agency under this section are subject to any limitations prescribed by regulation.

**54 Response before application**

- (1) Sections 52 and 53 also apply to the extent any response is given before a proposed development application is made, by an entity that would, if the application is actually made, be a referral agency.
- (2) However, a reference in section 52 to when the application was properly made is a reference to the day the proposed applicant first gave the entity documents in relation to the proposed development application.
- (3) If the application—
  - (a) is the same or substantially the same as the proposed application; and
  - (b) is made within the time, if any, stated in the response; the response is, or is part of, the entity's referral agency response for the application.
- (4) The proposed applicant must, if asked, pay the entity the required fee, even if there is no application.
- (5) Any fee under section 51(1) for the aspect of the application relating to a response under this section does not have to be paid again for the application.

**55 Effect of no response**

- (1) If a referral agency does not give a referral agency response under section 53(6) within the period provided for under the development assessment rules, the agency is taken to have given a response that the agency has no requirements or advice for the application.

[s 56]

---

- (2) Subsection (1) is subject to any provision of the development assessment rules about extending the period for giving a response or reviving the application after a contravention of the development assessment rules.

*Note—*

Section 72(2)(d) empowers the rules to provide for lapsing.

## **56 Changing response**

A referral agency may, before the application is decided, amend the referral agency's response if—

- (a) the applicant has agreed in writing to the amendment; or
- (b) the amendment directly relates to a change made to the application in response to an information request under the development assessment rules or a matter raised in a properly made submission.

*Note—*

The amendment might also happen because of a Ministerial direction, in which case the assessment manager must not decide the application until the direction has been complied with. See section 102.

# **Part 4 Assessing and deciding development applications**

## **Division 1 Assessment and decision**

### **57 Application of division**

- (1) This division applies for a properly made development application.
- (2) Unless otherwise provided, all of this division applies to the application whether a categorising instrument requires

---

standard or merit assessment for the application, or both for the application.

- (3) If both assessment types apply, a reference in this division to the application is a reference to the part of the application being considered.
- (4) This division applies even if a referral agency response tells the assessment manager to refuse the application.

**58 Assessment benchmarks**

- (1) The *assessment benchmarks* are matters, set out in a categorising instrument, that an assessment manager must assess a development application against.
- (2) A regulation may identify an assessment benchmark, or part of an assessment benchmark, the effect of which must not be changed under a local instrument.

**59 Assessing development applications generally**

- (1) This section applies to a development application, other than to the extent that a development application is a variation request.
- (2) To the extent a categorising instrument requires standard assessment for the application, the assessment manager must assess the application—
  - (a) against the assessment benchmarks; and
  - (b) having regard to any other matters prescribed by regulation for this paragraph.
- (3) To the extent a categorising instrument requires merit assessment for the application, the assessment manager—
  - (a) must assess the application—
    - (i) against the assessment benchmarks; and
    - (ii) having regard to any other matters prescribed by regulation for this subparagraph; and

[s 59]

---

- (b) may assess the application against, or having regard to, the following—
- (i) any matters prescribed, by regulation for this subparagraph;
  - (ii) any other relevant matters.

*Examples of other relevant matters—*

- planning need
  - the current relevance of the assessment benchmarks in the light of changed circumstances
  - whether assessment benchmarks or other prescribed matters were based on material errors
- (4) For subsections (2) and (3), a reference to a matter that is a statutory instrument is a reference to the statutory instrument as in effect when the application was properly made.
- (5) However, if the statutory instrument is amended or replaced before the assessment manager decides the application, the assessment manager may assess against, or have regard to, the amended or replacement instrument to the extent the assessment manager considers appropriate in all the circumstances.
- (6) Despite subsections (2) to (5), if the application is a superseded scheme development application, the assessment manager must assess the application as if the superseded scheme was in effect instead of—
- (a) the planning scheme; and
  - (b) any relevant planning scheme policies.
- (7) In this section—

***relevant matters*** do not include anyone's personal circumstances, financial or otherwise.

***statutory instrument*** includes a document applied, adopted or incorporated (with or without modification) by the instrument.

---

**60 Deciding development applications generally**

- (1) This section applies to the extent a development application is assessed under section 59.
- (2) The decision must be based on the relevant assessments under section 59.
- (3) To the extent a categorising instrument requires standard assessment for the application, the assessment manager—
  - (a) must decide to approve the application to the extent the development complies with the assessment benchmarks; and
  - (b) may decide to refuse all or part of the application only to the extent that—
    - (i) the development does not comply with the assessment benchmarks; and
    - (ii) compliance with the assessment benchmarks can not be achieved by lawfully imposing development conditions under division 2 and chapter 4.
- (4) To the extent a categorising instrument requires merit assessment for the application, the assessment manager must decide—
  - (a) to approve all or part of the application; or
  - (b) to approve all or part of the application, but impose development conditions on the approval; or
  - (c) to refuse the application.

**61 Assessing variation requests**

- (1) This section applies to the extent that a development application is a variation request.
- (2) The assessment manager must have regard to—
  - (a) the result of the assessment, under section 59, of that part of the development application that is not the variation request; and

[s 62]

---

- (b) the consistency of the variations sought with aspects of the relevant local planning instrument other than the aspects sought to be varied; and
- (c) the effect that the variations would have on any submission rights for later development applications, particularly having regard to the amount and detail of supporting information available to submitters; and
- (d) any other matter prescribed.

## **62 Deciding variation requests**

- (1) This section applies to any part of a development application assessed under section 61.
- (2) The decision must be based on the relevant assessments under section 59 and 61.
- (3) The assessment manager must decide—
  - (a) to approve all or some of the variations sought; or
  - (b) to approve different variations from those sought; or
  - (c) refuse the variations sought.
- (4) A variation approval may state either or both of the following—
  - (a) that the development is accepted, assessable or prohibited development;  
*Note—*  
See section 37(2) for the requirement for prohibited development to be prescribed by regulation.
  - (b) assessment benchmarks for assessable development.
- (5) In subsection (4), development includes any development that is the natural and ordinary consequence of the development that is the subject of the application.



---

**63 Declaratory provisions**

To remove any doubt, it is declared that—

- (a) a preliminary approval (other than a variation approval) may be given even though the application sought a development permit; and
- (b) if only part of the application is approved, the rest is refused.

**64 Compliance with referral agency responses**

- (1) Decisions under this subdivision must comply with all actions required under all referral agency responses.
- (2) If any of the responses requires conditions to be imposed, they must be imposed exactly as stated in the response.

**65 Notice of decision**

- (1) Subject to section 66, the assessment manager must give notice (a *decision notice*) of the decision to—
  - (a) the applicant; and
  - (b) if the development is in a local government area and the assessment manager is not the local government—the local government; and
  - (c) any principal submitter for each properly made submission for the application; and
  - (d) each referral agency; and
  - (e) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
  - (f) any other entity prescribed.

*Note—*

This notice can be given electronically: see section 232.

- (2) The notice must state—

[s 66]

---

- (a) if the decision is that the development may be carried out to any extent, the extent to which development is authorised; and
  - (b) if the decision is to give a preliminary approval, the extent to which the development is approved; and
  - (c) if development conditions are imposed—
    - (i) the conditions; and
    - (ii) for each condition—whether the condition was imposed directly by the assessment manager or required to be imposed under a referral agency response; and
    - (iii) for each condition imposed under a referral agency response—the referral agency’s name; and
    - (iv) for each condition about infrastructure under chapter 4—the provision of this Act under which the condition was imposed; and
  - (d) if the application is refused—
    - (i) whether the assessment manager was directed to refuse the application and, if so, the referral agency directing refusal and whether the refusal was solely because of the direction; and
    - (ii) for a refusal for any reason other than because of a referral agency’s direction—the reasons for the refusal; and
  - (e) all relevant appeal rights.
- (3) The notice must also state, or be accompanied by, all material prescribed.

**66 Restriction on decision if owner’s consent required**

- (1) If the owner’s consent is required for the application, a decision notice can only be given if—

- 
- (a) the application is accompanied by the consent, or evidence of the consent, of the owner of the land; or
  - (b) the decision is not to give any development approval; or
  - (c) a development approval given includes a condition that the development must not start until the owner has—
    - (i) agreed to the development starting; or
    - (ii) given an easement for a purpose consistent with carrying out the development on the land.
- (2) A condition mentioned in subsection (1)(c) is taken to comply with the relevant or reasonable requirement.
  - (3) To remove doubt, it is declared that an assessment manager is not required to impose a condition mentioned in subsection (1)(c).

**67 Deemed approval for particular applications**

- (1) This section applies to a development application that requires only standard assessment, if the assessment manager does not decide the application within the decision making period.
- (2) However, this section does not apply to—
  - (a) a development application that includes a variation request;
  - (b) an application that a referral agency directs the assessment manager to refuse or approve in part;
  - (c) a building development application;
  - (d) an application to which the owner's consent is required if the requirement has not been complied with;
  - (e) an application that is subject to a direction under section 97(1)(b), if the stated period for the application under that section has not ended.
- (3) The applicant may, before the application is decided, give the assessment manager a notice (a *deemed approval notice*), in

[s 68]

---

the approved form, that states the application should have been approved.

- (4) The applicant must give a copy of the deemed approval notice to each entity mentioned in section 65(1)(b), (d) or (e) for the application.
- (5) On the day that the assessment manager receives the deemed approval notice, the assessment manager is taken to have given approval (a *deemed approval*) to the application.
- (6) The assessment manager may, within 10 days after receiving the deemed approval notice, give the applicant a decision notice that—
  - (a) approves the application; or
  - (b) approves the application with conditions.
- (7) The deemed approval is taken to be—
  - (a) to the extent a referral agency or the Minister has directed the approval be a preliminary approval—a preliminary approval; or
  - (b) otherwise—the type or types of approval applied for.
- (8) The deemed approval is taken to include—
  - (a) any conditions imposed by a referral agency; and
  - (b) any conditions the Minister directed the assessment manager to impose under section 98; and
  - (c) if the assessment manager does not give a decision notice to the applicant under this section—the standard conditions.

## **Division 2                      Development conditions**

### **68                      Conditions must be relevant or reasonable**

- (1) A development condition must—

- 
- (a) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or
  - (b) be reasonably required for the development or use of premises as a consequence of the development.
- (2) This section is the *relevant or reasonable requirement* for development conditions.

**69 Permitted conditions**

- (1) A development condition may—
- (a) limit how long a lawful use may continue or works may remain in place; or
  - (b) include a condition mentioned in section 66(1)(c); or
  - (c) state that a development must not start until—
    - (i) other development permits for development on the same premises have been given; or
    - (ii) other development on the same premises (including development not covered by the development application) has been substantially started or completed; or

*Note—*

For when development can otherwise start, see also section 76(3).

- (d) require compliance with an infrastructure agreement for the land; or
  - (e) require development, or an aspect of development, to be completed within a stated period; or
  - (f) require the payment of security under an agreement under section 71 to support a requirement under paragraph (e).
- (2) A condition imposed under subsection (1)(c) is taken to comply with the relevant or reasonable requirement.

[s 70]

---

*Note—*

See chapter 4, parts 2 and 3 for other permitted development conditions.

## **70 Prohibited conditions**

- (1) A development condition must not be inconsistent with a development condition of an earlier development approval in effect for the development, unless—
  - (a) the earlier condition was imposed by the same entity imposing the condition; and
  - (b) the applicant and the owner otherwise agree in writing.
- (2) If a development condition is permitted under subsection (1), the earlier condition has no effect.

*Note—*

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

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

*Note—*

Chapter 4, parts 2 and 3 deal with infrastructure conditioning.

- (d) require an access restriction strip; or

- 
- (e) limit the period a development approval has effect for a use or work forming part of a network of infrastructure, other than State-owned or State-controlled transport infrastructure; or
  - (f) be imposed for water infrastructure about a matter for which the SEQ Water Act requires a water approval.

*Examples for paragraph (f)—*

A development condition that requires—

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

## 71 Agreements

The applicant may enter into an agreement with an assessment manager, referral agency or other entity to establish the obligations, or secure the performance, of a party to the agreement about a condition.

## Part 5 Development assessment rules

### 72 Development assessment rules

- (1) The Minister must make rules (the *development assessment rules*).
- (2) The development assessment rules may provide for, or for any aspect of, the following not provided for, or sufficiently provided for, under this Act—
  - (a) the development assessment process;
  - (b) the standard conditions for a deemed approval;
  - (c) any matter under part 6, divisions 4 to 6;

[s 72]

---

- (d) the effect on an application of the expiry of a time limit under, or a contravention of, the rules, including, for example, the lapsing of the application;
- (e) the revival of lapsed applications.

*Examples—*

- the effect, for section 47, of different types of change on a development application
  - the period for making referral agency responses, including when the responses may be made late
  - an aspect of the system under the repealed Act, chapter 6
  - matters to be considered in deciding whether or not a development application, or a change to a development application, would result in a substantially different development
  - matters to be considered in deciding if an action is a material change of use
  - the required periods for taking actions under the process
  - the effect of not taking the actions within the periods
  - provisions for information requests, and when and how the information can be sought
- (3) The development assessment rules may provide for lapsing of development applications only if a period that the Minister considers is reasonable for the type of contravention concerned has ended.
  - (4) The rules must provide for—
    - (a) how notification is to be carried out for applications for which public notification is required; and
    - (b) the consideration of properly made submissions.
  - (5) The development assessment rules do not take effect unless the rules are approved by a regulation.
  - (6) A reference to the development assessment rules is taken to include any amendment of the rules under section 73 that has taken effect.



- 
- (7) The development assessment rules are not subordinate legislation.

**73 Amending the rules**

- (1) The Minister may amend the development assessment rules.
- (2) However, the amendment does not take effect until—
- (a) the chief executive publishes both the amendment, and the rules as amended, by on the department’s website, free of charge; and
  - (b) a regulation approves the amendment.
- (3) The regulation must state the day the amendment was published.
- (4) In this section—  
*amend* includes remake.

**74 Access to and evidence of the rules**

- (1) The chief executive must keep the following on the department’s website, free of charge—
- (a) the development assessment rules, as in effect from time to time; and
  - (b) endnotes to the development assessment rules stating—
    - (i) when all amendments made under section 73 took effect; and
    - (ii) details of each relevant approving regulation under that section.
- (2) The following provisions apply to the rules as if the rules were Queensland legislation and as if a reference in the provisions to the parliamentary counsel were a reference to the chief executive—
- (a) the *Legislative Standards Act 1992*, section 10A;
  - (b) the *Evidence Act 1977*, sections 43(h) and 46A.

[s 75]

---

- (3) A failure to comply with subsection (1) does not invalidate or otherwise affect the rules.

## **Part 6                      Development approvals**

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

#### **75                      Effect of variation approval on local planning instrument**

- (1) This section applies to the extent a variation approval is a categorising instrument.
- (2) The approval prevails to the extent of any inconsistency with a local planning instrument applying to the premises.
- (3) However, subsection (2) ceases to apply when the earlier of the following happens—
  - (a) the development is completed;
  - (b) the end of the period for completing the development under section 92(1).

#### **76                      When development approval has effect**

- (1) A development approval starts to have effect when—
  - (a) if there is no eligible submitter or eligible building advisory agency for the development application (either an *eligible entity*) and the applicant does not appeal—the development approval is given, or taken to have been given, to the applicant; or

*Note—*

See sections 65, 67 and 107 for when a development approval is given, or taken to have been given, to the applicant.

- 
- (b) if all or part of the application was subject to merit assessment, there was an eligible entity for the application, and the applicant does not appeal or gives the assessment manager a notice stating the applicant will not be appealing before the appeal period ends—
    - (i) if the last eligible entity gives the assessment manager a notice that the eligible entity will not be appealing before the appeal period ends—the eligible entity’s notice is given; or
    - (ii) otherwise—the appeal period ends; or
  - (c) if an appeal is started—the appeal ends.
- (2) However, if, when the application was made, the land was acquisition land, the development approval starts to have effect when the last of the following happens—
- (a) when the land is taken or acquired under the Acquisition Act or State Development Act;
  - (b) when the development approval would, but for this subsection, have effect.
- (3) Development may start when—
- (a) all necessary development permits for the development have started to have effect; and
  - (b) any development condition of the permits relating to the start of development have been complied with.
- (4) The necessary development permits are the development permits given by each assessment manager for the development.

*Example—*

A planning scheme requires standard assessment for some aspects of building work against stated assessment benchmarks. Under the regulation, the relevant local government is the assessment manager for a development application for these aspects of the building work. The regulation also requires standard assessment for different aspects of the same building work against the building assessment provisions. Under the regulation and the Building Act, the applicant may choose either the relevant local government or a building certifier as assessment manager

[s 77]

---

for these aspects. If the applicant chooses the relevant local government for both assessments, then only one development permit is necessary. However, if the applicant chooses a building certifier as assessment manager for the aspects of the building work assessable under the building assessment provisions, then development permits from both the local government and the building certifier are necessary development permits for the development, and must both be in effect before the development may start.

- (5) Despite subsection (3), if an appeal is started in relation to a development approval, other than an appeal about a change application or extension application relating to the approval, development must not start until the appeal ends.
- (6) However, the entity that is hearing the appeal may allow all or part of the development to start before the appeal ends if the entity is satisfied the outcome of the appeal would not be affected.

## **77 Attachment to the land**

- (1) While a development approval is in effect, the development approval attaches to the land and binds the owner, the owner's successors in title and any occupier of the land.
- (2) To remove any doubt, it is declared that—
  - (a) the attachment continues even if a later development (including reconfiguring a lot) is approved for the land or the land as reconfigured; and
  - (b) a development approval does not confer or imply any proprietary rights to land.

---

## **Division 2                      Changing development approvals**

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

#### **78            What this division is about**

This division applies to a change of a development approval before the applicant's appeal period ends.

*Note—*

See division 5 for how a currency period may be changed.

#### **79            Seeking change to development approval**

- (1) The applicant for a development approval may make written representations to the assessment manager about changing—
  - (a) a matter stated in the approval, other than—
    - (i) one stated because of a referral agency response; or
    - (ii) a development condition imposed under a Ministerial direction; or
  - (b) the standard conditions of a deemed approval.
- (2) If the applicant needs more time to make the representations, the applicant may, within the appeal period, suspend the appeal period by a notice to the assessment manager.
- (3) Only 1 notice may be given.
- (4) If a notice is given, the rest of the applicant's appeal period restarts—
  - (a) if the written representations are not made within 20 business days after the notice is given; or
  - (b) the day after the assessment manager receives a notice withdrawing the notice to suspend the appeal period; or

[s 80]

---

- (c) the day after the applicant receives a notice that the assessment manager does not agree with the representations.

**80 Decision on changing development approval**

- (1) The assessment manager must decide whether the assessment manager agrees with the applicant's representations, having regard to the matters required to be considered in assessing the application, to the extent those matters are relevant.
- (2) If the assessment manager does not agree with the representations, the assessment manager must, within 5 business days after the decision is made, give notice of the assessment manager's decision to the applicant.
- (3) If the assessment manager agrees with the representations, the assessment manager must, within 5 business days after the decision is made, give notice (the *negotiated decision notice*) of the assessment manager's decision to—
  - (a) the applicant; and
  - (b) each principal submitter; and
  - (c) each referral agency; and
  - (d) if the assessment manager is not the local government and the development is in a local government area—the local government.
- (4) The negotiated decision notice must—
  - (a) state the nature of all changes agreed to; and
  - (b) comply with section 65 or 107.
- (5) Only 1 negotiated decision notice may be given.
- (6) If the applicant is given a negotiated decision notice, the appeal period starts again on the day after the applicant receives the negotiated decision notice.
- (7) The negotiated decision notice replaces the approval.

- 
- (8) If the assessment manager is a local government, the assessment manager may give a replacement infrastructure charges notice to the applicant.
  - (9) A reference in this Act to—
    - (a) giving the approval is taken to be a reference to giving the negotiated decision notice; and
    - (b) the time when the approval was given is taken to be the time when the negotiated decision notice was given.

## Subdivision 2 Changes after appeal period

### 81 What this division is about

This division applies to a change of a development approval, other than a change of the currency period of the approval, after the applicant's appeal period ends.

*Note—*

See division 5 for how a currency period may be changed.

### 82 Making change application

- (1) The following persons may make an application (a *change application*) to change a development approval—
  - (a) if the development approval is for infrastructure on designated land—a person who intends to supply, or is supplying, the infrastructure; or
  - (b) otherwise—any person.
- (2) A change application must be made to the responsible entity.
- (3) The *responsible entity* is—
  - (a) for a change to a development condition imposed under a Ministerial direction or if the development application was called in—the Minister; or

[s 83]

---

- (b) for a minor change to a development condition imposed by a referral agency—the referral agency; or
  - (c) if the development approval was given because of a P&E Court order, and there were properly made submissions for the application—the court; or
  - (d) otherwise—the assessment manager.
- (4) If the P&E Court or the Minister is the responsible entity, the court or Minister must assess and decide the change application as required under this division, but is not otherwise bound by the process under this division.

### **83 Requirements for change applications**

- (1) A change application must be—
- (a) made to the responsible entity—
    - (i) if the responsible entity has a form for the application—in the form; or
    - (ii) by notice; and
  - (b) accompanied by—
    - (i) the required fee; and
    - (ii) for an application for minor change—evidence to show the applicant has complied with section 84, including a copy of any pre-request response notice for the application; and
    - (iii) to the extent that the application relates to land for which the applicant is not the owner—the consent, or evidence of the consent, of the owner of the land.
- (2) However, subsection (1)(b)(iii) does not apply to the extent—
- (a) the land is acquisition land and the application relates to the purpose for which the land, or an interest in the land, is to be taken or acquired; or



- 
- (b) the owner is the owner of a servient tenement for an easement, and the change is not inconsistent with the easement's terms; or
  - (c) the development approval is for building work for supplying infrastructure on designated land; or
  - (d) the responsible entity is satisfied that the change does not materially affect any of the owners' land and that—
    - (i) having regard to the nature of the change, the owner has unreasonably withheld consent; or
    - (ii) because of the number of owners, it is impracticable to obtain their consent; and

*Example of when owners' consent may be impracticable—*

Since the development approval was given, the land had been subdivided and now has many owners.

- (3) The responsible entity must accept an application that complies with subsection (1).
- (4) Despite subsection (1), and the *Acts Interpretation Act 1954*, section 48A(2), the responsible entity may decide to accept an application if any or all of the following apply—
  - (a) if the responsible entity has a form for the application—the responsible entity considers the application does not include particular supporting information;
  - (b) the application is not accompanied by the consent, or evidence of the consent, of the owner of the land, if required under subsection (1)(b)(iii);
  - (c) the responsible entity decides to waive all or part of the required fee under section 113.

*Note—*

See section 85(5) for how a decision may be delayed because of failure to get the owner's consent.

[s 84]

---

- (5) If the application is made to the Minister who made a call in and the Minister is satisfied the change does not affect a State interest—
  - (a) the Minister may refer the application to the original assessment manager; and
  - (b) on the making of the referral, the original assessment manager is taken to be the responsible entity for the application.

**84 Notifying affected entities of minor change application**

- (1) This section applies to a change application for a minor change to a development approval.
- (2) A *minor change* to a development approval is a change that would not—
  - (a) result in substantially different development; or
  - (b) if a development application for the development, including the change, were made when the change application is made, cause any of the following—
    - (i) the inclusion of prohibited development in the development;
    - (ii) referral agency referral, other than to the chief executive, if there were no referral agencies for the development application;
    - (iii) referral to additional referral agencies, other than to the chief executive;
    - (iv) public notification if public notification was not required for the development application.
- (3) A person who proposes to make a change application for a minor change may give notice of the proposal and the details of the change to each affected entity.
- (4) An *affected entity* is any entity that would be any of the following if the application were actually made—

- 
- (a) if the responsible entity is the assessment manager—any referral agency for the development application other than the chief executive;
  - (b) if the responsible entity is a referral agency—the assessment manager, and any other referral agencies for the development application, other than the chief executive;
  - (c) if the responsible entity is the Minister or the P&E Court—the assessment manager, and any referral agencies for the development application, other than the chief executive;
  - (d) another entity prescribed.
- (5) The affected entity may give the person who proposes to make the change application a notice (a *pre-request response notice*) that states whether or not the entity objects to the change.
  - (6) If the applicant for a change application has not received a pre-request response notice from an affected entity, the applicant must give the affected entity a copy of the change application as soon as practicable after giving the application to the responsible entity.
  - (7) An affected entity must, within 15 business days after receiving a copy of a change application, give the responsible entity and the applicant a notice (a *response notice*) stating—
    - (a) the entity has no objection to the change; or
    - (b) the entity objects to the change and reasons for the objection.
  - (8) If the affected entity does not do so, the responsible entity must decide the application as if the affected entity had given a response notice of no objection to the change.

**85 Assessing and deciding application for minor changes**

- (1) This section applies to a change application for a minor change.

[s 85]

---

- (2) The responsible entity must assess the change application, to the extent relevant, having regard to—
  - (a) the information the applicant included with the application; and
  - (b) if the responsible entity is the assessment manager and submissions were made about the development application—the submissions; and
  - (c) any pre-request response notice or response notice given to the entity; and
  - (d) all matters the responsible entity would or may assess against or have regard to, if the application were a development application; and
  - (e) any other relevant matter.
- (3) For subsection (2)(d), the entity must have regard to the matters as they applied when the original development application was made, but may give the weight the entity considers appropriate to the matters applying when the change application was made.
- (4) After assessing the change application, the responsible entity must decide to—
  - (a) make the change, with or without imposing development conditions, or amending existing development conditions, relating to the change; or
  - (b) refuse to make the change.
- (5) However, if the owner's consent is required for the application, the responsible entity may decide the application only if—
  - (a) the application is accompanied by the consent, or evidence of the consent, of the owner of the land; or
  - (b) the decision is to refuse to make the change; or
  - (c) any approval includes a development condition that the change may not be made until the owner has—

- 
- (i) agreed to the change being made; or
    - (ii) given an easement for a purpose consistent with the change.
  - (6) Any development conditions imposed must comply with the relevant or reasonable requirement.
  - (7) If there is no affected entity, the responsible entity must decide the application within 20 business days after receiving the application.
  - (8) Otherwise, the responsible entity—
    - (a) must not decide the application until the first of the following happens—
      - (i) a response notice has been received from each affected entity given a copy of the application;
      - (ii) the end of the period of 20 business days after the responsible entity received the application; but
    - (b) must decide the application within 25 business days after receiving the application.
  - (9) However, the responsible entity and the applicant may, within the 25 business days, agree to extend the period.

**86 Assessing and deciding application for other changes**

- (1) This section applies to a change application, other than for a minor change.
- (2) The responsible entity must administer the change application, to the extent relevant, under sections 46 to 64, 66 and 67, and the development assessment rules, as if—
  - (a) the responsible entity were the assessment manager; and
  - (b) the original development application had included the change but was made when the change application was made.
- (3) However, any requirement for public notification under section 49 does not apply to the change application if the

[s 87]

---

change is not a minor change only because of a matter mentioned in section 84(2)(b)(ii) or (iii).

- (4) For assessing and deciding the change application, to the extent relevant, sections 52 to 56, and part 4 (other than section 65), apply as if the change were the entire development.

### **Subdivision 3 Notice of decision**

#### **87 Notice of decision**

- (1) The responsible entity must give notice of the entity's decision on a change application to—
  - (a) the applicant; and
  - (b) if the responsible entity is not the assessment manager—the assessment manager; and
  - (c) any referral agency for the application; and
  - (d) if the responsible entity is not a local government and the land is in a local government area—the local government whose local government area includes the land; and
  - (e) if the application relates to a development approval given under a call in and the Minister referred the application to the original assessment manager—the Minister; and
  - (f) if the approval was given under a court order and the court was not the responsible entity—the court.
- (2) The notice must—
  - (a) state the day the application was made; and
  - (b) state the day the development approval for the development application was decided; and
  - (c) state the decision; and

- 
- (d) if the decision is to make the change, be accompanied by a copy of the following showing the change, including any additional development conditions—
    - (i) if the responsible entity is a referral agency—the agency’s response for the original development application;
    - (ii) otherwise—the development approval; and
  - (e) if the decision is to refuse to make the change or to make the change subject to development conditions, state—
    - (i) reasons for the decision; and
    - (ii) all relevant appeal rights.
  - (3) If the decision is to make the change, the decision starts to have effect when—
    - (a) if no appeal is made against the decision before the appeal period ends—the appeal period ends;
    - (b) if an appeal is made against the decision—the appeal ends.

### **Division 3                      Cancelling development approvals**

#### **88            Application to cancel development approval**

- (1) A person may apply, by notice, to the assessment manager to cancel a development approval unless—
  - (a) development has started; and
  - (b) there are obligations under the approval relevant to the development already undertaken—
    - (i) about the ongoing conduct or management of uses started or works carried out under the approval; or
    - (ii) that remain unfulfilled.

*Examples of paragraph (b)—*

[s 89]

---

- a development condition about operating hours, traffic management or waste management
  - a development condition about restoring or rehabilitating the land or a building
- (2) The cancellation application must be accompanied by—
- (a) the required fee; and
  - (b) if the applicant is not the owner of the land—the consent, or evidence of the consent, of the owner of the land; and
  - (c) if there is a written arrangement between the owner and another person under which the other person proposes to buy the land—the other person’s consent; and
  - (d) if the land is subject to an easement in favour of a public utility—the entity’s consent.
- (3) On receiving a cancellation application that complies with this section, the assessment manager must—
- (a) cancel the development approval; and
  - (b) give notice of the cancellation to—
    - (i) the applicant; and
    - (ii) each referral agency; and
  - (c) release any monetary security for the approval.

#### **Division 4                      Lapsing and extending development approval**

##### **89            Lapsing at end of currency period**

- (1) An aspect of a particular development approval lapses at the end of the following period (the *currency period*)—
- (a) the period stated in the approval;
  - (b) if a period is not stated in the approval—



- 
- (i) for an aspect relating to a material change of use of premises—6 years after the approval starts to have effect, if the first change of use does not happen in that time;
    - (ii) for an aspect relating to reconfiguring a lot—4 years after the approval starts to have effect, if a plan for the reconfiguration is not given to the local government in that time;
    - (iii) for any other aspect—2 years after the approval starts to have effect, if the development does not substantially start in that time.
  - (2) The assessment manager must give the applicant and owner notice that—
    - (a) the aspect is due to lapse on a stated date; and
    - (b) the currency period may be extended under this division.
  - (3) The notice must be given no earlier than 6 months, and no later than 3 months before, the aspect is due to lapse.
  - (4) If the notice is not given within that period, the aspect does not lapse until 3 months after the assessment manager does give the notice.
  - (5) If an aspect of the approval lapses, any monetary security given for the aspect must be released.

## **90 Extension applications**

- (1) A person may, before a development approval lapses, make an extension application for any or all aspects of the approval to the assessment manager.
- (2) For a development application that was called in, a reference to assessment manager is a reference to the original assessment manager.
- (3) An extension application must be made—
  - (a) to the assessment manager—

[s 90]

---

- (i) if the assessment manager has a form for the application—in the form; or
      - (ii) by notice; and
    - (b) must be accompanied by—
      - (i) the required fee; and
      - (ii) to the extent that the application relates to land for which the applicant is not the owner—the consent, or evidence of the consent, of the owner of the land.
  - (4) However, subsection (3)(b)(ii) does not apply to the extent—
    - (a) the land is acquisition land and the owner’s consent was not required when the original development application was made; or
    - (b) the owner is the owner of a servient tenement for an easement, and the owner’s consent was not required when the original development application was made; or
    - (c) the development approval is for building work for supplying infrastructure on designated land; or
    - (d) the assessment manager is satisfied that—
      - (i) having regard to the nature of the application, the owner has unreasonably withheld consent; or
      - (ii) because of the number of owners, it is impracticable to obtain their consent.
- Example of when owners’ consent may be impracticable—*
- Since the development approval was given, the land has been subdivided and now has many owners.
- (5) The assessment manager must accept an extension application that complies with subsection (3).
  - (6) Despite subsection (3), and the *Acts Interpretation Act 1954*, section 48A(2), the assessment manager may decide to accept an application if any or all of the following apply—

- 
- (a) if the assessment manager has a form for the application—the assessment manager considers the application does not include particular supporting information;
  - (b) the application is not accompanied by the consent, or evidence of the consent, of the owner of the land, if required under subsection (3)(b)(ii);

*Note—*

See section 91(4) for how a decision may be delayed because of failure to get the owner's consent.

- (c) the assessment manager decides to waive all or part of the required fee under section 113.

## **91 Deciding extension applications**

- (1) The assessment manager must, within 20 business days after receiving an extension application, decide whether to—
  - (a) give or refuse the extension sought; or
  - (b) extend the currency period for a period that is different from the extension sought.
- (2) The assessment manager and the applicant may agree to extend the 20 business days.
- (3) In making the decision, the assessment manager—
  - (a) is not limited to the matters relevant to the granting of the development approval; and
  - (b) may consider any relevant matter.
- (4) However, if the owner's consent is required for the application, the application may be decided only if—
  - (a) the requirement has been complied with; or
  - (b) the decision is to refuse the extension sought.
- (5) The assessment manager may decide the application even if the development approval was given because of a P&E Court order.

[s 92]

---

- (6) The assessment manager must give notice of the decision to the applicant and any referral agency within 5 days after deciding the application.
- (7) The notice must state the applicant's appeal right under schedule 1 against the decision if the decision is—
  - (a) to refuse the extension sought; or
  - (b) to extend the currency period for a period less than the extension sought.
- (8) Despite section 89, a development approval does not lapse until—
  - (a) if the extension application is approved—the end of the extended period; or
  - (b) if the extension application is refused and the applicant does not appeal—the day on which notice is given under subsection (6); or
  - (c) if the extension application is refused and the applicant appeals—
    - (i) the day on which the appeal is dismissed or withdrawn; or
    - (ii) if the appeal is allowed—the end of the extended period decided by the court.

**92 Lapsing for failing to complete**

- (1) An aspect of a variation approval lapses if the development relating to the aspect is not completed within—
  - (a) if a development condition required the development to be completed within a stated period—the stated period;
  - (b) if paragraph (a) does not apply—the period the applicant nominated in the development application;
  - (c) if paragraphs (a) and (b) do not apply—5 years after the approval starts to have effect.



## **Part 7 Ministerial powers**

### **Division 1 Limit on Ministerial powers**

#### **94 Limit on Ministerial powers**

- (1) The Minister may exercise a power under this chapter only in relation to a matter that involves, or is likely to involve, a State interest.
- (2) When exercising a power under this chapter, the Minister need not—
  - (a) give notice to any person other than under division 3 or 4; and
  - (b) consult with any person; and
  - (c) consider any material given to the Minister by or for any person in relation to the exercise or proposed exercise of the power.

### **Division 2 Ministerial powers for directions**

#### **Subdivision 1 Directions generally**

#### **95 Directions generally**

- (1) This section applies to a power that is a direction.
- (2) As well as any other requirements under this chapter, the direction must state—
  - (a) the Minister's reasons for the direction; and
  - (b) the State interest for which the direction is given.
- (3) The recipient of the direction must comply with the direction.

- 
- (4) The Minister may consider any failure to comply with the direction if the Minister proposes to exercise another power.

## **Subdivision 2      Directions to assessment managers**

### **96      Direction to give copies of future applications**

- (1) The Minister may, by gazette notice given to an assessment manager, direct the assessment manager to give copies of all future development applications for a particular development or area to the Minister.
- (2) The direction must—
- (a) identify the development or area; and
  - (b) state the point in the development assessment process when the applications must be given.

*Notes—*

- 1 Under section 224, the access rules must ensure there is information available about Ministerial directions and documents relating to them. For public access to those directions and documents, see section 226.
- 2 For other things the direction must state, see section 95(2).

### **97      Directions about particular applications**

- (1) The Minister may direct an assessment manager to do any or all of the following for a development application—
- (a) if the assessment manager has not decided the application—to not decide the application within a stated period;
  - (b) if the assessment manager has not decided the application within the decision-making period—to decide the application within a stated period;
  - (c) to decide the application within the decision-making period;

[s 98]

---

- (d) to take an action under the development assessment process within a stated reasonable period;
  - (e) if the assessment manager has not made a decision about representations made under section 79—to decide, within a stated period, whether to give a negotiated decision notice.
- (2) The period stated for subsection (1)(a) and (b) must end no less than 20 business days after the direction is given.
  - (3) A direction under subsection (1)(a) may state that the Minister may, within the stated period, call in the application or give a further direction.
  - (4) If a direction is given under subsection (1)(a)—
    - (a) the development assessment process stops on the day the direction is given and starts—
      - (i) when the stated period ends; or
      - (ii) if the Minister calls in the application or gives a new direction before the stated period ends—on the day the Minister calls in the application or gives the new direction; and
- Note—*
- A notice of call in also may affect the process: see division 3.
- (b) the Minister must not call in the application after the stated period ends.

**98 Direction to impose conditions**

- (1) This section applies if—
  - (a) an assessment manager for a development application has not decided the application; and
  - (b) a deemed approval has not taken effect for the application under section 67.



- 
- (2) The Minister may direct the assessment manager to impose stated development conditions on any development approval given.

**99 Ministerial report about decision to direct**

- (1) The Minister must, after giving a direction to an assessment manager, prepare a report about the Minister's decision to give the direction.
- (2) The report must include—
- (a) a copy of the direction; and
  - (b) the reasons for the decision.
- (3) The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after the decision is made.

**Subdivision 3 Directions to referral agencies**

**100 Application of subdivision**

This subdivision applies to a referral agency for a development application, even if the period for the agency to assess the application has ended.

**101 Directions to referral agency**

The Minister may direct the referral agency to do any of the following—

- (a) if the Minister is satisfied the referral agency's response directs the imposition of a condition that does not comply with the relevant or reasonable requirement or section 70—to reissue the response without the condition or with a modified condition;
- (b) if the Minister is satisfied the response is not within the referral agency's functions—to reissue the response in a

[s 102]

---

stated way to ensure the response is within the functions;

- (c) if the Minister is satisfied the referral agency has not assessed, or adequately assessed, the application—to reissue the response in a stated way to ensure the agency has adequately assessed the application;
- (d) if the Minister is satisfied the referral agency has contravened a period for taking an action under the process—to take the action within a stated reasonable period.

#### **102 Effect of direction**

If a direction is given under this subdivision, the assessment manager must not decide the development application until the direction has been complied with.

*Note—*

If the Minister gives a direction under this section, the referral agency may give or amend its response after the end of the period under the development assessment rules to assess the application. See section 56.

### **Subdivision 4 Miscellaneous**

#### **103 Distribution to interested entities**

The Minister must give a copy of each direction to—

- (a) for a direction under section 96—each entity the Minister considers is likely to be an assessment manager or referral agency for any development application the subject of the direction; or
- (b) for a direction about a development application (other than a future development application), any of the following who is not the recipient of the direction—
  - (i) the applicant;

- (ii) the assessment manager;
- (iii) a referral agency.

### **Division 3                    Ministerial powers for calling in development applications**

#### **104    Call in power**

- (1) The Minister may call in a development application by a notice (a *call in notice*) to—
  - (a) the assessment manager; and
  - (b) the applicant; and
  - (c) any referral agency; and
  - (d) any principal submitter for a properly made submission for the application.

*Note—*

The subject of a call in must involve a State interest: see section 94(1).

- (2) The notice may be given up to 20 business days after the last of the following to happen—
  - (a) the day the chief executive receives notice of an appeal against the application;
  - (b) the end of the appeal period for the application.
- (3) The notice must state—
  - (a) the reasons for the call in, including the State interest giving rise to the call in; and
  - (b) whether the Minister intends to assess and decide, or reassess and re-decide, the application; and
  - (c) the point (the *restarting point*) in the development assessment process decided by the Minister, from which the process must restart.

[s 105]

---

- (4) In deciding the restarting point, the Minister may have regard to anything the Minister considers relevant.

*Example—*

properly made submissions for the application

- (5) If the call in is made before the application is decided, the notice may direct the assessment manager to—
- (a) assess, or continue to assess, the application; and
  - (b) refer the application to the Minister for decision.

#### **105 Ministerial action on calling in**

- (1) If a call in is made before the application is decided, the Minister may—
- (a) assess and decide all or part of the application instead of the original assessment manager; or
  - (b) give a direction mentioned in section 104(5).
- (2) If a call in is made after the application is decided, the Minister may, despite the original assessment manager's decision, reassess and re-decide the application.

#### **106 Effect of call in**

- (1) From the day the application is called in to when the Minister gives a decision notice on the application, the Minister is taken to be the assessment manager for the application.
- (2) If the application has not been decided, the development assessment process restarts from the restarting point stated in the call in notice.
- (3) If the application has been decided—
- (a) the decision is taken to be of no effect; and
  - (b) the process restarts from the restarting point; and
  - (c) the Minister's decision on the application is taken to be the original assessment manager's decision.

- 
- (4) If an appeal was made before the application was called in, the appeal is of no further effect.

*Note—*

There is no appeal against the Minister's decision: see section 194(3).

### **107 Provisions for Minister to decide application**

- (1) This section applies to any Ministerial decision under this division about all or part of a development application.
- (2) Part 4, division 1, other than section 65, does not apply.
- (3) The original assessment manager must give all reasonable help that the Minister requires to assess or decide, or re-assess or re-decide, the application.

*Examples—*

- giving all material about the application that the original assessment manager had before the call in or receives after the call in
  - giving any other material relevant to assessing the application
- (4) The Minister may consider anything the Minister considers relevant.

*Examples—*

- the matters the original decision-maker was required to assess the application against, or have regard to
  - referral agency responses already received
  - any material given under subsection (3)
  - the State interest for which the application was called in
  - any other relevant State interest
  - matters relating to any of the State interests
- (5) However, the Minister is not bound by any referral agency response.
- (6) The decision notice must state the matters the Minister considered.
- (7) Section 65(2)(c)(ii) does not apply to the decision notice.

[s 108]

---

- (8) Material prescribed for decision notices applies only to the extent the Minister considers it is relevant having regard to the calling in.
- (9) The Minister must give the decision notice to all entities that were given the call in notice.

**108 Process for any undecided part**

- (1) If the Minister does not decide all of a development application, the Minister must give the original assessment manager a notice referring the rest back to the manager.
- (2) The notice must state the point in the development assessment process from which the process must restart for the rest.

**109 Report about Minister's decision on application**

The Minister must, after deciding all or part of a development application—

- (a) prepare a report that—
  - (i) includes the Minister's decision notice; and
  - (ii) explains the nature of the decision and the matters the Minister considered in making the decision; and
- (b) cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days.

---

**Division 4**                      **Ministerial powers for change,  
extension or cancellation  
applications**

**110**    **Step in power**

- (1) This section applies if a change, extension or cancellation application has been made to an entity, even if the application has been decided.
- (2) The Minister may, by notice to the entity, step in for the application.
- (3) Division 3, including any time limit within which a power must be exercised, applies to the step in as if a reference in the division to a person or matter as follows (the *subject*) were a reference to the other person or matter stated for the subject—
  - (a) for a call in—the step in;
  - (b) for a development application—the application;
  - (c) for an assessment manager (other than the Minister)—the entity to whom the application has been made;
  - (d) for the development assessment process—the process under this part for administering the application;
  - (e) for a decision notice—the decision notice under this part for the application.
- (4) The division as applied under subsection (3) applies despite any other provision of this part.
- (5) The Minister may give directions about the application to the entity.
- (6) Sections 97 (other than subsection (1)(e)) and 98 apply to the directions with the adaptations mentioned in subsection (3).

## **Part 8                      Miscellaneous**

### **111      Restriction on use or preservation covenants**

- (1) A use or preservation covenant entered into in connection with a development application is of no effect unless the covenant is—
  - (a) required under a development condition for the application; or
  - (b) entered into under an infrastructure agreement.
- (2) Subsection (3) and (4) apply if—
  - (a) for a covenant under a development condition—
    - (i) the development approval including the condition lapses under section 89; or
    - (ii) the condition is changed or removed under part 6, division 4; or
  - (b) for a covenant under an infrastructure agreement—the agreement is changed or cancelled.
- (3) If, under subsection (2), the requirement for the covenant under the condition or agreement is removed, the covenantee must register an instrument releasing the covenant.
- (4) If, under subsection (2), the condition or agreement is changed in a way that affects rights or obligations under the covenant—
  - (a) the covenantee and the covenantor must execute a valid instrument that amends the covenant to reflect the change; and
  - (b) the covenantor must register the instrument.



---

**112 Regulation prevails over local categorising instruments whenever made**

- (1) This section applies if a provision of this chapter states that a local instrument must not provide for a matter prescribed.
- (2) The provision applies no matter when the regulation and the local categorising instrument commenced in relation to each other.

**113 Power to refund or waive fees**

An entity may, but need not, refund or waive all or part of the fee required to be paid to the entity for an application under this chapter.

## **Chapter 4 Infrastructure**

### **Part 1 Introduction**

**114 What this chapter is about**

- (1) Part 1, other than this section, states interpretative provisions.
- (2) Part 2—
  - (a) authorises local governments to do either or both of the following for development approvals for trunk infrastructure—
    - (i) adopt, by resolution, charges for development infrastructure and levy charges in accordance with the resolution;
    - (ii) impose particular conditions about development infrastructure; and

[s 115]

---

- (b) authorises local governments, for non-trunk infrastructure, to impose particular conditions about development infrastructure; and
- (b) provides for a regulation to govern local government adopted charges and charges by distributor-retailers under the SEQ Water Act for trunk infrastructure.
- (3) Part 3 authorises State infrastructure providers to impose particular conditions on development approvals about infrastructure.
- (4) Part 4 provides for agreements between public sector entities and others about infrastructure.
- (5) Part 5 contains miscellaneous provisions.

**115 Extension of chapter to change and extension applications and approvals**

- (1) A reference in a provision of this chapter to a person or matter as follows (the *subject*) includes a reference to the other person or matter stated for the subject—
  - (a) for a development application—
    - (i) a change application; and
    - (ii) an extension application;
  - (b) for the applicant for a development approval—a person making a change application or extension application;
  - (c) for a development approval—an approval of a change application or extension application;
  - (d) for the giving of a development approval—the giving of a change approval or extension approval.
- (2) The inclusions apply to both general and specific references and with necessary changes for them to apply to a change application or extension application.
- (3) In applying this chapter to a change approval or an extension approval, parts 2 and 3 apply as if—

- 
- (a) the power to give infrastructure charges notices were instead a power to give or amend, by notice to the applicant for the approval, any infrastructure charges notice for the relevant development approval; and
  - (b) a reference to an infrastructure charges notice were a reference to the infrastructure charges notice as so given or amended; and
  - (c) a reference to giving a development approval were a reference to giving the change approval or extension approval; and
  - (d) a power to impose a particular condition on a development approval were a power to amend the development approval the subject of the change application to impose or change the particular condition, under section 85(4); and
  - (e) a reference to a development approval, or to a condition of a development approval, were a reference to the relevant development approval as so amended or the condition.
- (4) However, despite subsection (3)(a), a local government may only amend an infrastructure charges notice for a relevant development approval for a change approval or an extension approval if the amendment relates to the change to, or extension of, the development approval.

- (5) In this section—

***change approval*** means the approval, under section 85(4)(a) or 86. of a change application.

***extension approval*** means the approval, under section 91(1), of an extension application.

***relevant development approval*** means—

- (a) for a change approval—the development approval changed under the change approval; or
- (b) for an extension approval—the development approval to which the extension approval relates.

**116 References in ch 4**

- (1) A reference in a provision of this chapter to a person or matter as follows (the *subject*) is a reference to the other person or matter stated for the subject—
- (a) for the applicant for a charge matter—the applicant for the relevant development approval;
  - (b) for the development for a charge matter—the development the subject of the relevant development approval;
  - (c) for the land or premises for a levied charge or infrastructure charges notice—the land to which the levied charge, or the levied charge under the notice, attaches;
  - (d) for the PIA—
    - (i) for a local government—the local government’s PIA; or
    - (ii) for a development application or condition of a development approval—the relevant local government’s PIA;
  - (e) for the LGIP—
    - (i) for a local government—the local government’s LGIP; or
    - (ii) for a development application or condition of a development approval—the relevant local government’s LGIP.
- (2) In this section—
- charge matter* means an adopted charge, infrastructure charges notice or levied charge.
- relevant development approval*, for a charge matter, means the development approval to which the matter relates or will relate.

---

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

**Division 1**                **Charges for trunk infrastructure**

**Subdivision 1**        **Power to adopt charges**

**117**    **Regulation prescribing charges**

- (1) A regulation may prescribe a maximum for each adopted charge—
  - (a) under this chapter in relation to providing trunk infrastructure for development; or
  - (b) under the SEQ Water Act in relation to providing trunk infrastructure.
- (2) The Minister may, by gazette notice, change the amount of a maximum adopted charge.
- (3) Any increase under subsection (2) in a maximum adopted charge over a financial year must not be more than an amount equal to the amount of the maximum adopted charge at the start of the financial year multiplied by the 3-year moving average annual percentage increase in the PPI index for the period of 3 years ending at the start of the financial year.
- (4) The regulation may also prescribe—
  - (a) the charges breakup; and
  - (b) development for which there may be an adopted charge under this chapter or land uses for which there may be an adopted charge under the SEQ Water Act for trunk infrastructure; and
  - (c) the parameters mentioned in section 121(2).
- (5) In this section—

[s 118]

---

*maximum adopted charge* means the maximum for an adopted charge prescribed under subsection (1) as the amount of that maximum is changed, from time to time, under subsection (2).

**118 Power to adopt charges by resolution**

- (1) A local government may, by resolution (a *charges resolution*), adopt charges (each an *adopted charge*) for providing trunk infrastructure for development.
- (2) However—
  - (a) a charges resolution may only be made if the local government’s planning scheme contains an LGIP; and
  - (b) a charges resolution does not, of itself, levy an infrastructure charge; and
  - (c) the making of a charges resolution is subject to this subdivision and subdivision 2; and
  - (d) an adopted charge must not be for—
    - (i) work or use of land authorised under the *Greenhouse Gas Storage Act 2009*, the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; or
    - (ii) development in a priority development area under the *Economic Development Act 2012*; or
    - (iii) development under a designation.
- (3) A charges resolution must state the day when an adopted charge under the resolution is to take effect.

*Note—*

See section 123(2).

---

## Subdivision 2 Charges resolutions

### 119 Contents—general

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

*Note—*

Also see section 120(5).

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

[s 120]

---

*3-yearly PPI index average* means the PPI index smoothed in accordance with the 3-year moving average quarterly percentage change between quarters.

**120 Provisions for participating local governments and distributor-retailers**

- (1) This section applies to each of the following (the *parties*)—
  - (a) a local government that, under the SEQ Water Act, is a participating local government for a distributor-retailer;
  - (b) the distributor-retailer.
- (2) The parties may agree about the charges breakup (a *breakup agreement*).
- (3) A breakup agreement prevails over a charges breakup prescribed by regulation.
- (4) A charges resolution of the local government must state the charges breakup for all adopted charges under the resolution.
- (5) However, the adopted charges must not be more than the proportion of the maximum adopted charges—
  - (a) the local government may have under a breakup agreement to which the local government is a party; or
  - (b) if the local government is not a party to a breakup agreement—prescribed by regulation.
- (6) Subsection (7) applies if there is a charges resolution of the local government and the parties later enter into a breakup agreement with a different charges breakup from the resolution.
- (7) The breakup agreement does not take effect until the later of the following—
  - (a) the local government makes a new charges resolution that reflects the agreement;
  - (b) the distributor-retailer adopts a new infrastructure charge schedule that reflects the agreement.



---

**121 Working out cost of infrastructure for offset or refund**

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

**122 Criteria for deciding conversion application**

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

**123 Steps after making charges resolution**

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

*Note—*

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

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

[s 124]

---

### **Subdivision 3      Levying charges**

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

- (1) This section applies if—
  - (a) a development approval has been given; and
  - (b) an adopted charge applies to providing the trunk infrastructure for the development; and
  - (c) a local government’s planning scheme contains an LGIP.
- (2) The local government must give a notice (an *infrastructure charges notice*) to the applicant.

*Note—*

See section 80(8) for when a local government may give a replacement infrastructure charges notice for a negotiated decision notice.

- (3) The local government may give the infrastructure charges notice only—
  - (a) generally—
    - (i) if the local government is the assessment manager—on, or as soon as practicable after, the development approval is given; or
    - (ii) if the local government is a referral agency—within 10 business days after the local government receives a copy of the development approval; or
  - (b) if the development approval is a deemed approval for which a decision notice has not been given—within 20 business days after the local government receives a copy of the deemed approval notice; or
  - (c) if paragraphs (a) and (b) do not apply—within 20 business days after the local government receives a copy of the development approval.

- 
- (4) Subsection (3) is subject to any provision under which an infrastructure charges notice may be amended or replaced.

*Note—*

See sections 115(3), 130(3), 144(4) and 149(4)(b).

- (5) The infrastructure charges notice lapses if the development approval stops having effect.
- (6) If the infrastructure charges notice levies on the applicant an amount for a charge worked out by applying the adopted charge (a *levied charge*)—
- (a) the amount of the levied charge is subject to sections 125 and 136; and
  - (b) the levied charge is payable by the applicant; and
  - (c) the levied charge attaches to the land; and
  - (d) the levied charge only becomes payable as provided for under subdivision 4; and
  - (e) the levied charge is subject to any agreement under section 128(1).

## **125 Limitation of levied charge**

- (1) A levied charge may be only for additional demand placed upon trunk infrastructure that will be generated by the development.
- (2) In working out additional demand, the demand on trunk infrastructure generated by the following must not be included—
- (a) an existing use on the premises if the use is lawful and already taking place on the premises;
  - (b) a previous use that is no longer taking place on the premises if the use was lawful at the time the use was carried out;

[s 126]

---

- (c) other development on the premises if the development may be lawfully carried out without the need for a further development permit.
- (3) However, the demand generated by a use or development mentioned in subsection (2) may be included if an infrastructure requirement that applies or applied to the use or development has not been complied with.
- (4) In this section—
  - charges notice* means—
    - (a) an infrastructure charges notice; or
    - (b) a notice mentioned in section 256(1).
  - infrastructure requirement* means a charges notice, or a condition of a development approval, that requires infrastructure or a payment in relation to demand on trunk infrastructure.

## 126 Requirements for infrastructure charges notice

- (1) An infrastructure charges notice must state all of the following for the levied charge—
  - (a) the current amount of the charge;
  - (b) how the charge has been worked out;
  - (c) the land;
  - (d) when the charge will be payable under section 127 (without considering any possible operation of section 128);
  - (e) if an automatic increase provision applies—
    - (i) that the charge is subject to automatic increases; and
    - (ii) how the increases are worked out under the provision;

- 
- (f) whether an offset or refund under this part applies and, if so, details of the offset or refund, including when the refund will be given.
  - (2) The infrastructure charges notice must also include, or be accompanied by, an information notice about the decision to give the notice.

## **Subdivision 4      Payment**

### **127      Payment triggers generally**

- (1) A levied charge becomes payable—
  - (a) if the charge applies for reconfiguring a lot—when the local government that levied the charge approves the plan of subdivision for the reconfiguration; or
  - (b) if the charge applies for building work—when the certificate of classification or final inspection certificate for the building work is given; or
  - (c) if the charge applies for a material change of use—when the change happens; or
  - (d) if the charge applies for other development—on the day stated in the infrastructure charges notice under which the charge was levied.
- (2) This section is subject to section 128.

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

- (1) The recipient of an infrastructure charges notice and the local government that gave the notice may agree about either or both of the following—
  - (a) whether the levied charge under the notice may be paid other than as required under section 127 including whether the charge may be paid by instalments;

[s 129]

---

- (b) whether infrastructure may be provided instead of paying all or part of the levied charge.
- (2) If the levied charge is subject to an automatic increase provision, the agreement must state how increases in the charge are payable under the agreement.

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

#### **129      Application of sdiv 5**

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

#### **130      Representations about infrastructure charges notice**

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

---

days after making the decision, give a notice stating the decision to the recipient.

- (7) The appeal period for the infrastructure charges notice starts again when the recipient is given the negotiated notice.

### **131 Suspension of relevant appeal period**

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

## **Division 2 Development approval conditions about trunk infrastructure**

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

#### **132 Application and operation of sdiv 1**

- (1) This subdivision applies if—
  - (a) a local government's planning scheme contains an LGIP;

[s 133]

---

- (b) trunk infrastructure necessary to service premises the subject of a development application (the *subject premises*)—
  - (i) has not been provided; or
  - (ii) has been provided but is inadequate.
- (2) Sections 133 and 134 provide for the local government to be able to impose particular development conditions on the development approval (each condition is a *necessary infrastructure condition*).

**133 Necessary infrastructure condition for LGIP-identified infrastructure**

- (1) This section applies if the LGIP identifies adequate trunk infrastructure to service the subject premises.
- (2) The local government may impose a development condition requiring either or both of the following to be provided at a stated time—
  - (a) the identified infrastructure;
  - (b) different trunk infrastructure delivering the same desired standard of service.

**134 Necessary infrastructure condition for other infrastructure**

- (1) This section applies if the LGIP does not identify adequate trunk infrastructure to service the subject premises.
- (2) The local government may impose a development condition on a development approval that requires development infrastructure necessary to service the premises to be provided at a stated time.

*Note—*

See schedule 2, definition *development infrastructure*.



- 
- (3) However, a local government may impose a development condition under subsection (2) only if the infrastructure is development infrastructure that services development—
- (a) consistent with the assumptions about the type, scale, location or timing of future development stated in the LGIP; and
  - (b) for premises completely inside the PIA.

**135 Deemed compliance with necessary or reasonable requirements**

- (1) A necessary infrastructure condition is taken to comply with the relevant or reasonable requirement if—
- (a) generally, the infrastructure required is—
    - (i) necessary to service the subject premises; and
    - (ii) the most efficient and cost-effective solution for servicing other premises in the general area of the subject premises; and
  - (b) for a necessary infrastructure condition that requires the provision of the infrastructure on the subject premises—its provision is not an unreasonable imposition on—
    - (i) the development; or
    - (ii) the use of the subject premises as a consequence of the development.
- (2) To remove any doubt, it is declared that a necessary infrastructure condition may be imposed for infrastructure even if the infrastructure will service premises other than the subject premises.

**136 Offset or refund requirements**

- (1) This section applies if—

[s 136]

---

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

*Note—*

For how the cost is worked out, see sections 121 and 144.

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

*Example—*

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

---

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

### 137      **Power to impose**

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

[s 138]

---

- (5) The power to impose an additional payment condition is subject to the rest of this subdivision.

**138 Content of additional payment condition**

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

---

classification or final inspection certificate for the work is given; or

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

**139 Restriction if development completely in PIA**

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

**140 Other area restrictions**

An additional payment condition imposed by a local government for development completely or partly outside the PIA may only require the payment of—

- (a) the establishment cost of infrastructure that is—
  - (i) made necessary by the development; and
  - (ii) if the relevant local government’s planning scheme indicates the premises is part of an area intended for future development for non-rural purposes—necessary to service the rest of the area; and
- (b) either or both of the following establishment costs of any temporary infrastructure—

[s 141]

---

- (i) costs required to ensure the safe or efficient operation of infrastructure needed to service the development;
- (ii) costs made necessary by the development; and
- (c) any decommissioning, removal and rehabilitation costs of the temporary infrastructure; and
- (d) the maintenance and operating costs for up to 5 years of the infrastructure and temporary infrastructure as mentioned in paragraphs (a) and (b).

**141 Refund if development in PIA**

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

**142 Refund if development approval ceases**

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

- 
- (3) Timing of the refund is subject to terms agreed between the payer and local government.

**143 Additional payment condition does not affect other powers**

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

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

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

**144 Process**

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

[s 145]

---

charges notice becomes payable under section 127.

- (4) By notice to the applicant, the local government must amend the existing infrastructure charges notice.
- (5) The amended infrastructure charges notice must adopt the method to work out the establishment cost.

### **Division 3                      Miscellaneous provisions about trunk infrastructure**

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

##### **145      Application of sdiv 1**

This subdivision applies if—

- (a) a particular development condition under section 152 requires non-trunk infrastructure to be provided; and
- (b) the construction of the non-trunk infrastructure has not started.

*Note—*

The combined effect of the definitions *trunk infrastructure* and *non-trunk infrastructure* is that where infrastructure is not identified in an LGIP the infrastructure is, by default, non-trunk infrastructure.

##### **146      Application to convert infrastructure to trunk infrastructure**

- (1) The applicant for the development approval may apply to convert non-trunk infrastructure to trunk infrastructure.
- (2) The application (the *conversion application*) must be made to the local government in writing.



---

**147 Deciding conversion application**

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

**148 Notice of decision**

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

[s 149]

---

- (3) If the decision is not to convert non-trunk infrastructure to trunk infrastructure, the notice must be an information notice about the decision.

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

- (1) This section applies if the decision on a conversion application is to convert non-trunk infrastructure to trunk infrastructure.
- (2) The condition of the relevant development approval requiring the non-trunk infrastructure to be provided no longer has effect.
- (3) Within 20 business days after making the decision, the local government may amend the development approval by imposing a necessary infrastructure condition for the trunk infrastructure.
- (4) If a necessary infrastructure condition is imposed, the local government must also do either of the following within 10 business days after the imposition for the purposes of section 136(2) or (3)(b)—
  - (a) give an infrastructure charges notice;
  - (b) amend, by notice to the applicant, any existing infrastructure charges notice for the development approval.
- (5) For taking action under subsections (3) and (4), divisions 1 and 2 and schedule 1, table 1, item 18 apply as if—
  - (a) a development approval were a reference to the conversion; and
  - (b) a levied charge were a reference to the amendment of a levied charge.

---

## Subdivision 2 Other provisions

### 150 Financial provisions

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

### 151 Levied charge taken to be rates

- (1) A levied charge is, for the purpose of its recovery, taken to be rates of the local government that levied the charge.
- (2) However, subsection (1) is subject to any agreement between the local government and the applicant.
- (3) In this section—  
*rates* means rates within the meaning of—
  - (a) for Brisbane—the *City of Brisbane Act 2010*; or
  - (b) otherwise—the *Local Government Act 2009*.

## Division 4 Non-trunk infrastructure

### 152 Conditions local governments may impose

A development condition imposed by a local government about non-trunk infrastructure—

- (a) may be only about providing development infrastructure for 1 or more of the following—
  - (i) a network, or part of a network, internal to the premises;
  - (ii) connecting the premises to external infrastructure networks;



- (d) if the State infrastructure provider is the chief executive—a matter mentioned in paragraph (a), (b) or (c) for another State infrastructure provider.

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

- turning lanes or traffic signals at a site access or nearby intersection that are to ensure road links and intersections continue to perform at an acceptable level
- upgraded traffic control devices at a level crossing in response to increased traffic
- drainage or retaining structures that are to protect transport infrastructure from changed hydraulics or excavation adjacent to State-owned or State-controlled transport infrastructure

- (3) In this section—

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

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

***safety or efficiency***, of infrastructure mentioned in subsection (2), means—

- (a) the safety of any users of the infrastructure and of others the infrastructure affects; or
- (b) the efficiency of the use of the infrastructure.

***State-owned or State-controlled***, for transport infrastructure, means transport infrastructure under the Transport Infrastructure Act that is owned or controlled by the State.

## 154 Content requirements for condition

A State-related condition must state—

[s 155]

---

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

**155 Refund if State-related condition ceases**

- (1) This section applies if—
  - (a) a State infrastructure provider imposed a State-related condition on a development approval; and
  - (b) a payment has been made under the condition; and
  - (c) the development approval stops having effect; and
  - (d) construction of the infrastructure the subject of the condition had not substantially started before the cessation.
- (2) The public sector entity responsible for providing the infrastructure must refund the payer any part of the payment not spent, or contracted to be spent, on designing or constructing the infrastructure before being told of the cessation.

**156 Reimbursement by local government for replacement infrastructure**

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

- 
- (i) provide the replacement infrastructure; or
  - (ii) reimburse someone else who provided the replacement infrastructure; and
- (b) agree with the State infrastructure provider and the person who provided the replacement infrastructure about when the amount of the levied charge will be paid.

## Part 4 Infrastructure agreements

### 157 Infrastructure agreement

An *infrastructure agreement* is an agreement, as amended from time to time, mentioned in any of the following—

- section 71, to the extent the agreement is about a condition for paying for, or providing, infrastructure
- section 128
- section 138(2)
- section 142(3)
- section 151(2)
- section 156(2)
- section 165.

### 158 Obligation to negotiate in good faith

- (1) This section applies if—
- (a) a public sector entity proposes to another entity that they enter into an infrastructure agreement; or
  - (b) another entity proposes to a public sector entity that they enter into an infrastructure agreement.

[s 159]

---

- (2) The entity (the *recipient*) to whom the proposal is made must, in writing, tell the entity making the proposal if the recipient agrees to entering into negotiation for an infrastructure agreement.
- (3) In negotiating an infrastructure agreement, the entities must act in good faith.

*Examples of actions that subsection (2) requires—*

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

#### **159 Content of infrastructure agreement**

- (1) An infrastructure agreement must—
  - (a) if obligations under the agreement would be affected by a change in the ownership of land the subject of the agreement—include a statement about how the obligations must be fulfilled in that event; and
  - (b) if the fulfilment of obligations under the agreement depends on development entitlements that may be affected by a change to a planning instrument—include a statement about both of the following—
    - (i) refunding or reimbursing amounts paid under the agreement;
    - (ii) changing or cancelling the obligations if the development entitlements are changed without the obligee's consent; and
  - (c) include any other matter required by regulation to be included.
- (2) To remove any doubt, it is declared that an infrastructure agreement may include matters that are not within the jurisdiction of a public sector entity that is a party to the agreement.



---

**160 Copy of infrastructure agreement to be given to local government**

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

**161 Copy of particular infrastructure agreements to be given to distributor-retailers**

- (1) This section applies if—
  - (a) a participating local government for a distributor-retailer is a party to an infrastructure agreement; and
  - (b) the distributor-retailer is not a party to the infrastructure agreement; and
  - (c) the infrastructure agreement relates to a water approval or an application for a water approval under the SEQ Water Act, chapter 4C, part 2.
- (2) The local government must give a copy of the agreement to the distributor-retailer.

**162 When infrastructure agreement binds successors in title**

- (1) This section applies if the owner of land to which an infrastructure agreement applies—
  - (a) is a party to the agreement; or
  - (b) consents to the obligations under the agreement being attached to the land.
- (2) However, subsection (1) does not apply to any of the obligations that are to be fulfilled by a public sector entity.

[s 163]

---

- (3) The obligations under the infrastructure agreement attach to the land and bind the owner and the owner's successors in title of the land.
- (4) If the owner's consent under subsection (1) is given but not endorsed on the agreement, the owner must give a copy of the document evidencing the owner's consent to the local government for the land to which the consent applies.
- (5) Despite subsection (3), subsections (6) and (7) apply if—
  - (a) the infrastructure agreement states that if the land is subdivided, part of the land is to be released from the obligations; and
  - (b) the land is subdivided.
- (6) The part is released from the obligations.
- (7) The obligations are no longer binding on the owner of the part.

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

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

**164 Infrastructure agreement prevails over approval and charges notice**

- (1) If an infrastructure agreement is inconsistent with a development approval or charges notice, the agreement prevails to the extent of the inconsistency.
- (2) However, if a State infrastructure provider (other than the chief executive) is a party to the infrastructure agreement, subsection (1) applies only if the chief executive has approved the agreement.

- 
- (3) The approval of the agreement must be given by notice to all parties to the agreement.
  - (4) In this section—
    - charges notice* means—
      - (a) an infrastructure charges notice; or
      - (b) a notice mentioned in section 256(1).

**165 Agreement for infrastructure partnerships**

- (1) A person may enter into an agreement with a public sector entity about—
  - (a) providing or funding infrastructure; or
  - (b) refunding payments made towards the cost of providing or funding infrastructure.
- (2) Subsection (1) has effect despite parts 2 and 3 and chapter 3, part 4, division 2.

**Part 5 Miscellaneous**

**166 Sale of particular local government land held on trust**

- (1) This section applies if a local government intends to sell land that the local government holds on trust in fee simple for public parks infrastructure or local community facilities.
- (2) The local government must advertise its intention to sell the land by placing notice of the sale in a newspaper circulating in the local government area if—
  - (a) all or part of the land was obtained under a development condition; or

[s 167]

---

- (b) selling the land would not be inconsistent with a current infrastructure agreement under which the local government obtained the land.
- (3) The notice must state the following—
  - (a) a description of the land;
  - (b) the purpose for which the land is held on trust;
  - (c) the reason for the proposed sale;
  - (d) a reasonable period within which submissions about the proposed sale may be made to the local government.
- (4) Before making a decision about the sale, the local government must consider all submissions made to the local government within the stated period.
- (5) The following apply if the local government complies with this section and sells the land—
  - (a) the land is sold free of the trust;
  - (b) the net proceeds of the sale must be used to provide trunk infrastructure.

## **Chapter 5      Offences and enforcement**

### **Part 1            Introduction**

#### **167      What this chapter is about**

- (1) This chapter is about offences against this Act, including development offences, and ways to prevent or remedy the commission of those offence.
- (2) Part 2 creates development offences.

- (3) Part 3 is about notices from an assessing authority requiring a person to refrain from committing a development offence, or to remedy the commission of a development offence.
- (4) Part 4 is about proceedings in a Magistrates Court for development offences and offences against this Act.
- (5) Part 5 is about orders from the P&E Court requiring a person to refrain from committing a development offence, or to remedy the commission of a development offence.
- (6) Part 6 contains miscellaneous provisions relating to offences and enforcement.

## **Part 2                      Development offences**

### **168      What this part is about**

- (1) This part creates offences (each a *development offence*).
- (2) The commission of a development offence is subject to any relevant exemption under this part or chapter 7, part 1.

### **169      Carrying out prohibited development**

A person must not carry out prohibited development, unless the development is carried out under a development approval given for a superseded scheme development application.

Maximum penalty—1665 penalty units.

### **170      Carrying out assessable development without approval**

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

Maximum penalty—

[s 171]

---

- (a) if the assessable development is on a Queensland heritage place or local heritage place—17,000 penalty units; or
  - (b) otherwise—1665 penalty units.
- (2) However, subsection (1) does not apply to development carried out under section 92(3).

**171 Compliance with development approval**

A person must not contravene a development approval.

Maximum penalty—1665 penalty units.

**172 Unlawful use of premises**

A person must not use premises unless the use—

- (a) is a lawful use; or
- (b) complies with a planning scheme or TLPI that regulates the use of the premises; or
- (c) for premises that have been designated—
  - (i) is a lawful use that existed before or after the designation; or
  - (ii) complies with any requirements about the use of premises that is part of the designation.

Maximum penalty—1665 penalty units.

**173 Exemptions if emergency causing safety concern**

- (1) This section applies if an emergency endangers—
- (a) a person's life or health; or
  - (b) a building's structural safety; or
  - (c) the operation or safety of infrastructure, other than a building; or

- (d) in the case of tidal works—the structural safety of an existing structure for which there is a development permit for operational work that is tidal works.
- (2) A person who is carrying out operational work that is tidal works does not commit a development offence, other than an offence against section 169, if the person—
- (a) has made a safety management plan for the work, after considering—
    - (i) the long-term safety of members of the public who have access to the work or any structure to which the work relates; and
    - (ii) if practicable, the advice of any registered professional engineer who has audited the structure; and
  - (b) complies with the plan; and
  - (c) gives a copy of the plan to the assessing authority as soon as reasonably practicable after starting the work; and
  - (d) takes reasonable precautions and exercises proper diligence to ensure the work and structure are in a safe condition, including by engaging a registered professional engineer to audit the structure.
- (3) A person who is carrying out building work on a Queensland heritage place, or local heritage place, for which a development permit would have been required, does not commit a development offence, other than an offence against section 169, if the person—
- (a) obtains the advice of a registered professional engineer about the work before starting the work, unless it is not practicable to do so; and
  - (b) takes all reasonable steps—
    - (i) to ensure the work is reversible; or

[s 173]

---

- (ii) if the work is not reversible—to limit the impact of the work on the place’s cultural heritage significance.
- (4) A person who is carrying out any other development or use does not commit a development offence if the person gives notice of the development or use to the assessing authority as soon as reasonably practicable after starting the development or use.
- (5) Subsections (2), (3) and (4) stop applying to a person who is carrying out work, development or a use (the **activity**) if an enforcement notice or order requires the activity to stop.
- (6) Subsections (2) and (3) stop applying to a person who is carrying out the activity if—
  - (a) as soon as reasonably practicable after starting the activity, the person does not—
    - (i) make a development application that, but for the exemption, would be required for the activity; and
    - (ii) give notice of the activity to the assessing authority; or
  - (b) the person’s development application is refused.
- (7) If a person’s development application is refused, the person must remove the work, development or use that is the subject of the exemption under this section as soon as practicable.

Maximum penalty—1665 penalty units.

- (8) In this section—

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

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

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



---

## Part 3 Enforcement notices

### 174 Show cause notices

- (1) This section applies if an assessing authority—
  - (a) reasonably believes a person has committed, or is committing, a development offence; and
  - (b) is considering giving an enforcement notice for the offence to the person.
- (2) The assessing authority must give the person a notice (a *show cause notice*) that—
  - (a) states the assessing authority is considering giving an enforcement notice to the person; and
  - (b) outlines the facts and circumstances that form the basis for the assessing authority's reason for giving an enforcement notice; and
  - (c) states the person may make representations about the notice to the assessing authority; and
  - (d) states how the representations may be made; and
  - (e) states—
    - (i) a day and time for making the representations; or
    - (ii) a period within which the representations must be made.
- (3) The day or period stated in the show cause notice must be, or must end, at least 20 business days after the notice is given.
- (4) After considering any representations made by the person in accordance with the show cause notice, the assessing authority may give the enforcement notice if the assessing authority still considers it appropriate to do so.
- (5) An assessing authority need not give the person a show cause notice if—
  - (a) the development offence relates to—

[s 175]

---

- (i) work to or on a Queensland heritage place or a local heritage place; or
  - (ii) work for which the notice states the assessing authority believes is a danger to persons or a risk to public health; or
  - (iii) the demolition of a work; or
  - (iv) the clearing of vegetation on freehold land; or
  - (v) the removal of quarry material allocated under the *Water Act 2000*; or
  - (vi) extracting clay, gravel, rock, sand or soil, not mentioned in subparagraph (v), from Queensland waters; or
  - (vii) development that the assessing authority reasonably believes is causing erosion, sedimentation or an environmental nuisance; or
- (b) if the assessing authority reasonably considers it is not appropriate in the circumstances to give the notice.

*Example—*

the assessing authority reasonably considers that giving a show cause notice is likely to adversely affect the effectiveness of the enforcement notice

#### 175 Enforcement notices

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

- 
- (b) remedy the commission of a development offence in a stated way.

*Examples of what an enforcement notice may require—*

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

- to stop carrying out development
- to demolish or remove development
- to restore, as far as practicable, premises to the condition it was in immediately before the development the subject of the offence was started
- to do, or not to do, another act to ensure development complies with a development permit or, if it is accepted development, a matter for it to be accepted development
- if the assessing authority reasonably believes a work is dangerous, to repair or rectify the work, to secure the work (whether by a system of supports or in another way) or to fence the work off to protect people
- to stop a stated use of premises
- to apply for a development permit
- to give a compliance program that shows how compliance with the enforcement notice will be achieved to the assessing authority

- (3) The notice must state—
- (a) the nature of the alleged offence; and
  - (b) if the notice requires the person to refrain from doing an act—
    - (i) the period for which the requirement applies; or
    - (ii) that the requirement applies until further notice; and
  - (c) if the notice requires the person to do an act—
    - (i) the details of the act; and
    - (ii) the period within which the act must be done; and
  - (d) that the person has an appeal right against the giving of the notice.

[s 176]

---

*Note—*

See schedule 1 for appeal rights.

- (4) The notice may require demolition or removal of a work only if the assessing authority reasonably believes it is not possible and practical to take steps—
  - (a) to make the work comply with a development approval; or
  - (b) if the development is accepted development—to make the development be accepted development; or
  - (c) if the work is dangerous—to remove the danger.
- (5) A person must not contravene an enforcement notice.  
Maximum penalty—1665 penalty units.
- (6) An enforcement notice that requires development on premises to stop being carried out may be given by fixing the notice to the premises, or a building or structure on the premises, in a way that a person entering the premises would normally see the notice.
- (7) A person must not deal with an enforcement notice mentioned in subsection (6) in a way that is reasonably likely to prevent the recipient seeing the notice.  
Maximum penalty—1665 penalty units.
- (8) An assessing authority that is a local government may delegate power to give an enforcement notice ordering the demolition of a building only to the local government’s chief executive officer.

**176 Consulting private certifier about enforcement notice**

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

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

**177 Notifying local government about enforcement notice**

- (1) This section applies if the assessing authority—
- (a) reasonably believes a development offence that is the subject of an enforcement notice relates to a local government area; and
  - (b) is not the local government for that area.
- (2) The assessing authority must give a copy of the enforcement notice to the local government.
- (3) If the assessing authority withdraws the enforcement notice, the assessing authority must give notice of the withdrawal to the local government.
- (4) A failure to comply with subsection (2) does not invalidate or otherwise affect the enforcement notice.

**178 Stay of enforcement notice**

- (1) An appeal against an enforcement notice stays the operation of the notice until—

[s 179]

---

- (a) on application of the assessing authority that gave the notice—the entity hearing the appeal decides otherwise; or
  - (b) the appeal ends.
- (2) However, the notice is not stayed to the extent the notice is about a matter mentioned in section 174(4)(a).

**179 Application required by show cause or enforcement notice**

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

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

Maximum penalty—1665 penalty units.

**180 Assessing authority may remedy contravention**

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

*Note—*

If the assessing authority is a local government, see the *Local Government Act 2009*, section 142 and the *City of Brisbane Act 2010*, section 132.

- (2) The assessing authority may—

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

## **Part 4                      Offence proceedings in    Magistrates Court**

### **181      Proceeding for offences**

- (1) An offence against this Act is a summary offence.
- (2) A proceeding (an *offence proceeding*) for an offence must start no later than—
  - (a) 1 year after the offence is committed; or
  - (b) 6 months after the offence comes to the complainant's knowledge.
- (3) In a complaint starting an offence proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

### **182      Proceeding brought in a representative capacity**

- (1) A person may bring an offence proceeding in a representative capacity, if the person has the consent of—
  - (a) for a proceeding brought on behalf of a body of persons or a corporation—the members of its committee or other controlling or governing body or of its executive;
  - (b) for a proceeding brought on behalf of an individual—the individual.
- (2) The person on whose behalf the offence proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

[s 183]

---

**183 Responsibility for act or omission of representative**

- (1) If it is relevant to prove, in an offence proceeding, a person's state of mind about particular conduct, it is enough to show—
  - (a) a representative of the person was engaged in the conduct for the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—

*conduct* means an act or omission.

*representative* means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

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

- (a) knowledge, intention, opinion, belief or purpose; and
- (b) reasons for the intention, opinion, belief or purpose.

**184 Order for remedial action**

- (1) After hearing an offence proceeding, a Magistrates Court may order the defendant to take stated action within a stated period.

*Examples of action that an order may require—*

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

- to stop carrying out development
- to demolish or remove development



- 
- to restore, as far as practicable, premises to the condition it was in immediately before the development the subject of the offence was started
  - to do, or not to do, another act to ensure development complies with a development permit or, if it is accepted development, a matter for it to be accepted development
  - if the court reasonably believes a work is dangerous, to repair or rectify the work, to secure the work (whether by a system of supports or in another way) or to fence the work off to protect people
  - to stop a stated use of premises
  - to apply for a development permit
- (2) If the order states that contravention of the order is a public nuisance, an assessing authority, other than a local government, may carry out any work necessary to remove the nuisance.
- (3) If the assessing authority carries out the work, the assessing authority may recover the reasonable cost of the work as a debt owing to the authority from the defendant.
- (4) A person must not contravene an order made under this section.
- Maximum penalty—1665 penalty units or 1 year’s imprisonment.
- (5) An order may be made under this section in addition to the imposition of a penalty and any other order under this Act.

**185 Order for compensation**

- (1) This section applies if a Magistrates Court—
- (a) finds a defendant guilty of an offence under this Act; and
  - (b) finds that, because of the commission of the offence, another person has—
    - (i) suffered loss of income; or

[s 186]

---

- (ii) suffered a reduction in the value of, or damage to, property; or
  - (iii) incurred expenses to replace or repair property or prevent or minimise, or attempt to prevent or minimise, the loss, reduction or damage.
- (2) The court may order the defendant to pay the other person compensation for the loss, reduction or damage suffered or the expenses incurred.
- (3) An order may be made under this section in addition to the imposition of a penalty and any other order under this Act.

**186 Order for investigation expenses**

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

**187 When fine is payable to local government**

If a local government is—

- (a) the complainant in an offence proceeding; and
- (b) the assessing authority for the matter that is the subject of the proceeding;

---

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

## Part 5                      Enforcement orders in P&E Court

### 188    Enforcement orders

- (1) Any person may start a proceeding in the P&E Court for an enforcement order.
- (2) An ***enforcement order*** is an order that requires a person to do either or both of the following—
  - (a) refrain from committing a development offence;
  - (b) remedy the commission of a development offence in a stated way.
- (3) The P&E Court may make an enforcement order if satisfied the development offence—
  - (a) has been committed; or
  - (b) will be committed unless the order is made.
- (5) The P&E Court may make an enforcement order (an ***interim enforcement order***) pending a decision in a proceeding for the enforcement order.
- (6) An enforcement order or interim enforcement order may direct the respondent—
  - (a) to stop an activity that constitutes, or will constitute, a development offence; or
  - (b) not to start an activity that will constitute a development offence; or
  - (c) to do anything required to stop committing a development offence; or

[s 189]

---

- (d) to return anything to a condition as close as practicable to the condition the thing was in immediately before a development offence was committed; or
- (e) to do anything about a development or use to comply with this Act.

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

- to repair, demolish or remove a building
- to rehabilitate or restore vegetation cleared from land
- if rehabilitation or restoration of the vegetation is not possible on the land—to plant and nurture stated vegetation on a stated area of land of an equivalent size.

- (7) An enforcement order or interim enforcement order may be in terms the P&E Court considers appropriate to secure compliance with this Act.

*Example—*

An interim enforcement order may require the applicant to undertake to pay the respondent's damages because of the order if the proceeding is unsuccessful

- (8) An enforcement order or interim enforcement order must state when the order must be complied with.

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

- (1) The P&E Court's power to make an enforcement order or interim enforcement order may be exercised whether or not the development offence has been prosecuted.
- (2) The power to order a person to stop, or not to start, an activity may be exercised whether or not—
  - (a) the P&E Court considers the person intends to engage, or to continue to engage, in the activity; or
  - (b) the person has previously engaged in an activity of the kind; or

- (c) there is danger of substantial damage to property or injury to another person if the person engages, or continues to engage, in the activity.
- (3) The power to order a person to do anything may be exercised whether or not—
  - (a) the P&E Court considers the person intends to fail, or to continue to fail, to do the thing; or
  - (b) the person has previously failed to do a thing of the kind; or
  - (c) there is danger of substantial damage to property or injury to another person if the person fails, or continues to fail, to do the thing.
- (4) The P&E Court may cancel or change an enforcement order or interim enforcement order on its own initiative or on the application of any person.
- (5) The P&E Court's powers under this section are in addition to the court's other powers.

## **Part 6                      Miscellaneous**

### **190    Application of other Acts**

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

[s 191]

---

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

the provisions of the other Act prevail over the provisions of this chapter to the extent of any inconsistency.

- (2) This chapter does not limit a court's powers under the *Penalties and Sentences Act 1992* or another law.

### **191 False or misleading documents**

- (1) A person must not, for this Act, give a document containing information that the person knows is false or misleading in a material particular to any of the following entities—
  - (a) an assessment manager;
  - (b) a referral agency;
  - (c) a responsible entity for a change application.Maximum penalty—1665 penalty units.
- (2) Subsection (1) does not apply if the person, when giving the document to the entity—
  - (a) informs the entity, to the best of the person's ability, how the information is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

- 
- (3) In a proceeding for an offence against this section, it is enough for a charge to state the information was ‘false or misleading’ without specifying which.

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

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

Maximum penalty—the penalty for the offence by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must consider—
- (a) whether the officer knew, or ought reasonably to have known, of the corporation’s conduct constituting the offence; and
  - (b) whether the officer was in a position to influence the corporation’s conduct in relation to the offence; and
  - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (4) This section does not affect—
- (a) the corporation’s liability for the offence; or
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence.

## Chapter 6 Dispute resolution

### Part 1 Introduction

#### 193 What this chapter is about

- (1) This chapter is about resolving disputes between persons involved in the development assessment process.
- (2) Part 2 is about rights of appeal to the P&E Court and to building and development dispute resolution committees.
- (3) Part 3 is about establishing those committees, and the proceedings before the committees.

### Part 2 Appeal rights

#### 194 Appeal rights

- (1) An appeal may be made, within the appeal period, to—
  - (a) the P&E Court, as set out in schedule 1, part 1; or
  - (b) a committee, as set out in schedule 1, part 2.
- (2) The *appeal period* is—
  - (a) for an appeal by a building advisory agency—10 business days after the agency is given notice of the appeal matter; or
  - (b) for an appeal by any other person—20 business days after the person is given notice of the appeal matter; or
  - (c) for an appeal against a deemed refusal of a development application—the period after the last day a decision on the matter should have been made.

*Note*—



---

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

- (3) A decision of a Minister under this Act is non-appealable.
- (4) An aggrieved person may appeal against a decision, other than a decision of the Minister, under this Act or the development assessment rules to the Supreme Court on the ground of jurisdictional error.
- (5) The *Judicial Review Act 1991*, part 4 applies to a decision under this Act, or the development assessment rules.
- (6) The rest of the *Judicial Review Act 1991* does not apply to the decision.
- (7) In particular, the Supreme Court does not have jurisdiction to hear and determine applications made to the court under the *Judicial Review Act 1991*, part 3 or 5 in relation to the decision.
- (8) In this section—  
**decision** includes—
  - (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision; and
  - (d) a purported decision; and
  - (e) a deemed refusal.**non-appealable**, for a decision, means the decision—
  - (a) is final and conclusive; and
  - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity).

[s 195]

---

## **Part 3 Building and development dispute resolution committees**

### **Division 1 General**

#### **195 Committees registrar and other officers**

- (1) The chief executive may, by gazette notice, appoint—
  - (a) a committees registrar; and
  - (b) other officers (including persons who are public service officers) as the chief executive considers appropriate to help committees perform their functions.
- (2) A person appointed under subsection (1) may hold the appointment or assist concurrently with any other public service appointment the person holds.

#### **196 Appointment of referees**

- (1) The Minister may, by gazette notice, appoint a person to be a referee if the person has the qualifications, the experience, or the qualifications and experience, to be a referee.
- (2) Also, the chief executive may, by notice, appoint other persons to be a referee if the person has the qualifications, the experience, or the qualifications and experience, to be a referee.
- (3) The Minister or chief executive may appoint a person as a referee for the term, of not more than 3 years, stated in the notice of appointment.
- (4) A referee may be reappointed for 1 or more further terms.
- (5) The appointer may, at any time, cancel a referee's appointment by signed notice given to referee.
- (6) A referee may, at any time, resign the referee's appointment by signed notice given to the appointer.

- 
- (7) A public service officer may be appointed as a referee.
  - (8) If a public service officer is appointed as a referee, the officer holds the appointment concurrently with any other appointment that the officer holds in the public service.
  - (9) A person appointed as a referee must—
    - (a) sign a declaration in the approved form; and
    - (b) give the declaration to the chief executive.
  - (10) The person must not sit as a committee member unless the person has complied with subsection (9).

**197 Referee with conflict of interest**

- (1) This section applies if the chief executive advises a referee that the chief executive proposes to appoint the referee as a committee member, and either or both of the following apply—
  - (a) the committee is to hear a matter about premises—
    - (i) the referee owns; or
    - (ii) for which the referee was, is, or is to be, an architect, builder, drainer, engineer, planner, plumber, plumbing inspector, private certifier, site evaluator or soil assessor; or
    - (iii) for which the referee has been, is, or will be, engaged by any party in the referee's capacity as an accountant, lawyer or other professional; or
    - (iv) situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;
  - (b) the referee has a direct or indirect personal interest in a matter to be considered by the committee, and the interest could conflict with the proper performance of the referee's functions for the committee's consideration of the matter.

[s 198]

---

- (2) However, this section does not apply to a referee merely because the referee previously acted in relation to the preparation of a relevant local planning instrument.
- (3) The referee must give notice to the chief executive that this section applies to the referee, and on doing so, the chief executive must not appoint the referee to the committee.
- (4) If a committee member is, or becomes, aware the member should not have been appointed to the committee, the member must not act, or continue to act, as a member of the committee.

**198 Establishing committees**

- (1) The chief executive may at any time establish a building and development dispute resolution committee (a *committee*) for a committee proceeding.
- (2) After a committee is established, the committee's membership must not be changed except under section 206.
- (3) A committee consists of up to 5 referees appointed by the chief executive.
- (4) The chief executive may appoint a referee as a committee member for a matter only if the person has the qualifications, the experience, or the qualifications and experience, prescribed by regulation.
- (5) The chief executive must appoint a chairperson for each committee.
- (6) If the committee is to hear only an appeal about a referral agency's response concerning the amenity and aesthetic impact of a building or structure, the chief executive must appoint an architect as the chairperson.
- (7) If the committee is to hear only an appeal about an infrastructure charges notice or a conversion application, the chief executive must appoint a lawyer as the chairperson.

---

**199 Remuneration**

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

**200 Committee proceedings**

- (1) A committee must ensure all persons appearing before the committee are afforded natural justice and procedural fairness.
- (2) A committee must make its decisions in a timely way.
- (3) A committee may—
  - (a) conduct its business as the committee considers appropriate, subject to a regulation made for this section; and
  - (b) sit at the times and places the committee decides; and
  - (c) hear an appeal and application for a declaration together; and
  - (d) hear 2 or more appeals or applications for a declaration together.
- (4) A regulation may provide for—
  - (a) how a committee proceeding is to be started; or
  - (b) the committee's procedures; or

*Examples—*

  - the giving of notices concerning the proceedings and who is to be a respondent or co-respondent to them
  - (c) the committee to comply with a guideline made by the Minister and prescribed by regulation; or
  - (d) the required fee for proceedings.

[s 201]

---

## Division 2 Applications for declarations

### 201 Application for declaration about making of development application

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

**respondent** means—

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

---

**202 Application for declaration about change to development approval**

- (1) This section applies to a development approval if—
  - (a) the approval is only for a material change of use of premises that involves the use of a prescribed building; and
  - (b) the responsible entity is not the Minister or the P&E Court.
- (2) The applicant for a change application in relation to the development approval may start a committee proceeding for a declaration about whether the proposed change to the approval is a minor change.
- (3) The responsible entity for the change application may start a committee proceeding for a declaration about whether the proposed change to the approval is a minor change.
- (4) The committees registrar must, within 10 business days after the committee proceeding starts, give written notice of the proceeding to the respondent.
- (5) The respondent is entitled to be heard in the committee proceeding as a party to the proceeding.
- (6) In this section—

*respondent* means—

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

**Division 3 Committee proceedings**

**203 How committee proceeding are started**

- (1) A person starts a committee proceeding by filing the following with the committees registrar—

[s 204]

---

- (a) for a declaration by a committee—an application in the approved form; or
  - (b) for an appeal to a committee—a notice of appeal, in the approved form, that states the grounds of the appeal.
- (2) The application or notice of appeal must be accompanied by the required fee.

**204 Action when proceeding starts**

- (1) If a document starting a committee proceeding is filed with the committees registrar within the period required under this Act, and is accompanied by the required fee, the chief executive must—
  - (a) establish a committee for the proceeding; and
  - (b) subject to section 198(6) and (7)—appoint 1 of the referees as the committee’s chairperson; and
  - (c) give notice of the establishment of the committee to each party to the proceeding.
- (2) However, the chief executive may decide to end the proceeding without establishing a committee if satisfied it is not reasonably practicable to establish a committee.

*Examples of when it is not reasonably practicable—*

  - if there are no qualified referees or insufficient qualified referees appointed under section 196 who are not disqualified under section 197(3)
  - if the referees who are available will not be able to decide the proceeding in a timely way
- (3) If the chief executive decides to end the proceeding, the chief executive may, but need not, refund the fee paid to start the proceeding.
- (4) If the chief executive decides to end the proceeding, the chief executive must give all parties to the proceeding a notice that states—
  - (a) the decision; and



- 
- (b) the reasons for the decision; and
  - (c) that a party may appeal against the decision to the P&E Court.
- (5) The appeal period for the matter that is the subject of the ended proceeding starts again when the person who started the ended proceeding is given a notice under subsection (4).

**205 Power of chief executive to excuse irregularities**

- (1) This section applies if—
  - (a) the committees registrar receives a document purporting to start a committee proceeding, accompanied by the required fee; and
  - (b) the document does not comply with requirements under this Act for validly starting a proceeding of that type.
- (2) The committees registrar must, by notice, refer the document to the chief executive together with the registrar’s reasons for deciding the document is non-compliant.
- (3) The chief executive must consider the document and the noncompliance, and decide whether or not to excuse the noncompliance having regard to whether—
  - (a) there are sufficient grounds for the noncompliance; and
  - (b) the noncompliance would cause substantial injustice to anyone who would be a party to the proceeding.

*Example of no substantial injustice—*

A notice of appeal contains an incorrect real property description of the land the subject of the appeal, but an attached supporting document contains the correct one.

- (4) If the chief executive decides not to excuse the noncompliance, the chief executive must give a notice stating that the document is of no effect, because of the noncompliance, to the person who filed the document.

[s 206]

---

- (5) If the chief executive does excuse the noncompliance, the chief executive may act under section 204 as if the noncompliance had not happened.

**206 Power to establish new committee or end committee proceeding**

- (1) This section applies if the chief executive is satisfied the committee established for a committee proceeding—
  - (a) does not have the expertise to hear or decide the proceeding; or
  - (b) is not able to make a decision for a proceeding.
- (2) The chief executive may decide—
  - (a) to suspend the proceeding and establish another committee to re-hear the proceeding; or
  - (b) if satisfied it is not reasonably practicable to establish another committee—to end the proceeding.

*Note—*

See section 204(2)(b) for examples of when it is not reasonably practicable to establish another committee.

- (3) If the chief executive decides to end the proceeding, the chief executive may, but need not, refund the fee paid to start the proceeding.
- (4) If the chief executive decides to end the proceeding, the chief executive must give all parties to the proceeding a notice that states—
  - (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) that a party may appeal against the decision to the P&E Court.
- (5) The appeal period for the matter that is the subject of the ended proceeding starts again when the person who started the ended proceeding is given a notice under subsection (4).

---

**207 Further material for committee proceeding**

- (1) The committees registrar may ask the assessment manager, or a referral agency, to give the registrar any information the registrar reasonably requires for a committee proceeding, including the following information—
  - (a) all material, including plans and specifications, about the proceeding;
  - (b) for a deemed refusal—a statement of the reasons why the assessment manager, or referral agency, had not decided the application during the period for deciding the application.
- (2) The assessment manager, or a referral agency, must give the information within 10 business days after the registrar asks for the information.

**208 Minister entitled to be party if State interest involved**

The Minister is entitled to be represented in a committee proceeding if, before the proceeding is decided, the Minister becomes satisfied the proceeding involves a State interest.

**209 Right to representation at hearing**

- (1) A party to a committee proceeding may appear in person or be represented by an agent.
- (2) However, the agent must not be a lawyer.

**210 Conduct of proceeding**

- (1) The chairperson of the committee must decide how a committee proceeding is to be conducted.
- (2) The committee may decide the proceeding on submissions if all parties agree.
- (3) If the proceeding is to be decided on submissions, the chairperson must give all parties a notice asking for the

[s 210]

---

submissions to be made to the chairperson within a stated reasonable period.

- (4) If the proceeding is to be decided by hearing, the chairperson must give all parties notice of the time and place of the hearing.
- (5) The committee need not hear a person who is not present or represented at the time and place appointed for hearing the person.
- (6) The committee may decide the proceeding without submissions of, or representations by, the recipient of a notice under subsection (3) and (4) if—
  - (a) for a hearing on submissions—the person’s submissions are not received within the time stated in the notice given under subsection (3); or
  - (b) for an oral hearing—the person, or the person’s agent, does not appear at the hearing.
- (7) In hearing a proceeding, the committee—
  - (a) need not proceed in a formal way; and
  - (b) is not bound by the rules of evidence; and
  - (c) may inform itself in the way it considers appropriate; and
  - (d) may seek the views of any person; and
  - (e) must ensure all persons appearing before the committee—
    - (i) have a reasonable opportunity to be heard; and
    - (ii) are afforded natural justice and procedural fairness; and
  - (f) may prohibit or regulate questioning in the hearing.
- (8) If, because of the time available for the proceeding, a person does not have an opportunity to be heard, or fully heard, the person may make submissions to the committee.

---

**211 Proceedings about development applications and approvals**

- (1) This section applies if a committee proceeding is about a development application, including about a development approval given for a development application.
- (2) Section 59 applies to the decision for the proceeding as if—
  - (a) the committee were the assessment manager for the application; and
  - (b) the reference in section 59(4) to when the assessment manager decides the application were a reference to when the committee makes the decision.

**212 Appeal about development application**

- (1) This section applies if a committee proceeding is an appeal to the committee.
- (2) It is for the applicant to establish the appeal should be upheld.
- (3) The committee must hear and decide the appeal by way of a reconsideration of the evidence that was before the entity that made the decision appealed against.
- (4) However, the committee may, but need not, receive and consider other evidence presented by a party to the appeal with leave of the committee.

**213 Deciding no jurisdiction for proceeding**

- (1) The chairperson of the committee for a committee proceeding may decide that the committee has no jurisdiction for the proceeding, at any time before the proceeding is decided, either—
  - (a) on the chairperson's initiative; or
  - (b) on the application of a party.
- (2) The chairperson must give all parties to the proceeding a notice that states—

[s 214]

---

- (a) the decision; and
  - (b) the reasons for the decision.
- (3) The appeal period for the matter that is the subject of the proceeding starts again when the person who started the proceeding is given a notice under subsection (2).

**214 Deciding committee proceeding**

- (1) This section applies to a committee proceeding.
- (2) The committee may make any direction or other order that the committee considers appropriate, at any time during the proceeding.

*Example—*

The committee may direct the assessment manager to provide development conditions for the development application.

- (3) In deciding the proceeding, the committee may make any direction or other order that the committee considers appropriate.
- (4) Without limiting subsection (3), the committee must decide the proceeding by—
  - (a) confirming the decision; or
  - (b) changing the decision; or
  - (c) replacing the decision with another decision; or
  - (d) setting the decision aside, return the matter to the entity that made the decision appealed against, and order the entity to decide the application by a stated time;
  - (e) for a deemed refusal of a development application—
    - (i) ordering the assessment manager to decide the application by a stated time and, if the assessment manager does not comply with the order, decide the application; or
    - (ii) deciding the application;

- 
- (f) if the application is for building work, the applicant consents and the change is a minor change—varying the application.
  - (5) The committee’s decision (other than one to confirm the decision or return a matter) is taken (other than for this chapter and schedule 1) to have been made by the entity that made the decision appealed against.
  - (6) The chairperson must give all parties to the proceeding a notice that states—
    - (a) the decision; and
    - (b) the reasons for the decision; and
    - (c) that a party may appeal against the decision to the P&E Court.
  - (7) The committee’s decision starts to have effect—
    - (a) if a party does not appeal against the decision—at the end of the appeal period for the decision; or
    - (b) if a party appeals against the decision to the P&E Court—subject to the decision of the court, when the appeal ends.

**215 No costs orders**

A committee must not make any order as to costs.

**216 Committee may extend period to take action**

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

Planning and Development Bill 2014  
Chapter 7 Miscellaneous  
Part 1 Existing uses and rights protected

[s 217]

---

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

If a committee directs or orders an assessment manager to do something, the assessment manager must, after doing the thing, give notice of that fact to the committees registrar.

**218 Publication of committee decisions**

The committees registrar must publish committee decisions under the arrangements, and in the way, approved by the chief executive.

**Chapter 7 Miscellaneous**

**Part 1 Existing uses and rights protected**

**Division 1 General**

**219 Lawful uses of premises when Act commences**

To the extent an existing use of premises was lawful immediately before this Act commences, the use is taken to be a lawful use when this Act commences.

**220 Prospective categorising regulations unaffected**

To remove any doubt, it is declared that this part does not affect the regulation-making power under section 37 for development starting on or after the regulation's notification.



---

**Division 2                      Protections from planning  
   instrument changes**

**221      Existing lawful uses, work and approvals**

- (1) If, immediately before a planning instrument change, a use of premises was a lawful use of premises, the change does not—
  - (a) stop the use from continuing; or
  - (b) further regulate the use; or
  - (c) require the use to be changed.
- (2) If a planning instrument change happens after a building or other work has been lawfully constructed or effected, the change does not require the building or work to be altered or removed.
- (3) If a planning instrument change happens after a development approval is given, the change does not—
  - (a) stop or further regulate the development; or
  - (b) otherwise affect the approval to any extent to which the approval remains in effect.

**222      Implied and uncommenced right to use**

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

[s 223]

---

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

## **Part 2                      Power to take or purchase land for planning purposes**

### **223      Local government may take or purchase land**

- (1) This section applies if—
  - (a) a local government is satisfied the taking of land would help to achieve the strategic outcomes stated in the local government’s planning scheme; or
  - (b) at any time after a development approval starts to have effect, the local government is satisfied—
    - (i) the development would create a need to construct infrastructure on land or to carry drainage over land; and
    - (ii) the applicant has taken reasonable measures to obtain the agreement of the owner of the land to actions that would facilitate the construction of the infrastructure or the carriage of the drainage, but has not been able to obtain the agreement; and
    - (iii) the action is necessary to allow the development to proceed.
- (2) For subsection (1)(b), it does not matter that the applicant may derive any measurable benefit from the action.
- (3) If the Governor in Council approves the taking, the local government is taken to be a constructing authority under the Acquisition Act and may take the land under that Act.
- (4) To remove any doubt, it is declared that the application of the Acquisition Act under subsection (3) includes the power under section 6 of that Act to purchase or take an easement.

---

## Part 3 Public access to information

### Division 1 General

#### 224 Rules to ensure appropriate public access

- (1) The Minister must make rules (*access rules*)—
  - (a) to ensure there is, and continues to be, appropriate publicly available information about the following—
    - (i) planning instruments;
    - (ii) designations;
    - (iii) development applications and development approvals;  
*Examples—*  
Ministerial directions, call ins and step-ins under section 110 and documents relating to them
    - (iv) infrastructure charges;
    - (v) any other matter relating to this Act or the Building Act that the Minister considers appropriate; and
  - (b) for the contents of planning and development certificates under division 2.
- (2) The access rules do not take effect unless the rules are approved by a regulation.
- (3) The chief executive must keep the access rules, as in effect from time to time, on the department's website, free of charge.
- (4) The access rules are not subordinate legislation.
- (5) In this section—

*appropriate*, for publicly available information on the matters mentioned in subsection (1)(a), means information that adequately informs those accessing the information about their rights and obligations relating to the matter.

[s 225]

---

**225 Access rules—powers for documents and registers**

- (1) This section applies to an entity that has, or had, functions—
  - (a) for planning instruments; or
  - (b) for designations; or
  - (c) under the development assessment system; or
  - (d) relating to infrastructure charges.
- (2) Access rules may require or permit the entity to keep stated documents (or a register of stated documents) relating to the functions available in either or both of the following ways—
  - (a) at the appropriate office for—
    - (i) inspection and purchase; or
    - (ii) inspection only; or
  - (b) by uploading and keeping them on its website.

*Note—*

The purpose of subsection (2) is to invoke the *Information Privacy Act 2009*, section 5 (Relationship with other Acts requiring access to or amendment of personal information). See also section 230 of this Act.

- (3) Subject to any contrary provision of the access rules—
  - (a) the documents may be kept in hard copy or electronic form; and
  - (b) different registers may be kept for different document types.
- (4) The entity must comply with the requirement.
- (5) In this section—

***appropriate office***, for an entity, means—

  - (a) the entity’s office and at any other place the entity decides; or
  - (b) for the chief executive—the department’s State office and at any other place the chief executive decides.

---

**certified copy**, of a document, means a copy of the document certified by a person as follows as being a true copy of the document—

- (a) if the Minister is an assessment manager or referral agency—the chief executive of any department for which the Minister has responsibility;
- (b) the chief executive is an assessment manager or referral agency—an appropriately qualified public service officer, for the chief executive;
- (c) if a local government is an assessment manager or referral agency—its chief executive officer;
- (d) for another type of assessment manager or referral agency—
  - (i) if it is an individual—the individual; or
  - (ii) if it is a department—the department’s chief executive; or
  - (iii) if it is a body corporate—the body corporate’s chief executive officer.

**documents** includes a certified copy of any or all of the documents.

**226 Public access rights [227]**

- (1) This section applies if the access rules require or permit an entity to keep documents or a register (the **material**).
- (2) If the material is kept available for inspection and purchase, the entity must allow anyone who asks—
  - (a) to inspect the material free of charge at the office at which the material is held at any time while the office is open for business (the **inspection right**); and
  - (b) to obtain a copy of any or all of the material, or part of any of the material, from the entity.

*Note—*

[s 226]

---

The *Copyright Act 1968* (Cwlth) overrides this Act and may limit the copying of material subject to copyright.

- (3) The entity may charge a person for the reasonable, but no more than the actual, costs of supplying the copy.
- (4) If the material is kept available for inspection only, the inspection right only applies to the material.
- (5) If the material is kept on the entity's website, the entity must allow anyone to do the following free of charge—
  - (a) to view the material on the website;
  - (b) to download the material in a form the entity decides.
- (6) The entity's obligations under this section do not apply to the extent the entity is reasonably satisfied the material contains—
  - (a) information of a purely private nature about an individual and the provision requiring the keeping of the document provides the document is subject to the operation of this paragraph; or  
*Example of information of a purely private nature—*  
the individual's residential address, telephone number and email address
  - (b) sensitive security information and the provision requiring the keeping of the material provides the material is subject to the operation of this paragraph.
- (7) The entity's obligations apply only during any period that a provision of this Act states the material must be kept.
- (8) The entity need not disclose a submitter's name, contact details or signature.



### **Division 3                    Miscellaneous**

#### **230     Provision for Information Privacy Act 2009**

- (1) To remove any doubt, it is declared that this part is a provision of an Act to which the *Information Privacy Act 2009*, section 5 applies.
- (2) However, when applying that section to this part, rights of access to personal information apply to corporations as well as individuals.

*Note—*

The effect of this section is that the *Information Privacy Act 2009* does not affect provisions of the access rule about keeping personal information or any right under this part to access that information.

### **Part 4                            Other provisions**

#### **231     Application of P&E Court Act evidentiary provisions**

The P&E Court Act, part 5, division 3 also applies to a proceeding relating to this Act started in a court other than the P&E Court or in a tribunal and to anyone else acting judicially in relation to a proceeding relating to this Act.

#### **232     Electronic service**

- (1) This section applies if—
  - (a) the entity to whom an application or submission under this Act has been made wishes to give a notice or other document to the applicant or a submitter for a purpose relating to the application or submission, or vice versa (either the *information-giver*); and



- 
- (b) the following states an electronic address for service relating to the application or submission—
- (i) for the applicant—the application or a notice from the applicant to the entity;
  - (ii) for a submitter—the submission or a notice from the submitter to the entity;
  - (iii) for the entity—the approved form or a notice from the entity to the applicant or submitter.

*Examples of an electronic address—*

an email address, an internet protocol (IP) address, the address of a digital mailbox

- (2) The information-giver may give the document to the proposed recipient mentioned in subsection (1)(a) (the *other party*) by electronically transmitting to the stated electronic address (the *communication*)—
- (a) the document itself; or
  - (b) a message stating that the document is available for the other party to view by opening a stated hyperlink.
- (3) For subsection (2)(b), the other party is taken to have been served with the document if the document was able to be viewed at the location accessed by opening the hyperlink—
- (a) when the communication was transmitted (the *sending time*); and
  - (b) for a period after the sending time that, in all the circumstances, was reasonable to allow the other party to open the hyperlink and read or copy the document.
- (4) In deciding what is a reasonable period for subsection (3)(b), regard must be had to the other party's functions under this Act for the application.
- (5) Subsection (3) applies whether or not the other party opened the hyperlink.
- (6) In a civil or criminal proceeding, a certificate signed by an appropriately qualified officer of the entity attaching a copy of

[s 233]

---

the communication and stating the following matters is evidence of those matters—

- (a) the sending time;
  - (b) that the document was able to be viewed at the hyperlinked address at the sending time and for a stated period after that time.
- (7) This section does not limit the *Acts Interpretation Act 1954*, section 39 or the *Electronic Transactions (Queensland) Act 2001*.

*Example—*

In an approved form, an entity consents to a particular—

- (a) type of electronic communication for service from the applicant to the entity for the application; and
- (b) method for electronic signatures for the communication.

The *Electronic Transactions (Queensland) Act 2001*, sections 11 and 12 (about requirements and permissions to give information in writing) and 14 (about electronic signatures) will apply for the communication.

- (8) In this section—  
*application* includes request.

### **233 References in Act to particular terms**

- (1) For this Act, a reference in subsections (2) to (9) to a person or matter is a reference to the person or matter stated in the subsection.
- (2) For a development application, the references are as follows—
  - (a) for ‘the applicant’—the person who made the application;
  - (b) for ‘development’ or ‘the development’—the development the subject of the application;
  - (c) for ‘the assessment manager’—the assessment manager for the application;

- 
- (d) for a ‘referral agency’—a referral agency for the application;
  - (e) for ‘the local government’—each local government for the local government area where the development is proposed;
  - (f) for ‘an information request’—an information request for assessing the application;
  - (g) for ‘a referral agency response’—a referral agency’s response for the application;
  - (h) for ‘the development approval’—the development approval for the application;
  - (i) for ‘the land’—the land the subject of the application;
  - (j) for ‘the premises’—the premises the subject of the application;
  - (k) for ‘the planning scheme’—the planning scheme for the locality where the development is proposed;
  - (l) for ‘a submitter’—a submitter for the application;
  - (m) for ‘the decision notice’—the decision notice for the application.
- (3) For a development approval, the references are as follows—
- (a) for ‘the development application’—the development application because of which the approval was given;
  - (b) for ‘the applicant’—
    - (i) the person who applied for the approval; and
    - (ii) for chapter 4—includes any person in whom the benefit of the approval vests;
  - (c) for ‘the development’—the development the subject of the approval;
  - (d) for ‘the assessment manager’—the assessment manager for the development application;

[s 233]

---

- (e) for ‘the assessment manager’ who was chosen by the applicant from a list mentioned in section 42(2)(b), but is no longer on the list— the prescribed assessment manager;
  - (f) for ‘referral agency’—a referral agency for the development application;
  - (g) for ‘the land’—the land the subject of the approval;
  - (h) for ‘the local government’—the local government for the local government area where the development is located.
- (4) For a development condition, the references are as follows—
    - (a) for ‘the development approval’—the development approval in which the condition is included;
    - (b) for ‘the development’—the development the subject of the development approval of which the condition is part;
    - (c) for ‘the land’—the land the subject of the development approval.
  - (5) For a call in, a reference to ‘the application’ is a reference to the development application the subject of the call in.
  - (6) For a change application or extension application, a reference to ‘the development approval’ is a reference to the development approval the subject of the application.
  - (7) For an enforcement notice or proposed enforcement notice, a reference to ‘the assessing authority’ is a reference to the assessing authority giving or proposing to give the notice.
  - (8) For an infrastructure charge, a reference to ‘the land’ is a reference to the land to which the charge attaches.
  - (9) A reference to a function includes a reference to a power and a reference to performing a function includes a reference to exercising a power.

---

**234 Applied laws apply with necessary changes**

If a provision of this Act applies another provision of this Act, another law or a provision of another law (the *applied law*) for a purpose, the applied law, and any definition relevant to the applied law, apply with necessary changes to achieve the purpose.

**235 Delegation**

A Minister may delegate the Minister's functions under this Act to—

- (a) an appropriately qualified public service officer; or
- (b) another Minister.

**236 Approved forms**

The chief executive may approve forms for use under this Act.

**237 Regulation-making power**

- (1) The Governor in Council may make a regulation under this Act.
- (2) A regulation may—
  - (a) prescribe requirements for the content of local planning instruments; and
  - (b) prescribe a minor change of use that is not a material change of use; and
  - (c) provide for how local governments may give approvals mentioned in the Land Title Act, section 50(1) for plans of subdivision; and
  - (d) prescribe fees payable under this Act; and
  - (e) impose a penalty for contravention of a provision of a regulation of no more than 20 penalty units.

Planning and Development Bill 2014  
Chapter 8 Repeal, savings and transitional provisions  
Part 1 Repeal provision

[s 238]

---

## **Chapter 8      Repeal, savings and transitional provisions**

### **Part 1            Repeal provision**

#### **238    Act repealed**

The Sustainable Planning Act 2009, No. 36 is repealed.

---

## Part 2 Savings and transitional provisions

Note: This version of part 2 establishes a framework for the transition from the SPA to this Act. It includes some general provisions about the treatment of instruments, process and other matters (see division 2), as well as some more specific provisions that provide further detail about, or qualifications or exceptions to, those general provisions.

Transitional provisions are typically the last part of a Bill to be finalised as they depend on the other parts of the Bill first being settled. Consequently, this part is incomplete and will continue to be developed during consultation on the Bill.

Further guidance will be provided about transitioning categories of development and assessment under the *Sustainable Planning Regulation 2009* and planning instruments into the development assessment system under this Bill so that existing instruments can continue to be used in development assessment without the need for immediate amendment.

Further guidance and examples will be provided (including through the use of examples in the Bill itself and explanatory notes) about the scope of key terms used in this part, such as “SPA related instruments”, “continued provisions” and instruments of a “corresponding type”.

Further provisions will be developed under divisions 3 to 7, for example to identify further “continued provisions” which will continue to apply as if they were part of this Bill, and “grandfathered” provisions to which the repealed legislation will continue to apply, either permanently or for a stated time.

### Division 1 Introduction

#### 239 Definitions for part

In this part—

*continued provision* means—

[s 239]

---

- (a) a provision of the repealed Act (the *first provision*) that this part—
  - (i) states is a continued provision; or
  - (ii) continues in effect for a particular purpose; and
- (b) any other former provision mentioned in the first provision or that is necessary to give effect to the first provision; and
- (c) a definition under the repealed Act applying to the first provision.

*Example—*

provisions continued under section 243 for undecided applications

***corresponding provision***, for the repealed Act (the ***SPA provision***), means the provision of this Act that corresponds, or most closely corresponds, to the SPA provision.

***corresponding type***, for a SPA-related instrument, means—

- (a) for an instrument of a type that bears the same description or name (whether or not they are different in effect) under both the repealed Act and this Act—an instrument of that type under this Act; or

*Examples—*

a planning scheme, superseded planning scheme, preliminary approval development permit, LGIP, charges resolution, infrastructure charges notice, negotiated notice, breakup agreement, show cause or enforcement notice and an enforcement order

- (b) otherwise—for a first-mentioned type of document as follows under the repealed Act, the type of document under this Act stated for the document—
  - (i) for a designation of land for infrastructure—a designation;
  - (ii) for a preliminary approval given under the repealed Act, section 242—a variation approval;



- (iii) for a compliance permit under the repealed Act—a development permit.

**instrument** means any document.

**made**, for an instrument, includes given or granted.

**migrated**, for an instrument, means that, under section 241(1) or 243(3), the instrument has become an instrument under this Act.

**repealed Act** includes continued provisions.

**SPA proceeding** means a proceeding started under the repealed Act.

**SPA-related instrument** means an instrument—

- (a) in effect under the repealed Act immediately before the commencement that—
- (i) has been made under that Act; or
  - (ii) continued in effect under the repealed Act, chapter 10; or

*Example—*

a preliminary approval or development permit in effect under the repealed Act immediately before the commencement

- (b) made because of the application of a continued provision.

**undecided application** means an application or request, whatever called, under the repealed Act made, but not decided, immediately before the commencement, but does not include a claim for compensation.

## Division 2                      General

### 240      Application of division

This division applies on the commencement, subject to the other divisions of this part.

[s 241]

---

**241 Migration of SPA-related instruments to this Act**

- (1) A SPA-related instrument other than the following becomes an instrument of its corresponding type under this Act—
  - (a) an undecided application;
  - (b) a regulation;
  - (c) guideline made by the Minister or chief executive.
- (2) The following apply to the instrument for its operation under this Act—
  - (a) the instrument is taken to have been made, given or taken effect when the instrument was first made, given or took effect under the repealed Act;
  - (b) the instrument is taken to be read with the changes necessary to make the instrument consistent with, and adapt its operation to, this Act.

*Example—*

A reference in the instrument to a provision of the repealed Act, must be read as a reference to its corresponding provision.

- (c) for a statutory instrument—the instrument may be amended or repealed by an instrument of its corresponding type under this Act.

**242 References in instruments of corresponding type or Acts**

A reference to a matter as follows (the *subject*) in an instrument of the corresponding type, or under another Act, is a reference to the other matter stated for the subject—

- (a) for exempt development—accepted development;
- (b) for self-assessable development, to the extent the development complies with all applicable codes for the self-assessable development—accepted development;
- (c) for self-assessable development, to the extent the development does not comply with all applicable codes

- 
- for the self-assessable development—assessable development;
  - (d) for a code in relation to assessable development—an assessment benchmark in relation to the development;
  - (e) to a matter, other than a code, against which assessable development must be assessed—an assessment benchmark for the development;
  - (f) for compliance assessment for development—standard assessment for the development;
  - (g) for code assessment for development—standard assessment for development;
  - (h) for impact assessment for development—merit assessment for which public notification is required under section 49 for the development.

**243 Saving of repealed Act for undecided applications**

- (1) The repealed Act continues to apply to—
  - (a) an undecided application; and
  - (b) any appeal in relation to an undecided application; and
  - (c) for an undecided development application—any negotiated decision notice in relation to the application.
- (2) If a reference in another Act to this Act or a provision of this Act relates to an undecided application, the other Act in force immediately before commencement continues to apply for—
  - (a) dealing with and deciding the application under the repealed Act; and
  - (b) carrying out any action under the other Act relating to the application.
- (3) However section 232 applies instead of e-IDAS under the repealed Act.

[s 244]

---

- (4) If the application results in the making of a SPA related instrument, immediately after it is made, the SPA related instrument becomes an instrument of its corresponding type.

#### **244 Statutory instruments**

- (1) This section applies if, immediately before the commencement, a process under the repealed Act for making or amending a statutory instrument (other than a State planning regulatory provision), had started but not ended.

*Note—*

For what is a statutory instrument, see the *Statutory Instruments Act 1992*, section 7.

*Examples of statutory instruments under the repealed Act—*

a State Planning policy, regional plan or local planning instrument

- (2) The instrument may continue to be made or amended as if this Act had not commenced.
- (3) If the instrument is made, the instrument immediately becomes an instrument of its corresponding type as if the instrument had been a SPA-related instrument.

#### **245 Migration of positions**

- (1) This section applies to a body or entity that, immediately before the commencement, was established or had been appointed under the repealed Act (the *position*).

*Examples of a position under the repealed Act—*

- a regional planning committee and its members
- a registrar of committees, or other officer, appointed under the repealed Act, section 509
- a building and development committee and a referee
- a delegation

- (2) On the commencement, the position continues for corresponding purposes under this Act for the rest of its term under the repealed Act.

---

**246 Saving of particular provisions of repealed Act**

The *Acts Interpretation Act 1954*, section 20A applies to the repeal of the following provisions of the repealed Act—

- (a) section 86;
- (b) chapter 10, part 2, division 10, other than sections 848 and 858;
- (c) section 868.

*Note*—

For access to these continued provisions, see the last repealed reprint of the repealed Act, which is available on the Queensland Legislation website.

Note: The list in (a) to (c) is incomplete. The provisions that need to be saved, but that do not need to be kept in current legislation, is still being reviewed.

**247 Operation of continued provisions**

A continued provision—

- (a) applies to the following despite the repeal of the repealed Act as if this Act or the corresponding provision of this Act, (as the case may be) had not been enacted—
  - (i) the purpose for which the provision is continued under this part;
  - (ii) if this part does not provide for any particular purpose—all purposes to which the part is relevant; and
- (b) is taken to be read with the changes necessary to make the provision consistent with, and adapt its operation to, this Act.

[s 248]

---

**248 References to SPA-related instruments**

A reference in an Act or document to a SPA-related instrument is taken to be a reference to an instrument of its corresponding type.

**249 References to repealed Act**

- (1) A reference in an Act or document to the repealed Act is taken to be a reference to this Act.
- (2) A reference in an Act or a document to a particular provision of the repealed Act (the *repealed provision*) is taken to be a reference to its corresponding provision.

*Note—*

This subsection applies to statutory instruments made under this Act. See the *Acts Interpretation Act 1954*, section 7.

**250 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
  - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from—
    - (i) the repealed Act to this Act; or
    - (ii) chapter 7 of the repealed Act to the provisions of the P&E Court Act concerning the P&E Court; or
    - (iii) the repealed Act, chapter 9, part 6; and
  - (b) this Act does not make provision or sufficient provision.

*Examples—*

- provisions of IDAS under the repealed Act for which there is no corresponding provision
  - the repealed Act, chapter 8A and chapter 9, parts 2, 5, 6, 7 and 7B
- (2) A transitional regulation may have retrospective operation to a day that is no earlier than the commencement.

- 
- (3) A transitional regulation must declare it is a transitional regulation.
  - (4) This section and any transitional regulation expire 5 years after the commencement.

### **Division 3                      Planning**

#### **251      Cessation of State planning regulatory and standard planning scheme provisions**

- (1) The State planning regulatory provisions and standard planning scheme provisions under the repealed Act have no effect for this Act other than this chapter and do not become a State planning instrument under this Act.
- (2) Subsection (1) is subject to any extent the provisions apply to a continued provision.

#### **252      Limited fast-track amendment of local planning instruments—code assessment**

- (1) This section applies despite chapter 2, part 3 to the extent a local planning instrument under the repealed Act required code assessment for development immediately before the commencement.
- (2) The local government may, by resolution, amend the local planning instrument to—
  - (a) require merit assessment instead of standard assessment for the development; and
  - (b) make other amendments necessary or desirable to interpret the amendments under subsection (1).

*Example of other amendments—*

changing references to codes to assessment benchmarks for the development

- (3) Section 49 does not apply to the development.

[s 253]

---

- (4) As soon as practicable after amending the local planning instrument under subsection (2), the local government must—
  - (a) give a copy of the amendment to the Minister; and
  - (b) publish a notice about the amendment as if the amendment had been made under chapter 2, part 3.

*Note—*

See the access rules for the requirement for the amendment to be kept publicly available.

- (5) This section stops having effect 1 year after this section commences.

#### **253 SPA compensation claims and rights**

- (1) A SPA compensation claim made, but not decided, before the commencement becomes a compensation claim under this Act for the same matter.
- (2) If, on the commencement, a person had a right to make a SPA compensation claim, but had not done so, the person may make a compensation claim under this Act for the same matter, and that claim must be decided as a compensation claim under this Act.
- (3) Subsection (2) does not extend the period for making the claim beyond the period for making the SPA compensation claim.
- (4) In this section—

*SPA compensation claim* means a claim for compensation under the repealed Act chapter 9, part 3.

### **Division 4 Development assessment**

#### **254 Entities for migrated development approval**

- (1) If—



- 
- (a) a person was the assessment manager or a referral agency (the *capacity*) for a development application under the repealed Act; and
  - (b) a development approval is given under the repealed Act, which approval has been migrated;

for applying this Act for the approval, the person continues in the capacity as if it had been under this Act.

- (2) However, in relation to a development approval to which section 944A of the repealed Act applied, the chief executive is taken to be—
  - (a) for a change application—the responsible entity; or
  - (b) for an application to cancel a development approval, or an extension application—the assessment manager.

## Division 5                      Infrastructure

### 255      Particular notices about charges for infrastructure continue in effect under repealed Act

- (1) The repealed Act continues to apply to the following SPA-related instruments as if this Act had not commenced—
  - (a) an infrastructure charges notice under the repealed Act or the *Integrated Planning Act 1997* given before 1 July 2012;  
*Note—*  
An infrastructure charges notice given after the *Sustainable Planning (Infrastructure Charges) and other Legislation Amendment Act 2014* commenced is treated as an instrument of a corresponding type and migrated to this Act under section 241.
  - (b) an adopted infrastructure charges notice;
  - (c) a regulated infrastructure charges notice;
  - (d) a negotiated infrastructure charges notice;
  - (e) a negotiated regulated infrastructure charges notice;

[s 256]

---

- (f) a negotiated adopted infrastructure charges notice.
- (2) However, if a change approval or an extension approval is given for a relevant development approval to which a notice mentioned in subsection (1) given by a local government relates, the local government may amend the notice under chapter 4 as if it were an infrastructure charges notice.
- (3) Section 144 does not apply to the amended notice.

**256 Existing payable charges**

- (1) A levied charge under the repealed Act is taken—
  - (a) to be a levied charge under this Act; and
  - (b) to comply with chapter 4 to the extent the charge complied with the repealed Act; and
  - (c) to have been levied on the day the charge was adopted or levied under the repealed Act.
- (2) The repealed Act continues to apply to the following charges payable under the repealed Act, including any offset, refund or repayment that applied to the charge—
  - (a) an infrastructure charge;
  - (b) a regulated infrastructure charge;
  - (c) an adopted infrastructure charge.

**257 Sunsetting of charges resolutions and adopted charges saved under repealed Act, s 979**

- (1) The repealed Act, section 979 is a continued provision in relation to the following—
  - (a) a charges resolution taken to have been made before 4 July 2014;
  - (b) an adopted charge under the charges resolution.
- (2) However, a reference in repealed section 979(5) to an existing resolution is taken to be a reference to a charges resolution.

*Note—*

Under section 979 of the repealed Act, adopted infrastructure charges resolutions and adopted infrastructure charges became charges resolutions and adopted charges on 1 July 2014. Under section 241, charges resolutions and adopted charges become instruments of their corresponding type under this Act, and are taken to have been made when they were originally made.

**258 Regulation prescribing charges may identify PIA's**

- (1) A regulation under section 117 may identify a PIA for a local government area.
- (2) This section stops having effect on 1 July 2016.

**259 Approval of chief executive not required for some infrastructure agreements**

Section 164(2) does not apply to an infrastructure agreement that is taken to have been entered into before 4 July 2014.

**Division 6 SPA proceedings and related matters**

**260 Existing SPA proceedings and proceeding rights**

- (1) This section applies if, on the commencement—
  - (a) a person had a right to start a SPA proceeding but had not done so (the *proposed proceeding*); or
  - (b) a SPA proceeding had started but had not ended (the *started proceeding*).

*Note—*

For other transitional provisions about the P&E Court and existing proceedings and rights, see the P&E Court Act, part 9.

- (2) The proposed proceeding may be started, and the started proceeding must be continued, as if this Act and the P&E Court Act had not been enacted.

[s 261]

---

- (3) If the proposed proceeding or started proceeding was to a building and development committee under the repealed Act and no committee has been established—
  - (a) sections 204 and 205 apply; and
  - (b) the appeal period under section 194(2) applies instead of any appeal period under the repealed Act.
- (4) For applying the repealed Act under subsection (2), a reference to the Planning and Environment Court is taken to be a reference to the P&E Court.

**261 Interim provision for committees and proceedings**

- (1) The repealed Act sections 516, 517 and 537 to 550 (the *SPA provisions*) continue to apply to a committee, an appeal to a committee and to referees.
- (2) The SPA provisions apply subject to any regulation.
- (3) A regulation may amend or repeal the effect of any or all of the SPA provisions or their continuing effect under this section.
- (4) This section stops having effect on the earlier of the following—
  - (a) 6 months after the commencement;
  - (b) the repeal, under subsection (3), of the effect of all of the SPA provisions.

**Division 7 Miscellaneous**

**262 Deeming of LGP&E Act approvals for compliance offence**

- (1) For section 171, an approval under the LGP&E Act, section 4.4(5) or 4.7(5) is taken to be a development approval.

*Note—*

---

repealed LGP&E Act, section 4.4 (Assessment of proposed planning scheme amendment) or 4.7 (Assessment of rezoning of land in stages)

(2) In this section—

*LGP&E Act* means the repealed *Local Government (Planning and Environment) Act 1990*.

### **263 Urban encroachment**

The following provisions are continued provisions—

- (a) the repealed Act, chapter 10, part 5, division 2;
- (b) the repealed Act, chapter 8A to the extent the chapter gives effect to the repealed Act, chapter 10, part 5, division 2.

### **264 Access and information provisions**

- (1) A requirement or permission of an entity under the repealed Act, chapter 9, part 6 to keep documents or information in a particular way is taken to be a requirement under access rules to so keep them available in the same way.
- (2) The requirements under the repealed Act, chapter 9, part 6, division 4 for planning and development certificates are taken to be the requirements for them under access rules.
- (3) This section stops having effect when access rules first commence.

### **265 Limited saving of master planning provisions**

- (1) The following provisions of the repealed Act are continued provisions—
  - sections 761A and 761B
  - section 797
  - chapter 10, part 6, division 2 (other than subdivision 8).
- (2) This section stops having effect on 23 November 2015.

[s 266]

---

**266 Continued provisions for compliance assessment of documents or work**

- (1) This section applies, to the extent relevant, to—
  - (a) a document or work that, on the commencement, a development approval or local planning instrument states requires compliance assessment; and
  - (b) a compliance certificate given under the repealed Act before the commencement for a document or work mentioned in paragraph (a).
- (2) The following are continued provisions of the repealed Act in relation to the document, work or certificate—
  - (a) chapter 6, part 10;
  - (b) sections 576 to 577;
  - (c) chapter 7, part 1, division 9;
  - (d) chapter 7, to the extent the chapter gives effect to the continued provisions under paragraphs (b) and (c).

**267 Compliance assessment of subdivision plans**

- (1) A compliance certificate for a plan of subdivision that was given under the repealed Act becomes an approval of the type mentioned in section 237(2)(c) on the commencement.
- (2) An application for compliance assessment of a plan of subdivision that was made under the repealed Act but was not decided before the commencement must be decided as if this Act had not commenced.
- (3) An appeal in relation to the application must be made and decided as if this Act had not commenced.
- (4) A compliance certificate given as a result of an application or appeal mentioned in subsections (2) or (3) immediately becomes an approval of the type mentioned in section 237(2)(c).

**268 Delayed commencement of provisions**

The following provisions commence on 1 July 2016—

- (a) section 119(2)(a);
- (b) section 125(1)(c);
- (c) section 133(1)(a);
- (d) section 138(1)(a).

**Schedule 1      Appeal rights**

section 194

**Part 1                      Appeals to P&E Court**

**1                      Appeals to P&E Court**

- (1) An entity mentioned in column 2 of table 1 may appeal to the P&E Court about a matter mentioned in column 1.
- (2) However, for item 18 of the table, an appeal may not be about the charges resolution or any aspect of the charges resolution.

<b>Table 1—Appeals to P&amp;E Court</b>	
<b>Column 1 Matter</b>	<b>Column 2 Appellant</b>
<b>Development applications</b>	
1 A refusal of all or part of a development application	The development applicant
2 Any provision of a development approval	
3 A decision to give a preliminary approval, when a development permit was applied for	
4 Any part of a development approval resulting from a variation request or merit assessment	An eligible submitter
5 Any provision of a development approval resulting from a variation request or merit assessment	
6 A failure to impose a particular development condition on a development approval	
7 Any matter relating to a referral agency’s functions for the development application	The referral agency (advice only)



<b>Table 1—Appeals to P&amp;E Court</b>	
<b>Column 1 Matter</b>	<b>Column 2 Appellant</b>
8 Any matter relating to an eligible building advisory agency's functions for a development application	The eligible building advisory agency
<b>Change applications</b>	
9 A decision to refuse a change sought by a change application	The change applicant
10 A decision to impose a condition on the approval of a change application	
11 A decision to refuse a change sought by a change application for a minor change	The responding entity that was the assessment manager
12 A decision to impose a condition on the approval of a change application for a minor change	
<b>Extension applications</b>	
13 A decision to refuse the extension sought by an extension application	The extension applicant
14 A decision to extend the currency period for a period less than sought by an extension application	
<b>Enforcement notices</b>	
15 A decision to give an enforcement notice	The recipient of the enforcement notice
<b>Local laws</b>	
16 A decision, or the conditions applied, under a local law about a permitted building use	A person dissatisfied with the decision or conditions
<b>Compensation claims</b>	
17 A decision to refuse all or part of a compensation claim	The compensation claimant

<b>Table 1—Appeals to P&amp;E Court</b>	
<b>Column 1 Matter</b>	<b>Column 2 Appellant</b>
<b>Infrastructure charge notices</b>	
18 The decision to give an infrastructure charges notice, on the ground of— (a) the decision was so unreasonable that no reasonable decision-maker of the same type could have made the decision; or (b) an error relating to the application of the application of the relevant adopted charge; or (c) an error in the working out, for section 125, of additional demand	The recipient of— (a) the infrastructure charges notice; or (b) a notice amending the infrastructure charges notice
<b>Conversion applications</b>	
19 A decision to refuse to make the conversion applied for under a conversion application	The conversion applicant
<b>Decisions of a committee</b>	
20 A decision of a committee in a committee proceeding, on the ground of— (a) an error or mistake in law; or (b) jurisdictional error	A party to the committee proceeding

## Part 2 Appeals to committee

### 2 Appeals to committee

- (1) Subject to subsections (2) to (4), an entity mentioned in column 2 of table 2 may appeal to a committee about a matter mentioned in column 1.
- (2) For items 1 to 10 of the table—
  - (a) an entity may appeal to a committee only to the extent that the development application or change application relates to—

- (i) a material change of use of premises involving the use of a prescribed building or a designated class 2 building; or
  - (ii) building work; or
  - (iii) operational work associated with building work; or
  - (iv) operational work for a retaining wall or tennis court; and
- (b) an entity may not appeal to a committee about—
  - (i) any part of a development application for which there was a properly made submission; or
  - (ii) the identification or inclusion, under a variation approval, of a matter for the development.
- (3) For items 11 and 14 to 17 of the table, an appeal may only be about—
  - (a) a matter under this Act that relates to—
    - (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
    - (ii) the *Plumbing and Drainage Act 2002*; or
  - (b) a matter that, under another Act, may be appealed to a building and development committee; or
  - (c) a matter prescribed under a regulation.
- (4) For item 12 of the table, an appeal may not be about the charges resolution or any aspect of the charges resolution.

<b>Table 2—Appeals to committee</b>	
<b>Column 1 Matter</b>	<b>Column 2 Appellant</b>
<b>Development applications</b>	
1 A refusal of all or part of a development application	The development applicant
2 Any provision of a development approval	
3 A decision to give a preliminary approval, when the development application was for a development permit	
4 Any matter relating to an eligible building advisory agency’s functions for a development application	The eligible building advisory agency
<b>Change applications</b>	
5 A decision to refuse a change sought by a change application	The change applicant
6 A decision to impose a condition on the approval of a change application	
7 A decision to refuse a minor change sought by a change application for a minor change	The change applicant
8 A decision to impose a condition on the approval of a change application for a minor change	The responding entity that was the assessment manager
<b>Extension applications</b>	
9 A decision to refuse the extension sought by an extension application	The extension applicant
10 A decision to extend the currency period for a period less than sought by an extension application	
<b>Enforcement notices</b>	
11 A decision to give an enforcement notice	A recipient of the enforcement notice

<b>Table 2—Appeals to committee</b>	
<b>Column 1 Matter</b>	<b>Column 2 Appellant</b>
<b>Infrastructure charge notices</b>	
12 The decision to give an infrastructure charges notice, on the ground of— (a) an error relating to the application of the relevant adopted charge; or (b) an error in the working out, for section 125, of additional demand	The recipient of— (a) an infrastructure charges notice; or (b) a notice amending an infrastructure charges notice
<b>Conversion applications</b>	
13 A decision to refuse to make the conversion applied for under a conversion application	The conversion applicant
<b>Building Act</b>	
14 A decision under the Building Act about building work that is the subject of a development approval, other than a decision of the commission  <i>Note—</i> For appeals against the commission’s decisions, see the Building Act, section 189.	The development applicant
15 A decision under the Building Act by a building certifier or referral agency about the inspection of building work that is the subject of a development approval	A person dissatisfied with the decision
16 The failure of a local government to make a decision about an application, other than a building development application, within the period required under the Building Act	The applicant
<b>Plumbing and Drainage Act</b>	
17 A decision about an information notice under the Plumbing and Drainage Act, part 4 or 5	A person who is given, or is entitled to be given, the information notice

## Schedule 2 Dictionary

section 4

***accepted development***—

- (a) see section 37(6); or
- (b) for development under a designation—means accepted development under section 29(3)(a).

***access rules*** means rules made under section 224(1).

***Acquisition Act*** means the *Acquisition of Land Act 1967*.

***acquisition land*** means land or an interest in land—

- (a) proposed to be taken or acquired under the Acquisition Act or the State Development Act; and
- (b) for which a notice of intention to resume under the Acquisition Act has been served, and the proposed taking or acquisition has not been discontinued; and
- (c) that has not been taken or acquired.

***additional payment condition*** see section 137(1).

***adopted charge*** see section 118(1).

***adverse planning change*** see section 25(2).

***affected entity*** see section 84(4).

***affected local government*** is a local government with a local government area that the Minister considers is to be affected by a proposed State planning instrument.

***affected owner*** see section 26(1).

***affected parties*** see section 31(2).

***agreement*** means an agreement in writing.

***appeal period***, for a decision or matter, see section 194(2).

***appeal rights*** means the appeal rights under schedule 1.

***appellant*** means a person who starts an appeal.

**applicant**, for an appeal, includes the person in whom the benefit of the application vests.

**approved form** means a form approved by the chief executive under section 236.

**assessable development**—

- (a) see section 37(1); or
- (b) for development under a designation—see section 29(3)(a).

**assessing authority** means—

- (a) for development the subject of a development permit—
  - (i) the assessment manager under section 42(1) or, for matters within its functions for the development application, a referral agency; or
  - (ii) if, under the Building Act, chapter 6, a private certifier (class A) performed private certifying functions under that Act for the development application—the private certifier or the local government; or
- (b) for assessable development not the subject of a development permit—the entity that would have been the assessing authority under paragraph (a) had a development approval been given; or
- (c) for building or plumbing work carried out by or for a public sector entity—the chief executive, however described, of the entity; or
- (d) for any other matter—the local government.

**assessment benchmarks** see section 58(1).

**assessment manager** see section 42(1).

**automatic increase provision** see section 119(3)(b).

**building** means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building.

**Building Act** means the *Building Act 1975*.

**building advisory agency**, for a development application or approval, means a referral agency for the application if—

- (a) the application required standard assessment for an aspect of building work to be assessed in relation to the Building Act; and
- (b) the referral agency's response powers are limited to offering advice to the assessment manager.

**building assessment provisions** see the Building Act, section 30.

**building certifier**—

- (a) means an individual who, under the Building Act, is licensed as a building certifier; and
- (b) includes a private certifier.

**Building Code** means the parts of the National Construction Code that form the Building Code of Australia (including the Queensland Appendix), published by the Australian Building Codes Board, as amended from time to time by amendments published by the board.

**building work**—

- (a) means—
  - (i) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or
  - (ii) work regulated under the building assessment provisions; or
  - (iii) excavating or filling for, or incidental to, the activities mentioned in subparagraph (i); or
  - (iv) excavating or filling that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or
  - (v) supporting (whether vertically or laterally) land for activities mentioned in subparagraph (i).
- (b) for a Queensland heritage place, includes—



- (i) altering, repairing, maintaining or moving a built, natural or landscape feature on the place; and
  - (ii) excavating, filling or other disturbances to land that damage, expose or move archaeological artefacts, as defined under the Heritage Act, on the place; and
  - (iii) altering, repairing or removing artefacts that contribute to the place's cultural heritage significance, including, for example, furniture and fittings; and
  - (iv) altering, repairing or removing building finishes that contribute to the place's cultural heritage significance, including, for example, paint, wallpaper and plaster; and
- (c) does not include undertaking—
- (i) operations of any kind and all things constructed or installed that allow taking or interfering with water under the *Water Act 2000*; or
  - (ii) tidal works; or
  - (iii) work for reconfiguring a lot; and
- Example—*
- building a retaining wall
- (d) for subparagraph (a)(ii)—includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure.

***business day*** does not include a day between 26 December of a year and 1 January of the following year.

***call in notice*** see section 104(1).

***canal*** see the Coastal Act.

***cancellation application*** means an application to cancel a development approval.

***categorised*** means categorised by a categorising instrument.

***categorising instrument*** see section 39(1).

**chairperson**, for a committee proceeding, means the chairperson of the committee established for the proceeding.

**change application** means an application to change a development approval.

**charges breakup** means the proportion of the maximum adopted charges under this chapter and under the SEQ Water Act as between—

- (a) the local government; and
- (b) a distributor-retailer of the local government.

**charges resolution** see section 118(1).

**chosen assessment manager** see section 46.

**clearing** of vegetation—

- (a) means to remove, cut down, ringbark, push over, poison or destroy vegetation in any way, including, for example, by burning, flooding or draining; but
- (b) does not include destroying standing vegetation by stock, or lopping a tree.

**Coastal Act** means the *Coastal Protection and Management Act 1995*.

**commission** means the Queensland Building and Construction Commission.

**committee** means a building and development dispute resolution committee established under section 198(1).

**committee proceeding** means proceeding by a committee to hear an appeal or declaration application.

**committees registrar** means the person who holds that office after appointment under section 198(1)(a).

**compensation claim** means a claim for compensation mentioned in section 26.

**consent** means written consent.

**conversion application** see section 146(2).

**currency period** see section 89(1).

***decision-making period***, for a development application, means the period fixed under the development assessment rules for deciding the application, and includes any extension of the period under the rules.

***decision notice*** means—

- (a) a notice given under section 65(1); or
- (b) if, under section 80(2)(d), a negotiated decision notice replaces a decision notice—the negotiated decision notice.

***deemed approval*** see section 67(5).

***deemed approval notice*** see section 67(3).

***deemed refusal***, means a refusal that is taken to have happened if a decision has not been made when the following ends—

- (a) for a development application—the decision-making period;
- (b) for a matter as follows—within the period allowed under this Act for the matter to be decided—
  - (i) a request under section 98(2);
  - (ii) a request made by a person under section 222(3);
  - (iii) a request to make a change to a development approval;
  - (iv) a request to extend a period mentioned in section 341;
  - (v) a conversion application;
  - (vi) a claim for compensation under chapter 9, part 3.

***designated class 2 building*** means a building classified under the Building Code as a class 2 building of no more than—

- (a) 3 storeys; and
- (b) 60 sole-occupancy units.

***designated land*** means land that is the subject of a designation.

**designation** see section 29(2).

**development** means any of the following—

- (a) carrying out—
  - (i) building work;
  - (ii) plumbing or drainage work;
  - (iii) operational work;
- (b) reconfiguring a lot;
- (c) making a material change of use of premises.

**development application** means an application for a development approval.

**development approval** see section 43(1).

**development assessment process** means the process for administering development applications.

**development assessment system** see section 3(3)(f).

**development assessment rules** see section 72(1).

**development condition** see section 43(6).

**development infrastructure** means—

- (a) land or works, or both land and works, for—
  - (i) water cycle management infrastructure, including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of waters and flood mitigation, but not water cycle management infrastructure that is State infrastructure; or
  - (ii) transport infrastructure, including roads, vehicle lay-bys, traffic control devices, dedicated public transport corridors, public parking facilities predominantly serving a local area, cycle ways, pathways and ferry terminals; or
  - (iii) public parks infrastructure, including playground equipment, playing fields, courts and picnic facilities; or

- (b) land, and works that ensure the land is suitable for development, for local community facilities, including, for example, the following—
- (i) community halls or centres;
  - (ii) public recreation centres;
  - (iii) public libraries.

***development offence*** see section 168(1).

***development permit*** see section 43(3).

***direction*** means a written direction.

***distributor-retailer*** see the SEQ Water Act, section 8.

***document*** includes information.

***drainage work*** see the Plumbing and Drainage Act, schedule.

***eligible building advisory agency***, for a development application, means a building advisory agency that has not given a notice stating the agency will not be appealing before the appeal period ends for the application.

***eligible submitter***, for a development application, means a submitter—

- (a) whose submission was not withdrawn before the application was decided; and
- (b) who has not given a notice stating the submitter will not be appealing before the appeal period ends for the application.

***enforcement notice*** see section 175(2).

***enforcement order*** see section 188(2).

***environment*** includes—

- (a) ecosystems and their constituent parts including people and communities; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed

scientific value or interest, amenity, harmony, and sense of community; and

- (d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a), (b) and (c) or affected by the matters.

***environmental nuisance*** see the Environmental Protection Act, section 15.

***Environmental Protection Act*** means the *Environmental Protection Act 1994*.

***establishment cost***, for trunk infrastructure, means—

- (a) for existing infrastructure—
  - (i) the current replacement cost of the infrastructure as reflected in the relevant local government's asset register; and
  - (ii) the current value of the land acquired for the infrastructure; or
- (b) for future infrastructure—all costs of land acquisition, financing, and design and construction, for the infrastructure.

***executive officer***, of a corporation, means a person who is concerned with or takes part in the management of the corporation, whether or not the person is a director or the person's position is given the title of executive officer.

***exemption certificate*** see section 40(1).

***extension application*** means an application to extend the currency period of a development approval.

***finds a defendant guilty*** includes accept a plea of guilty, whether or not a conviction is recorded.

***Heritage Act*** means the *Queensland Heritage Act 1992*.

***impose***, for a development condition, includes to attach the condition to a development approval.

***information notice***, about a decision, means a notice stating—

- (a) the decision and the reasons for the decision; and
- (b) that the recipient of the notice may appeal against the decision.

**information request** means a notice given under the development assessment rules requiring the applicant for a development application to give further information for the application.

**infrastructure** does not include land, facilities, services or works for an environmental offset.

**infrastructure agreement** see section 157.

**infrastructure charges notice** means—

- (a) if an infrastructure charges notice is replaced by a negotiated notice under section 130(3)—the negotiated notice; or
- (b) if an infrastructure charges notice is amended under section 115(3), 144(3) or 149(4)(b)—the notice as amended; or
- (c) otherwise—an infrastructure charges notice given under section 115(3), 124(2) or 149(4)(a).

**interim enforcement order** see section 188(5).

**land** includes—

- (a) any estate in, on, over or under land; and
- (b) the airspace above the surface of land and any estate in the airspace; and
- (c) the subsoil of land and any estate in the subsoil.

**Land Act** means the *Land Act 1994*.

**Land Title Act** means the *Land Title Act 1994*.

**lawful use**, of premises, means a use of premises that is a natural and ordinary consequence of making a material change of use of the premises in compliance with this Act.

**levied charge** means a charge levied by an infrastructure charges notice.

**local government infrastructure plan** or **LGIP** means the part of a local government's planning scheme that—

- (a) has been prepared under a guideline made by the Minister and adopted by regulation; and
- (b) does any or all of the following—
  - (i) identifies the PIA;
  - (ii) states assumptions about population and employment growth;
  - (iii) states assumptions about the type, scale, location and timing of future development;
  - (iv) includes plans for trunk infrastructure;
  - (v) states the desired standard of service for development infrastructure.

**local government area**, if a local government applies a planning scheme for assessing prescribed tidal work in the local government's tidal area under section 17(7), includes the local government's tidal area.

**local government road** means a road under the control of a local government.

**local heritage place** see the Heritage Act, schedule.

**local instrument** see section 39(1)(a).

**local planning instrument** see section 7(3).

**lot** means—

- (a) a lot under the Land Title Act; or
- (b) a separate, distinct parcel of land for which an interest is recorded in a register under the Land Act; or
- (c) common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or



- (d) a lot or common property to which the *Building Units and Group Titles Act 1980 (BUGTA)* continues to apply; or
- (e) a community or precinct thoroughfare under the *Mixed Use Development Act 1993*; or
- (f) a primary or secondary thoroughfare under the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*.

*Note—*

BUGTA may continue to apply to the Acts mentioned in paragraphs (e) and (f), the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980* and the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*.

**material change of use**, of premises, means any of the following that a regulation made under section 237(2)(b) does not prescribe to be minor change of use—

- (a) the start of a new use of the premises;
- (b) the re-establishment on the premises of a use that has been abandoned;
- (c) a material increase in the intensity of the use of the premises.

**merit assessment** see section 38(3).

**Ministerial direction** means a direction made by the Minister under chapter 3, part 7, division 2.

**Minister's guidelines** means the guidelines made by the Minister under section 16.

**minor amendment**, of a State planning instrument, means—

- (a) an amendment that corrects or otherwise changes—
  - (i) a spelling, grammatical or mapping error in the instrument; or
  - (ii) an explanatory matter about the instrument; or
  - (iii) the format or presentation of the instrument; or

- (iv) a factual matter incorrectly stated in the instrument; or
- (v) a redundant or outdated term in the instrument; or
- (vi) inconsistent numbering of provisions in the instrument; or
- (vii) a cross-reference in the instrument;
- (b) an amendment that the Minister considers merely reflects a part of another State planning instrument, if the Minister is satisfied adequate public consultation was carried out in relation to the making of that part of the other State planning instrument;
- (c) another amendment of a minor nature prescribed by regulation.

**minor change**, of a development approval, see section 84(2).

**necessary infrastructure condition** see section 132(2).

**negotiated decision notice** see section 80(3).

**non-rural purposes** means purposes that are not rural or rural residential purposes.

**non-port local government area**, for a local government, means the local government's area, other than any strategic port land in the local government's area.

**non-trunk infrastructure** means development infrastructure that is not trunk infrastructure.

**notice** means a notice in writing.

**offence proceeding** see section 181(2).

**operational work** means work, other than building work or plumbing or drainage work, in, on, over or under premises that materially affects premises or the use of premises.

**original assessment manager**, for a development application that is called in, means the entity that, before the call in, was the assessment manager for the application.

**owner**, of land, means the person who is entitled to receive rent for the land or who would be entitled to receive rent for the land if the land were let to a tenant at a rent.

*Note—*

See the Transport Infrastructure Act, section 247, for when the chief executive of the department in which that Act is administered is taken to be the owner of particular rail corridor land or non-rail corridor land under that Act.

**P&E Court** means the Planning and Environment Court.

**P&E Court Act** means the *Planning and Environment Court Act 2014*.

**party**, for a P&E Court proceeding or committee proceeding, or proposed proceeding, means any or all of the following—

- (a) the applicant or appellant;
- (b) the respondent;
- (c) any co-respondent;
- (d) if the Minister is represented—the Minister.

**payer**, for a levied charge or for a payment, means anyone who pays all or part of the charge or payment.

**payment** includes a contribution by way of a payment.

**permitted building use** means the use of premises or the erection of a building or other structure that is not prohibited development under the planning scheme or a TLPI for the local government area.

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

**plan of subdivision—**

- (a) means a plan for reconfiguring a lot that, under an Act, must be approved by a local government before the plan is registered or otherwise recorded under that Act; but
- (b) does not include a plan for reconfiguring a lot if the reconfiguration relates to—
  - (i) the acquisition of land by a constructing authority as defined under the Acquisition of Land Act for a

- purpose for which land may be taken under that Act; or
- (ii) the acquisition of land by an authorised electricity entity; or
  - (iii) the acquisition of land for a water infrastructure facility; or
  - (iv) land held by the State or a statutory body representing the State, for a purpose for which land may be taken under the Acquisition of Land Act, whether or not the land relates to an acquisition; or
  - (v) a lot that consists of strategic port land.

***planning*** means planning the use of land.

***planning instrument*** see section 7.

***planning instrument change*** means—

- (a) the commencement of a planning instrument or the amendment of a planning instrument; or
- (b) the start of the application of an existing planning instrument to premises.

***planning scheme*** see section 3.

***Plumbing and Drainage Act*** means the *Plumbing and Drainage Act 2002*.

***plumbing work*** see the Plumbing and Drainage Act, schedule.

***PPI index*** means the following—

- (a) the producer price index for construction 6427.0 (ABS PPI) index number 3101—Road and Bridge construction index for Queensland published by the Australian Bureau of Statistics;
- (b) if an index described in paragraph (a) ceases to be published—another similar index prescribed by regulation.

***preliminary approval*** see section 43(2).

***premises*** means—

- (a) a building or other structure; or
- (b) land, whether or not a building or other structure is situated on the land.

***pre-request response notice*** see section 84(5).

***prescribed*** means prescribed by regulation under this Act.

***prescribed assessment manager*** see section 46.

***prescribed building*** means a building classified under the Building Code as—

- (a) a class 1 building; or
- (b) a class 10 building, other than one that is incidental or subordinate to the use, or proposed use, of a building classified under the Building Code as a class 2, 3, 4, 5, 6, 7, 8 or 9 building.

***prescribed tidal work*** see section 17(7).

***principal submitter***, for a properly made submission, means—

- (a) if the submission is by 1 person—the person; or
- (b) otherwise—
  - (i) the submitter that the submission identifies as the principal submitter; or
  - (ii) if the submission does not identify a submitter as the principal submitter—the submitter whose name first appears in the submission.

***priority infrastructure area*** or ***PIA*** means an area—

- (a) used, or approved for use, for non-rural purposes; and
- (b) serviced, or intended to be serviced, with development infrastructure networks; and
- (c) that will accommodate at least 10 (but no more than 15) years of growth for non-rural purposes.

**private certifier** means a building certifier whose licence under the Building Act has private certification endorsement under that Act.

**prohibited development** see section 37(2).

**properly made**, for a development application, see section 45(4) and (6).

**properly made**, for a submission, means the submission—

- (a) is signed by each person (the **submission-makers**) who made the submission; and
- (b) is received—
  - (i) for a condition about a designation—on or before the last day for making the submission; or
  - (ii) for a condition about a development application—during the period for making submissions fixed under the development assessment rules; or
  - (iii) otherwise—during the period fixed under this Act for making the submission; and
- (c) states the name and residential or business address of all submission-makers; and
- (d) states its grounds and the facts and circumstances relied on to support the grounds; and
- (e) states 1 electronic address for service relating to the submission for all submission-makers; and
- (f) is made to—
  - (i) for a submission made under chapter 2—the entity to whom the submission is required to be made under that chapter; or
  - (ii) for a submission about a development application—the assessment manager.

**provision**, of a development approval, means all words or other matters forming, or forming part of, the approval.

*Examples—*

any of the following stated in the approval—

- a development condition
- a currency period
- the identification or inclusion under a variation approval of a matter for the development.

**public notice** means a notice that is published—

- (a) for a public notice mentioned in chapter 2, part 2—
  - (i) in the gazette; and
  - (ii) if the notice is about a State planning instrument or amendment that has, is to have, or had effect in a part of the State only—in a newspaper circulating generally in the part of the State; and
  - (iii) if the notice is about a State planning instrument that has, is to have, or had effect throughout the State—in a newspaper circulating generally in the State; and
  - (iv) on the department’s website; or
- (c) for a public notice mentioned in chapter 2, part 3 that is about a proposed local planning instrument—
  - (i) in a newspaper circulating in the local government’s area; and
  - (ii) on the local government’s website; or
- (d) for a public notice mentioned in chapter 2, part 3 that is about a local planning instrument that is not a proposed local planning instrument—
  - (i) in the gazette; and
  - (ii) in a newspaper circulating in the local government’s area; and
  - (iii) on the local government’s website.

**public purpose change** see section 25(3).

**public sector entity** means any of the following—

- (a) a department or part of a department;

- (b) other than in chapter 4, a distributor-retailer;
- (c) an agency, authority, commission, committee, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.

*Examples for paragraph (c)—*

a government owned corporation and a rail government entity under the Transport Infrastructure Act

***Queensland heritage place*** see the Heritage Act, schedule.

***reasonably believes*** means believes on grounds that are reasonable in all the circumstances.

***recipient***, for a direction, notice or order, means any person to whom the direction, notice or order is given.

***reconfiguring a lot*** means—

- (a) creating lots by subdividing another lot; or
- (b) amalgamating 2 or more lots; or
- (c) rearranging the boundaries of a lot by registering a plan of subdivision; or
- (d) dividing land into parts by agreement rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—
  - (i) a lease for a term, including renewal options, not exceeding 10 years; or
  - (ii) an agreement for the exclusive use of part of the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or
- (e) creating an easement giving access to a lot from a constructed road.

***referral agency*** see section 51(2).

***referral agency response*** see sections 53(9).

***referee*** means a referee who holds an appointment under section 195(1) or (2).



**refusal**, for an appeal matter, includes a deemed refusal.

**region** means—

- (a) the local government areas, or parts of local government areas, prescribed as a region; and
- (b) Queensland waters adjacent to the local government areas or parts.

**regional plan** see section 3.

**regional planning committee**, for a region, means the committee established for the region under section 13.

**registered professional engineer** means a registered professional engineer under the *Professional Engineers Act 2002* or a person registered as a professional engineer under an Act of another State.

**relevant or reasonable requirement**, for development conditions, see section 68(2).

**repealed Act** means the repealed *Sustainable Planning Act 2009*.

**required fee**, for an application or referral to, request of, or appeal to, an entity means—

- (a) if the entity is a local government—the fee, if any, the local government has fixed by resolution; or
- (b) if the entity is another public sector entity or the Minister—the fee, if any, prescribed; or
- (c) if the entity is an assessment manager mentioned in section 42(3)—the fee negotiated between the applicant and the entity.

**required contents** see section 15(1).

**responding entity**, for a change application, means an entity that gave a pre-request response notice or response about the application.

**response notice**, for a change application, see section 84(7).

**responsible entity**, for a change application, see section 82(3).

**road** has the meaning given in the Transport Infrastructure Act, schedule 6, definition of *road*, paragraphs (c) and (d).

**SEQ Water Act** means the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

**show cause notice** see section 174(2).

**sole-occupancy unit**, for a class 2 building, means a room or other part of the building used as a dwelling by a person to the exclusion of any other person.

**standard assessment** see section 38(2).

**standard conditions** means the conditions taken to be imposed on a deemed approval if the assessment manager does not give an assessment notice in relation to the approval.

**State-controlled road** see the Transport Infrastructure Act, schedule 6.

**State Development Act** means the *State Development and Public Works Organisation Act 1971*.

**State infrastructure** means any of the following—

- (a) State schools infrastructure;
- (b) public transport infrastructure;
- (c) State-controlled roads infrastructure;
- (d) emergency services infrastructure;
- (e) health infrastructure, including hospitals and associated institutions infrastructure;
- (f) freight rail infrastructure;
- (g) State urban and rural residential water cycle management infrastructure, including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of water and flood mitigation;
- (h) justice administration facilities, including court or police facilities.

**State infrastructure provider** means—

- (a) the chief executive; or
- (b) a public sector entity, other than a local government, that provides State infrastructure or administers a regional plan for a designated region.

**State interest** means an interest that the Minister considers—

- (a) affects an economic or environmental interest of the State or a part of the State; or

*Example of a possible interest for paragraph (a)—*

a tourism development involving broad economic benefits for the State or a part of the State

- (b) affects the interest of ensuring this Act's purpose is achieved in the way mentioned in section 3(2).

**State planning instrument** see section 7(2).

**State planning policy** see section 3(3)(a).

**State-related condition** see section 153(1).

**storey** see the Building Code, part A1.1.

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

**subject premises** see section 132(1).

**submission** means a submission in writing.

**submitter** means—

- (a) for a development application—a person who makes a properly made submission about the application; or
- (b) for a particular submission—the person who made the submission.

**superseded scheme development application** see section 24(4)(a).

**superseded planning scheme** see section 24(2).

**superseded scheme request** see section 24(4).

**supporting information**, for a form, means information or documents required under the form to be included in, attached to, or given with the form.

**temporary local planning instrument** or **TLPI** means an instrument made by a local government under section 20.

**temporary State planning policy** see section 11.

**tidal area**, for a non-port local government area or strategic port land (each *the area*), means—

- (a) the part or parts of a tidal river, estuarine delta or canal between high-water mark and the middle of the river, delta or canal—
  - (i) as far up the river, delta or canal as the spring tides ordinarily flow and reflow; and
  - (ii) adjacent to the area; and
- (b) to the extent the boundary of the area is, or is seaward or, the high water mark—the land that is seaward and within 50m of the high-water mark.

**tidal works** see the Coastal Act.

**Transport Infrastructure Act** means the *Transport Infrastructure Act 1994*.

**trunk infrastructure**, for a local government, means all of the following—

- (a) development infrastructure identified in an LGIP as trunk infrastructure;
- (b) development infrastructure that, because of a conversion application, becomes trunk infrastructure;
- (c) development infrastructure that is required to be provided under a condition imposed under section 134(2).

*Note—*

Until 1 July 2016, identification of trunk infrastructure may also take place by resolution: see section 979.

**use**, for premises, includes any ancillary use of the premises.

**variation approval** means a preliminary approval under section 62 to vary the effect of a local planning instrument.

*variation request* means a development application to vary the effect of a local planning instrument.