



Queensland

# **Planning and Development Bill 2014**





## Queensland

# Planning and Development Bill 2014

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# 2014

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## 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**

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[s 1]

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|  |                     |
|--|---------------------|
| <b>The Parliament of Queensland enacts—</b>  | 1                   |
| <br>   |                     |
| <b>Chapter 1            Preliminary</b>  | 2                   |
| <br>   |                     |
| <b>1            Short title</b>  | 3                   |
| This Act may be cited as the <i>Planning and Development Act 2014</i> .  | 4<br>5              |
| <br>   |                     |
| <b>2            Commencement</b>   | 6                   |
| This Act commences on a day to be fixed by proclamation.   | 7                   |
| <br>   |                     |
| <b>3            Purpose of the Act</b>   | 8                   |
| (1)    The purpose of this Act is to facilitate Queensland's prosperity, including through ecologically sustainable development that balances economic growth, environmental protection and community wellbeing. | 9<br>10<br>11<br>12 |
| (2)    The purpose is to be mainly achieved by providing for an efficient, effective, transparent, integrated and accountable system for—  | 13<br>14<br>15      |
| (a)    land use planning ( <i>planning</i> ); and  | 16                  |
| (b)    development assessment.   | 17                  |
| (3)    The system includes the following—  | 18                  |
| (a) <i>State planning policies</i> (including temporary ones) setting out planning and development assessment policies about matters of State interest;  | 19<br>20<br>21      |
| (b) <i>regional plans</i> setting out planning and development assessment policies about matters of State interest for particular regions of the State;  | 22<br>23<br>24      |

- 
- (c) ***planning schemes*** setting out integrated State, regional and local planning and development assessment policies for all of a local government area; 1  
2  
3
  - (d) ***temporary local planning instruments (TLPIs)*** setting out planning and development assessment policies to protect all or part of a local government area from adverse impacts in urgent or emergent circumstances; 4  
5  
6  
7
  - (e) ***planning scheme policies*** setting out policies, for all or part of a local government area, that support— 8  
9
    - (i) planning and development assessment policies under planning schemes; and 10  
11
    - (ii) action by a local government in making or amending local planning instruments; and 12  
13
    - (iii) action by a local government under the development assessment system; 14  
15
  - (f) a ***development assessment system*** for implementing planning instruments and other policies and requirements about development by— 16  
17  
18
    - (i) categorising development; and 19
    - (ii) categorising types of assessment for particular development; and 20  
21
    - (iii) making, receiving, assessing and deciding development applications; and 22  
23
    - (iv) establishing rights and responsibilities in relation to development approvals; 24  
25
  - (g) arrangements to expeditiously identify and authorise development of key infrastructure; 26  
27
  - (h) planning, development assessment, charging and other arrangements for infrastructure, to promote— 28  
29
    - (i) integrated land use and infrastructure planning; and 30  
31
    - (ii) the cost-effective provision of infrastructure to service development; 32  
33
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[s 4]

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|          |   |             |
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|          | (i) a variety of enforcement arrangements that are relevant to the nature and scale of offences;  | 1<br>2      |
|          | (j) Ministerial powers to protect, or give effect to, the State's interests relating to planning and development assessment;              | 3<br>4<br>5 |
|          | (k) dispute resolution (including appeals and declarations) for administrative decisions, other than those made under Ministerial powers. | 6<br>7<br>8 |
| <b>4</b> | <b>Definitions</b>  | 9           |
|          | The dictionary in schedule 2 defines particular words used in this Act.   | 10<br>11    |
|          | <i>Note—</i>  | 12          |
|          | For the meanings of some defined words used in particular contexts, see section 235.  | 13<br>14    |
| <b>5</b> | <b>Act binds all persons</b>  | 15          |
|          | (1) This Act binds all persons, including—  | 16          |
|          | (a) the State; and  | 17          |
|          | (b) to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.                                 | 18<br>19    |
|          | (2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.   | 20<br>21    |
|          | (3) This Act does not bind the Coordinator-General in carrying out functions and powers under the State Development Act.                  | 22<br>23    |

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|------------------|---|----------------|
| <b>Chapter 2</b> | <b>Planning</b>   | 1              |
| <b>Part 1</b>    | <b>Introduction</b>   | 2              |
| <b>6</b>         | <b>What this chapter is about</b>   | 3              |
| (1)              | This chapter is about planning.   | 4              |
| (2)              | Part 2 is about State planning instruments.   | 5              |
| (3)              | Part 3 is about local planning instruments.   | 6              |
| (4)              | Part 4 is about superseded planning schemes and compensation.   | 7<br>8         |
| (5)              | Part 5 is about designations.   | 9              |
| <b>7</b>         | <b>What are planning instruments</b>  | 10             |
| (1)              | A <i>planning instrument</i> is an instrument that sets out policies for planning and development assessment.                                 | 11<br>12       |
| (2)              | A <i>State planning instrument</i> is a planning instrument made by the Minister to protect or give effect to State interests, and is either— | 13<br>14<br>15 |
| (a)              | a State planning policy (including a temporary State planning policy); or   | 16<br>17       |
| (b)              | a regional plan.  | 18             |
| (3)              | A <i>local planning instrument</i> is a planning instrument made by a local government, and is either—  | 19<br>20       |
| (a)              | a planning scheme; or   | 21             |
| (b)              | a TLPI; or  | 22             |
| (c)              | a planning scheme policy.   | 23             |
| (4)              | To the extent of any inconsistency between planning instruments—  | 24<br>25       |

[s 8]

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| (a) | a State planning policy applies instead of a regional plan or local planning instrument; and                                   | 1<br>2  |
| (b) | a regional plan applies instead of a local planning instrument; and  | 3<br>4  |
| (c) | a planning scheme applies instead of a planning scheme policy; and   | 5<br>6  |
| (d) | a TLPI applies instead of a planning scheme policy.  | 7       |
|     | <i>Note—</i>   | 8       |
|     | A TLPI may also suspend, or otherwise affect, the operation of a planning scheme or planning scheme policy: see section 19(3). | 9<br>10 |

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| <b>Part 2</b> | <b>State planning instruments</b>  | <b>11</b>      |
| <b>8</b>      | <b>Making or amending State planning instruments</b>   | <b>12</b>      |
| (1)           | If the Minister proposes to make or amend a State planning instrument, the Minister must publish a public notice that states—              | 13<br>14<br>15 |
| (a)           | where copies of the proposed State planning instrument, or proposed amendment, (the <i>instrument</i> ) may be inspected or purchased; and | 16<br>17<br>18 |
| (b)           | a phone number or email address to contact for information about the instrument; and   | 19<br>20       |
| (c)           | any person may make a written submission about the instrument to the Minister; and   | 21<br>22       |
| (d)           | the requirements for properly making a submission; and   | 23             |
| (e)           | the period within which a submission may be made, which must be at least—  | 24<br>25       |
| (i)           | if the Minister proposes to make a State planning instrument—40 business days after the gazette notice is published; or                    | 26<br>27<br>28 |

[s 8]

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- (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 a copy of the notice and instrument to each affected local government.
  - (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 may be inspected or purchased; and
    - (b) give a copy of the notice to each affected local government.
  - (5) The instrument starts to have effect on—
    - (a) the day after the public notice is published; or
    - (b) a later day stated in the instrument.
  - (6) A State planning instrument that is made or amended substantially in compliance with this section is valid, as long as any noncompliance does not—
    - (a) restrict the public’s opportunity to properly make submissions about the proposed instrument; or
    - (b) adversely affect public awareness of the existence and nature of the proposed instrument.

[s 9]

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| (7)      | If the Minister decides not to make the instrument, the Minister must publish the decision in a gazette notice. | 1<br>2   |
| <b>9</b> | <b>Minor amendments to State planning instruments</b>   | 3        |
| (1)      | The Minister may make a minor amendment to a State planning instrument without complying with section 8.        | 4<br>5   |
| (2)      | Instead, the Minister may make a minor amendment by publishing a public notice that states—                     | 6<br>7   |
| (a)      | the day when the amendment was made; and  | 8        |
| (b)      | where a copy of the amended State planning instrument may be inspected or purchased.                            | 9<br>10  |
| (3)      | The amendment starts to have effect on—   | 11       |
| (a)      | the day after the public notice is published; or  | 12       |
| (b)      | a later day stated in the amendment.  | 13       |
| (4)      | In this section—  | 14       |
|          | <i>minor amendment</i> , of a State planning instrument, means—   | 15       |
| (a)      | an amendment that corrects or otherwise changes—  | 16       |
| (i)      | a spelling, grammatical or mapping error; or  | 17       |
| (ii)     | an explanatory matter about the instrument; or  | 18       |
| (iii)    | the format or presentation of the instrument; or  | 19       |
| (iv)     | a factual matter incorrectly stated; or   | 20       |
| (v)      | a redundant or outdated term; or  | 21       |
| (vi)     | inconsistent numbering of provisions; or  | 22       |
| (vii)    | a cross-reference in the instrument; or   | 23       |
| (b)      | an amendment that the Minister considers merely reflects—   | 24<br>25 |
| (i)      | a part of another State planning instrument, if the Minister is satisfied adequate public consultation          | 26<br>27 |

[s 10]

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|           | was carried out in relation to the making of that part of the other State planning instrument; or  | 1<br>2               |
|           | (ii) another Act; or   | 3                    |
|           | (c) another minor amendment prescribed by regulation.  | 4                    |
| <b>10</b> | <b>Making temporary State planning policies</b>  | 5                    |
| (1)       | If the Minister considers a State planning policy is urgently required to protect or give effect to a State interest, the Minister may make a State planning policy (a <i>temporary State planning policy</i> ) with temporary effect. | 6<br>7<br>8<br>9     |
| (2)       | A temporary State planning policy may suspend or otherwise affect the operation of, but does not amend or repeal, a State planning instrument.   | 10<br>11<br>12       |
| (3)       | Instead of complying with section 8, the Minister may make a temporary State planning policy by publishing a public notice that states—  | 13<br>14<br>15       |
|           | (a) the name of the temporary State planning policy; and   | 16                   |
|           | (b) if the temporary State planning policy suspends or otherwise affects the operation of another State planning instrument—the name of the other State planning instrument; and   | 17<br>18<br>19<br>20 |
|           | (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  | 21<br>22<br>23       |
|           | (d) where a copy of the temporary State planning policy may be inspected or purchased.   | 24<br>25             |
| (4)       | The temporary State planning policy starts to have effect on—  | 26                   |
|           | (a) the day after the public notice is published; or   | 27                   |
|           | (b) a later day stated in the temporary State planning policy.   | 28                   |
| (5)       | The temporary State planning policy continues to have effect for 2 years or a shorter period stated in the policy.   | 29<br>30             |

[s 11]

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| <b>11</b> | <b>Repealing State planning instruments</b>  | <b>1</b>       |
| (1)       | The Minister may repeal a State planning instrument by—  | 2              |
| (a)       | making another State planning instrument that specifically repeals the instrument; or  | 3<br>4         |
| (b)       | publishing a public notice that states—  | 5              |
| (i)       | the name of the State planning instrument; and   | 6              |
| (ii)      | if the State planning instrument has effect only in a part of the State—the name, or a description, of the part of the State; and  | 7<br>8<br>9    |
| (iii)     | that the State planning instrument is repealed.  | 10             |
| (2)       | The State planning instrument is repealed on—  | 11             |
| (a)       | if the instrument is repealed by another State planning instrument—the day when the other State planning instrument starts to have effect; or                            | 12<br>13<br>14 |
| (b)       | if the instrument is repealed by a public notice—  | 15             |
| (i)       | the day after the public notice is published; or   | 16             |
| (ii)      | a later day stated in the public notice.   | 17             |
| (3)       | The Minister must give a copy of the public notice to each affected local government.  | 18<br>19       |
| <b>12</b> | <b>Advice to Minister about regional plans</b>   | <b>20</b>      |
| (1)       | The Minister may establish a regional planning committee for a region by a gazette notice that states the committee’s name and the membership of the committee.          | 21<br>22<br>23 |
| (2)       | When developing and implementing a regional plan, the Minister must consider the advice of the regional planning committee that the Minister establishes for the region. | 24<br>25<br>26 |

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|-------------------|---|----------------------|
| <b>Part 3</b>     | <b>Local planning instruments</b>   | <b>1</b>             |
| <b>Division 1</b> | <b>Introduction</b>   | <b>2</b>             |
| <b>13</b>         | <b>What this part is about</b>  | <b>3</b>             |
| (1)               | This part sets out—   | 4                    |
| (a)               | the process for making, amending or repealing a local planning instrument; and  | 5<br>6               |
| (b)               | the State’s powers in relation to local planning instruments.   | 7<br>8               |
| (2)               | A local planning instrument, or amendment of a local planning instrument, (the <i>instrument</i> ) that is made substantially in compliance with the process in division 2 is valid, as long as any noncompliance does not— | 9<br>10<br>11<br>12  |
| (a)               | for the making or amending of a planning scheme or TLPI—restrict the Minister’s opportunity to consider whether the instrument would adversely affect State interests; or   | 13<br>14<br>15<br>16 |
| (b)               | if the process provides for public consultation about the instrument—   | 17<br>18             |
| (i)               | restrict the public’s opportunity to properly make submissions about the instrument under that process; or  | 19<br>20<br>21       |
| (ii)              | adversely affect public awareness of the existence and nature of the instrument.  | 22<br>23             |
| <b>14</b>         | <b>Required contents for local planning instruments</b>   | <b>24</b>            |
| (1)               | A regulation may prescribe requirements for the contents (the <i>required contents</i> ) of a local planning instrument.  | 25<br>26             |

[s 15]

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| (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. | 1<br>2<br>3    |
| <b>15</b>         | <b>Minister's rules and guidelines</b>  | 4              |
| (1)               | The Minister must make an instrument that contains—   | 5              |
| (a)               | guidelines setting out the matters that the chief executive must consider when preparing a notice about making or amending planning schemes; and                        | 6<br>7<br>8    |
| (b)               | rules setting out the process for—  | 9              |
| (i)               | making amendments, of a type stated in the rules, to planning schemes; and  | 10<br>11       |
| (ii)              | making or amending planning scheme policies; and  | 12<br>13       |
| (iii)             | making or amending TLPIs.   | 14             |
| (2)               | The Minister's rules and guidelines start to have effect when a regulation applies the rules.   | 15<br>16       |
| <b>Division 2</b> | <b>Making, amending or repealing local planning instruments</b>   | 17<br>18       |
| <b>16</b>         | <b>Making or amending planning schemes</b>  | 19             |
| (1)               | This section applies if a local government proposes to make or amend a planning scheme.   | 20<br>21       |
| (2)               | The local government must give notice of the proposed planning scheme, or proposed amendment, (the <i>instrument</i> ) to the chief executive.                          | 22<br>23<br>24 |
| (3)               | After consulting with the local government, the chief executive—  | 25<br>26       |

- 
- (a) must give a notice about the process for making or amending the planning scheme to the local government; and
    - (b) may give an amended notice about the process for making or amending the planning scheme to the local government.
  - (4) The chief executive must consider the Minister's guidelines made under section 15 when preparing the notice or any amended notice.
  - (5) The notice or amended notice must state—
    - (a) if the proposal is to make a planning scheme—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, after the planning scheme is made or amended, the local government must publish a public notice about making or amending the planning scheme.
  - (6) The chief executive must publish the notice, and any amended notice, on the department's website.
  - (7) The local government must make or amend the planning scheme by following the process stated in the notice or amended notice.
  - (8) The Minister may approve the instrument if satisfied the instrument appropriately integrates State, regional and local planning and development assessment policies, including policies under any applicable State planning instruments.
  - (9) The instrument starts to have effect on—
    - (a) the day after the local government publishes the public notice about making or amending the planning scheme in the gazette; or
    - (b) a later day stated in the instrument.
  - (10) A planning scheme replaces any other planning scheme administered by the local government.
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[s 17]

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| (11)      | A local government may apply a planning scheme as a<br>categorising instrument in relation to prescribed tidal works in<br>the tidal area for its non-port local government area, to the<br>extent prescribed by regulation. | 1<br>2<br>3<br>4 |
| <b>17</b> | <b>Amending planning schemes under Minister's rules</b>  | <b>5</b>         |
| (1)       | This section applies to an amendment of a planning scheme<br>that the Minister's rules made under section 15 apply to.   | 6<br>7           |
| (2)       | Instead of complying with section 16, a local government may<br>amend a planning scheme by following the process in the<br>rules.  | 8<br>9<br>10     |
| (3)       | The rules must provide for the local government to publish a<br>public notice about the making of the amendment.   | 11<br>12         |
| (4)       | The amendment starts to have effect on—  | 13               |
| (a)       | the day after the local government publishes the public<br>notice in the gazette; or   | 14<br>15         |
| (b)       | a later day stated in the amendment.   | 16               |
| <b>18</b> | <b>Making or amending planning scheme policies</b>   | <b>17</b>        |
| (1)       | A local government may make or amend a planning scheme<br>policy by following the process set out in the Minister's rules.   | 18<br>19         |
| (2)       | The rules must provide for the local government to publish a<br>public notice about the making or amendment of a planning<br>scheme policy.  | 20<br>21<br>22   |
| (3)       | The planning scheme policy or amendment starts to have<br>effect on—   | 23<br>24         |
| (a)       | the day after the local government publishes the public<br>notice in the gazette; or   | 25<br>26         |
| (b)       | a later day stated in the policy or amendment.   | 27               |

|           |  |                |
|-----------|--|----------------|
| <b>19</b> | <b>Making or amending TLPIs</b>  | <b>1</b>       |
| (1)       | A local government may make a TLPI if the local government and the Minister are satisfied that—  | 2<br>3         |
| (a)       | there is significant risk of serious adverse cultural, economic, environmental or social conditions happening in the local government area; and                          | 4<br>5<br>6    |
| (b)       | the delay involved in using the process set out in sections 16 to 18 to make or amend another local planning instrument would increase the risk; and                     | 7<br>8<br>9    |
| (c)       | the making of the TLPI would not adversely affect State interests.   | 10<br>11       |
| (2)       | A local government may amend a TLPI if the Minister is satisfied the amendment of the TLPI would not adversely affect State interests.                                   | 12<br>13<br>14 |
| (3)       | A TLPI may suspend or otherwise affect the operation of another local planning instrument, but does not amend or repeal the instrument.                                  | 15<br>16<br>17 |
| (4)       | The local government may make or amend a TLPI only by following the process set out in the Minister's rules.   | 18<br>19       |
| (5)       | The rules must provide for—  | 20             |
| (a)       | the Minister to approve a TLPI or amendment before the TLPI or amendment is made; and  | 21<br>22       |
| (b)       | the local government to publish a public notice about the making of a TLPI or amendment.   | 23<br>24       |
| (6)       | The TLPI or amendment starts to have effect on—  | 25             |
| (a)       | the day after the local government publishes the public notice about the making of a TLPI or amendment in the gazette; or  | 26<br>27<br>28 |
| (b)       | a later day stated in the TLPI or amendment; or  | 29             |
| (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 | 30<br>31<br>32 |

[s 20]

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| meeting resolved to give the TLPI or amendment to the Minister for approval.  | 1<br>2         |
| (7) The TLPI, with or without an amendment, continues to have effect for 2 years or a shorter period stated in the TLPI, unless repealed sooner.                            | 3<br>4<br>5    |
| (8) A TLPI—   | 6              |
| (a) does not create a superseded planning scheme; and   | 7              |
| (b) is not an adverse planning change.  | 8              |
| <b>20 Repealing TLPIs or planning scheme policies</b>   | 9              |
| (1) A local government may repeal a TLPI, or planning scheme policy, (the <i>instrument</i> ) by resolution.  | 10<br>11       |
| (2) However, if the instrument was made by or on the direction of the Minister, the local government must get the Minister’s written approval before making the resolution. | 12<br>13<br>14 |
| (3) As soon as practicable after the local government makes the resolution, the local government must publish a public notice that states—                                  | 15<br>16<br>17 |
| (a) the name of the local government; and   | 18             |
| (b) the name of the instrument that is to be repealed; and  | 19             |
| (c) the day when the resolution was made.   | 20             |
| (4) The instrument is repealed on—  | 21             |
| (a) the day after the local government publishes the public notice in the gazette; or   | 22<br>23       |
| (b) a later day stated in the public notice.  | 24             |
| (5) The local government must give a copy of the public notice to the chief executive.  | 25<br>26       |
| (6) A local government may repeal a TLPI by making or amending a planning scheme that specifically repeals the TLPI.  | 27<br>28<br>29 |

- (7) The TLPI is repealed on the day when the planning scheme or amendment starts to have effect. 1  
2
- (8) The planning scheme policies for a local government area are repealed by making (but not amending) a planning scheme for the local government area. 3  
4  
5
- (9) The planning scheme policy is repealed on the day when the planning scheme starts to have effect. 6  
7

### **Division 3                      State powers for local planning instruments** 8 9

#### **21            Power of Minister to direct action be taken** 10

- (1) This section applies if the Minister considers a local government should take an action in relation to an existing or proposed local planning instrument, or a proposed amendment of a local planning instrument, (the *instrument*)— 11  
12  
13  
14  
15
  - (a) to ensure the instrument is consistent with the required contents; or 16  
17
  - (b) to protect, or give effect to, a State interest. 18
- (2) The Minister must give the local government a notice that states— 19  
20
  - (a) the action that the Minister considers should be taken; 21  
and 22
  - (b) the reasons for taking the action; and 23
  - (c) the reasonable period within which the local government may make submissions to the Minister about the action. 24  
25  
26
- (3) After the Minister considers all submissions made in accordance with the notice, the Minister must decide— 27  
28
  - (a) to direct the local government to take the action mentioned in the notice; or 29  
30

[s 22]

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|           |  |                |
|-----------|--|----------------|
| (b)       | to direct the local government to take other action; or  | 1              |
| (c)       | not to direct the local government to take the action.   | 2              |
| (4)       | The Minister must give the local government an information notice about the decision that states—  | 3<br>4         |
| (a)       | the nature of any action the local government is directed to take; and   | 5<br>6         |
| (b)       | a reasonable period within which the local government must take the action.  | 7<br>8         |
| (5)       | Without limiting subsection (3), the Minister may direct the local government to make, amend or repeal a local planning instrument in accordance with—                             | 9<br>10<br>11  |
| (a)       | a relevant process set out in sections 16 to 20; or  | 12             |
| (b)       | the process set out in the Minister’s notice.  | 13             |
| (6)       | If the local government does not take the action as directed, the Minister may take the action in accordance with the applicable process stated in the Minister’s rules or notice. | 14<br>15<br>16 |
| (7)       | The action taken by the Minister has the same effect as if the local government had taken the action.  | 17<br>18       |
| (8)       | Any expense that the Minister reasonably incurs in taking the action may be recovered from the local government as a debt owing to the State.                                      | 19<br>20<br>21 |
| (9)       | A local government does not incur liability for anything the local government does, or does not do, in complying with a direction by the Minister to remove something from—        | 22<br>23<br>24 |
| (a)       | an existing or proposed local planning instrument; or  | 25             |
| (b)       | a proposed amendment of a local planning instrument.   | 26             |
| <b>22</b> | <b>Power of Minister to take urgent action</b>   | <b>27</b>      |
| (1)       | This section applies if the Minister considers—  | 28             |
| (a)       | an action should be taken for a reason mentioned in section 21(1); and   | 29<br>30       |

- 
- (b) the action must be taken urgently. 1
  - (2) The Minister may give the local government a notice that 2  
states— 3
    - (a) the action that the Minister intends to take; and 4
    - (b) the reasons for taking the action. 5
  - (3) After giving the notice, the Minister may take the action in 6  
accordance with the process stated in the Minister’s rules 7  
without— 8
    - (a) giving a direction to the local government under section 9  
21; or 10
    - (b) consulting with any person before taking the action. 11
  - (4) The action taken by the Minister has the same effect as if the 12  
local government had taken the action. 13
  - (5) Any expense that the Minister reasonably incurs in taking the 14  
action may be recovered from the local government as a debt 15  
owing to the State. 16

## **Part 4                      Superseded planning schemes                      17**

### **Division 1                      Applying superseded planning                      18** **scheme                      19**

- 23                      Request to apply superseded planning scheme                      20**
- (1) This section applies if a person wants a superseded planning 21  
scheme to apply to a proposed development application or 22  
proposed development. 23
  - (2) A *superseded planning scheme* is a planning scheme, 24  
together with any related planning scheme policies, that was 25  
in effect immediately before either or both of the following— 26

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- (a) the planning scheme was amended or replaced; 1
  - (b) any of the planning scheme policies were amended, 2  
replaced or repealed. 3
- (3) A person may, within 1 year after the planning scheme and 4  
related policies become a superseded planning scheme, make 5  
a superseded planning scheme request in relation to the 6  
superseded planning scheme. 7
- (4) A ***superseded planning scheme request*** is a written request to 8  
a local government— 9
  - (a) to accept, assess and decide a development application 10  
(a ***superseded planning scheme application***) under a 11  
superseded planning scheme; or 12
  - (b) to apply a superseded planning scheme to the carrying 13  
out of development that was accepted development 14  
under the superseded planning scheme. 15
- (5) A regulation may prescribe the following in relation to a 16  
superseded planning scheme request— 17
  - (a) that the request must be made in an approved form; 18
  - (b) the information that must be given with the request; 19
  - (c) how the local government may set a fee for considering 20  
the request; 21
  - (d) the period for deciding the request, and how the period 22  
may be extended; 23
  - (e) when and how a local government must notify the 24  
person making the request of the local government’s 25  
decision; 26
  - (f) any other matter related to deciding the request. 27
- (6) The local government must decide whether or not to agree to a 28  
superseded planning scheme request within the period 29  
prescribed by, or extended in accordance with, the regulation. 30

- 
- (7) The local government must, within 5 business days after making the decision, give notice of the decision to the person who made the superseded planning scheme request. 1  
2  
3
  - (8) If, within that period, the local government does not give notice of the decision to the person, the local government is taken to have agreed to the superseded planning scheme request. 4  
5  
6  
7
  - (9) If the local government decides to agree, or is taken to have agreed, to a request under subsection (4)(a)— 8  
9
    - (a) the superseded planning scheme application must be made within 6 months after the local government— 10  
11
      - (i) gives notice of the decision to the person who made the request; or 12  
13
      - (ii) is taken to have agreed to the request; and 14
    - (b) the superseded planning scheme application may be made for prohibited development, despite section 45(2). 15  
16
  - (10) If the local government decides to agree, or is taken to have agreed, to a request under subsection (4)(b)— 17  
18
    - (a) the development may be carried out under the superseded planning scheme; and 19  
20
    - (b) the following apply to the decision as if the decision were a development approval, given by the local government as the assessment manager, that took effect on the day when notice of the decision was given or the local government is taken to have agreed to the request— 21  
22  
23  
24  
25  
26
      - (i) chapter 3, part 6, division 4; 27
      - (ii) schedule 1, section 16. 28
  - (11) Despite section 40(5) and (6), an assessment manager must assess a superseded planning scheme application as if the superseded planning scheme was in effect instead of— 29  
30  
31
    - (a) the planning scheme; and 32
-

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- (b) any related planning scheme policies. 1

**Division 2                      Compensation** 2

**24            When this division applies** 3

- (1) This division applies in relation to an adverse planning change. 4  
5
- (2) An *adverse planning change* is a planning change that reduces the value of an interest in premises. 6  
7
- (3) An adverse planning change includes a planning change (a *public purpose change*) that limits the use of premises to— 8  
9
  - (a) the purpose for which the premises were lawfully being used when the change was made; or 10  
11
  - (b) a public purpose. 12
- (4) However, an adverse planning change does not include a planning change that— 13  
14
  - (a) has the same effect as another statutory instrument, other than a TLPI, for which compensation is not payable; or 15  
16  
17
  - (b) is made to include required contents; or 18
  - (c) includes, removes or changes the infrastructure shown in a planning scheme, including under a designation; or 19  
20
  - (d) is about matters included in an LGIP; or 21
  - (e) is made to substantially reduce a significant risk to persons or property from natural events such as flooding, landslide or bushfire, other than risk that could have been substantially reduced by development conditions imposed before the adverse planning change; or 22  
23  
24  
25  
26  
27
  - (f) is about the relationships between, the location of, or the physical characteristics of, buildings, works or lots, if 28  
29

|           |  |                      |
|-----------|--|----------------------|
|           | the yield achievable is not substantially different from the yield achievable before the change.   | 1<br>2               |
| (5)       | The yield achievable is not substantially different from the yield achievable before the change, in relation to residential building work, if the gross floor area of the residential building—  | 3<br>4<br>5<br>6     |
|           | (a) is not more than 2000m <sup>2</sup> ; and  | 7                    |
|           | (b) is reduced by not more than 15%.   | 8                    |
| (6)       | In this section—   | 9                    |
|           | <b>gross floor area</b> 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—  | 10<br>11<br>12       |
|           | (a) the areas (if any) used for building services, a ground floor public lobby or a public mall in a shopping centre; or   | 13<br>14<br>15       |
|           | (b) the areas associated with the parking, loading and manoeuvring of motor vehicles.  | 16<br>17             |
|           | <b>yield</b> means—  | 18                   |
|           | (a) for buildings and works—the gross floor area, the density of buildings or persons, or the plot ratio, achievable for premises; or  | 19<br>20<br>21       |
|           | (b) for reconfiguring a lot—the number of lots in a given area of land.  | 22<br>23             |
| <b>25</b> | <b>Entitlement to compensation</b>   | 24                   |
| (1)       | This section sets out when a person (an <i>affected owner</i> ) with an interest in premises, at the time an adverse planning change starts to have effect for the premises, is entitled to compensation because of the adverse planning change. | 25<br>26<br>27<br>28 |
| (2)       | An affected owner is entitled to reasonable compensation if the adverse planning change is a public purpose change.  | 29<br>30             |

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

|           |   |          |
|-----------|---|----------|
| <b>26</b> | <b>Deciding compensation claim</b>  | <b>1</b> |
| (1)       | If a claim for compensation is made to the local government, the local government must decide—  | 2        |
|           |   | 3        |
| (a)       | to approve all or part of the claim; or   | 4        |
| (b)       | to refuse the claim; or   | 5        |
| (c)       | if the claim relates to a public purpose change—  | 6        |
|           | (i) to give a notice of intention to resume the affected owner's interest in premises, under the Acquisition Act, section 7; or   | 7        |
|           |   | 8        |
|           |   | 9        |
|           | (ii) in addition to or instead of approving the claim in part or refusing the claim, to amend the planning scheme to enable premises to be used for the purposes that the premises were able to be used for under the superseded planning scheme. | 10       |
|           |   | 11       |
|           |   | 12       |
|           |   | 13       |
|           |   | 14       |
| (2)       | The local government's chief executive officer must, within 70 business days after the claim is made, give the affected owner—  | 15       |
|           |   | 16       |
|           |   | 17       |
| (a)       | if subsection (1)(c)(i) applies—the notice of intention to resume; or   | 18       |
|           |   | 19       |
| (b)       | otherwise—a notice that states—   | 20       |
|           | (i) the local government's decision; and  | 21       |
|           | (ii) if the local government decides to approve all or part of the claim—the amount of compensation to be paid; and   | 22       |
|           |   | 23       |
|           |   | 24       |
|           | (iii) all relevant appeal rights.   | 25       |
| (3)       | If the local government approves all or part of the claim, the local government must pay the approved compensation within 30 business days after—   | 26       |
|           |   | 27       |
|           |   | 28       |
| (a)       | if the decision is not appealed—the appeal period ends; or  | 29       |
|           |   | 30       |
| (b)       | if the decision is appealed—the appeal ends.  | 31       |

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| <b>27</b> | <b>Amount of compensation payable</b>   | <b>1</b>             |
| (1)       | The amount of compensation payable to the affected owner is the difference between the market value of the owner's interest in premises immediately before, and immediately after, the adverse planning change. | 2<br>3<br>4<br>5     |
| (2)       | When deciding the market value immediately after the adverse planning change, the local government must consider—   | 6<br>7<br>8          |
| (a)       | any benefit to the owner's interest in the premises, or in any neighbouring premises, because of the adverse planning change; and   | 9<br>10<br>11        |
|           | <i>Example—</i>   | 12                   |
|           | the likelihood of improved amenity in the locality of the premises  | 13<br>14             |
| (b)       | any benefit to the owner's interest in neighbouring premises because, after the adverse planning change but before the compensation claim was made—   | 15<br>16<br>17       |
| (i)       | another planning change started to have effect; or  | 18                   |
| (ii)      | infrastructure, other than infrastructure that the owner funds, was constructed or improved on the neighbouring premises; and   | 19<br>20<br>21       |
| (c)       | any conditions or other limitations that might reasonably have applied to development of the land under the superseded planning scheme; and   | 22<br>23<br>24       |
| (d)       | for an adverse planning change that was the subject of a superseded planning scheme request—  | 25<br>26             |
| (i)       | the effect of any other planning change that started to have effect after the adverse planning change but before the superseded planning scheme request was made; and   | 27<br>28<br>29<br>30 |
| (ii)      | the effect of any development approval given under section 25(3)(c).  | 31<br>32             |

|               |   |                |
|---------------|---|----------------|
| (3)           | However, the local government must not consider the effect of—  | 1<br>2         |
| (a)           | any TLPI; or  | 3              |
| (b)           | the land being joined with, or separated from, other land.  | 4<br>5         |
| <b>28</b>     | <b>Payment of compensation to be recorded on title</b>  | 6              |
| (1)           | The chief executive officer of the local government must give the registrar of titles notice of the payment of compensation under section 26(3).                          | 7<br>8<br>9    |
| (2)           | The notice must be in the form approved by the registrar.   | 10             |
| (3)           | The registrar must keep the information stated in the notice as information under the Land Title Act, section 34.   | 11<br>12       |
| <b>Part 5</b> | <b>Designation of premises for development of infrastructure</b>  | 13<br>14       |
| <b>29</b>     | <b>What is a designation</b>  | 15             |
| (1)           | A <i>designation</i> is a decision of the Minister that identifies premises for the development of one or more types of infrastructure that are prescribed by regulation. | 16<br>17<br>18 |
| (2)           | A designation may provide for, or include requirements about, the following for the infrastructure—   | 19<br>20       |
| (a)           | works, such as the height, shape, bulk, landscaping, or location of the works;  | 21<br>22       |
| (b)           | the use of premises, such as—   | 23             |
| (i)           | vehicular and pedestrian access to, and circulation on, premises; and   | 24<br>25       |
| (ii)          | operating times for the use; and  | 26             |

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|   |                      |
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| (iii) ancillary uses;   | 1                    |
| (c) lessening the impact of the works or use, such as environmental management procedures.  | 2<br>3               |
| <b>30 Criteria for making or amending designations</b>  | <b>4</b>             |
| (1) To make a designation, the Minister must be satisfied that—   | 5                    |
| (a) either—   | 6                    |
| (i) the infrastructure will satisfy statutory requirements, or budgetary commitments, for the supply of the infrastructure; or  | 7<br>8<br>9          |
| (ii) there is or will be a planning need for the efficient and timely supply of the infrastructure; and   | 10<br>11             |
| (b) adequate environmental assessment has been carried out in relation to the development of the infrastructure; and  | 12<br>13             |
| (c) the environmental assessment was carried out with adequate consultation.  | 14<br>15             |
| (2) To amend a designation, the Minister must be satisfied of the matters in subsection (1)(b) and (c).   | 16<br>17             |
| (3) The Minister is taken to be satisfied of the matters in subsection (1)(b) and (c) if the process set out in the guidelines made by the Minister, and applied by regulation, have been followed. | 18<br>19<br>20<br>21 |
| (4) However, the Minister may be satisfied of those matters in another way.   | 22<br>23             |
| (5) When making or amending a designation, the Minister must consider—  | 24<br>25             |
| (a) all relevant planning instruments; and  | 26                   |
| (b) if the premises are in a State development area under the State Development Act—any approved development scheme for the premises under that Act; and  | 27<br>28<br>29       |
| (c) any properly made submissions made as part of the consultation carried out under subsection (1)(c) or   | 1<br>2               |

|  |    |
|--|----|
| section 31.  | 3  |
| <b>31 Making or amending designation</b>   | 4  |
| (1) This section applies if the Minister proposes—   | 5  |
| (a) to make a designation; or  | 6  |
| (b) to amend a designation, including by amending—   | 7  |
| (i) the area of the premises; or   | 8  |
| (ii) the type of infrastructure.   | 9  |
| (2) The Minister must give notice of the proposal to the following entities (the <i>affected parties</i> )—  | 10 |
| (a) each local government that the Minister considers will be affected by the designation;   | 11 |
| (b) each owner of premises to which the designation will apply.  | 12 |
| (3) However, the Minister need not give the notice to an owner of premises if—   | 13 |
| (a) a 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 | 14 |
| (b) the Minister is unable to notify the owner after making reasonable efforts.  | 15 |
| (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.                | 16 |
| (5) If the Minister decides not to proceed with the proposal, the Minister must give notice of the decision to the affected parties.   | 17 |

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| <b>32</b> | <b>Process after making or amending designation</b>   | 1  |
| (1)       | If, after considering any properly made submissions, the Minister decides to make or amend a designation, the Minister must publish a gazette notice that states— | 2  |
|           |   | 3  |
|           |   | 4  |
|           | (a) that the designation has been made or amended; and  | 5  |
|           | (b) a description of the premises that is designated; and   | 6  |
|           | (c) the type of infrastructure for which the premises is designated; and  | 7  |
|           |   | 8  |
|           | (d) for an amendment—the nature of the amendment.   | 9  |
| (2)       | The Minister must give the following to the affected parties and the chief executive—   | 10 |
|           |   | 11 |
|           | (a) a copy of the notice;   | 12 |
|           | (b) a notice of any requirements included in the designation under section 29(2).   | 13 |
|           |   | 14 |
| (3)       | The designation, or the amendment, starts to have effect on—  | 15 |
|           | (a) the day after the notice is gazetted; or  | 16 |
|           | (b) a later day stated in the notice.   | 17 |
|           | <i>Note—</i>  | 18 |
|           | For the effect of a designation on the categorisation of development, see section 39(6)(b).   | 19 |
|           |   | 20 |
| <b>33</b> | <b>Duration of designation</b>  | 21 |
| (1)       | A designation stops having effect on the day (the <i>end day</i> ) that is 6 years after the designation starts to have effect, unless—                           | 22 |
|           |   | 23 |
|           |   | 24 |
|           | (a) on the end day—   | 25 |
|           | (i) a local government or public sector entity owns, or has an easement for the same purpose as the designation over, the designated premises; or                 | 26 |
|           |   | 27 |
|           |   | 28 |
|           | (ii) another entity owns, or has an easement over, the designated premises and construction of the  | 29 |
|           |   | 30 |

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|           |  |    |
|-----------|--|----|
|           | infrastructure for which the premises were                     | 1  |
|           | designated started before the end day; or                      | 2  |
| (b)       | before the end day—  | 3  |
| (i)       | a local government or public sector entity gave a              | 4  |
|           | notice of intention to resume the designated                   | 5  |
|           | premises under the Acquisition Act, section 7; or              | 6  |
| (ii)      | a local government or public sector entity signed              | 7  |
|           | an agreement to take designated premises under                 | 8  |
|           | the Acquisition Act or to otherwise buy the                    | 9  |
|           | premises; or   | 10 |
| (iii)     | the Minister gave each local government whose                  | 11 |
|           | local government area includes the designated                  | 12 |
|           | premises a notice under subsection (3).                        | 13 |
| (2)       | The Minister may extend the duration of a designation, for up  | 14 |
|           | to 6 years, by publishing a gazette notice about the extension | 15 |
|           | before the designation stops having effect.                    | 16 |
| (3)       | The Minister must give notice of the extension of the          | 17 |
|           | designation to each of the affected parties and the chief      | 18 |
|           | executive.   | 19 |
| (4)       | If a local government or public sector entity discontinues     | 20 |
|           | proceedings to resume designated premises, whether before or   | 21 |
|           | after the end day, the designation stops having effect on the  | 22 |
|           | day when the proceedings are discontinued.                     | 23 |
| <b>34</b> | <b>Repealing designation—Minister</b>                          | 24 |
| (1)       | The Minister may repeal a designation by publishing a gazette  | 25 |
|           | notice that states—  | 26 |
| (a)       | that the designation is repealed; and                          | 27 |
| (b)       | a description of the premises that was designated; and         | 28 |
| (c)       | the type of infrastructure for which the premises was          | 29 |
|           | designated; and  | 30 |
| (d)       | the reasons for the repeal.                                    | 31 |

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| (2)       | The Minister must give a copy of the notice to—   | 1                 |
| (a)       | the affected parties; and   | 2                 |
| (b)       | the chief executive.  | 3                 |
| (3)       | The repeal has effect on the day after the notice is published.   | 4                 |
| (4)       | Any development started under the designation may be completed as if the designation had not been repealed.   | 5<br>6            |
| (5)       | Subject to any requirements under section 29(2), any use of the premises that is the natural and ordinary consequence of the development is taken to be a use in existence immediately before the repeal. | 7<br>8<br>9<br>10 |
| <b>35</b> | <b>Repealing designation—owner’s request</b>  | 11                |
| (1)       | An owner of an interest in designated premises may request the Minister to repeal the designation on the basis that the designation is causing the owner hardship.  | 12<br>13<br>14    |
| (2)       | The request must be in writing and contain any information that the Minister’s guidelines under section 30(3) require.  | 15<br>16          |
| (3)       | The Minister must, within 40 business days after receiving the request—   | 17<br>18          |
| (a)       | repeal the designation, using the process under section 34; or  | 19<br>20          |
| (b)       | decide to refuse the request; or  | 21                |
| (c)       | decide to take other action that the Minister considers appropriate in the circumstances.   | 22<br>23          |
| (4)       | The Minister must, within 5 business days after making a decision under subsection (3)(b) or (c), give the owner an information notice about the decision.  | 24<br>25<br>26    |
| <b>36</b> | <b>Noting designation in planning scheme</b>  | 27                |
| (1)       | If a local government receives a notice about the making, amendment, extension or repeal of a designation, the local  | 28<br>29          |

- 
- government must include a note about the making,  
amendment or repeal in—
- (a) the local government’s planning scheme; and
  - (b) any planning scheme that the local government makes  
before the designation stops having effect.
- (2) The note must—
- (a) identify the premises that was designated; and
  - (b) describe the type of infrastructure for which the  
premises was designated; and
  - (c) state the day when the designation, amendment,  
extension or repeal started to have effect.
- (3) The local government must include the note in the planning  
scheme in a way that ensures the other provisions of the  
scheme that apply to the designated premises remain effective.
- (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 taken to be part of a planning scheme;  
and
  - (c) a designation is not the only way that infrastructure may  
be identified in a planning scheme; and
  - (d) the provisions of a planning scheme that apply to  
designated premises, other than the provision that notes  
the designation, are not affected by the designation even  
after the designation stops having effect.
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**Chapter 3                      Development assessment                      1**

**Part 1                                      Introduction                                      2**

**37                      What this chapter is about                                      3**

- (1) This chapter is about the development assessment system. 4
- (2) Part 2 is about the categories of development and categories of assessment for particular development. 5  
6
- (3) Part 3 is about making and changing development applications. 7  
8
- (4) Part 4 is about assessing and deciding development applications. 9  
10
- (5) Part 5 is about the development assessment rules. 11
- (6) Part 6 establishes rights and responsibilities in relation to development approvals. 12  
13
- (7) Part 7 is about the Minister's powers in relation to the development assessment system. 14  
15
- (8) Part 8 contains miscellaneous provisions. 16

**Part 2                                      Types of development and assessment                                      17  
18**

**38                      Categorising instruments                                      19**

- (1) A *categorising instrument* is a regulation or a local categorising instrument that does any or all of the following— 20  
21
  - (a) categorises development as prohibited, assessable or accepted development; 22  
23

- 
- (b) specifies the type of assessment required for different types of assessable development; 1  
2
  - (c) sets out the matters (the *assessment benchmarks*) that an assessment manager must assess assessable development against; 3  
4  
5
  - (d) sets out the types of development applications for which public notification is required. 6  
7
  - Note—* 8
    - See section 48 for the types of development application for which a categorising instrument may require public notification. 9  
10
  - (2) A *local categorising instrument* is— 11
    - (a) a planning scheme; or 12
    - (b) a TLPI; or 13
    - (c) a variation approval. 14
  - (3) A local categorising instrument— 15
    - (a) may state that development is prohibited development only if a regulation allows the local categorising instrument to do so; and 16  
17  
18
    - (b) may not state that development is assessable development if a regulation prohibits the local categorising instrument from doing so; and 19  
20  
21
    - (c) may not change the effect of a specified assessment benchmark, or a specified part of an assessment benchmark, to the extent a regulation prohibits the local categorising instrument from doing so. 22  
23  
24  
25
  - (4) To the extent of any inconsistency between categorising instruments, a regulation applies instead of a local categorising instrument. 26  
27  
28
  - Note—* 29
    - This subsection operates regardless of when the categorising instruments were made: see section 103. 30  
31
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|           |  |                      |
|-----------|--|----------------------|
| <b>39</b> | <b>Categories of development</b>   | 1                    |
| (1)       | There are 3 categories of development, namely prohibited, assessable or accepted development.  | 2<br>3               |
| (2)       | <i>Prohibited development</i> is development for which a development application may not be made.  | 4<br>5               |
| (3)       | <i>Assessable development</i> is development for which a development approval is required.   | 6<br>7               |
| (4)       | <i>Accepted development</i> is development for which a development approval is not required.   | 8<br>9               |
| (5)       | A categorising instrument may assign a category of development to development.   | 10<br>11             |
| (6)       | However—   | 12                   |
| (a)       | if a categorising instrument does not categorise a particular type of development, the development is accepted development; and  | 13<br>14<br>15       |
| (b)       | development under a designation is—  | 16                   |
| (i)       | to the extent the development is building work that is building assessment work under the Building Act—the category of development stated for the building work under a regulation; or | 17<br>18<br>19<br>20 |
| (ii)      | otherwise—accepted development.  | 21                   |
| <b>40</b> | <b>Categories of assessment</b>  | 22                   |
| (1)       | There are 2 categories of assessment for assessable development, namely standard and merit assessment.   | 23<br>24             |
| (2)       | A categorising instrument states the category of assessment that must be carried out for a type of assessable development.   | 25<br>26             |
| (3)       | A <i>standard assessment</i> is an assessment that must be carried out only—   | 27<br>28             |
| (a)       | against the assessment benchmarks set out in a categorising instrument for the type of assessable development; and   | 29<br>30<br>31       |

- 
- (b) having regard to any matters prescribed by regulation for this paragraph. 1  
2
- (4) A **merit assessment** is an assessment that— 3
- (a) must be carried out— 4
- (i) against the assessment benchmarks set out in a categorising instrument; and 5  
6
- (ii) having regard to any matters prescribed by regulation for this subparagraph; and 7  
8
- (b) may be carried out— 9
- (i) against any matters prescribed by regulation for this subparagraph; and 10  
11
- (ii) having regard to any matter prescribed by regulation for this subparagraph; and 12  
13
- (iii) against or having regard to any other relevant matter. 14  
15
- Examples of other relevant matter—* 16
- a planning need 17
  - the current relevance of the assessment benchmarks in the light of changed circumstances 18  
19
  - whether assessment benchmarks or other prescribed matters were based on material errors 20  
21
- (5) An assessment carried out against a statutory instrument, or another document applied, adopted or incorporated (with or without modification) by a statutory instrument, must be carried out against the statutory instrument or document as in effect when the application was properly made. 22  
23  
24  
25  
26
- (6) However, if the statutory instrument is amended or replaced before the assessment manager decides the application, the assessment manager may give the weight that the assessment manager is satisfied is appropriate, in all the circumstances, to the amendment or replacement. 27  
28  
29  
30  
31
- (7) In this section— 32
-

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|           |  |                      |
|-----------|--|----------------------|
|           | <i>relevant matter</i> does not include—   | 1                    |
|           | (a) any person’s personal circumstances, financial or otherwise; or  | 2<br>3               |
|           | (b) a matter that is the subject of a direction given to the assessment manager under section 21(9).   | 4<br>5               |
| <b>41</b> | <b>Exemption certificate for some assessable development</b>   | 6                    |
| (1)       | A development approval is not required for assessable development on premises if there is an exemption certificate for the development.  | 7<br>8<br>9          |
| (2)       | The following persons may give an exemption certificate—   | 10                   |
|           | (a) for development 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; | 11<br>12<br>13<br>14 |
|           | (b) otherwise—the chief executive.   | 15                   |
| (3)       | The person may give an exemption certificate if—   | 16                   |
|           | (a) for development for which there is a referral agency—each referral agency has agreed in writing to the exemption certificate being given; and  | 17<br>18<br>19       |
|           | (b) any of the following apply—  | 20                   |
|           | (i) the effects of the development would be minor or inconsequential, considering the circumstances under which the development was categorised as assessable development;                       | 21<br>22<br>23<br>24 |
|           | (ii) the development was categorised as assessable development only because of particular circumstances that no longer apply;  | 25<br>26<br>27       |
|           | (iii) the development was categorised as assessable development in error.  | 28<br>29             |
| (4)       | The person must give a copy of the exemption certificate to each owner of an interest in the premises.   | 30<br>31             |

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- (5) The exemption certificate attaches to the premises and benefits each of the owners, the owners' successors in title and any occupiers of the premises. 1  
2  
3
- (6) The exemption certificate has effect for 2 years. 4
- (7) However— 5
  - (a) any development started under the exemption certificate may be completed as if the certificate had not expired; and 6  
7  
8
  - (b) any use that is the natural and ordinary consequence of the development is taken to be a use in existence immediately before the exemption certificate expired; and 9  
10  
11  
12
  - (c) a development approval is not required for reconfiguring a lot that is the subject of the exemption certificate if works for the reconfiguration started before the certificate expires. 13  
14  
15  
16

## **Part 3                      Development applications                      17**

### **Division 1                      Introduction                      18**

#### **42              What this part is about                      19**

This part explains how a person makes a development application to an assessment manager for a development approval to carry out assessable development. 20  
21  
22

#### **43              Who is the *assessment manager*                      23**

- (1) The *assessment manager* is the person responsible for— 24
  - (a) administering a properly made development application; 25  
and 26

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- (b) assessing and deciding part or all of a properly made development application. 1  
2
- (2) Generally, a regulation prescribes who the assessment manager for a development application is. 3  
4
- (3) However, if— 5
  - (a) a regulation prescribes a local government or the chief executive to be the assessment manager in relation to development that requires standard assessment; and 6  
7  
8
  - (b) the local government or chief executive keeps a list of other persons who are appropriately qualified to be an assessment manager for a development application for development for which that person is prescribed to be the assessment manager; and 9  
10  
11  
12  
13
  - (c) the applicant makes a development application for only that development to one of the entities; and 14  
15
  - (d) the person accepts the application; 16  
the person is the *assessment manager* for the application. 17
- (4) As soon as practicable after the person accepts the application, the person must notify the assessment manager prescribed under subsection (2) using the approved form. 18  
19  
20
- (5) A regulation made under subsection (2) may identify the assessment manager for a development application as— 21  
22
  - (a) a person; or 23
  - (b) any person from a class of persons who have stated qualifications or characteristics. 24  
25
- (6) Also, a regulation made under subsection (2) may provide for the Minister either— 26  
27
  - (a) to do the following— 28
    - (i) to choose the assessment manager for a particular type of development application; 29  
30

- 
- (ii) to decide that a person who could also have been the assessment manager is instead to be a referral agency for the application; or
    - (b) to require a development application to be split into 2 or more applications.
  - (7) For an application for development that is tidal works, a local government may exercise an assessment manager's functions despite any limits on the local government's powers under—
    - (a) the City of Brisbane Act, section 11; or
    - (b) the Local Government Act, section 9.
- 44 What is a *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.
  - (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.
  - (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) Subject to section 63(2), a preliminary approval applies instead of a later development permit to the extent of any inconsistency.
  - (5) In this Act, a reference to a development approval—
    - (a) means the development approval as changed from time to time; and
-

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- (b) includes the development conditions imposed on the approval. 1  
2

**Division 2                      Making or changing applications                      3**

**45                      Right to make development applications                      4**

- (1) A person may make a development application, including for a preliminary approval. 5  
6
- (2) However, a development application may not be made for prohibited development. 7  
8
- (3) A development application for a preliminary approval may also include a variation request. 9  
10

**46                      Making development applications                      11**

- (1) A development application must be— 12
  - (a) made in the approved form to the assessment manager; 13  
and 14
  - (b) accompanied by— 15
    - (i) any documents required under the form to be attached to, or given with, the application; and 16  
17
    - (ii) the required fee (if any). 18
- (2) The application must be accompanied by evidence of the consent of the owner of the premises to the application, to the extent— 19  
20  
21
  - (a) the applicant is not the owner; and 22
  - (b) the application is for— 23
    - (i) a material change of use of premises or reconfiguring a lot; or 24  
25

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|           |  |                            |
|-----------|--|----------------------------|
|           | (ii) works on premises below high-water mark and outside a canal as defined under the Coastal Act; and   | 1<br>2<br>3                |
|           | (c) the premises are not excluded premises.  | 4                          |
| (3)       | If, under the Environmental Protection Act, section 115, a development application is taken to be an application for an environmental authority, the development application must comply with section 125(1)(c) to (4) of that Act as if—        | 5<br>6<br>7<br>8           |
|           | (a) a reference to the application were a reference to a development application; and  | 9<br>10                    |
|           | (b) a reference to the applicant were a reference to an applicant for a development application.   | 11<br>12                   |
| (4)       | An assessment manager must accept an application that complies with subsections (1) and (2).   | 13<br>14                   |
| (5)       | However, an assessment manager may accept an application that does not comply with subsections (1) and (2).  | 15<br>16                   |
| (6)       | An application that complies with subsections (1) to (3), or that the assessment manager accepts under subsection (5), is a <i>properly made</i> application.  | 17<br>18<br>19             |
| <b>47</b> | <b>Changing or withdrawing development applications</b>  | 20                         |
| (1)       | An applicant may change or withdraw a development application, before the application is decided, by a notice to—  | 21<br>22                   |
|           | (a) the assessment manager; and  | 23                         |
|           | (b) each referral agency.  | 24                         |
| (2)       | However—   | 25                         |
|           | (a) if the change is, or includes, a change of applicant, the notice may be given to the assessment manager by the person who proposes to become the applicant if the notice is accompanied by the written consent of the current applicant; and | 26<br>27<br>28<br>29<br>30 |

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- (b) section 46(2) applies for making the change as though the change were an application if—
  - (i) the applicant no longer owns the land or the change is to include land that the applicant does not own; and
  - (ii) were the application to be remade with the change, section 46(2) would apply to the application; and
- (c) the change may not include prohibited development.
- (3) If the change is a minor change, the change does not affect the development assessment process.

**48 Public notification requirement**

- (1) This section applies to a development application if—
  - (a) merit assessment is required for the application; and
  - (b) the application includes a variation request.
- (2) A categorising instrument may require an applicant to give notification of the application.
- (3) However, a local categorising instrument must not require notification of an application if a regulation states notification is not required for that type of application.
- (4) The notification must be given in the way set out in the development assessment rules.
- (5) 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.
- (6) If notification is required for a development application—

- 
- |  |              |
|--|--------------|
| (a) any person may make submissions about the application; and   | 1<br>2       |
| (b) any submissions made about the application remain effective even if the notification is carried out again under the development assessment rules.                      | 3<br>4<br>5  |
| (7) This section applies even if a referral agency has directed refusal of all or part of the application.   | 6<br>7       |
| (8) The assessment manager may, at the request of the applicant, carry out the notification for the applicant, for a fee of no more than the reasonable costs of doing so. | 8<br>9<br>10 |

|               |  |          |
|---------------|--|----------|
| <b>Part 4</b> | <b>Assessing and deciding<br/>development applications</b> | 11<br>12 |
|---------------|--|----------|

|                   |                                     |    |
|-------------------|-------------------------------------|----|
| <b>Division 1</b> | <b>Referral agency's assessment</b> | 13 |
|-------------------|-------------------------------------|----|

- |           |   |                |
|-----------|---|----------------|
| <b>49</b> | <b>Copy of application to referral agency</b>   | 14             |
| (1)       | The applicant must, within the period required under the development assessment rules, give a copy of the development application, and the required fee, to each referral agency. | 15<br>16<br>17 |
| (2)       | A <i>referral agency</i> , for a development application, is—   | 18             |
| (a)       | the person prescribed by regulation as a referral agency for applications of that type; or  | 19<br>20       |
| (b)       | if that person's functions have been devolved or delegated to another person—the other person; or   | 21<br>22       |
| (c)       | if the Minister has decided a referral agency under section 43(6)(a)(ii)—the person decided by the Minister.  | 23<br>24       |
| (3)       | However, if a person is the assessment manager for a development application, and would be a referral agency for the application because of subsection (2)(b)—                    | 25<br>26<br>27 |

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- (a) the person is not a referral agency for the application, but the person's functions and powers as assessment manager include those the person would have had as a referral agency; and
  - (b) the person's fee for the development application includes the required fee under subsection (1).
- (4) Despite subsection (1), the applicant need not give a copy of the application to a referral agency if—
  - (a) the applicant gave the assessment manager the referral agency response mentioned in section 52(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 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.
- (5) The assessment manager may, at the request of the applicant, give a copy of the application to a referral agency for the applicant, for a fee of no more than the reasonable costs of doing so.

## **50 Referral agency's assessment**

- (1) A referral agency decided by the Minister under section 43(6)(a)(ii) must assess a development application in accordance with section 56, as if the agency were the assessment manager.
- (2) Any other referral agency—
  - (a) must assess the application—

- 
- (i) against the matters prescribed by regulation for this subparagraph; and 1  
2
  - (ii) having regard to the matters prescribed by regulation for this subparagraph; and 3  
4
  - (b) may assess the application— 5
    - (i) against any matters prescribed by regulation for this subparagraph; and 6  
7
    - (ii) having regard to any matters prescribed by regulation for this subparagraph. 8  
9
  - (3) If the regulation refers to the following instruments— 10
    - (a) a statutory instrument; 11
    - (b) another document applied, adopted or incorporated (with or without modification) by a statutory instrument; 12  
13  
14

the reference is a reference to the instrument as in effect when the application was properly made. 15  
16
  - (4) However, the referral agency may give the weight that the referral agency is satisfied is appropriate, in all the circumstances, to any amendment or replacement of the instrument that came into effect after the application was properly made. 17  
18  
19  
20  
21

## 51 Referral agency response 22

- (1) After assessing the development application, the referral agency must decide— 23  
24
  - (a) to tell the assessment manager that the agency has no requirements for the application; or 25  
26
  - (b) to direct the assessment manager to do any or all of the following— 27  
28
    - (i) to give any development approval subject to stated development conditions; 29  
30

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- (ii) to give any development approval for only a stated part of the development; 1  
2
    - (iii) to give any development approval only as a preliminary approval; 3  
4
    - (iv) to require a stated currency period for any development approval given; or 5  
6
  - (c) to direct the assessment manager to refuse the application. 7  
8
- (2) However, to the extent the application is a variation request, the referral agency must, instead of a decision under subsection (1), decide— 9  
10  
11
  - (a) to tell the assessment manager that the agency has no requirements for the variation request; or 12  
13
  - (b) to direct the assessment manager to do any or all of the following— 14  
15
    - (i) to approve only some of the variations sought; 16
    - (ii) subject to section 57(4)—to approve different variations from those sought; or 17  
18
  - (c) to direct the assessment manager to refuse the variation request. 19  
20
- (3) The referral agency may offer advice to the assessment manager about the application. 21  
22
- (4) The referral agency must give an information notice (a ***referral agency response***) about the referral agency’s decision to— 23  
24  
25
  - (a) the applicant; and 26
  - (b) the assessment manager. 27
- (5) A regulation may limit the powers of a referral agency under this section, for example to the power to give advice only. 28  
29
- (6) A referral agency (a ***referral agency (advice only)***) that only has power to give advice may tell the assessment manager to treat the agency’s response as a properly made submission. 30  
31  
32

|           |  |                            |
|-----------|--|----------------------------|
| <b>52</b> | <b>Response before application</b>   | <b>1</b>                   |
| (1)       | Sections 50 and 51 apply to the extent a response is given before a proposed development application is made, by a person who would, if the application were made, be a referral agency.   | 2<br>3<br>4<br>5           |
| (2)       | However, a reference in section 50 to when the application was properly made is a reference to the day the proposed applicant first gave the person documents in relation to the proposed development application.   | 6<br>7<br>8<br>9           |
| (3)       | If the application—  | 10                         |
| (a)       | is the same or is not substantially different from the proposed application; and   | 11<br>12                   |
| (b)       | is made within the time, if any, stated in the response; the response is, or is part of, the person’s referral agency response for the application.  | 13<br>14<br>15             |
| (4)       | The proposed applicant must, if asked, pay the person the required fee for the referral, even if there is no application.  | 16<br>17                   |
| (5)       | Any fee under section 49(1) for the part of the application relating to a response under this section does not have to be paid again for the application.  | 18<br>19<br>20             |
| <b>53</b> | <b>Effect of no response</b>   | <b>21</b>                  |
| (1)       | If a referral agency does not give a referral agency response under section 51(4) within the period required 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. | 22<br>23<br>24<br>25<br>26 |
| (2)       | However, subsection (1) is subject to any provision of the development assessment rules about—   | 27<br>28                   |
| (a)       | extending the period for giving a response; or   | 29                         |
| (b)       | reviving a development application after a contravention of the development assessment rules.  | 30<br>31                   |

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|                   |  |    |
|-------------------|--|----|
| <b>54</b>         | <b>Changing response</b>   | 1  |
|                   | A referral agency may amend the referral agency response before a development application is decided, if—  | 2  |
|                   | (a) the applicant has agreed in writing to the amendment; or   | 3  |
|                   | (b) the amendment directly relates to a change made to the application in response to—   | 4  |
|                   | (i) an information request made under the development assessment rules; or   | 5  |
|                   | (ii) a matter raised in a properly made submission.  | 6  |
|                   | <i>Note—</i>   | 7  |
|                   | 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 96. | 8  |
|                   |  | 9  |
|                   |  | 10 |
|                   |  | 11 |
|                   |  | 12 |
|                   |  | 13 |
| <b>Division 2</b> | <b>Assessment manager's assessment and decision</b>  | 14 |
|                   |  | 15 |
| <b>55</b>         | <b>What this division is about</b>   | 16 |
|                   | (1) This division is about assessing and deciding properly made development applications, including a variation request.   | 17 |
|                   | (2) A <i>variation request</i> is part of a development application for a preliminary approval that seeks to vary the effect of a local planning instrument.   | 18 |
|                   | (3) An assessment manager must comply with this division even if a referral agency response to the assessment manager is to refuse the application.  | 19 |
|                   |  | 20 |
|                   |  | 21 |
|                   |  | 22 |
|                   |  | 23 |
|                   |  | 24 |
| <b>56</b>         | <b>Assessing and deciding development applications</b>   | 25 |
|                   | (1) This section applies to a properly made development application, other than any part of a development application that is a variation request.   | 26 |
|                   |  | 27 |
|                   |  | 28 |

- (2) To the extent standard assessment is required for development to which the application relates, after carrying out the assessment, the assessment manager—
  - (a) must decide to approve the application to the extent the development complies with the assessment benchmarks for the development; and
  - (b) may impose development conditions on any approval; and
  - (c) may, to the extent the development does not comply with the assessment benchmarks, decide to refuse the application only if compliance can not be achieved by imposing development conditions.
- (3) To the extent merit assessment is required for development to which the application relates, after carrying out the assessment, 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.
- (4) The assessment manager must not assess any part of the application for which, were that part of the application the subject of a separate development application, there would be a different assessment manager.
- (5) An assessment manager may give a preliminary approval to an applicant even though the development application sought a development permit.
- (6) If an assessment manager approves only part of a development application, the rest is taken to be refused.

## **57      Assessing and deciding variation requests**

- (1) This section applies to any part of a properly made development application that is a variation request.

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- (2) When assessing a variation request, the assessment manager must consider—
  - (a) the result of the assessment of that part of the development application that is not the variation request; and
  - (b) the consistency of the variations sought with the rest of the local planning instrument that is sought to be varied; and
  - (c) the effect the variations would have on any submission rights for later development applications, particularly considering the amount and detail of information included in, attached to, or given with the application and available to submitters; and
  - (d) any other matter prescribed by regulation.
- (3) The assessment manager must decide—
  - (a) to approve—
    - (i) all or some of the variations sought; or
    - (ii) different variations from those sought; or
  - (b) to refuse the variations sought.
- (4) A variation approval may state either or both of the following—
  - (a) that the development is accepted, assessable or prohibited development;
  - (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.

|           |   |                  |
|-----------|---|------------------|
| <b>58</b> | <b>Development applications requiring owner's consent</b>   | <b>1</b>         |
|           | If the consent of an owner of premises is required for a development application, the assessment manager may give a development approval only if the applicant has given evidence of the consent to the assessment manager. | 2<br>3<br>4<br>5 |
| <b>59</b> | <b>Complying with referral agency responses</b>   | <b>6</b>         |
|           | (1) An assessment manager's decision under this division must comply with all referral agency responses.  | 7<br>8           |
|           | (2) If a referral agency response requires conditions to be imposed on a development approval, the assessment manager must impose conditions exactly as stated in the response.   | 9<br>10<br>11    |
| <b>60</b> | <b>Notice of decision</b>   | <b>12</b>        |
|           | (1) The assessment manager must give notice (a <i>decision notice</i> ) of the assessment manager's decision to—  | 13<br>14         |
|           | (a) the applicant; and  | 15               |
|           | (b) if the development is in a local government area and the assessment manager is not the local government—the local government; and   | 16<br>17<br>18   |
|           | (c) any principal submitter; and  | 19               |
|           | (d) each referral agency; and   | 20               |
|           | (e) if the assessment manager is a chosen assessment manager—the assessment manager mentioned in section 43(2); and   | 21<br>22<br>23   |
|           | (f) any other person prescribed by regulation.  | 24               |
|           | (2) The notice must state—  | 25               |
|           | (a) if the decision is that the development may be carried out to any extent—the extent to which development is authorised; and   | 26<br>27<br>28   |
|           | (b) if the decision is to give a preliminary approval—the extent to which the development is approved; and  | 29<br>30         |

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- (c) if section 61(5) applies—that the assessment manager is taken to have approved the application under that subsection; and
  - (d) 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
  - (e) 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
  - (f) the name, residential or business address and electronic address of each principal submitter; and
  - (g) all relevant appeal rights.
- (3) The notice must also state, or be accompanied by, all material prescribed by regulation.

## **61 Deemed approval of 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 period or extended period for

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|--|----------------------|
| deciding the application under the development assessment rules.   | 1<br>2               |
| (2) However, this section does not apply to a development application—   | 3<br>4               |
| (a) that includes a variation request; or  | 5                    |
| (b) if a referral agency directs the assessment manager—   | 6                    |
| (i) to give any development approval for only a stated part of the development; or   | 7<br>8               |
| (ii) to refuse the application; or   | 9                    |
| (c) that is a building development application; or   | 10                   |
| (d) for which the owner's consent is required if the requirement has not been complied with; or  | 11<br>12             |
| (e) that is subject to a direction under section 92(1)(b), if the stated period for the application under that section has not ended.  | 13<br>14<br>15       |
| (3) The applicant may, before the application is decided, give the assessment manager a notice (a <i>deemed approval notice</i> ), in the approved form, that states the application should be approved. | 16<br>17<br>18<br>19 |
| (4) The applicant must give a copy of the deemed approval notice to each person mentioned in section 60(1)(b), (d) or (e) for the application.   | 20<br>21<br>22       |
| (5) On the day that the assessment manager receives the deemed approval notice, the assessment manager is taken to have given an approval (a <i>deemed approval</i> ) to the applicant.                  | 23<br>24<br>25       |
| (6) The assessment manager may, within 10 business days after receiving the deemed approval notice, give the applicant a decision notice that—   | 26<br>27<br>28       |
| (a) approves the application; or   | 29                   |
| (b) approves the application subject to conditions.  | 30                   |
| (7) The deemed approval is taken to be—  | 31                   |
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- (a) to the extent a referral agency or the Minister has directed the approval be a preliminary approval—a preliminary approval; or
- (b) otherwise—the type or types of approval applied for.
- (8) The deemed approval is taken to include—
  - (a) any conditions that a referral agency imposes; and
  - (b) any conditions that the Minister directed the assessment manager to impose under section 92(1)(d); and
  - (c) if the assessment manager does not give a decision notice to the applicant under this section—the standard conditions in the development assessment rules.

## **Division 3                      Development conditions                      12**

### **62                      Permitted development conditions                      13**

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

- (ii) other development on the same premises, including development that the development application does not cover, has been substantially started or completed; or

*Note—*

For when development can otherwise start, see section 69.

- (c) require compliance with an infrastructure agreement for the land; or
- (d) require development, or a part of development, to be completed within a stated period; or
- (e) require the payment of security under an agreement under section 64 to support a requirement under paragraph (d).

*Note—*

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

## **63 Prohibited development conditions**

- (1) A development condition must not—
  - (a) require a person other than the applicant to carry out works for the development; or
  - (b) require a person to enter into an infrastructure agreement; or
  - (c) other than under chapter 4, part 2 or 3, require a monetary payment for the establishment, operating or maintenance costs of, 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
  - (d) require an access restriction strip; or
  - (e) limit the period a development approval has effect for a use or works forming part of a network of infrastructure,

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|           |  |                      |
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|           | other than State-owned or State-controlled transport infrastructure; or  | 1<br>2               |
| (f)       | be for water infrastructure about a matter for which the SEQ Water Act requires a water approval.  | 3<br>4               |
|           | <i>Examples for paragraph (f)—</i>   | 5                    |
|           | A development condition that requires—   | 6                    |
|           | • works to be carried out  | 7                    |
|           | • a monetary payment   | 8                    |
|           | • land in fee simple to be given.  | 9                    |
| (2)       | A development condition must not be inconsistent with a development condition of an earlier development approval in effect for the premises, unless—   | 10<br>11<br>12       |
| (a)       | the same person imposes the conditions; and  | 13                   |
| (b)       | the applicant and the owner otherwise agree in writing.  | 14                   |
| (3)       | A development condition that complies with subsection (2) applies instead of the earlier condition.  | 15<br>16             |
|           | <i>Note—</i>   | 17                   |
|           | For other limits on development conditions about environmental offsets, see the Environmental Offsets Act, section 14.   | 18<br>19             |
| <b>64</b> | <b>Agreements about conditions</b>   | 20                   |
|           | The applicant may enter into an agreement with an assessment manager, referral agency or other person to establish the responsibilities, or secure the performance, of a party to the agreement about a condition. | 21<br>22<br>23<br>24 |

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| <b>Part 5</b> | <b>Development assessment rules</b>  | 1  |
| <b>65</b>     | <b>Development assessment rules</b>  | 2  |
| (1)           | The Minister must make rules (the <i>development assessment rules</i> ) for the development assessment process, including—   | 3  |
|               |  | 4  |
| (a)           | how notification is to be carried out for applications for which public notification is required; and  | 5  |
|               |  | 6  |
| (b)           | the consideration of properly made submissions; and  | 7  |
| (c)           | the effect on the development assessment process of the assessment manager taking action under the <i>Native Title Act 1993</i> (Cwlth), part 2, division 3.                       | 8  |
|               |  | 9  |
|               |  | 10 |
| (2)           | Also, the development assessment rules may provide for—  | 11 |
| (a)           | circumstances under which a development application is taken to be properly made for section 46(6); or   | 12 |
|               |  | 13 |
| (b)           | the effect on an application of the expiry of a time limit under, or because of a contravention of, the rules, including, for example, the lapsing of the application; or          | 14 |
|               |  | 15 |
|               |  | 16 |
| (c)           | the revival of lapsed applications; or   | 17 |
| (d)           | the standard conditions for a deemed approval; or  | 18 |
| (e)           | any matter under part 6, divisions 2 to 4.   | 19 |
|               | <i>Examples—</i>   | 20 |
|               | • the effect, for section 47, of different types of change on a development application  | 21 |
|               |  | 22 |
|               | • the period for making referral agency responses, including when the responses may be made late   | 23 |
|               |  | 24 |
|               | • matters to be considered when deciding whether or not a development application, or a change to a development application, would result in a substantially different development | 25 |
|               |  | 26 |
|               |  | 27 |
|               | • matters to be considered when deciding if an action is a material change of use  | 28 |
|               |  | 29 |
|               | • the periods for taking actions under the process   | 30 |
|               | • the effect of not taking the actions within the periods  | 31 |

[s 66]

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|           |   |                |
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| •         | provisions for information requests, and when and how the information can be sought   | 1<br>2         |
| (3)       | The development assessment rules do not have effect unless applied by regulation.   | 3<br>4         |
| (4)       | However, the development assessment rules are not subordinate legislation.  | 5<br>6         |
| <b>66</b> | <b>Amending the rules</b>   | 7              |
| (1)       | The Minister may amend the development assessment rules.  | 8              |
| (2)       | However, the amendment does not have effect until—  | 9              |
| (a)       | the chief executive publishes both the amendment, and the rules as amended, on the department’s website, free of charge; and    | 10<br>11<br>12 |
| (b)       | a regulation applies the amendment.   | 13             |
| (3)       | The regulation must state the day the amendment was published.  | 14<br>15       |
| (4)       | In this section—  | 16             |
|           | <i>amend</i> includes remake.   | 17             |
| <b>67</b> | <b>Access to and evidence of the rules</b>  | 18             |
| (1)       | The chief executive must keep the following on the department’s website, free of charge—  | 19<br>20       |
| (a)       | the development assessment rules, as in effect from time to time;   | 21<br>22       |
| (b)       | endnotes to the development assessment rules that state—  | 23<br>24       |
| (i)       | when all amendments made to the rules took effect; and  | 25<br>26       |
| (ii)      | details of each regulation that applies the rules.  | 27             |
| (2)       | The following provisions apply to the rules as if the rules were Queensland legislation and as if a reference in the provisions | 28<br>29       |

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- to the parliamentary counsel were a reference to the chief executive— 1  
2
  - (a) the *Legislative Standards Act 1992*, section 10A; 3
  - (b) the *Evidence Act 1977*, sections 43(h) and 46A. 4
  - (3) A failure to comply with subsection (1) does not invalidate or 5  
otherwise affect the rules. 6

## **Part 6                      Development approvals                      7**

### **Division 1                      Effect of development approval                      8**

- 68              When development approval has effect                      9**
- (1) This section explains when a development approval given for 10  
a development application starts to have effect. 11
  - (2) If— 12
    - (a) there is no eligible submitter, or eligible referral agency, 13  
for the application; and 14
    - (b) the applicant does not appeal; 15
the approval starts to have effect when the approval is given, 16  
or taken to have been given, to the applicant. 17
  - (3) If— 18
    - (a) there is an eligible submitter, or eligible referral agency, 19  
for the application; and 20
    - (b) the applicant or eligible submitter does not appeal; 21
the approval starts to have effect when the last appeal period 22  
ends. 23
  - (4) If— 24

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|           |   |                      |
|-----------|---|----------------------|
| (a)       | there is an eligible submitter, or eligible referral agency, for the application; and   | 1<br>2               |
| (b)       | each of those entities gives the assessment manager notice that the person will not be appealing; and   | 3<br>4               |
| (c)       | the applicant does not appeal;  | 5                    |
|           | the approval starts to have effect when the last person's notice under paragraph (b) is given.  | 6<br>7               |
| (5)       | If an appeal is started and subject to the outcome of the appeal, the approval starts to have effect when the appeal ends.  | 8<br>9<br>10         |
| (6)       | If the premises are acquisition land and the approval relates to the purpose for which the land or an interest in the land is to be taken or acquired, the approval starts to have effect when the last of the following happens— | 11<br>12<br>13<br>14 |
| (a)       | the land is taken or acquired under the Acquisition Act or the State Development Act;   | 15<br>16             |
| (b)       | the development approval would, but for paragraph (a), have effect.   | 17<br>18             |
| (7)       | A variation approval applies instead of the local planning instrument that the approval varies until whichever of the following happens first—  | 19<br>20<br>21       |
| (a)       | the development is completed;   | 22                   |
| (b)       | the variation approval lapses under section 85(1).  | 23                   |
| <b>69</b> | <b>When development may start</b>   | 24                   |
| (1)       | Development under a development approval may start when—  | 25<br>26             |
| (a)       | all development permits given by assessment managers for the development have started to have effect; and   | 27<br>28             |
| (b)       | all development conditions of the permits that are required to be complied with before development starts have been complied with.  | 29<br>30<br>31       |

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- (2) However, if an appeal is started in relation to a development approval, other than an appeal about a change application or extension application, development must not start until—
  - (a) the appeal ends; or
  - (b) the tribunal or court hearing the appeal allows all or part of the development to start, because the tribunal or court is satisfied the outcome of the appeal would not be affected.

## **70 Attachment to the premises**

- (1) While a development approval is in effect, the approval—
  - (a) attaches to premises, even if—
    - (i) a later development (including reconfiguring a lot) is approved for the premises; or
    - (ii) the premises are reconfigured; and
  - (b) binds the owner, the owner’s successors in title and any occupier of the land.
- (2) However, a development approval does not confer or imply any proprietary rights to—
  - (a) the land; or
  - (b) a resource.

*Note—*

However, see the Coastal Act, section 123 for the right to occupy land that is the subject of a development approval for tidal works under particular circumstances.

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| <b>Division 2</b>    | <b>Changing development approvals</b>  | 1                    |
| <b>Subdivision 1</b> | <b>Changes during appeal period</b>  | 2                    |
| <b>71</b>            | <b>What this subdivision is about</b>  | 3                    |
|                      | This subdivision is about changing a development approval, other than the currency period, before the applicant's appeal period ends.  | 4<br>5<br>6          |
| <b>72</b>            | <b>Making change representations</b>   | 7                    |
| (1)                  | The applicant may make representations ( <i>change representations</i> ) to the assessment manager, during the appeal period, about changing—                                      | 8<br>9<br>10         |
| (a)                  | a matter stated in the development approval, other than—   | 11<br>12             |
| (i)                  | a matter stated because of a referral agency response; or  | 13<br>14             |
| (ii)                 | a development condition imposed under a Ministerial direction; or  | 15<br>16             |
| (b)                  | the standard conditions of a deemed approval.  | 17                   |
| (2)                  | If the applicant needs more time to make the change representations, the applicant may, during the appeal period, suspend the appeal period by a notice to the assessment manager. | 18<br>19<br>20<br>21 |
| (3)                  | Only 1 notice may be given.  | 22                   |
| (4)                  | If a notice is given, the appeal period is suspended—  | 23                   |
| (a)                  | if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or                | 24<br>25<br>26       |

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- (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until the first of the following happens—
    - (i) the applicant withdraws the notice, by giving another notice to the assessment manager;
    - (ii) the applicant receives notice that the assessment manager does not agree with any of the change representations;
    - (iii) the assessment manager gives the applicant a negotiated decision notice;
    - (iv) any period for deciding the representations under the development assessment rules expires.

### **73 Deciding change representations**

- (1) The assessment manager must assess the change representations against and having regard to the matters that must be considered when assessing a development application, to the extent those matters are relevant.
- (2) Within 5 business days after making a decision about the change representations, the assessment manager must give notice of the decision to—
  - (a) the applicant; and
  - (b) if the assessment manager agrees with any of the change representations—
    - (i) each principal submitter; and
    - (ii) each referral agency; and
    - (iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
    - (iv) if the assessment manager was chosen from a list mentioned in section 43(3)—the assessment manager prescribed under section 43(2); and

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|                      |  |                |
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|                      | (v) another person prescribed by regulation.   | 1              |
| (3)                  | A notice (a <i>negotiated decision notice</i> ) that the assessment manager agrees with the change representations must—                           | 2<br>3         |
|                      | (a) state the nature of the changes agreed to; and   | 4              |
|                      | (b) comply with section 60(2) and (3).   | 5              |
| (4)                  | A negotiated decision notice replaces the development approval.  | 6<br>7         |
| (5)                  | Only 1 negotiated decision notice may be given.  | 8              |
| (6)                  | A local government may give a replacement infrastructure charges notice to the applicant.  | 9<br>10        |
| <b>Subdivision 2</b> | <b>Changes after appeal period</b>   | 11             |
| <b>74</b>            | <b>What this subdivision is about</b>  | 12             |
|                      | This subdivision is about changing a development approval, other than the currency period, after the applicant's appeal period ends.               | 13<br>14<br>15 |
| <b>75</b>            | <b>Making change application</b>   | 16             |
| (1)                  | A person may make an application (a <i>change application</i> ) to change a development approval.  | 17<br>18       |
| (2)                  | A change application must be made to the responsible entity.   | 19             |
| (3)                  | The <i>responsible entity</i> is—  | 20             |
|                      | (a) for a change to a development condition imposed under a Ministerial direction or if the development application was called in—the Minister; or | 21<br>22<br>23 |
|                      | (b) for a minor change to a development condition that a referral agency imposes—the referral agency; or   | 24<br>25       |

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- (c) if the development approval was given because of an order of the P&E Court, and there were properly made submissions for the application—the court; or
    - (d) otherwise—the assessment manager.
  - (4) If the P&E Court is the responsible entity, the court must—
    - (a) for a minor change—assess and decide the change application as required under this subdivision; or
    - (b) for any other change—refer the application to the assessment manager for assessment and decision.
  - (5) However, the P&E Court is not otherwise bound by the process under this subdivision.
  - (6) If the Minister is the responsible entity, the Minister must assess and decide the change application under part 7 as if the application had been called in.

## **76 Requirements for change applications**

- (1) A change application must be—
  - (a) made—
    - (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 a minor change—evidence to show the applicant has complied with section 77, including a copy of any pre-request response notice, or response notice, for the application; and
    - (iii) to the extent the application relates to premises for which the applicant is not the owner—evidence of the consent of the owner of the premises to the change application.

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|           |   |                |
|-----------|---|----------------|
| (2)       | However, subsection (1)(b)(iii) does not apply to the extent—   | 1              |
| (a)       | the premises are excluded premises; or  | 2              |
| (b)       | the development approval is for building work for supplying infrastructure on designated premises; or   | 3<br>4         |
| (c)       | the responsible entity is satisfied the change does not materially affect any of the owners' premises and that—   | 5<br>6         |
| (i)       | considering the nature of the change, the owner has unreasonably withheld consent; or   | 7<br>8         |
| (ii)      | because of the number of owners, it is impracticable to get their consent.  | 9<br>10        |
|           | <i>Example of when owners' consent may be impracticable—</i>  | 11             |
|           | Since the development approval was given, the premises have been subdivided and now has many owners.  | 12<br>13       |
| (3)       | The responsible entity must accept an application that complies with subsection (1).  | 14<br>15       |
| (4)       | The responsible entity may accept an application that does not comply with subsection (1).  | 16<br>17       |
| (5)       | If the responsible entity is the Minister because the application was called in and the Minister is satisfied the change does not affect a State interest—  | 18<br>19<br>20 |
| (a)       | the Minister may refer the application to the original assessment manager; and  | 21<br>22       |
| (b)       | the original assessment manager becomes the responsible entity for the application.   | 23<br>24       |
| <b>77</b> | <b>Notifying affected entities of minor change application</b>  | 25             |
| (1)       | Anyone who proposes to make a change application for a minor change must give notice of the proposal and the details of the change to each affected entity. | 26<br>27<br>28 |
| (2)       | An <i>affected entity</i> is any entity that would be any of the following if the change application were actually made—                                    | 29<br>30       |

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- (a) if the responsible entity is the assessment manager—any referral agency for the development application other than the chief executive; 1  
2  
3
  - (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; 4  
5  
6  
7
  - (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; 8  
9  
10  
11
  - (d) another person prescribed by regulation. 12
- (3) The affected entity may give the person who proposes to make the change application a notice (a *pre-request response notice*) that states whether the person objects to the change. 13  
14  
15
- (4) 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 application as soon as practicable after giving the application to the responsible entity. 16  
17  
18  
19  
20
- (5) 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*) that states— 21  
22  
23  
24
  - (a) the person has no objection to the change; or 25
  - (b) the person objects to the change and the reasons for the objection. 26  
27
- (6) 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. 28  
29  
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## **78 Assessing and deciding application for minor changes** 31

- (1) This section applies to a change application for a minor change to a development approval. 32  
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[s 78]

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- (2) When assessing the change application, the responsible entity must consider—
  - (a) the information the applicant included with the application; and
  - (b) if the responsible entity is the assessment manager and submissions were made about the development application—the submissions; and
  - (c) any pre-request response notice or response notice given to the person; and
  - (d) all matters the responsible entity would or may assess against or have regard to, if the change application were a development application; and
  - (e) any other relevant matter, other than a matter that is the subject of a Ministerial direction of a type mentioned in section 21(9), if the direction was given to a local government that is the responsible entity.
- (3) For subsection (2)(d), the person—
  - (a) must assess against, or have regard to, the matters that applied when the development application was made; and
  - (b) may assess against, or have regard to, the matters that applied when the change application was made.
- (4) If the consent of an owner of premises is required for the change application, the responsible entity may decide to make the change only if the applicant has given evidence of the consent to the responsible entity.
- (5) 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.

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- (6) If there is no affected entity, the responsible entity must decide the application within 20 business days after receiving the application. 1  
2  
3
- (7) If there is an affected entity, the responsible entity— 4
  - (a) must not decide the application until the first of the following happens— 5  
6
    - (i) the responsible entity receives a pre-request response notice, or response notice, from each affected entity; 7  
8  
9
    - (ii) the end of the period of 20 business days after the responsible entity received the application; but 10  
11
  - (b) must decide the application within 25 business days after receiving the application. 12  
13
- (8) However, the responsible entity and the applicant may, within the time required under subsection (6) or (7)(b), agree to extend the period. 14  
15  
16

## **79 Assessing and deciding application for other changes** 17

- (1) This section applies to a change application, other than for a minor change to a development approval. 18  
19
- (2) The responsible entity must deal with the change application under sections 40, 47 to 59, and 61 to 64, and the development assessment rules, as if— 20  
21  
22
  - (a) the responsible entity were the assessment manager; and 23
  - (b) the change application was the original development application with the change included, but was made when the change application was made. 24  
25  
26
- (3) However, the requirement for public notification under section 48 does not apply to the change application if the change is not a minor change only because the change may cause— 27  
28  
29
  - (a) a referral to a referral agency if there were no referral agencies for the development application; or 30  
31

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- (b) a referral to additional referral agencies. 1
- (4) The following provisions apply for assessing and deciding the 2  
change application, as if the change were the entire 3  
development— 4
  - (a) sections 50 to 54; 5
  - (b) part 4, other than section 60 and 61; 6
  - (c) the power to impose a development condition under 7  
sections 51(1)(b)(i) or 56 includes a power to amend a 8  
condition of the original development approval. 9

**Subdivision 3 Notice of decision** 10

**80 Notice of decision** 11

- (1) The responsible entity must give an information notice about 12  
the entity's decision on a change application to— 13
  - (a) the applicant; and 14
  - (b) if the responsible entity is not the assessment 15  
manager—the assessment manager; and 16
  - (c) if the responsible entity is a chosen assessment 17  
manger—the assessment manager prescribed under 18  
section 43(2); and 19
  - (d) any referral agency for the application; and 20
  - (e) if the responsible entity is not a local government and 21  
the premises are in a local government area—the local 22  
government whose local government area includes the 23  
land; and 24
  - (f) if the application relates to a development approval 25  
given under a call in and the Minister referred the 26  
application to the original assessment manager—the 27  
Minister; and 28
  - (g) if the approval was given under a court order and the 29  
court was not the responsible entity—the court. 30

[s 81]

- (2) The information notice must state the day when—
  - (a) the change application was made; and
  - (b) the development approval for the development application was decided.
- (3) If the decision is to make the change, the information notice must be accompanied by a copy of the following showing the change, including any additional development conditions—
  - (a) if the responsible entity is a referral agency—the agency’s response for the original development application;
  - (b) otherwise—the development approval.
- (4) If an information notice is given to a court, the court must attach the notice to the court’s file for the court order.
- (5) 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; or
  - (b) if an appeal is made against the decision—the appeal ends.

## **Division 3                      Cancelling development approvals                      20**

### **81                      Cancellation applications                      21**

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

[s 81]

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|  |                |
|--|----------------|
| <i>Examples of paragraph (b)—</i>  | 1              |
| • a development condition about operating hours, traffic management or waste management  | 2<br>3         |
| • a development condition about restoring or rehabilitating the land or a building   | 4<br>5         |
| (c) the responsibilities have not been superseded under another development approval, or authority, under this or another Act. | 6<br>7<br>8    |
| (2) A cancellation application must be made to the assessment manager.   | 9<br>10        |
| (3) The application must be accompanied by—  | 11             |
| (a) the required fee; and  | 12             |
| (b) evidence of the consent of—  | 13             |
| (i) if the applicant is not the owner of the premises—the owner of the premises; and   | 14<br>15       |
| (ii) if there is a written agreement for a person to buy the premises from the owner of the premises—the other person; and     | 16<br>17<br>18 |
| (iii) if the premises are subject to an easement in favour of a public utility—the public utility.                             | 19<br>20       |
| (4) On receiving an application that complies with this section, the assessment manager must—                                  | 21<br>22       |
| (a) cancel the development approval; and   | 23             |
| (b) give notice of the cancellation to—  | 24             |
| (i) the applicant; and   | 25             |
| (ii) each referral agency; and   | 26             |
| (c) release any monetary security for the development approval.  | 27<br>28       |

|                   |  |                |
|-------------------|--|----------------|
| <b>Division 4</b> | <b>Lapsing of and extending development approvals</b>  | 1<br>2         |
| <b>82</b>         | <b>Lapsing of approval at end of currency period</b>   | 3              |
| (1)               | A part of a development approval lapses at the end of the following period (the <i>currency period</i> )—  | 4<br>5         |
| (a)               | for any part of the development approval relating to a material change of use—if the first change of use does not happen within—                   | 6<br>7<br>8    |
| (i)               | the period stated for that part of the approval; or  | 9              |
| (ii)              | if no period is stated—6 years after the approval starts to have effect;   | 10<br>11       |
| (b)               | for any part of the development approval relating to reconfiguring a lot—if a plan of subdivision is not given to the local government within—     | 12<br>13<br>14 |
| (i)               | the period stated for that part of the approval; or  | 15             |
| (ii)              | if no period is stated—4 years after the approval starts to have effect;   | 16<br>17       |
| (c)               | for any other part of the development approval—if the development does not substantially start within—   | 18<br>19       |
| (i)               | the period stated for that part of the approval; or  | 20             |
| (ii)              | if no period is stated—2 years after the approval starts to take effect.   | 21<br>22       |
| (2)               | If part of a development approval lapses, any monetary security given for that part of the approval must be released.                              | 23<br>24       |
| <b>83</b>         | <b>Extension applications</b>  | 25             |
| (1)               | A person may make an application (an <i>extension application</i> ) for any part of a development approval before the part of the approval lapses. | 26<br>27<br>28 |
| (2)               | An extension application must be made to—  | 29             |

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- (a) the assessment manager; or 1
  - (b) for a development application that was called in—the 2  
original assessment manager. 3
- (3) The extension application must be— 4
  - (a) made— 5
    - (i) if the assessment manager has a form for the 6  
application—in the form; or 7
    - (ii) by notice; and 8
  - (b) accompanied by— 9
    - (i) the required fee; and 10
    - (ii) to the extent the application relates to premises for 11  
which the applicant is not the owner—evidence of 12  
the consent of the owner of the premises to the 13  
application. 14
- (4) However, subsection (3)(b)(ii) does not apply to the extent— 15
  - (a) the premises are excluded premises; or 16
  - (b) the development approval is for building work for 17  
supplying infrastructure on designated premises; or 18
  - (c) the assessment manager is satisfied that— 19
    - (i) considering the nature of the application, the owner 20  
has unreasonably withheld consent; or 21
    - (ii) because of the number of owners, it is 22  
impracticable to get their consent. 23

*Example of when owners' consent may be impracticable—* 24

Since the development approval was given, the land has been 25  
subdivided and now has many owners. 26

- (5) The assessment manager must accept an extension application 27  
that complies with subsection (3). 28
- (6) However, the assessment manager may decide to accept an 29  
application that does not comply with subsection (3). 30

|           |   |                      |
|-----------|---|----------------------|
| <b>84</b> | <b>Assessing and deciding extension applications</b>  | <b>1</b>             |
| (1)       | When assessing an extension application, the assessment manager may consider any relevant matter whether or not the matter was relevant to assessing the development application.   | 2<br>3<br>4          |
| (2)       | However, a relevant matter does not include a matter that is the subject of a Ministerial direction of a type mentioned in section 21(9) if the direction was given to a local government that is the assessment manager. | 5<br>6<br>7<br>8     |
| (3)       | The assessment manager must, within 20 business days after receiving the extension application, decide whether to—  | 9<br>10              |
| (a)       | give or refuse the extension sought; or   | 11                   |
| (b)       | extend the currency period for a period that is different from the extension sought.  | 12<br>13             |
| (4)       | The assessment manager and the applicant may agree to extend the 20 business day period.  | 14<br>15             |
| (5)       | If the owner's consent was required for the development application, the assessment manager may give the extension only if evidence of the consent of the owner accompanies the extension application.                    | 16<br>17<br>18<br>19 |
| (6)       | The assessment manager may decide the extension application even if the development approval was given because of an order of the P&E Court.  | 20<br>21<br>22       |
| (7)       | The assessment manager must, within 5 business days after deciding the extension application, give an information notice to—  | 23<br>24<br>25       |
| (a)       | the applicant; and  | 26                   |
| (b)       | any referral agency; and  | 27                   |
| (c)       | if the assessment manager is not a local government and the premises are in a local government area—the local government whose local government area includes the premises; and   | 28<br>29<br>30<br>31 |
| (d)       | if the development approval was given because of an order of the P&E Court—the P&E Court.   | 32<br>33             |

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|-----------|---|----------------------|
| (8)       | If an information notice is given to the P&E Court, the P&E Court must attach the notice to the court's file for the court's order.   | 1<br>2<br>3          |
| (9)       | The development approval lapses—  | 4                    |
| (a)       | if the extension application is approved—at the end of the extended period; or  | 5<br>6               |
| (b)       | if the extension application is refused and the applicant does not appeal—on whichever of the following comes last—   | 7<br>8<br>9          |
| (i)       | the day notice is given under subsection (7);   | 10                   |
| (ii)      | the end of the currency period; or  | 11                   |
| (c)       | if the extension application is refused and the applicant does appeal—on whichever of the following comes last—   | 12<br>13<br>14       |
| (i)       | the day the appeal is dismissed or withdrawn;   | 15                   |
| (ii)      | the end of the currency period; or  | 16                   |
| (d)       | if the extension application is refused, the applicant does appeal, and the appeal is allowed—at the end of the extended period decided by the court.   | 17<br>18<br>19       |
| <b>85</b> | <b>Lapsing of approval for failing to complete development</b>  | <b>20</b>            |
| (1)       | A development approval, other than a variation approval, for development lapses to the extent the development is not completed within the period or periods required under a development condition. | 21<br>22<br>23<br>24 |
| (2)       | A variation approval for development lapses to the extent the development is not completed within—  | 25<br>26             |
| (a)       | if a development condition required the development to be completed within a stated period or periods—the stated period; or   | 27<br>28<br>29       |

- (b) if paragraph (a) does not apply—the period or periods the applicant nominated in the development application; or 1  
2  
3
- (c) if paragraphs (a) and (b) do not apply—5 years after the approval starts to have effect. 4  
5
- (3) However, despite the lapsing of the development approval, any security paid under a condition mentioned in section 62(2)(e) may be used as stated in the approval or agreement under section 64 (to finish the development, for example). 6  
7  
8  
9

## **Division 5                      Noting development approvals on planning scheme** 10 11

### **86              Particular approvals to be noted** 12

- (1) This section applies if a local government— 13
  - (a) gives a development approval and is satisfied the approval is substantially inconsistent with the planning scheme; or 14  
15  
16
  - (b) gives a variation approval; or 17
  - (c) agrees to a superseded planning scheme request for a superseded planning scheme to apply to particular development. 18  
19  
20
- (2) The local government must— 21
  - (a) note the approval or decision on the local government's planning scheme; and 22  
23
  - (b) give notice of the notation, and the premises to which the note relates, to the chief executive. 24  
25
- (3) The note does not amend the planning scheme. 26
- (4) Failure to comply with subsection (2) does not affect the validity of the approval or decision. 27  
28

[s 87]

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| <b>Part 7</b>     | <b>Minister's powers</b>  | 1  |
| <b>Division 1</b> | <b>Introduction</b>   | 2  |
| <b>87</b>         | <b>What this part applies to</b>  | 3  |
|                   | (1) This part applies to the following (an <i>application</i> )—  | 4  |
|                   | (a) a development application;  | 5  |
|                   | (b) change representations;   | 6  |
|                   | (c) a change application;   | 7  |
|                   | (d) an extension application;   | 8  |
|                   | (e) a cancellation application.   | 9  |
|                   | (2) In this part, the <i>decision maker</i> for one of those applications is—   | 10 |
|                   | (a) for a change application—the responsible entity; or   | 11 |
|                   | (b) otherwise—the assessment manager.   | 12 |
| <b>88</b>         | <b>Limit on Minister's powers</b>   | 13 |
|                   | The Minister may exercise a power under this part in relation to a matter only if the matter involves, or is likely to involve, a State interest. | 14 |
| <b>89</b>         | <b>Minister not required to notify, consult or consider particular material</b>   | 15 |
|                   | When exercising a power under this part, the Minister need not—   | 16 |
|                   | (a) give notice to anyone other than under division 2 or 3; or  | 17 |
|                   | (b) consult with anyone; or   | 18 |

[s 90]

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|-----|---|-------------|
| (c) | consider any material given to the Minister by or for any person in relation to the exercise or proposed exercise of the power. | 1<br>2<br>3 |
|-----|---|-------------|

|                   |                              |   |
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| <b>Division 2</b> | <b>Minister's directions</b> | 4 |
|-------------------|------------------------------|---|

|                      |                             |   |
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| <b>Subdivision 1</b> | <b>Directions generally</b> | 5 |
|----------------------|-----------------------------|---|

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|-----------|---|----------|
| <b>90</b> | <b>Directions generally</b>   | 6        |
|           | (1) A direction given by the Minister must state—   | 7        |
|           | (a) the Minister's reasons for the direction; and   | 8        |
|           | (b) the State interest for which the direction is given.  | 9        |
|           | (2) The recipient of the direction must comply with the direction.  | 10       |
|           | (3) The Minister may consider any failure to comply with the direction when exercising another power under this part. | 11<br>12 |

|                      |                                      |    |
|----------------------|--------------------------------------|----|
| <b>Subdivision 2</b> | <b>Directions to decision makers</b> | 13 |
|----------------------|--------------------------------------|----|

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|-----------|--|----------------|
| <b>91</b> | <b>Directions to decision makers—future applications</b>   | 14             |
|           | (1) The Minister may, by gazette notice, direct a decision maker to give copies of all future applications of a specified type to the Minister at a stated time. | 15<br>16<br>17 |
|           | (2) The Minister must give a copy of the direction to each person, other than the chief executive, that the Minister considers is likely to be—                  | 18<br>19<br>20 |
|           | (a) a referral agency in relation to that type of application; and   | 21<br>22       |
|           | (b) if the decision maker is not the assessment manager in relation to that type of application—the assessment manager.  | 23<br>24<br>25 |

[s 92]

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|-----------|--|----------------------|
| <b>92</b> | <b>Directions to decision makers—current applications</b>  | <b>1</b>             |
| (1)       | The Minister may, by gazette notice, direct a decision maker to do any of the following in relation to an undecided application—   | 2<br>3<br>4          |
| (a)       | to exercise one of the decision maker's functions, within a stated reasonable period;  | 5<br>6               |
| (b)       | not to decide the application, within a stated period of at least 20 business days;  | 7<br>8               |
| (c)       | to decide the application, within a stated period of at least 20 business days;  | 9<br>10              |
| (d)       | for a development application for which a deemed approval has not taken effect under section 61—to impose stated development conditions on any development approval given; | 11<br>12<br>13<br>14 |
| (e)       | for change representations or a change application—to impose, or amend, stated development conditions on the development approval.   | 15<br>16<br>17       |
| (2)       | A direction not to decide an application must state that the Minister may, within the stated period, call in the application or give a further direction.                  | 18<br>19<br>20       |
| (3)       | The Minister may not call in the application after the stated period ends.   | 21<br>22             |
| (4)       | The Minister must give a copy of the direction to—   | 23                   |
| (a)       | the applicant; and   | 24                   |
| (b)       | for an application other than change representations—each referral agency other than the chief executive.  | 25<br>26<br>27       |
| (5)       | If a direction not to decide an application is given—  | 28                   |
| (a)       | the process for administering the application stops when the direction is given; and   | 29<br>30             |
| (b)       | the balance of the process restarts on the day after—  | 31                   |
| (i)       | the stated period ends; or   | 32                   |

[s 93]

- (ii) if the Minister calls in the application or gives another direction before the stated period ends—the Minister calls in the application or gives the other direction.

- 93 Report about directions**
- (1) If the Minister gives a direction, the Minister must prepare a report that—
    - (a) states the reasons for the direction; and
    - (b) includes a copy of the direction.
  - (2) The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after giving the direction.

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

- 94 What this subdivision is about**
- This subdivision is about directions the Minister may give to a referral agency for the following applications—
- (a) a development application;
  - (b) a change application other than for a minor change.

- 95 Directions to referral agency**
- (1) The Minister may, before or after the end of the period for a referral agency to assess an application, direct the referral agency—
    - (a) to reissue the referral agency response—
      - (i) if the Minister considers the response directs the imposition of a condition that does not comply with section 62 or 63—without the condition or with another condition; or

[s 96]

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|                   |   |                     |
|-------------------|---|---------------------|
| (ii)              | if the Minister considers the response is not within the referral agency's functions—in a stated way to ensure the response is within the referral agency's functions; or                             | 1<br>2<br>3<br>4    |
| (iii)             | if the Minister considers the referral agency has not adequately assessed the application—in a stated way that the Minister considers reflects an adequate assessment of the application; or          | 5<br>6<br>7<br>8    |
| (b)               | if the Minister considers the referral agency has contravened a period for taking an action under the process for administering the application—to take the action within a stated reasonable period. | 9<br>10<br>11<br>12 |
| (2)               | At the same time as the Minister gives the direction to the referral agency, the Minister must give a copy of the direction to—   | 13<br>14<br>15      |
| (a)               | the applicant; and  | 16                  |
| (b)               | any other referral agency; and  | 17                  |
| (c)               | the decision maker.   | 18                  |
| <b>96</b>         | <b>Effect of direction</b>  | 19                  |
|                   | If the Minister gives a direction to a referral agency, the decision maker must not decide the application until the direction has been complied with.  | 20<br>21<br>22      |
| <b>Division 3</b> | <b>Minister's call in</b>   | 23                  |
| <b>97</b>         | <b>What this division is about</b>  | 24                  |
|                   | This division is about the Minister's power to call in an application.  | 25<br>26            |

## 98 Call in notice

- (1) The Minister may call in an application by a notice (a *call in notice*) to—
  - (a) the decision maker; and
  - (b) the applicant; and
  - (c) any referral agency, other than the chief executive; and
  - (d) any principal submitter; and
  - (e) if there are proceedings relating to the application in the P&E Court—the court.
- (2) The notice must be given—
  - (a) for a cancellation application—any time before the application is cancelled; or
  - (b) for any other application—within 20 business days after whichever of the following happens last—
    - (i) when the chief executive receives notice of an appeal against the decision maker's decision on the application;
    - (ii) the end of any appeal period for the decision on 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 redecide, the application; and
  - (c) for an application other than a cancellation application—the point (the *restarting point*) in the process for administering the application, that the Minister decides, from which the process must restart.
- (4) When deciding the restarting point, the Minister may consider anything the Minister considers relevant.

[s 99]

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|            |   |    |
|------------|---|----|
| <b>99</b>  | <b>Effect of call in notice</b>   | 1  |
| (1)        | When the Minister gives a call in notice to the decision maker—   | 2  |
|            |   | 3  |
| (a)        | any decision by the decision maker is of no effect; and   | 4  |
| (b)        | any appeal against a decision by the decision maker is discontinued.  | 5  |
|            |   | 6  |
| (2)        | The giving of a call in notice does not stop a local government giving or amending an infrastructure charges notice.                  | 7  |
|            |   | 8  |
| <b>100</b> | <b>Deciding called in application</b>   | 9  |
| (1)        | If the Minister gives a call in notice to the decision maker, the Minister may—   | 10 |
|            |   | 11 |
| (a)        | assess and decide all or part of the application instead of the decision maker; or  | 12 |
|            |   | 13 |
| (b)        | if the call in notice is given before the decision maker decides the application—   | 14 |
|            |   | 15 |
| (i)        | direct the decision maker to assess all or part of the application; and   | 16 |
|            |   | 17 |
| (ii)       | decide the application, or part of the application, based on the decision maker's assessment.   | 18 |
|            |   | 19 |
| (2)        | The decision maker must give all reasonable help that the Minister requires to assess or decide the application.                      | 20 |
|            |   | 21 |
|            | <i>Examples—</i>  | 22 |
|            | • giving all material about the application that the original assessment manager had before the call in or receives after the call in | 23 |
|            |   | 24 |
|            | • giving any other material relevant to assessing the application   | 25 |
| (3)        | For an application that is not a cancellation application—  | 26 |
| (a)        | the Minister may consider anything the Minister considers relevant; and   | 27 |
|            |   | 28 |
| (b)        | the following do not apply—   | 29 |

[s 101]

|            |   |                  |
|------------|---|------------------|
| (i)        | for a development application—section 40(3) to (7), sections 56 to 59, to the extent those sections impose obligations on the assessment manager, and section 61; | 1<br>2<br>3<br>4 |
| (ii)       | for change representations—section 73(1);   | 5                |
| (iii)      | for a change application for a minor change—section 78;   | 6<br>7           |
| (iv)       | for a change application for a change that is not a minor change—section 79;  | 8<br>9           |
| (v)        | for an extension application—section 84(1) to (4).  | 10               |
| (4)        | For any application—  | 11               |
| (a)        | the Minister need not consider any referral agency response; and  | 12<br>13         |
| (b)        | the requirements for the content of notices under sections 60, 80(2) and (3), 81(4) and 84(7) apply only to the extent the Minister considers relevant.           | 14<br>15<br>16   |
| (5)        | The notice that the Minister gives about the Minister's decision must state the matters the Minister considered in making the decision.                           | 17<br>18<br>19   |
| (6)        | The Minister must give the notice to each person who was required to be given notice of the call in.  | 20<br>21         |
| <b>101</b> | <b>Report about call ins</b>  | 22               |
| (1)        | If the Minister decides a called in application, the Minister must prepare a report that—   | 23<br>24         |
| (a)        | explains the nature of the decision and the matters the Minister considered in making the decision; and   | 25<br>26         |
| (b)        | includes a copy of the notice of the decision.  | 27               |
| (2)        | The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after giving the notice of the decision.             | 28<br>29<br>30   |

[s 102]

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|               |  |                |
|---------------|--|----------------|
| <b>Part 8</b> | <b>Miscellaneous</b>   | 1              |
| <b>102</b>    | <b>Valid use or preservation covenants</b>   | 2              |
| (1)           | A use or preservation covenant entered into in connection with a development application is of no effect unless the covenant is required under—          | 3<br>4<br>5    |
| (a)           | a development condition; or  | 6              |
| (b)           | an infrastructure agreement.   | 7              |
| (2)           | If—  | 8              |
| (a)           | the requirement for a use or preservation covenant under a development condition or infrastructure agreement is removed; or                              | 9<br>10<br>11  |
| (b)           | the development approval lapses;   | 12             |
|               | the covenantee must register an instrument releasing the covenant.   | 13<br>14       |
| (3)           | If a development condition or infrastructure agreement is changed in a way that affects rights or responsibilities under a use or preservation covenant— | 15<br>16<br>17 |
| (a)           | the covenantee and the covenantor must execute a valid instrument that amends the covenant to reflect the change; and                                    | 18<br>19<br>20 |
| (b)           | the covenantor must register the instrument.   | 21             |
| (4)           | In this section—   | 22             |
|               | <i>use or preservation covenant</i> means a covenant under the Land Act, section 373A(4) or the Land Title Act, section 97A(3)(a) or (b).                | 23<br>24<br>25 |

|            |   |             |
|------------|---|-------------|
| <b>103</b> | <b>Regulation prevails over local categorising instruments whenever made</b>  | 1<br>2      |
| (1)        | This section applies if a provision of this chapter states that a local categorising instrument must not provide for a matter prescribed by regulation. | 3<br>4<br>5 |
| (2)        | The provision applies no matter when the regulation and the local categorising instrument commenced in relation to each other.                          | 6<br>7<br>8 |
| <b>104</b> | <b>Power to refund or waive fees</b>  | 9           |
|            | A person may, but need not, refund or waive all or part of a required fee.  | 10<br>11    |

## Chapter 4            Infrastructure 12

### Part 1                    Introduction 13

|            |   |                |
|------------|---|----------------|
| <b>105</b> | <b>What this chapter is about</b>   | 14             |
| (1)        | Part 2—   | 15             |
| (a)        | authorises local governments to do either or both of the following for development approvals in relation to trunk infrastructure— | 16<br>17<br>18 |
| (i)        | adopt, by resolution, charges for development infrastructure and levy charges in accordance with the resolution;                  | 19<br>20<br>21 |
| (ii)       | impose particular conditions about development infrastructure; and  | 22<br>23       |
| (b)        | authorises local governments, for non-trunk infrastructure, to impose particular conditions about development infrastructure; and | 24<br>25<br>26 |

[s 106]

|                      |   |                |
|----------------------|---|----------------|
| (c)                  | provides for a regulation to govern local government adopted charges and charges by distributor-retailers under the SEQ Water Act for trunk infrastructure. | 1<br>2<br>3    |
| (2)                  | Part 3 authorises State infrastructure providers to impose particular conditions on development approvals about infrastructure.                             | 4<br>5<br>6    |
| (3)                  | Part 4 provides for agreements between public sector entities and others about infrastructure.  | 7<br>8         |
| (4)                  | Part 5 contains a miscellaneous provision.  | 9              |
| <b>Part 2</b>        | <b>Provisions for local governments</b>   | 10<br>11       |
| <b>Division 1</b>    | <b>Preliminary</b>  | 12             |
| <b>106</b>           | <b>Application of pt 2</b>  | 13             |
|                      | This part, other than section 107 and division 5, applies to a local government only if the local government's planning scheme includes an LGIP.            | 14<br>15<br>16 |
| <b>Division 2</b>    | <b>Charges for trunk infrastructure</b>   | 17             |
| <b>Subdivision 1</b> | <b>Power to adopt charges</b>   | 18             |
| <b>107</b>           | <b>Regulation prescribing charges</b>   | 19             |
| (1)                  | A regulation may prescribe a maximum amount for each adopted charge—  | 20<br>21       |

[s 108]

- (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 111(2).
- (5) The regulation may identify a PIA for a local government area.
- (6) Subsection (5) and this subsection stop having effect on 1 July 2016.
- (7) In this section—

*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).

## 108 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.

[s 109]

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- (2) However— 1
  - (a) a charges resolution does not, of itself, levy an 2  
infrastructure charge; and 3
  - (b) the making of a charges resolution is subject to this 4  
subdivision and subdivision 2; and 5
  - (c) an adopted charge must not be for— 6
    - (i) works or use of premises authorised under the 7  
*Greenhouse Gas Storage Act 2009*, the *Mineral* 8  
*Resources Act 1989*, the *Petroleum Act 1923* or the 9  
*Petroleum and Gas (Production and Safety) Act* 10  
*2004*; or 11
    - (ii) development in a priority development area under 12  
the *Economic Development Act 2012*; or 13
    - (iii) development under a designation. 14
- (3) A charges resolution must state the day when an adopted 15  
charge under the resolution is to have effect. 16

**Subdivision 2 Charges resolutions** 17

**109 Contents—general** 18

- (1) An adopted charge may be made if the charge is— 19
  - (a) prescribed by regulation; and 20
  - (b) no more than the maximum adopted charge for 21  
providing trunk infrastructure for development. 22
- (2) There may be different adopted charges for development in 23  
different parts of the local government’s area. 24
- (3) Also, a charges resolution may do the following— 25
  - (a) declare there is no adopted charge for all or part of the 26  
relevant local government area; 27

[s 110]

|            |   |                      |
|------------|---|----------------------|
| (b)        | include a provision (an <i>automatic increase provision</i> ) that provides for automatic increases in levied charges from when they are levied to when they are paid.                            | 1<br>2<br>3          |
| (4)        | However—  | 4                    |
| (a)        | an automatic increase provision must state how increases under the provision are to be worked out; and  | 5<br>6               |
| (b)        | an automatic increase must not be more than the lesser of the following—  | 7<br>8               |
| (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;                                       | 9<br>10<br>11<br>12  |
| (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. | 13<br>14<br>15<br>16 |
| (5)        | In this section—  | 17                   |
|            | <i>3-yearly PPI index average</i> means the PPI index smoothed in accordance with the 3-year moving average quarterly percentage change between quarters.   | 18<br>19<br>20       |
| <b>110</b> | <b>Provisions for participating local governments and distributor-retailers</b>   | 21<br>22             |
| (1)        | This section applies to each of the following entities (the <i>parties</i> )—   | 23<br>24             |
| (a)        | a local government that is a participating local government for a distributor-retailer;   | 25<br>26             |
| (b)        | the distributor-retailer.   | 27                   |
| (2)        | The parties may make an agreement (a <i>breakup agreement</i> ) about the charges breakup.  | 28<br>29             |
| (3)        | A breakup agreement prevails over a charges breakup prescribed by regulation.   | 30<br>31             |

[s 111]

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|            |  |                     |
|------------|--|---------------------|
| (4)        | A charges resolution of the local government must state the charges breakup for all adopted charges under the resolution.  | 1<br>2              |
| (5)        | However, the adopted charges must not be more than the proportion of the maximum adopted charges—  | 3<br>4              |
| (a)        | the local government may have under a breakup agreement to which the local government is a party; or   | 5<br>6              |
| (b)        | if the local government is not a party to a breakup agreement—prescribed by regulation.  | 7<br>8              |
| (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. | 9<br>10<br>11<br>12 |
| (7)        | The breakup agreement does not have effect until the later of the following—   | 13<br>14            |
| (a)        | the local government makes a new charges resolution that reflects the agreement;   | 15<br>16            |
| (b)        | the distributor-retailer adopts a new infrastructure charge schedule that reflects the agreement.  | 17<br>18            |
| <b>111</b> | <b>Working out cost of infrastructure for offset or refund</b>   | 19                  |
| (1)        | For working out an offset or refund under this part, a charges resolution must include a method for working out the cost of the infrastructure the subject of the offset or refund.        | 20<br>21<br>22      |
| (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.  | 23<br>24<br>25      |
| <b>112</b> | <b>Criteria for deciding conversion application</b>  | 26                  |
| (1)        | A charges resolution must include criteria for deciding a conversion application.  | 27<br>28            |

- (2) The criteria must be consistent with parameters for the criteria provided for under a guideline made by the Minister and prescribed by regulation.

### 113 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 the planning scheme that the local government gives to, or publishes for, others.
- Note—*
- A charges resolution is not part of a planning scheme even if the resolution is attached to the scheme.
- (2) The charges under the charges resolution have effect—
- (a) if the charges resolution is uploaded on the relevant local government website before the beginning of the day stated in the resolution as the day for the charges to have effect—on the day stated in the resolution; or
  - (b) otherwise—on the day the charges resolution is uploaded on the website.

## Subdivision 3 Levying charges

### 114 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.
- (2) The local government must give a notice (an *infrastructure charges notice*) to the applicant.
- Note—*

[s 114]

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- For when a local government may give a replacement infrastructure charges notice for a negotiated decision notice, see section 73(6). 1  
2
- (3) The local government must give the infrastructure charges notice— 3  
4
- (a) if the local government is the assessment manager—at 5  
the same time as, or as soon as practicable after, the 6  
development approval is given; or 7
- (b) if the local government is a referral agency—within 10 8  
business days after the local government receives a copy 9  
of the development approval; or 10
- (c) if the development approval is a deemed approval for 11  
which a decision notice has not been given—within 20 12  
business days after the local government receives a copy 13  
of the deemed approval notice; or 14
- (d) if paragraphs (a) to (c) do not apply—within 20 business 15  
days after the local government receives a copy of the 16  
development approval. 17
- (4) Subsection (3) is subject to subsection (8), and any other 18  
provision under which an infrastructure charges notice may be 19  
amended or replaced. 20
- (5) The local government must give an infrastructure charges 21  
notice to the applicant for a change application or extension 22  
application if— 23
- (a) an approval is given for the application; and 24
- (b) subsection (1)(b) did not apply for the development 25  
approval to which the application relates, but applies 26  
because of the change or extension. 27
- (6) If an approval is given for a change application or extension 28  
application related to a development approval for which an 29  
infrastructure charges notice has been given, the local 30  
government may give an amended infrastructure charges 31  
notice to the applicant. 32
- (7) However, an infrastructure charges notice may be given or 33  
amended under subsection (5) or (6) only if the notice or 34

[s 115]

|   |                |
|---|----------------|
| amendment relates to the change to, or extension of, the development approval.  | 1<br>2         |
| (8) The local government must give the infrastructure charges notice or amended infrastructure charges notice under subsection (5) or (6)—                  | 3<br>4<br>5    |
| (a) if the local government is the assessment manager or responsible entity—at the same time as, or as soon as practicable after, the approval is given; or | 6<br>7<br>8    |
| (b) otherwise—within 20 business days after the local government receives a copy of the approval.   | 9<br>10        |
| (9) The amended infrastructure charges notice replaces the infrastructure charges notice.   | 11<br>12       |
| (10) A reference in this Act to an infrastructure charges notice includes a reference to an amended infrastructure charges notice.                          | 13<br>14<br>15 |
| (11) An infrastructure charges notice stops having effect to the extent the development approval stops having effect.                                       | 16<br>17       |
| (12) A charge (a <i>levied charge</i> ) under an infrastructure charges notice—   | 18<br>19       |
| (a) is subject to sections 115 and 126; and   | 20             |
| (b) is payable by the applicant; and  | 21             |
| (c) attaches to the premises; and   | 22             |
| (d) becomes payable as provided for under subdivision 4; and  | 23<br>24       |
| (e) is subject to any agreement under section 118(1).   | 25             |
| <b>115 Limitation of levied charge</b>  | 26             |
| (1) A levied charge may be only for additional demand placed on trunk infrastructure that the development will generate.                                    | 27<br>28       |
| (2) When working out additional demand, the demand on trunk infrastructure generated by the following must not be included—                                 | 29<br>30<br>31 |

[s 115]

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- (a) an existing use on the premises if the use is lawful and already taking place on the premises; 1  
2
  - (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; 3  
4  
5
  - (c) other development on the premises if the development may be lawfully carried out without the need for a further development permit. 6  
7  
8
- (3) However— 9
- (a) 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; and 10  
11  
12  
13
  - (b) the demand generated by development mentioned in subsection (2)(c) may be included if— 14  
15
    - (i) an infrastructure requirement applies to the premises on which the development will be carried out; and 16  
17  
18
    - (ii) the infrastructure requirement was imposed on the basis of development of a lower scale or intensity being carried out on the premises. 19  
20  
21
- (4) In this section— 22
- charges notice*** means— 23
- (a) an infrastructure charges notice; or 24
  - (b) a notice mentioned in section 120(3). 25
- 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. 26  
27  
28  
29

|            |  |    |
|------------|--|----|
| <b>116</b> | <b>Requirements for infrastructure charges notice</b>  | 1  |
| (1)        | An infrastructure charges notice must state all of the following for the levied charge—  | 2  |
| (a)        | the current amount of the charge;  | 3  |
| (b)        | how the charge has been worked out;  | 4  |
| (c)        | the premises;  | 5  |
| (d)        | when the charge will be payable under section 117, without considering any possible operation of section 118;                                    | 6  |
| (e)        | if an automatic increase provision applies—  | 7  |
| (i)        | that the charge is subject to automatic increases; and   | 8  |
| (ii)       | how the increases are worked out under the provision;  | 9  |
| (f)        | whether an offset or refund under this part applies and, if so, information about the offset or refund, including when the refund will be given. | 10 |
| (2)        | The infrastructure charges notice must also include, or be accompanied by, an information notice about the decision to give the notice.          | 11 |
|            |  | 12 |
|            |  | 13 |
|            |  | 14 |
|            |  | 15 |
|            |  | 16 |
|            |  | 17 |
|            |  | 18 |
|            |  | 19 |
|            |  | 20 |

## **Subdivision 4      Payment** 21

|            |   |    |
|------------|---|----|
| <b>117</b> | <b>Payment triggers generally</b>   | 22 |
| (1)        | A levied charge becomes payable—  | 23 |
| (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 | 24 |
|            |   | 25 |
|            |   | 26 |
| (b)        | if the charge applies for building work—when the certificate of classification or final inspection certificate for the building work is given; or           | 27 |
|            |   | 28 |
|            |   | 29 |

[s 118]

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|                      |   |                |
|----------------------|---|----------------|
|                      | (c) if the charge applies for a material change of use—when the change happens; or  | 1<br>2         |
|                      | (d) if the charge applies for other development—on the day stated in the infrastructure charges notice under which the charge was levied.                     | 3<br>4<br>5    |
|                      | (2) This section is subject to section 118.   | 6              |
| <b>118</b>           | <b>Agreements about payment or provision instead of payment</b>   | 7<br>8         |
|                      | (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—          | 9<br>10<br>11  |
|                      | (a) whether the levied charge under the notice may be paid other than as required under section 117 including whether the charge may be paid by instalments;  | 12<br>13<br>14 |
|                      | (b) whether infrastructure may be provided instead of paying all or part of the levied charge.  | 15<br>16       |
|                      | (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. | 17<br>18<br>19 |
| <b>Subdivision 5</b> | <b>Changing charges during relevant appeal period</b>   | 20<br>21       |
| <b>119</b>           | <b>Application of sdiv 5</b>  | 22             |
|                      | This subdivision applies to the recipient of an infrastructure charges notice given by a local government.  | 23<br>24       |
| <b>120</b>           | <b>Representations about infrastructure charges notice</b>  | 25             |
|                      | (1) During the relevant appeal period, the recipient may make representations to the local government about the infrastructure charges notice.                | 26<br>27<br>28 |

[s 121]

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- (2) The local government must consider the representations. 1
  - (3) If the local government agrees with a representation, the local 2  
government must, within 10 business days after making the 3  
decision, give a new infrastructure charges notice (a 4  
*negotiated notice*) to the recipient. 5
  - (4) The local government may give only 1 negotiated notice. 6
  - (5) A negotiated notice— 7
    - (a) must be in the same form as the infrastructure charges 8  
notice; and 9
    - (b) must state the nature of the changes; and 10
    - (c) replaces the infrastructure charges notice. 11
  - (6) If the local government does not agree with any of the 12  
representations, the local government must, within 5 business 13  
days after making the decision, give an information notice 14  
about the decision to the recipient. 15
  - (7) The appeal period for the infrastructure charges notice starts 16  
again when the local government gives the information notice 17  
to the recipient. 18
- 121 Suspension of relevant appeal period 19**
- (1) If the recipient needs more time to make representations, the 20  
recipient may give a notice suspending the relevant appeal 21  
period to the local government. 22
  - (2) The recipient may give only 1 notice. 23
  - (3) If the representations are not made within 20 business days 24  
after the notice is given, the balance of the relevant appeal 25  
period restarts. 26
  - (4) If representations are made within the 20 business days and 27  
the recipient gives the local government a notice withdrawing 28  
the notice, the balance of the relevant appeal period restarts 29  
the day after the local government receives the notice of 30  
withdrawal. 31
-

[s 122]

|                      |   |                      |
|----------------------|---|----------------------|
| <b>Division 3</b>    | <b>Development approval conditions about trunk infrastructure</b>   | 1<br>2               |
| <b>Subdivision 1</b> | <b>Conditions for necessary trunk infrastructure</b>  | 3<br>4               |
| <b>122</b>           | <b>Application and operation of sdiv 1</b>  | 5                    |
| (1)                  | This subdivision applies if trunk infrastructure necessary to service premises (the <i>subject premises</i> ) that is the subject of a development application—                               | 6<br>7<br>8          |
| (a)                  | has not been provided; or   | 9                    |
| (b)                  | has been provided but is inadequate.  | 10                   |
| (2)                  | Sections 123 and 124 provide for the local government to be able to impose particular development conditions (each a <i>necessary infrastructure condition</i> ) on the development approval. | 11<br>12<br>13<br>14 |
|                      | <i>Note—</i>  | 15                   |
|                      | For imposing or amending development conditions in relation to an approval of a change application, see sections 78(5)(a) and 79(4).  | 16<br>17             |
| <b>123</b>           | <b>Necessary infrastructure condition for LGIP-identified infrastructure</b>  | 18<br>19             |
| (1)                  | This section applies if the LGIP identifies adequate trunk infrastructure to service the subject premises.  | 20<br>21             |
| (2)                  | The local government may impose a development condition requiring either or both of the following to be provided at a stated time—  | 22<br>23<br>24       |
| (a)                  | the identified infrastructure;  | 25                   |
| (b)                  | different trunk infrastructure delivering the same desired standard of service.   | 26<br>27             |

|            |   |                           |
|------------|---|---------------------------|
| <b>124</b> | <b>Necessary infrastructure condition for other infrastructure</b>  | 1<br>2                    |
| (1)        | This section applies if the LGIP does not identify adequate trunk infrastructure to service the subject premises.   | 3<br>4                    |
| (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.   | 5<br>6<br>7<br>8          |
| (3)        | However, a local government may impose a condition under subsection (2) only if the development infrastructure services development consistent with the assumptions stated in the LGIP about type, scale, location or timing of future development. | 9<br>10<br>11<br>12<br>13 |
| <b>125</b> | <b>Deemed compliance with relevant or reasonable requirements</b>   | 14<br>15                  |
| (1)        | A necessary infrastructure condition is taken to comply with section 62(1) if—  | 16<br>17                  |
| (a)        | generally, the infrastructure required is—  | 18                        |
| (i)        | necessary to service the subject premises; and  | 19                        |
| (ii)       | the most efficient and cost-effective solution for servicing other premises in the general area of the subject premises; and  | 20<br>21<br>22            |
| (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—  | 23<br>24<br>25<br>26      |
| (i)        | the development; or   | 27                        |
| (ii)       | the use of the subject premises as a consequence of the development.  | 28<br>29                  |
| (2)        | To remove any doubt, it is declared that a necessary infrastructure condition may be imposed for infrastructure   | 30<br>31                  |

[s 126]

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even if the infrastructure will service premises other than the  
subject premises.

**126 Offset or refund requirements**

(1) This section applies if—

(a) trunk infrastructure the subject of a necessary  
infrastructure condition services, or is planned to  
service, premises other than the subject premises; and

(b) an adopted charge applies to the development.

(2) If the cost of the infrastructure required to be provided under  
the condition is equal to or less than the amount worked out  
by applying the adopted charge to the development, the cost  
must be offset against that amount.

*Note—*

For how the cost is worked out, see sections 111 and 134.

(3) If the cost of the infrastructure required to be provided under  
the condition is more than the amount worked out by applying  
the adopted charge to the development—

(a) no amount is payable for the development approval; and

(b) the local government must refund to the applicant the  
difference between the establishment cost of the trunk  
infrastructure and the amount worked out by applying  
the adopted charge to the development.

*Example—*

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

|                      |   |                |
|----------------------|---|----------------|
| <b>Subdivision 2</b> | <b>Conditions for additional trunk infrastructure costs</b>   | 1<br>2         |
| <b>127</b>           | <b>Power to impose</b>  | 3              |
| (1)                  | A local government may impose a development condition (an <i>additional payment condition</i> ) requiring the payment of additional trunk infrastructure costs if—      | 4<br>5<br>6    |
| (a)                  | the development—  | 7              |
| (i)                  | will generate infrastructure demand of more than that required to service the type or scale of future development that the LGIP assumes; or                             | 8<br>9<br>10   |
| (ii)                 | will require new trunk infrastructure earlier than when identified in the LGIP; or  | 11<br>12       |
| (iii)                | is for premises completely or partly outside the PIA; and   | 13<br>14       |
| (b)                  | the development would impose additional trunk infrastructure costs on the local government after taking into account either or both of the following—                   | 15<br>16<br>17 |
| (i)                  | levied charges for the development;   | 18             |
| (ii)                 | trunk infrastructure provided, or to be provided, by the applicant under this part.   | 19<br>20       |
| (2)                  | However, an additional payment condition must not be imposed for a State infrastructure provider.   | 21<br>22       |
| (3)                  | An additional payment condition is taken to be relevant or reasonable to the extent the infrastructure is necessary, but not yet available, to service the development. | 23<br>24<br>25 |
| (4)                  | Subsection (3) applies even if the infrastructure is also intended to service other development.  | 26<br>27       |
| (5)                  | The power to impose an additional payment condition is subject to the rest of this subdivision.   | 28<br>29       |

[s 128]

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|            |   |                      |
|------------|---|----------------------|
| <b>128</b> | <b>Content of additional payment condition</b>  | <b>1</b>             |
| (1)        | An additional payment condition must state—   | 2                    |
| (a)        | why the condition was imposed; and  | 3                    |
| (b)        | the amount of the payment to be made under the condition; and   | 4<br>5               |
| (c)        | details of the trunk infrastructure for which the payment is required; and  | 6<br>7               |
| (d)        | the time (the <i>payment time</i> ) when the amount becomes payable; and  | 8<br>9               |
| (e)        | the applicant may, instead of making the payment, elect to provide all or part of the trunk infrastructure; and   | 10<br>11             |
| (f)        | if the applicant so elects—   | 12                   |
| (i)        | any requirements for providing the trunk infrastructure; and  | 13<br>14             |
| (ii)       | when the trunk infrastructure must be provided.   | 15                   |
| (2)        | Unless the applicant and the local government otherwise agree, the payment time is—   | 16<br>17             |
| (a)        | if the trunk infrastructure is necessary to service the premises—by the day the development, or works associated with the development, starts; or                       | 18<br>19<br>20       |
| (b)        | otherwise—  | 21                   |
| (i)        | if the additional payment condition applies for reconfiguring a lot—when the local government approves the plan of subdivision for the reconfiguration; or              | 22<br>23<br>24<br>25 |
| (ii)       | if the additional payment condition applies for building work—when the certificate of classification or final inspection certificate for the building work is given; or | 26<br>27<br>28<br>29 |
| (iii)      | if the additional payment condition applies for a material change of use—when the change happens.   | 30<br>31             |

[s 129]

|            |   |                            |
|------------|---|----------------------------|
| <b>129</b> | <b>Restriction if development completely in PIA</b>   | <b>1</b>                   |
| (1)        | This section applies to an additional payment condition that a local government imposes for development completely inside the PIA.  | 2<br>3<br>4                |
| (2)        | The additional payment condition may require a payment only as follows—   | 5<br>6                     |
| (a)        | for trunk infrastructure to be provided earlier than planned in the LGIP—the additional establishment cost that the local government incurs to provide the infrastructure earlier than planned;   | 7<br>8<br>9<br>10          |
| (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.                              | 11<br>12<br>13<br>14       |
| <b>130</b> | <b>Other area restrictions</b>  | <b>15</b>                  |
|            | An additional payment condition that a local government imposes for development completely or partly outside the PIA may require the payment of—  | 16<br>17<br>18             |
| (a)        | the establishment cost of infrastructure that is—   | 19                         |
| (i)        | made necessary by the development; and  | 20                         |
| (ii)       | if the relevant local government’s planning scheme indicates the premises is part of an area intended for future development for purposes other than rural or rural residential purposes—necessary to service the rest of the area; and | 21<br>22<br>23<br>24<br>25 |
| (b)        | either or both of the following establishment costs of any temporary infrastructure—  | 26<br>27                   |
| (i)        | costs required to ensure the safe or efficient operation of infrastructure needed to service the development;   | 28<br>29<br>30             |
| (ii)       | costs made necessary by the development; and  | 31                         |

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| (c)        | any decommissioning, removal and rehabilitation costs of the temporary infrastructure; and  | 1<br>2         |
| (d)        | the maintenance and operating costs for up to 5 years of the infrastructure and temporary infrastructure as mentioned in paragraphs (a) and (b).                                    | 3<br>4<br>5    |
| <b>131</b> | <b>Refund if development in PIA</b>   | 6              |
| (1)        | This section applies to an additional payment condition that a local government imposes for development completely inside the PIA.  | 7<br>8<br>9    |
| (2)        | The local government must refund the payer the proportion of the establishment cost of the infrastructure that—   | 10<br>11       |
| (a)        | may be apportioned reasonably to other users of the infrastructure; and   | 12<br>13       |
| (b)        | has been, is, or is to be, the subject of a levied charge by the local government.  | 14<br>15       |
| <b>132</b> | <b>Refund if development approval ceases</b>  | 16             |
| (1)        | This section applies if—  | 17             |
| (a)        | a development approval subject to an additional payment condition no longer has effect; and   | 18<br>19       |
| (b)        | a payment has been made under the condition; and  | 20             |
| (c)        | construction of the infrastructure the subject of the condition has not substantially started before the development approval no longer has effect.                                 | 21<br>22<br>23 |
| (2)        | The local government must refund to the payer any part of the payment the local government has not spent, or contracted to spend, on designing and constructing the infrastructure. | 24<br>25<br>26 |
| (3)        | The timing of the refund is subject to terms agreed between the payer and local government.   | 27<br>28       |

[s 133]

|                      |  |                            |
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| <b>133</b>           | <b>Additional payment condition does not affect other powers</b>   | 1<br>2                     |
|                      | 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—   | 3<br>4<br>5                |
|                      | (a) adopting charges for trunk infrastructure and levying charges;   | 6<br>7                     |
|                      | (b) imposing a condition for non-trunk infrastructure;   | 8                          |
|                      | (c) imposing a necessary infrastructure condition.   | 9                          |
| <b>Subdivision 3</b> | <b>Working out cost for required offset or refunds</b>   | 10<br>11                   |
| <b>134</b>           | <b>Process</b>   | 12                         |
|                      | (1) This section applies if—   | 13                         |
|                      | (a) a development approval requires the applicant to provide trunk infrastructure; and   | 14<br>15                   |
|                      | (b) the local government has given the applicant for the development approval an infrastructure charges notice that includes information about an offset or refund under this part relating to the establishment cost of the trunk infrastructure; and | 16<br>17<br>18<br>19<br>20 |
|                      | (c) the applicant does not agree with the value of the establishment cost.   | 21<br>22                   |
|                      | (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.  | 23<br>24<br>25             |
|                      | (3) A notice under subsection (2) must be given to the local government before the levied charge under the infrastructure charges notice becomes payable under section 117.  | 26<br>27<br>28             |
|                      | (4) By notice to the applicant, the local government must amend the existing infrastructure charges notice.  | 29<br>30                   |

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|                      |  |                |
|----------------------|--|----------------|
| (5)                  | The amended infrastructure charges notice must adopt the method to work out the establishment cost.  | 1<br>2         |
| <b>Division 4</b>    | <b>Miscellaneous provisions about trunk infrastructure</b>   | 3<br>4         |
| <b>Subdivision 1</b> | <b>Conversion of particular non-trunk infrastructure before construction starts</b>  | 5<br>6<br>7    |
| <b>135</b>           | <b>Application of sdiv 1</b>   | 8              |
|                      | This subdivision applies if—   | 9              |
| (a)                  | a particular development condition under section 142 requires non-trunk infrastructure to be provided; and   | 10<br>11       |
| (b)                  | the construction of the non-trunk infrastructure has not started.  | 12<br>13       |
|                      | <i>Note—</i>   | 14             |
|                      | The combined effect of the definitions <i>trunk infrastructure</i> and <i>non-trunk infrastructure</i> is that if infrastructure is not identified in an LGIP the infrastructure is, by default, non-trunk infrastructure. | 15<br>16<br>17 |
| <b>136</b>           | <b>Application to convert infrastructure to trunk infrastructure</b>   | 18<br>19       |
| (1)                  | The applicant for the development approval may apply to convert non-trunk infrastructure to trunk infrastructure.  | 20<br>21       |
| (2)                  | The application (the <i>conversion application</i> ) must be made to the local government, in writing, within 1 year after the development approval starts to have effect.   | 22<br>23<br>24 |

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| <b>137</b> | <b>Deciding conversion application</b>   | 1  |
| (1)        | The local government must consider and decide the conversion application within 30 business days after—  | 2  |
|            | (a) the application is made; or  | 3  |
|            | (b) if an information request is made—the request is complied with.  | 4  |
| (2)        | When deciding the conversion application, the local government must consider the criteria for deciding the application in its charges resolution.  | 5  |
|            |  | 6  |
| (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.   | 7  |
|            |  | 8  |
|            |  | 9  |
| (4)        | The notice must state—   | 10 |
|            | (a) what information the local government requires; and  | 11 |
|            | (b) a period of at least 10 business days for giving the information; and  | 12 |
|            | (c) the effect of subsection (5).  | 13 |
| (5)        | The application lapses if the applicant does not comply with the notice within the later of the following—   | 14 |
|            | (a) the period stated in the notice for giving the information;  | 15 |
|            | (b) any later period, as agreed within the period stated in the notice, between the local government and the applicant.  | 16 |
|            |  | 17 |
|            |  | 18 |
|            |  | 19 |
|            |  | 20 |
|            |  | 21 |
|            |  | 22 |
|            |  | 23 |
| <b>138</b> | <b>Notice of decision</b>  | 24 |
| (1)        | As soon as practicable after deciding the conversion application, the local government must give notice of the decision to the applicant.  | 25 |
|            |  | 26 |
|            |  | 27 |
| (2)        | If the decision is to convert non-trunk infrastructure to trunk infrastructure, the notice must state whether an offset or refund under this part applies and, if it does, information about the offset or refund. | 28 |
|            |  | 29 |
|            |  | 30 |
|            |  | 31 |

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| (3)        | If the decision is not to convert non-trunk infrastructure to trunk infrastructure, the notice must be an information notice about the decision.   | 1<br>2<br>3          |
| <b>139</b> | <b>Effect of and action after conversion</b>   | 4                    |
| (1)        | This section applies if the decision on a conversion application is to convert non-trunk infrastructure to trunk infrastructure.   | 5<br>6<br>7          |
| (2)        | The condition of the relevant development approval requiring the non-trunk infrastructure to be provided no longer has effect.   | 8<br>9<br>10         |
| (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.                | 11<br>12<br>13<br>14 |
| (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 126(2) or (3)(b)— | 15<br>16<br>17<br>18 |
| (a)        | give an infrastructure charges notice;   | 19                   |
| (b)        | amend, by notice to the applicant, any existing infrastructure charges notice for the development approval.  | 20<br>21<br>22       |
| (5)        | For taking action under subsections (3) and (4), divisions 2 and 3 and schedule 1, table 1, item 18 apply as if—   | 23<br>24             |
| (a)        | a development approval were a reference to the conversion; and   | 25<br>26             |
| (b)        | a levied charge were a reference to the amendment of a levied charge.  | 27<br>28             |

|                      |  |                |
|----------------------|--|----------------|
| <b>Subdivision 2</b> | <b>Other provisions</b>  | 1              |
| <b>140</b>           | <b>Financial provisions</b>  | 2              |
| (1)                  | A levied charge paid to a local government must be used to provide trunk infrastructure.   | 3<br>4         |
| (2)                  | To remove any doubt, it is declared that the amount paid need not be held in trust by the local government.                                | 5<br>6         |
| <b>141</b>           | <b>Levied charge taken to be rates</b>   | 7              |
| (1)                  | A levied charge is, for the purpose of its recovery, taken to be rates of the local government that levied the charge.                     | 8<br>9         |
| (2)                  | However, subsection (1) is subject to any agreement between the local government and the applicant.  | 10<br>11       |
| <b>Division 5</b>    | <b>Non-trunk infrastructure</b>  | 12             |
| <b>142</b>           | <b>Conditions local governments may impose</b>   | 13             |
|                      | A development condition that a local government imposes about non-trunk infrastructure—  | 14<br>15       |
| (a)                  | may be about providing development infrastructure for 1 or more of the following—  | 16<br>17       |
| (i)                  | a network, or part of a network, internal to the premises;   | 18<br>19       |
| (ii)                 | connecting the premises to external infrastructure networks;   | 20<br>21       |
| (iii)                | protecting or maintaining the safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component; and | 22<br>23<br>24 |
|                      | <i>Example for subparagraph (iii)—</i>   | 25             |

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- A condition may require that works near existing transport infrastructure must not adversely affect the infrastructure's integrity. 1  
2  
3
- (b) must state the infrastructure to be provided and when the infrastructure must be provided. 4  
5

**Part 3** **Provisions for State infrastructure providers** 6  
7

**143 Power to impose conditions about infrastructure** 8

- (1) A State infrastructure provider may impose a development condition (a *State-related condition*) on a development approval about— 9  
10  
11
    - (a) infrastructure; and 12
    - (b) works to protect or maintain infrastructure operation. 13
  - (2) However, a State-related condition may only be about protecting or maintaining the safety or efficiency of— 14  
15
    - (a) existing or proposed State-owned or State-controlled transport infrastructure; or 16  
17
    - (b) public passenger transport or public passenger transport infrastructure (whether or not State-owned or State-controlled); or 18  
19  
20
    - (c) the safety or efficiency of railways, ports or airports under the Transport Infrastructure Act; or 21  
22
    - (d) if the State infrastructure provider is the chief executive—a matter mentioned in paragraph (a), (b) or (c) for another State infrastructure provider. 23  
24  
25
- Examples of infrastructure that might be required under a State-related condition—* 26  
27

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| • 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  | 1<br>2<br>3          |
| • upgraded traffic control devices at a level crossing in response to increased traffic  | 4<br>5               |
| • drainage or retaining structures that are to protect transport infrastructure from changed hydraulics or excavation next to State-owned or State-controlled transport infrastructure   | 6<br>7<br>8          |
| (3) In this section—   | 9                    |
| <i>public passenger transport</i> means the carriage of passengers by a public passenger service as defined under the <i>Transport Operations (Passenger Transport) Act 1994</i> using a public passenger vehicle as defined under that Act. | 10<br>11<br>12<br>13 |
| <i>public passenger transport infrastructure</i> means infrastructure for, or associated with, the provision of public passenger transport.  | 14<br>15<br>16       |
| <i>safety or efficiency</i> , of infrastructure, means—  | 17                   |
| (a) the safety of any users of the infrastructure and of others the infrastructure affects; or   | 18<br>19             |
| (b) the efficiency of the use of the infrastructure.   | 20                   |
| <b>144 Content of State-related condition</b>  | 21                   |
| A State-related condition must state—  | 22                   |
| (a) the infrastructure or works to be provided, or the contribution to be made, under the condition; and   | 23<br>24             |
| (b) when the provision or contribution must take place.  | 25                   |
| <b>145 Refund if State-related condition ceases</b>  | 26                   |
| (1) This section applies if—   | 27                   |
| (a) a State infrastructure provider imposed a State-related condition on a development approval; and   | 28<br>29             |
| (b) a payment has been made under the condition; and   | 30                   |

[s 146]

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|            |  |                       |
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|            | (c) the development approval stops having effect; and  | 1                     |
|            | (d) construction of the infrastructure the subject of the condition had not substantially started before the cessation.  | 2<br>3<br>4           |
|            | (2) The public sector entity responsible for providing the infrastructure must refund to the payer any part of the payment not spent, or contracted to be spent, on designing or constructing the infrastructure before being told of the cessation. | 5<br>6<br>7<br>8<br>9 |
| <b>146</b> | <b>Reimbursement by local government for replacement infrastructure</b>  | 10<br>11              |
|            | (1) This section applies if infrastructure provided under a State-related condition—   | 12<br>13              |
|            | (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   | 14<br>15<br>16        |
|            | (b) provides the same desired standard of service as the replaced infrastructure.  | 17<br>18              |
|            | (2) The local government must—   | 19                    |
|            | (a) pay the amount of the levied charge, when paid to local government, to the State infrastructure provider that imposed the condition to—  | 20<br>21<br>22        |
|            | (i) provide the replacement infrastructure; or   | 23                    |
|            | (ii) reimburse a person who provided the replacement infrastructure; and   | 24<br>25              |
|            | (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.   | 26<br>27<br>28        |

|               |   |                      |
|---------------|---|----------------------|
| <b>Part 4</b> | <b>Infrastructure agreements</b>  | 1                    |
| <b>147</b>    | <b>Infrastructure agreement</b>   | 2                    |
|               | An <i>infrastructure agreement</i> is an agreement, as amended from time to time, mentioned in any of the following—  | 3<br>4               |
|               | (a) section 64, to the extent the agreement is about a condition for paying for, or providing, infrastructure;  | 5<br>6               |
|               | (b) section 118;  | 7                    |
|               | (c) section 128(2);   | 8                    |
|               | (d) section 132(3);   | 9                    |
|               | (e) section 141(2);   | 10                   |
|               | (f) section 146(2);   | 11                   |
|               | (g) section 155.  | 12                   |
| <b>148</b>    | <b>Obligation to negotiate in good faith</b>  | 13                   |
|               | (1) This section applies if—  | 14                   |
|               | (a) a public sector entity proposes to another entity that they enter into an infrastructure agreement; or  | 15<br>16             |
|               | (b) another entity proposes to a public sector entity that they enter into an infrastructure agreement.   | 17<br>18             |
|               | (2) The person (the <i>recipient</i> ) to whom the proposal is made must, in writing, tell the person making the proposal if the recipient agrees to entering into negotiation for an infrastructure agreement. | 19<br>20<br>21<br>22 |
|               | <i>Examples of actions that subsection (2) requires—</i>  | 23                   |
|               | • disclosing to the other party to the negotiation in a timely way information relevant to entering into the proposed agreement   | 24<br>25             |
|               | • considering and responding in a timely way to the other party's proposals about the proposed agreement  | 26<br>27             |
|               | • giving reasons for each response  | 28                   |

[s 149]

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| (3)        | When negotiating an infrastructure agreement, the entities must act in good faith.  | 1<br>2                |
| <b>149</b> | <b>Content of infrastructure agreement</b>  | 3                     |
| (1)        | An infrastructure agreement must—   | 4                     |
| (a)        | if responsibilities under the agreement would be affected by a change in the ownership of premises the subject of the agreement—include a statement about how the responsibilities must be fulfilled in that event; and | 5<br>6<br>7<br>8<br>9 |
| (b)        | if the fulfilment of responsibilities 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—                | 10<br>11<br>12<br>13  |
| (i)        | refunding or reimbursing amounts paid under the agreement;  | 14<br>15              |
| (ii)       | changing or cancelling the responsibilities if the development entitlements are changed without the obligee’s consent; and  | 16<br>17<br>18        |
| (c)        | include any other matter required by regulation to be included.   | 19<br>20              |
| (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.                               | 21<br>22<br>23<br>24  |
| <b>150</b> | <b>Copy of infrastructure agreement to be given to local government</b>   | 25<br>26              |
| (1)        | This section applies if—  | 27                    |
| (a)        | a distributor-retailer or a public sector entity other than a local government is a party to an infrastructure agreement; and   | 28<br>29<br>30        |

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|            | (b) the local government for the area to which the agreement applies is not a party to the agreement.  | 1<br>2         |
|            | (2) The distributor-retailer or public sector entity must give a copy of the agreement to the local government.  | 3<br>4         |
| <b>151</b> | <b>Copy of particular infrastructure agreements to be given to distributor-retailers</b>   | 5<br>6         |
|            | (1) This section applies if—   | 7              |
|            | (a) a participating local government for a distributor-retailer is a party to an infrastructure agreement; and   | 8<br>9         |
|            | (b) the distributor-retailer is not a party to the infrastructure agreement; and   | 10<br>11       |
|            | (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.           | 12<br>13<br>14 |
|            | (2) The local government must give a copy of the agreement to the distributor-retailer.  | 15<br>16       |
| <b>152</b> | <b>When infrastructure agreement binds successors in title</b>   | 17             |
|            | (1) This section applies if the owner of premises to which an infrastructure agreement applies—  | 18<br>19       |
|            | (a) is a party to the agreement; or  | 20             |
|            | (b) consents to the responsibilities under the agreement being attached to the premises.   | 21<br>22       |
|            | (2) However, subsection (1) does not apply to any responsibilities that are to be fulfilled by a public sector entity.                                     | 23<br>24       |
|            | (3) The responsibilities under the infrastructure agreement attach to the premises and bind the owner of the premises and the owner's successors in title. | 25<br>26<br>27 |
|            | (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                              | 28<br>29       |

[s 153]

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|------------|---|----------------------|
|            | document evidencing the owner's consent to the local government for the premises to which the consent applies.  | 1<br>2               |
| (5)        | Despite subsection (3), subsections (6) and (7) apply if—   | 3                    |
| (a)        | the infrastructure agreement states that if the premises are subdivided, part of the premises is to be released from the responsibilities; and  | 4<br>5<br>6          |
| (b)        | the premises are subdivided.  | 7                    |
| (6)        | The part is released from the responsibilities.   | 8                    |
| (7)        | The responsibilities are no longer binding on the owner of the part.  | 9<br>10              |
| <b>153</b> | <b>Exercise of discretion unaffected by infrastructure agreement</b>  | 11<br>12             |
|            | 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. | 13<br>14<br>15<br>16 |
| <b>154</b> | <b>Infrastructure agreement prevails over approval and charges notice</b>   | 17<br>18             |
| (1)        | An infrastructure agreement prevails to the extent of any inconsistency with—   | 19<br>20             |
| (a)        | a development approval; or  | 21                   |
| (b)        | an infrastructure charges notice; or  | 22                   |
| (c)        | a notice mentioned in section 120(3).   | 23                   |
| (2)        | However, if a State infrastructure provider (other than the chief executive) is a party to the infrastructure agreement, subsection (1) applies if the chief executive approves the agreement.  | 24<br>25<br>26<br>27 |
| (3)        | The approval of the agreement must be given by notice to all parties to the agreement.  | 28<br>29             |



**Chapter 5                      Offences and enforcement** 1

**Part 1                              Introduction** 2

**157      What this chapter is about** 3

- (1) This chapter is about offences against this Act, including 4  
development offences, and ways to prevent or remedy the 5  
effect of those offences. 6
- (2) Part 2 creates development offences. 7
- (3) Part 3 is about notices from an enforcement authority 8  
requiring a person to refrain from committing a development 9  
offence, or to remedy the effect of a development offence. 10
- (4) Part 4 is about proceedings in a Magistrates Court for 11  
development offences and other offences against this Act. 12
- (5) Part 5 is about orders made by the P&E Court requiring a 13  
person not to commit a development offence, or to remedy the 14  
effect of a development offence. 15
- (6) Part 6 contains miscellaneous provisions about offences and 16  
enforcement. 17

**Part 2                              Development offences** 18

**158      What this part is about** 19

This part creates offences (each a *development offence*), 20  
subject to any exemption under this part or chapter 7, part 1. 21

**159      Carrying out prohibited development** 22

A person must not carry out prohibited development, unless— 23

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|            |  |                  |
|------------|--|------------------|
| (a)        | the development is carried out under a development approval given for a superseded planning scheme application; or   | 1<br>2<br>3      |
| (b)        | the local government for the area in which the development is carried out has agreed, or is taken to have agreed, to a request under section 23(4)(b) for the development. | 4<br>5<br>6<br>7 |
|            | Maximum penalty—4500 penalty units.  | 8                |
| <b>160</b> | <b>Carrying out assessable development without permit</b>  | 9                |
| (1)        | A person must not carry out assessable development, unless all necessary development permits are in effect for the development.  | 10<br>11<br>12   |
|            | Maximum penalty—   | 13               |
| (a)        | if the assessable development is on a Queensland heritage place or local heritage place—17,000 penalty units; or   | 14<br>15<br>16   |
| (b)        | otherwise—4500 penalty units.  | 17               |
| (2)        | However, subsection (1) does not apply to development carried out under section 85(3).   | 18<br>19         |
| <b>161</b> | <b>Compliance with development approval</b>  | 20               |
|            | A person must not contravene a development approval.   | 21               |
|            | Maximum penalty—4500 penalty units.  | 22               |
| <b>162</b> | <b>Unlawful use of premises</b>  | 23               |
|            | A person must not use premises unless the use—   | 24               |
| (a)        | is a lawful use; or  | 25               |
| (b)        | for designated premises—complies with any requirements about the use of the premises in the designation.   | 26<br>27<br>28   |

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| Maximum penalty—4500 penalty units.   | 1                    |
| <b>163 Exemptions if emergency causing safety concern</b>   | 2                    |
| (1) This section applies to works, development or use, for which a development permit is ordinarily required, in an emergency endangers—  | 3<br>4<br>5          |
| (a) any person’s life or health; or   | 6                    |
| (b) a building’s structural safety; or  | 7                    |
| (c) the operation or safety of infrastructure, other than a building; or  | 8<br>9               |
| (d) for tidal works—the structural safety of an existing structure for which there is a development permit for operational work that is tidal works.  | 10<br>11<br>12       |
| (2) A person who, in an emergency, is carrying out necessary operational work that is tidal works does not commit a development offence, other than an offence against section 159, if the person—          | 13<br>14<br>15<br>16 |
| (a) has made a safety management plan for the works, after considering—   | 17<br>18             |
| (i) the long-term safety of members of the public who have access to the works or any structure to which the works relates; and   | 19<br>20<br>21       |
| (ii) if practicable, the advice of any registered professional engineer who has audited the structure; and  | 22<br>23<br>24       |
| (b) complies with the plan; and   | 25                   |
| (c) gives a copy of the plan to the enforcement authority as soon as reasonably practicable after starting the works; and   | 26<br>27<br>28       |
| (d) takes reasonable precautions and exercises proper diligence to ensure the works and structure are in a safe condition, including by engaging a registered professional engineer to audit the structure. | 29<br>30<br>31<br>32 |

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- (3) A person who, in an emergency, is carrying out necessary building work on a Queensland heritage place, or local heritage place, does not commit a development offence, other than an offence against section 159, if the person—
- (a) gets the advice of a registered professional engineer about the works before starting the works, unless it is not practicable to do so; and
  - (b) takes all reasonable steps—
    - (i) to ensure the works are reversible; or
    - (ii) if the works are not reversible—to minimise the impact of the works on the place’s cultural heritage significance.
- (4) A person who, in an emergency, is carrying out any other necessary works, development or use does not commit a development offence if the person gives notice of the works, development or use to the enforcement authority as soon as reasonably practicable after starting the works, development or use.
- (5) Subsections (2), (3) and (4) stop applying to any person carrying out works, 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 any person 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 enforcement authority; or
  - (b) the person’s development application is refused.
- (7) If a person’s development application is refused, the person must restore, as far as practicable, premises to the condition
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[s 164]

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| the premises were in immediately before the activity was carried out.   | 1<br>2               |
| Maximum penalty—4500 penalty units.   | 3                    |
| (8) In this section—  | 4                    |
| <i>emergency</i> 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.            | 5<br>6<br>7<br>8     |
| <i>Example of an action not done because of an emergency—</i>   | 9                    |
| the carrying out, in winter, of a use or building or operational work in anticipation of the next cyclone season  | 10<br>11             |
| <i>necessary</i> , in relation to works, development or use, means the works, development or use is necessary to ensure the emergency does not, or is not likely to, endanger someone or something mentioned in subsection (1). | 12<br>13<br>14<br>15 |

**Part 3** **Enforcement notices** 16

|   |          |
|---|----------|
| <b>164 Show cause notices</b>   | 17       |
| (1) This section applies if an enforcement authority—   | 18       |
| (a) reasonably believes a person has committed, or is committing, a development offence; and        | 19<br>20 |
| (b) is considering giving an enforcement notice for the offence to the person.                      | 21<br>22 |
| (2) The enforcement authority must give the person a notice (a <i>show cause notice</i> ) that—     | 23<br>24 |
| (a) states the enforcement authority is considering giving an enforcement notice to the person; and | 25<br>26 |

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- (b) outlines the facts and circumstances that form the basis for the enforcement authority's reason for giving an enforcement notice; and
  - (c) states the person may make representations about the notice to the enforcement authority; and
  - (d) states how the representations may be made; and
  - (e) states—
    - (i) a day and time for making the representations; or
    - (ii) a period within which the representations must be made.
  - (3) The day or period stated in the show cause notice must be, or must end, at least 20 business days after the notice is given.
  - (4) After considering any representations made by the person in accordance with the show cause notice, the enforcement authority may give the enforcement notice if the enforcement authority still considers it appropriate to do so.
  - (5) An enforcement authority need not give the person a show cause notice, before giving the person an enforcement notice, if—
    - (a) the development offence relates to—
      - (i) a Queensland heritage place or a local heritage place; or
      - (ii) works that the enforcement authority reasonably believes are a danger to persons or a risk to public health; or
      - (iii) the demolition of works; or
      - (iv) the clearing of vegetation; or
      - (v) the removal of quarry material allocated under the *Water Act 2000*; or
      - (vi) extracting clay, gravel, rock, sand or soil, not mentioned in subparagraph (v), from Queensland waters; or
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|            |   |                |
|------------|---|----------------|
|            | (vii) development that the enforcement authority reasonably believes is causing erosion, sedimentation or an environmental nuisance; or                           | 1<br>2<br>3    |
| (b)        | the enforcement authority reasonably believes it is not appropriate in the circumstances to give the show cause notice.   | 4<br>5<br>6    |
|            | <i>Example for paragraph (b)—</i>   | 7              |
|            | the enforcement authority reasonably believes that giving a show cause notice is likely to adversely affect the effectiveness of the enforcement notice           | 8<br>9<br>10   |
| <b>165</b> | <b>Enforcement notices</b>  | 11             |
| (1)        | If an enforcement authority reasonably believes a person has committed, or is committing, a development offence, the authority may give an enforcement notice to— | 12<br>13<br>14 |
| (a)        | the person; and   | 15             |
| (b)        | if the offence involves premises and the person is not the owner of the premises—the owner of the premises.   | 16<br>17       |
| (2)        | An <b><i>enforcement notice</i></b> is a notice that requires a person to do either or both of the following—   | 18<br>19       |
| (a)        | to refrain from committing a development offence;   | 20             |
| (b)        | to remedy the effect of a development offence in a stated way.  | 21<br>22       |
|            | <i>Examples of what an enforcement notice may require—</i>  | 23             |
|            | The notice may require a person do any or all of the following on or before a stated time or within a stated period—  | 24<br>25       |
|            | • to stop carrying out development  | 26             |
|            | • to demolish or remove development   | 27             |
|            | • to restore, as far as practicable, premises to the condition it was in immediately before the development the subject of the offence was started                | 28<br>29<br>30 |
|            | • to do, or not to do, another act to ensure development complies with a development permit   | 31<br>32       |

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- if the enforcement authority reasonably believes works are dangerous, to repair or rectify the works, to secure the works, or to fence the works off to protect people 1
  - to stop a stated use of premises 2
  - to apply for a development permit 3
  - to give a compliance program that shows how compliance with the enforcement notice will be achieved to the enforcement authority. 4
- (3) The notice must state— 5
- (a) the nature of the alleged offence; and 6
  - (b) if the notice requires the person not to do an act— 7
    - (i) the period for which the requirement applies; or 8
    - (ii) that the requirement applies until further notice; 9
  - (c) if the notice requires the person to do an act— 10
    - (i) the details of the act; and 11
    - (ii) the period within which the act must be done; and 12
  - (d) that the person has an appeal right against the giving of the notice. 13
- (4) The notice may require demolition or removal of all or part of the works if the enforcement authority reasonably believes it is not possible or practical to take steps— 14
- (a) to make the development be accepted development; or 15
  - (b) to make the works comply with a development approval; or 16
  - (c) if the works are dangerous—to remove the danger. 17
- (5) A person must not contravene an enforcement notice. 18
- Maximum penalty—4500 penalty units. 19
- (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 20

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|            |   |                |
|------------|---|----------------|
|            | way that a person entering the premises would normally see the notice.  | 1<br>2         |
| (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.          | 3<br>4<br>5    |
|            | Maximum penalty—4500 penalty units.   | 6              |
| <b>166</b> | <b>Consulting private certifier about enforcement notice</b>  | 7              |
| (1)        | This section applies if a private certifier is engaged in relation to development.  | 8<br>9         |
| (2)        | The enforcement authority must not give an enforcement notice for that part of the development until the authority has consulted about the giving of the notice with— | 10<br>11<br>12 |
| (a)        | the private certifier; or   | 13             |
| (b)        | if the enforcement authority is the private certifier—the assessment manager.   | 14<br>15       |
| (3)        | However, subsection (2) does not apply if the enforcement authority reasonably believes the works for which the enforcement notice is to be given are dangerous.      | 16<br>17<br>18 |
| (4)        | If the enforcement authority is the private certifier, the authority may not delegate power to give an enforcement notice that orders the demolition of a building.   | 19<br>20<br>21 |
| (5)        | The enforcement authority may carry out consultation under this section in the way the enforcement authority considers appropriate.                                   | 22<br>23<br>24 |
| <b>167</b> | <b>Notifying local government about enforcement notice</b>  | 25             |
| (1)        | This section applies if the enforcement authority—  | 26             |
| (a)        | reasonably believes a development offence, under an enforcement notice, relates to a local government area; and   | 27<br>28<br>29 |
| (b)        | is not the local government for that area.  | 30             |

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- (2) The enforcement authority must give a copy of the enforcement notice to the local government. 1  
2
- (3) If the enforcement authority withdraws the enforcement notice, the enforcement authority must give notice of the withdrawal to the local government. 3  
4  
5
- (4) A failure to comply with subsection (2) does not invalidate or otherwise affect the enforcement notice. 6  
7

## **168 Stay of enforcement notice** 8

- (1) An appeal against an enforcement notice stays the operation of the notice until— 9  
10
  - (a) the tribunal or court hearing the appeal decides otherwise; or 11  
12
  - (b) the appeal ends. 13
- (2) However, the notice is not stayed to the extent the notice is about a matter mentioned in section 164(5)(a). 14  
15

## **169 Application in response to show cause or enforcement notice** 16 17

- If a person applies for a development permit in response to a show cause notice, or as required by an enforcement notice, the person— 18  
19  
20
- (a) must not withdraw the application, unless the person has a reasonable excuse; and 21  
22
  - (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 23  
24  
25  
26
  - (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. 27  
28  
29  
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[s 170]

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|  |                |
|--|----------------|
| Maximum penalty—4500 penalty units.  | 1              |
| <b>170 Enforcement authority may remedy contravention</b>  | 2              |
| (1) This section applies if an enforcement notice is contravened and the enforcement authority is not a local government.  | 3<br>4         |
| <i>Note—</i>   | 5              |
| If the enforcement authority is a local government, see the Local Government Act, section 142 or the City of Brisbane Act, section 132.                                      | 6<br>7         |
| (2) The enforcement authority may—   | 8              |
| (a) do anything reasonably necessary to ensure the notice is complied with; and  | 9<br>10        |
| (b) recover any reasonable costs and expenses incurred in doing so as a debt owing by the recipient to the authority.  | 11<br>12<br>13 |
| <br><b>Part 4 Offence proceedings in Magistrates Court</b>   | <br>14<br>15   |
| <b>171 Proceedings for offences</b>  | 16             |
| (1) An offence against this Act is a summary offence.  | 17             |
| (2) Proceedings ( <i>offence proceedings</i> ) for an offence must start no later than—  | 18<br>19       |
| (a) 1 year after the offence is committed; or  | 20             |
| (b) 1 year after the offence comes to the complainant's knowledge.   | 21<br>22       |
| (3) In a complaint starting offence proceedings, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter. | 23<br>24<br>25 |

|            |  |           |
|------------|--|-----------|
| <b>172</b> | <b>Proceedings brought in a representative capacity</b>  | <b>1</b>  |
| (1)        | A person may bring offence proceedings in a representative capacity, if the person has the consent of—   | 2         |
|            |  | 3         |
| (a)        | for proceedings 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; or            | 4         |
|            |  | 5         |
|            |  | 6         |
| (b)        | for proceedings brought on behalf of an individual—the individual.   | 7         |
|            |  | 8         |
|            | <i>Note—</i>   | 9         |
|            | For proceedings by a local government, see the Local Government Act, section 237 or the City of Brisbane Act, section 218.   | 10        |
|            |  | 11        |
| (2)        | The person on whose behalf the offence proceedings are brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceedings.        | 12        |
|            |  | 13        |
|            |  | 14        |
| <b>173</b> | <b>Enforcement orders</b>  | <b>15</b> |
| (1)        | After hearing offence proceedings, a Magistrates Court may make an order (an <b><i>enforcement order</i></b> ) for the defendant to take stated action within a stated period. | 16        |
|            |  | 17        |
|            |  | 18        |
|            | <i>Examples of action that an order may require—</i>   | 19        |
|            | • to stop carrying out development   | 20        |
|            | • to demolish or remove development  | 21        |
|            | • to restore, as far as practicable, premises to the condition it was in immediately before the development the subject of the offence was started                             | 22        |
|            |  | 23        |
|            |  | 24        |
|            | • to do, or not to do, another act to ensure development complies with a development permit  | 25        |
|            |  | 26        |
|            | • if the court reasonably believes works are dangerous, to repair or rectify the works, to secure the works, or to fence the works off to protect people                       | 27        |
|            |  | 28        |
|            |  | 29        |
|            | • to stop a stated use of premises   | 30        |
|            | • to apply for a development permit  | 31        |

[s 173]

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| (2) | The enforcement order may be in terms the court considers appropriate to secure compliance with this Act.  | 1<br>2               |
|     | <i>Example—</i>  | 3                    |
|     | The order may require the defendant to provide security for the reasonable cost of taking the stated action.   | 4<br>5               |
| (3) | An enforcement order may be made under this section in addition to the imposition of a penalty and any other order under this Act.   | 6<br>7<br>8          |
| (4) | A person must not contravene an enforcement order.   | 9                    |
|     | Maximum penalty—4500 penalty units or 2 years imprisonment.  | 10<br>11             |
| (5) | The defendant must give the registrar of titles a notice, in the form approved by the registrar, asking the registrar to record the enforcement order on the appropriate register for the premises to which the order relates. | 12<br>13<br>14<br>15 |
| (6) | An enforcement order attaches to the premises and binds the owner, the owner's successors in title and any occupier of the premises.   | 16<br>17<br>18       |
| (7) | The defendant may apply to the court for an order (a <b>compliance order</b> ) stating the defendant has complied with the enforcement order.  | 19<br>20<br>21       |
| (8) | On receiving a compliance order from the defendant, the registrar of titles must remove the enforcement order from the appropriate register for the premises to which the enforcement order relates.                           | 22<br>23<br>24<br>25 |
| (9) | If the defendant does not comply with the enforcement order within the period stated in the order, the enforcement authority may—  | 26<br>27<br>28       |
|     | (a) take the action; and   | 29                   |
|     | (b) recover the reasonable cost of taking the action as a debt owing to the authority from the defendant.  | 30<br>31             |

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|------------|---|----------------------|
| <b>174</b> | <b>Order for compensation</b>   | 1                    |
| (1)        | This section applies if a Magistrates Court—  | 2                    |
| (a)        | finds a defendant guilty of an offence under this Act;<br>and   | 3<br>4               |
| (b)        | finds that, because of the offence, another person has—   | 5                    |
| (i)        | suffered loss of income; or   | 6                    |
| (ii)       | suffered a reduction in the value of, or damage to,<br>property; or   | 7<br>8               |
| (iii)      | incurred expenses to replace or repair property or<br>prevent or minimise, or attempt to prevent or<br>minimise, the loss, reduction or damage.   | 9<br>10<br>11        |
| (2)        | The court may order the defendant to pay the other person<br>compensation for the loss, reduction or damage suffered or the<br>expenses incurred.   | 12<br>13<br>14       |
| (3)        | An order may be made under this section in addition to the<br>imposition of a penalty and any other order under this Act.   | 15<br>16             |
| <b>175</b> | <b>Order for investigation expenses</b>   | 17                   |
| (1)        | This section applies if—  | 18                   |
| (a)        | a Magistrates Court finds—  | 19                   |
| (i)        | a defendant guilty of a development offence; and  | 20                   |
| (ii)       | an enforcement authority has reasonably incurred<br>expenses in taking a sample or conducting an<br>inspection, test, measurement or analysis to<br>investigate the offence; and          | 21<br>22<br>23<br>24 |
| (b)        | the enforcement authority applies for an order for the<br>payment of the expenses.  | 25<br>26             |
| (2)        | The court may order the defendant to pay a reasonable amount<br>for the expenses to the enforcement authority if satisfied it<br>would be just to do so in the circumstances of the case. | 27<br>28<br>29       |

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| <b>176</b>    | <b>When fine is payable to local government</b>                          | 1  |
|               | If a local government is—  | 2  |
|               | (a) the complainant in offence proceedings; and                          | 3  |
|               | (b) the enforcement authority for the matter that is the                 | 4  |
|               | subject of the proceedings;  | 5  |
|               | any fine ordered in the proceedings must be paid to the local            | 6  |
|               | government.  | 7  |
| <br>          |  |    |
| <b>Part 5</b> | <b>Enforcement orders in P&amp;E</b>                                     | 8  |
|               | <b>Court</b>   | 9  |
| <br>          |  |    |
| <b>177</b>    | <b>Enforcement orders</b>  | 10 |
|               | (1) Any person may start proceedings in the P&E Court for an             | 11 |
|               | enforcement order.   | 12 |
|               | (2) An <i>enforcement order</i> is an order that requires a person to do | 13 |
|               | either or both of the following—   | 14 |
|               | (a) refrain from committing a development offence;                       | 15 |
|               | (b) remedy the effect of a development offence in a stated               | 16 |
|               | way, for example, by paying compensation to a person                     | 17 |
|               | who, because of the offence, has—  | 18 |
|               | (i) suffered loss of income; or  | 19 |
|               | (ii) suffered a reduction in the value of, or damage to,                 | 20 |
|               | property; or   | 21 |
|               | (iii) incurred expenses to replace or repair property or                 | 22 |
|               | prevent or minimise, or attempt to prevent or                            | 23 |
|               | minimise, the loss, reduction or damage.                                 | 24 |
|               | (3) The P&E Court may make an enforcement order if satisfied             | 25 |
|               | the development offence—   | 26 |
|               | (a) has been committed; or   | 27 |

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- (b) will be committed unless the order is made. 1
- (4) The P&E Court may make an enforcement order (an *interim enforcement order*) pending a decision in proceedings for the enforcement order. 2  
3  
4
- (5) An enforcement order or interim enforcement order may direct the respondent— 5  
6
- (a) to stop an activity that constitutes a development offence; or 7  
8
- (b) not to start an activity that constitutes a development offence; or 9  
10
- (c) to do anything required to stop committing a development offence; or 11  
12
- (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 13  
14  
15
- (e) to do anything to comply with this Act. 16
- Examples of what the respondent may be directed to do—* 17
- to repair, demolish or remove a building 18
  - to rehabilitate or restore vegetation cleared from land 19
  - if rehabilitation or restoration of cleared vegetation is not possible—to plant and nurture stated vegetation on a stated area of land of an equivalent size. 20  
21  
22
- (6) An enforcement order or interim enforcement order may be in terms the P&E Court considers appropriate to secure compliance with this Act. 23  
24  
25
- Examples—* 26
- An order may require the defendant to provide security for the reasonable cost of taking the stated action. 27  
28
- An interim enforcement order may require the applicant to undertake to pay the respondent's damages because of the order if the proceedings are unsuccessful. 29  
30  
31
- (7) An enforcement order or interim enforcement order must state the period within which the order must be complied with. 32  
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[s 178]

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|------------|---|----------------------|
| (8)        | A person must not contravene an order made under this section.  | 1<br>2               |
|            | Maximum penalty—4500 penalty units or 2 years imprisonment.   | 3<br>4               |
| (9)        | The respondent must give the registrar of titles a notice, in the form approved by the registrar, asking the registrar to record the order on the appropriate register for the premises to which the order relates. | 5<br>6<br>7<br>8     |
| (10)       | An order under this section attaches to the premises and binds the owner, the owner’s successors in title and any occupier of the premises.   | 9<br>10<br>11        |
| (11)       | The respondent may apply to the court for an order (a <i><b>compliance order</b></i> ) stating the respondent has complied with the enforcement order.  | 12<br>13<br>14       |
| (12)       | On receiving a compliance order from the respondent, the registrar of titles must remove the enforcement order from the appropriate register for the premises to which the enforcement order relates.               | 15<br>16<br>17<br>18 |
| (13)       | If the respondent does not comply with the enforcement order within the period stated in the order, the enforcement authority may—  | 19<br>20<br>21       |
|            | (a) take the action required under the order; and   | 22                   |
|            | (b) recover the reasonable cost of taking the action as a debt owing to the authority from the respondent.  | 23<br>24             |
| <b>178</b> | <b>P&amp;E Court’s powers about enforcement orders</b>  | <b>25</b>            |
| (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.  | 26<br>27<br>28       |
| (2)        | The power to order a person to stop, or not to start, an activity may be exercised whether or not—  | 29<br>30             |
|            | (a) the P&E Court considers the person intends to engage, or to continue to engage, in the activity; or   | 31<br>32             |
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- (b) the person has previously engaged in an activity of the same kind; or 1  
2
  - (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  
4  
5
  - (3) The power to order a person to do anything may be exercised whether or not— 6  
7
    - (a) the P&E Court considers the person intends to fail, or to continue to fail, to do the thing; or 8  
9
    - (b) the person has previously failed to do a thing of the same kind; or 10  
11
    - (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. 12  
13  
14
  - (4) A person may apply to the P&E Court to cancel or change an enforcement order or interim enforcement order. 15  
16
  - (5) The P&E Court's powers under this section are in addition to the court's other powers. 17  
18

## Part 6 Miscellaneous 19

### 179 Application of other Acts 20

- (1) If another Act— 21
  - (a) specifies monetary penalties for offences about development greater or less than the penalties specified in this chapter; or 22  
23  
24
  - (b) provides that an activity specified in this chapter as a development offence is not an offence; or 25  
26
  - (c) contains provisions about the carrying out of development in an emergency; or 27  
28

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- (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) If a person who is nominated by the chief executive as an enforcement authority also has functions of an investigative or enforcement nature under another Act, the person may perform those functions in relation to a development approval.
  - (3) This chapter does not limit a court's powers under the *Penalties and Sentences Act 1992* or another law.

**180 False or misleading documents**

- (1) A person must not, for this Act, give an official a document containing information that the person knows is false or misleading in a material particular.  
Maximum penalty—4500 penalty units.
- (2) Subsection (1) does not apply if the person, when giving the document to the official—
  - (a) informs the official, to the best of the person's ability, how the information is false or misleading; and
  - (b) if the person has, or can reasonably get, the correct information—gives the correct information.

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|            |   |                |
|------------|---|----------------|
| (3)        | In proceedings for an offence against this section, it is enough for a charge to state the information was ‘false or misleading’ without specifying which.        | 1<br>2<br>3    |
| (4)        | In this section—  | 4              |
|            | <i>official</i> means—  | 5              |
| (a)        | an assessment manager; or   | 6              |
| (b)        | a referral agency; or   | 7              |
| (c)        | a responsible entity for a change application; or   | 8              |
| (d)        | an enforcement authority; or  | 9              |
| (e)        | the Minister; or  | 10             |
| (f)        | the chief executive; or   | 11             |
| (g)        | a local government; or  | 12             |
| (h)        | another person prescribed by regulation.  | 13             |
| <b>181</b> | <b>Executive officer must ensure corporation complies with Act</b>  | 14<br>15       |
| (1)        | An executive officer of a corporation commits an offence if—  | 16             |
| (a)        | the corporation commits an offence against an executive liability provision; and  | 17<br>18       |
| (b)        | the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.                                   | 19<br>20<br>21 |
|            | Maximum penalty—the penalty for the offence by an individual.   | 22<br>23       |
| (2)        | When deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must consider—        | 24<br>25<br>26 |
| (a)        | whether the officer knew, or ought reasonably to have known, of the corporation’s conduct constituting the offence against the executive liability provision; and | 27<br>28<br>29 |

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|            |  |                  |
|------------|--|------------------|
| (b)        | whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and   | 1<br>2<br>3      |
| (c)        | any other relevant matter.   | 4                |
| (3)        | The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision. | 5<br>6<br>7<br>8 |
| (4)        | This section does not affect—  | 9                |
| (a)        | the corporation's liability for the offence against the executive liability provision; or  | 10<br>11         |
| (b)        | the liability, under the Criminal Code, chapter 2, of any person for the offence, whether or not the person is an executive officer of the corporation.  | 12<br>13<br>14   |
| (5)        | In this section—   | 15               |
|            | <i>executive liability provision</i> means any of the following provisions—  | 16<br>17         |
| (a)        | section 159;   | 18               |
| (b)        | section 160;   | 19               |
| (c)        | section 161;   | 20               |
| (d)        | section 162;   | 21               |
| (e)        | section 163(7);  | 22               |
| (f)        | section 165(5);  | 23               |
| (g)        | section 169;   | 24               |
| (h)        | section 173(4);  | 25               |
| (i)        | section 177(8).  | 26               |
| <b>182</b> | <b>Responsibility for representative</b>   | 27               |
| (1)        | If it is relevant to prove, in offence proceedings, a person's state of mind about particular conduct, it is enough to show—   | 28<br>29         |

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- 
- (a) the person’s representative was engaged in the conduct for the person within the scope of the representative’s actual or apparent authority; and
  - (b) the representative had the state of mind.
  - (2) The person is taken to have engaged in the representative’s conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
  - (3) In this section—
    - conduct** means an act or omission.
    - representative** means—
      - (a) of a corporation—an executive officer, employee or agent of the corporation; or
      - (b) of an individual—an employee or agent of the individual.
    - state of mind**, of a person, includes the person’s—
      - (a) knowledge, intention, opinion, belief or purpose; and
      - (b) reasons for the intention, opinion, belief or purpose.

## Chapter 6      Dispute resolution      18

### Part 1      Introduction      19

#### 183      What this chapter is about      20

- (1) This chapter is about resolving disputes between persons involved in development assessment and other processes.
- (2) Part 2 is about rights of appeal to the P&E Court and to tribunals.

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- (3) Part 3 is about establishing tribunals to help the parties to a dispute to achieve an affordable and timely resolution of the dispute. 1  
2  
3

**Part 2** **Appeal rights** 4

**184 Appeals to tribunal or P&E Court** 5

- (1) A person may appeal to a tribunal or the P&E Court, about a matter set out in schedule 1, within the appeal period. 6  
7

- (2) The *appeal period* is— 8

- (a) for an appeal by a building advisory agency— 9

- (i) for a deemed approval of a development application for which a decision notice has not been given—20 business days after the applicant gives the agency a copy of the deemed approval notice; or 10  
11  
12  
13  
14

- (ii) otherwise—10 business days after the agency is given notice of a decision for the matter; or 15  
16

- (b) for an appeal against a deemed refusal—at any time after the last day a decision on the matter should have been made; or 17  
18  
19

- (c) for any other appeal—20 business days after the person is given notice of a decision for the matter. 20  
21

*Note—* 22

See the P&E Court Act for the court’s power to extend the appeal period. 23  
24

- (3) A person starts an appeal by lodging a notice of appeal that succinctly states the grounds of the appeal with the registrar of the tribunal or P&E Court. 25  
26  
27

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- (4) The person or, for an appeal to the tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
  - (a) the respondent for the appeal under schedule 1; and
  - (b) each co-respondent for the appeal under schedule 1; and
  - (c) any other person who may elect to become a co-respondent for the appeal under schedule 1; and
  - (d) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate; and
  - (e) for an appeal to the P&E Court—the chief executive.
- (5) The *service period* is—
  - (a) if a submitter or referral agency (advice only) started the appeal—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (6) A notice of appeal given to a person mentioned in subsection (4)(c), must state that the person may, within 10 business days after the notice is given, elect to become a co-respondent by filing a notice of election in the approved form.
- (7) A person who is entitled to elect to be a co-respondent may do so, within 10 business days after the notice of appeal is given to the person, by filing a notice of election in the approved form.
- (8) If a chosen assessment manager is a respondent, the prescribed assessment manager may elect to become a co-respondent.
- (9) Each respondent and co-respondent for an appeal is entitled to be heard in the appeal.

## 185 Other appeals

- (1) A person who is aggrieved by a decision made under this Act may apply to the Supreme Court for a review of the decision on the ground of jurisdictional error.

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|            |   |          |
|------------|---|----------|
| (2)        | Otherwise, a decision of the Minister under this Act, other than a decision under chapter 7, part 4, is non-appealable. | 1<br>2   |
| (3)        | The <i>Judicial Review Act 1991</i> , other than part 4, does not apply to a decision made under this Act.              | 3<br>4   |
| (4)        | In this section—  | 5        |
|            | <b>decision</b> includes—   | 6        |
| (a)        | conduct engaged in for the purpose of making a decision; and  | 7<br>8   |
| (b)        | other conduct that relates to the making of a decision; and   | 9<br>10  |
| (c)        | the making of a decision or the failure to make a decision; and   | 11<br>12 |
| (d)        | a purported decision; and   | 13       |
| (e)        | a deemed refusal.   | 14       |
|            | <b>non-appealable</b> , for a decision, means the decision—   | 15       |
| (a)        | is final and conclusive; and  | 16       |
| (b)        | may not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way.           | 17<br>18 |
| <b>186</b> | <b>Rules of the P&amp;E Court</b>   | 19       |
| (1)        | A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.            | 20<br>21 |
| (2)        | However, the P&E Court may hear and decide an appeal if the person has not complied with rules of the P&E Court.        | 22<br>23 |

|                   |   |                   |
|-------------------|---|-------------------|
| <b>Part 3</b>     | <b>Tribunals</b>  | 1                 |
| <b>Division 1</b> | <b>General</b>  | 2                 |
| <b>187</b>        | <b>Appointment of referees</b>  | 3                 |
| (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, prescribed by regulation.           | 4<br>5<br>6       |
| (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, prescribed by regulation. | 7<br>8<br>9<br>10 |
| (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.  | 11<br>12<br>13    |
| (4)               | A referee may be reappointed for further terms.   | 14                |
| (5)               | The appointer may, at any time, cancel a referee's appointment by signed notice given to referee.   | 15<br>16          |
| (6)               | A referee may, at any time, resign the referee's appointment by signed notice given to the appointer.   | 17<br>18          |
| (7)               | A public service officer may be appointed as a referee.   | 19                |
| (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.                        | 20<br>21<br>22    |
| (9)               | A person appointed as a referee must—   | 23                |
| (a)               | sign a declaration in the approved form; and  | 24                |
| (b)               | give the declaration to the chief executive.  | 25                |
| (10)              | The person must not sit as a tribunal member unless the person has complied with subsection (9).  | 26<br>27          |

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|            |   |                            |
|------------|---|----------------------------|
| <b>188</b> | <b>Referee with conflict of interest</b>  | 1                          |
| (1)        | This section applies if the chief executive advises a referee that the chief executive proposes to appoint the referee as a tribunal member, and either or both of the following apply—   | 2<br>3<br>4                |
| (a)        | the tribunal is to hear a matter about premises—  | 5                          |
| (i)        | the referee owns; or  | 6                          |
| (ii)       | for which the referee was, is, or is to be, an architect, builder, drainer, engineer, planner, plumber, plumbing inspector, certifier, site evaluator or soil assessor; or  | 7<br>8<br>9<br>10          |
| (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   | 11<br>12<br>13             |
| (iv)       | situated or to be situated in the area of a local government of which the referee is an officer, employee or councillor;  | 14<br>15<br>16             |
| (b)        | the referee has a direct or indirect personal interest in a matter to be considered by the tribunal, and the interest could conflict with the proper performance of the referee’s functions for the tribunal’s consideration of the matter. | 17<br>18<br>19<br>20<br>21 |
| (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.   | 22<br>23<br>24             |
| (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 tribunal.  | 25<br>26<br>27             |
| (4)        | If a tribunal member is, or becomes, aware the member should not have been appointed to the tribunal, the member must not act, or continue to act, as a member of the tribunal.   | 28<br>29<br>30             |

|            |   |                    |
|------------|---|--------------------|
| <b>189</b> | <b>Establishing tribunals</b>   | 1                  |
| (1)        | The chief executive may at any time establish a development tribunal (a <i>tribunal</i> ) for tribunal proceedings.   | 2<br>3             |
| (2)        | After a tribunal is established, the tribunal's membership must not be changed.   | 4<br>5             |
| (3)        | A tribunal consists of up to 5 referees appointed by the chief executive as tribunal members.   | 6<br>7             |
| (4)        | The chief executive may appoint a referee as a tribunal member for a matter if the person has the qualifications, the experience, or the qualifications and experience, for the matter. | 8<br>9<br>10<br>11 |
| (5)        | A regulation may specify the qualifications, the experience, or the qualifications and experience, that is required for a particular matter.  | 12<br>13<br>14     |
| (6)        | The chief executive must appoint a chairperson for each tribunal.   | 15<br>16           |
| <b>190</b> | <b>Remuneration</b>   | 17                 |
|            | A tribunal member must be paid the remuneration the Governor in Council decides.  | 18<br>19           |
| <b>191</b> | <b>Tribunal proceedings</b>   | 20                 |
| (1)        | A tribunal must ensure all persons before the tribunal are afforded natural justice.  | 21<br>22           |
| (2)        | A tribunal must make its decisions in a timely way.   | 23                 |
| (3)        | A tribunal may—   | 24                 |
| (a)        | conduct its business as the tribunal considers appropriate, subject to a regulation made for this section; and  | 25<br>26<br>27     |
| (b)        | sit at the times and places the tribunal decides; and   | 28                 |
| (c)        | hear an appeal and application for a declaration together; and  | 29<br>30           |

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|                   |  |                |
|-------------------|--|----------------|
| (d)               | hear 2 or more appeals or applications for a declaration together.   | 1<br>2         |
| (4)               | A regulation may provide for the following—  | 3              |
| (a)               | the way in which a tribunal is to operate, including who is to be the chairperson of the tribunal for particular proceedings;                              | 4<br>5<br>6    |
| (b)               | the tribunal to comply with a guideline made by the Minister and prescribed by regulation;   | 7<br>8         |
| (c)               | the required fee for tribunal proceedings.   | 9              |
| <b>192</b>        | <b>Registrar and other officers</b>  | 10             |
| (1)               | The chief executive may, by gazette notice, appoint—   | 11             |
| (a)               | a registrar; and   | 12             |
| (b)               | other officers (including persons who are public service officers) as the chief executive considers appropriate to help tribunals perform their functions. | 13<br>14<br>15 |
| (2)               | The person may hold the appointment or assist concurrently with any other public service appointment the person holds.                                     | 16<br>17       |
| <b>Division 2</b> | <b>Applications for declarations</b>   | 18             |
| <b>193</b>        | <b>Starting proceedings for declarations</b>   | 19             |
| (1)               | A person may start proceedings for a declaration by filing an application, in the approved form, with the registrar.                                       | 20<br>21       |
| (2)               | The application must be accompanied by the required fee.   | 22             |
| <b>194</b>        | <b>Application for declaration about making of development application</b>   | 23<br>24       |
| (1)               | The following persons may start proceedings for a declaration about whether a development application is properly made—                                    | 25<br>26       |

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- 
- (a) the applicant; 1
  - (b) the assessment manager. 2
  - (2) However, a person may not seek a declaration under this 3  
section about whether a development application includes, or 4  
is supported by, the written consent of the owner of the 5  
premises. 6
  - (3) The proceedings must be started by— 7
    - (a) the applicant within 20 business days after receiving 8  
notice from the assessment manager, under the 9  
development assessment rules, that the development 10  
application is not properly made; or 11
    - (b) the assessment manager within 10 business days after 12  
receiving the development application. 13
  - (4) The registrar must, within 10 business days after the 14  
proceedings start, give notice of the proceedings to the 15  
respondent as a party to the proceedings. 16
  - (5) The tribunal must give an information notice about the 17  
tribunal's decision on the application to the parties to the 18  
proceedings. 19
  - (6) In this section— 20
    - respondent* means— 21
      - (a) if the applicant started the proceedings—the assessment 22  
manager; or 23
      - (b) if the assessment manager started the proceedings—the 24  
applicant. 25
  - 195 Application for declaration about change to development 26  
approval 27**
    - (1) This section applies to a change application for a development 28  
approval if— 29
      - (a) the approval is for a material change of use of premises 30  
that involves the use of a classified building; and 31
-

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- (b) the responsible entity for the change application is not the Minister or the P&E Court. 1  
2
- (2) The applicant for the change application may start proceedings for a declaration about whether the proposed change to the approval is a minor change. 3  
4  
5
- (3) The responsible entity for the change application may start proceedings for a declaration about whether the proposed change to the approval is a minor change. 6  
7  
8
- (4) The registrar must, within 10 business days after the proceedings start, give notice of the proceedings to the respondent as a party to the proceedings. 9  
10  
11
- (5) The tribunal must give an information notice about the tribunal's decision on the application to the parties to the proceedings. 12  
13  
14
- (6) In this section— 15  
*respondent* means— 16
  - (a) if the applicant started the proceedings—the responsible entity; or 17  
18
  - (b) if the responsible entity started the proceedings—the applicant. 19  
20

**Division 3                      Tribunal proceedings** 21

**196      Action when proceedings start** 22

- (1) If a document starting tribunal proceedings is filed with the registrar within the period required under this Act, and is accompanied by the required fee, the chief executive must— 23  
24  
25
  - (a) establish a tribunal for the proceedings; and 26
  - (b) appoint 1 of the referees as the tribunal's chairperson, in accordance with any requirements of a regulation; and 27  
28
  - (c) give notice of the establishment of the tribunal to each party to the proceedings. 29  
30

[s 197]

- (2) However, the chief executive may decide to end the proceedings without establishing a tribunal if satisfied it is not reasonably practicable to establish a tribunal.  
*Examples of when it is not reasonably practicable—*
  - if there are no qualified referees or insufficient qualified referees because of a conflict of interest
  - if the referees who are available will not be able to decide the proceedings in a timely way
- (3) If the chief executive decides to end the proceedings, the chief executive must give an information notice about the decision to all parties to the proceedings.
- (4) The period for starting proceedings in the P&E Court for the matter starts again when the chief executive gives the information notice to the applicant.
- (5) If the chief executive decides to end the proceedings, the chief executive may, but need not, refund all or part of the fee paid to start the proceedings.

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

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|            |   |                      |
|------------|---|----------------------|
| (4)        | The chief executive must give the notice within 10 business days after the document is given to the chief executive.  | 1<br>2               |
| (5)        | If the chief executive does excuse the noncompliance, the chief executive may act under section 196 as if the noncompliance had not happened.                             | 3<br>4<br>5          |
| <b>198</b> | <b>Power to establish new tribunal or end tribunal proceedings</b>  | 6<br>7               |
| (1)        | This section applies if the chief executive is satisfied the tribunal established for tribunal proceedings—   | 8<br>9               |
| (a)        | does not have the expertise to hear or decide the proceedings; or   | 10<br>11             |
| (b)        | is not able to make a decision for proceedings, including, for example, if a tribunal member must not continue to hear the proceedings because of a conflict of interest. | 12<br>13<br>14<br>15 |
| (2)        | The chief executive may decide—   | 16                   |
| (a)        | to suspend the proceedings and establish another tribunal to re-hear the proceedings; or  | 17<br>18             |
| (b)        | if satisfied it is not reasonably practicable to establish another tribunal—to end the proceedings.   | 19<br>20             |
|            | <i>Note—</i>  | 21                   |
|            | See section 196(2) for examples of when it is not reasonably practicable to establish another tribunal.   | 22<br>23             |
| (3)        | If the chief executive decides to end the proceedings, the chief executive must give an information notice about the decision to all parties to the proceedings.          | 24<br>25<br>26       |
| (4)        | The period for starting proceedings in the P&E Court for the matter starts again when the chief executive gives the information notice to the applicant.                  | 27<br>28<br>29       |
| (5)        | If the chief executive decides to end the proceedings, the chief executive may, but need not, refund all or part of the fee paid to start the proceedings.                | 30<br>31<br>32       |

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|            |   |                     |
|------------|---|---------------------|
| <b>199</b> | <b>Further material for tribunal proceedings</b>  | <b>1</b>            |
| (1)        | The registrar may, at any time, ask a person to give the registrar any information that the registrar reasonably requires for the proceedings.                                  | 2<br>3<br>4         |
| (2)        | The information may, for example, include—  | 5                   |
| (a)        | material about the proceedings, such as plans; or   | 6                   |
| (b)        | information to help the chief executive decide whether to excuse noncompliance under section 197; or  | 7<br>8              |
| (c)        | 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. | 9<br>10<br>11<br>12 |
| (3)        | The person must give the information within 10 business days after the registrar asks for the information.  | 13<br>14            |
| <b>200</b> | <b>Representation of Minister if State interest involved</b>  | <b>15</b>           |
|            | If, before tribunal proceedings are decided, the Minister becomes satisfied the proceedings involve a State interest, the Minister may be represented in the proceedings.       | 16<br>17<br>18      |
| <b>201</b> | <b>Representation of parties at hearing</b>   | <b>19</b>           |
|            | A party to tribunal proceedings may appear in person, or by an agent who is not a lawyer.   | 20<br>21            |
| <b>202</b> | <b>Conduct of tribunal proceedings</b>  | <b>22</b>           |
| (1)        | The chairperson of the tribunal must decide how tribunal proceedings are to be conducted.   | 23<br>24            |
| (2)        | The tribunal may decide the proceedings on submissions if the parties agree.  | 25<br>26            |
| (3)        | If the proceedings are to be decided on submissions, the tribunal must give all parties a notice asking for the   | 27<br>28            |

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

**203 Tribunal directions or orders**

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

*Examples of directions—*

- a direction to an applicant about how to change their application to  
make the application comply with this Act

[s 204]

- a direction to an assessment manager to assess an application, even though the referral agency response to the assessment manager was to refuse the application

## **204 Matters tribunal may consider**

- (1) This section applies to tribunal proceedings about an application or other request.
- (2) The tribunal must decide the proceedings based on the laws in effect when the application or request was properly made, but may give the weight that the tribunal considers appropriate, in all the circumstances, to any new laws.

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

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

## **206 Conduct of appeals**

- (1) This section applies to an appeal to the tribunal.
- (2) It is for the applicant to establish the appeal should be upheld.

[s 207]

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|            |  |                      |
|------------|--|----------------------|
| (3)        | For an appeal by the recipient of an enforcement notice, the enforcement authority that gave the notice must establish the appeal should be dismissed.               | 1<br>2<br>3          |
| (4)        | The tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against.          | 4<br>5<br>6          |
| (5)        | However, the tribunal may, but need not, receive and consider other evidence presented by a party to the appeal with leave of the tribunal.                          | 7<br>8<br>9          |
| <b>207</b> | <b>Deciding appeals to tribunal</b>  | 10                   |
| (1)        | This section applies to an appeal to a tribunal against a decision.  | 11<br>12             |
| (2)        | The tribunal must decide the appeal by—  | 13                   |
| (a)        | confirming the decision; or  | 14                   |
| (b)        | changing the decision; or  | 15                   |
| (c)        | replacing the decision with another decision; or   | 16                   |
| (d)        | setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time; or  | 17<br>18<br>19       |
| (e)        | for a deemed refusal of an application—  | 20                   |
| (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 | 21<br>22<br>23<br>24 |
| (ii)       | deciding the application.  | 25                   |
| (3)        | However, the tribunal must not make a change, other than a minor change, to a development application.   | 26<br>27             |
| (4)        | The tribunal’s decision takes the place of the decision appealed against.  | 28<br>29             |

|            |  |                      |
|------------|--|----------------------|
| <b>208</b> | <b>Notice of tribunal's decision</b>   | 1                    |
| (1)        | The tribunal must give an information notice about the tribunal's decision for the tribunal proceedings, including any directions or orders given by the tribunal, to all parties to proceedings.  | 2<br>3<br>4<br>5     |
| (2)        | The tribunal's decision starts to have effect—   | 6                    |
| (a)        | if a party does not appeal the decision—at the end of the appeal period for the decision; or   | 7<br>8               |
| (b)        | if a party appeals against the decision to the P&E Court—subject to the decision of the court, when the appeal ends.   | 9<br>10<br>11        |
| <b>209</b> | <b>No costs orders</b>   | 12                   |
|            | A tribunal must not make any order as to costs.  | 13                   |
| <b>210</b> | <b>Recipient's notice of compliance with direction or order</b>  | 14                   |
|            | If a tribunal directs or orders a party to do something, the party must notify the registrar when the thing is done.   | 15<br>16             |
| <b>211</b> | <b>Tribunal may extend period to take action</b>   | 17                   |
| (1)        | This section applies if, under this chapter, an action for tribunal proceedings must be taken within a stated period or before a stated time, even if the period has ended or the time has passed. | 18<br>19<br>20<br>21 |
| (2)        | The tribunal may allow a longer period or a different time to take the action if the tribunal is satisfied there are sufficient grounds for the extension.   | 22<br>23<br>24       |
| <b>212</b> | <b>Publication of tribunal decisions</b>   | 25                   |
|            | The registrar must publish tribunal decisions under the arrangements, and in the way, approved by the chief executive.   | 26<br>27<br>28       |

[s 213]

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|------------------|---|----|
| <b>Chapter 7</b> | <b>Miscellaneous</b>  | 1  |
| <b>Part 1</b>    | <b>Existing uses and rights protected</b>   | 2  |
|                  |   | 3  |
| <b>213</b>       | <b>Existing lawful uses, works and approvals</b>  | 4  |
| (1)              | If, immediately before a planning instrument change, a use of premises was a lawful use of premises, the change does not—   | 5  |
|                  |   | 6  |
| (a)              | stop the use from continuing; or  | 7  |
| (b)              | further regulate the use; or  | 8  |
| (c)              | require the use to be changed.  | 9  |
| (2)              | If a planning instrument change happens after building or other works have been lawfully constructed or effected, the change does not require the building or works to be altered or removed. | 10 |
|                  |   | 11 |
|                  |   | 12 |
|                  |   | 13 |
| (3)              | If a planning instrument change happens after a development approval is given, the change does not—   | 14 |
|                  |   | 15 |
| (a)              | stop or further regulate the development; or  | 16 |
| (b)              | otherwise affect the approval to any extent to which the approval remains in effect.  | 17 |
|                  |   | 18 |
| <b>214</b>       | <b>Implied and uncommenced right to use</b>   | 19 |
| (1)              | This section applies if—  | 20 |
| (a)              | a development approval comes into effect; and   | 21 |
| (b)              | when the development application was properly made, a material change of use for a use implied by the application was accepted development; and   | 22 |
|                  |   | 23 |
|                  |   | 24 |
| (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.                       | 25 |
|                  |   | 26 |
|                  |   | 27 |

|               |  |                            |
|---------------|--|----------------------------|
| (2)           | The use is taken to be a lawful use in existence immediately before the change if—   | 1<br>2                     |
| (a)           | the development approval has not lapsed; and   | 3                          |
| (b)           | the use starts within 5 years after the completion of the development.   | 4<br>5                     |
| <b>215</b>    | <b>Prospective categorising regulations unaffected</b>   | 6                          |
|               | To remove any doubt, it is declared that this part does not affect the regulation-making power under section 39 for development starting on or after the regulation is notified.   | 7<br>8<br>9                |
| <b>Part 2</b> | <b>Taking or purchasing land for planning purposes</b>   | 10<br>11                   |
| <b>216</b>    | <b>Taking or purchasing land for planning purposes</b>   | 12                         |
| (1)           | This section applies if—   | 13                         |
| (a)           | a local government is satisfied the taking of land would help to achieve the outcomes stated in the local government’s planning scheme; or   | 14<br>15<br>16             |
| (b)           | at any time after a development approval starts to have effect, the local government is satisfied—   | 17<br>18                   |
| (i)           | the development would create a need to construct infrastructure on land or to carry drainage over land; and  | 19<br>20<br>21             |
| (ii)          | the applicant has taken reasonable measures to get 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 get the agreement; and | 22<br>23<br>24<br>25<br>26 |

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- (iii) the action is necessary to allow the development to proceed. 1  
2
- (2) For subsection (1)(b), it does not matter that the applicant may 3  
derive any measurable benefit from the action. 4
- (3) If the Governor in Council approves the taking, the local 5  
government is taken to be a constructing authority under the 6  
Acquisition Act and may take the land under that Act. 7
- (4) To remove any doubt, it is declared that the application of the 8  
Acquisition Act under subsection (3) includes the power 9  
under section 6 of that Act to purchase or take an easement. 10

**Part 3** **Public access to information** 11

**217 Rules to ensure appropriate public access** 12

- (1) The Minister must make rules (*access rules*)— 13
  - (a) to ensure there is, and continues to be, appropriate 14  
publicly available information about the following— 15
    - (i) planning instruments; 16
    - (ii) designations; 17
    - (iii) applications, decisions and Ministerial powers 18  
under chapter 3; 19
    - (iv) infrastructure charges; 20
    - (v) any other matter relating to this Act or the Building 21  
Act that the Minister considers appropriate; and 22
  - (b) for the contents of planning and development 23  
certificates under section 220. 24
- (2) The access rules have effect when the rules are applied by 25  
regulation. 26

[s 218]

- (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 about a matter mentioned in subsection (1)(a), means information that adequately informs anyone who is accessing the information about their rights and responsibilities relating to the matter.

## 218 Access rules for certain documents

- (1) This section applies to a person who has, or had, functions in relation to—
  - (a) the development assessment system; or
  - (b) a designation; or
  - (c) an infrastructure charge; or
  - (d) a planning instrument.
- (2) The access rules may require or allow the person to keep the following at the person's main office or on the person's website—
  - (a) a document, or certified copy of a document, that relates to the person's functions; or
  - (b) a register of those documents.
- (3) The person must comply with the access rules, unless section 219(6) applies to the person.  
Maximum penalty—50 penalty units.
- (4) Subject to any contrary provision of the access rules—
  - (a) the person may keep a document in electronic form; and
  - (b) different registers may be kept for different types of documents.
- (5) In this section—

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- main office*, of a person, means— 1
- (a) if the person is the chief executive—the department’s 2  
State office, and any other place the chief executive 3  
decides; or 4
  - (b) otherwise—the person’s main office, and any other 5  
place the person decides. 6

**219 Public access rights** 7

- (1) This section applies if the access rules require or allow a 8  
person to keep documents or a register (the *material*). 9
- (2) If the material is kept available for inspection and purchase, 10  
the person must allow a person— 11
  - (a) to inspect the material free of charge at the office where 12  
the material is held, whenever the office is open for 13  
business; and 14
  - (b) to get a copy of any or all of the material, or part of any 15  
of the material, from the person. 16

*Note—* 17

The *Copyright Act 1968* (Cwlth) overrides this Act and may 18  
limit the copying of material subject to copyright. 19

Maximum penalty—50 penalty units. 20

- (3) The person may charge for the reasonable, but no more than 21  
the actual, costs of supplying the copy. 22
- (4) If the material is kept available for inspection only, the person 23  
must allow a person to inspect the material free of charge at 24  
the office where the material is held, whenever the office is 25  
open for business, but need not give a copy to the person. 26
- (5) If the material is kept on the person’s website, the person must 27  
allow any person to do the following free of charge— 28
  - (a) to view the material on the website; 29
  - (b) to download the material in a form that the person 30  
decides. 31

[s 220]

- (6) The person's responsibilities under this section do not apply to the extent—
  - (a) the person reasonably considers the material contains—
    - (i) information of a purely private nature about an individual; or  
*Example of information of a purely private nature—*  
the individual's residential address, telephone number and email address
    - (ii) sensitive security information; and  
*Example of information of sensitive security information—*  
the location of a security system or safe
  - (b) the provision of the access rules that requires the material to be kept states this section does not apply to the material.
- (7) The person's responsibilities apply during any period that a provision of the access rules states the material must be kept.
- (8) The person need not disclose a submitter's name, contact details or signature.

## 220 Planning and development certificates 19

- (1) A person may apply to a local government for a limited, standard or full planning and development certificate for premises. 20  
21  
22
- (2) The application must be accompanied by the required fee. 23
- (3) The local government must give a certificate that includes the content required under the access rules to the applicant, within the following time after the application is made— 24  
25  
26
  - (a) for a limited certificate—5 business days; 27
  - (b) for a standard certificate—10 business days; 28
  - (c) for a full certificate—30 business days. 29

[s 221]

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|               |   |                  |
|---------------|---|------------------|
| (4)           | A person who suffers financial loss because of an error or omission in a planning and development certificate is entitled to reasonable compensation from the local government if the claim is made within 6 years after the loss was first suffered. | 1<br>2<br>3<br>4 |
| (5)           | Section 26 applies to the claim as if the claim were a compensation claim.  | 5<br>6           |
| <b>221</b>    | <b>Application of Information Privacy Act 2009</b>  | 7                |
| (1)           | The <i>Information Privacy Act 2009</i> , section 5 applies to this part.   | 8<br>9           |
| (2)           | However, when applying that section to this part, rights of access to personal information apply to corporations as well as individuals.  | 10<br>11<br>12   |
| <b>Part 4</b> | <b>Urban encroachment</b>   | 13               |
| <b>222</b>    | <b>What this part is about</b>  | 14               |
|               | The purpose of this part is to protect existing uses of particular premises from the effects of encroachment by newer uses in the vicinity of the premises by—  | 15<br>16<br>17   |
| (a)           | providing for the registration of the premises; and   | 18               |
| (b)           | establishing the responsibilities of certain persons in the area (the <i>affected area</i> ) to which the registration relates; and   | 19<br>20<br>21   |
| (c)           | restricting particular proceedings in connection with emissions coming from premises that are registered.   | 22<br>23         |
| <b>223</b>    | <b>Making or renewing registrations</b>   | 24               |
| (1)           | This section applies to premises if—  | 25               |

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- 
- (a) an activity that involves emissions is carried out on the premises; and
  - (b) the levels of emissions from the premises comply with—
    - (i) the development approval for the premises; and
    - (ii) any code of environmental compliance applying to the activity.
  - (2) The owner of the premises may apply to the Minister to register the premises.
  - (3) The Minister must consider the application and decide to—
    - (a) register the premises, with or without conditions; or
    - (b) refuse to register the premises.
  - (4) The owner of registered premises may apply to the Minister to renew the registration of premises, before the registration expires.
  - (5) The Minister must consider the application and decide to—
    - (a) renew the registration, with or without conditions; or
    - (b) refuse to renew the registration.
  - (6) If an application to renew the registration of premises is made before the registration expires, the registration continues until the application—
    - (a) is decided; or
    - (b) is withdrawn, or taken to have been withdrawn, by the applicant.
  - Note—*
  - A regulation made under section 231 may prescribe the circumstances in which an application is taken to have been withdrawn.
  - (7) The Minister may register premises, or renew the registration of premises, if the Minister is satisfied—
    - (a) the levels of emissions from the premises comply with—
-

[s 223]

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- (i) the development approval for the premises; and 1
  - (ii) any code of environmental compliance applying to 2  
the activity; and 3
- (b) of any matters prescribed by regulation. 4
- (8) The Minister must, as soon as practicable after deciding an 5  
application under subsection (2) or (4), give the applicant an 6  
information notice. 7
- (9) The information notice must identify the affected area for the 8  
premises. 9
- (10) The registration of premises starts to have effect on— 10
  - (a) for a decision to register premises— 11
    - (i) the day when the information notice is given to the 12  
applicant; or 13
    - (ii) a later day stated in the information notice; or 14
  - (b) for a decision to renew the registration of premises—the 15  
day after the registration would have ended if the 16  
registration had not been renewed. 17
- (11) A registration, including a renewed registration, that is not 18  
cancelled, continues to have effect for— 19
  - (a) the period of between 10 years and 25 years stated in the 20  
information notice; or 21
  - (b) if the information notice does not state a period—10 22  
years. 23
- (12) As soon as practicable after premises are registered, or a 24  
registration is renewed, the Minister must give notice of the 25  
registration or renewal to each local government in whose 26  
local government area the affected area for the registered 27  
premises are situated. 28
- (13) As soon as practicable after receiving the notice, the local 29  
government must note the registration on— 30
  - (a) the local government’s planning scheme (if any); and 31

[s 224]

- (b) any planning scheme that the local government makes before the registration expires. 1  
2

## 224 Amending or cancelling registrations 3

- (1) The Minister, after seeking representations from the owner of premises registered under this part, may decide to— 4  
5
  - (a) amend the conditions of the registration; or 6
  - (b) cancel the registration if— 7
    - (i) the levels of emissions from the premises no longer comply with section 223(7)(a); or 8  
9
    - (ii) a condition of the registration is contravened. 10
- (2) The Minister, after considering any representations from the owner, must give a notice (an *information notice*) of the Minister's decision to the owner. 11  
12  
13
- (3) If the Minister decides to amend or cancel a registration, the amendment or cancellation starts to have effect on— 14  
15
  - (a) the day when the information notice is given to the owner; or 16  
17
  - (b) a later day stated in the information notice. 18
- (4) The owner of registered premises may, by notice given to the Minister, cancel the registration. 19  
20
- (5) The registration ends on— 21
  - (a) the day when the Minister receives the owner's notice; 22  
or 23
  - (b) a later day stated in the owner's notice. 24

## 225 Responsibilities of owners of registered premises 25

- (1) This section applies to the owner of premises registered under this part. 26  
27
- (2) Within 20 business days after the premises are registered, the owner must give the registrar of titles a notice, in the form 28  
29

[s 225]

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- approved by the registrar, asking the registrar to keep a record  
that this part applies to all lots within the affected area stated  
in the registration.
- Maximum penalty—200 penalty units.
- (3) Within 20 business days after the premises are registered, the  
owner must—
- (a) publish a notice about the registration in a newspaper  
circulating generally in the affected area; and
- (b) if the owner has a website for the premises—publish  
details about the registration, and the levels of emissions  
allowed under the registration, on the website.
- Maximum penalty—50 penalty units.
- (4) Within 20 business days after the registration of premises is  
renewed, the owner must publish a notice about the renewal in  
a newspaper circulating generally in the affected area.
- Maximum penalty—50 penalty units.
- (5) As soon as practicable after complying with subsection (3) or  
(4), the owner must give notice of the compliance to the  
Minister.
- Maximum penalty—50 penalty units.
- (6) While the premises are registered, the owner must keep  
information about the registration, and the levels of emissions  
allowed under the registration, reasonably available for  
inspection, free of charge, by members of the public.
- Maximum penalty—50 penalty units.
- (7) As soon as practicable after a registration is cancelled or ends,  
the owner must give the registrar of titles a notice, in the form  
approved by the registrar, asking the registrar to remove the  
record mentioned in subsection (2).
- (8) If the owner fails to comply with this section, the failure does  
not affect the operation of section 230.

|            |   |                            |
|------------|---|----------------------------|
| <b>226</b> | <b>Responsibilities of owners of affected premises</b>  | 1                          |
| (1)        | This section applies to the owner of premises in the affected area for premises registered under this part.   | 2<br>3                     |
| (2)        | The owner or the owner's agent must, before entering into a lease of the premises with a person, give the person a notice that states—  | 4<br>5<br>6                |
| (a)        | the premises are in an affected area; and   | 7                          |
| (b)        | that restrictions may apply to the person in taking proceedings about emissions from registered premises in the affected area.  | 8<br>9<br>10               |
|            | Maximum penalty—50 penalty units.   | 11                         |
| (3)        | In this section—  | 12                         |
|            | <i>lease</i> means an agreement under which the owner gives a person the right to occupy the premises in exchange for money or other valuable consideration.  | 13<br>14<br>15             |
| <b>227</b> | <b>Responsibilities on applicants</b>   | 16                         |
| (1)        | This section applies to a person who makes a development application for a material change of use of premises or reconfiguring a lot in an affected area, other than an application prescribed by regulation.   | 17<br>18<br>19<br>20       |
| (2)        | Within 20 business days after making the application, the person must give the registrar of titles a notice, in the form approved by the registrar, asking the registrar to keep a record that this part applies to the premises that are the subject of the application. | 21<br>22<br>23<br>24<br>25 |
|            | Maximum penalty—200 penalty units.  | 26                         |
| (3)        | Within 20 business days after the application lapses, is refused or is withdrawn, the person must give the registrar of titles a notice, in the form approved by the registrar, asking the registrar to remove the record.  | 27<br>28<br>29<br>30       |
|            | Maximum penalty—200 penalty units.  | 31                         |

[s 228]

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|            |  |                       |
|------------|--|-----------------------|
| <b>228</b> | <b>Rights of buyers in Milton rail precinct</b>  | 1                     |
| (1)        | This section applies if—   | 2                     |
| (a)        | the applicant for a development application mentioned in section 227(1), for premises in the Milton rail precinct, enters into a contract with another person for the person (the <i>buyer</i> ) to buy all or part of the premises; and | 3<br>4<br>5<br>6<br>7 |
| (b)        | when the contract is entered into, the record mentioned in section 227(2) is not shown on the appropriate register because the applicant failed to comply with that subsection.  | 8<br>9<br>10<br>11    |
| (2)        | The buyer may, before the contract is completed, end the contract by giving the applicant or the applicant's agent a signed and dated notice that states the contract is ended under this section.                                       | 12<br>13<br>14<br>15  |
| (3)        | Within 10 business days after the buyer ends the contract, the applicant must refund any deposit paid under the contract.  | 16<br>17              |
|            | Maximum penalty—50 penalty units.  | 18                    |
| (4)        | This section applies despite anything to the contrary in the contract.   | 19<br>20              |
| <b>229</b> | <b>Responsibilities of registrar of titles</b>   | 21                    |
| (1)        | The registrar of titles must, on receiving a notice, keep the record mentioned in section 225(2) so that a search of the appropriate register will show the record.  | 22<br>23<br>24        |
| (2)        | The registrar of titles must, on receiving a notice under section 225(7), remove the record from the register.   | 25<br>26              |
| (3)        | The registrar of titles may remove a record under this part from a register if the registrar is satisfied, on reasonable grounds, that—  | 27<br>28<br>29        |
| (a)        | the registration of the premises has expired or been cancelled; or   | 30<br>31              |

[s 230]

- (b) for a development application mentioned in section 1  
227(2)—the application has lapsed, or been refused or 2  
withdrawn. 3

## 230 Restriction on legal proceedings 4

- (1) This section applies to an affected person's claim that another 5  
person's act or omission in carrying out an activity of a type 6  
mentioned in section 223(1) at registered premises (a *relevant* 7  
*act*) is, was or will be an unreasonable interference, or likely 8  
interference, with an environmental value. 9
- (2) Despite any other Act, the affected person may not take civil 10  
proceedings for nuisance, or criminal proceedings relating to 11  
a local law, against any person in relation to the claim if the 12  
following have been complied with for the relevant act— 13
  - (a) the development approval for the registered premises; 14
  - (b) any code of environmental compliance applying to the 15  
relevant act. 16
- (3) However, this section does not apply if— 17
  - (a) a new or amended authority starts to apply for the 18  
registered premises; and 19
  - (b) the new or amended authority authorises greater 20  
emissions than the original authority of the same type 21  
for the premises. 22
- (4) In this section— 23
  - affected person* means the owner, occupier or lessee of 24  
premises that are, or were, the subject of a development 25  
application— 26
    - (a) made after this section commences; or 27
    - (b) made before this section commences for which a 28  
decision notice had not been given before the 29  
commencement; or 30
    - (c) for premises for which— 31

[s 231]

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- (i) a development approval has been given for the application before this section commences; and
- (ii) a certificate of classification had not been given under the Building Act, before this section commences.

***environmental value*** means an environmental value under the Environmental Protection Act.

***new or amended authority***, for registered premises, means—

- (a) a new development approval or a new registration authorising the carrying out of an environmentally relevant activity on the premises; or
- (b) an amendment to the development approval or registration for the premises; or
- (c) a new code of environmental compliance applying to the premises; or
- (d) an amendment to an existing code of environmental compliance applying to the premises.

***original authority***, for registered premises, means the following in effect when the premises were first registered—

- (a) the registration;
- (b) the development approval for the premises;
- (c) any code of environmental compliance applying to the activity on the premises.

**231 Regulation may prescribe additional matters**

A regulation may prescribe additional matters for this part, including the following—

- (a) requirements for an application;
- (b) processes for dealing with applications;
- (c) circumstances in which an application lapses, or is taken to have been withdrawn;

[s 232]

- 
- (d) matters the Minister must assess an application against, 1  
or having regard to; 2
  - (e) the content of notices; 3
  - (f) procedures for notification; 4
  - (g) procedures for cancelling registrations or amending the 5  
conditions of a registration; 6
  - (h) the form in which information must be kept. 7

## **Part 5                      Other provisions                      8**

- 232      Party houses                      9**
- (1) This section is about party houses. 10
  - (2) A *party house* is a residential dwelling that is used, for a fee, 11  
to provide accommodation or facilities for guests if— 12
    - (a) all or part of the dwelling is regularly used by guests for 13  
parties (such as bucks nights, hens nights, raves, or 14  
wedding receptions); and 15
    - (b) the accommodation or facilities are provided for a 16  
period of less than 10 days; and 17
    - (c) the owner of the dwelling does not occupy the dwelling 18  
during that period. 19
  - (3) A planning scheme, or TLPI, (a *planning instrument*) of a 20  
local government may— 21

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- (a) state that a material change of use for a party house is assessable development in all or part of the local government area; and
  - (b) include assessment benchmarks for a material change of use for a party house; and
  - (c) identify all or part of the local government area as a party house restriction area.
- (4) The use of a residential dwelling as a party house, in a party house restriction area, is not, and has never been, a natural and ordinary consequence of a residential dwelling development.
- (5) Neither of the following authorises, or has ever authorised, a material change of use of a party house to take place as part of a residential dwelling development in a party house restriction area—
  - (a) a development permit for the residential dwelling development;
  - (b) a planning instrument that states residential dwelling development in the party house restriction area is accepted development.
- (6) Subsection (5) applies whether the development permit or planning instrument was made before or after this section commences.
- (7) In this section—

**residential dwelling** means premises used for a self-contained residence that is—

  - (a) a dual occupancy; or
  - (b) a dwelling house; or
  - (c) a dwelling unit; or
  - (d) a multiple dwelling.

**residential dwelling development** means a material change of use of a residential dwelling.

[s 233]

|            |   |    |
|------------|---|----|
| <b>233</b> | <b>Application of P&amp;E Court Act evidentiary provisions</b>  | 1  |
|            | The P&E Court Act, part 5, division 2 also applies to—  | 2  |
|            | (a) proceedings relating to this Act started in a court other than the P&E Court or in a tribunal; and  | 3  |
|            |   | 4  |
|            | (b) any person acting judicially in relation to proceedings relating to this Act.   | 5  |
|            |   | 6  |
| <br>       |   |    |
| <b>234</b> | <b>Electronic service</b>   | 7  |
|            | (1) This section applies if—  | 8  |
|            | (a) a person (the <i>server</i> ) receives a document from another person; and  | 9  |
|            |   | 10 |
|            | (b) the document states an electronic address for service; and  | 11 |
|            |   | 12 |
|            | <i>Examples of an electronic address—</i>   | 13 |
|            | an email address, an internet protocol (IP) address, the address of a digital mailbox   | 14 |
|            |   | 15 |
|            | (c) the server wants to give a document to the other person.  | 16 |
|            | (2) The server may give the document to the other person by electronically transmitting the following (the <i>communication</i> ) to the electronic address—          | 17 |
|            |   | 18 |
|            |   | 19 |
|            | (a) the document; or  | 20 |
|            | (b) a message stating that the document is available for the other party to view by opening a stated hyperlink.   | 21 |
|            |   | 22 |
|            | (3) The other person is taken to have been served with the document under subsection (2)(b) if the document was able to be viewed by opening the hyperlink—           | 23 |
|            |   | 24 |
|            |   | 25 |
|            | (a) at the time (the <i>sending time</i> ) when the communication was transmitted; and  | 26 |
|            |   | 27 |
|            | (b) for a period after the sending time that, in all the circumstances, was reasonable to allow the other person to open the hyperlink and read or copy the document. | 28 |
|            |   | 29 |
|            |   | 30 |

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|            |  |                |
|------------|--|----------------|
| (4)        | When deciding what is a reasonable period for subsection (3)(b), regard must be had to the other person's functions under this Act for the application.  | 1<br>2<br>3    |
| (5)        | Subsection (3) applies whether or not the other person opened the hyperlink.   | 4<br>5         |
| (6)        | In any civil or criminal proceedings, a certificate signed by the sender attaching a copy of the communication and stating the following matters is evidence of those matters—   | 6<br>7<br>8    |
| (a)        | the sending time;  | 9              |
| (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.  | 10<br>11<br>12 |
| (7)        | This section does not limit the Interpretation Act, section 39 or the <i>Electronic Transactions (Queensland) Act 2001</i> .   | 13<br>14       |
|            | <i>Example—</i>  | 15             |
|            | In an approved form, a person consents to a particular—  | 16             |
| (a)        | type of electronic communication for service from the applicant to the person for the application; and   | 17<br>18       |
| (b)        | method for electronic signatures for the communication.  | 19             |
|            | The <i>Electronic Transactions (Queensland) Act 2001</i> , sections 11 and 12 (about requirements and permissions to give information in writing) and 14 (about electronic signatures) will apply for the communication. | 20<br>21<br>22 |
| <b>235</b> | <b>References in Act to particular terms</b>   | 23             |
|            | In this Act, a reference to a person or thing mentioned in column 1 of the following table is, if the context allows, a reference to the person or thing mentioned in column 2—  | 24<br>25<br>26 |

| Column 1                       | Column 2  |
|--------------------------------|---|
| For a development application— |   |
| the applicant                  | the applicant for the application   |
| the development                | the development that is the subject of the application                                |
| the assessment manager         | the assessment manager for the application  |
| a referral agency              | a referral agency for the application   |
| the local government           | each local government for the local government area where the development is proposed |
| a referral agency response     | a referral agency response for the application  |
| the development approval       | the development approval for the application  |
| the land                       | the land that is the subject of the application                                       |
| the premises                   | the premises that are the subject of the application                                  |
| the planning scheme            | the planning scheme for the local government area where the development is proposed   |
| a submitter                    | a submitter for the application   |

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| Column 1                     | Column 2  |
|------------------------------|---|
| the decision notice          | the decision notice for the application   |
| For a development approval—  |   |
| the development application  | the development application because of which the approval was given                             |
| the applicant                | the person who applied for the approval or any person in whom the benefit of the approval vests |
| the development              | the development that is the subject of the approval   |
| the assessment manager       | the assessment manager for the development application  |
| a referral agency            | a referral agency for the development application   |
| the land                     | the land that is the subject of the approval  |
| the premises                 | the premises that are the subject of the approval   |
| the local government         | the local government for the local government area where the development is located             |
| For a development condition— |   |
| the development approval     | the development approval in which the condition is included                                     |

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| Column 1  | Column 2   |
|---|--|
| the development   | the development that is the subject of the development approval of which the condition is part |
| the land  | the land that is the subject of the development approval                                       |
| the premises  | the premises that are the subject of the approval  |
| For a call in—  |  |
| the application   | the application that is the subject of the call in   |
| For a change application, cancellation application or extension application—  |  |
| the applicant   | the person who made the application  |
| the development approval  | the development approval that is the subject of the application                                |
| the referral agency   | the referral agency for the development approval that is the subject of the application        |
| For an enforcement notice or proposed enforcement notice—   |  |
| the enforcement authority   | the enforcement authority giving or proposing to give the notice                               |
| For an infrastructure charge, adopted charge, infrastructure charges notice or levied charge (a <i>charge matter</i> )— |  |

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| <b>Column 1</b>   | <b>Column 2</b>  |
|---|--|
| the applicant   | the applicant for the development approval, approval for the extension application, or approval for the change application, to which the charge matter relates |
| the development   | the development that is the subject of the development approval to which the charge matter relates   |
| the premises  | the premises to which the charge attaches  |
| the local government  | the local government for the local government area where the development is located  |
| For a PIA—  |  |
| a PIA   | a local government's PIA   |
| a PIA in relation to a development application or a condition of a development approval   | the local government's PIA   |
| For an LGIP—  |  |
| an LGIP   | a local government's LGIP  |
| an LGIP in relation to a development application or a condition of a development approval | the local government's LGIP  |

|            |   |                  |
|------------|---|------------------|
| <b>236</b> | <b>Applied provisions apply with necessary changes</b>  | 1                |
|            | If this Act applies a provision of another Act (including the old Act) for a purpose, the other provision, and any definition relevant to the provision, apply with necessary changes to achieve the purpose. | 2<br>3<br>4<br>5 |
| <b>237</b> | <b>Delegation</b>   | 6                |
|            | A Minister may delegate the Minister's functions under this Act to—   | 7<br>8           |
|            | (a) an appropriately qualified public service officer; or   | 9                |
|            | (b) another Minister.   | 10               |
| <b>238</b> | <b>Approved forms</b>   | 11               |
|            | The chief executive may approve forms for use under this Act.   | 12               |
| <b>239</b> | <b>Guideline-making power</b>   | 13               |
|            | (1) The Minister or chief executive may make guidelines about—  | 14               |
|            | (a) the matters to be considered by a person when performing a function or exercising a power under this Act; and   | 15<br>16<br>17   |
|            | <i>Example—</i>   | 18               |
|            | the matters that the chief executive must consider when preparing a notice about the making or amending a planning scheme   | 19<br>20<br>21   |
|            | (b) another matter the Minister or chief executive considers appropriate for the administration of this Act.  | 22<br>23         |
|            | (2) The Minister or chief executive must consult with the persons or entities the Minister or chief executive considers appropriate, before making a guideline.   | 24<br>25<br>26   |
|            | (3) The Minister or chief executive must notify the making of a guideline by a notice published in the gazette.   | 27<br>28         |

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|            |  |                |
|------------|--|----------------|
| (4)        | The guideline starts to have effect on the day after the notice is published.                                      | 1<br>2         |
| <b>240</b> | <b>Regulation-making power</b>   | 3              |
| (1)        | The Governor in Council may make a regulation under this Act.  | 4<br>5         |
| (2)        | A regulation may—  | 6              |
| (a)        | prescribe requirements for the content of local planning instruments; and  | 7<br>8         |
| (b)        | prescribe a minor change of use that is not a material change of use; and  | 9<br>10        |
| (c)        | provide for how local governments may give approvals mentioned in the Land Title Act for plans of subdivision; and | 11<br>12<br>13 |
| (d)        | prescribe fees payable under this Act; and   | 14             |
| (e)        | impose a penalty for contravention of a provision of a regulation of no more than 20 penalty units.                | 15<br>16       |

|                   |  |                |
|-------------------|--|----------------|
| <b>Chapter 8</b>  | <b>Transitional provisions and repeal</b>  | 1<br>2         |
| <b>Part 1</b>     | <b>Transitional provisions for repeal of Sustainable Planning Act 2009</b>   | 3<br>4<br>5    |
| <b>Division 1</b> | <b>Introduction</b>  | 6              |
| <b>241</b>        | <b>What this part is about</b>   | 7              |
| (1)               | This part is about the transition from the repealed <i>Sustainable Planning Act 2009</i> (the <b><i>old Act</i></b> ) to this Act.                                 | 8<br>9         |
| (2)               | If this part applies a provision (the <b><i>applied provision</i></b> ) of the old Act to a thing, the following provisions also apply to the thing—               | 10<br>11<br>12 |
| (a)               | any other provision of the old Act, to the extent the applied provision refers to the other provision;   | 13<br>14       |
| (b)               | any definition in the old Act that is used in the applied provision or a provision mentioned in paragraph (a).   | 15<br>16       |
| (3)               | Division 2 applies subject to the other divisions of this part.  | 17             |
| <b>Division 2</b> | <b>General provisions</b>  | 18             |
| <b>242</b>        | <b>Documents</b>   | 19             |
| (1)               | This section applies to a document that is in effect when the old Act is repealed.   | 20<br>21       |
| (2)               | The document continues to have effect according to the terms and conditions of the document, even if the terms and conditions could not be imposed under this Act. | 22<br>23<br>24 |

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- (3) This Act applies to the document as if the document had been made under this Act. 1  
2
- (4) To remove any doubt, it is declared that the document took effect or was made, given or received when the document was made, given or received under the old Act. 3  
4  
5
- (5) The name of the document does not change unless subsection (6) applies to the document. 6  
7
- (6) If a document mentioned in column 1 of the following table is in effect when the old Act is repealed, the document is taken to be the document mentioned in column 2 of the table. 8  
9  
10

| Column 1<br>Old name  | Column 2<br>New name                     |
|---|--|
| a compliance certificate for a plan of subdivision given under the repealed <i>Sustainable Planning Regulation 2009</i> , schedule 19 | an approval made under section 240(2)(c) |
| a compliance permit   | a development permit                     |
| a designation of land for community infrastructure  | a designation                            |
| a preliminary approval given under the old Act, section 242   | a variation approval                     |

- (7) In this section— 11  
**document**— 12
- (a) includes the following— 13
- (i) an agreement, such as an infrastructure agreement or breakup agreement; 14  
15
- (ii) an instrument of appointment, such as the appointment of a referee or the registrar; 16  
17
- (iii) an approval, such as a development approval or preliminary approval; 18  
19

---

|   |                      |
|---|----------------------|
| (iv) a certificate, such as a planning and development certificate;   | 1<br>2               |
| (v) a delegation;   | 3                    |
| (vi) a direction;   | 4                    |
| (vii) an exemption;   | 5                    |
| (viii) a notice, such as a call in notice, enforcement notice, infrastructure charges notice or show cause notice;  | 6<br>7<br>8          |
| (ix) a notation;  | 9                    |
| (x) a notification, such as a public notification;  | 10                   |
| (xi) an order, such as an enforcement order;  | 11                   |
| (xii) a planning instrument, such as a State planning policy, regional plan, planning scheme, planning scheme policy, or temporary local planning instrument;     | 12<br>13<br>14<br>15 |
| (xiii) a resolution, such as a charges resolution; but  | 16                   |
| (b) does not include the following—   | 17                   |
| (i) an instrument that is specifically dealt with under this part, including under section 243 or 247;  | 18<br>19             |
| (ii) a guideline made by the Minister or chief executive;   | 20<br>21             |
| (iii) a regulation.   | 22                   |
| <br><b>243 Statutory instruments</b>  | <br>23               |
| (1) This section applies if a process for making or amending a statutory instrument had started under the old Act but had not ended before that Act was repealed. | 24<br>25<br>26       |
| (2) The old Act continues to apply to the making or amending of the statutory instrument.   | 27<br>28             |

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[s 244]

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|            |  |                  |
|------------|--|------------------|
| (3)        | This Act applies to the statutory instrument as made or amended when the process has ended, as if the statutory instrument had been made under this Act.   | 1<br>2<br>3      |
| (4)        | The statutory instrument has effect according to the terms and conditions of the statutory instrument, even if the terms and conditions could not be imposed on the statutory instrument under this Act. | 4<br>5<br>6<br>7 |
| (5)        | To remove any doubt, it is declared that the statutory instrument took effect or was made when the statutory instrument was made under the old Act.  | 8<br>9<br>10     |
| (6)        | A regulation may identify a statutory instrument as a statutory instrument to which this section applies.  | 11<br>12         |
| <b>244</b> | <b>Applications generally</b>  | 13               |
| (1)        | This section applies to an application (however described) that was made under the old Act but was not decided before that Act was repealed.   | 14<br>15<br>16   |
| (2)        | The old Act continues to apply to—   | 17               |
| (a)        | the application; and   | 18               |
| (b)        | any appeal in relation to the application; and   | 19               |
| (c)        | any negotiated decision notice in relation to the application.   | 20<br>21         |
| (3)        | However, section 234 of this Act applies instead of section 259 of the old Act (which is about giving notices electronically).   | 22<br>23<br>24   |
| (4)        | To remove any doubt, it is declared that any instrument that results from the application—   | 25<br>26         |
| (a)        | took effect or was made when the instrument was made under the old Act; but  | 27<br>28         |
| (b)        | is taken to have been made under this Act, even if that type of instrument can not be made under this Act.   | 29<br>30         |

[s 245]

- (5) However, if a compliance permit results from the application, sections 341 and 409(2) of the old Act (which are about when a development approval lapses) apply to the permit instead of section 82 of this Act.
1  
2  
3  
4
- (6) In this section—  
*application*—
5  
6
- (a) includes a request; but
7
- (b) does not include a claim for compensation to which section 250 applies.
8  
9

## 245 **References to the old Act or provisions of the old Act** 10

- (1) This section applies to a reference in another Act or a document.
11  
12
- (2) If the context allows—
13
- (a) a reference to the old Act is a reference to this Act; and
14
- (b) a reference to a provision of the old Act is a reference to the provision of this Act that corresponds, or most closely corresponds, to the provision of the old Act; and
15  
16  
17
- (c) a reference to the person or thing in column 1 of the following table is a reference to the person or thing in column 2 of the table.
18  
19  
20

| Column 1<br>Old name  | Column 2<br>New name |
|---|----------------------|
| a designation of land for community infrastructure          | a designation        |
| a preliminary approval given under the old Act, section 242 | a variation approval |
| a compliance permit   | a development permit |

[s 245]

| <b>Column 1</b><br><b>Old name</b>   | <b>Column 2</b><br><b>New name</b>  |
|--|---|
| a compliance certificate for a plan of subdivision given under the repealed <i>Sustainable Planning Regulation 2009</i> , schedule 19    | an approval made under section 240(2)(c)  |
| a notice about a superseded scheme request   | a notice of a local government's decision about a request given under section 23(7) or taken to have been given under section 23(8) |
| exempt development   | accepted development  |
| self-assessable development, to the extent the development complies with all applicable codes for the self-assessable development        | accepted development  |
| self-assessable development, to the extent the development does not comply with all applicable codes for the self-assessable development | assessable development  |
| a code   | an assessment benchmark   |
| a matter, other than a code, against which assessable development must be assessed   | an assessment benchmark   |
| compliance assessment  | standard assessment   |

| Column 1<br>Old name | Column 2<br>New name  |
|----------------------|---|
| code assessment      | standard assessment   |
| impact assessment    | merit assessment for which public notification is required under section 48 |

|            |  |             |
|------------|--|-------------|
| <b>246</b> | <b>Lawful uses of premises</b>   | 1           |
|            | To the extent an existing use of premises is lawful when the old Act is repealed, the use is taken to be a lawful use when this section commences. | 2<br>3<br>4 |
| <b>247</b> | <b>State planning regulatory and standard planning scheme provisions</b>   | 5<br>6      |
|            | The following instruments made under the old Act stop having effect when this section commences—   | 7<br>8      |
|            | (a) the State planning regulatory provisions;  | 9           |
|            | (b) the standard planning scheme provisions.   | 10          |
| <b>248</b> | <b>Declaration for certain continued provisions</b>  | 11          |
|            | It is declared that the Interpretation Act, section 20A applies to the following provisions of the old Act—  | 12<br>13    |
|            | (a) section 714 (which is about a local government taking or purchasing land);   | 14<br>15    |
|            | (b) section 850 (which is about conditions attaching to land);   | 16<br>17    |
|            | (c) section 859 (which is about the <i>Local Government (Robina Central Planning Agreement) Act 1992</i> );  | 18<br>19    |
|            | (d) section 861 (which is about orders in council relating to particular land);  | 20<br>21    |

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- |     |  |             |
|-----|--|-------------|
| (e) | section 888 (which is about development applications made under the repealed <i>Planning (Urban Encroachment—Milton Brewery) Act 2009</i> ); | 1<br>2<br>3 |
| (f) | section 958 (which is about enforcement by new local governments);   | 4<br>5      |
| (g) | section 959I (which is about existing land transfer agreements or requirements);   | 6<br>7      |
| (h) | section 970 (which is about making a payment under an environmental offset condition).   | 8<br>9      |
|     | <i>Note—</i>   | 10          |
|     | This section removes any doubt that the effect of those provisions does not end just because the old Act is repealed.                        | 11<br>12    |

## Division 3                      Planning 13

### 249      Local planning instruments requiring code assessment 14

- |     |   |                |
|-----|---|----------------|
| (1) | This section applies to a local planning instrument that, when the old Act is repealed, requires code assessment for development. | 15<br>16<br>17 |
| (2) | After getting the Minister's approval, the local government may, by resolution, amend the local planning instrument to—           | 18<br>19       |
|     | (a)    require merit assessment for the development; and  | 20             |
|     | (b)    make any other amendments that are necessary or desirable to interpret amendments under paragraph (a).                     | 21<br>22       |
|     | <i>Example of other amendments—</i>   | 23             |
|     | changing references to codes to references to assessment benchmarks for the development   | 24<br>25       |
| (3) | As soon as practicable after amending the local planning instrument, the local government must—                                   | 26<br>27       |
|     | (a)    give a copy of the amendment to the Minister; and  | 28             |
|     | (b)    publish a notice about the amendment in the way required for an amendment of that type under the                           | 1<br>2         |

|                   |   |                  |
|-------------------|---|------------------|
|                   | Minister's rules under section 15.  | 3                |
| (4)               | The requirement for public notification set out in section 48 does not apply to a development application that requires merit assessment because of an amendment under subsection (2)(a). | 4<br>5<br>6<br>7 |
| (5)               | This section stops having effect 1 year after it commences.   | 8                |
| <b>250</b>        | <b>Compensation claims</b>  | 9                |
| (1)               | This section applies to a person who was entitled to make a claim for compensation under the old Act.   | 10<br>11         |
| (2)               | If the person makes a claim for compensation before the old Act is repealed, the old Act continues to apply to—   | 12<br>13         |
|                   | (a) the claim; and  | 14               |
|                   | (b) any appeal in relation to the claim.  | 15               |
| (3)               | If the person wants to make a claim for compensation after the old Act is repealed—   | 16<br>17         |
|                   | (a) section 708 of the old Act continues to apply to the claim in relation to the time within which the claim must be made; but   | 18<br>19<br>20   |
|                   | (b) this Act, other than section 25(6), applies to—   | 21               |
|                   | (i) the claim; and  | 22               |
|                   | (ii) any appeal in relation to the claim.   | 23               |
| <b>Division 4</b> | <b>Development assessment</b>   | 24               |
| <b>251</b>        | <b>Categorising development under designations</b>  | 25               |
| (1)               | This section applies if—  | 26               |
|                   | (a) a designation of land for community infrastructure is in force when the old Act is repealed; and  | 1<br>2           |

[s 252]

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|            |  |                      |
|------------|--|----------------------|
| (b)        | development under the designation is to be carried out after this section commences.   | 3<br>4               |
| (2)        | The development is categorised as follows, instead of the way set out in section 39(6)—  | 5<br>6               |
| (a)        | for development that was categorised as assessable development by a local categorising instrument made under the old Act—accepted development;   | 7<br>8<br>9          |
| (b)        | to the extent the development involves reconfiguring a lot—accepted development;   | 10<br>11             |
| (c)        | otherwise—the category of development stated under the old Act.  | 12<br>13             |
| <b>252</b> | <b>Water infrastructure applications</b>   | 14                   |
| (1)        | This section applies if—   | 15                   |
| (a)        | a development approval was given before 1 July 2014; and   | 16<br>17             |
| (b)        | a development application (a <i>new application</i> ) is made, after this section commences, in relation to the development approval.  | 18<br>19<br>20       |
| (2)        | To the extent the new application relates to a distributor-retailer’s water infrastructure, the referral agency for the new application is—  | 21<br>22<br>23       |
| (a)        | if, before 1 July 2014, the distributor-retailer delegated its functions as concurrence agency under the old Act to a participating local government—the local government; or  | 24<br>25<br>26<br>27 |
| (b)        | otherwise—the distributor-retailer.  | 28                   |
| (3)        | Section 755D of the old Act, as in force immediately before 1 July 2014, applies to the new application as if that section referred to section 40(3)(a) and (4)(a)(i) of this Act, instead of to ‘sections 313(2) and 314(2)’. | 29<br>30<br>31<br>32 |

|            |  |                      |
|------------|--|----------------------|
| (4)        | Section 755U of the old Act, as in force immediately before 1 July 2014, applies to the new application as if that section referred to—                                    | 1<br>2<br>3          |
| (a)        | the new application, instead of to ‘a development application (distributor-retailer)’; and   | 4<br>5               |
| (b)        | a notice of appeal under the P&E Court Act, instead of to ‘a notice of appeal under section 482’.  | 6<br>7               |
| <b>253</b> | <b>Development approvals and compliance permits</b>  | 8                    |
| (1)        | Section 82 of this Act does not apply to a development approval or compliance permit given under the old Act.  | 9<br>10              |
| (2)        | Instead—   | 11                   |
| (a)        | section 341 of the old Act (which is about when a development approval lapses) applies to the development approval; and  | 12<br>13<br>14       |
| (b)        | section 409(2) of the old Act (which is about when a compliance permit lapses) applies to the compliance permit.   | 15<br>16<br>17       |
| (3)        | For a development approval to which section 944A of the old Act applied—   | 18<br>19             |
| (a)        | the chief executive becomes—   | 20                   |
| (i)        | if the relevant entity mentioned in that section was the assessment manager—the assessment manager; or   | 21<br>22<br>23       |
| (ii)       | if the relevant entity mentioned in that section was a concurrence agency—a referral agency; and   | 24<br>25             |
| (b)        | if the relevant entity mentioned in that section, as a concurrence agency, imposed a condition of the approval—the chief executive is taken to have imposed the condition. | 26<br>27<br>28<br>29 |
| (4)        | For any other development approval, the person who was the assessment manager or a referral agency for the development   | 30<br>31             |

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| application for the approval continues as the assessment manager or referral agency for this Act.  | 1<br>2               |
| <b>254 Change applications for designated infrastructure</b>   | 3                    |
| For a development approval for infrastructure that was designated before this section commences, only the person who intends to supply, or is supplying, the infrastructure may make a change application in relation to the approval. | 4<br>5<br>6<br>7     |
| <b>Division 5 Infrastructure</b>   | 8                    |
| <b>255 Infrastructure charges notices</b>  | 9                    |
| (1) The old Act applies to the following notices given by a local government or distributor-retailer that is in force when the old Act is repealed—  | 10<br>11<br>12       |
| (a) an infrastructure charges notice given before 4 July 2014;   | 13<br>14             |
| (b) a negotiated infrastructure charges notice;  | 15                   |
| (c) an adopted infrastructure charges notice;  | 16                   |
| (d) a negotiated adopted infrastructure charges notice;  | 17                   |
| (e) a regulated infrastructure charges notice;   | 18                   |
| (f) a negotiated regulated infrastructure charges notice.  | 19                   |
| (2) However, if the notice relates to a development approval that is changed or extended before or after the old Act is repealed, this Act, other than section 134, applies to amending the notice.                                    | 20<br>21<br>22<br>23 |
| (3) Subsection (2) does not apply to a notice given by a distributor-retailer.   | 24<br>25             |

|            |   |    |
|------------|---|----|
| <b>256</b> | <b>Levied charges</b>   | 1  |
| (1)        | The old Act continues to apply to the following charges payable before 4 July 2014, including any offset, refund or repayment that applied to the charge— | 2  |
|            |   | 3  |
|            |   | 4  |
|            | (a) an infrastructure charge;   | 5  |
|            | (b) a regulated infrastructure charge;  | 6  |
|            | (c) an adopted infrastructure charge.   | 7  |
| (2)        | This Act applies to a levied charge that was levied under the old Act after 3 July 2014, as if the charge had been levied under this Act.                 | 8  |
|            |   | 9  |
|            |   | 10 |
| (3)        | To remove any doubt, it is declared that the levied charge was levied when the levied charge was levied under the old Act.                                | 11 |
|            |   | 12 |
| <b>257</b> | <b>Infrastructure charges</b>   | 13 |
| (1)        | This Act applies to an infrastructure charge adopted under a charges resolution made under the old Act, as if the charge had been adopted under this Act. | 14 |
|            |   | 15 |
|            |   | 16 |
| (2)        | To remove any doubt, it is declared that the infrastructure charge was adopted when the charges resolution was made under the old Act.                    | 17 |
|            |   | 18 |
|            |   | 19 |
| <b>258</b> | <b>Infrastructure charges resolutions</b>   | 20 |
| (1)        | This section applies in relation to a local government's planning scheme that—  | 21 |
|            |   | 22 |
|            | (a) did not include a PIP (as defined under the old Act) before 4 July 2014; and  | 23 |
|            |   | 24 |
|            | (b) does not include an LGIP when this section commences.   | 25 |
| (2)        | A charges resolution, whether made before or after this section commences, may do either or both of the following despite sections 108 and 109—           | 26 |
|            |   | 27 |
|            |   | 28 |
|            | (a) identify development infrastructure as trunk infrastructure for the local government area;  | 29 |
|            |   | 30 |

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|            |   |                |
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| (b)        | state the required standard of service, and establishment costs, for the trunk infrastructure identified.   | 1<br>2         |
| (3)        | The local government may do the following as if the matters under subsection (2) were part of an LGIP, despite section 106—   | 3<br>4<br>5    |
| (a)        | adopt charges under section 108;  | 6              |
| (b)        | give an infrastructure charges notice under section 114;  | 7              |
| (c)        | impose conditions about trunk infrastructure under section 123, 124 or 127.   | 8<br>9         |
| (4)        | This section stops having effect on the earlier of the following days—  | 10<br>11       |
| (a)        | the day the local government—   | 12             |
| (i)        | amends the planning scheme to include an LGIP;<br>or  | 13<br>14       |
| (ii)       | adopts a new planning scheme that includes an LGIP;   | 15<br>16       |
| (b)        | 1 July 2016.  | 17             |
| <b>259</b> | <b>Infrastructure charges in declared master plan area</b>  | 18             |
| (1)        | A local government's charges resolution may state whether an infrastructure charge may be levied for development in a declared master planned area of the local government.   | 19<br>20<br>21 |
| (2)        | If the local government's charges resolution does not do so, the local government must not levy an infrastructure charge for development in the declared master planned area. | 22<br>23<br>24 |
| <b>260</b> | <b>Infrastructure conditions</b>  | 25             |
| (1)        | This section applies to a development approval, in force when the old Act is repealed, that is subject to a condition imposed under section 848(2)(c) of the old Act.         | 26<br>27<br>28 |

|                   |  |                |
|-------------------|--|----------------|
| (2)               | Section 848(3) to (5) of the old Act continues to apply to the development approval.   | 1<br>2         |
| (3)               | This Act, other than section 115(3)(a) and (b), applies to the giving of an infrastructure charges notice in relation to—                  | 3<br>4         |
| (a)               | a change approval given in relation to the development approval; or  | 5<br>6         |
| (b)               | an extension approval given in relation to the development approval.   | 7<br>8         |
| (4)               | This section applies whether the change approval or extension approval (however described) is made before or after this section commences. | 9<br>10<br>11  |
| <b>261</b>        | <b>Infrastructure agreements</b>   | 12             |
|                   | Section 154(2) does not apply to an infrastructure agreement entered into before 4 July 2014.  | 13<br>14       |
| <b>Division 6</b> | <b>Enforcement and appeals</b>   | 15             |
| <b>262</b>        | <b>Tribunals</b>   | 16             |
|                   | When this section commences, a building and development dispute resolution committee under the old Act becomes a tribunal under this Act.  | 17<br>18<br>19 |
| <b>263</b>        | <b>Proceedings</b>   | 20             |
| (1)               | This section applies to a person who was entitled to start proceedings, or had started proceedings, for a matter under the old Act.        | 21<br>22<br>23 |
| (2)               | If proceedings had not been started before the old Act was repealed, proceedings may be brought only under this Act.                       | 24<br>25       |
| (3)               | For proceedings that were started in the P&E Court before the old Act was repealed—  | 26<br>27       |

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- (a) the old Act continues to apply to the proceedings; and 1
- (b) this Act applies to any appeal in relation to the 2  
proceedings. 3
- (4) For proceedings that were started in a committee before the 4  
old Act was repealed— 5
  - (a) if a committee had been established to hear the 6  
proceedings before the old Act was repealed— 7
    - (i) the old Act continues to apply to the proceedings; 8  
and 9
    - (ii) this Act applies to any appeal in relation to the 10  
proceedings; or 11
  - (b) if a committee had not been established before the old 12  
Act was repealed—this Act applies to the proceedings, 13  
and any appeal in relation to the proceedings. 14
- (5) A committee mentioned in subsection (4)(a) must continue to 15  
hear the proceedings despite the repeal of the old Act. 16

## **Division 7                      Miscellaneous                      17**

### **264      Structure plans                      18**

- (1) To remove any doubt, it is declared that each structure plan 19  
made by the Sunshine Coast Regional Council under the old 20  
Act stopped having effect on 21 May 2014. 21
- (2) A structure plan made by the Gold Coast City Council or 22  
Redland City Council under the old Act stops having effect 23  
when a planning scheme mentioned in subsection (3) is made. 24
- (3) The Gold Coast City Council or Redland City Council may 25  
make a planning scheme in relation to a declared master 26  
planned area under the old Act after the Minister notifies the 27  
council that the Minister is satisfied the planning scheme— 28
  - (a) is consistent with the strategic intent of the structure 29  
plan for the declared master planned area; and 30

|            |  |                            |
|------------|--|----------------------------|
| (b)        | does not affect the development entitlements or development responsibilities, stated in the structure plan, in an adverse and material way.  | 1<br>2<br>3                |
| (4)        | The Cairns Regional Council or Moreton Bay Regional Council may make a planning scheme in relation to a declared master planned area under the old Act after the Minister notifies the council that the Minister is satisfied the planning scheme addresses the matters in section 761A(4) of the old Act. | 4<br>5<br>6<br>7<br>8<br>9 |
| (5)        | An agreement (a <i><b>funding agreement</b></i> ) to fund the preparation of a structure plan under section 143 of the old Act, as that Act was in force on 21 September 2012, is not repealed just because of the repeal of the old Act.  | 10<br>11<br>12<br>13       |
| (6)        | A local government may apply any funds received under a funding agreement to fulfil the local government's responsibilities under subsections (2) or (3), in accordance with the local government's policy under section 143(2) of the old Act, as that Act was in force on 21 September 2012.             | 14<br>15<br>16<br>17<br>18 |
| <b>265</b> | <b>Master plans</b>  | 19                         |
| (1)        | This section applies to a master plan that is in force when the old Act is repealed.   | 20<br>21                   |
| (2)        | The master plan continues to have effect until the time stated in section 907(a) or (b) of the old Act.  | 22<br>23                   |
| (3)        | The following provisions of this Act apply to the master plan as if the master plan were a local planning instrument—  | 24<br>25                   |
| (a)        | section 7(4)(a) and (b);   | 26                         |
| (b)        | section 30(5)(a);  | 27                         |
| (c)        | section 216(1)(a);   | 28                         |
| (d)        | section 218(2)(a);   | 29                         |
| (e)        | section 225.   | 30                         |

[s 265]

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| (4) | Any provision of this Act that relates to a categorising instrument applies to the master plan as if the master plan were a local categorising instrument.                        | 1<br>2<br>3          |
| (5) | The following provisions of this Act apply to the master plan as if the master plan were a development approval for the land in the master planning unit—                         | 4<br>5<br>6          |
| (a) | section 70;   | 7                    |
| (b) | section 86;   | 8                    |
| (c) | section 154(1)(a);  | 9                    |
| (d) | section 161;  | 10                   |
| (e) | section 165(4)(b);  | 11                   |
| (f) | section 216(1)(b).  | 12                   |
| (6) | To the extent of any inconsistency, the master plan applies instead of the following—   | 13<br>14             |
| (a) | a local planning instrument;  | 15                   |
| (b) | a condition decided under the repealed LGP&E Act, section 2.19(3)(a);   | 16<br>17             |
| (c) | a condition of an approval given under the repealed LGP&E Act, section 4.4(5).  | 18<br>19             |
| (7) | An agreement about the master plan under section 193 of the old Act, as that Act was in force on 21 September 2012, is not repealed just because of the repeal of the old Act.    | 20<br>21<br>22       |
| (8) | A certified copy of the master plan is evidence of the content of the master plan.  | 23<br>24             |
| (9) | After this section commences, the master plan may be amended or cancelled in accordance with chapter 4, part 3, divisions 3 and 4 of the old Act as in force on 21 November 2012. | 25<br>26<br>27<br>28 |

|            |  |          |
|------------|--|----------|
| <b>266</b> | <b>Development control plans</b>   | <b>1</b> |
| (1)        | Section 86(4) of the old Act continues to apply to the following development control plans—  | 2        |
|            |  | 3        |
| (a)        | the Ipswich City Council’s Springfield Structure Plan;   | 4        |
| (b)        | the Moreton Bay Regional Council’s Mango Hill Infrastructure Development Control Plan;   | 5        |
|            |  | 6        |
| (c)        | the Sunshine Coast Regional Council’s Development Control Plan 1 Kawana Waters.  | 7        |
|            |  | 8        |
| (2)        | Section 857 of the old Act—  | 9        |
| (a)        | continues to apply to a development control plan mentioned in section 857(1) of the old Act until the plan is applied or adopted under section 86(4) of the old Act; and       | 10       |
|            |  | 11       |
|            |  | 12       |
|            |  | 13       |
| (b)        | applies to a development control plan applied or adopted under section 86(4) of the old Act, whether before or after this section commences.                                   | 14       |
|            |  | 15       |
|            |  | 16       |
| (3)        | However, section 857 of the old Act is to be read as if—   | 17       |
| (a)        | section 857(6) referred to this Act as well as to the ‘repealed IPA and this Act’; and   | 18       |
|            |  | 19       |
| (b)        | section 857(7) referred to chapter 3 of this Act, or an instrument made under section 16A of this Act, instead of to ‘chapter 6 or a guideline made under section 117(1)’; and | 20       |
|            |  | 21       |
|            |  | 22       |
|            |  | 23       |
| (c)        | section 857(8) and (9) referred to a planning scheme under this Act as well as to a ‘transitional planning scheme’; and  | 24       |
|            |  | 25       |
|            |  | 26       |
| (d)        | section 857(10) referred to a planning scheme policy under this Act as well as to a ‘transitional planning scheme policy’.   | 27       |
|            |  | 28       |
|            |  | 29       |
| (4)        | The Minister’s powers under chapter 3, part 7 of this Act apply to a process under section 857(5) of the old Act as if—  | 30       |
|            |  | 31       |

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- (a) the process were the development assessment process; 1  
and 2
- (b) the local government were the assessment manager for 3  
the development assessment process. 4

## **267 Rezoning approval conditions** 5

- (1) This section applies to the following conditions (a *rezoning condition*)— 6  
7
  - (a) a condition decided under the repealed LGP&E Act, 8  
section 2.19(3)(a); 9
  - (b) a condition of an approval given under the repealed 10  
LGP&E Act, section 4.4(5). 11
- (2) If a person wants to change a rezoning condition, the person 12  
must make a change application under this Act. 13
- (3) To the extent of any inconsistency, a development approval 14  
applies instead of a rezoning condition. 15

## **268 Rezoning approval agreements** 16

- (1) This section applies to an agreement made, before this section 17  
commences, for securing the conditions of a rezoning 18  
approval if the conditions did not attach to the land the subject 19  
of the approval and bind successors in title. 20
- (2) Nothing in this Act, or the repealed planning legislation, 21  
affects the agreement, to the extent the agreement— 22
  - (a) was validly made; and 23
  - (b) was in force when the old Act was repealed; and 24
  - (c) is not inconsistent with a development condition. 25
- (3) Any amount that was paid, or is payable, in relation to 26  
infrastructure under the agreement must be taken into account 27  
by— 28

- 
- (a) an assessment manager in imposing a condition under this Act about infrastructure; and
    - (b) a local government in levying an infrastructure charge under chapter 4, part 2.
  - (4) In this section—
    - repealed planning legislation*** means—
      - (a) the repealed *Local Government Act 1936*; or
      - (b) the repealed *City of Brisbane Town Planning Act 1964*; or
      - (c) the repealed LGP&E Act; or
      - (d) the repealed *Integrated Planning Act 1997*; or
      - (e) the old Act.
    - rezoning approval*** means an approval decided or given under—
      - (a) the repealed *Local Government Act 1936*, section 33(6A); or
      - (b) the repealed *City of Brisbane Town Planning Act 1964*; or
      - (c) the repealed LGP&E Act, section 6.1.26.

## 269 Compliance assessment of documents or works

- (1) This section applies to—
  - (a) a document or works if, when the old Act was repealed, a development approval or local planning instrument required compliance assessment for the document or works; and
  - (b) a compliance certificate given under the old Act for a document or works.
- (2) The following provisions of the old Act continue to apply in relation to the document, works or certificate—

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|            |  |                      |
|------------|--|----------------------|
|            | (a) chapter 6, part 10;  | 1                    |
|            | (b) sections 576 to 577;   | 2                    |
|            | (c) chapter 7, part 1, division 9;   | 3                    |
|            | (d) chapter 7, to the extent the chapter gives effect to the provisions mentioned in paragraphs (b) and (c).   | 4<br>5               |
| <b>270</b> | <b>Public housing development</b>  | 6                    |
|            | (1) This section applies to development for public housing if, before this section commences, the chief executive has complied with section 721(2)(a) of the old Act in relation to the development. | 7<br>8<br>9<br>10    |
|            | (2) Chapter 9, part 5 of the old Act continues to apply to the development.  | 11<br>12             |
| <b>271</b> | <b>LGP&amp;E Act approvals</b>   | 13                   |
|            | For section 161 (which contains the offence for contravening a development approval), a development approval includes an approval under the repealed LGP&E Act, section 4.4(5) or 4.7(5).            | 14<br>15<br>16<br>17 |
| <b>272</b> | <b>Milton XXXX Brewery</b>   | 18                   |
|            | (1) This section applies to the brewery on lot 35 on plan SL805565.  | 19<br>20             |
|            | (2) The brewery is taken to be registered under section 223 for 10 years from 27 April 2009.   | 21<br>22             |
|            | (3) The Milton rail precinct is the affected area to which the registration relates.   | 23<br>24             |
|            | (4) Section 225(3) to (8) applies to the brewery only for a renewal of the registration.   | 25<br>26             |
|            | (5) Section 230 applies to a claim relating to an emission of light only if the intensity of the light is more than the intensity of light emitted before 27 April 2009.                             | 27<br>28<br>29       |

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|               |   |                  |
|---------------|---|------------------|
| (6)           | Section 225(2), and schedule 1, clause 20, do not apply in relation to the brewery.   | 1<br>2           |
| <b>273</b>    | <b>Transitional regulation-making power</b>   | 3                |
| (1)           | The Governor in Council may make a regulation (a <i>transitional regulation</i> ) providing for anything that is necessary to enable or facilitate the transition from the old Act to this Act and the P&E Court Act. | 4<br>5<br>6<br>7 |
| (2)           | A transitional regulation may have retrospective operation to a time that is no earlier than when the old Act was repealed.   | 8<br>9           |
| (3)           | A transitional regulation must declare it is a transitional regulation.   | 10<br>11         |
| (4)           | This section and any transitional regulation stop having effect 5 years after the old Act was repealed.   | 12<br>13         |
| <b>Part 2</b> | <b>Repeal provision</b>   | 14               |
| <b>274</b>    | <b>Act repealed</b>   | 15               |
|               | The Sustainable Planning Act 2009, No. 36 is repealed.  | 16               |

|                   |   |                |
|-------------------|---|----------------|
| <b>Schedule 1</b> | <b>Appeals</b>  | 1              |
|                   | section 184   | 2              |
| <b>Part 1</b>     | <b>Appeals to tribunals</b>   | 3              |
| <b>Division 1</b> | <b>Development applications and approvals</b>   | 4<br>5         |
| <b>1</b>          | <b>Particular development applications</b>  | 6              |
| (1)               | This section applies to a development application to the extent the application relates to—                                       | 7<br>8         |
| (a)               | a material change of use of a classified building; or   | 9              |
| (b)               | operational work associated with—   | 10             |
| (i)               | building work; or   | 11             |
| (ii)              | a retaining wall or tennis court.   | 12             |
| (2)               | However, this section does not apply if—  | 13             |
| (a)               | any part of the development application required merit assessment for which public notification is required under section 48; and | 14<br>15<br>16 |
| (b)               | the assessment manager received any properly made submissions for the development application.                                    | 17<br>18       |
| (3)               | The person who made the development application may appeal to a tribunal against any of the following—                            | 19<br>20       |
| (a)               | the refusal, or deemed refusal, of all or part of the application;  | 21<br>22       |
| (b)               | a provision of the development approval;  | 23             |
| (c)               | the decision to give a preliminary approval when a development permit was applied for.  | 24<br>25       |
| (4)               | The assessment manager is the respondent.   | 26             |

|          |   |                      |
|----------|---|----------------------|
| (5)      | If the appeal is about a referral agency response, the referral agency is a co-respondent.  | 1<br>2               |
| (6)      | If the appeal is only about a referral agency response, the assessment manager may apply to the tribunal to withdraw from the appeal.   | 3<br>4<br>5          |
| (7)      | A referral agency that is not a co-respondent under subsection (5) may elect to be a co-respondent.   | 6<br>7               |
| <b>2</b> | <b>Extension applications</b>   | 8                    |
| (1)      | This section applies to a development approval that is only for a material change of use of a classified building.  | 9<br>10              |
| (2)      | A person who made an extension application, may appeal to a tribunal against—   | 11<br>12             |
| (a)      | a decision for the application; or  | 13                   |
| (b)      | a deemed refusal of the application.  | 14                   |
| (3)      | The assessment manager is the respondent.   | 15                   |
| (4)      | A referral agency may elect to be a co-respondent.  | 16                   |
| <b>3</b> | <b>Change applications for minor changes</b>  | 17                   |
| (1)      | This section applies to a development approval that is only for a material change of use of a classified building.  | 18<br>19             |
| (2)      | The following persons may appeal to a tribunal against a decision on a change application for a minor change, other than a deemed refusal of the application—                                 | 20<br>21<br>22       |
| (a)      | the person who made the change application;   | 23                   |
| (b)      | if the responsible entity for the change application is the assessment manager for the development application—an affected entity that gave a pre-request response notice or response notice. | 24<br>25<br>26<br>27 |
| (3)      | The responsible entity for the change application is the respondent.  | 28<br>29             |
| (4)      | If an affected entity starts the appeal, the person who made the change application is a co-respondent.   | 30<br>31             |

Schedule 1

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|          |  |                |
|----------|--|----------------|
| (5)      | If the responsible entity is the assessment manager, any person who was a referral agency for the development application may elect to become a co-respondent. | 1<br>2<br>3    |
| <b>4</b> | <b>Development conditions</b>  | <b>4</b>       |
| (1)      | This section applies to a development application if—  | 5              |
| (a)      | the application is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and         | 6<br>7<br>8    |
| (b)      | the proposed development is for premises of not more than 3 storeys; and   | 9<br>10        |
| (c)      | the proposed development is for not more than 60 sole-occupancy units.   | 11<br>12       |
| (2)      | However, this section does not apply to a development application if—  | 13<br>14       |
| (a)      | any part of the application required merit assessment for which public notification is required under section 48; and  | 15<br>16<br>17 |
| (b)      | the assessment manager received any properly made submissions.   | 18<br>19       |
| (3)      | The applicant may appeal to a tribunal against a development condition.  | 20<br>21       |
| (4)      | The assessment manager is the respondent.  | 22             |
| (5)      | If the appeal is about a referral agency response, the referral agency is a co-respondent.   | 23<br>24       |
| (6)      | Another referral agency may elect to be a co-respondent.   | 25             |
| (7)      | If the appeal is only about a referral agency response, the assessment manager may apply to the tribunal to withdraw from the appeal.                          | 26<br>27<br>28 |

|                   |   |                            |
|-------------------|---|----------------------------|
| <b>Division 2</b> | <b>Building, plumbing and drainage matters</b>  | 1<br>2                     |
| <b>5</b>          | <b>Applicant appeals</b>  | 3                          |
| (1)               | This section applies to a tribunal appeal matter.   | 4                          |
| (2)               | A person who made a development application may appeal to a tribunal against any of the following—  | 5<br>6                     |
| (a)               | the refusal, or deemed refusal, of all or part of the application;  | 7<br>8                     |
| (b)               | a provision of the development approval;  | 9                          |
| (c)               | the decision to give a preliminary approval when a development permit was applied for.  | 10<br>11                   |
| (3)               | The assessment manager is the respondent.   | 12                         |
| (4)               | If the appeal is about a referral agency response, the referral agency is a co-respondent.  | 13<br>14                   |
| (5)               | The following may elect to become a co-respondent—  | 15                         |
| (a)               | another referral agency for the development application;  | 16                         |
| (b)               | any private certifier for the development application.  | 17                         |
| (6)               | If the appeal is only about a referral agency response, the assessment manager may apply to the tribunal to withdraw from the appeal.   | 18<br>19<br>20             |
| <b>6</b>          | <b>Building advisory agency appeals</b>   | 21                         |
| (1)               | This section applies to a tribunal appeal matter.   | 22                         |
| (2)               | A building advisory agency may appeal to a tribunal about the giving of a development approval for a development application that involves standard assessment for the part of building work to be assessed against the building assessment provisions. | 23<br>24<br>25<br>26<br>27 |
| (3)               | The assessment manager is the respondent.   | 28                         |
| (4)               | The person who made the development application is a co-respondent.   | 29<br>30                   |

Schedule 1

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|----------|---|----------------|
| (5)      | The following may elect to become a co-respondent—  | 1              |
| (a)      | another referral agency for the development application;  | 2              |
| (b)      | any private certifier for the development application.  | 3              |
| <b>7</b> | <b>Extension applications</b>   | <b>4</b>       |
| (1)      | This section applies to a tribunal appeal matter.   | 5              |
| (2)      | A person who is given a notice of a decision under section 84(7) in relation to a development approval may appeal to a tribunal against the decision.           | 6<br>7<br>8    |
| (3)      | The assessment manager is the respondent.   | 9              |
| (4)      | The following may elect to become a co-respondent—  | 10             |
| (a)      | a referral agency for the development application;  | 11             |
| (b)      | any private certifier for the development application.  | 12             |
| <b>8</b> | <b>Change applications for minor changes</b>  | <b>13</b>      |
| (1)      | This section applies to a tribunal appeal matter.   | 14             |
| (2)      | The following persons may appeal to a tribunal against a decision on a change application for a minor change to a development approval—                         | 15<br>16<br>17 |
| (a)      | the person who made the change application;   | 18             |
| (b)      | if the responsible entity for the change application is the assessment manager—an affected entity that gave a pre-request response notice or a response notice. | 19<br>20<br>21 |
| (3)      | However, this section does not apply to—  | 22             |
| (a)      | a deemed refusal of a change application; or  | 23             |
| (b)      | a decision on a change application made by the P&E Court.   | 24<br>25       |
| (4)      | The responsible entity for the change application is the respondent.  | 26<br>27       |
| (5)      | If an affected entity starts the appeal, the person who made the change application is a co-respondent.   | 28<br>29       |

|           |  |                         |
|-----------|--|-------------------------|
| (6)       | The following may elect to become a co-respondent—   | 1                       |
| (a)       | a referral agency for the development application;   | 2                       |
| (b)       | any private certifier for the development application.   | 3                       |
| <b>9</b>  | <b>Building and plumbing and drainage matters</b>  | <b>4</b>                |
| (1)       | This section applies to a tribunal appeal matter.  | 5                       |
| (2)       | A person may appeal to a tribunal about—   | 6                       |
| (a)       | if the person was an applicant for a building development approval under the Building Act—a decision by a building certifier or referral agency about the inspection of building work that is the subject of the building development approval; or | 7<br>8<br>9<br>10<br>11 |
| (b)       | a decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission; or   | 12<br>13<br>14          |
| (c)       | a decision under the Plumbing and Drainage Act, part 4 or 5.   | 15<br>16                |
| (3)       | A person may appeal to tribunal about a local government's failure to decide an application, other than a building development application, under the Building Act within the period required under that Act.                                      | 17<br>18<br>19<br>20    |
| (4)       | The respondent is—   | 21                      |
| (a)       | for an appeal under subsection (2)—the person who gave the notice or made the decision mentioned in subsection (2); and  | 22<br>23<br>24          |
| (b)       | for an appeal under subsection (3)—the local government to whom the application mentioned in subsection (3) was made.  | 25<br>26<br>27          |
| <b>10</b> | <b>Enforcement notices</b>   | <b>28</b>               |
| (1)       | A person who is given an enforcement notice in relation to a tribunal matter may appeal to a tribunal about the decision to give the notice.   | 29<br>30<br>31          |

Schedule 1

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| (2) | The enforcement authority is the respondent.  | 1      |
| (3) | If the enforcement authority is not the local government, the local government may elect to be a co-respondent. | 2<br>3 |

|                   |                |   |
|-------------------|----------------|---|
| <b>Division 3</b> | <b>Charges</b> | 4 |
|-------------------|----------------|---|

|           |                                       |   |
|-----------|---------------------------------------|---|
| <b>11</b> | <b>Infrastructure charges notices</b> | 5 |
|-----------|---------------------------------------|---|

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|-----|--|----------------|
| (1) | A person who is given an infrastructure charges notice may appeal to a tribunal about the decision to give the notice on 1 or more of the following grounds— | 6<br>7<br>8    |
| (a) | the decision involved an error relating to—  | 9              |
|     | (i) the application of the relevant adopted charge; or   | 10             |
|     | (ii) the working out, for section 115, of additional demand; or  | 11<br>12       |
|     | (iii) an offset or refund;   | 13             |
|     | <i>Examples of possible errors in applying an adopted charge—</i>  | 14             |
|     | • the incorrect application of gross floor area for a non-residential development  | 15<br>16       |
|     | • applying an incorrect ‘use category’ under an SPRP (adopted charges) to the development  | 17<br>18       |
| (b) | there was no decision about an offset or refund;   | 19             |
| (c) | if the infrastructure charges notice states a refund will be given—the timing for giving the refund.   | 20<br>21       |
| (2) | To remove any doubt, it is declared that the appeal must not be about—   | 22<br>23       |
| (a) | the adopted charge itself; or  | 24             |
| (b) | for a decision about an offset or refund—  | 25             |
|     | (i) the establishment cost of infrastructure in an LGIP; or  | 26<br>27       |
|     | (ii) the cost of infrastructure decided using the method included in the local government’s charges resolution.  | 28<br>29<br>30 |

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| (3)               | The local government that gave the infrastructure charges notice is the respondent.   | 1<br>2         |
| <b>12</b>         | <b>Conversion applications</b>  | 3              |
| (1)               | A person who made a conversion application may appeal to a tribunal against a refusal, or deemed refusal, of the application. | 4<br>5<br>6    |
| (2)               | The local government is the respondent.   | 7              |
| <b>Part 2</b>     | <b>Appeals to P&amp;E Court</b>   | 8              |
| <b>Division 1</b> | <b>Development applications and approvals</b>   | 9<br>10        |
| <b>13</b>         | <b>Appeals from tribunals</b>   | 11             |
| (1)               | A party to proceedings decided by a tribunal may appeal to the P&E Court against the tribunal's decision on the ground of—    | 12<br>13<br>14 |
| (a)               | an error or mistake in law on the part of the tribunal; or  | 15             |
| (b)               | jurisdictional error.   | 16             |
| (2)               | The other party is the respondent.  | 17             |
| <b>14</b>         | <b>Development applications</b>   | 18             |
| (1)               | A person who made a development application may appeal to the P&E Court against any of the following—                         | 19<br>20       |
| (a)               | the refusal, or deemed refusal, of all or part of the development application;  | 21<br>22       |
| (b)               | a provision of a development approval;  | 23             |
| (c)               | the decision to give a preliminary approval when a development permit was applied for.  | 24<br>25       |

Schedule 1

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|-----------|---|----------------|
| (2)       | The assessment manager is the respondent.   | 1              |
| (3)       | If the appeal is about a referral agency response, the referral agency is a co-respondent.  | 2<br>3         |
| (4)       | Any submitter may elect to become a co-respondent.  | 4              |
| (5)       | If the appeal is only about a referral agency response, the assessment manager may apply to the court to withdraw from the appeal.                      | 5<br>6<br>7    |
| <b>15</b> | <b>Eligible submitter appeals</b>   | 8              |
| (1)       | An eligible submitter for a development application that is approved may appeal to the P&E Court only against—  | 9<br>10        |
| (a)       | the part of the development approval that relates to the assessment manager's decision about any part of the application requiring merit assessment; or | 11<br>12<br>13 |
| (b)       | the part of the approval that relates to the assessment manager's decision about a variation request.   | 14<br>15       |
| (2)       | The appeal may be against—  | 16             |
| (a)       | for an eligible submitter that is not a referral agency (advice only)—the giving of the development approval;   | 17<br>18       |
| (b)       | for any eligible submitter—a provision of the development approval, or failure to include a provision in the development approval.                      | 19<br>20<br>21 |
| (3)       | The assessment manager is the respondent.   | 22             |
| (4)       | The applicant is a co-respondent.   | 23             |
| (5)       | If the appeal is about a referral agency response, the referral agency is a co-respondent.  | 24<br>25       |
| (6)       | Another eligible submitter may elect to become a co-respondent.   | 26<br>27       |
| (7)       | If the appeal is only about a referral agency response, the assessment manager may apply to the court to withdraw from the appeal.                      | 28<br>29<br>30 |

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|-------------------|--|----|
| <b>16</b>         | <b>Extension applications</b>  | 1  |
| (1)               | A person who made an extension application may appeal to the P&E Court against—  | 2  |
|                   |  | 3  |
| (a)               | the assessment manager's decision on the application; or   | 4  |
| (b)               | a deemed refusal of the application.   | 5  |
| (2)               | The assessment manager is the respondent.  | 6  |
| <b>17</b>         | <b>Change applications</b>   | 7  |
| (1)               | The following persons may appeal to the P&E Court against a decision on a change application—  | 8  |
|                   |  | 9  |
| (a)               | the person who made the change application; or   | 10 |
| (b)               | if the responsible entity for assessing the application is the assessment manager for the development application—an affected entity that gave a pre-request response notice or response notice.                               | 11 |
|                   |  | 12 |
|                   |  | 13 |
|                   |  | 14 |
| (2)               | Also, a person who made a change application may appeal to the P&E Court against a deemed refusal of the application.  | 15 |
|                   |  | 16 |
| (3)               | However, this section does not apply to a decision on a change application made by the P&E Court.  | 17 |
|                   |  | 18 |
| (4)               | The responsible entity for the change application is the respondent.   | 19 |
|                   |  | 20 |
| (5)               | If the responsible entity is the assessment manager and the appeal is started by an affected entity that gave a pre-request response notice or response notice, the person who made the change application is a co-respondent. | 21 |
|                   |  | 22 |
|                   |  | 23 |
|                   |  | 24 |
| <b>Division 2</b> | <b>Other matters</b>   | 25 |
| <b>18</b>         | <b>Enforcement notices</b>   | 26 |
| (1)               | A person who is given an enforcement notice may appeal to the P&E Court about the decision to give the notice.   | 27 |
|                   |  | 28 |
| (2)               | The enforcement authority is the respondent.   | 29 |

Schedule 1

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|-----------|--|----------------------|
| (3)       | If the enforcement authority is not the local government, the local government may elect to be a co-respondent.  | 1<br>2               |
| <b>19</b> | <b>Local laws</b>  | 3                    |
| (1)       | This section applies if—   | 4                    |
| (a)       | a person is dissatisfied with a decision of a local government or the conditions applied under a local law about the use of premises or the erection of a building or other structure; and   | 5<br>6<br>7<br>8     |
| (b)       | the use is not prohibited development under the planning scheme or a TLPI for the planning scheme area.  | 9<br>10<br>11        |
| (2)       | The person may appeal to the P&E Court against the decision or the conditions applied.   | 12<br>13             |
| (3)       | The local government is the respondent.  | 14                   |
| <b>20</b> | <b>Registered premises</b>   | 15                   |
| (1)       | A person who is given an information notice about a decision of the Minister under chapter 7, part 4 may appeal to the P&E Court against the decision.   | 16<br>17<br>18       |
| (2)       | If the Minister decides, under chapter 7, part 4, to register premises or to renew the registration of premises, an owner or occupier of affected premises who is dissatisfied with the decision may appeal to the P&E Court against the decision. | 19<br>20<br>21<br>22 |
| (3)       | The Minister is the respondent.  | 23                   |
| (4)       | The owner of the registered premises may elect to be a co-respondent.  | 24<br>25             |
| (5)       | In this section—   | 26                   |
|           | <i>affected premises</i> means land in the affected area for the registered premises.  | 27<br>28             |

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|-----------|---|----------------|
| <b>21</b> | <b>Compensation claims</b>  | 1              |
| (1)       | A person who is dissatisfied with a decision under section 26 about the payment of compensation may appeal to the P&E Court against—                            | 2<br>3<br>4    |
| (a)       | the decision; or  | 5              |
| (b)       | a deemed refusal of the claim.  | 6              |
| (2)       | The local government is the respondent.   | 7              |
| <b>22</b> | <b>Infrastructure charges notice</b>  | 8              |
| (1)       | A person who is given an infrastructure charges notice may appeal to the P&E Court about the decision to give the notice on 1 or more of the following grounds— | 9<br>10<br>11  |
| (a)       | the decision involved an error relating to—   | 12             |
| (i)       | the application of the relevant adopted charge; or  | 13             |
| (ii)      | the working out, for section 115, of additional demand; or  | 14<br>15       |
| (iii)     | an offset or refund;  | 16             |
|           | <i>Examples of possible errors in applying an adopted charge—</i>   | 17             |
|           | • the incorrect application of gross floor area for a non-residential development   | 18<br>19       |
|           | • applying an incorrect ‘use category’ under a regulation to the development  | 20<br>21       |
| (b)       | there was no decision about an offset or refund;  | 22             |
| (c)       | if the infrastructure charges notice states a refund will be given—the timing for giving the refund;  | 23<br>24       |
| (d)       | the charge in the notice is so unreasonable that no reasonable relevant local government could have imposed it.   | 25<br>26<br>27 |
| (2)       | To remove any doubt, it is declared that the appeal must not be about—  | 28<br>29       |
| (a)       | the adopted charge itself; or   | 30             |
| (b)       | for a decision about an offset or refund—   | 31             |

Schedule 1

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|           |  |               |
|-----------|--|---------------|
| (i)       | the establishment cost of infrastructure identified in an LGIP; or   | 1<br>2        |
| (ii)      | the cost of infrastructure decided using the method included in the local government's charges resolution.                       | 3<br>4<br>5   |
| (3)       | The local government that gave the infrastructure charges notice is the respondent.  | 6<br>7        |
| <b>23</b> | <b>Conversion applications</b>   | 8             |
| (1)       | A person who made a conversion application may appeal to the P&E Court against a refusal, or deemed refusal, of the application. | 9<br>10<br>11 |
| (2)       | The local government is the respondent.  | 12            |

|                                     |  |                |
|-------------------------------------|--|----------------|
| <b>Schedule 2</b>                   | <b>Dictionary</b>  | 1              |
|                                     | section 4  | 2              |
| <i>accepted development</i>         | see section 39(4).   | 3              |
| <i>access rules</i>                 | see section 217(1).  | 4              |
| <i>Acquisition Act</i>              | means the <i>Acquisition of Land Act 1967</i> .  | 5              |
| <i>acquisition land</i>             | means land or an interest in land—   | 6              |
| (a)                                 | proposed to be taken or acquired under the Acquisition Act or the State Development Act; and   | 7<br>8         |
| (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 | 9<br>10<br>11  |
| (c)                                 | that has not been taken or acquired.   | 12             |
| <i>additional payment condition</i> | see section 127(1).  | 13             |
| <i>adopted charge</i>               | see section 108(1).  | 14             |
| <i>adverse planning change</i>      | see section 24(2).   | 15             |
| <i>affected area</i>                | see section 222(b).  | 16             |
| <i>affected entity</i>              | see section 77(2).   | 17             |
| <i>affected local government</i>    | means a local government with a local government area that the Minister considers is, or will be, affected by a State planning instrument.                 | 18<br>19<br>20 |
| <i>affected owner</i>               | see section 25(1).   | 21             |
| <i>affected parties</i>             | see section 31(2).   | 22             |
| <i>agreement</i>                    | means a written agreement.   | 23             |
| <i>appeal period</i>                | for a decision or matter, see section 184(2).  | 24             |
| <i>appeal rights</i>                | means the appeal rights under schedule 1.  | 25             |
| <i>appellant</i>                    | means a person who starts an appeal.   | 26             |

|   |                            |
|---|----------------------------|
| <b><i>applicant</i></b> , for an appeal in relation to an application, includes the person in whom the benefit of the application vests.  | 1<br>2                     |
| <b><i>application</i></b> , for chapter 3, part 7, see section 87(1).   | 3                          |
| <b><i>approved form</i></b> means a form approved by the chief executive under section 238.   | 4<br>5                     |
| <b><i>assessable development</i></b> see section 39(3).   | 6                          |
| <b><i>assessment benchmarks</i></b> see section 38(1)(c).   | 7                          |
| <b><i>assessment manager</i></b> —  | 8                          |
| (a) has the meaning given in section 43(1); and   | 9                          |
| (b) includes a prescribed assessment manager and a chosen assessment manager.   | 10<br>11                   |
| <b><i>authorised electricity entity</i></b> means an entity authorised, or taken to be authorised, under the <i>Electricity Act 1994</i> , section 116(1), to acquire land.   | 12<br>13<br>14             |
| <b><i>automatic increase provision</i></b> see section 109(3)(b).   | 15                         |
| <b><i>breakup agreement</i></b> see section 110(2).   | 16                         |
| <b><i>building</i></b> 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.   | 17<br>18<br>19             |
| <b><i>Building Act</i></b> means the <i>Building Act 1975</i> .   | 20                         |
| <b><i>building advisory agency</i></b> , for a provision about a development application or approval, means a referral agency (advice only) for the application if the application required standard assessment for building work against the building assessment provisions. | 21<br>22<br>23<br>24<br>25 |
| <b><i>building assessment provisions</i></b> see the Building Act, section 30.  | 26<br>27                   |
| <b><i>building certifier</i></b> —  | 28                         |
| (a) means an individual who, under the Building Act, is licensed as a building certifier; and   | 29<br>30                   |
| (b) includes a private certifier.   | 31                         |

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- 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 development application*** means a development application for building work that requires assessment only against the building assessment provisions.
- 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) works 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 premises on which the building or other structure is situated or on adjoining premises; or
    - (v) supporting (vertically or laterally) premises for activities mentioned in subparagraph (i); and
  - (b) for a Queensland heritage place, includes—
    - (i) altering, repairing, maintaining or moving a built, natural or landscape feature on the place; and
    - (ii) excavating, filling or other disturbances to premises that damage, expose or move archaeological artefacts, as defined under the Heritage Act, on the place; and
    - (iii) altering, repairing or removing artefacts that contribute to the place's cultural heritage significance, including, for example, furniture and fittings; and
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Schedule 2

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- (iv) altering, repairing or removing building finishes 1  
that contribute to the place's cultural heritage 2  
significance, including, for example, paint, 3  
wallpaper and plaster; and 4
- (c) does not include undertaking— 5
  - (i) operations of any kind and all things constructed or 6  
installed that allow taking or interfering with water 7  
under the *Water Act 2000*; or 8
  - (ii) tidal works; or 9
  - (iii) works for reconfiguring a lot; and 10

*Example—* 11  
building a retaining wall 12
- (d) for paragraph (a)(ii)—includes a management procedure 13  
or other activity relating to a building or structure even 14  
though the activity does not involve a structural change 15  
to the building or structure. 16
- business day*** does not include a day between 26 December of 17  
a year and 1 January of the following year. 18
- call in notice*** see section 98(1). 19
- canal*** see the Coastal Act. 20
- cancellation application*** see section 81(1). 21
- categorised*** means categorised by a categorising instrument. 22
- categorising instrument*** see section 38(1). 23
- certified copy***, of a document, means a copy of the document 24  
certified as being an unaltered copy of the document by— 25
  - (a) if the Minister is an assessment manager or referral 26  
agency in relation to the document—the chief executive 27  
of any department for which the Minister has 28  
responsibility; or 29
  - (b) if the chief executive is an assessment manager or 30  
referral agency in relation to the document—an 31  
appropriately qualified public service officer; or 32

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- (c) if a local government is an assessment manager or referral agency in relation to the document—the local government’s chief executive officer; or 1  
2  
3
- (d) if an individual is an assessment manager or referral agency in relation to the document—the individual; or 4  
5
- (e) if a department is an assessment manager or referral agency in relation to the document—the department’s chief executive; or 6  
7  
8
- (f) if a body corporate is an assessment manager or referral agency in relation to the document—the body corporate’s chief executive officer. 9  
10  
11
- chairperson***, for tribunal proceedings, means the chairperson of the tribunal established for the proceedings. 12  
13
- change*** an instrument means amend, replace or repeal the instrument. 14  
15
- change application*** see section 75(1). 16
- change representations*** see section 72(1). 17
- charges breakup*** means the proportion of the maximum adopted charges under chapter 4 and under the SEQ Water Act as between— 18  
19  
20
- (a) the local government; and 21
- (b) a distributor-retailer of the local government. 22
- charges resolution*** see section 108(1). 23
- chosen assessment manager*** means the assessment manager chosen under section 43(3). 24  
25
- City of Brisbane Act*** means the *City of Brisbane Act 2010*. 26
- classified building*** means a building classified under the Building Code as— 27  
28
- (a) a class 1 building; or 29
- (b) a class 10 building, other than a building that is incidental or subordinate to the use, or proposed use, of a building classified under the Building Code as a class 2, 3, 4, 5, 6, 7, 8 or 9 building. 30  
31  
32  
33
-

|   |                |
|---|----------------|
| <i>clear</i> , in relation to vegetation, see the <i>Vegetation Management Act 1999</i> .                                       | 1<br>2         |
| <i>Coastal Act</i> means the <i>Coastal Protection and Management Act 1995</i> .  | 3<br>4         |
| <i>code of environmental compliance</i> see the Environmental Protection Act, section 676.                                      | 5<br>6         |
| <i>compensation claim</i> means a claim for compensation under section 25(6).   | 7<br>8         |
| <i>consent</i> means written consent.   | 9              |
| <i>constructing authority</i> see the Acquisition Act.  | 10             |
| <i>conversion application</i> see section 136(2).   | 11             |
| <i>currency period</i> see section 82(1).   | 12             |
| <i>decision maker</i> see section 87(2).  | 13             |
| <i>decision notice</i> —  | 14             |
| (a) has the meaning given under section 60(1); or   | 15             |
| (b) if a decision notice is replaced by a negotiated decision notice—means the negotiated decision notice.                      | 16<br>17       |
| <i>deemed approval</i> see section 61(5).   | 18             |
| <i>deemed approval notice</i> see section 61(3).  | 19             |
| <i>deemed refusal</i> , means a refusal that is taken to have happened if a decision has not been made when the following ends— | 20<br>21<br>22 |
| (a) for a development application—the period, under the development assessment rules, for making a decision;                    | 23<br>24       |
| (b) for a matter as follows—within the period allowed under this Act for the matter to be decided—                              | 25<br>26       |
| (i) a change application;   | 27             |
| (ii) an extension application;  | 28             |
| (iii) a conversion application;   | 29             |
| (iv) a claim for compensation under chapter 2, part 4, division 2.  | 30<br>31       |

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| <b><i>designated class 2 building</i></b> means a building classified under the Building Code as a class 2 building of no more than— | 1<br>2   |
| (a) 3 storeys; and   | 3        |
| (b) 60 sole-occupancy units.   | 4        |
| <b><i>designated premises</i></b> means premises that are the subject of a designation.  | 5<br>6   |
| <b><i>designation</i></b> see section 29(1).   | 7        |
| <b><i>development</i></b> means any of the following—  | 8        |
| (a) carrying out—  | 9        |
| (i) building work; or  | 10       |
| (ii) plumbing or drainage work; or   | 11       |
| (iii) operational work;  | 12       |
| (b) reconfiguring a lot;   | 13       |
| (c) making a material change of use of premises.   | 14       |
| <b><i>development application</i></b> means an application for a development approval.   | 15<br>16 |
| <b><i>development approval</i></b> see section 44(1).  | 17       |
| <b><i>development assessment process</i></b> means the process for administering development applications.                           | 18<br>19 |
| <b><i>development assessment rules</i></b> see section 65(1).  | 20       |
| <b><i>development assessment system</i></b> see section 3(3)(f).   | 21       |
| <b><i>development condition</i></b> means a condition that a development approval is subject to, including a condition—              | 22<br>23 |
| (a) imposed by the assessment manager under section 56; or   | 24<br>25 |
| (b) directed to be imposed under section 51 or 92(1)(d); or  | 26       |
| (c) taken to have been imposed under section 61.   | 27       |
| <i>Note—</i>   | 28       |
| Also see the Environmental Offsets Act, section 16 which provides for deemed conditions on development approvals.                    | 29<br>30 |
| <b><i>development infrastructure</i></b> means—  | 31       |

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Schedule 2

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- (a) land or works, or both land and works, for—
1
- (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
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7
- (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
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12
- (iii) public parks infrastructure, including playground equipment, playing fields, courts and picnic facilities; or
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14  
15
- (b) land, and works that ensure the land is suitable for development, for local community facilities, including, for example, the following—
16  
17  
18
- (i) community halls or centres;
19
- (ii) public recreation centres;
20
- (iii) public libraries.
21
- development offence** see section 158.
22
- development permit** see section 44(3).
23
- direction** means a written direction.
24
- distributor-retailer** see the SEQ Water Act, section 8.
25
- document** includes information.
26
- drainage work** see the Plumbing and Drainage Act.
27
- eligible referral agency**, for a development application, means a referral agency (advice only) that has not given a notice stating the agency will not be appealing before the appeal period ends for the application.
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|---|----------------------|
| <b><i>eligible submitter</i></b> , for a development application, means a submitter—  | 1<br>2               |
| (a) whose submission was not withdrawn before the application was decided; and  | 3<br>4               |
| (b) who has not given a notice stating the submitter will not be appealing before the appeal period ends for the application.   | 5<br>6<br>7          |
| <b><i>emissions</i></b> means emissions of aerosols, fumes, light, noise, odour, particles or smoke.  | 8<br>9               |
| <b><i>enforcement authority</i></b> means—  | 10                   |
| (a) for assessable development that is the subject of a development approval—   | 11<br>12             |
| (i) the assessment manager, including a chosen assessment manager; or   | 13<br>14             |
| (ii) a referral agency for matters within the agency's functions for the development application; or  | 15<br>16             |
| (iii) if the chief executive is the assessment manager or referral agency—a person nominated by the chief executive; or   | 17<br>18<br>19       |
| (iv) if a private certifier (class A) performed private certifying functions for the development application, under the Building Act, chapter 6—the certifier or the local government; or               | 20<br>21<br>22<br>23 |
| (b) for assessable development that is not the subject of a development approval—the person who would have been the enforcement authority under paragraph (a) had a development approval been given; or | 24<br>25<br>26<br>27 |
| (c) for building or plumbing work carried out by or for a public sector entity—the chief executive, however described, of the entity; or  | 28<br>29<br>30       |
| (d) for any other matter—the local government.  | 31                   |
| <b><i>enforcement notice</i></b> see section 165(2).  | 32                   |
| <b><i>enforcement order</i></b> —   | 33                   |

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Schedule 2

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- (a) for an enforcement order made by the Magistrates Court—see section 173; or
  - (b) for an enforcement order made by the P&E Court—see section 177.

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- environment** see the Environmental Protection Act, section 8.

5
- environmental nuisance** see the Environmental Protection Act, section 15.

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- Environmental Offsets Act** means the *Environmental Offsets Act 2014*.

8

9
- Environmental Protection Act** means the *Environmental Protection Act 1994*.

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11
- establishment cost**, for trunk infrastructure, means—

12
- (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.

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- excluded premises** means premises that are—

22
- (a) for a development application—
    - (i) owned by the State; or
    - (ii) a servient tenement for an easement, and the development is not inconsistent with the easement’s terms; or
    - (iii) 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) for a change application or extension application—a servient tenement for an easement or acquisition land, if the owner’s consent was not required in relation to the

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|---|----|
| tenement or acquisition land for the original                             | 1  |
| development application.  | 2  |
| <b>executive officer</b> , of a corporation, means a person who is        | 3  |
| concerned with or takes part in the management of the                     | 4  |
| corporation, whether or not the person is a director or the               | 5  |
| person's position is given the title of executive officer.                | 6  |
| <b>extension application</b> see section 83(1).                           | 7  |
| <b>finds a defendant guilty</b> includes accept a plea of guilty,         | 8  |
| whether or not a conviction is recorded.                                  | 9  |
| <b>Heritage Act</b> means the <i>Queensland Heritage Act 1992</i> .       | 10 |
| <b>information notice</b> , about a decision, means a notice that         | 11 |
| states—   | 12 |
| (a) the decision; and   | 13 |
| (b) the reasons for the decision; and                                     | 14 |
| (c) any appeal rights of the recipient of the notice in relation          | 15 |
| to the decision.  | 16 |
| <b>information request</b> means a notice given under the                 | 17 |
| development assessment rules seeking further information                  | 18 |
| from the applicant for a development application.                         | 19 |
| <b>infrastructure</b> does not include land, facilities, services or      | 20 |
| works for an environmental offset.  | 21 |
| <b>infrastructure agreement</b> see section 147.                          | 22 |
| <b>infrastructure charges notice</b> means—                               | 23 |
| (a) if an infrastructure charges notice is replaced by a                  | 24 |
| negotiated notice under section 120(3)—the negotiated                     | 25 |
| notice; or  | 26 |
| (b) if an infrastructure charges notice is amended under                  | 27 |
| section 114(6), 134(4) or 139(4)(b)—the notice as                         | 28 |
| amended; or   | 29 |
| (c) otherwise—an infrastructure charges notice given under                | 30 |
| section 114(2) or (5) or section 139(4)(a).                               | 31 |
| <b>interim enforcement order</b> see section 177(4).                      | 32 |
| <b>Interpretation Act</b> means the <i>Acts Interpretation Act 1954</i> . | 33 |

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|---|--------------|
| <b>land</b> includes—   | 1            |
| (a) any estate in, on, over or under land; and  | 2            |
| (b) the airspace above the surface of land and any estate in the airspace; and  | 3<br>4       |
| (c) the subsoil of land and any estate in the subsoil.  | 5            |
| <b>Land Act</b> means the <i>Land Act 1994</i> .  | 6            |
| <b>Land Title Act</b> means the <i>Land Title Act 1994</i> .  | 7            |
| <b>lawful use</b> , 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. | 8<br>9<br>10 |
| <b>levied charge</b> see section 114(12).   | 11           |
| <b>LGIP</b> see <i>local government infrastructure plan</i> .   | 12           |
| <b>local categorising instrument</b> see section 38(2).   | 13           |
| <b>Local Government Act</b> means the <i>Local Government Act 2009</i> .  | 14<br>15     |
| <b>local government infrastructure plan</b> means the part of a local government's planning scheme that—  | 16<br>17     |
| (a) has been prepared under a guideline made by the Minister and adopted by regulation; and   | 18<br>19     |
| (b) does any or all of the following—   | 20           |
| (i) identifies the PIA;   | 21           |
| (ii) states assumptions about population and employment growth;   | 22<br>23     |
| (iii) states assumptions about the type, scale, location and timing of future development;  | 24<br>25     |
| (iv) includes plans for trunk infrastructure;   | 26           |
| (v) states the desired standard of service for development infrastructure.  | 27<br>28     |
| <b>local government road</b> means a road under the control of a local government.  | 29<br>30     |
| <b>local heritage place</b> see the Heritage Act.   | 31           |

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|--|----------------------------|
| <b>local planning instrument</b> see section 7(3).   | 1                          |
| <b>lot</b> means—  | 2                          |
| (a) a lot under the Land Title Act; or   | 3                          |
| (b) a separate, distinct parcel of land for which an interest is recorded in a register under the Land Act; or   | 4<br>5                     |
| (c) common property for a community titles scheme under the <i>Body Corporate and Community Management Act 1997</i> ; or   | 6<br>7<br>8                |
| (d) a lot or common property to which the <i>Building Units and Group Titles Act 1980</i> continues to apply; or   | 9<br>10                    |
| (e) a community or precinct thoroughfare under the <i>Mixed Use Development Act 1993</i> ; or  | 11<br>12                   |
| (f) a primary or secondary thoroughfare under the <i>Integrated Resort Development Act 1987</i> or the <i>Sanctuary Cove Resort Act 1985</i> .   | 13<br>14<br>15             |
| <i>Note—</i>   | 16                         |
| The <i>Building Units and Group Titles Act 1980</i> may continue to apply to the Acts mentioned in paragraphs (e) and (f), the <i>Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980</i> and the <i>Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984</i> . | 17<br>18<br>19<br>20<br>21 |
| <b>material change of use</b> , of premises, means any of the following that a regulation made under section 240(2)(b) does not prescribe to be minor change of use—   | 22<br>23<br>24             |
| (a) the start of a new use of the premises;  | 25                         |
| (b) the re-establishment on the premises of a use that has been abandoned;   | 26<br>27                   |
| (c) a material increase in the intensity or scale of the use of the premises.  | 28<br>29                   |
| <b>merit assessment</b> see section 40(4).   | 30                         |
| <b>Milton rail precinct</b> means the area called Milton rail precinct shown on the map in schedule 1 of the repealed <i>Planning (Urban Encroachment—Milton Brewery) Act 2009</i> .   | 31<br>32<br>33             |

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Schedule 2

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- Minister**, for chapter 3, part 7, includes the Minister responsible for administering the State Development Act. 1 2
- Ministerial direction** means a direction made by the Minister under chapter 3, part 7, division 2. 3 4
- Minister's rules and guidelines** means the rules and guidelines made by the Minister under section 15. 5 6
- minor change** to a development application is a change that— 7
- (a) does not result in substantially different development; 8  
and 9
  - (b) does not— 10
    - (i) cause the inclusion of prohibited development in the application; or 11 12
    - (ii) cause referral to a referral agency if there were no referral agencies for the development application; 13 14  
or 15
    - (iii) cause referral to additional referral agencies; or 16
    - (iv) cause public notification if public notification was not required for the development application. 17 18
- minor change** to a development approval is a change that— 19
- (a) would not result in substantially different development; 20  
and 21
  - (b) if a development application for the development, including the change, were made when the change application is made would not— 22 23 24
    - (i) cause the inclusion of prohibited development in the application; or 25 26
    - (ii) cause referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or 27 28 29
    - (iii) cause referral to additional referral agencies, other than to the chief executive; or 30 31
    - (iv) cause public notification if public notification was not required for the development application. 32 33

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|---|----|
| <b><i>necessary infrastructure condition</i></b> see section 122(2).            | 1  |
| <b><i>negotiated decision notice</i></b> see section 73(3).                     | 2  |
| <b><i>negotiated notice</i></b> see section 120(3).                             | 3  |
| <b><i>non-port local government area</i></b> , for a local government,          | 4  |
| means the local government area, other than any strategic port                  | 5  |
| land in the local government area.  | 6  |
| <b><i>non-trunk infrastructure</i></b> means development infrastructure         | 7  |
| that is not trunk infrastructure.   | 8  |
| <b><i>notice</i></b> means a written notice.                                    | 9  |
| <b><i>offence proceedings</i></b> see section 171(2).                           | 10 |
| <b><i>old Act</i></b> see section 241(1).                                       | 11 |
| <b><i>operational work</i></b> means work, other than building work or          | 12 |
| plumbing or drainage work, in, on, over or under premises                       | 13 |
| that materially affects premises or the use of premises.                        | 14 |
| <b><i>original assessment manager</i></b> , for a development application       | 15 |
| that is called in, means the person who, before the call in, was                | 16 |
| the assessment manager for the application.                                     | 17 |
| <b><i>owner</i></b> , of premises, means the person who is entitled to          | 18 |
| receive rent for the premises or who would be entitled to                       | 19 |
| receive rent for the premises if the premises were let to a                     | 20 |
| tenant at a rent.   | 21 |
| <i>Note—</i>  | 22 |
| See the Transport Infrastructure Act, section 247, for when the chief           | 23 |
| executive of the department in which that Act is administered is taken to       | 24 |
| be the owner of particular rail corridor land or non-rail corridor land         | 25 |
| under that Act.   | 26 |
| <b><i>P&amp;E Court Act</i></b> means the <i>Planning and Environment Court</i> | 27 |
| <i>Act 2014</i> .   | 28 |
| <b><i>participating local government</i></b> see the SEQ Water Act.             | 29 |
| <b><i>party</i></b> , in relation to proceedings in the P&E Court or tribunal   | 30 |
| proceedings, means any or all of the following—                                 | 31 |
| (a) the applicant or appellant;   | 32 |
| (b) the respondent;   | 33 |

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Schedule 2

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- (c) any co-respondent; 1
- (d) if the Minister is represented—the Minister. 2
- payer**, for a levied charge or for a payment, means any person 3  
who pays all or part of the charge or payment. 4
- payment** includes a contribution by way of a payment. 5
- perform** a function includes exercise a power. 6
- person** includes a body of persons, whether incorporated or 7  
unincorporated. 8
- PIA** see *priority infrastructure area*. 9
- plan of subdivision**— 10
- (a) means a plan for reconfiguring a lot that, under an Act, 11  
must be approved by a local government before the plan 12  
is registered or otherwise recorded under that Act; but 13
- (b) does not include a plan for reconfiguring a lot if the 14  
reconfiguration relates to— 15
  - (i) the acquisition of land by a constructing authority, 16  
or an authorised electricity entity, for a purpose for 17  
which land may be taken under the Acquisition 18  
Act; or 19
  - (ii) the acquisition of land for a water infrastructure 20  
facility; or 21
  - (iii) land held by the State, or a statutory body 22  
representing the State, for a purpose for which land 23  
may be taken under the Acquisition Act, whether 24  
or not the land relates to an acquisition; or 25
  - (iv) a lot that consists of strategic port land. 26
- planning** see section 3(2)(a). 27
- planning change**, for premises, is the amendment, 28  
replacement or repeal of a local planning instrument, other 29  
than a TLPI, affecting the premises that creates a superseded 30  
planning scheme in relation to the premises. 31
- planning instrument** see section 7(1). 32
- planning instrument change** means— 33

- 
- (a) the commencement of a planning instrument or the amendment of a planning instrument; or 1  
2
- (b) the start of the application of an existing planning instrument to premises. 3  
4
- planning scheme*** see section 3(3)(c). 5
- planning scheme policy*** see section 3(3)(e). 6
- Plumbing and Drainage Act*** means the *Plumbing and Drainage Act 2002*. 7  
8
- plumbing work*** see the Plumbing and Drainage Act. 9
- PPI index*** means the following— 10
- (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; 11  
12  
13  
14
- (b) if an index described in paragraph (a) ceases to be published—another similar index prescribed by regulation. 15  
16  
17
- preliminary approval*** see section 44(2). 18
- premises*** means— 19
- (a) a building or other structure; or 20
- (b) land, whether or not a building or other structure is on the land. 21  
22
- pre-request response notice*** see section 77(3). 23
- prescribed assessment manager*** means an assessment manager prescribed by regulation under section 43(2). 24  
25
- prescribed tidal works*** means tidal works of a kind prescribed by regulation. 26  
27
- principal submitter***, for a properly made submission, means— 28  
29
- (a) if the submission is by 1 person—the person; or 30
- (b) otherwise— 31
-

Schedule 2

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- (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** 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 39(2).
- properly made**, for a development application, see section 46(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 submission about a designation—on or before the last day for making the submission; or
    - (ii) for a submission 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                | 1  |
|                      | submission for all submission-makers; and                              | 2  |
| (f)                  | is made to—  | 3  |
| (i)                  | for a submission made under chapter 2—the                              | 4  |
|                      | person to whom the submission is required to be                        | 5  |
|                      | made under that chapter; or  | 6  |
| (ii)                 | for a submission about a development                                   | 7  |
|                      | application—the assessment manager.                                    | 8  |
| <b>provision</b> ,   | of a development approval, means all words or                          | 9  |
|                      | other matters forming, or forming part of, the approval.               | 10 |
| <i>Examples—</i>     |  | 11 |
|                      | any of the following stated in the approval—                           | 12 |
| •                    | a development condition  | 13 |
| •                    | a currency period  | 14 |
| •                    | the identification or inclusion under a variation approval of a matter | 15 |
|                      | for the development  | 16 |
| <b>public notice</b> | means a notice that is published—                                      | 17 |
| (a)                  | for a public notice mentioned in chapter 2, part 2—                    | 18 |
| (i)                  | in the gazette; and  | 19 |
| (ii)                 | if the notice is about a State planning instrument or                  | 20 |
|                      | amendment that has, is to have, or had effect in a                     | 21 |
|                      | part of the State only—in a newspaper circulating                      | 22 |
|                      | generally in the part of the State; and                                | 23 |
| (iii)                | if the notice is about a State planning instrument                     | 24 |
|                      | that has, is to have, or had effect throughout the                     | 25 |
|                      | State—in a newspaper circulating generally in the                      | 26 |
|                      | State; and   | 27 |
| (iv)                 | on the department's website; or  | 28 |
| (b)                  | for a public notice mentioned in chapter 2, part 3 that is             | 29 |
|                      | about a proposed local planning instrument—                            | 30 |
| (i)                  | in a newspaper circulating in the local government                     | 31 |
|                      | area; and  | 32 |
| (ii)                 | on the local government's website; or                                  | 33 |
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Schedule 2

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- (c) 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—
1  
2  
3
- (i) in the gazette; and
4
- (ii) in a newspaper circulating in the local government area; and
5  
6
- (iii) on the local government’s website.
7
- public purpose change** see section 24(3).
8
- public sector entity** means any of the following—
9
- (a) a department or part of a department;
10
- (b) other than in chapter 4—a distributor-retailer;
11
- (c) an agency, authority, commission, committee, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.
12  
13  
14
- Examples for paragraph (c)—*
15
- a government owned corporation and a rail government entity under the Transport Infrastructure Act
16  
17
- Queensland heritage place** see the Heritage Act.
18
- rates** means rates within the meaning of—
19
- (a) for Brisbane—the City of Brisbane Act; or
20
- (b) otherwise—the Local Government Act.
21
- reasonably believes** means believes on grounds that are reasonable in all the circumstances.
22  
23
- recipient**, for a direction, notice or order, means any person who is given the direction, notice or order.
24  
25
- reconfiguring a lot** means—
26
- (a) creating lots by subdividing another lot; or
27
- (b) amalgamating 2 or more lots; or
28
- (c) rearranging the boundaries of a lot by registering a plan of subdivision; or
29  
30

- 
- (d) dividing land into parts by agreement rendering  
different parts of a lot immediately available for separate  
disposition or separate occupation, other than by an  
agreement that is—
- (i) a lease for a term, including renewal options, not  
exceeding 10 years; or
- (ii) an agreement for the exclusive use of part of the  
common property for a community titles scheme  
under the *Body Corporate and Community  
Management Act 1997*; or
- (e) creating an easement giving access to a lot from a  
constructed road.
- referee** means a referee who holds an appointment under  
section 187(1) or (2).
- referral agency** see section 49(2).
- referral agency (advice only)** see section 51(6).
- referral agency response** see section 51(4).
- region** means—
- (a) the local government areas, or parts of local government  
areas, prescribed by regulation as a region; and
- (b) Queensland waters next to the local government areas or  
parts of local government areas.
- regional plan** see section 3(3)(b).
- regional planning committee**, for a region, means the  
committee established for the region under section 12.
- registered professional engineer** means—
- (a) a registered professional engineer under the  
*Professional Engineers Act 2002*; or
- (b) a person registered as a professional engineer under an  
Act of another State.
- registrar** means the person who holds an appointment under  
section 192(1)(a).
- registrar of titles** means—
-

Schedule 2

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- (a) the registrar of titles under the Land Title Act; or 1
- (b) another person who is responsible for keeping, under 2  
another Act, a register of interests in land. 3
- repealed LGP&E Act*** means the repealed *Local Government* 4  
*(Planning and Environment) Act 1990*. 5
- representation*** means written representation. 6
- required contents*** see section 14(1). 7
- required fee***, for an application or referral to, request of, or 8  
appeal to, a person means— 9
- (a) if the person is a local government—the fee, if any, the 10  
local government has fixed by resolution; or 11
- (b) if the person is another public sector entity or the 12  
Minister—the fee, if any, prescribed by regulation; or 13
- (c) if the person is a chosen assessment manager—the fee 14  
negotiated between the applicant and the person. 15
- responding entity***, for a change application, means a person 16  
who gave a pre-request response notice or response about the 17  
application. 18
- response notice***, for a change application, see section 77(5). 19
- responsible entity***, for a change application, see section 75(3). 20
- road*** has the meaning given in the Transport Infrastructure 21  
Act, schedule 6, definition *road*, paragraphs (c) and (d). 22
- SEQ Water Act*** means the *South-East Queensland Water* 23  
*(Distribution and Retail Restructuring) Act 2009*. 24
- show cause notice*** see section 164(2). 25
- sole-occupancy unit***, for a class 2 building, means a room or 26  
other part of the building used as a dwelling by a person to the 27  
exclusion of any other person. 28
- standard assessment*** see section 40(3). 29
- standard conditions*** means the conditions taken to be 30  
imposed on a deemed approval if the assessment manager 31  
does not give a decision notice in relation to the approval. 32

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- State-controlled road*** see the Transport Infrastructure Act, schedule 6. 1  
2
- State Development Act*** means the *State Development and Public Works Organisation Act 1971*. 3  
4
- State infrastructure*** means any of the following— 5
- (a) State schools infrastructure; 6
  - (b) public transport infrastructure; 7
  - (c) State-controlled roads infrastructure; 8
  - (d) emergency services infrastructure; 9
  - (e) health infrastructure, including hospitals and associated institutions infrastructure; 10  
11
  - (f) freight rail infrastructure; 12
  - (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; 13  
14  
15  
16  
17
  - (h) justice administration facilities, including court or police facilities. 18  
19
- State infrastructure provider*** means— 20
- (a) the chief executive; or 21
  - (b) a public sector entity, other than a local government, that provides State infrastructure or administers a regional plan for a designated region. 22  
23  
24
- State interest*** means an interest that the Minister considers— 25
- (a) affects an economic or environmental interest of the State or a part of the State; or 26  
27
- Example of a possible interest for paragraph (a)—* 28
- a tourism development involving broad economic benefits for the State or a part of the State 29  
30
  - (b) affects the interest of ensuring this Act's purpose is achieved in the way mentioned in section 3(2). 31  
32
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| <b><i>State-owned or State-controlled transport infrastructure</i></b>       | 1  |
| means transport infrastructure under the Transport                           | 2  |
| Infrastructure Act that the State owns or controls.                          | 3  |
| <b><i>State planning instrument</i></b> see section 7(2).                    | 4  |
| <b><i>State planning policy</i></b> see section 3(3)(a).                     | 5  |
| <b><i>State-related condition</i></b> see section 143(1).                    | 6  |
| <b><i>storey</i></b> see the Building Code, part A1.1.                       | 7  |
| <b><i>strategic port land</i></b> see the Transport Infrastructure Act,      | 8  |
| section 286(5).  | 9  |
| <b><i>subject premises</i></b> see section 122(1).                           | 10 |
| <b><i>submission</i></b> means a submission in writing.                      | 11 |
| <b><i>submitter</i></b> means—   | 12 |
| (a) for a development application—a person who makes a                       | 13 |
| properly made submission about the application; or                           | 14 |
| (b) for a particular submission—the person who made the                      | 15 |
| submission.  | 16 |
| <b><i>superseded planning scheme</i></b> see section 23(2).                  | 17 |
| <b><i>superseded planning scheme application</i></b> see section             | 18 |
| 23(4)(a).  | 19 |
| <b><i>superseded planning scheme request</i></b> see section 23(4).          | 20 |
| <b><i>temporary State planning policy</i></b> see section 10(1).             | 21 |
| <b><i>tidal area</i></b> , for a non-port local government area or strategic | 22 |
| port land (each <b><i>the area</i></b> ), means—                             | 23 |
| (a) the part or parts of a tidal river, estuarine delta or canal             | 24 |
| between the high-water mark and the middle of the                            | 25 |
| river, delta or canal—   | 26 |
| (i) as far up the river, delta or canal as the spring tides                  | 27 |
| ordinarily flow and reflow; and  | 28 |
| (ii) next to the area; and   | 29 |
| (b) to the extent the boundary of the area is, or is seaward                 | 30 |
| or, the high-water mark—the land that is seaward and                         | 31 |
| within 50m of the high-water mark.   | 32 |

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|---|--------------------|
| <b><i>tidal works</i></b> see the Coastal Act.  | 1                  |
| <b><i>TLPI</i></b> see section 3(3)(d).   | 2                  |
| <b><i>Transport Infrastructure Act</i></b> means the <i>Transport Infrastructure Act 1994</i> .   | 3<br>4             |
| <b><i>tribunal</i></b> see section 189(1).  | 5                  |
| <b><i>tribunal appeal matter</i></b> means a matter—  | 6                  |
| (a) under this Act that relates to—   | 7                  |
| (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 | 8<br>9<br>10<br>11 |
| (ii) the Plumbing and Drainage Act; or  | 12                 |
| (b) under another Act that may be appealed to a tribunal; or  | 13                 |
| (c) prescribed by regulation.   | 14                 |
| <b><i>tribunal proceedings</i></b> means proceedings in a tribunal to hear an appeal or an application for a declaration.                       | 15<br>16           |
| <b><i>trunk infrastructure</i></b> , for a local government, means—   | 17                 |
| (a) development infrastructure identified in an LGIP as trunk infrastructure; or  | 18<br>19           |
| (b) development infrastructure that, because of a conversion application, becomes trunk infrastructure; or                                      | 20<br>21           |
| (c) development infrastructure that is required to be provided under a condition under section 124(2).  | 22<br>23           |
| <b><i>use</i></b> , for premises, includes any ancillary use of the premises.   | 24                 |
| <b><i>variation approval</i></b> means that part of a preliminary approval that varies the effect of a local planning instrument.               | 25<br>26           |
| <b><i>variation request</i></b> see section 55(2).  | 27                 |
| <b><i>water infrastructure</i></b> see the SEQ Water Act.   | 28                 |
| <b><i>works</i></b> includes building work, operational work, plumbing work and drainage work.  | 29<br>30           |

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