

NORTHERN TERRITORY OF AUSTRALIA

PLANNING ACT 1999

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No. 55 of 1999

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## SCHEDULE





# NORTHERN TERRITORY OF AUSTRALIA

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No. 55 of 1999

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to provide for appropriate and orderly planning and control of the use and development of land, and for related purposes

[Assented to 14 December 1999]

[Second reading 21 October 1999]

**The Legislative Assembly of the Northern Territory enacts as follows:**

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Planning Act 1999*.

### **2. Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

### **3. Interpretation**

(1) In this Act, unless the contrary intention appears –

"Appeals Tribunal" has the meaning in section 108;

"approved form" means a form approved by the Minister;

"base period of the permit", in relation to a development permit, means –

- (a) the period commencing on the relevant date of consent and extending to the date specified in the development permit as the date on which the permit will lapse; or

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- (b) if no date on which the permit will lapse is specified in the permit – a period of 2 years after the relevant date of consent;

"building" includes a structure of any kind (including a temporary structure) and part of a building or structure;

"Chairman" means the Chairman of the Development Consent Authority appointed under section 88(1) and includes a Deputy Chairman while acting as Chairman under section 88(3) or (4);

"commencement date" means the date on which this Act comes into operation;

"committee" means a committee of the Development Consent Authority established under section 104;

"consent authority" has the meaning in section 4;

"consolidation" means the amalgamation of 2 or more parcels of land to form a single parcel but does not include –

- (a) a consolidation of pastoral land under section 64, 65 or 66 of the *Pastoral Land Act*, if, after consolidation, the land remains pastoral land within the meaning of that Act;
- (b) a consolidation under the *Unit Titles Act*, except the consolidation of lots that are lots defined for the purposes of Part IVB of that Act;
- (c) a consolidation of land the subject of a grant of an estate or interest with land already held by the grantee for the purpose of section 16 or 24 of the *Control of Roads Act*;
- (d) the consolidation of land vested in a local authority under section 133 of the *Local Government Act* with land adjoining that land if the consolidation takes place not later than 12 months after the vesting of the land in the local authority; or
- (e) a consolidation or class of consolidation prescribed for the purposes of this definition;

"construct", in relation to a building, includes –

- (a) to build, re-build, erect or re-erect the building;
- (b) to make alterations to the building;
- (c) to enlarge or extend the building; and

- (d) to place or relocate the building on land;

"contribution" means the amount, calculated under and in accordance with a contribution plan, payable in accordance with Part 6;

"contribution plan" means a contribution plan made under section 68;

"council area" has the same meaning as in the *Local Government Act*;

"date of consent", in relation to a development permit, means —

- (a) the date on which the consent authority issued the development permit under section 53; or
- (b) the date on which the consent authority, in accordance with an order under section 125(4) or 130(4), issued or amended the development permit,

whichever is the later;

"Deputy Chairman" means a person appointed as a Deputy Chairman of the Development Consent Authority under section 88(2);

"development", in relation to land, means an activity that involves —

- (a) the establishment of, or a change in, the use of the land;
- (b) the subdivision or consolidation of the land; or
- (c) the carrying out of works on or in relation to the land, including—
  - (i) excavation or land-filling;
  - (ii) the clearing of vegetation;
  - (iii) the construction of a building;
  - (iv) the construction or upgrading of roads and drains, other than —
    - (A) by a statutory corporation, by a statutory authority or corporation incorporated under an Act of the Commonwealth or by a local authority; or
    - (B) if the works are carried out in pursuance of a statutory responsibility;

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- (v) the construction or upgrading of hardstand car parking or landscaping; and
- (vi) any other operation that affects the physical character of the land;

"development application" means an application under section 46;

"Development Consent Authority" means the Authority established by section 82 and includes a Division of the Authority;

"development permit" means a development permit issued under section 53 or taken to be issued under section 45, as varied under section 57, as varied pursuant to an order under section 130 or as modified under section 66;

"development provisions" means the development provisions under Part 2 that are in force from time to time;

"Division", in relation to the Development Consent Authority, means a Division established under section 83;

"Division area" means the area of a Division as specified in, or as amended by, a notice under section 83;

"Division member", in relation to a Division of the Development Consent Authority, means a person appointed under section 89 or 90 to be a member in respect of the Division and includes a person appointed under section 91, 93 or 94 to act in the office of a member of the Division while acting as that member;

"exceptional development permit" means a permit granted under section 40 as varied, if at all, under that section;

"existing use" has the meaning in section 33;

"former Act" means the *Planning Act* as in force immediately before the commencement date;

"formula for calculation" means a formula for the calculation of contributions that is referred to in section 69(4)(d) or 70(3);

"incorporated document" means an incorporated document made under Part 2 that is in force from time to time;

"interim development control order" means an interim development control order made under Part 3 that is in force from time to time;

"land" includes land covered by water and buildings constructed on land;

"land use objective" means a land use objective made under Part 2 that is in force from time to time;

"local authority" means a municipal council or community government council within the meaning of the *Local Government Act*;

"member" means a person appointed under section 89 or 90 as a member of the Development Consent Authority and includes —

- (a) the Chairman;
- (b) an alternate member appointed under section 91 while acting as a member; and
- (c) a temporary member appointed under section 93 or 94 while acting as a member;

"member of a local authority" means a member within the meaning of the *Local Government Act*;

"notice of appeal" means a notice referred to in section 118;

"notice of refusal" means a notice of refusal issued under section 53;

"owner", in relation to land held under a lease from the Territory, means the lessee of the land;

"party", in relation to an appeal under Part 9, means —

- (a) the applicant;
- (b) in the case of an appeal other than an appeal under section 115 — the members of the Division of the Authority against whose determination or failure to make a determination the appeal is lodged; and
- (c) in the case of an appeal under section 115(3) — the service authority that made the contribution plan under which was payable the contribution in relation to which a refund or remittance is sought;

"Planning Scheme" means the Northern Territory Planning Scheme within the meaning of section 7;

"policy area" means a policy area within the meaning of section 69(3);

"Registrar" means the Registrar within the meaning of the *Lands and Mining Tribunal Act*;

"service authority" means the Territory, a minister, a local authority, the Power and Water Authority established by the *Power and Water Authority Act* or a prescribed statutory corporation;

"statutory corporation" means a corporation, commission or authority incorporated by name for a public purpose by a law of the Territory, but does not include a local authority;

"subdivision" has the meaning in section 5;

"Surveyor-General" has the same meaning as in the *Licensed Surveyors Act*;

"town" means —

- (a) a town within the meaning of the *Crown Lands Act*;
- (b) a municipality or a community government area within the meaning of the *Local Government Act*; or
- (c) land that is specified to be treated as a town under the former Act and that is to continue to be so treated by virtue of the operation of section 176 of this Act;

"works" means —

- (a) any activity on land, other than mining or agriculture, resulting in a physical change to the land or a part of the land; or
- (b) the results of such an activity, other than a building;

"zone", in relation to land, means a zone specified in relation to the land in the development provisions.

(2) If in this Act the expression "default penalty" appears in or at the foot of a section or subsection, section 79 applies in relation to the section or subsection.

#### **4. Meaning of "consent authority"**

(1) Subject to subsection (4), if a Division of the Development Consent Authority is not established in relation to an area of land, the Minister is the consent authority in relation to the land.

(2) Subject to subsection (3), if a Division of the Development Consent Authority is established in relation to an area of land, the Division is the consent authority in relation to the land.

(3) If the Minister is nominated under section 31(3) as the consent authority in relation to an interim development control order, the Minister is the consent authority in relation to —

- (a) if the order only relates to a type of development specified in the order — development of that type on the land to which the order relates; or
- (b) if the order does not specify that it only relates to a type of development — the land to which the order relates.

(4) If a Division of the Development Consent Authority is nominated under section 31(3) as the consent authority in relation to an interim development control order, the Division is the consent authority in relation to —

- (a) if the order only relates to a type of development specified in the order — development of that type on the land to which the order relates; or
- (b) if the order does not specify that it only relates to a type of development — the land to which the order relates.

## 5. Meaning of "subdivision"

(1) Subject to subsections (2), (3) and (4), in this Act, "subdivision" means the division of land into parts available for separate occupation or use, by means of —

- (a) sale, transfer or partition; or
- (b) lease, agreement, dealing or instrument purporting to render different parts of the land available for separate disposition or separate occupation.

(2) Despite subsection (1), "subdivision" does not include —

- (a) a subdivision created by —
  - (i) an acquisition or resumption of land or of an interest in land resulting from an action under the *Lands Acquisition Act* or the *Crown Lands Act*;
  - (ii) an action under the *Control of Roads Act* or the *Local Government Act* to open a road, or to create a parcel of land to be included in a future road, if all the parts of the parcel that are not or will not be acquired for the purposes of the road will remain one parcel;

- (iii) the vesting of land in a local authority under section 133 of the *Local Government Act*; or
  - (iv) a grant of an estate or interest in land for the purpose of section 16 or 24 of the *Control of Roads Act* if it is to be consolidated with the land already held by the grantee;
  - (b) a subdivision under the *Unit Titles Act* within the meaning of Part III of that Act or referred to in section 4(6) of that Act;
  - (c) a subdivision that creates not more than 2 lots if one of the lots is or is intended to be a park or reserve within the meaning of the *Territory Parks and Wildlife Conservation Act*;
  - (d) the subdivision of pastoral land under section 61 or 66 of the *Pastoral Land Act* if, after the subdivision, the land will remain pastoral land within the meaning of that Act;
  - (e) a subdivision required under the *Encroachment of Buildings Act*;
  - (f) a sublease under the *Pastoral Lands Act*;
  - (g) a subdivision required under any other Act; or
  - (h) a subdivision, or a subdivision of a class of subdivision, prescribed for the purposes of this section.
- (3) Land is not to be taken to be subdivided for the purposes of this Act—
- (a) by the grant of a lease, licence or other right to use or occupy a part of the land unless the lease, licence or other right is for a term of more than 12 years; or
  - (b) by reason only of the lease of part of a building.
- (4) For the purposes of subsection (3), a lease, licence or other right to use or occupy a part of land that contains—
- (a) an option to renew the lease, licence or right for an additional term from the date of expiration of the lease, licence or right; or
  - (b) a provision for the granting of a further lease, licence or right for an additional term from the date of expiration of the lease, licence or right,

so that the aggregate of all the terms is more than 12 years is to be taken to be a lease, licence or right for a term of more than 12 years.



**6. Act to bind Crown**

This Act binds the Crown not only in the right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

**PART 2 – NORTHERN TERRITORY PLANNING SCHEME**

*Division 1 – Northern Territory Planning Scheme*

**7. Contents of Planning Scheme**

- (1) The Northern Territory Planning Scheme is comprised of—
  - (a) land use objectives;
  - (b) development provisions; and
  - (c) incorporated documents.
- (2) The instruments that, under sections 155 and 156, are to be taken to be land use objectives and development provisions comprise the Planning Scheme on and from the commencement of this Act.
- (3) An instrument that is an incorporated document by virtue of section 160 forms part of the Planning Scheme on and from the date on which the notice under that section in relation to the instrument appears in the *Gazette*.
- (4) The Planning Scheme may be amended under this Part.
- (5) The Minister must, as soon as reasonably practicable after becoming aware of an inconsistency between 2 or more provisions of the Planning Scheme, take action under this Act to remove the inconsistency.

**8. Land use objectives**

- (1) A land use objective is a statement of policy in respect of the use or development of land.
- (2) A land use objective is to specify the land to which it applies.

**9. Development provisions**

- (1) Development provisions are documents containing, in relation to all or a part of the Territory specified in the provisions, provisions permitting, prohibiting, restricting or imposing conditions on, a use or development of land.
- (2) Development provisions are to specify the land to which they apply.

**10. Incorporated documents**

(1) An incorporated document is a document providing guidelines for or in respect of the use or protection or the development of land to assist the consent authority in assessing development applications.

(2) An incorporated document is to specify the area of land to which it relates.

***Division 2 – Planning Scheme may be amended***

**11. Minister may amend Planning Scheme**

The Minister may, at the request of a person or body under section 12 or on the Minister's own initiative amend the Planning Scheme in accordance with this Part by –

- (a) making, amending or revoking a land use objective under section 25;
- (b) making, amending or revoking a provision of the development provisions under section 26; or
- (c) making, amending or revoking an incorporated document under section 27.

**12. Person may apply for amendment to Planning Scheme**

(1) A person or body may apply to the Minister for an amendment to the Planning Scheme.

(2) An application under subsection (1) is to be in the approved form.

**13. Preliminary reports**

The Minister may, before making a decision under section 14 in relation to a proposed amendment to the Planning Scheme, request a person or body, including the Development Consent Authority, to provide to him or her a report on the suitability of the proposed amendment.

**14. Minister to decide whether to proceed with amendment**

(1) The Minister must, after receiving an application under section 12 and considering the report, if any, received in accordance with his or her request under section 13, decide whether to –

- (a) without taking the actions otherwise required under Divisions 3 and 4 of this Part to be taken in relation to the proposed amendment – refuse to amend the Planning Scheme;

- (b) take the actions required under Divisions 3 and 4 to be taken in relation to the proposed amendment;
- (c) defer consideration of the proposed amendment; or
- (d) in the case of a proposed amendment to the Planning Scheme that would consist of a proposed amendment to a development provision (including by changing the zone in relation to the land) so as to enable a use or development of an area of land that is prohibited by the current zone in relation to the land –
  - (i) take an action referred to in paragraph (a), (b) or (c); or
  - (ii) consider granting an exceptional development permit under section 40 instead of considering making an amendment to the Planning Scheme.

(2) The Minister must, as soon as reasonably practicable after making a decision under subsection (1) in relation to an application under section 12, notify the applicant accordingly.

- (3) If the Minister –
  - (a) has received an application under section 12; and
  - (b) decides under subsection (1)(d)(ii) to consider granting an exceptional development permit under section 40 instead of considering making an amendment to the Planning Scheme,

Divisions 3 and 4 apply to and in relation to the application as if the proposal to consider granting the permit were a proposal to amend the Planning Scheme.

(4) If the Minister makes a decision under subsection (1)(c) in respect of an application under section 12, he or she must, as soon as reasonably practicable after deciding that a determination of the application should no longer be deferred –

- (a) make a further decision under that section; and
- (b) notify the applicant in writing of the decision.

***Division 3 – Consultation and exhibition in relation to proposed amendments to Planning Scheme***

**15. Notice requirements if proposed amendment relates to rezoning**

- (1) Subject to subsection (2) –

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- (a) if a proposed amendment to the Planning Scheme proposes that a zone be specified in relation to land or that a change of the zone in relation to land be specified; or
- (b) the Minister determined under section 14(1)(d)(ii) to consider granting an exceptional development permit under section 40 instead of considering making an amendment to the Planning Scheme,

the Minister must, before exhibiting the proposed amendment under section 17 —

- (c) cause notice to be served on the owner of the land; and
- (d) cause to be placed on or in the vicinity of the land to which the proposed amendment relates as many notices, in accordance with subsections (3) and (4), as the Minister thinks fit.

(2) Subsection (1) does not apply if, in the opinion of the Minister —

- (a) it is impractical to comply with the subsection because of the location of the land or the number of parcels of land to be affected by the proposed amendment to the Planning Scheme; and
- (b) the notice placed in a newspaper under section 17 is such that all persons likely to be affected by the proposed amendment to the Planning Scheme could reasonably be expected to have notice of it.

(3) For the purposes of subsection (1), a notice is to state —

- (a) the current zone in relation to the land; and
- (b) the zone proposed in relation to the land or the activity that would be, despite the zone in relation to the land, permitted under an exceptional development permit granted in relation to the land.

(4) A notice under subsection (1)(d) is to be of sufficient size and be so placed that a person with normal unimpaired eyesight can, without optical assistance, read it from the boundary of the public road nearest to the lot to which the proposed amendment to the Planning Scheme relates.

(5) A person must not remove a notice placed on land in accordance with this section until after the end of the exhibition period determined under section 17(1) in relation to the notice.

Penalty: In the case of a natural person — 100 penalty units;

In the case of a corporation — 500 penalty units.

**16. Notice to local authority if amendment relates to council area only**

- (1) If—
  - (a) a proposed amendment to the Planning Scheme relates to land part or all of which is within a Division area;
  - (b) there is a council area within the Division area; and
  - (c) there is not more than one council area in relation to the land,

the Minister must notify the local authority in respect of the council area of the proposed amendment.

- (2) A notice under subsection (1) is to contain —
  - (a) the information specified in section 17(4); and
  - (b) an invitation to the local authority to make a submission under section 19,

in relation to the proposed amendment.

**17. Exhibition of proposed amendments**

(1) The Minister must determine a period during which a proposed amendment to the Planning Scheme is to be exhibited under this Division.

- (2) The period determined under subsection (1) —
  - (a) is to begin on the first day on which the notice appears in the newspaper in accordance with subsection (7); and
  - (b) is to end not earlier than 28 days after that day.

(3) The Minister must, before making an amendment to the Planning Scheme, exhibit the proposed amendment under this Division during the period determined under subsection (1) in relation to the amendment.

(4) Subject to section 18, the Minister must, during the exhibition period in relation to an amendment to the Planning Scheme, publish or cause to be published in the *Gazette*, a notice —

- (a) that a proposed amendment to the Planning Scheme is being or is to be exhibited;
- (b) of the place where the proposed amendment is being or is to be exhibited;
- (c) of the period of exhibition determined under subsection (1);

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- (d) of the person or body to whom written submissions should be made in respect of the proposed amendment; and
  - (e) containing a brief summary of the nature of the proposed amendment.
- (5) If—
- (a) a proposed amendment includes a proposal to change the zone in relation to land; or
  - (b) the Minister decided under section 14(1)(d)(ii) to consider granting an exceptional development permit under section 40 instead of considering making an amendment to a development provision,

and it is, in the opinion of the Minister, practicable to do so, the summary under subsection (4)(e) is to include—

- (c) the lot number, Section number or Portion number and, if applicable, the street address of the land;
- (d) the current zone in relation to the land; and
- (e) in a case referred to in paragraph (a) — the zone proposed in relation to the land.

(6) The Minister must cause to be displayed a notice of the proposed amendment in a prominent position at each place referred to in subsection (4)(b) during the period for exhibition specified under subsection (4)(c).

(7) The Minister must cause the notice referred to in subsection (4) to be published twice in a newspaper circulating in the Territory or in the area to which the proposed amendment relates.

**18. Insignificant amendment not required to be exhibited etc.**

(1) Despite sections 15, 17, and 39 (but subject to section 39(3)) if, in the opinion of the Minister, a proposed amendment to the Planning Scheme is not so significant as to require consultation or exhibition under this Part, the amendment may be made although there has not been consultation in respect of the amendment, or exhibition of the amendment, under this Part.

(2) If the Minister specifies in writing that, in his or her opinion, a class of proposed amendments to the Planning Scheme are not so significant as to require consultation or exhibition, a proposed amendment within the class need not be the subject of consultation or be exhibited under this Part.

## **19. Submissions**

(1) A person may, within the period during which a proposed amendment to the Planning Scheme is exhibited under this Division, make a written submission in relation to the proposed amendment to the person or body specified in the notice under section 17 as the person or body to whom written submissions are to be made.

(2) A written submission may include reasons why the Minister should determine that a hearing is to be held in relation to the proposed amendment to the Planning Scheme.

## **20. Reports**

(1) The Minister may, before making, altering and making or refusing to make an amendment to the Planning Scheme, request a person or body, including the Development Consent Authority, to provide to him or her a report on—

- (a) issues raised in written submissions received under section 19 in relation to the proposed amendment;
  - (b) issues raised during consultation under section 21 or further consultation under section 23; or
  - (c) any other matter.
- (2) If—
- (a) a proposed amendment to the Planning Scheme relates to land part or all of which is within a Division area;
  - (b) there is a council area within the Division area; and
  - (c) there is not more than one council area in relation to the land,

the Minister must request the Division in respect of the Division area to provide to him or her a report on—

- (d) issues raised in written submissions received under section 19 in relation to the proposed amendment;
- (e) issues raised during consultation under section 21 or further consultation under section 23; or
- (f) any other matter.

**21. Consultation**

(1) The Minister must determine the manner and form of consultation, if any, to be engaged in before the making of—

- (a) a particular amendment to the Planning Scheme;
- (b) a class of proposed amendments to the Planning Scheme; or
- (c) amendments to the Planning Scheme generally.

(2) If the Minister makes a decision under section 14(1)(b) or (d) in relation to a proposed amendment to the Planning Scheme, he or she must consult in accordance with the manner and form, if any, determined under subsection (1) in relation to the amendment.

**22. When hearing to be held**

(1) The Minister may, before making, altering and making or refusing to make a proposed amendment to the Planning Scheme—

- (a) determine that a hearing is to be held in relation to the proposed amendment; and
- (b) appoint a person or body, including a Division of the Development Consent Authority, to conduct the hearing and to report to the Minister in relation to the hearing.

(2) If—

- (a) a proposed amendment to the Planning Scheme relates to land part or all of which is within a Division area;
- (b) there is a council area within the Division area; and
- (c) there is not more than one council area in relation to the land,

the Minister must—

- (d) determine that a hearing is to be held in relation to the proposed amendment;
- (e) appoint the Division of the Development Consent Authority in respect of the Division area to conduct the hearing and to report to the Minister in relation to the hearing; and
- (f) require the Division to invite to the hearing the local authority in respect of the land within the council area.



(3) A local authority invited to a hearing under subsection (2) is entitled to be heard at the hearing.

**23. Minister may require further consultation, exhibition or hearings**

(1) The Minister may, before making, altering and making or refusing to make a proposed amendment, determine that the proposed amendment is to be re-exhibited in accordance with this Division.

(2) The Minister may, before making, altering and making or refusing to make a proposed amendment, determine that further consultation or a further hearing under section 22 is required in relation to the amendment.

(3) The Minister may only make a determination under subsection (1) or (2) after considering—

- (a) the proposed amendment to the Planning Scheme;
- (b) the submissions, if any, under section 19; and
- (c) the reports, if any, under section 20 and 22 in relation to the amendment.

***Division 4 – Minister may make amendment to Planning Scheme***

**24. Minister to consider submissions, reports before amending Scheme**

The Minister must not make an amendment to the Planning Scheme or refuse (other than under section 14(1)(a)) to make an amendment to the Scheme unless he or she has considered—

- (a) the submissions, if any, under section 19; and
- (b) the reports, if any, under section 20 and 22,

in relation to the amendment.

**25. Land use objectives**

(1) After considering a proposed amendment to the Planning Scheme that consists of a proposed new or replacement land use objective, the Minister may—

- (a) make the land use objective as proposed in the amendment to the Planning Scheme and revoke the land use objective, if any, it is intended that the new land use objective replace;

(b) subject to section 29, alter the proposed land use objective, make the objective as so altered and revoke the land use objective, if any, it is intended that the new land use objective replace; or

(c) refuse to make the land use objective.

(2) After considering a proposed amendment to the Planning Scheme that consists of an amendment to a land use objective, the Minister may –

(a) make the amendment to the land use objective as proposed in the amendment to the Planning Scheme;

(b) subject to section 29, alter the proposed amendment to the land use objective and make the amendment as so altered; or

(c) refuse to make the amendment to the land use objective.

(3) After considering a proposed amendment to the Planning Scheme that consists of the revocation of a land use objective, the Minister may –

(a) revoke the land use objective; or

(b) refuse to revoke the land use objective.

## **26. Development provisions**

(1) After considering a proposed amendment to the Planning Scheme that consists of a proposed new development provision, the Minister may –

(a) make the development provision as proposed in the amendment to the Planning Scheme and revoke the development provision, if any, it is intended that the new development provision replace;

(b) subject to section 29, alter the proposed development provision, make the development provision as so altered and revoke the development provision, if any, it is intended that the new development provision replace; or

(c) refuse to make the development provision.

(2) After considering a proposed amendment to the Planning Scheme that consists of an amendment to a development provision, the Minister may –

(a) make the amendment to the development provision as proposed in the amendment to the Planning Scheme;

(b) subject to section 29, alter the proposed amendment to the development provision and make the amendment as so altered;

- (c) refuse to make the amendment to the development provision and refuse under section 40 to grant an exceptional development permit; or
  - (d) determine the application to which the proposed amendment relates by granting, or altering the proposal and granting, an exceptional development permit under section 40.
- (3) After considering a proposed amendment to the Planning Scheme that consists of the revocation of a development provision, the Minister may –
- (a) revoke the development provision; or
  - (b) refuse to revoke the development provision.
- (4) The Minister may take an action under subsection (2)(c) or (d) in relation to an application under section 12 whether the proposal in the application –
- (a) was exhibited under Division 3 as a proposed amendment to the development provisions; or
  - (b) was exhibited under Division 3 as a proposal to grant an exceptional development permit.

## **27. Incorporated documents**

(1) After considering a proposed amendment to the Planning Scheme that consists of a proposed new or replacement incorporated document, the Minister may –

- (a) make the incorporated document as proposed in the amendment and revoke the incorporated document, if any, it is intended that the new incorporated document replace;
  - (b) subject to section 29, alter the proposed incorporated document, make the incorporated document as so altered and revoke the incorporated document, if any, it is intended that the new incorporated document replace; or
  - (c) refuse to make the incorporated document.
- (2) After considering a proposed amendment to the Planning Scheme that consists of an amendment to an incorporated document, the Minister may –
- (a) make the amendment to the incorporated document as proposed in the amendment to the Planning Scheme;

(b) subject to section 29, alter the proposed amendment to the incorporated document and make the incorporated document as so altered; or

(c) refuse to make the amendment to the incorporated document.

(3) After considering a proposed amendment to the Planning Scheme that consists of the revocation of an incorporated document, the Minister may –

(a) revoke the incorporated document; or

(b) refuse to revoke the incorporated document.

**28. Notice of making of amendment**

(1) The Minister must cause notice of –

(a) the making of an amendment to the Planning Scheme; and

(b) the place where copies of the amendment are available,

to be published in the *Gazette*.

(2) An amendment to the Planning Scheme takes effect on –

(a) the date on which notice of the making of the amendment is published in the *Gazette*; or

(b) if a later date is provided for in the notice – that later date.

(3) Subsection (1) does not apply in relation to a proposal to amend the Planning Scheme if the Minister determines the application under section 26(2) by granting, altering a proposal and granting or refusing to grant, an exceptional development permit under section 40.

**29. Re-exhibition if extensive change by Minister**

(1) If the Minister –

(a) alters a proposed amendment to the Planning Scheme under section 25, 26 or 27; and

(b) is satisfied that the alterations are sufficiently extensive or significant as to justify the re-exhibition of the amendment as altered,

the Minister must re-exhibit the proposed amendment as altered.

(2) If a proposed amendment to the Planning Scheme has been exhibited under this Part and the Minister is intending to grant an exceptional development permit instead of making an amendment to the development provisions, the

Minister may, but is not required to, re-exhibit the proposal as a proposal to grant the permit.

(3) Subject to this section, sections 17 to 24 (inclusive) apply to and in relation to the re-exhibition under subsection (1) of a proposed amendment altered under section 25, 26 or 27 as if the amendment so altered had not previously been exhibited.

(4) Section 15 applies to an alteration under section 25, 26 or 27 only if the zone of the land, after the alteration is made, varies from that originally set out in the proposed amendment to which the alteration relates.

(5) Section 19 applies to a proposed amendment re-exhibited under subsection (1) only in relation to the alterations made under section 25(1)(b) or (2)(b), 26(1)(b) or (2)(b) or 27(1)(b) or (2)(b).

**30. Reasons to be given for determination in relation to proposed amendment to Planning Scheme**

If the Minister makes, or refuses (other than under section 14(1)(a)) to make, an amendment to the Planning Scheme, he or she must make available for purchase or inspection by the public his or her written reasons for the decision.

**PART 3 – INTERIM DEVELOPMENT CONTROL ORDERS**

**31. Interim development control orders**

(1) If the Minister decides that an amendment to the Planning Scheme is to be made, the Minister may, subject to this section, by notice in the *Gazette*, make an interim development control order in respect of the land or part of the land to which it is proposed the amendment is to apply.

(2) An interim development control order may declare that –

- (a) a development provision does not apply to all or part of the land to which the order relates;
- (b) development specified in the order in all or part of the land to which the order relates may proceed only with a permit granted under Part 6 by the consent authority specified in the order; or
- (c) specified types of development are prohibited,

and while the order remains in force the provision does not apply, or development may only proceed or is prohibited, accordingly.

(3) The Minister may, in an interim development control order, nominate himself or herself or a Division of the Development Consent Authority as

the consent authority for the purposes of this section in respect of the order or development specified in the order.

- (4) An interim development control order takes effect on —
  - (a) the date it is notified in the *Gazette*; or
  - (b) if a later date is provided for in the order — that later date.

(5) An interim development control order remains in force for 2 years or a lesser period specified in the order.

(6) An interim development control order must not be made in respect of land within 3 months after the day on which a previous interim development control order affecting that land expires, except if it relates to a different matter to the order that has expired.

### **32. Inconsistencies with Planning Scheme**

(1) The Minister must not make an interim development control order that allows a development of land that, if the order had not been made, would not be lawful under the development provisions relating to the land.

(2) Subject to subsection (1), if there is an inconsistency between an interim development control order and the Planning Scheme, the interim development control order prevails and the Planning Scheme, to the extent of the inconsistency, has no effect for the duration of the order.

## **PART 4 – PERMITS FOR USES OR DEVELOPMENTS NOT PERMITTED UNDER DEVELOPMENT PROVISIONS**

### ***Division 1 – If zoning changes, existing use or works remain lawful***

### **33. Existing uses and existing buildings and works**

- (1) In this Part, a use of land is an existing use if —
  - (a) the use was being made immediately before the commencement of an amendment of the development provisions in relation to the land on which the use occurs;
  - (b) the use was lawful under the development provisions immediately before the commencement of the amendment as —
    - (i) a use permitted under the development provisions without the consent of a consent authority; or

- (ii) a use, only permitted under the development provisions with the consent of the authority, to which the consent authority has consented; and
- (c) the use would, apart from this Part, cease to be lawful after the commencement of the amendment,

and includes a use that is only permitted in accordance with an exceptional development permit.

(2) A building is an existing building or works are existing works for the purposes of this Part if—

- (a) it or they was or were in existence or being carried out immediately before the commencement of an amendment of the development provisions in relation to the land on which the building or works are situated;
- (b) it or they were lawful under the development provisions immediately before the commencement of the amendment; and
- (c) the building or works would, apart from this Part, cease to be lawful after the commencement of the amendment.

#### **34. Existing uses protected**

(1) Subject to subsection (2), a person does not contravene the development provisions by reason only of continuing an existing use after the commencement of an amendment of the development provisions that is an amendment with which the use conflicts.

- (2) A person may continue an existing use only if—
  - (a) the use is restricted to the part of the land on which the use took place immediately before the commencement of the amendment of the development provisions that is an amendment with which the use conflicts; and
  - (b) the intensity of the use is not greater than the intensity of use immediately before the commencement of the amendment of the development provisions that is an amendment with which the use conflicts.

#### **35. Existing construction or works protected**

(1) A person does not contravene the development provisions by reason only of continuing works (whether or not to completion) after the commencement

of an amendment to the development provisions that is an amendment with which those works conflict if—

- (a) the works were lawful under a development permit or an exceptional development permit under this Act in force immediately before that commencement and the permit remains in force; or
- (b) the works were —
  - (i) otherwise lawful under this Act; and
  - (ii) substantially commenced,immediately before the commencement of the amendment.

(2) Works to which this section refers, and a building constructed as part of such works, may be used for the purpose for which it was or they were constructed.

(3) Sections 57 and 59 do not apply to a development permit referred to in subsection (1).

### **36. Repairs and maintenance**

A person may perform repair work on or maintain an existing building or existing works if the repair work or maintenance is not so extensive as to constitute a modification or alteration of the building or works that would —

- (a) adversely affect the amenity of the area in which the land is situated;
- (b) result in a substantial increase in the physical size of a building, as determined by the floor area, storage capacity or other relevant structural dimensions; or
- (c) result in a substantial increase in the intensity of the use of the land.

### **37. Abandonment of existing uses**

(1) A person is conclusively presumed to have abandoned an existing use if he or she discontinues the use for a continuous period of not less than 12 months or a longer period that the Minister determines under this section.

(2) An owner of land, or a person authorised in writing by the owner, may, within 12 months after discontinuing an existing use, apply to the Minister for an extension of the period referred to in subsection (1).

(3) An application under subsection (2) is to be in the approved form and accompanied by the prescribed fee.



(4) The Minister may determine an application under subsection (2) in relation to land by extending or refusing to extend the period during which a use of the land may be discontinued without a person being conclusively presumed to have abandoned the use.

(5) The Minister must give notice in the *Gazette* of a determination under subsection (4).

(6) A notice for the purposes of subsection (5) is to contain the prescribed details.

***Division 2 – Exceptional development permits***

**38. Applications for permit and variation to permit**

(1) A person may apply to the Minister for the grant of an exceptional development permit.

(2) An exceptional development permit may permit any of the following:

- (a) a development or use although the use or development would otherwise not be lawful under the development provisions;
- (b) a development or use in substitution for an existing use although the use or development would otherwise not be lawful under the development provision;
- (c) a modification or alteration of an existing building, or existing works, within the meaning of section 33, that is not in accordance with section 36;
- (d) the demolition and reconstruction of an existing building within the meaning of section 33 that is used for the purposes of an existing use of the land.

(3) The owner of the land to which an exceptional development permit relates may apply for a variation of the permit.

(4) An application under subsection (1) or (3) is to be in the approved form and accompanied by the prescribed fee.

**39. Applications to be dealt with as if amendments to Planning Scheme**

(1) After receiving an application under section 38(1) or (3), the Minister must –

- (a) decide to exhibit under Division 3 of Part 2 the proposal in the application;

- (b) in relation to an application under section 38(3) – decide that the proposed amendment is not so significant as to require consultation or exhibition under Part 2; or
- (c) without exhibiting under Division 3 of Part 2 the proposal in the application – refuse to grant or to vary an exceptional development permit.

(2) The Minister must, as soon as reasonably practicable after deciding to exhibit the proposal in the application or refusing to grant or to vary the permit, notify the applicant in writing accordingly.

(3) If the Minister decides under subsection (1)(a) to exhibit the proposal, Division 3 of Part 2 (other than section 18) and sections 24 and 29 apply in relation to the proposal as if the application were an application to amend the Planning Scheme.

#### **40. Grant or variation of exceptional development permit**

(1) Subject to section 39(1)(b), the Minister must not grant an exceptional development permit for a purpose specified in section 38(2)(a) unless he or she is satisfied that it is preferable to issue a permit in relation to the proposal in the application than to amend the Planning Scheme.

(2) Subject to subsection (1), the Minister may, if permitted to do so under section 26(2)(d) –

- (a) grant an exceptional development permit;
- (b) alter a proposal to amend the development provisions, or a proposal as set out in an application for an exceptional development permit, and grant an exceptional development permit in relation to the proposal as so altered; or
- (c) refuse to grant an exceptional development permit.

(3) Subject to subsection (1), if the Minister has exhibited under Division 3 of Part 2 a proposal in an application under section 38(1), the Minister may –

- (a) grant or refuse to grant an exceptional development permit; or
  - (b) alter the proposal set out in the application and grant an exceptional development permit in relation to the proposal as so altered.
- (4) If the Minister has –
- (a) exhibited under Division 3 of Part 2 a proposal in an application under section 38(3); or

- (b) decided under section 39(1)(b) that the proposed amendment is not so significant as to require consultation or exhibition under Part 2,

the Minister may –

- (c) vary or refuse to vary an exceptional development permit; or
  - (d) alter the proposal set out in the application and vary the permit in accordance with the proposal as so altered.
- (5) An exceptional development permit may be granted or varied subject to the conditions the Minister thinks fit and specifies on the permit or the variation.
- (6) The Minister must give notice in the *Gazette* of a decision under subsection (2), (3) or (4).
- (7) A notice for the purposes of subsection (6) is to contain the prescribed details.

#### **41. Reasons to be given**

If the Minister grants or varies, or refuses (other than under section 14(1)(a) or section 39(1)(c)) to grant or vary, an exceptional development permit, including in relation to an application under section 12, he or she must make available for purchase or inspection by the public his or her written reasons for the decision.

#### **42. Matters to be taken into account**

In determining whether to grant or vary an exceptional development permit under section 40, the Minister must take into account the matters specified in section 51(d), (g), (h), (j), (k), (m), (n), (p), (r), (s) and (t).

#### **43. If proposal referred to in *Unit Titles Act***

If the Minister grants an exceptional development permit in relation to a proposal referred to in section 16 of the *Unit Titles Act*, the building to which the permit relates is to be taken to conform with the relevant development provisions for the purposes of that section.

### **PART 5 – DEVELOPMENT PERMITS**

#### ***Division 1 – Development permits generally***

#### **44. When development permit is required**

This Part applies in any of the following circumstances:

- (a) if the development provisions allow development only with the consent of the consent authority;

- (b) if the proposed development is the subdivision or consolidation of land;
- (c) if an interim development control order allows development only with the consent of a consent authority.

**45. Development permit taken to be issued in certain circumstances**

If—

- (a) a use of an area of land was permitted under the development provisions to be made without the consent of the consent authority;
- (b) as a result of an amendment under Part 2 to the development provisions the use of the area of land becomes a use of a kind that is only permitted with the consent of the consent authority; and
- (c) the use was made of the land immediately before the commencement of the amendment to the development provisions,

a development permit permitting the use is to be taken to have been issued in relation to the land.

**46. Development applications**

(1) The owner of land, or a person authorised in writing by the owner, may apply to the consent authority for consent to carry out a development on the land.

(2) An application under subsection (1) is to be in the approved form and accompanied by the prescribed fee.

(3) A development application is to contain the following:

- (a) an assessment demonstrating how the proposed development will comply with the Planning Scheme insofar as it applies, if at all, to the land;
- (b) an assessment demonstrating how the proposed development will comply with an interim development control order, if any, applying to the land;
- (c) if a public environmental report or an environmental impact statement has been prepared or is required under the *Environmental Assessment Act* in relation to the proposed development — a copy of the report or statement and the results of any assessment of the report or statement under that Act by the Minister administering that Act;

- (d) an assessment demonstrating the merits of the proposed development;
  - (e) a description of the physical characteristics of the land and a detailed assessment demonstrating the land's suitability for the purposes of the proposed development and the effect of development on that land and other land;
  - (f) a statement specifying the public facilities or public open space available in the area in which the land is situated, whether land for public facilities or public open space is to be provided by the developer and whether it is proposed that facilities or open space be developed by the developer;
  - (g) a statement specifying the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and whether public utilities or infrastructure are to be provided by the developer or land is to be provided by the developer for the provision of public utilities or infrastructure;
  - (h) an assessment of the potential impact on the existing and future amenity of the area in which the land is situated;
  - (j) an assessment of the benefit or detriment to the public interest of the development;
  - (k) in the case of a proposed subdivision of land on which a building is situated – a report from a building certifier within the meaning of the *Building Act* as to whether the building will cease to comply with the *Building Act* if the proposed development were to proceed.
- (4) A consent authority to which an application has been made under subsection (1) –
- (a) may reject the application without further consideration of it if it does not address the matters specified in subsection (2);
  - (b) may require the applicant to provide it with the additional information that it considers necessary in order to enable the proper consideration of the application; and
  - (c) may, if –
    - (i) an amendment to the Planning Scheme has been exhibited under Part 2; and

- (ii) it is of the opinion that a decision under Division 4 of Part 2 ought to be made before the consent authority makes a determination under section 53 in relation to the application,

defer consideration of the application under Division 3 until the determination is made under Part 2.

- (5) The consent authority must notify in writing the applicant of a decision under subsection (4).

### ***Division 2 – Public consultation***

#### **47. Notification of proposal**

(1) If a development application is received by a consent authority, the consent authority must, before it determines the application, notify, or require the applicant to notify, the public in the prescribed manner and form –

- (a) that a development application has been made;
- (b) of the details of the application; and
- (c) that a member of the public may make a submission in respect of the application within the period, ending not earlier than 14 days after the date on which notice was given, that is specified in the notice.

(2) If the consent authority gives notice of an application under subsection (1) it may charge the applicant the reasonable cost of the notification.

#### **48. Notification of local authorities**

(1) If a development application in respect of land within the council area of a local authority is received by the consent authority, the consent authority must notify in writing the local authority –

- (a) that a development application has been made;
- (b) of the details of the application; and
- (c) that it may make a submission in respect of the application within the period, ending not earlier than 14 days after the date on which notice was given, that is specified in the notice.

(2) The consent authority may charge the applicant the reasonable cost of notification in accordance with this section.

**49. Person or local authority may make submissions**

(1) A person may make a submission to the consent authority in relation to the application within the period specified for submissions under section 47(1).

(2) A local authority that has been notified of a development application under section 48 may, within the period specified in the notice under section 48(1), make a submission to the consent authority in relation to the application.

**50. Invitations to Authority meeting in relation to development permit**

(1) A consent authority may invite –

(a) a person; or

(b) if the person is not a natural person – a representative of the person,

who has made a submission to it under section 49 in respect of a development application to appear and to give evidence at that part of a meeting of the Development Consent Authority at which evidence is to be taken in relation to the development application.

(2) A consent authority must, at the request of a local authority notified under section 48, permit a representative of the local authority to attend and give evidence at that part of a meeting of the Development Consent Authority at which evidence is to be taken in relation to an application for a development permit.

***Division 3 – Determination of application***

**51. Matters to be taken into account**

A consent authority must, in considering a development application, take into account the following:

(a) the Planning Scheme as it applies to the land to which the application relates;

(b) any proposed amendments to the Planning Scheme –

(i) that have been or are being exhibited under Division 3 of Part 2;

(ii) in respect of which a determination has not been made under Division 4 of Part 2; and

(iii) that are relevant to the development proposed in the development application;

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- (c) an interim development control order, if any, in respect of the land to which the application relates;
- (d) an environment protection objective within the meaning of the *Waste Management and Pollution Control Act* that is relevant to the land to which the application relates;
- (e) any submissions made under section 49 in relation to the development application;
- (f) a matter that the Minister has, under section 85, directed it to consider in relation to development applications generally;
- (g) if a public environmental report, or an environmental impact statement, has been prepared or is required under the *Environmental Assessment Act* in relation to the proposed development – the report or statement and the results of any assessment of the report or statement under that Act by the Minister administering that Act;
- (h) the merits of the proposed development as demonstrated in the application;
- (j) the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development;
- (k) the public facilities or public open space available in the area in which the land is situated and the requirement, if any, for the facilities, or land suitable for public recreation, to be provided by the developer;
- (m) the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose;
- (n) the potential impact on the existing and future amenity of the area in which the land is situated;
- (p) the public interest;
- (q) in the case of a proposed subdivision of land on which a building is situated – whether the building will cease to comply with the *Building Act* if the proposed development were to proceed;
- (r) any potential impact on natural, social, cultural or heritage values;



- (s) any beneficial uses, quality standards, criteria, or objectives, that are declared under section 73 of the *Water Act*;
- (t) other matters it thinks fit.

**52. Consent to be given only if development complies with Scheme**

(1) The Development Consent Authority must not consent to a proposed development under section 53 if—

- (a) in its opinion, the proposed development is contrary to a land use objective; or
- (b) the proposed development is contrary to the development provisions or an interim development control order.

(2) The Minister must not consent to a proposed development under section 53 if the proposed development is contrary to the development provisions or an interim development control order.

(3) Despite subsection (1), the Development Consent Authority may consent to a proposed development under section 53 although the proposed development is contrary to a land use objective, if—

- (a) the Authority notifies the Minister in writing; and
- (b) either —
  - (i) the Minister gives written approval to the giving of consent to the proposed development; or
  - (ii) the Minister has not, within 14 days after receipt of the notice under paragraph (a), given written approval to the giving of consent to the proposed development although the amendment is contrary to a land use objective or refused to give such written approval.

**53. Determination of development applications**

Subject to this Act, a consent authority must, as soon as practicable after receiving a development application, determine the application by—

- (a) consenting, either conditionally or unconditionally, to —
  - (i) the proposed development; or
  - (ii) the proposed development as amended by the consent authority in the manner it thinks fit,

and issuing a development permit or permits in the approved form;  
or

- (b) refusing to consent to the proposed development and issuing a notice of refusal in the approved form.

**54. Statement of reasons to be given**

(1) As soon as practicable after a consent authority determines an application under section 53, it must –

- (a) serve on the applicant a statement of the reasons for the determination; and
- (b) make available for inspection and purchase by the public a copy of the statement of the reasons for the determination.

(2) If the Development Consent Authority is the consent authority, a statement of the reasons for the determination is to contain a statement that the applicant has a right to appeal to the Appeals Tribunal under Part 9 against a condition imposed on a permit by the consent authority, the refusal to grant a permit or the amendment of a proposal in a development application.

(3) A consent authority must –

- (a) advise the local authority, if any, in respect of the land to which an application relates as to whether a development permit was issued in relation to the application; and
- (b) provide to the local authority a copy of the statement of the reasons for the determination served under subsection (1)(a).

(4) If the Minister directs the Development Consent Authority –

- (a) to refuse to issue a development permit in relation to a development application;
- (b) to issue a development permit in relation to a development application on a condition specified in the direction; or
- (c) to amend a proposal in a development application,

the Development Consent Authority must state in the statement of reasons provided to the applicant that the refusal, condition or amendment was in accordance with a direction of the Minister and that the applicant has no right of appeal to the Appeals Tribunal against the refusal, condition or amendment.

**55. Conditions may be placed on permits**

A consent authority may impose on a development the conditions it thinks fit and specifies in the development permit, including a provision for the permit to lapse on a specified date.

**56. Conditions may relate to stage of development**

A condition under section 55 may –

- (a) provide that the development is permitted in stages specified in the permit;
- (b) specify the conditions to be satisfied at the conclusion of a stage; and
- (c) specify that if a stage is completed in accordance with the conditions specified to relate to that stage, use may be made of the part of the development completed at that stage –
  - (i) whether the stage completed relates to all or part of the area of land to which the permit relates; and
  - (ii) although conditions relating to stages yet to be completed have not been complied with.

**57. Variation of conditions of permit**

(1) The owner of land to which a development permit relates, or a person authorised by the owner, may, at any time before the permit lapses, apply to the consent authority that issued the permit for a variation of a condition of the development permit.

(2) An application under subsection (1) is to be in the approved form and accompanied by the prescribed fee.

(3) The consent authority that issued a permit may, in writing, vary a condition of a permit if the consent authority is satisfied that the variation would not result in the development being substantially different from the development originally permitted.

(4) If the consent authority does not vary a condition of a permit in accordance with an application under subsection (1), the consent authority must give to the applicant a statement of the consent authority's reasons for doing so.

***Division 4 – Duration of development permits***

**58. Duration of permit**

(1) Subject to this Part, a development permit remains in force during the base period of the permit and, if the duration of a permit is extended under this section or section 59, the period of that extension.

(2) If—

- (a) a consent is conditional on the carrying out of works; and
- (b) those works are substantially commenced in accordance with the permit within the base period of the development permit,

the permit does not lapse at the end of the base period of the permit but instead is automatically extended for another 2 years from the date on which it would otherwise lapse.

(3) A development permit that relates to a plan of subdivision or consolidation does not lapse if, within the base period of the permit or any extension of that period under this section or section 59, the plan of survey is approved under section 49(3) of the *Licensed Surveyors Act*.

(4) Subject to this Part, if a development under a development permit includes or consists of the establishment of or a change in a use, the development permit does not lapse if the use has commenced in accordance with the permit within the base period of the permit or any extension of that period under this section or section 59.

**59. Extension of period of permit**

(1) The owner of land to which a development permit applies, or a person authorised in writing by the owner, may, at any time before the permit lapses, apply to the consent authority for an extension of the period of the permit.

(2) An application under subsection (1) is to be in the approved form and accompanied by the prescribed fee.

(3) On receipt of an application under subsection (1), the consent authority may—

- (a) extend the period of the permit as it thinks fit; or
- (b) refuse to extend the period of the permit.

(4) If the consent authority makes a determination under subsection (3) other than in accordance with an application, it must give to the applicant a statement of its reasons.

***Division 5 – Development works***

**60. Development provisions may require consultation or agreement**

- (1) In this section, "referral authority" means –
  - (a) a statutory corporation;
  - (b) a body corporate;
  - (c) the holder of a statutory office under a law of the Territory or the Commonwealth;
  - (d) an Agency; or
  - (e) a local authority or a minister,

that or who is specified in the development provisions for the purposes of this section.

(2) The development provisions may specify that a consent authority must not consent to a development taking place unless it has consulted with, or obtained the agreement of, a referral authority.

(3) If the development provisions specify that the agreement of a referral authority must be obtained before the consent authority consents to a development taking place, the development provisions are to specify the matters that the referral authority must take into account in considering whether to agree.

(4) A referral authority may, by notice in writing to the consent authority, specify circumstances in which the consultation or agreement required by the development provisions may be assumed to have taken place or been given.

- (5) A consent authority must not consent to a development unless –
  - (a) if the development provisions require the consent authority to consult with a referral authority before consenting –
    - (i) the consent authority has consulted with the referral authority; or
    - (ii) the circumstances in which the consultation required by the development provisions may be assumed to have taken place exist in relation to the development application; or
  - (b) if the development provisions require the consent authority to obtain the agreement of a referral authority before consenting –
    - (i) the consent authority has obtained the agreement; or

- (ii) the circumstances in which the agreement may be assumed to have been given exist.

***Division 6 – Subdivisions and consolidations***

**61. Subdivisions etc. to be approved under *Licensed Surveyors Act***

A person must not subdivide or consolidate land otherwise than in accordance with a plan of survey approved under section 49(3) of the *Licensed Surveyors Act*.

Penalty: In the case of a natural person – 200 penalty units;

In the case of a corporation – 1000 penalty units.

**62. Surveyor-General can only approve survey if consent given**

(1) The Surveyor-General must not approve under section 49(3) of the *Licensed Surveyors Act* a plan of survey submitted under that section for a subdivision or consolidation of land unless satisfied that –

- (a) consent under this Part has been given for the subdivision or consolidation; and
- (b) if works are required under this Part to be carried out –
  - (i) they have been carried out in accordance with the requirements of the consent authority; or
  - (ii) security to the satisfaction of the consent authority has been given for the due completion of the works.

(2) If land proposed to be subdivided is, or the land to be consolidated is to be, the subject of a lease from the Territory containing conditions in relation to the development, the security referred to in subsection (1) may, if the consent authority thinks fit, be the lease.

**63. Purported subdivision or consolidation prohibited**

(1) A person must not enter into a transaction purporting to subdivide or consolidate land in contravention of this Part.

Penalty: In the case of a natural person – 200 penalty units;

In the case of a corporation – 1000 penalty units.

(2) A transaction purporting to subdivide or consolidate land in contravention of this Part is void.

#### 64. Service easements

(1) If a plan of survey approved under section 49(3) of the *Licensed Surveyors Act* for the subdivision or consolidation of land is deposited under section 101 of the *Real Property Act* with the Registrar-General and is registered –

- (a) all land shown on the plan of survey as a road, street, passage, court, alley, thoroughfare or cul-de-sac vests in fee simple in the Territory and vests, for the purpose specified in the plan of survey, in the service authority specified in the plan of survey under subsection (4); or
- (b) all land shown on the plan of survey as a square, park, water or drainage reserve, reserve or other similar open space vests in fee simple in the service authority specified in the plan of survey under subsection (4),

by virtue of this section and without further assurance, freed and discharged of all interests, trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates of any kind.

(2) If a plan of survey referred to in subsection (1) is registered under the *Real Property Act*, the Registrar-General must make the entries that he or she thinks necessary for the purpose of recording in the Register kept under the *Real Property Act*, in relation to the affected land –

- (a) that the plan of survey has been deposited and registered; or
- (b) the vesting of the land under subsection (1).

(3) A road, street, passage, court, alley, thoroughfare or cul-de-sac vested under subsection (1) is a road within the meaning and for the purposes of the *Control of Roads Act* and the *Local Government Act*.

(4) A plan of survey referred to in subsection (1) may indicate that land delineated in it is subject to or intended to be subject to an easement in favour of a specified service authority.

(5) If a plan of survey referred to in subsection (1) indicates an intended easement in favour of a specified service authority and describes it by a description specified in the Schedule or in a regulation made for the purposes of this section then, on the registration of the plan of subdivision under the *Real Property Act* –

- (a) the intended easement is to be an easement although it may not be appurtenant to a dominant tenement; and
- (b) without limiting the power that it may have under any other law in force in the Territory, the service authority –

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- (i) is to have the use and benefit of the easement for the purposes; and
- (ii) has for itself and its agents, servants and workmen all the powers,

specified in the Schedule or that regulation, as the case may be, in relation to that easement.

(6) If, by virtue of this section, land is the subject of an easement, the Registrar-General must make the entries in relation to the land in the Register kept under the *Real Property Act* that he or she thinks necessary to evidence the easement.

(7) If—

- (a) a pipe, duct, wire, pole or other thing that is attached to or constructed on, under or above the surface of, land is, by virtue of this section, subject to an easement; and
- (b) it was attached to the land or constructed for or in relation to a purpose described in the Schedule or a regulation made for the purposes of this section,

it is not to be taken to be a fixture to the land for the purpose of giving the proprietor of the land a proprietary interest in it.

(8) A service authority that is the proprietor of an easement referred to in this section may allow any other person, himself or herself or by his or her employees, agents or workers, to enter on and do anything on the land subject to the easement that the proprietor of the easement can do as the proprietor.

(9) A proprietor of land on which is located an easement referred to in this section must not hinder or obstruct a person entering on or doing anything on the land in pursuance of the authority of the service authority.

(10) For the purposes of this section, "service authority" includes a person declared to be a service authority under subsection (11).

(11) The Minister may, by notice in the *Gazette*, declare a person to be a service authority for the purposes of this section.

### ***Division 7— Certification***

#### **65. Certification of compliance with permit or Part**

(1) A person may apply to the consent authority for the issue of a certificate in the approved form certifying the extent to which the conditions of a



development permit or the requirements of this Part in relation to land have been complied with.

(2) An application under subsection (1) is to be in the approved form and accompanied by the prescribed fee.

(3) If an application is made under subsection (1) to the consent authority, it must issue a certificate certifying the extent to which the conditions of a development permit or the requirements of this Part in relation to land have been complied with.

(4) A certificate issued under this section is prima facie evidence of the facts certified as at the date specified in the certificate.

***Division 8 – Revocation and modification of permits***

**66. Minister may revoke or modify permit**

(1) Subject to this section, the Minister may, by notice in the *Gazette*, revoke or modify a development permit.

(2) The Minister must not revoke or modify a development permit unless the Minister has –

- (a) served notice in writing, in the approved form, on –
  - (i) the owner or occupier of the land; or
  - (ii) the person apparently using or developing the land, of the proposal to revoke or modify the permit;
- (b) required the Chairman to carry out an inquiry under section 144; and
- (c) considered the report provided under section 144.

(3) Before making its report, the Chairman or person appointed under section 144(2) to conduct the inquiry must give the persons on whom the notice under subsection (2) was served an opportunity to be heard in relation to the proposed report.

(4) The Minister must revoke or modify the permit, or determine not to revoke or modify the permit, as soon as practicable after receiving a report provided under section 144.

(5) Subject to subsections (7) and (8), a person served with notice under subsection (2)(a) must not continue any use or development of the land that is only permitted under the permit referred to in the notice.

Penalty: In the case of a natural person – 200 penalty units and 2 penalty units default penalty;

In the case of a corporation – 1000 penalty units and 10 penalty units default penalty.

(6) The Minister must, after determining –

(a) to revoke or modify a permit; or

(b) not to revoke or modify a permit,

notify the persons served with notice under subsection (2)(a) of his or her decision in writing.

(7) After a notice has been served on a person under subsection (6) modifying a permit, he or she must not continue a use or development permitted under the permit except under and in accordance with the permit as modified.

Penalty: In the case of a natural person – 200 penalty units and 4 penalty units default penalty;

In the case of a corporation – 1000 penalty units and 20 penalty units default penalty.

(8) After receiving notice under subsection (6) that the Minister has decided not to revoke or modify a permit, an applicant may use or develop the land to which the permit relates, under and in accordance with the permit.

## **PART 6 – DEVELOPER CONTRIBUTIONS**

### **67. Definition**

In this Part, "infrastructure" means prescribed capital works but does not include –

- (a) the repair or maintenance of capital works;
- (b) works required as a condition of a development permit to be carried out on the land to which the permit relates; or
- (c) the provision of public car parking.

### **68. Service authority may make contribution plans**

(1) A service authority may prepare a proposed contribution plan.

(2) A service authority that prepares a proposed contribution plan may, by notice in a newspaper circulating in the Territory or, if the service authority is a

local authority, in a newspaper circulating in the council area in respect of the local authority, notify the public –

(a) of the exhibition of the proposed contribution plan and the place where it may be viewed; and

(b) that submissions may be made in relation to the plan.

(3) If a service authority gives notice under subsection (2), the proposed contribution plan must be exhibited at the place specified in the notice for not less than 28 days.

(4) If a service authority –

(a) has complied with subsections (2) and (3) and the prescribed requirements, if any, in relation to the making of a contribution plan; and

(b) has considered all submissions made in relation to the plan,

it may –

(c) make the proposed plan; or

(d) amend the proposed plan and make the proposed plan as amended.

(5) If a service authority makes a contribution plan under subsection (4), the plan takes effect –

(a) on the publication of a notice in the *Gazette* specifying that the contribution plan has been made and where copies of the plan may be viewed or purchased; or

(b) if a later date is specified in the notice – on the date specified.

(6) A service authority must ensure that all contribution plans proposed or made by it are available for inspection and purchase by members of the public.

(7) A contribution plan cannot, in any legal proceedings commenced after the expiration of 90 days after the date on which the notice in relation to the plan appears in the *Gazette* under subsection (5), be declared to be of no effect by virtue only of a defect or irregularity in the procedure prescribed by or under this Act for making a contribution plan.

## **69. Contents of contribution plans**

(1) A contribution plan may specify that the owner of land on which a development of a type specified in the plan occurs will be required to contribute

towards the provision of infrastructure or public car parking, as the case may be, in accordance with the plan.

(2) A contribution plan that is made by a service authority that is a local authority applies only to land within the local authority's council area.

(3) A contribution plan relates to the policy area specified in the plan, being land that can appropriately be treated as a discrete area for the provision of infrastructure or public car parking of the type specified in the plan because of—

- (a) the location of the land;
- (b) land uses in the area of land or other common identifiable characteristics;
- (c) the anticipated future development of the area of land; and
- (d) the infrastructure or public car parking that is or will be required on the area of land.

(4) A contribution plan is to contain—

- (a) a description of the infrastructure or public car parking that is or will be required in the policy area specified in the plan;
- (b) a statement of the intended order in which works relating to the development of the infrastructure or public car parking are to occur;
- (c) an estimate of, and the method for calculating, the capital cost of works relating to each type of infrastructure or each public car park;
- (d) in relation to each type of infrastructure or public car park for which a contribution is required under the plan— a formula for calculating the contribution required, determined—
  - (i) in relation to the provision of infrastructure— having regard to prescribed types of information or estimations and descriptions or other information referred to in this section; and
  - (ii) in relation to the provision of public car parking— in accordance with section 70; and

(e) other prescribed information.

(5) A formula referred to in subsection (4)(d)(i) may relate to the following:

- (a) the intensity of a development;

- (b) the anticipated increased usage of proposed infrastructure as a consequence of a development of a particular type;
- (c) other factors specified in the contribution plan.

**70. Contributions for car parking**

(1) The development provisions may require, in relation to a particular type of development, that the development is to provide for public car parking in order to meet the expected increased demand for car parking spaces in the policy area as a consequence of the development.

(2) Although the development provisions require that a certain number of public car parking spaces are to be provided as part of a development, the consent authority –

- (a) after considering all the circumstances of a particular case; and
- (b) if satisfied that the intent of the development provisions will still be fulfilled,

may determine, as a condition of a development permit, that a different number of public car parking spaces, or no spaces, are to be provided as part of the development.

(3) If a consent authority has determined, as a condition of a development permit, that a number of public car parking spaces are to be provided as part of the development, a contribution, calculated in accordance with a formula for calculation contained in a contribution plan made by a service authority that is the local authority in relation to the land on which the development is to take place, may be paid to the service authority in lieu of the provision of some or all of the number of car parking spaces required in accordance with subsection (1) or (2).

(4) A formula for calculation referred to in subsection (3) is to have regard to –

- (a) the value of the land necessary for an off-street car park in the policy area; and
- (b) the estimated cost of construction of public car parking spaces on the land referred to in paragraph (a), using the most appropriate or cost effective form of construction, whether ground level or multi-level and having regard to all the circumstances in the policy area.

**71. Contribution payable**

(1) Subject to subsection (7) and a determination, if any, under section 130(6), the payment of a contribution payable under this Part is to be taken to be a

condition of the development permit in respect of which it is payable and is to be provided in accordance with this Part by the owner of the land to which the permit relates.

(2) A contribution to be provided in accordance with this Part is payable—

- (a) if the development consists only of a change in the use to which the land may be put—before the commencement of the new use;
- (b) if it is a condition of a development permit relating to the development that, at the completion of each specified stage of the development, a specified number of car parking spaces are to be provided or a proportion of the total contribution as assessed by the service authority in accordance with the contribution plan is to be payable—at the completion of each stage and before commencement of the use of that part of the development in accordance with the conditions of the permit;
- (c) if a time for payment is specified in a written agreement between the service authority and the person who is required to provide the contribution—at that time; or
- (d) in a case to which paragraph (a), (b) or (c) does not apply—on completion of the development and before commencement of the use to which the development relates.

(3) A service authority may, by notice in writing to the owner of land to which a contribution plan made by the authority applies, demand that the owner pay the contribution assessed in accordance with the plan in respect of a development on the land.

(4) A demand may only be made under subsection (3) if the amount, or part of the amount, has become payable under subsection (2).

(5) If a demand for contribution is made under subsection (3) to an owner of land, he or she must pay the amount specified in the notice in accordance with the terms of the notice.

(6) If a demand for contribution is made under subsection (3) to an owner of land in relation to development on that land, the balance from time to time outstanding of the amount demanded is an overriding statutory charge, within the meaning of the *Real Property Act*, on the land.

(7) A reference in subsection (5) or (6) to an amount is, if section 73 or an order under section 125(6) or 130(6) applies in relation to the amount, the amount payable in accordance with section 73 or the order under section 125(6) or 130(6) respectively.

- (8) A contribution plan is not valid unless —
- (a) the total cost of providing the infrastructure or car parking in respect of which the contribution is to be payable under the plan by the owner of land is calculated by reference to the most appropriate and cost-effective form of construction;
  - (b) the contribution to be payable by an owner of land is calculated as part or all of the total cost of providing infrastructure or car parking; and
  - (c) the contribution to be payable by an owner of land is relative to the proportion of anticipated future usage of the infrastructure or public car parking attributable to the development of the land.

(9) If an owner of land is required under this Part to construct infrastructure himself or herself, the amount of money spent in constructing that infrastructure is to be set off against the contribution otherwise payable under this Part to the extent of, but not exceeding, the amount of contribution payable.

## **72. Duties of service authority**

A service authority to which money is paid in accordance with this Part must —

- (a) maintain —
  - (i) a trust account in relation to each contribution plan; or
  - (ii) if the service authority is a local authority — a trust account within the meaning of the *Local Government Act*,  
  
for the purposes of providing the infrastructure or public car parking spaces for which the contribution was provided;
- (b) pay money received by it in accordance with this Part into the trust account; and
- (c) within a reasonable time, having regard to all the circumstances, expend money paid to it in accordance with this Part for the purpose of providing infrastructure or public car parking for the provision of that infrastructure or public car parking, as the case may be, in the policy area in which the development is situated.

## **73. Discount, interest rate etc.**

(1) A service authority may, (in the case of a body corporate, by resolution, and, in any other case, in the prescribed manner and form, if any) declare —

- (a) that a discount is to be given for the prompt payment, or the payment in advance, of a contribution payable under this Part;
  - (b) the rate or rates of a discount referred to in paragraph (a) and the circumstances in which it is to be given;
  - (c) the rate of interest payable on a contribution or part of a contribution if, in each case, the contribution is paid late; or
  - (d) that a refund or remittance of all or part of a contribution otherwise payable is to be made in the special circumstances of a particular case.
- (2) The interest payable under subsection (1)(c) is to be —
- (a) calculated on the amount outstanding from time to time on a monthly basis until the contribution is paid in full; and
  - (b) not more than —
    - (i) the prescribed rate of interest; or
    - (ii) in the case of a local authority — the rate of penalty interest payable to it on rates payable under the *Local Government Act* but not paid when due and payable.

(3) A person may apply to the service authority for a refund or remittance, in the special circumstances of the person, of all or part of a contribution otherwise payable by the person under this Part.

#### **74. Enforcement of contribution plan**

If a contribution is to be paid to a service authority under this Part, the service authority may —

- (a) if it is the Territory — take proceedings to recover the contribution;
- (b) if it is a local authority or a statutory corporation — in its own name take proceedings to recover the contribution; and
- (c) if it is a minister — in the name of the Territory take proceedings to recover the contribution.



**PART 7 – ENFORCEMENT**

***Division 1 – Offences***

**75. Use or development to comply with Act**

(1) A person must not use or develop land in contravention of the development provisions in relation to the land, except in accordance with a permit issued under this Act in relation to the land.

Penalty: In the case of a natural person – 200 penalty units and 4 penalty units default penalty;

In the case of a corporation – 1000 penalty units and 20 penalty units default penalty.

(2) A person must not use or develop land in contravention of an interim development control order, except in accordance with a permit in force immediately before the order was made.

Penalty: In the case of a natural person – 200 penalty units and 4 penalty units default penalty;

In the case of a corporation – 1000 penalty units and 20 penalty units default penalty.

(3) A person must not –

(a) use or develop land in a manner that is only permitted in accordance with a development permit except in accordance with the permit; or

(b) subject to section 56(c), use land in a manner that is only permitted in accordance with a development permit until all the conditions of the permit that must be complied with before the use is permitted have been complied with.

Penalty: In the case of a natural person – 200 penalty units and 4 penalty units default penalty;

In the case of a corporation – 1000 penalty units and 20 penalty units default penalty.

**76. Notice to cease if contravention**

(1) If –

(a) land is being used or developed in contravention of the development provisions that apply to the land; and

(b) the development is not otherwise permitted by or under this Act,  
the consent authority in respect of the development provisions in relation to the land may, by notice in writing, require —

- (c) the owner or occupier of the land; or
- (d) the person apparently using or developing the land in contravention of the development provisions or interim development control order,

to cease using or developing the land in contravention of the development provisions.

(2) If land is being used or developed in contravention of an interim development control order that applies to the land, the consent authority specified in the order may, by notice in writing, require —

- (a) the owner or occupier of the land; or
- (b) the person apparently using or developing the land in contravention of the interim development control order,

to cease using or developing the land in contravention of the interim development control order.

(3) If—

- (a) land is being used or developed in contravention of a permit that applies to the land; and
- (b) the development is not otherwise permitted by or under this Act,

the consent authority in respect of the development provisions in relation to the land may, by notice in writing, require —

- (c) the owner or occupier of the land; or
- (d) the person apparently using or developing the land in contravention of the permit,

to cease using or developing the land in contravention of the permit.

(4) A notice under this section may be served on —

- (a) the owner of the land;
- (b) an occupier of the land;
- (c) a person apparently in charge of premises on the land; or

- (d) a person apparently in charge of an activity being carried out on the land.

(5) A person specified in a notice under this section must not contravene, or fail to comply with, the notice.

Penalty: In the case of a natural person – 200 penalty units and 4 penalty units default penalty.

In the case of a corporation – 1000 penalty units and 20 penalty units default penalty.

### ***Division 2 – Enforcement***

#### **77. Power to enter land**

(1) A person who is authorised in writing to enter land by the Minister or the Chairman may at any reasonable time, without notice to the owner or occupier of land, enter the land for the purpose of investigating a breach of this Act or of an instrument of a legislative or administrative character made under this Act that the person suspects has occurred, or is occurring, on the land.

(2) A person authorised under subsection (1) must not enter a building or part of a building used for residential purposes without –

- (a) the consent of the occupier of the building or part of a building; or
- (b) a search warrant issued under subsection (3).

(3) If a member of the Police Force or a person authorised under subsection (1) makes a complaint on oath to a Justice to the effect that the member or authorised person has reason to suspect, and believes, that this Act or the Regulations has or have been or is or are being contravened in or on residential premises, the Justice may, if satisfied that the belief is well founded, authorise by search warrant a member of the Police Force or an authorised person to enter the premises to search for evidence in relation to the contravention in or on the premises.

(4) Section 120B(4) to (8), inclusive, of the *Police Administration Act* apply to and in relation to a search warrant issued under subsection (3).

#### **78. Who may prosecute offences against Act**

(1) A prosecution under this Act may only be brought in the name of the Development Consent Authority or the Minister.

(2) The Chairman or the Minister may authorise a person to bring a prosecution in the name of the Development Consent Authority or the Minister respectively.

(3) A person who, but for this section, would not be entitled to take proceedings for or with respect to enforcing or securing the observance of a provision of or under this Act in his or her own name may take such proceedings in his or her own name with the leave of the court before which the proceedings are proposed to be taken.

(4) A court may grant leave to take proceedings referred to in subsection (3) on the terms and conditions it thinks fit, including terms and conditions requiring the person seeking leave to deposit with the court the amount of money the court thinks fit as security –

- (a) for costs; or
- (b) for damage the person against whom the proceedings are proposed to be taken may suffer by reason of the proceedings, if the person taking the proceedings does not obtain the relief sought in the proceedings.

***Division 3 – Court orders etc.***

**79. Default penalty may be imposed for continuing offences**

If –

- (a) in this Act the expression "default penalty" appears in or at the foot of a section or subsection; and
- (b) a court is satisfied on finding a person guilty of an offence against the section or subsection that the person continued to contravene, or to fail to comply with, the section after the date when he or she was notified of the alleged offence,

the Court may, in addition to the penalty, if any, specified for the offence, impose the default penalty in respect of each day during which the offence continued to be committed after the first day on which it was committed.

**80. Court may order work to be done**

In addition to any other relief that may be granted in proceedings for enforcing or securing the observance of a provision of or under this Act, a court may order a person who has contravened or failed to comply with the provision to do the work to remedy the contravention or failure that it specifies.

**81. Onus of proof**

In an action, suit or proceeding under this Act –

- (a) an averment by or on behalf of the Development Consent Authority or the Minister that –

- (i) land is Crown land, reserved or dedicated land, land held under lease or land occupied under licence or agreement; or
- (ii) a person is authorised to take proceedings, to do an act or perform a duty, or sue for the recovery of a penalty or other money under this Act,

is prima facie evidence of the fact;

- (b) if a question arises as to whether the defendant was authorised or permitted to do the act complained of, proof of that fact lies with the defendant; and
- (c) all licences, certificates, maps, plans and copies of those documents, purporting to be certified as true under the hand of the Surveyor-General are, in all matters relating to the action, suit or proceeding, to be sufficient evidence, without production of original records and without the personal attendance of the Surveyor-General or proof of his or her signature.

## **PART 8 – DEVELOPMENT CONSENT AUTHORITY**

### ***Division 1 – Establishment of Development Consent Authority and Divisions of Authority***

#### **82. Development Consent Authority**

The Development Consent Authority is established by this section.

#### **83. Minister may establish Divisions of Authority**

- (1) The Minister may, by notice in the *Gazette* –
  - (a) establish and name a Division of the Development Consent Authority; and
  - (b) specify the area of the Territory to which the Division is to relate.
- (2) The Minister may, by notice in the *Gazette* –
  - (a) amend a Division area specified in a notice under subsection (1);
  - (b) rename a Division of the Development Consent Authority; or
  - (c) abolish a Division of the Development Consent Authority.
- (3) The Minister may not declare a Division area or amend a Division area if part of the area or area as amended would be within a council area in respect of a local authority and another part would be within another council area.

**84. Functions and powers of Development Consent Authority**

(1) The functions of a Division of the Development Consent Authority are —

- (a) the functions of a consent authority under this Act in relation to the Division area in respect of which the Division was established; and
- (b) other functions conferred or imposed on it by or under this or any other Act.

(2) The Development Consent Authority has the powers that are necessary or convenient for, or incidental to, the performance of its functions or the exercise of its powers.

**85. Minister may direct Authority**

(1) The Minister may direct the Development Consent Authority —

- (a) generally; or
- (b) in respect of a particular matter, including a development application,

except in relation to the contents of any report or recommendation the Authority is required to provide under this Act.

(2) The Development Consent Authority, in the performance of its functions and the exercise of its powers, is subject to a direction of the Minister under subsection (1).

(3) If the Minister directs the Development Consent Authority as to the determination of a particular development application, he or she must table in the Legislative Assembly, within 3 sitting days of the Legislative Assembly after the day on which the direction was given —

- (a) a summary of the development application to which the direction relates;
- (b) the terms of the direction; and
- (c) the reasons for the direction.

**86. Delegation**

(1) The Development Consent Authority may, by resolution, delegate to an employee within the meaning of the *Public Sector Employment and Management Act* or a member any of its powers and functions under this Act.

(2) If a committee formed under this Act consists only of members of the Development Consent Authority, the Authority may delegate to it any of its powers and functions under this Act.

***Division 2 – Membership***

**87. Constitution of Development Consent Authority**

(1) The Development Consent Authority consists of –

(a) the Chairman; and

(b) the members appointed by the Minister under section 89 or 90.

(2) A person may, under section 89 or 90, be appointed a member of more than one Division.

**88. Chairman and Deputy Chairman**

(1) The Minister may, in writing, appoint a person to be the Chairman of the Development Consent Authority for 2 years or a lesser period specified in the instrument.

(2) The Minister may, in writing, appoint –

(a) a member to be the Deputy Chairman of the Development Consent Authority; or

(b) a member to be the Deputy Chairman of the Development Consent Authority in respect of one or more Divisions of the Authority.

(3) If the Minister appoints a member to be the Deputy Chairman of the Development Consent Authority under subsection (2)(a), the Deputy Chairman is to act as the Chairman during –

(a) any period when the Chairman appointed under subsection (1) is unable to attend a particular meeting; and

(b) any vacancy in the office of Chairman.

(4) If the Minister appoints a member to be the Deputy Chairman of the Development Consent Authority in respect of a Division under subsection (2)(b), the Deputy Chairman is to act as the Chairman during –

(a) any period when the Chairman appointed under subsection (1) is unable to attend a particular meeting in relation to the Division; and

(b) any vacancy in the office of Chairman, but only in relation to matters relating to the Division.

**89. Appointment of members within council area**

(1) If all or part of a Division area is within a council area, the Minister must, in writing, appoint –

- (a) 2 persons in accordance with subsection (4); and
- (b) 2 other persons,

to be Division members in respect of the Division area.

(2) If an appointment is to be made under subsection (1)(a), the Minister must, by notice in writing to the local authority, request the local authority to nominate a person for appointment to the position.

(3) A local authority that receives a notice under subsection (2) may within 30 days nominate to the Minister the person it thinks fit to be a Division member.

(4) If a person –

- (a) is nominated under subsection (3) by the local authority – the Minister must under subsection (1)(a) appoint the person to be a member; or
- (b) is not nominated by the local authority within the period specified in subsection (3) – the Minister must under subsection (1)(a) appoint a person he or she thinks fit to be a member.

(5) If all or part of a Division area is within a council area, the local authority may nominate to the Minister persons it thinks fit to be members under subsection (1)(b) and the Minister may take into account that nomination as he or she thinks fit.

**90. Appointment of members outside council area**

If no part of a Division area is within a council area, the Minister may, in writing, appoint 4 persons he or she thinks fit to be the Division members of the Development Consent Authority in respect of the Division area.

**91. Alternate members for local authority representatives**

(1) The Minister must appoint a person to be an alternate member for both members appointed under section 89(1)(a) in relation to a Division.

(2) If an appointment is to be made under subsection (1) in relation to a Division, the Minister must, by notice in writing to the local authority of the council area within which is situated all or part of the Division area, request the local authority to nominate a person for appointment to the position.



(3) A local authority that receives a notice under subsection (2) may within 30 days nominate to the Minister the person it thinks fit to be an alternate member for the members appointed under section 89(1)(a) in relation to a Division.

(4) If a person –

- (a) is nominated under subsection (3) by the local authority – the Minister must under subsection (1) appoint the person to be an alternate member; or
- (b) is not nominated by the local authority within the period specified in subsection (3) – the Minister must under subsection (1) appoint a person he or she thinks fit to be an alternate member.

(5) Subject to subsection (6), a person appointed under subsection (1) to be the alternate member for a Division member may, during the absence or inability to act of the Division member, act in the member's place at a meeting of the Division, but may not act as the alternate member for more than one person at the same meeting.

(6) A person appointed under subsection (1) may not act in the place of a member appointed to be a Deputy Chairman who is acting as Chairman under section 88(3) or (4).

## **92. Term of office of member**

(1) Subject to this Act, a member appointed under section 89, 90 or 91 holds office for 2 years or a lesser period specified in the instrument of appointment and is eligible for reappointment.

(2) If a member is appointed under section 89(1)(a) or 91(1) and the next election (other than a by-election) for the local authority by which he or she was nominated is held before the member ceases to be a member, the member holds office until the expiration of 3 months after the declaration of the polls for the election.

(3) If the Minister abolishes a Division of the Development Consent Authority, the members appointed under this Part in respect of the Division cease to be members on and from the date on which the notice abolishing the Division appears in the *Gazette*.

## **93. Chairman may appoint member to act in another Division**

(1) If the Chairman is satisfied that a member appointed in relation to a Division ("the first Division") in relation to whom there is no alternate member appointed under section 91 is prevented by illness, absence, the operation of section 97 or other cause considered sufficient by the Chairman, from performing the member's duties of office, the Chairman may, in writing, appoint a member in

relation to another Division to act as a member in relation to the first Division for a period of not more than 3 months.

(2) The Chairman may, in writing, appoint a member in relation to the Division who is—

- (a) appointed as a member under section 89(1)(a) in accordance with section 89(4)(b); or
- (b) appointed as a member under section 90,

to act as a member in relation to another Division in the place of a member of that other Division who is required to act as the Chairman in relation to that other Division.

(3) The appointment of a member under subsection (1) takes effect on and from the date on which the instrument is signed or a later date specified in the instrument.

(4) If a period of appointment is not specified in an instrument under subsection (1), the appointment is to be taken to be for a period of 3 months on and from the date on which the instrument is signed.

(5) The Chairman may, in writing, revoke the appointment of a member of a Division under subsection (1).

**94. Minister may appoint temporary member**

- (1) If—
  - (a) there is a vacancy in the membership of a Division; and
  - (b) the Minister is of the opinion that it is necessary to appoint a person to act in the vacancy on urgency,

the Minister may, despite sections 89 and 90, by in writing, appoint a person to be a temporary member of the Division for a period of not more than 6 months specified in the instrument.

(2) The appointment of a member under subsection (1) takes effect on and from the date on which the instrument is signed or a later date specified in the instrument.

(3) The Minister may, in writing, revoke the appointment of a temporary member of a Division under this section.

**95. Vacancy or defect does not invalidate action of Authority**

(1) The performance of a function or exercise of a power by the Development Consent Authority is not invalid by reason only of there being a vacancy in its membership.

(2) The appointment of a person as a member is not invalid by reason only of a defect or irregularity in or in connection with the appointment of the person.

**96. Resignation of members**

A member may resign office by writing signed by him or her and delivered to the Minister.

**97. Disclosure of interest**

(1) A member who has –

(a) subject to section 99(1), a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Division of which he or she is a member, otherwise than a direct or indirect pecuniary interest as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or she is not a director; or

(b) a personal, professional, commercial or other relationship with an applicant or another person or association, which relationship is of a nature that it is likely to, or may reasonably be regarded as likely to, inhibit or prevent the exercise by the member of independent judgment in respect of an application,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of his or her interest or relationship at or before a meeting of the Division.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the Division.

(3) If a disclosure is made under subsection (1) by a member, the member –

(a) must not, after the disclosure, while he or she has that interest or has that relationship, be present during or take part in any deliberation or decision of the Division in relation to the matter in relation to which he or she has declared an interest, including discussions as to whether the Chairman ought to determine otherwise under this subsection; and

- (b) must be disregarded for the purpose of constituting a quorum of the Development Consent Authority in relation to the matter,

unless the Chairman determines otherwise.

Penalty: 50 penalty units.

**98. Interests of members nominated by local authority**

(1) In this section, "local authority member" means a member who is appointed under section 89(1)(a) or 91 on the nomination of a local authority under section 89(3) or 91(3), as the case may be.

(2) If—

- (a) a development application being considered, or about to be considered, by a Division has not been made by or on behalf of the local authority in relation to the Division;
- (b) a local authority member in relation to the Division declares at each meeting and hearing, if any, in relation to the development application—
  - (i) that he or she was nominated by the local authority; and
  - (ii) the views of the local authority in relation to the application,

then the local authority member—

- (c) may take into account the opinion of the local authority in relation to the application and the Authority is not to be taken to have contravened the rules of natural justice only because the local authority member took that opinion into account; and
- (d) is not to be taken to have an interest or relationship for the purposes of section 97 by reason only of that person being a local authority member.

(3) If a development application made by or on behalf of a local authority in relation to a Division is being considered, or is about to be considered, by the Division, a local authority member of the Division is to be taken for the purposes of section 97 to have disclosed the interest he or she may have as a local authority member in relation to the development application.

(4) If—

- (a) a local authority member is to be taken under subsection (3) to have disclosed under section 97(3) an interest in a development application; and

- (b) the Chairman makes a determination under section 97(3) in respect of the local authority member and that interest,

in acting in accordance with that determination, the local authority member may take into account the opinion of the local authority in relation to the application and the Authority is not to be taken to have contravened the rules of natural justice by reason only of taking the opinion into account.

**99. Direct or indirect interests in companies**

- (1) For the purposes of section 97, a member who –
  - (a) is a member of the governing body of, or is a substantial shareholder within the meaning of section 708 of the Corporations Law in; or
  - (b) has a relevant interest within the meaning of paragraph (a) of the definition of "relevant interest" in the Corporations Law in,

a company which has a direct or indirect interest in a matter is to be taken to have a direct or indirect interest in the matter.

(2) For the purposes of section 97, a person who is an employee of, a partner with, an agent for or a consultant to, a person, partnership, firm or company who or which has a direct or indirect interest in a matter or is representing a party to an application under this Act is to be taken to have an interest in the matter.

**100. Removal from office**

(1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

- (2) If a member –
  - (a) being the Chairman – is absent, except by leave of the Minister, from 3 consecutive meetings of the Development Consent Authority;
  - (b) not being the Chairman – is absent, except by leave of the Chairman, from 3 consecutive meetings of a Division of which he or she is a member; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

the Minister must terminate the appointment of the member.

- (3) The Minister must terminate the appointment of a member –

- (a) if the member –
  - (i) was, at the time of his or her appointment as a member, a member of the local authority that nominated him or her under section 89; and
  - (ii) has, since his or her appointment, ceased to hold office as a member of the local authority that nominated him or her under section 89; and
- (b) if the local authority that nominated him or her under section 89 has requested that his or her appointment under that section be terminated.

***Division 3 – Procedure***

**101. Meetings of Authority**

(1) The Chairman is to call meetings of the Development Consent Authority necessary for the performance of its functions and the exercise of its powers.

(2) The Chairman must, within 28 days after receiving a written notice, signed by not less than 2 members of a Division, requiring a meeting of the Division to be held, call a meeting of the Division.

(3) At a meeting of a Division of the Development Consent Authority –

- (a) the Authority is constituted by the Division members and, if he or she is present, the Chairman;
- (b) 3 members constitute a quorum;
- (c) the Chairman or, in the Chairman's absence or inability to act, a member elected by the Division members at the meeting is to preside; and
- (d) questions arising are to be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the member presiding over the meeting is to have, in addition to his or her deliberative vote, a casting vote.

(4) The procedures of the Development Consent Authority and of committees of the Development Consent Authority, including but not limited to the calling and conduct of meetings, are to be –

- (a) as determined from time to time by the Chairman; or

- (b) in the absence of a determination by the Chairman in respect of a particular matter – as determined by the member presiding over a particular meeting.

## **102. Meetings to be open**

(1) Subject to subsection (2), the part of a meeting of the Development Consent Authority at which evidence is to be taken in relation to an application for a development permit is to be open to the public and the applicant for a permit.

- (2) Despite subsection (1), if, in the opinion of the Chairman –
  - (a) information disclosed or likely to be disclosed at a meeting of the Development Consent Authority in respect of a particular application should be treated as confidential; or
  - (b) the absence of the public from a meeting of the Development Consent Authority in relation to an application is necessary or likely to be necessary for the orderly conduct of a meeting,

he or she may direct that the meeting be closed to the public.

(3) If the Chairman directs under subsection (2) that a meeting is closed to the public, the meeting is closed to the public.

(4) The part of a meeting of the Development Consent Authority during which part deliberations in respect of a development application are occurring is not open to the public or the applicant.

## **103. Minutes**

(1) The Development Consent Authority is to cause minutes to be kept of all meetings of the Development Consent Authority and of its committees.

(2) The Development Consent Authority is to keep available for public inspection during normal office hours the minutes of meetings of the Development Consent Authority and of its committees.

## **104. Committees**

(1) The Development Consent Authority may establish one or more committees for the purposes of advising the Authority on matters related to its functions or for the purpose of performing functions delegated to it under section 86, or for both purposes.

(2) A person may be a member of a committee of the Development Consent Authority whether or not he or she is also a member of the Authority.

**105. Protection of members and witnesses**

(1) No action or proceeding, civil or criminal, is to lie against a member or person acting with the authority of the Development Consent Authority for or in respect of an act or thing done or omitted to be done in good faith by the member or person or by the Authority in –

- (a) the performance or purported performance of a function; or
- (b) the exercise or purported exercise of a power,

under this or any other Act imposing a function or conferring a power on the Authority.

(2) A witness appearing before the Development Consent Authority has the same protection and immunity as a witness in proceedings before the Supreme Court.

**106. Contempt**

(1) A person must not, during a meeting of the Development Consent Authority –

- (a) insult a member;
- (b) interrupt proceedings of the Authority; or
- (c) create a disturbance or take part in creating or continuing a disturbance, in or near a place where the Authority is meeting.

Penalty: 50 penalty units or imprisonment for 6 months.

(2) If a person has, in the opinion of the Chairman, committed an offence against this section during a meeting of the Development Consent Authority, the Chairman may eject him or her from the meeting.

(3) A person ejected from a meeting under subsection (2) must not return to the meeting from which he or she was ejected.

Penalty: 50 penalty units or imprisonment for 6 months.

**107. Confidentiality**

A member or a person appointed to a committee must not disclose information obtained in the course of his or her duties as a member or a person appointed to the committee unless –

- (a) the information is otherwise available to the public;



- (b) the disclosure is made in the course of exercising powers or performing functions under this Act;
- (c) authorised or required by law to do so;
- (d) for the purposes of court proceedings; or
- (e) the information –
  - (i) is disclosed by the member or person at a meeting, other than a public meeting, of a local authority; and
  - (ii) does not relate to a direction or other communication between the Minister and the Development Consent Authority.

Penalty: 50 penalty units or imprisonment for 6 months.

## **PART 9 – APPEALS**

### ***Division 1 – Appeals Tribunal***

#### **108. Appeals Tribunal**

The Lands and Mining Tribunal established under the *Lands and Mining Tribunal Act* is the Appeals Tribunal for the purposes of this Act.

#### **109. Application of *Lands and Mining Tribunal Act* to Tribunal**

The provisions of the *Lands and Mining Tribunal Act*, other than –

- (a) sections 14(2) and (4A), 17(1)(d)(ii) and (2) and Divisions 2 and 3 of Part 3; and
- (b) sections 36, 37 and 38,

apply in relation to the Appeals Tribunal in relation to an appeal under this Part.

#### **110. Interests of members of Appeals Tribunal**

(1) A personal, professional, commercial or other relationship that a member of the Appeals Tribunal has with an appellant or another person or association, which relationship is one that it is likely to, or may reasonably be regarded as likely to, inhibit or prevent the exercise by the member of independent judgment in relation to an appeal under this Act is an interest for the purposes of section 32 of the *Lands and Mining Tribunal Act*.

(2) A direct or indirect pecuniary interest that a member of the Appeals Tribunal has as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or she is

not a director, is not, in relation to an appeal under this Act, an interest for the purposes of section 32 of the *Lands and Mining Tribunal Act*.

(3) A member of the Appeals Tribunal who is an employee of, a partner with, an agent for or a consultant to, a person, partnership, firm or company who or which has a direct or indirect interest in a matter to which an appeal under this Act relates or is representing a party to an appeal under this Act is to be taken to have an interest in relation to the appeal for the purposes of section 32 of the *Lands and Mining Tribunal Act*.

***Division 2 – Decisions that may be appealed against***

**111. Appeal against refusal to issue permit**

(1) A person who made an application under section 46 may appeal to the Appeals Tribunal against a determination of the Development Consent Authority under section 53 to refuse to consent to the development proposal in the application.

(2) An appeal may be made under subsection (1) only within 28 days after service of the statement of the reasons for the determination under section 54.

**112. Appeal if Development Consent Authority does not determine application**

(1) A person who made an application under section 46 to the Development Consent Authority may appeal to the Appeals Tribunal if –

- (a) he or she has not, within 12 weeks after the application was made, received from the Development Consent Authority a notice under section 46(5), a development permit or a notice of refusal in respect of the application;
- (b) having received from the Development Consent Authority a notice under section 46(5) specifying that a decision in relation to the application was to be deferred until a decision was made under Part 2 in relation to a proposed amendment to the Planning Scheme, he or she has not, within 12 weeks after the making of the decision under Part 2 in relation to the proposed amendment to the Planning Scheme, received a development permit or a notice of refusal in respect of the application; or
- (c) both of the following have occurred:
  - (i) the Development Consent Authority notified the Minister responsible for the administration of the *Environmental Assessment Act* of the development application;

- (ii) the person has not received a development permit or a notice of refusal in respect of a development application within 12 weeks after the last day that an administrative action has been or may be taken under that Act.

(2) A person who made an application under section 57 or 59 may appeal to the Appeals Tribunal if he or she has not been notified by the Development Consent Authority of a determination of the application within 12 weeks after the application was made.

(3) If an appeal is made under subsection (1) or (2) in relation to an application under section 46, 57 or 59, the Development Consent Authority is to be taken for the purposes of this Part to have made a determination refusing the application.

(4) An appeal may be made under subsection (1) or (2) at any time before the matter is determined by the Development Consent Authority.

(5) The making of an appeal under this section does not prevent the Development Consent Authority from making a determination in respect of the application under section 53, 57 or 59 at any time before the determination of the appeal by the Appeals Tribunal.

(6) If—

- (a) as a result of an appeal being made under subsection (1) or (2) ("the first appeal") the Development Consent Authority is by virtue of subsection (3) to be taken to have made a determination refusing an application; and
- (b) subsequently the Development Consent Authority makes a determination in accordance with subsection (5) in respect of the application ("the actual determination"),

then—

- (c) the first appeal lapses;
- (d) all fees paid in respect of the first appeal are to be refunded;
- (e) subject to this Part, a person may appeal against the actual determination; and
- (f) the Appeals Tribunal may admit the evidence provided in respect of the first appeal that is admissible in accordance with this Part in relation to the subsequent appeal.

**113. Appeal against refusal to extend period of permit**

(1) A person who made an application under section 59 may appeal to the Appeals Tribunal against a determination of the Development Consent Authority under that section to refuse to consent to the extension of time proposed in the application.

(2) An appeal may be made under subsection (1) only within 28 days after service of the statement of the reasons for the determination under section 59(4).

**114. Appeal against condition of permit or alteration of proposal**

(1) A person who made an application under section 46 may appeal to the Appeals Tribunal against –

- (a) a determination of the Development Consent Authority under section 53 to issue a permit in relation to the application after altering the proposed development the subject of the application; or
- (b) a determination of the Development Consent Authority under section 55 or 70(2) to place a condition on a permit issued in relation to the application.

(2) An appeal may be made under subsection (1) within 28 days after service of the statement of the reasons for the determination under section 54.

**115. Appeal against refusal to refund or remit contribution**

(1) A person who made an application to a service authority under section 73(3) may appeal to the Appeals Tribunal against the refusal by the service authority to refund or remit all or part of a contribution otherwise payable by the person under Part 6.

(2) If a service authority does not make a determination under section 73(1)(d) within 12 weeks after receiving an application under section 73(3), the service authority is to be taken for the purposes of this Part to have made a determination refusing the application.

(3) An appeal may be made under subsection (1) only within 28 days after the applicant under section 73(3) was notified of the determination of the service authority to refuse to remit or refund all or part of the contribution otherwise payable by the person.

(4) An appeal may be made under subsection (2) at any time before the matter is determined by the service authority.

(5) The lodging under section 118 of an appeal under this section does not prevent the service authority from making a determination in respect of the application under section 73 at any time before the determination of the appeal by the Appeals Tribunal.

(6) If—

- (a) as a result of an appeal being made under subsection (1) ("the first appeal") the service authority is by virtue of subsection (2) to be taken to have made a determination refusing an application; and
- (b) subsequently the service authority makes a determination in accordance with subsection (5) in respect of the application ("the actual determination"),

then—

- (c) the first appeal made under this section lapses;
- (d) all fees paid in respect of the first appeal are to be refunded;
- (e) subject to this Part, a person may make a subsequent appeal against the actual determination of the service authority; and
- (f) the Appeals Tribunal may admit the evidence provided in respect of the first appeal that is admissible in accordance with this Part in relation to the subsequent appeal.

#### **116. Appeal against variation of condition placed on permit**

(1) A person who made an application under section 57 for a variation of a condition of a development permit may appeal to the Appeals Tribunal against a determination of the Development Consent Authority under that section to refuse to vary the condition in accordance with the application.

(2) An appeal may be made under subsection (1) only within 28 days after service of the statement of the reasons for the determination under section 57(4).

#### **117. No appeal against decision subject to direction of Minister**

There is no right of appeal to the Appeals Tribunal against a determination of the Development Consent Authority, or a part of a determination of the Development Consent Authority, that is made in accordance with a direction of the Minister under section 85.

***Division 3 – Beginning an appeal***

**118. Notice of appeal**

(1) An appeal under this Part is to be commenced by lodging a notice of appeal at the office of the Registrar.

(2) A notice of appeal is to –

- (a) be in the approved form;
- (b) state the name of the appellant;
- (c) specify details of the application in respect of which the appeal is lodged;
- (d) state the grounds of the appeal; and
- (e) be accompanied by the prescribed fee.

(3) An appellant must cause a copy of a notice of appeal to be served on the other party to the appeal.

(4) An appellant may, by notice to the Registrar and the other party, amend the grounds of appeal specified in his or her notice of appeal at any time up until the conclusion of a conference under Division 4.

**119. No works or use permitted under permit if appeal lodged**

Subject to this Act, if a notice of appeal is lodged under section 118 in relation to the issue of a development permit, the holder of the permit must not develop or use the land in a manner only permitted under the permit until the appeal is determined by the Tribunal.

Penalty: In the case of a natural person – 200 penalty units and 2 penalty units default penalty;

In the case of a corporation – 1000 penalty units and 10 penalty units default penalty.

**120. Authorities to provide information to Tribunal and appellant**

(1) On receipt of a notice of appeal, other than in relation to an appeal under section 115, the Registrar must require the Development Consent Authority to provide to the Registrar and the appellant, before a date specified by the Registrar in the requirement, copies of all information before it when it made the determination in respect of the application under section 46, 57 or 59 to which the appeal relates.

(2) On receipt of a notice of appeal in relation to an appeal under section 115, the Registrar must require the service authority to provide to the Registrar and the appellant, before a date specified by the Registrar in the requirement, copies of all information before it when it made the determination under section 73(1)(d) to which the appeal relates.

(3) The date specified under subsection (1) or (2) is to be at least 7 days before the date to be fixed by the Registrar under section 121 for a conference in relation to the matter.

#### ***Division 4 – Compulsory conferences***

##### **121. Registrar to fix date for conference**

The Registrar must, as soon as practicable after a notice of appeal has been lodged under section 118 –

- (a) fix a date, time and place for a conference between the parties; and
- (b) give to each party notice in writing of the date, time and place fixed for the conference.

##### **122. Appointment of mediator**

(1) The Chairperson within the meaning of the *Lands and Mining Appeals Tribunal Act* must appoint in writing a panel of persons (which may include the Registrar) who are willing to act as mediators for the purposes of this Division.

(2) As soon as reasonably practicable after a notice of appeal has been lodged under section 118, the Registrar must nominate a person appointed under subsection (1) (including himself or herself) to mediate at a conference under this Division.

##### **123. Attendance at conference**

(1) A person nominated under section 122(2) to be a mediator at a conference must attend the conference.

(2) The mediator is to preside at a conference.

(3) An applicant who is a natural person must attend a conference in person.

(4) An applicant who is not a natural person must appoint a representative to represent the applicant at a conference.

(5) Except in relation to an appeal under section 115, the Chairman of the Development Consent Authority or at least one member of the Division that made the decision to which the appeal relates must attend a conference in person.

(6) If an appeal is made under section 115, the service authority against whose decision or failure to make a decision the appeal is lodged must ensure that a person who is authorised in writing by the service authority to represent the service authority attends at the conference.

(7) The mediator at a conference may permit a person to take part in the conference if he or she is of the opinion that the person may be of assistance in reaching a compromise or settlement.

#### **124. Objects of conference**

The objectives of a conference under this Division are –

- (a) to determine the matters in dispute between the parties; and
- (b) to enable the parties to discuss their reasons for instigating or resisting the appeal and where possible to settle or resolve the matters in dispute without requiring further action to be taken under Division 5.

#### **125. Compromise and settlement**

(1) A compromise or settlement agreed to at a conference under this Division by the parties or by the parties' representatives is binding on the parties.

(2) A compromise or settlement agreed to at a conference is to be reduced to writing and signed by the parties and the mediator.

(3) The mediator is to notify the member of the Appeals Tribunal presiding over the appeal if a compromise or settlement is made at a conference in relation to a decision of the Development Consent Authority.

(4) If the member of the Appeals Tribunal presiding over an appeal is informed of a compromise or settlement under subsection (3), he or she may order the Development Consent Authority to take an action under Division 3 of Part 5 to give effect to the compromise or settlement.

(5) Division 2 of Part 5 does not apply in relation to an action taken under Division 3 of Part 5 in accordance with an order under subsection (4).

(6) If a compromise or settlement is made at a conference in relation to a service authority, the mediator is to notify the member of the Appeals Tribunal presiding over the appeal, and the Tribunal may order the authority to take an action under section 73(1)(d) to give effect to the compromise or settlement.



(7) Evidence of anything said or done in the course of a conference, including the terms of a compromise or settlement, is not admissible in proceedings under Division 5 before the Appeals Tribunal, except by consent of both parties.

**126. Mediator may make orders at conference**

(1) The mediator may, at the conference, make the orders he or she considers necessary for the expeditious handling of the matter.

(2) Without limiting the generality of subsection (1), orders that may be made under that subsection include orders for or in relation to the exchange of reports or other documents or proofs of evidence between parties who intend to tender those reports or other documents or evidence at the hearing of the appeal.

***Division 5 – Determination by Tribunal***

**127. Application for determination by Appeals Tribunal**

(1) If—

- (a) a conference has been held under Division 4 in relation to an appeal; and
- (b) a compromise or settlement has not been reached under section 125 in relation to the appeal,

the appellant may give notice to the Registrar that he or she wishes the matter to be determined by the Appeals Tribunal.

(2) A notice under subsection (1) is to be in a form approved by the Registrar and accompanied by the prescribed fee.

(3) The Registrar must provide to the other party to the appeal—

- (a) a copy of a notice under subsection (1); and
- (b) a notice stating that the party has 14 days from the receipt of the notice to make a submission to the Appeals Tribunal in relation to the grounds of appeal.

**128. Parties may make written submissions**

(1) An appellant must, within 14 days of giving a notice to the Registrar under section 127, make a written submission to the Appeals Tribunal specifying his or her argument in relation to the grounds of appeal specified in his or her notice of appeal and serve a copy of the submission on the other party to the appeal.

(2) The Development Consent Authority or, if the appeal is made under section 115, the relevant service authority must, within 14 days after receiving notice under section 127, make a written submission to the Appeals Tribunal in response to the grounds of appeal specified in the notice of appeal and serve a copy of the submission on the other party to the appeal.

(3) A party may, within 28 days after the lodging of a notice under section 127, make a written submission to the Appeals Tribunal in reply to a submission under subsection (1) or (2) by another party.

(4) A written submission for the purposes of this section may not introduce material or evidence not before the Development Consent Authority or the service authority, as the case may be, when it made the decision to which the appeal relates.

#### **129. Evidence that may be considered by Tribunal**

(1) Subject to subsection (2), the Appeals Tribunal is to determine an appeal in the absence of the parties and having regard only to –

- (a) the information before the Development Consent Authority or the service authority, as the case may be, at the time it made the decision to which the appeal relates;
- (b) in the case of an appeal, other than an appeal under section 113 or 115 – the matters specified in section 51; and
- (c) submissions made to it under section 128.

(2) The Appeals Tribunal may, if it thinks fit, require –

- (a) a person who is a party;
- (b) a person who made a submission under section 49 or at a part of a meeting of the Development Consent Authority at which evidence was taken in relation to a development application; or
- (c) any other person,

to appear before it and answer questions put to him or her by the Appeals Tribunal.

(3) The Appeals Tribunal may only permit a person, including a party, to appear and give evidence before it under subsection (2) –

- (a) if each party to the appeal is notified by the Registrar of the date and time and place at which the evidence is to be given; and
- (b) if the evidence is given –

- (i) in the presence of both parties to the appeal; or
- (ii) in the presence of one of the parties if the other party, having been invited to attend at a date, time and place specified under paragraph (a), has not appeared.

(4) A party is not permitted to cross-examine a person or party giving evidence under subsection (2) in relation to an appeal.

### **130. Determination of appeal**

(1) If a notice is given to the Registrar under section 127, the Appeals Tribunal must determine the appeal to which the notice relates.

(2) The Appeals Tribunal must, except in the case of an appeal under section 113 or 115, take into account the matters specified in section 51 in making a determination of an appeal.

(3) The Appeals Tribunal must not make a determination that would permit a proposed development if—

- (a) in its opinion, the development would be contrary to a land use objective; or
- (b) the development would be contrary to the development provisions.

(4) The Appeals Tribunal must, in writing, determine an appeal against a determination of the Development Consent Authority by taking one of the following actions:

- (a) confirming the determination of the Development Consent Authority;
- (b) only in respect of an appeal in relation to section 114(1)(a) — revoking the development permit issued by the Development Consent Authority and ordering the Authority to issue a development permit in its place subject to the conditions, if any, the Appeals Tribunal thinks fit;
- (c) ordering the Development Consent Authority to issue or vary a development permit subject to the conditions, if any, the Appeals Tribunal thinks fit.

(5) Section 57(3) does not apply in relation to the variation of a permit ordered under subsection (4).

(6) If an appeal is made under section 115, the Appeals Tribunal must determine the appeal by ordering that –

- (a) all or some contribution paid or payable by the appellant is to be refunded or remitted; or
- (b) no contribution paid or payable by the appellant is to be refunded or remitted.

(7) If the Appeals Tribunal makes an order under subsection (6) that all or some contribution should be refunded or remitted, the payment of so much of the contribution that is to be refunded or remitted is to be taken to be a condition of the permit in substitution for the condition that would otherwise be taken to be imposed on the permit under section 71(1).

### **131. Reasons for determination to be given**

(1) The Appeals Tribunal must give written reasons for, and maintain a record of, its determinations.

(2) The Appeals Tribunal must cause to be served on the parties a copy of the determination and its reasons for making the determination.

(3) The Appeals Tribunal must make available for inspection and purchase by the public copies of all determinations made by the Tribunal, together with the written reasons given under subsection (1).

### **132. Powers of Appeals Tribunal**

In addition to any powers it has under the *Lands and Mining Tribunal Act*, the Appeals Tribunal may –

- (a) appoint one or more of the members of the Appeals Tribunal to make an inquiry or an inspection that appears to be necessary or expedient for the purposes of this Part;
- (b) permit a notice of appeal or a notice under section 127 to be withdrawn; or
- (c) if the applicant does not appear at a conference, dismiss the appeal.

### **133. Appeals to Supreme Court**

(1) A person may appeal against a determination of the Tribunal to the Supreme Court only on a question of law.

(2) An appeal under subsection (1) must be made within 28 days after the date of service by the Tribunal of the statement of reasons for the determination.

## **PART 10 – MISCELLANEOUS**

### ***Division 1 – Administration***

#### **134. Delegation by Minister**

The Minister may, in writing, delegate to a person any of the Minister's powers and functions under this Act.

#### **135. Fees and charges**

(1) The Minister may, by notice in the *Gazette*, prescribe the fees to be charged in relation to matters under this Act.

(2) The Minister may, in the circumstances of a particular case, in writing, waive, or remit the whole or part of, a fee prescribed under subsection (1).

(3) An amount may be charged for the provision of a service relating to a matter under this Act for which a charge is not otherwise prescribed if the amount is reasonably proportionate to the reasonable cost of providing the service.

### ***Division 2 – Notice of instruments under this Act***

#### **136. Planning Scheme to be available to public**

(1) The Minister must make available, for purchase or inspection by the public, copies of—

- (a) the Planning Scheme;
- (b) all proposed amendments to the Scheme that have been or are being exhibited under section 17;
- (c) all land use objectives, control plan amendments and explanatory documents made under the former Act; and
- (d) all repealed provisions of the Planning Scheme.

(2) A copy of a control plan amendment within the meaning of the former Act is not to be sold unless an explanatory document in relation to the amendment is sold with the copy.

(3) A copy of development provisions that incorporate a map, plan, design or diagram may be sold although the map, plan, design or design is not sold with the copy.

**137. Certified copies and extracts of Planning Scheme etc.**

- (1) A person may apply to the Minister for a certified copy of—
  - (a) a planning instrument, or a control plan, within the meaning of the former Act as at a date specified in the application;
  - (b) part or all of the development provisions, or an amendment or proposed amendment to those provisions, as at a date specified in the application, whether or not those development provisions or the amendment are or is in force;
  - (c) land use objectives in force under the former Act or this Act as at a date specified in the application; or
  - (d) incorporated documents in force as at a date specified in the application.
- (2) An application under this section is to be in the approved form and is to be accompanied by the prescribed fee.
- (3) A copy certified under this section is admissible in a court or before a body or person acting judicially as prima facie evidence of the contents of the document of which it is a copy.

**138. Registers**

The Minister and the Development Consent Authority must retain and keep available for public inspection during normal office hours —

- (a) a copy of each plan of subdivision or consolidation approved by him, her or it;
- (b) a register of all development permits and exceptional development permits issued by him, her or it; and
- (c) a register of all determinations by the Appeals Tribunal, or the Planning Appeals Tribunal under the former Act, in respect of appeals against determinations by the Development Consent Authority or the former Authority.

**139. Service of notices and other documents**

- (1) Except if otherwise provided in this Act, a notice or other document required by this Act to be given to or served on a person may be delivered personally to the person or sent by post, addressed —
  - (a) in the case of an individual — to the person's last-known place of business or residence; and

- (b) in the case of a corporation – in accordance with the Corporations Law.

(2) A notice under, or arising out of a breach of, this Act or a condition of a development permit may, in the case of a corporation without a registered office in the Territory, be served by affixing a copy of the notice on a conspicuous part of the land to which it relates.

***Division 3 – Planning certificates***

**140. Planning certificates**

(1) A person may apply in the approved form accompanied by the prescribed fee to the Minister for a certificate under this section.

(2) A certificate issued under this section is prima facie evidence of the facts certified in it.

(3) A certificate under this section is to –

(a) be in the approved form; and

(b) show in relation to the land in respect of which it is issued as at the date on which the certificate is issued –

(i) whether a land use objective, the development provisions or an interim development control order applies;

(ii) in general terms, the effect of restrictions or prohibitions, if any, placed by or under this Act on the use of the land;

(iii) if a development application has been determined within 2 years before the date of the application for a certificate under this section – the nature of the development application and the determination made in respect of it;

(iv) if a development permit or an exceptional development permit under Part 4 is in force – the nature of the permit; and

(v) if a development application has been made but no development permit, exceptional development permit or statement of the reasons for the determination in respect of the development permit has been issued – the nature of the application.

(4) If a condition of the permit referred to in section 56 permits the development to which the application relates to be completed in stages, a certificate issued under this section may certify that the requirements of this Act have been complied with in respect of the development of land although not all stages of the

development permitted under the development permit have been completed in relation to the balance of that land.

**141. Effect of planning certificates**

(1) For the purpose of proceedings for an offence against this Act taken by or against a person who has obtained a certificate under section 140, the certificate is, in favour of the person, conclusive evidence of the matters stated in it at the time the certificate was issued.

(2) For the purposes of the registration of a plan or instrument intended to affect or evidence the title to land, a certificate under section 140 is, in favour of—

- (a) the person to whom the certificate is issued; and
- (b) the Registrar-General, the Solicitor for the Northern Territory or another person registering or certifying title,

conclusively presumed to be true and correct.

(3) A claim against the Development Consent Authority in respect of a certificate referred to in this section is a claim against the Territory.

***Division 4 – Compensation***

**142. Compensation for abortive expenditure**

(1) A person who, relying on a development permit, has incurred expenditure that has been rendered abortive in whole or in part by the revocation or modification of the permit under section 66, may recover the amount of the expenditure under this section from the Territory.

(2) Divisions 2 and 3 of Part VIII of the *Lands Acquisition Act*, with the necessary changes, apply to and in relation to a claim for compensation under subsection (1) as they apply to claims for compensation for abandoned proposals under that Act.

(3) For the purposes of subsection (2), a reference in Divisions 2 and 3 of Part VIII of the *Lands Acquisition Act*—

- (a) to a claim for compensation under section 60 of that Act — is to be read as a reference to a claim for compensation under subsection (1);
- (b) to the date of service of a notice under section 35 of that Act — is to be read as a reference to the date of service of notice of revocation or modification of a permit under section 66;



- (c) to compensation under that Act — is to be read as a reference to compensation under subsection (1); and
- (d) to Schedule 2 to that Act — is to be disregarded.

#### **143. Compensation and liability**

Except as provided by this Act, the Territory is not liable to pay compensation to a person as a result of the operation of this Act or of the due exercise of a power, function, authority or discretion conferred by this Act unless, in a particular case, it amounts to an acquisition of property within the meaning of section 50 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, in which case the acquisition is to be on just terms.

### ***Division 5 – Other***

#### **144. Inquiries**

(1) The Minister may require the Chairman or a Division to conduct an inquiry for purposes connected with the administration of this Act.

(2) The Chairman or a Division may appoint a person to conduct an inquiry the Chairman or the Division is required to conduct under subsection (1).

(3) The *Inquiries Act* applies to and in relation to an inquiry under this section as if the Chairman or the Division or the person appointed under subsection (2) had been appointed as a Board or Commissioner, as the case may be, under section 4(1) of that Act.

(4) The Development Consent Authority or the person appointed under subsection (2), as the case may be, must provide a report to the Minister setting out the results of an inquiry under this section.

#### **145. Territory lease term of no effect if inconsistent with Scheme or order**

If the development provisions or an interim development control order apply to land the subject of a lease from the Territory, a provision or covenant in the lease that permits or requires the use of the leased land for purposes inconsistent with the development provisions or order is, to the extent of the inconsistency, of no effect.

#### **146. Saving of other laws**

Nothing in this Act permits a person to use or develop land in contravention of any other law in force in the Territory.

#### **147. Actions not to be invalidated**

An action taken by the Development Consent Authority, the Minister or the Appeals Tribunal is not invalid by reason only of administrative error or oversight

if the action was done in good faith and will not cause hardship to, or prejudice the interests of, a person.

**148. Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular –

- (c) providing for the payment of fees and expenses to witnesses required by this Act to attend and give evidence before the Development Consent Authority, the Appeals Tribunal or any other person;
- (d) prescribing the manner in which fees or payments prescribed are to be calculated or paid;
- (e) prescribing types of easements for the purposes of section 64 and the purposes of, and powers in relation to, those easements;
- (f) providing for the inspection of instruments required to be kept under section 137 and of the registers required to be kept under section 138;
- (g) providing a method for assessing, reviewing and collecting the contribution payable under a contribution plan;
- (h) requiring the notification of administrative interests and information in relation to land affected by this Act; and
- (j) prescribing penalties, not exceeding 10 penalty units, for offences against the Regulations.

**PART 11 – REPEAL AND TRANSITIONALS**

***Division 1 – Repeal and definitions***

**149. Repeal**

The *Planning Act 1993* (No. 85 of 1993) is repealed.

**150. Definitions**

In this Part, unless the contrary intention appears –

"control plan" and "control plan amendment" have the same respective meanings they had in the former Act;

"draft control plan amendment" has the same meaning as in the former Act;

"former Appeals Tribunal" means the Planning Appeals Tribunal within the meaning of the former Act;

"former Authority" means the Northern Territory Planning Authority constituted under the former Act;

"former consent authority" means the consent authority within the meaning of the former Act;

"planning instrument" means a planning instrument saved under section 134 of the former Act.

*Division 2 – Development Consent Authority*

**151. Development Consent Authority to replace Planning Authority**

On and from the commencement date –

- (a) all real and personal property that immediately before that date was vested in the former Authority vests in the Territory;
- (b) all money and liquidated and unliquidated claims that, immediately before that date, were payable to or recoverable by the former Authority are to be money and liquidated and unliquidated claims payable to or recoverable by the Territory;
- (c) all proceedings in a court commenced before that date –
  - (i) by the former Authority and pending immediately before that date are to be taken to be proceedings pending on that date by the Territory and may be continued in the name of the former Authority; and
  - (ii) by any person against the former Authority and pending immediately before that date are to be taken to be proceedings pending on that date by that person against the Territory;
- (d) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to or by, the former Authority and in force immediately before that date are to be taken to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the Territory;

- (e) the Territory may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, in its own name, pursue the same remedies for the recovery of money and claims referred to in this section and for the prosecution of actions and proceedings so referred to as the former Authority might have done but for the enactment of this Act;
- (f) the Territory may enforce and realise any security or charge existing immediately before that date in favour of the former Authority and may exercise any powers thereby conferred on the former Authority as if the security or charge were a security or charge in favour of the Territory;
- (g) all debts, money and claims, liquidated and unliquidated, that immediately before that date were due or payable by or recoverable against the former Authority, are to be debts due and payable by, money payable by and claims recoverable against, the Territory; and
- (h) all liquidated and unliquidated claims for which the former Authority would, but for the commencement of this Act, have been liable are to be liquidated and unliquidated claims, as the case may be, for which the Territory is to be liable.

**152. References in other documents**

A reference in —

- (a) another Act; or
- (b) an instrument of a legislative or administrative character (other than an instrument appointing a person as a member of the former Authority),

to the former Authority is to be taken to be a reference to the Development Consent Authority.

**153. Saving of actions**

An act, matter or thing done or omitted to be done before the commencement of this Act by, to or in respect of the former Authority is, to the extent that but for the commencement of this Act that act, matter or thing would on or after the commencement date have had any force or effect or been in operation, to be taken to have been done or omitted to be done by, to or in respect of the Development Consent Authority, as the case may be.

**154. Development Consent Authority to keep records of former Authority**

The Development Consent Authority must retain all records and minutes that the former Authority had kept as required under the former Act.

***Division 3 – Components of Planning Scheme***

**155. Saving of objectives**

(1) On and from the commencement date, a land use objective in force under the former Act immediately before the commencement date is to be taken to be a land use objective made under this Act.

(2) If a proposed land use objective within the meaning of the former Act, or a proposed amendment to such a land use objective, had been, or begun to be, exhibited under section 8 of the former Act but had not been made under that Act, the proposal is to be taken to be a proposed land use objective or an amendment to a land use objective under this Act and the exhibition is to be taken to have taken, or to be taking, place under section 17 of this Act.

**156. Saving of control plans**

(1) On and from the commencement date, a control plan (including a planning instrument) within the meaning of the former Act in force under the former Act immediately before the commencement date is to be taken to be part of the development provisions under this Act.

(2) If a provision of the development provisions specifies the area to which part of the development provisions is to relate and all of the area specified is within a Division area, the Minister may, within 3 months after the commencement date, by notice in the *Gazette*, amend the development provisions –

- (a) by repealing a provision specifying the consent authority in relation to that part of the development provisions; or
- (b) by omitting a reference to the Planning Authority and substituting a reference to the consent authority.

(3) Part 2 of this Act does not apply in relation to an amendment to the development provisions made under subsection (2).

**157. Proposed new control plans**

(1) Subject to this section, this Act applies in relation to a proposed control plan existing under the former Act immediately before the commencement date as if it were a proposed amendment to the Development Provisions.

(2) If under the former Act a proposed control plan has been exhibited for part only of the period required by or under section 19 of that Act, this Act applies as if the plan were required under section 17(1) of this Act to be exhibited for all of the period required by or under section 19 of the former Act in relation to the proposal.

(3) If under the former Act a proposed control plan has completed the exhibition period required by or under section 19 of that Act and the former Authority has made a submission to the Minister under section 23 of the former Act in relation to the plan, the Minister may –

- (a) require a further hearing or consultation under section 23 of this Act, in which case Divisions 3 and 4 of Part 2 of this Act apply to the proposed control plan; or
- (b) deal with the proposed control plan under Division 4 of Part 2 of this Act,

as if –

- (c) a submission made to the former Authority under section 21 of the former Act had been made to the Minister under section 19 of this Act; and
- (d) the report under section 23 of the former Act were a report under section 20 of this Act.

(4) If under the former Act a proposed control plan has completed the exhibition period required by or under section 19 of the former Act but the former Authority –

- (a) has not made a submission to the Minister under section 23 of the former Act in relation to the proposed plan; and
- (b) has not part-heard the matter,

then –

- (c) a submission made under section 21 of the former Act in relation to the proposed control plan is to be taken to be a submission made under section 19 of this Act; and
- (d) sections 20, 22 and 23 and Division 4 of Part 2 of this Act apply in relation to the proposed control plan.

(5) If under the former Act a proposed control plan has completed the exhibition period required by or under section 19 of the former Act but the former Authority –

- (a) has not made a submission to the Minister under section 23 of the former Act in relation to the proposed control plan; and
- (b) has part-heard the matter,

then —

- (c) a submission made under section 21 of the former Act in relation to the proposed control plan is to be taken to be a submission made under section 19 of this Act;
- (d) the Chairman of the Planning Authority within the meaning of the former Act must, within 60 days after the commencement of this Act —
  - (i) prepare and deliver to the Minister under section 20 of this Act a report as if he or she had been asked to do so under that section; and
  - (ii) prepare and deliver to the Minister under section 22 of this Act a report on so much of the hearing as has been part-heard as if he or she had been asked to do so under that section;
- (e) the Minister must appoint a person under section 22 to complete the hearing and report to the Minister in accordance with that section; and
- (f) section 23 and Division 4 of Part 2 apply in relation to the proposed control plan.

**158. If exhibition of draft control plan amendment not completed**

(1) If an application was made under the former Act for an amendment to a control plan but a draft control plan amendment has not, before the commencement date, begun to be exhibited under the former Act, this Act applies as if it were an application made under section 12 of this Act for an amendment to the Planning Scheme consisting of an amendment to the development provisions.

(2) If an application was made under the former Act for an amendment to a control plan but a draft control plan amendment has been exhibited for part only of the period required by or under section 19 of the former Act, this Act applies as if it were an application made under section 12 of this Act for an amendment to the Planning Scheme consisting of an amendment to the development provisions and were required under section 17(1) of this Act to be exhibited for all of the period required by or under section 19 of the former Act in relation to the amendment.

**159. If decision not made in relation to exhibited draft control plan amendments**

(1) If a draft control plan amendment has, under the former Act, completed the exhibition period required by or under section 19 of that Act and the former Authority has made a submission to the Minister under section 23 of the former Act in relation to the proposed amendment, the Minister may –

- (a) require a further hearing or consultation under section 23 of this Act, in which case Divisions 3 and 4 of Part 2 of this Act apply to the amendment; or
- (b) deal with the amendment under Division 4 of Part 2 of this Act,

as if –

- (c) the proposed amendment were a proposed amendment to the Planning Scheme consisting of an amendment to the development provisions;
- (d) a submission made to the former Authority under section 21 of the former Act had been made to the Minister under section 19 of this Act; and
- (e) the report under section 23 of the former Act were a report under section 20 of this Act.

(2) If a draft control plan amendment has, under the former Act, completed the exhibition period required by or under section 19 of the former Act and the former Authority –

- (a) has not made a submission to the Minister under section 23 of the former Act in relation to the proposed amendment; and
- (b) has not part-heard the matter,

then –

- (c) a submission made under section 21 of the former Act in relation to the proposed amendment is to be taken to be a submission made under section 19 of this Act; and
- (d) sections 20, 22 and 23 and Division 4 of Part 2 of this Act apply in relation to the draft control plan amendment as if it were a proposed amendment to the Planning Scheme consisting of an amendment to the development provisions.



(3) If a draft control plan amendment has, under the former Act, completed the exhibition period required by or under section 19 of the former Act and the former Authority –

- (a) has not made a submission to the Minister under section 23 of the former Act in relation to the proposed amendment; and
- (b) has part-heard a matter,

then –

- (c) a submission made under section 21 of the former Act in relation to the proposed amendment is to be taken to be a submission made under section 19 of this Act;
- (d) the Chairman of the Planning Authority within the meaning of the former Act must, within 60 days after the commencement of this Act –
  - (i) prepare and deliver to the Minister under section 20 of this Act a report as if he or she had been asked to do so under that section; and
  - (ii) prepare and deliver to the Minister under section 22 of this Act a report on so much of the hearing as has been part-heard as if he or she had been asked to do so under that section;
- (e) the Minister must appoint a person under section 22 to complete the hearing; and
- (f) section 23 and Division 4 of Part 2 apply as if it were an application made under section 12 of this Act for an amendment to the Planning Scheme consisting of an amendment to the development provisions.

#### **160. Declaration of incorporated documents**

(1) Despite Part 2 of this Act, the Minister may, in writing, within 30 days after the commencement date, declare an instrument to be an incorporated document.

(2) The Minister must publish in the *Gazette* a notice specifying that an incorporated document has been declared and that copies of the document are available for purchase or viewing at a place specified in the notice.

***Division 4 – Development applications, permits, interim development control orders etc.***

**161. Saving of interim development control orders**

An interim development control order within the meaning of the former Act that was in force immediately before the commencement date is to be taken to be an interim development control order made under this Act.

**162. Saving of existing non-conforming uses and works**

A use of land (including of a building) or works that was or were lawful immediately before the commencement date under Part 6 of the former Act continues to be lawful under this Act but may be varied under this Act as if it were an existing use or works within the meaning of section 33.

**163. Saving of determinations**

A determination saved by section 136 of the former Act and in force immediately before the commencement date continues in force for the period specified in the determination.

**164. Saving of extensions of period and applications**

(1) If a period referred to in section 46 of the former Act was extended under section 47 of the former Act, the period is to be taken to be a period extended under section 37 of this Act commencing at the time it commenced under the former Act.

(2) If an application was received under section 47 of the former Act but was not determined under that section before the commencement date, it is to be taken to be an application under section 37 of this Act.

(3) An application that was received under section 43 of the former Act but was not determined under section 45 of the former Act before the commencement of this Act is to be taken to be an application under section 38 of this Act.

**165. Saving of existing use determinations and permits**

(1) A determination under section 45 of the former Act to consent to a proposal is to be taken to be an exceptional development permit issued under this Act.

(2) A development permit within the meaning of the former Act or a consent taken under section 137 of the former Act to be a development permit issued under that Act is to be taken to be a development permit issued under this

Act and to be subject to the conditions, if any, specified on the permit or taken to be the conditions of the permit under that section.

(3) A consent that was, immediately before the commencement date, continuing in force by virtue of the operation of section 138(4) of the former Act is to be taken to be a development permit issued under this Act subject to the conditions, if any, taken under that section to be imposed on the determination.

**166. Saving of statement of reasons and appeal periods**

(1) A statement of reasons issued under section 52(2), 57 or 58 of the former Act is, subject to this section, to be taken to be a statement of the reasons for the determination in respect of a particular matter under section 54, 59 or 57 of this Act, respectively.

(2) A person must not lodge a notice of appeal relating to a statement of reasons referred to in this section after the expiration of 28 days after the date of the determination to which the reasons relate.

**167. Development applications etc. lodged under former Act**

(1) If—

- (a) an application was made to the former Authority as consent authority under section 48, 57 or 58 of the former Act;
- (b) a hearing in respect of the application was commenced or completed under the former Act; and
- (c) a determination in respect of the application was not made before the commencement date,

the former Authority continues in existence for the purposes of determining the application, and may deal with the application under the former Act, as if this Act had not come into operation.

(2) If—

- (a) an application was made to the former Authority as consent authority under section 48, 57 or 58 of the former Act; and
- (b) a hearing in respect of the application had not been commenced under the former Act,

this Act applies to the application as if it were an application under section 46, 59 or 57, respectively, of this Act.

***Division 5 – Contribution plans etc.***

**168. Saving of contribution plans**

A contribution plan within the meaning of the former Act that was in force immediately before the commencement date is to be taken to be a contribution plan made under this Act.

**169. Trust accounts**

Money held immediately before the commencement of this Act in a trust account under section 31(2) of the former Act –

- (a) is to be taken to be money held in a trust account under section 72(a) of this Act; and
- (b) is to be used under and in accordance with Part 6 of this Act.

**170. Saving of policy areas and claims etc.**

If an area of land was, immediately before the commencement date, a policy area within the meaning of the former Act or the Planning (Parking Space Contributions) Regulations saved under the former Act and any amendments to those Regulations under that Act –

- (a) that area is to be taken to be a policy area within the meaning of this Act;
- (b) the method of calculating the amount of a contribution determined under the former Act in respect of the area is to be taken to be a formula for calculation within the meaning of this Act;
- (c) all debts, money and claims, liquidated and unliquidated, that, immediately before that date, were due or payable to the local authority by virtue of section 29 or 145 of the former Act continue to be debts or money due or payable to and claims recoverable by the local authority;
- (d) any money due or payable to the local authority by virtue of section 29 or 145 of the former Act and paid after the commencement date is to be taken to be money received under section 72 of this Act and is to be dealt with in accordance with that section; and
- (e) a rate of interest payable, or a discount, declared under section 32 of the former Act, or a decision to remit or refund money, continues in force until revoked by resolution of the local authority.

***Division 6 – Appeals***

**171. Appeal to Appeals Tribunal under former Act**

(1) If a notice of appeal within the meaning of the former Act was lodged with the former Appeals Tribunal under section 98 of the former Act and a hearing (other than a preliminary hearing) in respect of the matter was held under that Act before the commencement date –

- (a) the former Appeals Tribunal; and
- (b) the former consent authority whose determination is the subject of the notice of appeal,

continue in existence for the purpose of determining the matter and Part 9 of the former Act applies as if the former Act had not been repealed by this Act.

(2) If a notice of appeal was lodged with the former Appeals Tribunal under section 98 of the former Act and a hearing (other than a preliminary hearing) in respect of the matter was not held before the commencement date –

- (a) the former consent authority in respect of the land to which the instrument relates is to be the consent authority for the purposes of the appeal; and
- (b) this Act applies as if the notice of appeal had been lodged with the Appeals Tribunal under this Act.

(3) If a person had, immediately before the commencement date, a right of appeal to the former Appeals Tribunal under the former Act but had not before the commencement date lodged a notice of appeal under section 98 of the former Act –

- (a) a notice of appeal may be lodged under and in accordance with section 118 of this Act as if the determination of the former consent authority were a determination under the relevant corresponding provision of this Act; and
- (b) the former consent authority under the former Act whose determination is the subject of the appeal is to be taken to be the consent authority in respect of the land to which the request relates for the purposes of determining the appeal.

**172. Saving of determinations of former Appeals Tribunal**

Without affecting the limitation period to which a claim is subject under the *Limitation Act*, a determination of the former Appeals Tribunal under section 103

of the former Act continues in existence as if it was made under section 130 of this Act.

**173. Appeals to Supreme Court under former Act**

A person who was eligible under the former Act to appeal to the Supreme Court on a question of law may do so as if the former Act had not been repealed.

***Division 7 – Miscellaneous***

**174. Saving of notices**

(1) A notice served on a person under section 66(2)(a) of the former Act and in force immediately before the commencement date continues in force, and may be enforced, as if it were a notice served under section 66(2)(a) of this Act.

(2) A notice served on a person under section 38 of the former Act and in force immediately before the commencement date continues in force, and may be enforced, as if it were a notice served under section 76 of this Act.

**175. Saving of rights to compensation**

Without affecting the limitation period to which a claim is subject under the *Limitation Act*, section 142 of this Act applies in respect of a person who had a right to receive compensation under section 122 of the former Act as if the right had accrued under this Act.

**176. Saving of provisions of certain regulations**

Regulation 5 and Schedule 3 of the Planning Regulations continued in existence under section 135(3) of the former Act continue in existence as if they were made under this Act and as if a reference in regulation 5 of those Regulations to section 4 were a reference to section 3 of this Act, but may be repealed or amended by Regulations made under this Act.

**177. Saving of inquiries**

(1) Subject to this section, an inquiry commenced under section 120 of the former Act is to be taken to be an inquiry under section 144 of this Act.

(2) If the former Authority was directed to conduct an inquiry under section 120 of the former Act, the former Authority continues in existence for the purpose of reporting to the Minister in respect of the inquiry.

(3) If a person other than the former Authority was appointed to conduct an inquiry under section 120 of the former Act, he or she must complete the inquiry and report to the Minister in accordance with section 144 of this Act.

**178. Maintenance of registers**

If, immediately before the commencement date, a register was kept under section 118 of the former Act by the former Authority, the Development Consent Authority must maintain the register in accordance with section 138 of this Act.

**179. Saving of certificates**

(1) A certificate issued under the former Act is to be taken to be a certificate issued under this Act.

(2) A certified copy or extract issued under the former Act is to be taken to be a certified copy or extract issued under this Act.

**180. Saving of restriction on powers under easements**

If—

(a) a plan of survey referred to in section 65(1) of the former Act that was registered before the commencement of the *Statute Law Revision Act (No.2) 1998* indicates an intended easement in favour of a specified service authority and describes it by a description in Schedule 1 of the former Act; and

(b) the easement is in force immediately before the commencement date, despite section 64(5) of this Act, the service authority, has, for itself and its agents, servants and workers, only the powers specified in Schedule 1 of the former Act.

**181. Transitional regulations**

(1) For the purposes only of ensuring the proper transfer of powers, functions and property and the continuity of rights and obligations of persons or bodies under the former Act, the Administrator may make regulations that he or she considers necessary or convenient to be made.

(2) The power given by subsection (1) may only be exercised within 12 months after the commencement date.

(3) A regulation made under this section remains in force until repealed or amended under this Act.

(4) Regulations made under this section may be made retrospective to the commencement date or any date after that commencement date and are to have force accordingly.

(5) To the extent that the provisions of the Regulations made under this section are inconsistent with this Act or a provision of an Act specified in the Regulations, the Regulations are to prevail.

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**SCHEDULE**

Section 64

Easements

Description

**Sewerage easement.**

Purpose

Supplying or conveying to, through or across the land a sewerage service.

Power

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining pipes for the purposes of the easement and of using and maintaining those pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers.

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Description

**Water supply easement.**

Purpose

Supplying or conveying to, through or across the land a water service.

Power

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining pipes for the purposes of the easement and of using and maintaining those pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers.

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**Description**

**Drainage easement.**

**Purpose**

Draining water, sewerage or other effluent from, through or across the land.

**Power**

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining drains or drainage pipes for the purposes of the easement and of using and maintaining such drains and pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers.

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**Description**

**Electricity supply easement.**

**Purpose**

Supplying or conveying to, through or across the land an electricity service.

**Power**

For the purposes of the easement —

- (a) to enter on and pass, either with or without motor or other vehicles, along or over the land;
- (b) to construct and lay under, on or above the surface of the land —
  - (i) ducts, pipes, poles, conductors, cables, wires and other works; and
  - (ii) incidental or ancillary works for the transmission of electricity (including, but not limited to, manholes and cable markers),

including but not limited to the construction on a portion of the land so designated in the plan poles, equipment for transforming electricity and incidental or ancillary works (including such walls or other structures as the proprietor of the easement considers necessary) to a height not exceeding the height shown in the plan, from the surface of the land;

- (c) to break the surface of, dig, open up and use the land for the purposes of the easement or exercising these powers;
  - (d) to inspect, repair, alter, remove and replace works referred to in these powers; and
  - (e) to transmit electricity by means of any such works.
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Description

**Electronic communications easement.**

Purpose

Supply or convey to, through or across the land a communications service by electronic means.

Power

For the purposes of the easement —

- (a) to enter on and pass, either with or without motor or other vehicles, along or over the land;
  - (b) to construct and lay —
    - (i) under the surface of the land, ducts, pipes, conductors, cables, wires and other works; and
    - (ii) on the surface of the land, incidental or ancillary works for the transmission of telecommunication services (including, but not limited to, manholes and cable markers);
  - (c) to break the surface of, dig, open up and use the land for any of the purposes of the easement or exercising these powers; and
  - (d) to inspect, repair, alter, remove and replace any works referred to in these powers.
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**Description**

**Energy supply easement.**

**Purpose**

Supplying or conveying to, through or across the land gas, liquid fuels or water or other liquids in such a form or state as to be capable of conveying energy.

**Power**

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining pipes for the purposes of the easement and of using and maintaining those pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers.

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**Description**

**General service easement.**

**Purpose**

All of the purposes of—

- (a) a sewerage easement;
- (b) a water supply easement;
- (c) a drainage easement;
- (d) an electricity supply easement;
- (e) an electronic communications easement; and
- (f) an energy supply easement.

**Powers**

All of the powers in this Schedule relating to the purposes of the easement.

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