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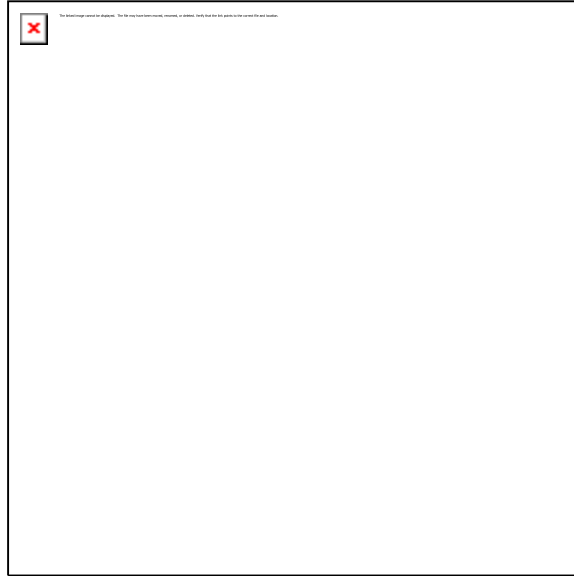
SCHEDULE 1 – OBJECTIVES

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TASMANIA



**LAND USE PLANNING AND APPROVALS ACT
1993**

No. 70 of 1993

An Act to make provision for land use planning and approvals

[Royal Assent 9 November 1993]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Part 1 – Preliminary

1. Short title

This Act may be cited as the *Land Use Planning and Approvals Act 1993*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

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

"accredited person" means a person accredited or approved for the purposes of this Act under –

- (a) the *Fire Service Act 1979*; or
- (b) any other prescribed legislation;

"agreement" means an agreement entered into under **Part 5**;

"Appeal Tribunal" means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

"authorised officer" means a person who, under section 65I, is, or is authorised to be, an authorised officer;

"building" includes –

- (a) a structure and part of a building or structure; and
- (b) fences, walls, out-buildings, service installations and other appurtenances of a building; and
- (c) a boat or a pontoon which is permanently moored or fixed to land;

"bushfire hazard management plan" means a plan showing means of protection from bushfires in a form approved in writing by the Chief Officer;

"certifiable scheme or order" means a planning scheme, or special planning order, prescribed for the purposes of section 50A;

"certifiable permitted use or development" means a use, or development, that is prescribed for the purposes of section 50A;

"Chief Officer" means the person appointed as Chief Officer under *section 10 of the Fire Service Act 1979*;

"Commission" means the Tasmanian Planning Commission established under the *Tasmanian Planning Commission Act 1997*;

"conservation" includes preservation, maintenance, sustainable use and

restoration of the natural and cultural environment;

"council" has the same meaning as in the *Local Government Act 1993*;

"development" includes –

- (a) the construction, exterior alteration or exterior decoration of a building; and
- (b) the demolition or removal of a building or works; and
- (c) the construction or carrying out of works; and
- (d) the subdivision or consolidation of land, including buildings or airspace; and
- (e) the placing or relocation of a building or works on land; and
- (f) the construction or putting up for display of signs or hoardings –

but does not include any development of a class or description, including a class or description mentioned in prescribed by the regulations for the purposes of this definition;

"discretionary permit" means a permit to which *section 57* applies;

"dispensation" means a dispensation, granted under *section 30W*, that is in force;

"Executive Commissioner" means the person from time to time holding that office under the *Tasmanian Planning Commission Act 1997*;

"interim planning directive" means an interim planning directive, issued under section 12A(2), that is in force;

"interim planning scheme" means an interim planning scheme, declared under section 30F, or an interim planning scheme made under section 30M, that is in force;

"land" includes –

- (a) buildings and other structures permanently fixed to land; and
- (b) land covered with water; and
- (c) water covering land; and
- (d) any estate, interest, easement, servitude, privilege or right in or over land;

"modification" includes elaboration, enlargement, alteration and substitution;

"municipality" means a council;

"municipal district" means a municipal area;

"owner" means –

- (a) in the case of a fee simple estate in land, the person in whom that estate vested; or

- (b) in the case of land not registered under the *Land Titles Act 1980* and subject to a mortgage, the person having, for the time being, the equity of redemption in that mortgage; or
- (c) in the case of land held under a tenancy for life, the person who is the life tenant; or
- (d) in the case of land held under a lease for a term of not less than 99 years or for a term of not less than such other prescribed period, the person who is the lessee of the land; or
- (e) in the case of land in respect of which a person has a prescribed interest, that person; or
- (f) in the case of Crown land within the meaning of the *Crown Lands Act 1976*, the Crown in right of the State of Tasmania –

but does not include the holder of an interest in land other than the Crown in right of Tasmania if the interest of the holder cannot reasonably be discovered by a search of the Register, within the meaning of the *Land Titles Act 1980*, or a search conducted at the Registry, within the meaning of the *Registration of Deeds Act 1935*.

"permit" means any permit, approval or consent required by a planning scheme or

special planning order to be issued or given by a municipality in respect of the use or development of any land;

"permitted use or development certificate" means a certificate, issued under section 50B, that is in force;

"person" includes a department, or other agency of Government of the State or the Commonwealth and an authority of the State or the Commonwealth;

"planning appeal" means an appeal under **section 61**;

"planning authority" means a council;

"planning certifier" means a person to whom has been issued an authorisation, under section 80C, that is in force;

"planning compliance certificate" means a planning compliance certificate, within the meaning of , that has been issued under and is in force;

"planning directive" means a planning directive issued under **section 13**, or a ~~planning directive~~an interim planning directive issued under **section 12A**, that is in force;

"planning scheme" means –

- (a) a planning scheme in force under **section 29**; and
- (b) an interim planning scheme; and

- (c) a planning scheme made under **section 30N** that is in force;

"regional area" means an area specified in a notice under **section 30C** to be a regional area;

"regional land use strategy", in relation to a regional area, means the regional land use strategy declared under **section 30C(3)** in relation to the area;

"relevant agency" means –

- (a) a department or other agency of Government of the State or of the Commonwealth; or
- (b) an authority of the State or of the Commonwealth established for a public purpose; or
- (c) a person undertaking a function for the public benefit –

declared by the regulations to be a relevant agency for the purposes of the provision in which the expression occurs or for the purposes of a matter prescribed in the regulations;

"representation", in relation to –

- (a) a draft planning scheme, an interim planning scheme or a draft amendment of a planning scheme; or
- (b) an application for a permit; or

(c) a project in respect of which a special permit may be granted –

includes a written statement of facts or reasons in support of or in opposition to the scheme, amendment, application or project;

"special permit" means a permit that is granted under *section 60T* and that is in force;

"special planning order" means an order in force under *section 47*;

"State Policy" means a Tasmanian Sustainable Development Policy made under *section 11*, or that comes into operation under *section 12*, of the *State Policies and Projects Act 1993*;

"use", in relation to land, includes the manner of utilising land but does not include the undertaking of development;

"water and sewerage certificate" means a certificate issued under ;

"works" includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil, but does not include forest practices, as defined in the *Forest Practices Act 1985*, carried out in State forests.

(2) Words and expressions used both in this Act and in the *Local Government Act 1993* have in this Act, unless the contrary intention appears, the

same respective meanings as they have in that Act.

4. Application of Act

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) Subject to **subsection (3)**, this Act applies to all parts of the State except such parts as may from time to time be prescribed in the regulations and, in particular, applies to land in Wellington Park, as defined in the *Wellington Park Act 1993*.
- (3) **Part 3** of this Act does not apply to public land, within the meaning of the *Public Land (Administration and Forests) Act 1991*, that is the subject of a reference to the Commission.

5. Objectives to be furthered

It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives set out in **Schedule 1**.

6. Delegation

- (1) [This component has been omitted.]
- (2) [This component has been omitted.]

- (3) A planning authority may, by resolution, delegate any of its functions or powers under this Act other than this power of delegation to a person employed by the authority.
- (4) A delegation may be made either generally or as otherwise provided by the instrument of delegation.
- (5) Notwithstanding any delegation, a planning authority may continue to perform or exercise all or any of the functions or powers delegated.
- (6) A function or power performed or exercised by a delegate has the same effect as if performed or exercised by a planning authority.

7. Municipalities may exercise powers in respect of accretions from sea, &c.

A municipality may exercise its powers under this Act in respect of –

- (a) any accretion from the sea, whether natural or unnatural, adjoining its municipal district; and
- (b) any part of the sea-shore to the low-water mark adjoining its municipal district; and
- (c) all bridges, jetties, wharves, boat-houses and other structures partly within its municipal district and partly in or over the sea adjacent to its municipal district; and
- (d) any area of the sea directly adjoining its municipal district in, on, over or under which any use or development is related

to, or affects, the use of any adjacent land, subject to [section 20\(7\)\(c\)](#) and [\(d\)](#).

Part 2 – Functions of Commission under this Act

8. Functions of Commission

The functions of the Commission under this Act are to –

- (a) certify and approve planning schemes and amendments to planning schemes; and
- (b) perform such other functions as are imposed on it by or under this Act.

Part 2A – Planning Directives

9. Planning directive

A planning directive may be made in accordance with this Part in respect of the following matters:

- (a) issues relating to use, development, protection or conservation of any land requiring consistency for all municipal areas;
- (b) issues relating to use, development, protection or conservation of any land unique to one municipal area or only some municipal areas;
- (c) procedural matters arising from the operation of this Act or a State Policy;
- (d) the application of a State Policy;
- (e) any other matter the Minister considers appropriate.

10. Draft planning directive

- (1) The following persons may prepare a draft planning directive at any time:
 - (a) the Commission;
 - (b) a planning authority;
 - (c) a State Service Agency;
 - (d) any other person.

- (2) A draft planning directive is to be lodged with the Commission.
- (3) The Commission must forward to the Minister a draft planning directive lodged with it or prepared by it together with a recommendation as to whether or not an assessment of the draft planning directive should be undertaken.

11. Determination to proceed with draft planning directive

- (1) On receipt of a draft planning directive and the recommendation of the Commission under [section 10\(3\)](#), the Minister may –
 - (a) direct the Commission to undertake an assessment of the draft planning directive; or
 - (b) determine that no further proceedings are to be undertaken in respect of the draft planning directive.
- (2) A direction to undertake an assessment of a draft planning directive is to be provided to the Commission in writing.
- (3) If the Minister determines that no further proceedings are to be undertaken in respect of the draft planning directive, the Minister is to give written notice of that determination to the person who prepared the draft planning directive.

12. Assessment of draft planning directive

- (1) On receipt under **section 11** of a direction to undertake an assessment of a draft planning directive, the Commission must undertake that assessment.
- (2) Before undertaking the assessment, the Commission must –
 - (a) give written notice to the person (other than the Commission) who prepared the draft planning directive and any planning authority or State Service Agency likely to be affected by the planning directive, if issued, that it will be undertaking the assessment; and
 - (b) invite representations from any person given notice under **paragraph (a)**; and
 - (c) publish notice that it will be undertaking the assessment in a newspaper circulating generally in Tasmania or that part of Tasmania likely to be affected by the planning directive, if issued.
- (3) In undertaking an assessment, the Commission may inform itself of any matter in any manner it considers appropriate, including by the conduct of a hearing.
- (4) **Part 3 of the *Resource Planning and Development Commission Act 1997*** applies in respect of a hearing held by the Commission for the purposes of an assessment.
- (5) On the completion of an assessment, the Commission must provide to the Minister a report of its findings and its recommendations as

to whether or not a planning directive in the terms of the draft planning directive, or the draft planning directive modified as recommended by the Commission, should be issued.

12A. Issue of interim planning directives

(1) The Commission may recommend to the Minister that the Minister issue under this section a planning directive that is in the terms of a draft planning directive—

(a) that is lodged with the Commission or prepared by the Commission; and

(b) in relation to which the Commission has made under **section 10(3)** a recommendation that an assessment should be undertaken.

(2) After considering a recommendation made to him or her under **subsection (1)** to issue a planning directive in the terms of a draft planning directive, the Minister may—

(a) issue under this section a planning directive that is in the terms of the draft planning directive; or

(b) determine not to issue under this section a planning directive.

(3) The Minister may only issue under **subsection (2)** a planning directive that is in the terms of a draft planning directive if the Minister issues, or has issued, a direction under **section 11** that an assessment of the draft planning directive be undertaken by the Commission.

- ~~(4) If the Minister issues under this section a planning directive, the Minister must –~~
- ~~(a) give written notice of the planning directive to the Commission and all planning authorities affected by the planning directive; and~~
- ~~(b) publish in the *Gazette* notice of the issue of the planning directive and of the day on which the planning directive is to take effect.~~
- ~~(5) If the Minister determines not to issue under this section a planning directive, the Minister must give written notice of that determination to the Commission.~~
- ~~(6) A planning directive issued under this section takes effect on the day specified, in the notice of its issue published in the *Gazette*, as the day on which the planning directive is to take effect.~~
- ~~(7) The Minister may revoke a planning directive issued under this section.~~
- ~~(8) If the Minister revokes under *subsection (7)* a planning directive the Minister must –~~
- ~~(a) give written notice of the revocation to the Commission and all planning authorities affected by the planning directive; and~~
- ~~(b) publish in the *Gazette* notice of the revocation and of the day on which the revocation is to take effect.~~
- ~~(9) A revocation of a planning directive under *subsection (7)* takes effect on the day specified,~~

in the notice of its issue published in the *Gazette*,
as the day on which the revocation is to take
effect.

(10) A planning directive issued under this section
that is in the terms of a draft planning directive
remains in force until—

(a) the end of the period of 12 months from
the day on which the planning directive
took effect; or

(b) a planning directive that is in the same
terms as—

(i) the draft planning directive; or

(ii) the draft planning directive
modified as recommended by the
Commission in a report, in
relation to the draft planning
directive, provided to the
Minister under *section 12(5)*—

is issued by the Minister under
section 13(1); or

(c) a revocation of the planning directive
under *subsection (7)* takes effect—

whichever occurs first.

12A. Issue of interim planning directives

(1) The Commission may recommend to the
Minister that the Minister issue under
subsection (2) an interim planning directive that
is in the terms of a draft planning directive —

- (a) that is lodged with the Commission or prepared by the Commission; and
 - (b) in relation to which the Commission has made under [section 10\(3\)](#) a recommendation that an assessment should be undertaken.
- (2) After considering a recommendation made to him or her under [subsection \(1\)](#) to issue an interim planning directive in the terms of a draft planning directive, the Minister may –
- (a) issue an interim planning directive that is in the terms of the draft planning directive; or
 - (b) determine not to issue an interim planning directive.
- (3) An interim planning directive may include a statement that –
- (a) any or all of the provisions of the interim planning directive are to have effect, during the period in which it is in force, in the place of any or all of the provisions of a planning directive issued under [section 13\(1\)](#); and
 - (b) the provisions, of the planning directive issued under [section 13\(1\)](#), that are specified in the statement are accordingly suspended for that period.
- (4) If an interim planning directive includes a statement in accordance with [subsection \(3\)](#) in relation to any or all of the provisions of a planning directive issued under [section 13\(1\)](#) –

(a) the provisions of the interim planning directive specified in the statement are to have effect, during the period in which it is in force, in the place of the provisions, of the planning directive issued under [section 13\(1\)](#), specified in the statement; and

(b) the provisions, of the planning directive issued under [section 13\(1\)](#), that are specified in the statement are accordingly suspended for that period.

(5) The Minister may only issue an interim planning directive that is in the terms of a draft planning directive if the Minister issues, or has issued, a direction under [section 11](#) that an assessment of the draft planning directive be undertaken by the Commission, despite that a report in relation to the interim planning directive has not been provided to the Minister under [section 12\(5\)](#).

(6) If the Minister issues an interim planning directive, the Minister must –

(a) give written notice of the interim planning directive to the Commission and all planning authorities affected by the interim planning directive; and

(b) publish in the *Gazette* notice of the issue of the interim planning directive and of the day on which the interim planning directive is to take effect.

(7) If the Minister determines not to issue an interim planning directive, the Minister must give written notice of that determination to the Commission.

(8) An interim planning directive issued under this section takes effect on the day specified, in the notice of its issue published in the *Gazette*, as the day on which the interim planning directive is to take effect.

(9) An interim planning directive that is in the terms of a draft planning directive remains in effect until –

(a) the end of the period of 12 months from the day on which the interim planning directive took effect; or

(b) the day on which a planning directive, issued under [section 13\(1\)](#), that is in the same terms as –

(i) the draft planning directive; or

(ii) the draft planning directive, modified as recommended by the Commission in a report, in relation to the draft planning directive, provided to the Minister under [section 12\(5\)](#) –

takes effect; or

(c) a revocation of the interim planning directive under [section 12B\(1\)](#) takes effect –

whichever occurs first.

(10) For the purposes of [subsection \(9\)\(b\)](#), a planning directive issued under [section 13\(1\)](#) ("**the relevant directive**") is to be taken to be in the same terms as a draft planning directive despite that it does not contain a statement of the kind

referred to in subsection (3) suspending any or all provisions, of a planning directive issued under section 13, that have been suspended by an interim planning directive in the same terms as the draft planning directive, if the relevant directive –

(a) states that the suspension of the provisions is to cease on a date specified in the relevant directive; or

(b) contains a provision modifying or revoking any or all of the provisions, of a planning directive issued under section 13, that have been suspended by the interim planning directive (whether or not it also modifies or revokes any other provisions of that planning directive issued under section 13).

12B. Modification or revocation of interim planning directive

(1) The Minister –

(a) may revoke an interim planning directive; or

(b) may modify an interim planning directive.

(2) If the Minister revokes or modifies under subsection (1) an interim planning directive, the Minister must –

(a) give written notice of the revocation or modification to the Commission and all

planning authorities affected by the interim planning directive; and

(b) publish in the *Gazette* notice of the revocation or modification and of the day on which the revocation or modification is to take effect.

(3) A revocation or modification of an interim planning directive under *subsection (1)* takes effect on the day specified, in the notice of its issue published in the *Gazette*, as the day on which the revocation or modification is to take effect.

13. Issue of planning directive

(1A) In this section –

"**planning directive**" does not include an interim planning directive.

(1) After considering the report and recommendations of the Commission made under *section 12(5)* in respect of a draft planning directive, the Minister may –

(a) issue a planning directive; or

(b) determine not to issue a planning directive.

(2) If the Minister issues a planning directive, the Minister must –

(a) give written notice of the planning directive to the Commission and all planning authorities affected by the planning directive; and

- (b) publish notice of the issue of the planning directive in the *Gazette*.
- (3) If the Minister determines not to issue a planning directive, the Minister must –
 - (a) give written notice of that determination to the person who prepared the draft planning directive and the Commission; and
 - (b) publish notice of that determination in the same newspaper in which notice of the assessment of the draft planning directive was published under *section 12(2)(c)*.
- (4) A planning directive may be issued in the same terms as the draft planning directive or in the terms of the draft planning directive modified as recommended by the Commission.
- (5) A planning directive takes effect on the day on which notice of its issue is published in the *Gazette* or on a later day specified in the planning directive.

14. Effect of planning directive

- (1) A planning authority is bound by a planning directive and must take all necessary steps to comply with it.
- (2) If a planning directive applies to all or part of the area of land to which a planning scheme relates, the Commission, with the approval of the Minister, may, for the purpose of –

- (a) ensuring the scheme complies with the planning directive; or
- (b) ensuring the effectiveness of the operation of the planning directive; or
- (c) removing any inconsistency between the scheme and the planning directive –

~~modify the scheme by revoking or amending any provision of the scheme or inserting a new provision into the scheme.~~

(2A) The modification of a planning scheme under subsection (2) may be effected by –

(a) revoking or amending any provision of the scheme; or

(b) inserting a new provision into the scheme; or

(c) if provisions of a planning directive issued under section 13(1) have been suspended by an interim planning directive, by –

(i) annotating the planning scheme accordingly; and

(ii) inserting in the appropriate place in the planning scheme (including by being attached in accordance with subsection (6)) the provisions of the interim planning directive that are to have effect, during the period in which it is in force, in the place of any or all of the provisions inserted in the scheme in accordance with the

relevant provisions of the planning directive issued under section 13(1).

- (3) **Division 2 of Part 3** does not apply in respect of the modification of any planning scheme under **subsection (2)**.
- (4) The modification of a planning scheme under **subsection (2)** takes effect on the day specified by the Commission.
- (5) On modifying a planning scheme under **subsection (2)**, the Commission must give notice, as prescribed, of the modification.
- (6) If a planning directive applies in relation to all or part of the land to which a planning scheme relates, the Commission, with the approval of the Minister, may attach to the planning scheme, by appendix or by provisions inserted in between the provisions of the planning scheme, any provisions of the directive.
- (7) A provision of a planning directive may only be attached to a planning scheme under **subsection (6)** if the attached provision clearly indicates that it is a provision of a planning directive and does not form part of the planning scheme.
- (8) A provision that is attached to a planning scheme under **subsection (6)** does not form part of the planning scheme.
- (9) On attaching a provision to a planning scheme under **subsection (6)**, the Commission must give notice, as prescribed for the purposes of a modification under **subsection (2)**, of the

attachment as if it were such a modification, and state in the notice that the attachment does not form part of the planning scheme.

15. Modification or revocation of planning directive

~~A planning directive may be modified or revoked and, except in the case of a revocation under [section 12A\(7\)](#), this Part applies to the modification or revocation in the same manner as it applies to the making of a planning directive.~~

15. Modification or revocation of planning directive

A planning directive issued under [section 13\(1\)](#) may be modified or revoked and, except in the case of a modification or revocation under [section 12B\(1\)](#), this Part applies to the modification or revocation in the same manner as it applies to the making of a planning directive.

16. Power of Minister to dispense with certain requirements

(1A) In this section –

"**planning directive**" does not include an interim planning directive.

(1) Notwithstanding [section 15](#), where the Minister is satisfied that –

(a) the modification to a planning directive is for the purpose of –

- (i) correcting any error; or
 - (ii) removing any anomaly; or
 - (iii) clarifying or simplifying; or
 - (iv) removing any inconsistency with any Act; or
 - (v) making procedural changes; or
 - (vi) amending a planning directive to bring it into conformity with a State Policy; or
 - (via) amending the planning directive so as to make it consistent with another planning directive; or
 - (vii) any other prescribed purpose; and
- (b) the public interest will not be prejudiced –

the Minister may, by notice in the *Gazette*, dispense with the requirements of sections 10, 11 and 12 in relation to the modification.

- (2) If the Minister dispenses with the requirements of sections 10, 11 and 12 in relation to a modification of a planning directive –
- (a) despite section 15, the planning directive, as in force before the modification, is revoked by virtue of this subsection; and
 - (b) the Minister must issue the modified planning directive as a planning directive under section 13(1) as if the requirements for issue under that section had been satisfied; and

- (c) a notice required to be given under **section 13** is to contain a statement that the planning directive, as in force before the modification, is revoked by virtue of this subsection.

17. Permit applications not determined before planning directive comes into, or ceases to have, effect

(1) If an application that is made for a permit during the period before a planning directive is in effect is not determined before the directive comes into effect –

(a) the planning directive does not apply in relation to the application; and

(b) any decision, of the planning authority, in relation to the application is to be made in accordance with the planning scheme that applies to the land to which the application relates, despite the provisions of the planning directive; and

(c) the Appeal Tribunal must determine any appeal in relation to the application or a permit granted, or not granted, in relation to the application –

as if the planning directive was not in effect.

(2) Subject to subsection (1), if an application that is made for a permit during the period in which a planning directive is in effect is not determined before the directive ceases to have effect –

(a) the planning directive continues in effect in relation to the application; and

(b) any decision, of the planning authority, in relation to the application is to be made in accordance with the planning directive, despite the provisions of any planning scheme or another planning directive; and

(c) the Appeal Tribunal must determine any appeal in relation to the application or a permit granted, or not granted, in relation to the application –

as if the planning directive continued in effect.

(3) If a permit is granted, or a decision to grant a permit is deemed under [section 59\(1\)](#) to have been made, in relation to an application to which [subsection \(1\)](#) or [\(2\)](#) applies, a use or development, authorised under the permit, that takes place on the land to which the permit relates is to be taken, from the day on which the permit takes effect under this Act until the permit lapses or expires, if at all, to be lawfully established before the planning scheme that applies in relation to the land came into operation.

17. [This component has been omitted.]

18. [This component has been omitted.]

19. [This component has been omitted.]

Part 3 – Planning Schemes

Division 1 – Preparation of planning schemes

19A. [This component has been omitted.]

20. What can a planning scheme provide for?

(1) ~~A planning scheme for an area~~A relevant decision-maker, in preparing, accepting, declaring or making a relevant scheme, or giving approval in relation to the making or approving of a relevant scheme, must, as far as is, in the opinion of the relevant decision-maker, practicable –

(a) ~~must~~ seek to further the objectives set out in **Schedule 1** within the area covered by the scheme; and

(b) ~~must be prepared~~prepare the scheme in accordance with State Policies made under **section 11 of the State Policies and Projects Act 1993**; and

~~(c) may make any provision which relates to the use, development, protection or conservation of any land in the area; and~~

(d) ~~must~~ have regard to the strategic plan of a council referred to in Division 2 of Part 7 of the **Local Government Act 1993** as adopted by the council at the time the planning scheme is prepared; and

(e) ~~must~~ have regard to the safety requirements set out in the standards

prescribed under the *Gas Pipelines Act 2000*.

(2A) For the purposes of ~~subsection (1)~~ –

(a) a planning authority, the Commission, or the Minister, is a relevant decision-maker in relation to a relevant scheme; and

(b) a draft planning scheme, a draft interim planning scheme, a draft amendment to a planning scheme or to an interim planning scheme, and an interim planning scheme, is a relevant scheme.

(2) ~~Without limiting subsection (1), a planning~~A planning scheme may –

(aa) make any provision which relates to the use, development, protection or conservation of any land in the area; and

(a) set out policies and specific objectives; and

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

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

(d) [This component has been omitted.]

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

(f) require specified things to be done to the satisfaction of the Commission, relevant agency or planning authority; and

- (g) apply, adopt or incorporate any document which relates to the use, development or protection of land; and
 - (h) provide that any use or development of land is conditional on an agreement being entered into under **Part 5**; and
 - (ha) set out provisions relating to the implementation in stages of uses or developments; and
 - (i) provide for any other matter which this Act refers to as being included in a planning scheme; and
 - (j) provide for an application to be made to a planning authority to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme.
- (3) Subject to **subsections (4), (5) and (6)**, nothing in any planning scheme is to be taken (including by virtue of requiring a permit to be obtained) to –
- (a) prevent the continuance of the use of any land, upon which buildings or works are not erected, for the purposes for which it was being lawfully used before the coming into operation of the scheme; or
 - (b) prevent the use of any building which was erected before that coming into operation for any purpose for which it was lawfully being used immediately before that coming into operation, or the maintenance or repair of such a building; or

- (c) prevent the use of any works constructed before that coming into operation for any purpose for which they were being lawfully used immediately before that coming into operation; or
- (d) prevent the use of any building or works for any purpose for which it was being lawfully erected or carried out immediately before that coming into operation; or
- (e) require the removal or alteration of any lawfully constructed buildings or works; or
- (f) prevent a development, which was lawfully commenced but not completed before the coming into operation of the scheme, from being completed within –
 - (i) 3 years of that coming into operation; or
 - (ii) any lesser or greater period specified in respect of the completion of that development under the terms of a permit or special permit granted before the coming into operation of the scheme.

(3A) Subject to **subsections (4) and (6)**, nothing in a planning scheme is to be taken to prevent (including by virtue of requiring a permit to be obtained) the reconstruction of a building, or restoration of works, destroyed or damaged, which was or were integral and subservient to a lawfully established existing use ~~that does not~~

conform to the scheme, whether or not the use conforms to the scheme, or a provision of the scheme, or a planning directive, if –

- (a) the destruction or damage was not caused intentionally by the owner of that building or those works; and
 - (b) the building or works was or were lawfully established before the coming into operation of the scheme, the provision of the scheme, or the planning directive, respectively.
- (4) **Subsections (3) and (3A)** do not apply to a use of land–
- (a) which has stopped for a continuous period of 2 years; or
 - (b) which has stopped for 2 or more periods which together total 2 years in any period of 3 years; or
 - (c) in the case of a use which is seasonal in nature, if the use does not take place for 2 years in succession.
- (5) **Subsection (3)** does not apply to the extension or transfer from one part of a parcel of land to another of a use previously confined to the first-mentioned part of that parcel of land.
- (6) **Subsections (3) and (3A)** do not apply where a use of any land, building or work is substantially intensified.
- (7) Nothing in any planning scheme or special planning order affects –

- (a) forestry operations conducted on land declared as a private timber reserve under the *Forest Practices Act 1985*; or
- (b) the undertaking of mineral exploration in accordance with a mining lease, an exploration licence, or retention licence, issued under the *Mineral Resources Development Act 1995*, provided that any mineral exploration carried out is consistent with the standards specified in the Mineral Exploration Code of Practice; or
- (c) fishing; or
- (d) marine farming in State waters.

(7A) In subsection (7)(a), "forestry operations" includes the processes and works connected with

—

- (a) the establishment of forests; and
 - (b) the growing of timber; and
 - (c) the harvesting of timber; and
 - (d) land clearing, land preparation, burning off, road construction and associated quarry works conducted in relation to an activity specified in paragraph (a), (b) or (c).
- (8) The coming into operation of a planning scheme or a special planning order does not legitimize a use or development which was illegal under a planning scheme or a special planning order in force immediately before that coming into operation.

- (9) A planning scheme may require a use to which **subsection (3)** applies to comply with a code of practice approved or ratified by Parliament under an Act.
- (10) A planning scheme is not to prohibit or require a discretionary permit for the use or development of a proclaimed wharf area for port and shipping purposes.
- (11) **Subsection (7)(d)** does not apply in respect of the following:
- (a) any bridge, jetty, wharf, boathouse, shed, pipeline or other structure used in connection with marine farming that is constructed wholly or in part on, or above, the high water mark;
 - (b) a use or development on any accretion from the sea.
- (12) In this section –
- "fishing"** means fishing as defined in the *Living Marine Resources Management Act 1995* and conducted in accordance with that Act;
- "marine farming"** means marine farming as defined in the *Marine Farming Planning Act 1995* and conducted in accordance with that Act and the *Living Marine Resources Management Act 1995*;
- "proclaimed wharf area"** means the area of a wharf the boundaries of which have been defined, altered or redefined under the *Marine Act 1976* before the

commencement of the *Port Companies Act 1997*;

"State waters" means State waters as defined in the *Living Marine Resources Management Act 1995*.

21. Co-ordination of planning schemes

- (1) Subject to **section 20(1)**, a planning scheme for an area must, as far as is, in the opinion of the Commission, practicable, be consistent with and co-ordinated with the planning schemes applying to adjacent areas and must have regard for the use and development of the region as an entity in environmental, economic and social terms.
- (2) A planning scheme that includes an area referred to in **section 7(d)** is to be prepared in consultation with the Marine and Safety Authority established under the *Marine and Safety Authority Act 1997*.

22. Initiation of preparation of draft planning schemes

- (1) A planning authority may prepare a draft planning scheme in respect of such area as it may determine.
- (2) The Commission may, with the approval of the Minister, give a written direction to a municipality to prepare a draft planning scheme in respect of the area specified in the direction and the municipality must prepare a draft planning scheme in accordance with the direction.

- (2A) The direction referred to in **subsection (2)** may require a municipality to prepare a draft planning scheme jointly with one or more municipalities if the Commission considers such a requirement would promote a regional approach to planning.
- (3) [This component has been omitted.]
- (4) [This component has been omitted.]
- (5) [This component has been omitted.]
- (6) An area in respect of which a planning scheme is prepared may comprise –
 - (a) the whole or any part, or parts, of a municipal district of the relevant municipality; and
 - (b) the whole or any part of the area referred to in **section 7(d)**; and
 - (c) any area in that municipal district covered by an existing planning scheme or special planning order.

23. Notification of commencement of preparation of draft planning scheme

A planning authority must, not later than 14 days after making a decision to prepare a draft planning scheme, cause a copy of its decision to be given to the Commission, and must give such other notice as may be prescribed.

Unvalidated References : (3)

24. Certification by Commission of draft planning schemes prepared by planning authorities

- (1) Not later than 12 months after making a decision to prepare a draft planning scheme, or the receipt of a direction under **section 22(2)** or **(3)**, or such longer period as the Commission may allow, the planning authority must cause a copy of the draft planning scheme prepared by it to be submitted to the Commission.
- (2) The Commission must, not later than 6 weeks after the submission of a draft planning scheme to it under **subsection (1)** or such longer period as the Minister may allow, examine the draft and—
 - (a) if it is suitable for exhibition, certify it accordingly and, by notice in writing given to the planning authority, direct that it be publicly exhibited; or
 - (b) if it is not suitable for exhibition—
 - (i) with the agreement of the authority, amend it so that it is so suitable, certify it accordingly and, by notice in writing given to the authority, direct that the draft planning scheme, as amended, be publicly exhibited; or
 - (ii) by notice in writing given to the authority, specify the respects in which the draft planning scheme is not suitable for exhibition and a period within which a revised draft planning scheme is to be submitted to the Commission.

- (3) For the purposes of **subsection (2)**, a draft planning scheme is suitable for exhibition if –
 - (a) it satisfies the requirements of **section 20**;
or
 - (b) the Commission, by notice in writing given to the planning authority, directs that the draft planning scheme be publicly exhibited together with a notice from the Commission indicating that its approval of the draft planning scheme will be conditional on issues identified in the notice being dealt with to the satisfaction of the Commission.
- (3A) Nothing in **subsection (3)(b)** limits the Commission's obligations and powers under **sections 27 and 28**.
- (4) Where the Commission gives a notice to a planning authority under **subsection (2)(b)(ii)**, the authority must, within the period specified in the notice or such longer period as the Commission may allow, revise the draft planning scheme and resubmit it to the Commission, and **subsections (2) and (3)** apply in relation to the revised draft planning scheme as if it had not previously been submitted to the Commission.
- (5) Where the Commission does not complete its examination within the period first referred to in **subsection (2)**, the draft planning scheme is deemed to be certified as submitted and the Commission must, by notice in writing given to the planning authority, direct that the draft planning scheme be publicly exhibited.

25. Public exhibition of draft planning schemes

(1) Where the Commission gives notice under **section 24(2)(a), (2)(b)(i), (3)(b) or (5)** directing the public exhibition of a draft planning scheme

–

(a) the planning authority must –

(i) within 3 weeks or such longer period as the Commission may allow, cause a copy of the draft planning scheme to be placed on public exhibition for a period of 2 months; and

(ii) advertise, as prescribed, the exhibition of the draft planning scheme; and

(b) the Commission must cause a copy of the draft planning scheme to be placed on public exhibition at its office for that period.

(2) For the purpose of determining the period of 2 months referred to in **subsection (1)(a)(i)**, any days on which the office of the planning authority is closed during normal business hours, in that part of the State where the planning scheme will apply, are not to be included.

26. Representations in respect of draft planning schemes

(1) Where a draft planning scheme is placed on public exhibition by a planning authority in accordance with **section 25**, representations in

relation to that draft planning scheme may be submitted to the authority by any person before the expiration of the exhibition period referred to in [section 25\(1\)\(a\)\(i\)](#).

- (2) The planning authority must, not later than the expiration of 3 months after the exhibition period referred to in [section 25\(1\)\(a\)\(i\)](#) or such further period as the Commission allows, forward to the Commission a report comprising—
 - (a) a copy of each representation received by the authority in relation to the draft planning scheme or, where it has received no such representation, a statement to that effect; and
 - (b) a statement of its opinion as to the merit of each such representation, including, in particular, its views as to—
 - (i) the need for modification of the draft planning scheme in the light of that representation; and
 - (ii) the impact of that representation on the draft planning scheme as a whole; and
 - (ba) if the public exhibition of the draft planning scheme was required by notice under [section 24\(3\)\(b\)](#), a statement addressing how the issues identified in that notice and upon which approval of that scheme is conditional have been or may be dealt with; and

- (c) such recommendations in relation to the draft planning scheme as the authority considers necessary.

27. Consideration by Commission of draft planning scheme and relevant representations

- (1) As soon as practicable after receipt by it of a report under **section 26(2)**, the Commission must consider the draft planning scheme and the representations, statements and recommendations contained in the report.
- (2) For the purposes of its consideration under **subsection (1)**, the Commission must hold a hearing in relation to each representation contained in the report.
- (3) The Commission may consolidate any of the representations and hold a hearing in relation to the consolidated representations.

28. Modification or rejection, &c., of draft planning schemes before approval

- (1) The Commission may, after its consideration under **section 27** of a draft planning scheme prepared by a planning authority—
 - (a) require the planning authority to modify the draft planning scheme after having regard to the report made under **section 26**, and any evidence and submissions made in a hearing under **section 27** in relation to it; or
 - (ab) modify the draft planning scheme; or

- (b) by notice in writing given to the authority—
 - (i) reject the draft planning scheme; or
 - (ii) direct that a specified part of the draft planning scheme be done again.
- (2) Where the Commission rejects a draft planning scheme, the planning authority must, within such period as the Commission may allow, prepare and submit to the Commission another draft planning scheme, and the provisions of this Division (other than [sections 22, 23 and 24\(1\)](#)) apply in relation to that other draft planning scheme as if it had been prepared under [section 22\(1\)](#).
- (3) Where the Commission directs that a specified part of a draft planning scheme be done again—
 - (a) the planning authority must, within such period as the Commission may allow, prepare and submit to the Commission a substitute version of that part; and
 - (b) the provisions of this Division (other than [sections 22, 23, 24\(1\) and 29](#)) apply in relation to the substitute part as if it were a draft planning scheme prepared under [section 22\(1\)](#).
- (4) When directing a part of a draft planning scheme to be done again, the Commission may give directions as to the explanatory material to be included in the public notification of the

substitute part and to be available for public inspection with it.

- (5) Where the Commission requires the planning authority to modify the draft planning scheme, the planning authority must not issue a permit or do any other thing that would, if the draft planning scheme modified as required had at that time been approved as a planning scheme, be a contravention of that approved planning scheme.

28AA. Direction to undertake modification of draft planning scheme

- (1) If a draft planning scheme is required to be modified under **section 28(1)(a)**, the Commission, by notice in writing to the planning authority, must—
 - (a) direct that it undertake the modification; and
 - (b) specify the manner in which the scheme is to be modified.
- (2) A planning authority must undertake a modification to a draft planning scheme in accordance with a direction of the Commission under **subsection (1)** and submit the modified scheme to the Commission within 28 days from the receipt of that direction or such longer period as the Commission may allow.
- (3) The period referred to in **section 29(2)** does not run after a direction to modify the draft scheme has been made until the period referred to in **subsection (2)** of this section expires.

28A. Application for withdrawal of draft planning scheme

- (1) A planning authority may apply to the Commission to withdraw a draft planning scheme.
- (2) An application may only be made if –
 - (a) a report under **section 26(2)** has not been forwarded to the Commission; and
 - (b) the planning authority proposes to prepare a further draft planning scheme for an area the same as, or greater than, the area to which the scheme to be withdrawn relates; and
 - (c) the planning authority has complied with **section 28B**.
- (3) An application is to –
 - (a) be in writing; and
 - (b) attach a statement outlining the proposed replacement draft planning scheme; and
 - (c) attach a copy of any representation made under **section 28B**; and
 - (d) state the planning authority's opinion as to the merit of the representation.

28B. Notice of intention to withdraw draft planning scheme

- (1) Before making an application under **section 28A**, the planning authority, by notice in a daily

newspaper circulating generally in the area, must notify its intention to withdraw a draft planning scheme.

- (2) A notice is to –
 - (a) advise that any person may make representations to the planning authority relating to its intention to withdraw a draft planning scheme within 28 days after the date on which the notice was advertised; and
 - (b) specify the places at which, and the hours during which, any person may make representations; and
 - (c) specify the place at which any person may examine the draft planning scheme which the planning authority intends to withdraw; and
 - (d) specify why the draft planning scheme is to be withdrawn.

28C. Approval of withdrawal of draft planning scheme

- (1) The Commission must consider an application made under **section 28A** and any representation made in connection with that application.
- (2) In considering any representation, the Commission may hold a hearing.
- (3) The Commission, after considering an application and any representation and with the Minister's approval, may–

- (a) approve the withdrawal of a draft planning scheme; or
- (b) refuse to approve the withdrawal.

28D. Conditions of withdrawal of draft planning scheme

- (1) An approval to withdraw a draft planning scheme is subject to any condition the Commission specifies.
- (2) The Commission, with the Minister's approval, may revoke an approval if the planning authority fails to comply with any condition specified by the Commission.

28E. Notification of withdrawal of draft planning scheme

- (1) The Commission is to notify the planning authority of–
 - (a) its approval of the withdrawal of a draft planning scheme; or
 - (b) its refusal to approve the withdrawal.
- (2) The planning authority, by notice published in a daily newspaper circulating generally in the area, must notify –
 - (a) that the draft planning scheme is withdrawn; and
 - (b) the date on which the withdrawal takes effect.

28F. Date of withdrawal of draft planning scheme

The withdrawal of a draft planning scheme comes into effect –

- (a) 7 days after the date on which the Commission approved the withdrawal; or
- (b) if the withdrawn planning scheme is in operation as a special planning order, on the date on which the draft planning scheme prepared under **section 28A** comes into operation as a planning scheme or a special planning order.

29. Approval of draft planning schemes

- (1) Where, after consideration by the Commission, under **section 27**, of a draft planning scheme (including any modifications made or substitute parts required under **section 28**), the Commission is satisfied that the draft planning scheme is in order, it must, subject to the approval of the Minister, give its approval to the draft planning scheme.
- (2) The Commission must give its approval to a draft planning scheme not later than–
 - (a) 6 months after–
 - (i) the submission to it, under **section 26(2)**, of the report of the planning authority in relation to the draft planning scheme; or
 - (ii) where any part of it is required, under **section 28**, to be done again, the day on which the report

of the authority in relation to the substitute part was submitted to the Commission under **section 26 (2)** or, where more than one such report was so submitted, the day on which the last such report was so submitted; or

(b) such later day as the Minister may approve.

(3) When the Commission gives its approval to a draft planning scheme—

(a) the scheme must be signed —

(i) by the chairperson of the Commission; or

(ii) if for any reason the chairperson is unavailable or unable to sign the scheme, by another member of the Commission approved by the Commission under **subsection (3A)**; and

(b) notwithstanding any failure to comply with a procedural provision of this Part, the planning scheme comes into operation on such date as is specified by the Commission, being a date not earlier than the date on which it is signed; and

(c) the Commission must advise the planning authority of its approval; and

(d) the planning authority must give notice of the Commission's approval as prescribed.

- (3A) For the purposes of **subsection (3)(a)(ii)**, the Commission may approve a member of the Commission –
- (a) to sign a particular draft planning scheme if the chairperson is unavailable or unable to sign it; or
 - (b) to sign draft planning schemes as required during any period during which the chairperson is unavailable or unable to sign them.
- (4) If a date is not specified under **subsection (3)(b)**, the planning scheme comes into operation 7 days after the date on which the Commission gives its approval.
- (5) When a planning scheme comes into operation, any existing planning scheme covering the area to which the new planning scheme applies does not apply to that area.

30. Failure to comply with provision of this Division

- (1) Where a planning authority fails to comply with a provision of this Division within the period referred to in that provision –
- (a) the Commission may assume the responsibilities and obligations of the authority under this Division in relation to the preparation of a draft planning scheme; and
 - (b) the authority must pay to the Commission all costs incurred by the Commission in assuming the

responsibilities and obligations of the authority in relation to the preparation of the draft planning scheme.

- (2) The failure to comply with a provision of this Division within the period referred to in that provision does not invalidate a planning scheme approved by the Commission under this Division.

Division 1A – Regional land use strategies and interim planning schemes

Subdivision 1 – Purposes and interpretation

30A. Purposes of Division

The purposes of this Division are –

- (a) to ensure greater consistency between planning schemes within regional areas; and
- (b) to ensure greater consistency between planning schemes across the State as a whole –

including by ensuring that there are regional land use strategies for all regional areas of the State.

30B. Interpretation: Division 1A

In this Division, unless the contrary intention appears –

"common provision" means a provision, of an interim planning scheme or of a

planning scheme made under section 30N, that is –

- (a) a mandatory common provision; or
- (b) an optional common provision;

"conflicting local provision" means a provision that is specified in a planning purposes notice to be a conflicting local provision;

"local provision" means a provision, of an interim planning scheme or of a planning scheme made under section 30N, that is not a common provision, and includes a zoning of a particular area of land;

"mandatory common provision" means a provision that –

- (a) is specified in a planning directive; and
- (b) is specified in that directive to be a provision that a planning scheme that is made after the directive comes into force must contain;

"optional common provision" means a provision that –

- (a) is specified in a planning directive; and
- (b) is specified in that directive to be a provision that a planning scheme that is made after the

directive comes into force may, but is not required to, contain;

"overriding local provision" means a provision that is specified in a planning purposes notice to be an overriding local provision;

"planning purposes notice" means a notice in force under [section 30EA](#).

Subdivision 2 – Regional areas and land use strategies

30C. Regional areas and regional land use strategies

- (1) The Minister, by notice in the *Gazette*, may specify the regional areas into which the State is divided for the purposes of this Act.
- (2) A notice under [subsection \(1\)](#) is to specify the municipal areas that are within a regional area specified in the notice.
- (3) The Minister, by notice in the *Gazette*, may declare a regional land use strategy for each regional area.
- (4) The Minister must keep all regional land use strategies under regular and periodic review.

Subdivision 3 – Interim planning schemes

30D. Interim planning schemes to be provided to Minister

- (1) A planning authority may provide to the Minister a draft interim planning scheme for the authority's municipal area.

- (2) The Minister, by notice in writing to a planning authority, may request the planning authority to provide to the Minister a draft interim planning scheme for the authority's municipal area.
- (3) The Minister may direct the Commission to prepare a draft interim planning scheme for a municipal area.
- (4) The Minister may only direct the Commission to prepare a draft interim planning scheme under **subsection (3)** for a municipal area if the Minister is satisfied that –
 - (a) the planning authority for the area has not provided such a scheme to the Minister under **subsection (1)** within 21 days after being requested by the Minister to do so under **subsection (2)**; and
 - (b) such a scheme would further the purposes of this Division.
- (5) The Commission must provide to the Minister a draft interim planning scheme prepared by the Commission in accordance with a direction under **subsection (3)**.
- (6) The Minister, by notice in writing to a planning authority, may request the planning authority to provide to the Minister a draft interim planning scheme that has been provided to the Minister by the planning authority under **subsection (1)** and that is amended, in accordance with the directions specified in the notice –

- (a) to remove or amend any local provision that is, under **section 30EA**, inconsistent with another provision; or
 - (b) to ensure that the draft interim planning scheme complies with this Act; or
 - (c) to ensure the effective operation of a planning purposes notice; or
 - (d) to ensure that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme.
- (7) A planning authority to which a notice is given under **subsection (6)** may provide to the Minister a draft interim planning scheme that has been provided to the Minister by the planning authority under **subsection (1)** and that is amended, in accordance with the directions specified in the notice.
- (8) The Minister may direct the Commission to amend a draft interim planning scheme for a municipal area that has been provided to the Minister under **subsection (1)** or **(5)**.
- (9) The Commission must provide to the Minister a draft interim planning scheme prepared by the Commission in accordance with a direction under **subsection (8)**.
- (10) If a draft interim planning scheme has been provided to the Minister under **subsection (9)**, the Minister must –
 - (a) notify the planning authority for the area of land to which the scheme, if declared,

would relate, that the scheme has been provided to the Minister and that the comments of the planning authority may be provided to the Minister within 14 days after the notice is given; and

- (b) provide to the planning authority a copy of the scheme so provided to the Minister by the Commission; and
- (c) consider any comments in relation to the scheme that are provided to the Minister by the planning authority within 14 days after the notice is given.

30E. Contents of interim planning schemes

- (1) A draft interim planning scheme and an interim planning scheme must contain the mandatory common provisions.
- (2) A draft interim planning scheme and an interim planning scheme may contain optional common provisions.
- (3) Subject to this Act, a draft interim planning scheme and an interim planning scheme may contain a provision (a *local provision*) that is not a common provision.
- (4) Subject to **section 30EA**, a draft interim planning scheme and an interim planning scheme may only contain a local provision if the provision is not directly or indirectly inconsistent with –
 - (a) a mandatory common provision; or
 - (b) an optional common provision that is contained in the planning scheme; or

- (c) an overriding local provision.
- (4A) A draft interim planning scheme and an interim planning scheme may only contain a local provision if the provision is not a conflicting local provision.
- (5) **Subsection (4)** does not apply in relation to a local provision that applies to an area of land, if a planning directive allows a planning scheme in relation to the land to specify that some or all of the common provisions are not to apply to such an area of land.
- (6) ~~A draft interim planning scheme and an interim planning scheme are~~An interim planning scheme is, as far as is, in the opinion of the *Commission*, practicable, to be consistent with, and likely to further the objectives and outcomes of, the regional land use strategy, if any, for the regional area in which ~~the schemes are~~ the scheme is to apply.
- (7) Apart from **sections 20** and **21**, **Division 1** does not apply to draft interim planning schemes and interim planning schemes.

30EA. Overriding local provisions and conflicting local provisions

- (1) In this section –

"relevant scheme" means –

- (a) a draft interim planning scheme;
or
- (b) an interim planning scheme; or

~~(c) an interim planning scheme modified under **section 30M**; or~~

~~(d) a planning scheme made under **section 30N**.~~

- (2) The Minister, on the recommendation of the Commission, by notice to the Commission, may issue a planning purposes notice.
- (3) A planning purposes notice may specify –
 - (a) that a local provision, specified in the notice, that is or may be included in a relevant scheme, for a municipal area that is specified in the notice, is, if included in such a scheme, an overriding local provision; and
 - (b) that a local provision, specified in the notice, that is or may be included in a relevant scheme, for a municipal area that is specified in the notice, is, if included in such a scheme, a conflicting local provision.
- (4) If there is an inconsistency between an overriding local provision of a relevant scheme and a common provision of the scheme, the overriding local provision prevails to the extent of the inconsistency.
- (5) If there is an inconsistency between a conflicting local provision of a relevant scheme and a common provision of the scheme, the conflicting local provision is of no effect.
- (6) If a planning purposes notice is issued under **subsection (2)**, the Minister must ensure that, as

soon as practicable, a notice is published in the *Gazette* specifying –

- (a) that the planning purposes notice has been issued; and
 - (b) the date on which it was issued; and
 - (c) the relevant schemes to which the notice relates; and
 - (d) the general purport or effect of the notice.
- (7) If a planning purposes notice is issued under **subsection (2)**, the Commission, as soon as practicable –
- (a) must notify each planning authority in respect of a relevant scheme to which the planning purposes notice relates of the issue of the planning purposes notice; and
 - (b) make copies of the planning purposes notice available to the public at the offices of the Commission.
- (8) If a planning purposes notice that applies in relation to a relevant scheme is issued under **subsection (2)**, the Commission must –
- (a) amend the relevant scheme to ensure the effective operation of the planning purposes notice and the scheme as so amended; or
 - (b) direct a planning authority to amend the relevant scheme in accordance with the directions of the Commission, to ensure

the effective operation of the planning purposes notice and the scheme as so amended.

- (9) The Minister, on the recommendation of the Commission, by notice, may amend or revoke a planning purposes notice.
- (10) If a planning purposes notice that applies in relation to a relevant scheme is amended or revoked, the Commission must –
 - (a) amend the relevant scheme to ensure the effective operation of the amendment or revocation of the planning purposes notice and the scheme as so amended; or
 - (b) direct a planning authority to amend the relevant scheme, in accordance with the directions of the Commission, to ensure the effective operation of the amendment or revocation of the planning purposes notice and the scheme as so amended.
- (11) If an amendment or revocation of a planning purposes notice that applies in relation to a relevant scheme is to the effect that a provision of the relevant scheme has ceased to be an overriding local provision or a conflicting local provision, the Commission may amend, or direct a planning authority to amend, any local provision of the scheme, that, in the opinion of the Commission, requires amendment to ensure the effective operation of the scheme after a provision has ceased to be an overriding local provision or a conflicting local provision.

- (12) The amendments that may be made, to a relevant scheme, under this section include, but are not limited to including, the following:
- (a) removing or amending any local provision that is, under this section, inconsistent with another provision;
 - (b) amendments to ensure that the scheme complies with this Act;
 - (c) amendments to ensure that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme.
- (13) If an amendment to a relevant scheme is made under this section –
- (a) the amendment must be signed by the chairperson of the Commission or, if he or she is unavailable or unable to sign the amendment, another member of the Commission approved by the Commission to sign the amendment; and
 - (b) the amendment comes into effect –
 - (i) on the date (which may not be a date before the amendment is made) specified in the amendment as the date on which it comes into effect; or
 - (ii) if no such date is specified, 7 days after the amendment is made; and

- (c) the Commission must notify the planning authority in respect of the scheme of the amendment; and
- (d) the Commission must give notice of the amendment in a newspaper circulating generally in the area to which the scheme relates.

30F. Declaration of interim planning scheme

- (1) The Minister, by notice in the *Gazette*, may declare to be an interim planning scheme a draft interim planning scheme that is provided to the Minister under **section 30D(1), (5), (7) or (9)**.
- (2) The Minister may decide not to declare to be an interim planning scheme a draft interim planning scheme that is provided to the Minister under **section 30D(1), (5), (7) or (9)**.
- (3) The Minister may only declare a draft interim planning scheme to be an interim planning scheme if –
 - (a) the scheme complies with **sections 20 and 21 and section 30E**; and
 - (b) where the scheme is required under **section 30EA** or **section 30IA** to be amended, it is amended under **section 30EA** or **section 30IA** respectively; and
 - (c) where the planning scheme has been provided to the Minister under **section 30D(9), section 30D(10)** has been complied with in relation to the scheme.

- (4) An interim planning scheme comes into operation –
- (a) on the date on which it is notified under **subsection (1)**; or
 - (b) if a later date is specified in the notice under **subsection (1)**, on that later date.
- (5) On and from the day on which an interim planning scheme that is declared in relation to an area of land comes into operation –
- (a) the interim planning scheme applies to the land, ~~until a planning scheme is declared under **section 30N** until a planning scheme is made under **section 30M**~~ in relation to the land; and
 - (b) the planning scheme that applied to the land immediately before the interim planning scheme came into operation ceases to have effect; and
 - ~~(ba) an amendment to the interim planning scheme may not be initiated or approved under **Division 2** or **2A**; and~~
 - (c) a draft planning scheme may not be approved under **section 29** in relation to the land while the interim planning scheme applies to the land.
- (6) [This component has been omitted.]

30FA. Permit applications not resolved before interim planning scheme in operation

- (1) Despite any other provision of this Act, on and from the day on which an interim planning scheme comes into operation, an application, for a permit in relation to land to which the scheme relates, that –
 - (a) is made before that day; and
 - (b) is an application to which a request under **section 43A** relates; and
 - (c) is not determined by the planning authority before that day; and
 - (d) is not an application in relation to which, before that day, a decision to grant a permit is deemed under **section 59(1)** to have been made –

ceases to have effect.

- (2) On and from the day on which an interim planning scheme comes into operation, **subsection (3)** applies to, and in relation to, an application, for a permit in relation to land to which the scheme relates, that –
 - (a) is, before that day, made in accordance with this Act, valid under **section 86** and a valid application within the meaning of **section 51(1AC)**; and
 - (b) is not an application to which a request under **section 43A** relates; and
 - (c) is not determined by the planning authority before that day; and

- (d) is not an application in relation to which, before that day, a decision to grant a permit is deemed under **section 59(1)** to have been made.
- (3) Despite any other provision of this Act , other than **section 17**, or an interim planning scheme, on and from the day on which an interim planning scheme comes into operation in relation to land to which an application, to which this subsection applies, relates –
- (a) a planning scheme, or special planning order, as in force in relation to the land immediately before that day ("**the former scheme or former order**"), continues to apply in relation to the application; and
 - (b) any decision of the planning authority in relation to the application is to be made in accordance with the provisions of the former scheme or former order; and
 - (c) this Act applies in relation to the application; and
 - (d) the Appeal Tribunal must determine any appeal in relation to the application or a permit granted, or not granted, in relation to the application –

as if the former scheme or former order continued in operation, and the interim planning scheme did not apply, in relation to the land.

- (4) If a permit is granted, or a decision to grant a permit is deemed under **section 59(1)** to have been made, in relation to an application to which

subsection (3) applies, a use or development, authorised under the permit, that takes place on the land to which the permit relates is to be taken, from the day on which the permit takes effect under this Act until the permit lapses or expires, if at all, to be lawfully established before the interim planning scheme that applies in relation to the land came into operation.

- (5) Nothing in this section is to be taken to apply to an application that is determined by a planning authority, or is an application in relation to which a decision to grant a permit is deemed under **section 59(1)** to have been made, before the day on which this section comes into operation.

30G. Notice of declaration of scheme or decision not to declare scheme

- (1) The Minister must give to the following persons notice in writing of the declaration under **section 30F(1)** of an interim planning scheme for an area of land that is within a regional area:
 - (a) the planning authority for the land;
 - (b) each other planning authority for an area of land within the regional area;
 - (c) the Commission;
 - (d) those State Service Agencies that the Minister considers to have an interest in the scheme.

- (2) The notice under **subsection (1)** may specify that public exhibition of the scheme is to begin on a date specified in the notice.
- (3) The Minister must give to the following persons notice in writing of a decision under **section 30F(2)** not to declare a draft interim planning scheme for an area of land in a regional area to be an interim planning scheme, and the reasons for the decision:
 - (a) the planning authority for the land;
 - (b) each other planning authority for an area of land within the regional area;
 - (c) the Commission.

30H. Notification and public exhibition of interim planning schemes

- (1) A planning authority notified under **section 30G(1)(a)** of the declaration of an interim planning scheme must ensure that a copy of the scheme is –
 - (a) publicly exhibited at the offices of the planning authority in accordance with this section; and
 - (b) made available for viewing at a website address specified in the notice in relation to the scheme in accordance with **subsection (6)(e)**.
- (2) The public exhibition of an interim planning scheme by the planning authority is to begin –

- (a) on the date, if any, specified in the notice under **section 30G(1)(a)** in relation to the scheme as the date on which public exhibition of the scheme is to begin; or
 - (b) if the notice under **section 30G(1)(a)** does not specify such a date, on a date, chosen by the planning authority, that is within 3 weeks after the authority receives the notice.
- (3) The interim planning scheme is to be publicly exhibited by the planning authority for a period of ~~2 months~~42 days.
- (4) The planning authority notified under **section 30G(1)(a)** of the declaration of an interim planning scheme must ensure that a notice is published in a daily newspaper circulating generally in the area to which the scheme applies.
- (5) The notice under **subsection (4)** is to be published on or before the day on which the exhibition of the planning scheme begins under **subsection (2)**.
- (6) The notice under **subsection (4)** is to –
 - (a) specify that an interim planning scheme has been declared; and
 - (b) indicate generally the area to which the scheme applies; and
 - (c) specify that the area to which the scheme applies is indicated with more particularity on a plan that is displayed at an office, of the planning authority, the

address of which is specified in the notice; and

- (d) specify that a copy of the interim planning scheme is or will be on public exhibition at the address of the offices of the planning authority, and the address of the offices of the Commission, specified in the notice; and
 - (e) specify that a copy of the interim planning scheme is available for viewing at a website address specified in the notice; and
 - (f) specify the date on which the scheme came into operation; and
 - (g) specify that representations in relation to the interim planning scheme may be made to the planning authority –
 - (i) at the address of the planning authority specified in the notice; and
 - (ii) at any time within ~~2 months~~42 days from the date, specified in the notice, on which, under **subsection (2)**, the public exhibition of the scheme is to begin.
- (7) If the public exhibition of 2 or more interim planning schemes for areas of land in the same regional area is required under **subsection (2)(a)** to begin on the same day, the planning authorities in respect of the areas of land may combine into a single notice, in one or more

newspapers, all the notices for the schemes that are required under this section to be published in a daily newspaper.

- (8) The Commission must cause a copy of an interim planning scheme to be publicly exhibited at its office during the period in which the planning authority notified under **section 30G(1)(a)** of the declaration of the scheme is required under this section to publicly exhibit the scheme.
- (9) If a period, in relation to an interim planning scheme, referred to in this section includes any days on which the office of a planning authority is closed during normal business hours in that part of the State in which the scheme applies, that period is to be extended by the number of those days.

30I. Representations in relation to interim planning schemes

- (1) A person may make to a planning authority a representation in relation to an interim planning scheme that is exhibited at the offices of the authority in accordance with **section 30H**.
- (2) A representation in relation to an interim planning scheme may only be made within the period that is, under **section 30H(6)(g)**, specified in the notice in relation to the scheme as the period in which representations may be made.
- ~~(3) A planning authority to which a representation is made under **subsection (1)** in relation to a common provision of an interim planning scheme must provide a copy of the~~

~~representation to each other planning authority notified under **section 30G(1)(b)** of the declaration of the scheme.~~

- ~~(4) The copy of the representation made in relation to an interim planning scheme is to be provided under **subsection (3)** within 14 days after the end of the 2-month period for which the scheme is publicly exhibited in accordance with **section 30H**.~~

30IA. Urgent amendment of interim planning schemes

- (1) The Commission may issue to the Minister a notice –
 - (a) specifying that the Commission is of the opinion that an authorisation under **subsection (2)** is urgently required; and
 - (b) specifying the purposes for which the authorisation is sought; and
 - (c) recommending to the Minister that the authorisation be issued.
- (2) The Minister, on his or her own motion or on receiving a notice under **subsection (1)**, may issue to the Commission a notice (an authorisation).
- (3) The Minister may only issue an authorisation under **subsection (2)** if he or she is of the opinion that the interim planning scheme requires amendments for any of the following purposes: purposes specified in section 37(1)(a) and he or she is satisfied that the public interest will not be prejudiced.

- ~~(a) to remove or amend any local provision of the scheme that is, under **section 30EA**, inconsistent with another provision;~~
- ~~(b) to ensure that the scheme complies with this Act;~~
- ~~(c) to ensure the effective operation of a planning purposes notice;~~
- ~~(d) to ensure that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme;~~
- ~~(e) for a purpose specified in a notice to the Minister under **subsection (1)**.~~

(4) If an authorisation is issued to the Commission in relation to an interim planning scheme that applies to land in a regional area, the Commission must prepare and submit to the Minister a draft amendment to the interim planning scheme –

- (a) in accordance with the amendments, if any, specified in the authorisation; and
- (b) for any of the purposes specified in **subsection (3)**.

(5) The Minister, by notice to the Commission, may –

- (a) accept a draft amendment to an interim planning scheme submitted to the Minister under **subsection (4)**; or

- (b) direct the Commission to submit to the Minister under that subsection another draft amendment, as modified in accordance with the notice.
- (6) If the Minister accepts a draft amendment to an interim planning scheme submitted to the Minister under **subsection (4)** –
 - (a) the Commission must amend the interim planning scheme in accordance with the draft amendment; and
 - (b) the amendment must be signed by the chairperson of the Commission or, if he or she is unavailable or unable to sign the amendment, another member of the Commission approved by the Commission to sign the amendment; and
 - (c) the amendment comes into effect –
 - (i) on the date (which may not be a date before the amendment is made) specified in the amendment as the date on which it comes into effect; or
 - (ii) if no such date is specified, 7 days after the amendment is made; and
 - (d) the Commission must cause a copy of the interim planning scheme that has commenced public exhibition to be publicly exhibited, as so amended, at its office for the remainder, if any, of the period in which the planning authority in respect of the scheme is required under

section 30H to publicly exhibit the scheme that commenced public exhibition; and

- (e) the Commission must give notice of the amendment to the interim planning scheme to –
 - (i) the planning authority for the land to which the interim planning scheme relates; and
 - (ii) each other planning authority for an area of land within the regional area; and
 - (iii) those State Service Agencies that the Commission considers to have an interest in the scheme; and
- (f) the planning authority notified under **paragraph (e)(i)** must ensure that notice (which may be a notice in relation to one or more interim planning schemes) of the amendment is published in a newspaper generally circulating in the regional area; and
- (g) the planning authority notified under **paragraph (e)(i)** must ensure that a copy of the interim planning scheme, as amended in accordance with **paragraph (a)** is, as soon as practicable after the notification, for a period of at least 14 days –
 - (i) publicly exhibited at the offices of the planning authority; and

- (ii) made available for viewing at the website address specified under **section 30H(6)(e)** in relation to the interim planning scheme before the scheme was amended under **paragraph (a)**; and
- (h) the interim planning scheme as amended is to be taken to have been exhibited for the purposes of **section 30H** if the requirements of **paragraph (d)**, if applicable, are satisfied; and
- (i) a reference in **section 30I, 30J, 30K, 30L, 30M or 30N** or ~~Subdivision 4~~ to an interim planning scheme is to be taken to be a reference to the interim planning scheme as amended under **paragraph (a)**; and
- (j) any dispensation amendment in force in relation to an interim planning scheme is to be taken to be a dispensation amendment in relation to the interim planning scheme as amended under **paragraph (a)**.

30J. Report to be provided to Commission

- (1) A planning authority that has exhibited an interim planning scheme under **section 30H** must provide to the Commission a report in relation to the scheme.
- (2) The report in relation to an interim planning scheme is to be provided to the Commission not later than –

- (a) ~~4 months~~3 months after the end of the period for which the scheme is publicly exhibited in accordance with **section 30H**; or
 - (b) the end of a further period that the Commission allows.
- (3) The report is to contain a copy of each representation made under **section 30I** in relation to the interim planning scheme, or, if no representations have been made in relation to the interim planning scheme, a statement to that effect.
- (4) The report is also to contain a statement of the planning authority's views as to the merit of each representation made to the authority under **section 30I** in relation to a local provision in the interim planning scheme.
- (5) The statement as to the merit of a representation in relation to a local provision is to include, in particular, the planning authority's views as to –
 - (a) the need for modification of the interim planning scheme in the light of that representation; and
 - (b) the impact of that representation on the scheme as a whole.
- (6) The report is also to contain a statement of the planning authority's views as to the merit of each representation made under **section 30I** in relation to a common provision in the interim planning scheme.
- (7) The statement as to the merit of a representation in relation to a common provision is to include,

in particular, the planning authority's views as to the impact of that representation on the interim planning scheme as a whole, if –

- (a) the relevant planning directive were to be modified to take into account the representation and the scheme were to be modified accordingly; or
 - (b) where the common provision is an optional common provision, the provision were, in accordance with the representation, to be –
 - (i) taken out of the scheme; or
 - (ii) taken out of the scheme and replaced by another optional common provision.
- (8) The report may also contain a statement of the planning authority's views, and recommendations, in respect of the operation of the interim planning scheme.
- (9) If 2 or more planning authorities within a regional area are required under [section 30H\(2\)\(a\)](#) to begin to publicly exhibit interim planning schemes on the same day, the planning authorities must provide –
- (a) one joint statement as to the matters referred to in [subsections \(6\) and \(7\)](#); and
 - (b) one joint statement as to the matters referred to in [subsection \(8\)](#) –

instead of each providing a separate report in relation to those matters.

- (10) A joint statement for the purposes of **subsection (9)** is to include the views of all the planning authorities, whether they are in agreement or not.

~~**30K. Commission to consider scheme and representations and hold hearings**~~

~~**30K. Commission to consider scheme and representations**~~

- ~~(1) The Commission, after receiving a report under **section 30J(1)** in relation to an interim planning scheme –~~
- ~~(a) must hold a hearing in relation to each of the representations provided to the Commission, in accordance with **section 30J(3)**, in the report; and~~
- ~~(b) may consolidate any of those representations and, if it does so, must hold a hearing in relation to the consolidated representations; and~~
- ~~(c) may hold hearings in relation to other matters that it thinks fit.~~
- (2) The Commission, after receiving a report under **section 30J(1)** in relation to an interim planning scheme, must consider the applicable matters in relation to the scheme.
- (3) The applicable matters in relation to an interim planning scheme are –
- (a) the interim planning scheme itself; and

(b) any documents in relation to the scheme that are provided to the Commission under **section 30J**; and

~~(c) matters raised at any hearings in relation to the scheme under this section; and~~

(d) the regional land use strategy, if any, for the regional area in which the scheme is to apply; and

(e) any applicable State policy.

(4) After considering the applicable matters in relation to an interim planning scheme, the Commission may, if it thinks it desirable to do so, issue a notice under **section 30IA(1)** recommending to the Minister that an authorisation be issued in relation to the interim planning scheme.

30L. Commission to report to Minister about common provisions

~~(1) The Commission must prepare a report in relation to the common provisions of an interim planning scheme.~~

~~(2) The Commission is to prepare the report in relation to the common provisions of an interim planning scheme as soon as practicable after complying with **section 30K**.~~

~~(3) The report in relation to the common provisions of an interim planning scheme is to contain—~~

~~(a) a copy of the interim planning scheme; and~~

~~(b) a consolidation of all the statements, in relation to the common provisions in the scheme, that are provided to the Commission under [section 30J\(6\), \(8\) or \(9\)](#).~~

~~(4) The report in relation to the common provisions of an interim planning scheme is also to contain a statement by the Commission in relation to each common provision in respect of which a representation has been made under [section 30I](#).~~

~~(5) The statement under [subsection \(4\)](#) in relation to a common provision is to specify whether the Commission is of the opinion that~~

~~(a) the planning directive containing the provision ought to be modified to take into account the representation made in respect of the provision; and~~

~~(b) the interim planning scheme ought to be modified accordingly.~~

~~(6) The statement under [subsection \(4\)](#) in relation to a common provision is to be prepared having regard to any statement of a local authority provided to the Commission under [section 30J](#) in relation to the common provision.~~

~~(7) The Commission is to provide to the Minister the report prepared under [subsection \(1\)](#) in relation to the common provisions of an interim planning scheme.~~

~~(8) The report in relation to the common provisions of an interim planning scheme is to be provided by the Commission to the Minister within~~

~~(a) 9 months after the Commission receives a report provided under [section 30J](#) from the planning authority in respect of the scheme; or~~

~~(b) a longer period determined by the Minister.~~

~~(9) The Minister, after considering the report provided under [subsection \(7\)](#), may direct the Commission to prepare, as a draft planning directive under [section 10](#), a modification of a planning directive containing a common provision to which the report relates.~~

~~**30M. Modification of interim planning scheme**~~

~~(1) After the Commission has considered under [section 30K](#) the applicable matters in relation to an interim planning scheme or after an authorisation under [section 30IA](#) is issued in relation to an interim planning scheme, the Commission may—~~

~~(a) direct the planning authority in respect of the scheme to prepare a modification, as specified in the direction, to the scheme; or~~

~~(b) itself prepare modifications to the scheme.~~

~~(2) A planning authority that is directed to prepare a modification of an interim planning scheme under [subsection \(1\)\(a\)](#) must, in the period the Commission allows, prepare and submit to the Commission the scheme modified in accordance with the direction.~~

~~(3) A modification of an interim planning scheme may be prepared under this section—~~

~~(a) in respect of a local provision; or~~

~~(b) to correct an error in the interim planning scheme.~~

~~(4) A modification of an interim planning scheme may be prepared under this section in respect of a common provision, but only if—~~

~~(a) the modification is necessary to comply with a planning directive; or~~

~~(ab) the modification is necessary for a purpose specified in [section 30IA\(3\)](#); or~~

~~(b) where the common provision is an optional common provision, the modification consists of—~~

~~(i) taking the provision out of the scheme; or~~

~~(ii) taking the provision out of the scheme and replacing it with another optional common provision.~~

~~(5) The Commission may direct a planning authority to re-exhibit, from a date specified in the direction, a modification of an interim planning scheme that is prepared by the Commission or submitted to the Commission under [subsection \(2\)](#).~~

~~(6) If a direction is given to a planning authority under [subsection \(5\)](#) in relation to a modification of an interim planning scheme, [sections 30H, 30I](#)~~

~~, 30J, 30K and 30L and this section apply to the modification—~~

~~(a) in the same way as those provisions apply to an interim planning scheme; and~~

~~(b) as if the direction were a notice under section 30G(1)(a).~~

~~30N. Commission may make planning schemes~~

~~(1) If the Commission is satisfied that an interim planning scheme, as modified if at all under section 30M, is in order and, if the scheme is required under section 30EA or 30IA to be amended, has been so amended, the Commission, with the approval of the Minister, must make a planning scheme consisting of the interim planning scheme.~~

~~(2) Apart from sections 20 and 21, Divisions 1, 2 and 2A do not apply in relation to the making of a planning scheme under this section.~~

~~(3) The Commission may only make a planning scheme under subsection (1) if—~~

~~(a) the scheme complies with sections 20 and 21; and~~

~~(b) the scheme complies with section 30E as if it were a draft interim planning scheme.~~

~~(4) The Commission, by notice in the Gazette, must declare that a planning scheme has been made under this section.~~

~~(5) A planning scheme made under this section comes into operation —~~

~~(a) on the day on which the notice of the declaration in relation to the scheme is given under ~~subsection (4)~~; or~~

~~(b) on a later day specified in the notice.~~

~~(6) On the day on which a planning scheme made under this section in relation to an area of land comes into operation —~~

~~(a) the interim planning scheme that applied to the area of land immediately before that day is revoked; and~~

~~(b) an application for an ordinary permit that —~~

~~(i) was made under the interim planning scheme; and~~

~~(ii) had not been determined by the date on which the planning scheme comes into operation —~~

~~is to be taken to be an application made, under the planning scheme, on the day on which the planning scheme comes into operation.~~

~~(7) If a planning scheme is made under this section, the Commission, as soon as practicable, must give notice in writing of the making of the scheme to —~~

~~(a) all the planning authorities for land in the regional area in which is situated the land to which the scheme applies; and~~

~~(b) the State Service Agencies that the Minister notified under [section 30G\(1\)\(d\)](#) in respect of the interim planning scheme of which the planning scheme consists.~~

~~(8) If 2 or more planning authorities are required under [section 30H\(2\)\(a\)](#) to begin to exhibit interim planning schemes on the same day, the Commission is to take reasonable steps to ensure that, if the schemes are to come into operation under this section, the schemes also come into operation on the same day, unless it is of the opinion that to take such steps would cause unreasonable delay in relation to one or more of the schemes.~~

30L. Commission may report to Minister about common provisions

~~(1) The Commission, within 2 months after complying with [section 30K](#) in relation to an interim planning scheme, may prepare a report in relation to the common provisions of the interim planning scheme and provide a copy of the report to the Minister.~~

~~(2) The Minister, after receiving a report under [subsection \(1\)](#) in relation to the common provisions of an interim planning scheme, must consider whether the planning directive that contains such common provisions ought to be amended or replaced.~~

30M. Substitution of interim planning scheme

(1) After the Commission has considered under section 30K the applicable matters in relation to an interim planning scheme (in this section referred to as the "existing interim planning scheme") in relation to which hearings have, before the repeal of section 30K(1), been completed, the Commission may –

(a) direct the planning authority in respect of the scheme to prepare under this section an interim planning scheme, as specified in the direction, that is to replace the existing interim planning scheme; or

(b) itself prepare under this section an interim planning scheme that is to replace the existing interim planning scheme.

(2) A planning authority that is directed to prepare a an interim planning scheme under subsection (1)(a) must, in the period the Commission allows, prepare and submit to the Commission the interim planning scheme.

(3) An interim planning prepared under this section may –

(a) consist of a copy of a local provision that is in the existing interim planning scheme; or

(b) contain a copy of a local provision of the existing interim planning scheme, altered –

(i) to correct an error in the provision, as it appeared in the existing planning scheme; or

(ii) so far as is necessary for a purpose specified in [section 30IA\(3\)](#) or a planning purposes notice under [section 30EA](#); or

Client Note 1: we need new (ii) as well

(iii) so that the zoning that applied to the land before the interim planning scheme applied ("**the former zoning**") may become the zoning, required to be included in the interim planning scheme by a planning directive, that most closely corresponds to the former zoning.

Client Note 2: (ii) altered to match s 37 wording

(4) An interim planning scheme prepared under this section –

(a) must contain all the common provisions that are required to be contained in an interim planning scheme so as to comply with a planning directive; or

(b) may contain a copy of a common provision that was contained in the existing planning scheme, altered so far as is necessary for a purpose specified in [section 30IA\(3\)](#) or a planning purposes notice under [section 30EA](#); or

- (c) may contain, or not contain, an optional common provision, whether or not the provision was, or was not, in the existing interim planning scheme.
- (5) If the Commission is satisfied that an interim planning scheme made under this section is in order, the Commission, with the approval of the Minister, must make the interim planning scheme.
- (6) Apart from sections 20 and 21, Divisions 1, 2 and 2A do not apply in relation to the making of an interim planning scheme under this section.
- (7) This subdivision, apart from sections 30E, 30EA and 30IA, does not apply in relation to an interim planning scheme made under this section.
- (8) The Commission, by notice in the *Gazette*, must declare that an interim planning scheme has been made under this section.
- (9) An interim planning scheme made under this section comes into operation –
- (a) on the day on which the notice of the declaration in relation to the scheme is given under subsection (8); or
- (b) on a later day specified in the notice.
- (10) On the day on which a planning scheme made under this section in relation to an area of land comes into operation –
- (a) the existing interim planning scheme that applied to the area of land immediately before that day is revoked; and

(b) an application for an ordinary permit that –

(i) was made under the existing interim planning scheme; and

(ii) had not been determined by the date on which the existing interim planning scheme is revoked –

is to be taken to be an application made, under the interim planning scheme made under this section, on the day on which that scheme comes into operation under this section.

(11) If an interim planning scheme is made under this section, the Commission, as soon as practicable, must give notice in writing of the making of the scheme to –

(a) all the planning authorities for land in the regional area in which is situated the land to which the scheme applies; and

(b) the State Service Agencies that the Minister notified under [section 30G\(1\)\(d\)](#) in respect of the existing interim planning scheme for which the interim planning scheme made under this section is substituted.

300. Amendments under Divisions 2 and 2A of planning schemes made under section 30N

300. Amendments under Divisions 2 and 2A of interim planning schemes

- (1) An amendment may only be made under **Division 2** or **2A** to a local provision of a planning scheme ~~made under section 30N~~, or to insert a local provision into, or remove a local provision from, such a scheme, if the amendment is, as far as is, in the opinion of the Commission, practicable, consistent with the regional land use strategy, if any, for the regional area in which is situated the land to which the scheme applies.
- (2) An amendment, of a planning scheme ~~made under section 30N~~, that would amend a local provision of the scheme or insert a new provision into the scheme may only be made under **Division 2** or **2A** if –
 - (a) the amendment is not such that the local provision as amended or inserted would be directly or indirectly inconsistent with the common provisions, except in accordance with **section 30EA**, or an overriding local provision; and
 - (b) the amendment does not revoke or amend an overriding local provision; and
 - (c) the amendment is not to the effect that a conflicting local provision would, after the amendment, be contained in the scheme.

- (3) Subject to **section 30EA**, an amendment may be made to a local provision if –
- (a) the amendment is to the effect that a common provision is not to apply to an area of land; and
 - (b) a planning directive allows the planning scheme to specify that some or all of the common provisions are not to apply to such an area of land.
- (4) An amendment may not be made under **Division 2** or **2A** to a common provision of a planning scheme ~~made under **section 30N**~~ unless the common provision, as so amended, would not be inconsistent with a planning directive that requires or permits the provision to be contained in the planning scheme.
- (5) Subject to **section 30EA**, an amendment of a planning scheme ~~made under **section 30N**~~ may be made under **Division 2** or **2A** if the amendment consists of –
- (a) taking an optional common provision out of the scheme; or
 - (b) taking the provision out of the scheme and replacing it with another optional common provision.

~~Subdivision 4 – Dispensations~~

~~30P. Interpretation of Subdivision 4~~

~~In this Subdivision –~~

"relevant exhibition documents", in relation to an application under **section 30Q(1)**; means—

- ~~(a) the application; and~~
- ~~(b) any documentation that accompanied the application; and~~
- ~~(c) any additional information provided in relation to the application, pursuant to a request under **section 30Q(6)**; and~~
- ~~(d) if the application includes a request under **section 30Q(3)**—
 - ~~(i) a copy of the application under **section 30R(1)** to which the request relates; and~~
 - ~~(ii) any documentation that accompanied the application under **section 30R(1)**; and~~
 - ~~(iii) any additional information that accompanied the application under **section 30R(1)** pursuant to a request under **section 30R(6)**; and~~
 - ~~(iv) a copy of a permit granted under **section 30T**, or of a decision under **section 30T** to refuse to grant a permit, pursuant to~~~~

~~the application under
section 30R(1).~~

~~30Q. Applications for dispensations~~

- ~~(1) A person may, in a form approved by the Commission, apply to a planning authority for a dispensation from a local provision of an interim planning scheme administered by the planning authority.~~
- ~~(2) If the person who makes an application under subsection (1) is not the owner of the land to which the application relates, the application must be—~~
 - ~~(a) signed by the owner or owners of the land; and~~
 - ~~(b) accompanied by the written permission of the owner or owners for the application to be made.~~
- ~~(3) A person who makes an application under subsection (1) for a dispensation from a local provision of an interim planning scheme may request the planning authority to consider at the same time an application under section 30R(1) by the person for a permit that could not be granted under the scheme if the dispensation were not granted.~~
- ~~(4) A planning authority to which an application under subsection (1) is made may, by notice to the applicant, modify the application.~~

~~(5) An application under **subsection (1)** that is modified under **subsection (4)** is to be taken to be the application under **subsection (1)**.~~

~~(6) A planning authority to which an application under **subsection (1)** is made may, within 28 days, by notice in writing served on the applicant, request the applicant to provide the planning authority with additional information in relation to the application before it considers the application.~~

~~(7) If a planning authority requests under **subsection (6)** additional information to be provided in relation to an application under **subsection (1)**—~~

~~(a) the period referred to in **section 30S(1)** does not run in relation to the application while the request for information has not been answered to the satisfaction of the planning authority; and~~

~~(b) the period referred to in **section 30T(3)** does not, while the request for information has not been answered to the satisfaction of the planning authority, run in relation to an application under **section 30R(1)** to which relates a request under **subsection (3)** that is included in the application under **subsection (1)**.~~

~~**30R. Application for permit that relates to application for dispensation**~~

~~(1) A person may apply to a planning authority for a permit which could not be granted under an interim planning scheme unless a dispensation~~

~~from a local provision of the interim planning scheme were granted.~~

~~(2) An application under **subsection (1)** by a person is to accompany an application under **section 30Q(1)** by the person.~~

~~(3) If an undertaking is in respect of—~~

~~(a) a combination of uses; or~~

~~(b) a combination of developments; or~~

~~(c) a combination of one or more uses and one or more developments—~~

~~and under an interim planning scheme any of those uses or developments requires a permit to be granted in respect of them, a person, in one application, may apply to the planning authority for a permit with respect to that undertaking.~~

~~(4) **Sections 52** and **52A** apply in relation to an application under **subsection (1)**.~~

~~(5) **Sections 51, 53, 54, 55, 56, 56A, 57, 57A** and **58** do not apply in relation to an application under **subsection (1)**.~~

~~(6) A planning authority to which an application under **subsection (1)** is made may, within 28 days, by notice in writing served on the applicant, request the applicant to provide the planning authority with additional information in relation to the application before it considers the application.~~

~~(7) If a planning authority requests under **subsection (6)** additional information to be~~

~~provided in relation to an application under subsection (1) —~~

- ~~————— (a) the period referred to in section 30T(3) does not run in relation to the application under subsection (1) while the request for information has not been answered to the satisfaction of the planning authority; and~~
- ~~————— (b) the period referred to in section 30S(1) does not run in relation to the application under section 30Q(1) to which the application under subsection (1) relates, while the request for information has not been answered to the satisfaction of the planning authority.~~

~~————— **30S. Planning authority to decide whether to reject or exhibit application for dispensation**~~

- ~~————— (1) Within 42 days of receiving an application under section 30Q(1) a planning authority must decide to —~~
 - ~~————— (a) reject the application; or~~
 - ~~————— (b) exhibit the application.~~
- ~~————— (2) A planning authority may only decide under subsection (1) to exhibit an application under section 30Q(1) in relation to an area of land if it is satisfied that a dispensation granted in accordance with the application —~~
 - ~~————— (a) would not conflict with a common provision in the interim planning scheme that applies to the area of land; and~~

- ~~(b) would further the objectives set out in Schedule 1; and~~
 - ~~(c) would be in accordance with all State policies; and~~
 - ~~(d) would be in accordance with the regional land use strategy for the regional area in which the land is situated; and~~
 - ~~(e) is consistent with the safety requirements set out in the standards prescribed under the *Gas Pipelines Act 2000*; and~~
 - ~~(f) as far as practicable, will not conflict with a use, or development, in respect of land next to the land to which the application relates, that is a use or development permissible under the relevant interim planning scheme.~~
- ~~(3) If a planning authority decides under *subsection (1)* to reject an application under *section 30Q(1)* that includes a request under *section 30Q(3)* in relation to an application under *section 30R(1)* for a permit, the planning authority is to be taken to have refused the permit.~~
- ~~(4) A planning authority that decides under *subsection (1)* to reject an application under *section 30Q(1)* must give notice in writing to the following persons of its decision, and, if *subsection (3)* applies, notice that the planning authority has refused to grant the permit:~~
- ~~(a) the applicant;~~

~~(b) if the applicant is not the owner of the land to which the application relates, the owner or owners of the land;~~

~~(c) the Commission.~~

~~**30T. Planning authority that agrees to exhibition is to consider permit application first**~~

~~(1) This section applies to an application to a planning authority under **section 30R(1)** if the planning authority has decided under **section 30S** to exhibit an application under **section 30Q(1)** that includes under **section 30Q(3)** a request in relation to the application under **section 30R(1)**.~~

~~(2) The planning authority must decide under **subsection (3)** an application under **section 30R(1)** to which this section applies, by reference to the provisions of the interim planning scheme, as in force at the date of its decision, that applies in relation to the land to which the application relates, as if the application under **section 30Q(1)** to which the application under **section 30R(1)** relates had been granted.~~

~~(3) The planning authority, within 42 days after receiving an application under **section 30R(1)** to which this section applies, must decide the application by—~~

~~(a) granting a permit on the conditions or restrictions, if any, it thinks fit and specifies on the permit; or~~

~~(b) refusing to grant a permit.~~

~~(4) In deciding under **subsection (3)** an application under **section 30R(1)** for a permit, a planning authority—~~

~~(a) must seek to further the objectives set out in **Schedule 1**; and~~

~~(b) must take into consideration each of the prescribed matters that are relevant to the use or development to which the application relates.~~

~~**30U. Exhibition of applications for dispensations**~~

~~(1) If the planning authority decides under **section 30S(1)** to exhibit an application under **section 30Q(1)** that does not include a request under **section 30Q(3)**, the planning authority must—~~

~~(a) as soon as practicable, exhibit in accordance with **subsection (3)** the relevant exhibition documents in relation to the application under **section 30Q(1)**; and~~

~~(b) within 7 days, notify the Commission that the planning authority is to exhibit in accordance with **subsection (3)** the relevant exhibition documents; and~~

~~(c) within 7 days, provide to the Commission the relevant exhibition documents.~~

~~(2) If a planning authority decides under **section 30T(3)** an application under **section 30R(1)** to which relates a request under~~

~~section 30Q(3)~~ that is included in an application under ~~section 30Q(1)~~, the planning authority must—

~~(a) as soon as practicable, exhibit in accordance with ~~subsection (3)~~ the relevant exhibition documents in relation to the application under ~~section 30Q(1)~~; and~~

~~(b) within 7 days, notify the Commission that the planning authority is to exhibit in accordance with ~~subsection (3)~~ the relevant exhibition documents; and~~

~~(c) within 7 days, provide to the Commission the relevant exhibition documents.~~

~~(3) If the planning authority is required under ~~subsection (1)~~ or ~~(2)~~ to exhibit in accordance with this subsection the relevant exhibition documents in relation to an application under ~~section 30Q(1)~~, the planning authority must ensure that—~~

~~(a) the relevant exhibition documents are, for a period of 3 weeks, publicly exhibited at the office of the planning authority at which the interim planning scheme to which the application relates is publicly exhibited in accordance with ~~section 30H~~; and~~

~~(b) the relevant exhibition documents are, for a period of 3 weeks, made available for viewing at the website at which the interim planning scheme is made~~

available for viewing in accordance with ~~section 30H~~; and

~~(c) a notice in relation to the relevant exhibition documents is published in a daily newspaper circulating generally in the area to which applies the interim planning scheme to which the application relates.~~

~~(4) The notice under ~~subsection (3)(c)~~ in relation to the relevant exhibition documents in relation to an application under ~~section 30Q(1)~~ is to—~~

~~(a) specify that an application under ~~section 30Q(1)~~, and an application under ~~section 30R(1)~~, if any, have been made; and~~

~~(b) indicate the area of land to which the application or applications relate; and~~

~~(c) specify that the relevant exhibition documents are, or will be, on public display at the address of the offices of the planning authority specified in the notice; and~~

~~(d) specify that copies of the relevant exhibition documents are available for viewing at a website address specified in the notice; and~~

~~(e) specify that representations in relation to the relevant exhibition documents may be made to the planning authority—~~

~~(i) at the address of the planning authority specified in the notice; and~~

~~(ii) at any time within 3 weeks from the date, specified in the notice, on which the public exhibition of those documents is to begin.~~

~~(5) If a period, in relation to an application, referred to in this section includes any days on which the office of a planning authority is closed during normal business hours in that part of the State to which applies the interim planning scheme to which the application relates, the period is extended by the number of those days.~~

~~**30V. Representations and reports in relation to applications for dispensations and permits**~~

~~(1) A person may make to a planning authority a representation in relation to the relevant exhibition documents in relation to an application under **section 30Q(1)** that are exhibited at the offices of the authority in accordance with **section 30U**.~~

~~(2) A representation may only be made in relation to the relevant exhibition documents within the period that is, in accordance with **section 30U(4)(e)(ii)**, specified in the notice under **section 30U(3)(c)** in relation to the documents as the period in which representations may be made.~~

~~(3) A planning authority that has exhibited the relevant exhibition documents in relation to an application under **section 30Q(1)** must provide to the Commission a report in relation to the documents.~~

- ~~(4) The report in relation to the relevant exhibition documents in relation to an application under [section 30Q\(1\)](#) is to be provided to the Commission not later than 35 days after—~~
- ~~(a) the end of the period for which the documents have been publicly exhibited in accordance with [section 30U](#); or~~
 - ~~(b) the end of a further period that the Commission allows.~~
- ~~(5) The report in relation to the relevant exhibition documents in relation to an application under [section 30Q\(1\)](#) is to contain—~~
- ~~(a) a copy of each representation made in relation to the documents; and~~
 - ~~(b) a statement as to the planning authority's opinion as to the merit of each representation, including, in particular, if the application included a request under [section 30Q\(3\)](#) in relation to an application under [section 30R\(1\)](#), its views as to the need for modification of a decision by the planning authority in relation to the application under [section 30R\(1\)](#); and~~
 - ~~(c) a statement as to the merit of the relevant exhibition documents and as to whether the planning authority recommends any modification of any permit included in those documents or any condition on such a permit.~~
- ~~(6) If an application under [section 30Q\(1\)](#) includes a request under [section 30Q\(3\)](#) in relation to an~~

~~application under **section 30R(1)** and the application under **section 30R(1)** has been referred to the Board of the Environment Protection Authority under **section 24** or **section 25** of the *Environmental Management and Pollution Control Act 1994*~~

- ~~(a) the planning authority must, not later than 7 days after the expiration of the exhibition period referred to in **section 30U**, forward copies of all representations received under **subsection (1)** to the Board of the Environment Protection Authority; and~~
- ~~(b) the Board of the Environment Protection Authority must, within 28 days of receiving the representations, provide a report to the Commission containing~~
 - ~~(i) the Board's opinion as to the merit of each representation; and~~
 - ~~(ii) the Board's opinion as to the need for modification of a decision by the planning authority in relation to the application under **section 30R(1)**; and~~
 - ~~(iii) the Board's recommendations, if any, in relation to the planning authority's decision.~~

~~**30W.** Grant of dispensations~~

- ~~(1) The Commission, after receiving a report under **section 30V** in relation to the relevant exhibition~~

~~documents in relation to an application under section 30Q(1) —~~

- ~~_____ (a) must hold a hearing in relation to each of the representations, if any, contained in the report; and~~
- ~~_____ (b) may consolidate any of those representations and, if it does so, must hold a hearing in relation to the consolidated representations; and~~
- ~~_____ (c) may hold hearings in relation to other matters as it thinks fit; and~~
- ~~_____ (d) must consider the applicable matters in relation to the relevant exhibition documents.~~
- ~~_____ (2) The applicable matters in relation to the relevant exhibition documents in relation to an application under section 30Q(1) are —~~
 - ~~_____ (a) the interim planning scheme to which the application relates; and~~
 - ~~_____ (b) the report provided under section 30V in relation to the documents; and~~
 - ~~_____ (c) matters raised at any hearings under subsection (1) in relation to the documents; and~~
 - ~~_____ (d) the regional land use strategy, if any, for the regional area in which the interim planning scheme is to apply; and~~
 - ~~_____ (e) any applicable State policy.~~

- ~~(3) The Commission, after considering an application made under **section 30Q(1)** and complying with **subsection (1)**, must decide—~~
- ~~(a) to grant the dispensation sought in the application, with or without the modifications the Commission thinks fit; or~~
 - ~~(b) to refuse to grant the dispensation sought in the application.~~
- ~~(4) The Commission must decide under **subsection (3)** an application under **section 30Q(1)** within 3 months after receiving the report under **section 30V** in relation to the application or a later date, if any, approved by the Minister.~~
- ~~(5) The Commission may only grant a dispensation if it is satisfied that the dispensation—~~
- ~~(a) would not conflict with a common provision in the interim planning scheme that applies to the area of land; and~~
 - ~~(b) would further the objectives set out in **Schedule 1**; and~~
 - ~~(c) would be in accordance with all State policies; and~~
 - ~~(d) would be in accordance with the regional land use strategy for the regional area in which the land is situated; and~~
 - ~~(e) is consistent with the safety requirements set out in the standards prescribed under the *Gas Pipelines Act 2000*; and~~

~~(f) as far as practicable, will not conflict with a use, or development, in respect of land next to the land to which the application relates, that is a use or development permissible under the relevant interim planning scheme.~~

~~(6) A dispensation may be granted on the conditions specified in the dispensation.~~

~~(7) A person to whom a dispensation has been granted must comply with, and not contravene, the conditions, if any, specified in the dispensation.~~

~~Penalty: Fine not exceeding 100 penalty units.~~

~~(8) The Commission is to give notice in writing to the following persons of its decision under **subsection (3)** in relation to an application under **section 30Q(1)**:~~

~~(a) the applicant;~~

~~(b) if the applicant is not the owner of the land to which the application relates, the owner or owners of the land;~~

~~(c) the planning authority in respect of the land to which the application relates.~~

~~(9) If a person is granted a dispensation in relation to a local provision of an interim planning scheme—~~

~~(a) the local provision does not apply, to the extent of any inconsistency with the dispensation, to the land to which the dispensation relates; and~~

- ~~(b) the dispensation applies to the land as if it were a local provision of the interim planning scheme; and~~
- ~~(c) when the interim planning scheme, as modified if at all under **section 30M**, is made a planning scheme under **section 30N**—
 - ~~(i) a provision of the planning scheme that is inconsistent with the dispensation does not apply in relation to the land to which the dispensation relates; and~~
 - ~~(ii) the dispensation applies to the land as if it were a local provision of the planning scheme.~~~~

~~**30X. Alteration of certain planning schemes and revocation of dispensations**~~

- ~~(1) An owner of land to which a dispensation relates may apply to the Commission for a revocation of the dispensation.~~
- ~~(2) The Commission, after receiving an application under **subsection (1)** in relation to a dispensation, may revoke or refuse to revoke the dispensation.~~
- ~~(3) If the Commission has granted a dispensation in relation to an area of land to which an interim planning scheme relates—
 - ~~(a) the Commission may direct under **section 30M** the planning authority in relation to the land to prepare a modification to the scheme so that the~~~~

~~planning scheme consisting of the interim planning scheme, as so modified, made in relation to the land under **section 30N** will be, in relation to the land, to the same effect as the dispensation; and~~

~~(b) after the planning scheme, consisting of the interim planning scheme, as so modified, if at all under **section 30M**, is made under **section 30N**, the Commission may revoke the dispensation by notice in writing to the owner of the land to which the dispensation relates.~~

~~(4) If the Commission has granted a dispensation in relation to an area of land to which a planning scheme made under **section 30N** relates—~~

~~(a) the Commission, for the purpose of ensuring a use or development to which a permit granted or confirmed under **section 30Y(1)** relates is consistent with the planning scheme, may modify the planning scheme; and~~

~~(b) may revoke the dispensation by notice in writing to the owner of the land to which the dispensation relates.~~

~~(5) The Commission may, under **subsection (3)** or **(4)**, revoke a dispensation only if—~~

~~(a) the Commission has notified the owner of the land to which the dispensation relates of the Commission's intention—~~

~~(i) to modify a planning scheme or to issue a direction to modify an interim planning scheme; and~~

~~(ii) to revoke the dispensation; and~~

~~(b) has, in the notice under **paragraph (a)**, invited the owner of the land to make representations, within a period specified in the notice, to the Commission as to why the Commission ought not to carry out its intentions; and~~

~~(c) the Commission has considered any representations made to it by the owner of the land within the period specified in the notice.~~

~~(6) If the Commission modifies a planning scheme under **subsection (4)**—~~

~~(a) **Division 2** of **Part 3** does not apply in respect of the modification; and~~

~~(b) the modification takes effect on the day specified by the Commission; and~~

~~(c) the Commission must give notice, as prescribed, of the modification.~~

~~**30Y. Decision in relation to permit application accompanying dispensation application**~~

~~(1) If an application under **section 30Q(1)** includes a request under **section 30Q(3)** in relation to an application under **section 30R(1)**, the Commission must, at the same time as it decides under **section 30W(3)** the application under **section 30Q(1)**—~~

- ~~(a) where the Commission decides to reject the application under **section 30Q(1)**, refuse to grant a permit in relation to the application under **section 30R(1)**; or~~
- ~~(b) confirm the decision of the planning authority in relation to the application under **section 30R(1)**; or~~
- ~~(c) where the Commission disagrees with the decision of the planning authority, in relation to the application under **section 30R(1)**, to grant a permit —
 - ~~(i) refuse the permit; or~~
 - ~~(ii) modify or delete conditions or restrictions attached to the permit or add new conditions or restrictions to the permit; or~~~~
- ~~(d) where the the Commission disagrees with the decision of the planning authority, in relation to the application under **section 30R(1)**, to refuse to grant the permit, grant a permit subject to the conditions or restrictions that the Commission thinks fit.~~
- ~~(2) If an application under **section 30Q(1)** includes a request under **section 30Q(3)** in relation to an application under **section 30R(1)** and the Commission makes under **subsection (1)** a decision, in relation to the application under **section 30R(1)**, that confirms the grant of a permit by a planning authority, or results in a permit being granted, the permit takes effect on whichever of the following dates occurs last:~~

~~(a) the date on which the decision is made under **subsection (1)**;~~

~~(b) a later date, specified in the decision made under **subsection (1)**;~~

~~(c) if any approvals under this or any other Act are required for the proposed use or development to which the permit relates, the date on which all those approvals are granted;~~

~~(d) if an agreement is, under the permit, required to be entered into, the date on which the agreement is executed.~~

~~(3) If the use or development in respect of which a permit is granted under **subsection (1)**, or in respect of which the grant of a permit is confirmed under **subsection (1)**, is not substantially commenced —~~

~~(a) within 2 years from the date on which the permit was granted or confirmed; or~~

~~(b) within a further period of 2 years, if the planning authority has granted an extension under **subsection (4)** —~~

the permit lapses.

~~(4) If the use or development —~~

~~(a) in respect of which a permit is granted under **subsection (1)**; or~~

~~(b) in respect of which the grant of a permit is confirmed under **subsection (1)** —~~

is not, or is unlikely to be, substantially commenced before the permit would otherwise

~~lapse under **subsection (3)(a)**, the planning authority may grant, once only, an extension of the period in which the use or development must be substantially commenced.~~

~~(5) If~~

~~(a) an application under **section 30Q(1)** includes a request under **section 30Q(3)** to consider an application under **section 30R(1)** for a permit; and~~

~~(b) the planning authority granted the permit; and~~

~~(c) the Commission makes a decision under **subsection (1)** to refuse the permit~~

~~the permit is cancelled by virtue of this section.~~

~~(6) The Commission is to give notice in writing to the following persons of its decision under **subsection (1)** in relation to an application under **section 30R(1)**:~~

~~(a) the applicant;~~

~~(b) if the applicant is not the owner of the land to which the application relates, the owner or owners of the land;~~

~~(c) the planning authority in respect of the land to which the application relates.~~

~~**30Z. Correction of mistakes in permits referred to in section 30Y and minor amendments**~~

~~A planning authority may correct a permit referred to in **section 30Y** if the permit contains—~~

- ~~————— (a) a clerical mistake or an accidental omission; or~~
- ~~————— (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the permit.~~

~~**30ZA. Minor amendments of permits referred to in section 30Y**~~

- ~~————— (1) The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit referred to in **section 30Y** which applies to that land.~~
- ~~————— (2) The planning authority may amend the permit if it is satisfied that the amendment—~~
 - ~~————— (a) does not change the effect of any decision of the Commission under **section 30Y**; and~~
 - ~~————— (b) will not cause an increase in detriment to any person; and~~
 - ~~————— (c) does not change the use or development for which the permit was issued other than by making a minor change to the description of the use or development.~~

~~(3) If the planning authority amends a permit referred to in **section 30Y**, it must, by notice in writing served on—~~

~~(a) the person who requested the permit to be amended; and~~

~~(b) if that person is not the owner of the land, the owner; and~~

~~(c) the owner or occupier of any property which adjoins the land; and~~

~~(d) any person who made a representation under **section 30V(1)** in relation to the application for the permit—~~

~~notify those persons of the amendments made to the permit.~~

~~(4) If the planning authority amends a permit referred to in **section 30Y** containing a condition or restriction which the Board of the Environment Protection Authority has required under **section 25(5) of the *Environmental Management and Pollution Control Act 1994***, the planning authority must, by notice in writing served on the Board, notify it of the amendments made to the permit.~~

~~(5) If the planning authority amends a permit in respect of which the Commission has modified, deleted or added conditions or restrictions under **section 30Y(1)(c)(ii)**, the planning authority must, by notice in writing served on the Commission, notify the Commission of the amendments made to the permit.~~

~~(6) **Section 56A** applies to an amendment of a permit referred to in **section 30Y**.~~

~~**30ZB. Dispensation applications that are not decided before planning scheme made**~~

~~(1) If a planning authority has not decided under **section 30S(1)** an application under **section 30Q(1)** for a dispensation from an interim planning scheme before a planning scheme, consisting of the interim planning scheme, or the interim planning scheme as modified under **section 30M**, is made under **section 30N**, the application lapses.~~

~~(2) If an application under **section 30Q(1)** for a dispensation from an interim planning scheme is made and the Commission has not decided the application under **section 30W(3)** before a planning scheme, consisting of the interim planning scheme, or the interim planning scheme as modified under **section 30M**, is made under **section 30N**—~~

~~(a) the Commission is to continue to determine the application; and~~

~~(b) if the application includes a request under **section 30Q(3)** in relation to an application under **section 30R(1)**, the Commission is to make its decision under **section 30Y** in relation to the application under **section 30R**—~~

~~as if the interim planning scheme continued to apply in relation to the land rather than the planning scheme made under **section 30N**.~~

Division 2 – Amendment of planning scheme

31. Interpretation: Division 2

In this Division, "**amend**", in relation to a planning scheme, includes –

- (a) revoke, in whole or in part, the planning scheme; and
- (b) alter the area covered by the planning scheme.

32. Requirements for preparation of amendments

(1) ~~An amendment of a planning scheme—A draft amendment of a planning scheme, and an amendment of a planning scheme, as far as is, in the opinion of the planning authority or the Commission, respectively, practicable –~~

- ~~(a) must seek to further the objectives set out in *Schedule 1*; and~~
- ~~(b) must be prepared in accordance with State Policies made under *section 11 of the State Policies and Projects Act 1993*; and~~
- ~~(c) may make any provision which relates to the use, development, protection or conservation of any land; and~~
- ~~(d) must have regard to the safety requirements set out in the standards prescribed under the *Gas Pipelines Act 2000*; and~~

(e) must, ~~as far as practicable,~~ avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area; and

(ea) must not conflict with the requirements of section 30O; and

(f) must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.

(2) The provisions of **section 20(2), (3), (4), (5), (6), (7), (8) and (9)** apply to the amendment of a planning scheme in the same manner as they apply to planning schemes.

33. Request for amendment of planning scheme

(1) A person may request a planning authority to amend a planning scheme administered by it.

(2) A request is to be in a form approved by ~~the planning authority~~ the Commission.

(2A) If a request under **subsection (1)** is in respect of one parcel or several parcels of land covered by the planning scheme and is requested by a person who is not the owner of the land to which the proposed amendment applies, the request must be –

(a) signed by the owner or owners of the land; or

- (b) accompanied by the written permission of the owner or owners to the making of the request.
- (2B) Before making a decision as to whether or not to initiate an amendment of the planning scheme, the planning authority must consider –
 - (a) whether the requested amendment is consistent with the requirements of **section 32**; and
 - (b) any advice referred to in **section 65 of the *Local Government Act 1993*** received by it.
- (3) A planning authority must, within 42 days of the receipt of a request, make a decision as to whether or not to initiate an amendment of the planning scheme and serve on the person who made the request notice of its decision within 7 days of making the decision.

(3AA) If the planning authority decides under **subsection (3)** to initiate an amendment of a planning scheme after receipt of a request from a person under **subsection (1)**, it must –

(a) initiate the amendment under **section 34**;
and

(b) certify the amendment under **section 35** –

within 42 days of receiving the request or such longer time as is agreed by the planning authority and the person.

- (3A)** Where a planning authority decides not to initiate an amendment of the planning scheme, the person who requested the amendment may,

within 14 days of being notified of that decision, request the Commission to review the process by which the planning authority reached its decision.

- (3B) Where the Commission has been requested to review the process by which the planning authority reached its decision, the Commission may request the planning authority to provide it with any material relevant to that process.
- (3C) A planning authority must provide the material requested by the Commission within 7 days of receiving that request.

Penalty: Fine not exceeding 100 penalty units.

- (3D) The Commission must, not later than 28 days after receiving the material requested by it or such longer period as the Minister may allow –
 - (a) direct the planning authority to reconsider the amendment; or
 - (b) confirm that in reaching its decision the planning authority took into account the matters specified in **subsection (2B)**.
- (3E) The Commission must, within 7 days of making its decision, notify the planning authority and the person who requested the review of its decision.
- (4) Where a planning authority decides not to initiate an amendment of the planning scheme, a person may not request the authority to initiate an amendment which is substantially the same as the first-mentioned amendment within a period of 2 years from the date on which the planning authority made its decision.

(5) If –

(a) an interim planning scheme has been declared under [section 30F](#) or a planning scheme has been made under [section 30M](#); and

(b) a local provision of the scheme consists of a change to the zoning of an area of land from the zoning that applied in relation to the area of land before the scheme was declared or made; and

(c) an owner, or occupier, of all or part of the area of land made a representation under [section 30I](#) in respect of the change of zoning; and

(d) the planning authority receives a request under [section 33\(1\)](#) from the owner or occupier, respectively, to amend the zoning of the area of land –

the planning authority must give to the Commission, within 2 weeks after receiving the request, a notice in relation to the request.

(6) A notice under [subsection \(5\)](#) in relation to a request from an owner or occupier must specify –

(a) the area of land to which the notice relates; and

(b) the zoning of the area of land under the planning scheme that applies to the area of land; and

(c) the zoning of the area of land to the zoning that applied in relation to the area

of land before an interim planning scheme in relation to the area of land was declared.

-
- (7) The Commission, within 30 days after receiving from a planning authority a notice under subsection (5) in relation to an area of land, must decide whether to seek the approval of the Minister under section 34(2) to the giving under that section of a written direction to a planning authority in relation to the amendment.

33A. Additional information

-
- (1) A planning authority may, within the period of 28 days from the day on which it receives a request under section 33, by notice in writing served on the person, require the person to provide it with additional information before it considers the application.
-
- (2) If the planning authority requires a person to provide it with additional information under subsection (1), the period referred to in section 33(3) and (3AA), whichever is applicable, does not run while the request for information has not been answered to the satisfaction of the planning authority.

33B. Review of request for additional information

-
- (1) Where a planning authority requests additional information under section 33A(1), the person may, within 14 days of receiving that request, request the Commission to review the process by

which the planning authority reached its decision to make the request.

(2) Where the Commission has been requested to review the process by which the planning authority reached its decision, the Commission may request the planning authority to provide it with any material relevant to that process.

(3) A planning authority must provide the material requested by the Commission within 7 days of receiving that request.

Penalty: Fine not exceeding 100 penalty units.

(4) The Commission, not later than 28 days after receiving the material requested by it or such longer period as the Minister may allow, must –

(a) direct the planning authority to reconsider the decision to request the information; or

(b) determine that the request was appropriate.

(5) The Commission, within 7 days of making its decision, must notify the planning authority and the person who requested the review of its decision.

34. Amendment of planning scheme

(1) A planning authority may –

(a) in response to a request under **section 33**;
or

(b) of its own motion –

initiate an amendment of a planning scheme administered by it.

(2) The Commission may, with the approval of the Minister, give a written direction to a planning authority to initiate an amendment of a planning scheme administered by the authority and the authority must initiate the amendment of the planning scheme in accordance with the direction within 10 weeks after receiving the direction or such longer period as the Commission allows.

(3) A planning authority may at any time determine to withdraw an amendment, of a planning scheme administered by it, that it has initiated of its own motion.

(4) The withdrawal of a draft planning scheme comes into effect 7 days after the date on which the planning authority determines to withdraw the amendment.

(5) The planning authority is to –

(a) notify the Commission of the withdrawal of the amendment; and

(b) give notice, in a daily newspaper circulating generally in the area, that the amendment has been withdrawn and of the date on which the withdrawal takes effect.

35. Certification of draft amendments by planning authorities

- (1) After preparing a draft amendment of a planning scheme, the planning authority must determine whether the draft amendment meets the requirements specified in **section 32** and –
 - (a) if satisfied that it does, certify the draft amendment as so meeting those requirements; or
 - (b) if not so satisfied, proceed to modify the draft amendment until it does meet those requirements and then certify the modified draft amendment as so meeting those requirements.
- (2) For the purposes of **subsection (1)**, the planning authority must certify the draft amendment by instrument in writing affixed with the common seal of the planning authority.

(3) [This component has been omitted.]

- (4) Within 7 days after certifying under **subsection (1)** that the draft amendment of a planning scheme meets the requirements specified in **section 32**, the planning authority must give a copy of the draft amendment and the instrument containing that certification to the Commission.

36. [This component has been omitted.]

37. Power of Commission to dispense with certain requirements

(1) Where, on the submission to the Commission of a draft amendment of a planning scheme, the Commission is satisfied that –

(a) the draft amendment is for the purpose of –

(i) the correction of any error in the planning scheme; or

(ii) the removal of any anomaly in the planning scheme; or

(iii) clarifying or simplifying the planning scheme; or

(iv) removing any inconsistency between the planning scheme and any Act; or

(v) making procedural changes to the planning scheme; or

(vi) amending the planning scheme to bring it into conformity with the model planning scheme framework; or

(via) the removal or amendment of any local provision of the scheme that is, under **section 30EA**, inconsistent with another provision; or

(vib) ensuring the effective operation of a planning purposes notice; or

(vic) ensuring that the local provisions of the scheme are consistent with one another and any planning directive, to the extent that the directive applies in relation to the scheme; or

(vid) furthering a purpose specified in a notice to the Minister under section 30IA(1); or

(vie) enabling an alteration of the zoning of land to which an interim planning scheme applies, or has applied, so that the zoning that applied to the land before the interim planning scheme applied ("**the former zoning**") may become the zoning, required to be included in the interim planning scheme by a planning directive, that most closely corresponds to the former zoning;

(vii) for any other prescribed reason;
and

(b) the public interest will not be prejudiced –

the Commission may, by notice in writing given to the planning authority, dispense with the requirements of sections 38, 39, 40 and 41 in relation to the draft amendment and give its approval to the draft amendment in accordance with section 42.

(2) Before approving the draft amendment in accordance with section 42, the Commission

may modify the amendment to correct any errors or remove any anomalies.

38. Public exhibition of draft amendment

- (1) After giving to the Commission a copy of a draft amendment of a planning scheme and the instrument certifying that the amendment meets the requirements specified in **section 32**, the planning authority must –
 - (a) cause a copy of the draft amendment to be placed on public exhibition for a period, being not less than 3 weeks and not more than 2 months, determined by the planning authority of 28 days or a longer period agreed to by the planning authority and the Commission; and
 - (b) advertise, as prescribed, the exhibition of the draft amendment.
- (2) If the period referred to in **subsection (1)(a)** includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the planning scheme to be amended applies, that period is to be extended by the number of those days.

39. Representations in respect of draft amendments

- (1) Where a draft amendment of a planning scheme is placed on public exhibition by a planning authority in accordance with **section 38**, representations in relation to that draft amendment may be submitted to the authority by

any person before the expiration of the exhibition period referred to in **section 38(1)(a)**.

- (2) The planning authority must, not later than the expiration of 35 days after the exhibition period referred to in **section 38(1)(a)** or such further period as the Commission allows, forward to the Commission a report comprising—
 - (a) a copy of each representation received by the authority in relation to the draft amendment or, where it has received no such representation, a statement to that effect; and
 - (b) a statement of its opinion as to the merit of each such representation, including, in particular, its views as to—
 - (i) the need for modification of the draft amendment in the light of that representation; and
 - (ii) the impact of that representation on the draft amendment as a whole; and
 - (c) such recommendations in relation to the draft amendment as the authority considers necessary.

40. Consideration by Commission of draft amendment and relevant representations

- (1) As soon as practicable after receipt by it of a report under **section 39(2)**, the Commission must consider the draft amendment and the

representations, statements and recommendations contained in the report.

- (2) For the purposes of its consideration under **subsection (1)**, the Commission must hold a hearing in relation to each representation contained in the report.
- (2A) Despite **subsection (2)**, the Commission may dispense with the holding of a hearing in relation to a representation contained in the report if, after examining each representation—
 - (a) the Commission is satisfied that all the representations received by the planning authority are in support of the draft amendment; or
 - (b) the Commission has consulted with a person who made a representation and that person has advised the Commission in writing that he or she does not wish to attend a hearing.
- (2B) The Commission must, within 14 days of making a decision to dispense with the holding of a hearing under **subsection (2A)**, give notice in writing to each person who made a representation under **section 39(1)** of its decision to dispense with the holding of a hearing.
- (2C) The Commission must hold a hearing in respect of a representation if a person who has been notified under **subsection (2B)** requests the Commission in writing, within 7 days after the date of that notice, that a hearing be held.

- (3) The Commission may consolidate any of the representations and hold a hearing in relation to the consolidated representations.
- (4) For the purposes of its consideration under **subsection (1)**, the Commission may, where there are no representations, hold a hearing into issues that in the Commission's opinion require consideration.
- (5) The Commission must, within 14 days of its decision to hold a hearing, give notice, as prescribed, of its intention to hold a hearing under **subsection (4)**.

41. Modification or rejection of draft amendment before approval

The Commission may, after its consideration under **section 40** of a draft amendment prepared by a planning authority—

- (a) require the planning authority to modify, or alter to a substantial degree, the draft amendment after having regard to the report made under **section 39**, and any evidence and submissions made in a hearing under **section 40**, in relation to it; or
- (ab) modify, or alter to a substantial degree, the draft amendment after having regard to the report made under **section 39** and any evidence and submissions made in a hearing under **section 40**; or
- (b) by notice in writing given to the authority, reject the draft amendment.

41A. Direction to undertake modification or alteration of draft amendment

- (1) If a draft amendment is required to be modified, or altered to a substantial degree, under **section 41(a)**, the Commission, by notice in writing to the planning authority, must—
 - (a) direct that it undertake the modification or alteration; and
 - (b) specify the manner in which the draft amendment is to be modified or altered.
- (2) A planning authority must undertake a modification, or an alteration to a substantial degree, to a draft amendment in accordance with a direction by the Commission under **subsection (1)** and submit the modified or altered amendment to the Commission within 28 days from the receipt of that direction or such longer period as the Commission may allow.
- (3) The period referred to in **section 42(2)** does not run after a direction to modify or alter the draft amendment has been made until the period referred to in **subsection (2)** of this section expires.

41AB. Limitation on planning authority's actions

If a draft amendment to a planning scheme is required to be modified, or altered to a substantial degree, under **section 41(a)**, the planning authority must not issue a permit or do any other thing that would, if the draft amendment modified as required had at that time become operative, be a contravention of that

planning scheme as amended by that amendment.

41B. Certification of altered draft amendments

- (1) If a draft amendment has been altered to a substantial degree in accordance with **section 41A**, the Commission must, within 28 days of receipt of the altered draft amendment—
 - (a) certify the altered draft amendment; and
 - (b) by notice in writing to the planning authority, direct that it be publicly exhibited, as prescribed.
- (2) **Sections 38 to 43** apply to a draft amendment certified under **subsection (1)**.

42. Approval of draft amendments

- (1) Where, after consideration by the Commission, under **section 40**, of a draft amendment (including any modifications made under **section 41**), the Commission is satisfied that the draft amendment is in order, it must give its approval to the draft amendment.
- (2) The Commission must give its approval to a draft amendment not later than—
 - (a) 3 months after the submission to it, under **section 39(2)**, of the report of the planning authority in relation to the draft amendment; or

- (b) such later day as the Minister may approve.
- (3) When the Commission gives its approval to a draft amendment–
 - (a) the amendment must be signed –
 - (i) by the chairperson of the Commission; or
 - (ii) if for any reason the chairperson is unavailable or unable to sign the amendment, by another member of the Commission approved by the Commission under **subsection (3A)**; and
 - (b) notwithstanding any failure to comply with a procedural provision of this Part, the amendment comes into operation on such date as is specified by the Commission, being a date not earlier than the date on which it is signed; and
 - (c) the Commission must advise the planning authority of its approval; and
 - (d) the authority must give notice of the Commission's approval, as prescribed.
- (3A) For the purposes of **subsection (3)(a)(ii)**, the Commission may approve a member of the Commission –
 - (a) to sign a particular amendment if the chairperson is unavailable or unable to sign it; or

- (b) to sign draft amendments as required during any period during which the chairperson is unavailable or unable to sign them.
- (4) If a date is not specified under **subsection (3)(b)**, the amendment comes into operation 7 days after the date on which the Commission gives its approval.

43. Failure to comply with provision of this Division

- (1) Where a planning authority fails to comply with a provision of this Division within the period referred to in that provision –
 - (a) the Commission may assume the responsibilities and obligations of the authority under this Division in relation to the preparation and certification of a draft amendment; and
 - (b) the authority must pay to the Commission all costs incurred by the Commission in assuming the responsibilities and obligations of the authority in relation to the preparation and certification of the draft amendment.
- (2) The failure to comply with a provision of this Division within the period referred to in that provision does not invalidate an amendment to a planning scheme approved by the Commission under this Division.

Division 2A – Combined permit and amendment process

43A. Application for a permit when amendment requested

- (1) A person who requests a planning authority to amend a planning scheme may also request the planning authority to consider, in accordance with this Division, an application for a permit which would not be allowed if the planning scheme were not amended as requested.
- (2) Where a planning authority has decided to initiate an amendment under [section 33\(3\)](#), it may consider the application for a permit ~~under [section 43A\(1\)](#)~~ – referred to in [subsection \(1\)](#) concurrently with the preparation of the requested amendment to the planning scheme.
- (3) An application may be made for a permit under this section even if it could not be granted under the existing planning scheme.

43B. Application of certain provisions to draft amendment

If the planning authority agrees to a request under [section 43A](#), [Division 2](#) of [Part 3](#), except [sections 37](#) and [43](#), applies to the amendment of the planning scheme referred to in [section 43A\(1\)](#).

43C. Applications referred to in [section 43A](#)

- (1) In determining an application referred to in [section 43A](#), a planning authority, as far as is, in

the opinion of the planning authority, practicable –

- (a) must seek to further the objectives set out in **Schedule 1**; and
 - (b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application.
- (2) If an undertaking is in respect of –
- (a) a combination of uses; or
 - (b) a combination of developments; or
 - (c) a combination of one or more uses and one or more developments –

and under a planning scheme or special planning order any of those uses or developments requires a permit to be granted in respect of them, a person, in one application, may apply to the planning authority for a permit with respect to that undertaking.

- (2A) **Section 57(3), (4), (5), (5A) and (5B)** does not apply in respect of an application for a permit referred to in **subsection (2)**.
- (3) The decision of a planning authority on an application referred to in **section 43A** or **subsection (2)** is to be made by reference to the provisions of the planning scheme or special planning order as in force at the date of its decision, as if the planning scheme or special planning order had been amended in accordance with the draft amendment which has been

initiated by the planning authority in response to a request under **section 43A**.

- (4) A permit to which this section applies may be subject to such conditions or restrictions as the planning authority may impose.

43D. What if applicant referred to in **section 43A is not the owner?**

- (1) If the applicant referred to in **section 43A** is not the owner of the land in respect of which a permit is required and a planning scheme or special planning order does not provide otherwise, an application is to –
 - (a) be signed by the owner of the land; or
 - (b) be accompanied by the written permission of the owner to the making of the application.
- (2) **Subsection (1)** does not apply to an application for a permit to carry out mining operations, within the meaning of the *Mineral Resources Development Act 1995*, if a mining lease has been issued under that Act which authorises those operations.
- (3) A person must not obtain or attempt to obtain a permit by wilfully making or causing to be made any false representation or declaration either orally or in writing.

Penalty: Fine not exceeding 20 penalty units.

Unvalidated References : 36(1)

43E. Additional information

~~(1) A planning authority may, by notice in writing served on the applicant within the period of 28 days from the day on which it receives an application for a permit referred to in [section 43A](#), require the applicant to provide it with additional information before it considers the application.~~

~~(1) A planning authority that receives an application for a permit referred to in [section 43A](#) may, within the period of 28 days from the day on which it receives the application, require the applicant to provide it with additional information before it considers the application.~~

(2) If the planning authority requires the applicant to provide it with additional information, the period referred to in ~~[section 33\(3\)](#)~~[section 33\(3\)](#) ~~or [\(3AA\)](#)~~ or [36\(1\)](#), whichever is applicable, does not run while the request for information has not been answered to the satisfaction of the planning authority.

43EA. Review of request for additional information

(1) Where a planning authority requests additional information under [section 43E\(1\)](#), the person may, within 14 days of receiving that request, request the Commission to review the process by which the planning authority reached its decision to make the request.

(2) Where the Commission has been requested to review the process by which the planning authority reached its decision, the Commission

may request the planning authority to provide it with any material relevant to that process.

(3) A planning authority must provide the material requested by the Commission within 7 days of receiving that request.

Penalty: Fine not exceeding 100 penalty units.

(4) The Commission must, not later than 28 days after receiving the material requested by it or such longer period as the Minister may allow –

(a) direct the planning authority to reconsider the decision to request the information; or

(b) determine that the request was appropriate.

(5) The Commission must, within 7 days of making its decision, notify the planning authority and the person who requested the review of its decision.

43F. Procedure for determining an application for a permit under this Division

(1) Before a draft amendment of a planning scheme referred to in **section 43A** is placed on public exhibition in accordance with **section 38** –

(a) the planning authority must determine the application for the permit in accordance with **section 43C(1)**; and

(b) the planning authority must –

(i) grant the permit unconditionally or subject to such conditions or

restrictions as the planning authority may impose; or

- (ii) notwithstanding [section 43C\(3\)](#), refuse to grant the permit.

(c) [This component has been omitted.]

- (2) Within 7 days of making its decision under [subsection \(1\)\(b\)](#), the planning authority must forward to the Commission –
 - (a) a copy of the application for the permit and any documentation submitted with that application; and
 - (b) a copy of the planning authority's decision under [subsection \(1\)\(b\)](#) and, if a permit is granted, a copy of the permit.
- (3) When the planning authority advertises the exhibition of the draft amendment in accordance with [section 38\(1\)\(b\)](#), it must advertise the exhibition of the material referred to in [subsection \(2\)](#).
- (4) When the planning authority causes a copy of the draft amendment to be placed on public exhibition in accordance with [section 38](#), it must cause a copy of the material referred to in [subsection \(2\)](#) to be placed on public exhibition with the draft amendment for the same period as the draft amendment is on exhibition.
- (5) Where the material referred to in [subsection \(2\)](#) has been placed on public exhibition, any person may make representations to the planning authority in relation to the application for the

permit and the planning authority's decision under **subsection (1)(b)**.

- (6) When the planning authority forwards to the Commission a report in accordance with **section 39(2)**, it must forward to the Commission –
 - (a) a copy of each representation received by the planning authority in relation to the application for the permit or the planning authority's decision under **subsection (1)(b)**, or where it has received no such representation, a statement to that effect; and
 - (b) a statement of its opinion as to the merit of each representation including, in particular, its views as to the need for modification of the planning authority's decision in the light of that representation; and
 - (c) such recommendations in relation to the planning authority's decision as the planning authority considers necessary.
- (7) Where the application for a permit referred to in **section 43A** has been referred to the Board of the Environment Protection Authority under **section 24** or **section 25** of the *Environmental Management and Pollution Control Act 1994* –
 - (a) the planning authority must, not later than 7 days after the expiration of the exhibition period referred to in **section 38**, forward copies of all representations received under **subsection (5)** to the

Board of the Environment Protection Authority; and

- (b) the Board of the Environment Protection Authority must, within 28 days of receiving the representations referred to in **paragraph (a)**, provide a report to the Commission containing –
 - (i) the information specified in **subsection (6)(b)**; and
 - (ii) such recommendations in relation to the planning authority's decision as the Board considers necessary.

43G. Consideration by Commission of planning authority's decision and relevant representations

- (1) When the Commission considers the draft amendment in accordance with **section 40**, it must, at the same time, consider the representations, statements and recommendations referred to in **section 43F**.
- (2) **Section 40** applies to representations, statements and recommendations referred to in **subsection (1)** as if they were representations, statements and recommendations referred to in that section.

43H. Review of planning authority's decision referred to in section 43F

- (1) At the same time as the Commission makes its decision to reject or approve the draft amendment, it must –
 - (a) confirm the decision of the planning authority under **section 43F(1)** in relation to the permit; or
 - (b) if the planning authority's decision was to grant a permit –
 - (i) refuse the permit; or
 - (ii) modify or delete conditions or restrictions attached to the permit or add new conditions or restrictions to the permit; or
 - (c) if the planning authority's decision was to reject the permit, grant a permit subject to such conditions or restrictions as the Commission thinks necessary; or
 - (d) if the Commission's decision is to reject the draft amendment in accordance with **section 41(b)**, refuse the permit.
- (2) When the Commission makes its decision in relation to a permit under **subsection (1)**, the Commission must give notice in writing of its decision to –
 - (a) the planning authority; and
 - (b) the applicant for the permit; and

- (c) if representations have been made in relation to the permit, to all persons who made such representations; and
- (d) if the permit application has been referred to the Board of the Environment Protection Authority under **section 24** or **section 25** of the *Environmental Management and Pollution Control Act 1994*, the Board.

43I. When does a permit referred to in **section 43H take effect?**

- (1) If the Commission makes a decision under **section 43H(1)** which confirms, or results in, a permit being granted, the permit takes effect on the date of the Commission's approval of the draft amendment under **section 42**.
- (2) The day on which a permit takes effect may be specified in the permit as being a day later than the day on which the permit would otherwise have taken effect under **subsection (1)**.
- (3) Where any other approvals under this Act or any other Act are required for the proposed use or development to which the permit relates, the permit does not take effect until all those approvals have been granted.
- (4) If the use or development in respect of which a permit was granted is not substantially commenced, the permit lapses –
 - (a) after a period of 2 years from the date on which the permit was granted; or

(b) if the planning authority has granted an extension under **subsection (4A)**, after a further period of ~~2 years.~~ 2 years; or

(c) if the planning authority has granted a further extension under **subsection (6)**, at the end of a further period of 2 years from the end of the further period of 2 years for which the permit was extended under **subsection (4A)**.

(4A) If the use or development in respect of which a permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under **subsection (4)(a)**, the planning authority may grant (once only) an extension of the period during which that use or development must be substantially commenced.

(5) If under a permit an agreement is required to be entered into, the permit does not take effect until the day the agreement is executed.

(6) If the use or development in respect of which a permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under **subsection (4)(b)**, the planning authority may grant (once only) a further extension of the period during which that use or development must be substantially commenced.

(7) An application may be made under **subsection (4A)** or **(6)**, for an extension of a period during which a use or development in respect of which a permit was granted must be substantially commenced, at any time before 6 months after the day on which the permit has

lapsed and, if the extension is granted, the permit is to be taken to not have lapsed on that day.

43J. Correction of mistake in permits referred to in section 43H

A planning authority may correct a permit referred to in section 43H if the permit contains –

- (a) a clerical mistake or an accidental omission; or
- (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the permit.

43K. Minor amendment of permits referred to in section 43H

- (1) The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit referred to in section 43H which applies to that land.
- (2) The planning authority may amend the permit if it is satisfied that the amendment –

~~(a) does not change the effect of any decision of the Commission under section 43H; and~~

~~(aa) is not an amendment of a condition or restriction, specified in the permit, that is required, imposed or amended by the Commission or the Appeal Tribuna; and~~

-
- (a) does not change the effect of a condition or restriction, specified in the permit, that is required, imposed or amended by the Commission or the Appeal Tribunal; and
 - (b) will not cause an increase in detriment to any person; and
 - (c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.

(2A) An amendment to a condition or restriction specified in a permit is not to be taken to contravene subsection (2)(a) by reason only that other conditions or restrictions have been specified in the permit, or amended, by the Commission or the Appeal Tribunal.

(2B) A condition or restriction ("**the fresh condition or requirement**") specified by the Commission or the Appeal Tribunal in a permit is not to be taken, for the purposes of this section, to be required or imposed by the Commission or the Appeal Tribunal if –

-
- (a) the fresh condition or restriction is to the same effect as a condition or restriction that was specified in the permit by the planning authority before the Commission or the Appeal Tribunal specified the fresh condition or restriction in the permit; and
 - (b) the fresh condition or restriction is not referred to in the decision, in relation to the permit, of –

(i) the Appeal Tribunal under section 23 of the *Resource Management and Planning Appeal Tribunal Act 1993*; or

(ii) the Commission under section 43H.

(3) If the planning authority amends a permit referred to in **section 43H**, it must, by notice in writing served on –

- (a) the person who requested the permit to be amended; and
- (b) if that person is not the owner of the land, the owner; and
- (c) the owner or occupier of any property which adjoins the land; and
- (d) any person who made a representation under **section 43F(5)** in relation to the application for the permit –

notify those persons of the amendments made to the permit.

(4) If the planning authority amends a permit referred to in **section 43H** containing a condition or restriction which the Board of the Environment Protection Authority has required under **section 25(5) of the *Environmental Management and Pollution Control Act 1994***, the planning authority must, by notice in writing served on the Board, notify it of the amendments made to the permit.

(5) If the planning authority amends a permit in respect of which the Commission has modified,

deleted or added conditions or restrictions under [section 43H\(1\)\(b\)\(ii\)](#), the planning authority must, by notice in writing served on the Commission, notify it of the amendments made to the permit.

(6) If the planning authority amends a permit referred to in [section 43H](#) containing a condition or restriction which the Heritage Council has required under section 39(6) of the *Historic Cultural Heritage Act 1995*, the planning authority must, by notice in writing served on the Heritage Council, notify the Council of the amendment.

43L. Application of [section 56A](#)

[Section 56A](#) applies to an amendment of a permit referred to in [section 43H](#).

43M. Failure to comply with certain provisions

- (1) Where a planning authority fails to comply with a provision of [section 43B](#) or [43F](#) within the period referred to in that provision –
 - (a) the Commission may assume the responsibilities and obligations of the planning authority under this Division in relation to the preparation of a draft amendment or the decision in relation to the permit; and
 - (b) the planning authority must pay to the Commission all costs incurred by the Commission in assuming the

responsibilities and obligations referred to in **paragraph (a)**.

- (2) The failure to comply with a provision of this Division within the period referred to in that provision does not invalidate an amendment to a planning scheme approved by the Commission or a decision in relation to a permit under this Division.

2B. [This component has been omitted.]

Division 3 – Reviews of planning schemes

44. Review of planning schemes

- (1) The Commission must direct a planning authority to undertake, on every fifth anniversary of the date on which its planning scheme came into operation under **section 29**, a review of the planning scheme in accordance with a notice issued under **subsection (2)**.
- (2) The notice must –
 - (a) specify matters that the planning authority must address in the review of its planning scheme; and
 - (b) include a requirement that public comments be sought on the review for a period of not less than 3 weeks; and
 - (c) include a requirement for the planning authority to prepare and submit to the Commission a report, comprising a statement of its opinion as to whether the planning scheme –

- (i) requires amendment; or
 - (ii) needs to be replaced with another planning scheme; or
 - (iii) can continue without amendment –
- after taking into account public comments received; and
- (d) specify the period by the end of which the report is to be submitted to the Commission, being a period not less than 3 months.
- (3) If the Commission is of the opinion that the report under **subsection (2)** has not been prepared in accordance with the notice, the Commission must direct the planning authority to revise the report and resubmit it within 2 months or such longer period as the Commission may allow.
- (4) If the Commission is of the opinion, based on the report under **subsection (2)**, that the planning scheme requires replacement or amendment, the Commission, with the approval of the Minister, must direct the planning authority to initiate the preparation of a draft planning scheme in accordance with **section 22** or initiate an amendment or amendments in accordance with **section 34** not later than 2 months from the date on which the Commission receives the report under **subsection (2)** or a revised report under **subsection (3)**.
- (5) If the Commission directs that an amendment or amendments be initiated under **subsection (4)**,

the Commission must specify the manner in which the draft amendment or amendments are to be prepared.

- (6) The planning authority must initiate the preparation of a draft planning scheme in accordance with **section 22** or initiate an amendment or amendments in accordance with **section 34** not later than 2 months from the date on which the direction is given under **subsection (4)** or such longer period as the Commission may allow.
- (7) If a planning authority fails to comply with a direction under **subsection (1)** within the period specified in the notice relating to the direction, or fails to comply with **subsection (3)** or **(6)** –
 - (a) the Commission may assume the responsibilities and obligations of the planning authority under this section; and
 - (b) the authority must pay to the Commission all costs incurred by the Commission in assuming the responsibilities and obligations of the authority under this section.
- (8) **Subsection (1)** does not apply if a planning authority has initiated the preparation of a draft planning scheme under **section 22** that, if approved under **section 29**, would replace the planning scheme required to be reviewed.
- (9) The time period specified in **subsection (1)** does not apply to planning schemes in operation immediately before the commencement of this section.

- (10) The Commission must direct a planning authority to undertake a review of any of its planning schemes that are in operation immediately before the commencement of this section, in accordance with a notice issued under **subsection (2)**, by the date prescribed in the regulations in respect of a planning scheme of that planning authority and on every fifth anniversary of that date.

Division 3A – Abolition of, or change of boundaries of, municipal districts

44A. Abolition of, or change of boundaries of, municipal districts

If a municipal district is abolished or a boundary of a municipal district is changed, the Commission may, by notice published in the *Gazette*, designate which planning authority has jurisdiction over a planning scheme or part of a planning scheme or a special planning order or part of a special planning order.

Division 4 – Provisions relating to existing interim orders

45. Interpretation of Division 4

In this Division, "**existing interim order**" means an interim order administered by a planning authority immediately before the commencement of the *Land Use Planning and Approvals Amendment Act (No. 2) 1995*.

45A. Validation of existing interim orders

An existing interim order is valid and effectual and is always taken to have been valid and effectual.

46. Existing interim order taken to be planning scheme

An existing interim order is taken to be a planning scheme for the purposes of this Act.

Division 5 – Special planning orders

47. Making of special planning orders

(1) Subject to **subsection (2)**, the Commission, of its own volition or at the request of a planning authority, may make a special planning order providing for any of the matters for which a planning scheme may provide if it considers that—

- (a) there are contradictions in, or inconsistencies between, the provisions of a planning scheme; or
- (b) it is necessary to introduce planning provisions for an area for which a planning scheme is not in force or will cease to operate—

and it is satisfied that the provisions of **Division 1** or **2** would result in an unacceptable delay in addressing the matters referred to in **paragraph (a)** or **(b)**.

- (2) The Commission must not exercise its powers under **subsection (1)** unless it considers that it is in the public interest to do so.
- (3) The Commission or a planning authority may prepare a special planning order.
- (4) If a special planning order has been prepared by a planning authority, it must submit the special planning order to the Commission, and the Commission must—
 - (a) either –
 - (i) make the special planning order in the same terms as the order submitted to it; or
 - (ii) if the planning authority agrees, modify the order submitted to it and then make the special planning order in the terms of the modified order; or
 - (iii) refuse to make the special planning order; and
 - (b) notify the planning authority of its decision.
- (5) A special planning order must satisfy the requirements of **section 32** and may be made in such form and on such terms and conditions as the Commission thinks fit.
- (6) If the Commission makes a special planning order it must—
 - (a) cause notice of the making of the order to be published in the *Gazette* and in a daily

newspaper published in Tasmania and circulating generally in the area to which the order relates; and

- (b) nominate a place at which the order may be inspected.

47A. Operation of special planning orders

- (1) A special planning order operates from the date specified in the notice published in the *Gazette* under **section 47(6)**.
- (2) A special planning order overrides any existing planning scheme applying to the same area to the extent of any inconsistency.
- (3) A special planning order ceases to operate –
 - (a) if the Commission, by notice published in the *Gazette*, revokes the order; or
 - (b) if either House of Parliament passes a resolution disallowing it; or
 - (c) when a planning scheme or amendment to a planning scheme applying to the area the subject of the special planning order comes into operation.

47B. Revocation of special planning orders

- (1) The Commission, of its own volition or at the request of a planning authority, may revoke a special planning order.
- (2) If the Commission revokes a special planning order it must cause notice of the revocation of

the order to be published in the *Gazette* and in a daily newspaper published in Tasmania and circulating generally in the area to which the order relates.

- (3) The revocation of a special planning order operates from the date specified in the notice published in the *Gazette* under subsection (2).

Part 4 – Enforcement of Planning Control

Division 1 – General

48. Enforcement of observance of planning schemes and interim orders

Where a planning scheme or special planning order is in force, the planning authority must, within the ambit of its power, observe, and enforce the observance of, that planning scheme or special planning order in respect of all use or development undertaken within the area to which the planning scheme or special planning order relates, whether by the authority or by any other person.

48AA. Enforcement of special permits

A planning authority must, within the ambit of its power, enforce the observance of any condition or restriction to which a special permit is subject.

48A. Notice to remove signs

- (1) If a person is erecting or placing, or has erected or placed, a sign for which the issue of a permit is required under the provisions of a planning scheme or special planning order, unless the planning authority which administers the scheme or order has granted a permit in respect of that sign and the permit is in effect, the planning authority may do one or more of the following:

- (a) by written notice given to the person, require the person to cease erecting or placing the sign;
 - (b) by written notice given to the person, require the person to remove the sign or that part of the sign that has been erected or placed;
 - (c) by written notice given to the person, require the person to take all action necessary to restore the land or any building to the condition it was in before the person erected or placed, or started erecting or placing, the sign;
 - (d) take all action necessary to remove the sign or that part of the sign that has been erected or placed and restore the land or any building to the condition it was in before the person erected or placed, or started erecting or placing, the sign.
- (2) If the planning authority takes any action under **subsection (1)(d)**, the planning authority, by written notice given to the person who is erecting or placing or has erected or placed a sign, may require the person to pay the reasonable costs of that action, and those costs –
- (a) are a debt due and payable to the planning authority; and
 - (b) may be recovered in a court of competent jurisdiction.
- (3) If the planning authority takes any action under **subsection (1)(d)**, the planning authority is not liable for any damages caused to the sign, or any

structure to which the sign was affixed, through the removal of the sign or the storage of the sign on its removal.

- (4) The planning authority may dispose of the sign after 2 months from the date on which the planning authority took action under **subsection (1)(d)** if the sign has not been collected by the person who erected or placed the sign.
- (5) For the purposes of this section, a **"person"** includes the owner and the occupier of the property on which the sign is being erected or placed or has been erected or placed.

49. Effect of Divisions 2 and 3 on certain planning schemes and interim orders

- (1) A planning scheme or special planning order, whether made before or after the commencement of this section, has effect subject to **Divisions 2 and 3**, and, to the extent to which a planning scheme or special planning order is inconsistent with those Divisions, it is of no effect.
- (2) Without prejudice to the generality of **subsection (1)**, any provision in a planning scheme or special planning order that –
 - (a) requires notification or publication of an application for a planning approval; or
 - (b) gives a right of appeal in respect of any decision of a planning authority –

is deemed to be inconsistent with **Divisions 2 and 3**.

Division 2 – Development control

50. Certain applications deemed to be applications for permits

An application of the kind referred to in **section 20(2)(j)** is deemed to be an application for a permit.

51. Permits

- (1) A person must not commence any use or development which, under the provisions of a planning scheme or special planning order, requires a permit unless the planning authority which administers the scheme or order has granted a permit in respect of that use or development and the permit is in effect.

(1A) An application is to be in a form approved by the Commission.

- (1A)** A person may apply to a planning authority which administers a planning scheme or special planning order for the granting of a permit for a use or development which under that scheme or order requires a permit to be granted in respect of that use or development.

- (1AB)** A planning authority must not refuse to accept a valid application for a permit, unless the application does not include a declaration that the applicant has –

- (a) notified the owner of the intention to make the application; or

- (b) obtained the written permission of the owner under **section 52**.
- (1AC) For the purposes of **subsection (1AB)**, a valid application is an application that contains all relevant information required by the planning scheme applying to the land that is the subject of the application.
- (1B) If an undertaking is in respect of –
 - (a) a combination of uses; or
 - (b) a combination of developments; or
 - (c) a combination of one or more uses and one or more developments –

and under a planning scheme or special planning order any of those uses or developments requires a permit to be granted in respect of them, a person, in one application, may apply to the planning authority for a permit with respect to that undertaking.

- (2) In determining an application for a permit, a planning authority –
 - (a) must seek to further the objectives set out in **Schedule 1**; and
 - (b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application; and
 - (c) must take into consideration the matters set out in representations relating to the application that were made during the period referred to in **section 57(5)**; and

- (d) must accept –
 - (i) any relevant bushfire hazard management plan, or other prescribed management plan relating to environmental hazards or natural hazards, that has been certified as acceptable by an accredited person or a State Service Agency; or
 - (ii) any certificate issued by an accredited person or a State Service Agency and stating that the proposed use or development will result in an insufficient increase in risk from the environmental hazard or natural hazard to warrant any specific protection measures.
- (3) The decision of a planning authority on an application referred to in **subsection (1A) or (1B)** is to be made by reference –
 - (a) to the provisions of the planning scheme or special planning order as in force at the date of that decision; or
 - (b) if the planning authority has been required under **section 28(1)(a)** to modify a draft planning scheme and that draft planning scheme has not been approved by the Commission at the date of that decision, to the provisions of the draft planning scheme modified as required; or
 - (c) if the planning authority has been required under **section 41(a)** to modify,

or alter to a substantial degree, a draft amendment to a planning scheme and that draft amendment has not become operative at the date of that decision, to the provisions of the planning scheme as they would be if the draft amendment modified, or altered to a substantial degree, as required had become operative.

- (3A) A permit to which **section 57** applies may be subject to such conditions or restrictions as the planning authority may impose.
- (4) A permit to which **section 58** applies may be granted subject to such conditions or restrictions as the planning authority may impose with respect to any matter specified in the relevant planning scheme or special planning order.

52. What if applicant is not the owner?

- (1) If –
 - (a) the applicant for a permit is not the owner of the land in respect of which the permit is required; and
 - (b) the land is not –
 - (i) Crown land, within the meaning of the *Crown Lands Act 1976*; or
 - (ii) land owned by a council; or
 - (iii) land administered by the Crown or a council; and

- (c) the planning scheme or special planning order does not provide otherwise –

the applicant must include in the application for the permit a declaration that the applicant has notified the owner of the intention to make the application.

- (1A) **Subsection (1)** does not apply to an application for a permit to carry out mining operations, within the meaning of the *Mineral Resources Development Act 1995*, if a mining lease has been issued under that Act which authorises those operations.
- (1B) If land in respect of which an application for a permit is required is Crown land, within the meaning of the *Crown Lands Act 1976*, is owned by a council or is administered or owned by the Crown or a council and a planning scheme or special planning order does not provide otherwise, the application must –
 - (a) be signed by the Minister of the Crown responsible for the administration of the land or by the general manager of the council; and
 - (b) be accompanied by the written permission of that Minister or general manager to the making of the application.
- (1C) In **subsection (1B)**, "**general manager**" has the same meaning as in the *Local Government Act 1993*.
- (1D) The Minister of the Crown administering the *Crown Lands Act 1976* may delegate his or her

functions under **subsection (1B)** to the Director-General of Lands.

- (1E) The Director-General of Lands may delegate to a person prescribed for the purposes of **section 71(2) of the *Crown Lands Act 1976*** a function delegated to the Director-General under **subsection (1D)**.
- (1F) A Minister of the Crown administering land administered or owned by the Crown, other than the Minister of the Crown administering the *Crown Lands Act 1976*, may delegate to any person the Minister considers appropriate his or her functions under **subsection (1B)**.
- (1G) The general manager of a council may delegate to an employee of the council his or her functions under **subsection (1B)**.
- (1H) If land in respect of which an application for a permit is required is Crown land, within the meaning of the *Crown Lands Act 1976*, **subsection (1B)** does not apply to an application for a permit to carry out mining operations, within the meaning of the *Mineral Resources Development Act 1995*, if a mining lease has been issued under that Act which authorises those operations.
- (2) A person must not obtain or attempt to obtain a permit by wilfully making or causing to be made any false representation or declaration either orally or in writing.

Penalty: Fine not exceeding 20 penalty units.

- (3) A provision in a planning scheme or a special planning order is of no effect to the extent that it

provides that an application for a permit by a person who is not the owner of the land in respect of which the permit is required must be signed by, or accompanied by the written permission of, the owner.

52A. Permit for development of land in Wellington Park

If any land in respect of which an application for a permit is required is in Wellington Park, as defined in the *Wellington Park Act 1993*, in assessing the application for the permit, the relevant planning authority must take into account the standards, values and conditions set out in each management plan, within the meaning of the *Wellington Park Act 1993*, in force as at the date of the application for the permit.

- (a) [This component has been omitted.]
- (b) [This component has been omitted.]

53. When does a permit take effect?

- (1) Where a planning authority grants a permit, the permit, subject to **subsections (2), (3) and (4)**, takes effect on the day on which it is granted by the authority or, where there is a right of appeal against the granting of the permit, at the expiration of 14 days from the day on which the notice of the granting of the permit was served on the person who has the right of appeal.
- (1A) If the applicant is the only person with a right of appeal under **section 61** in relation to a permit

and does not intend to exercise that right, the use or development in respect of which the permit is granted may, subject to **subsections (1B) and (4)**, be commenced before the expiration of the 14 day period specified in **subsection (1)**.

- (1B) If the applicant referred to in **subsection (1A)** proposes to commence the use or development before the expiration of the 14 day period specified in that subsection, the applicant must notify the planning authority in writing of his or her intention to commence that use or development.
- (1C) If the applicant notifies the planning authority under **subsection (1B)**, the applicant is taken to have forfeited the right to appeal in relation to the permit.
- (2) A day later than the day on which a permit would otherwise have taken effect under **subsection (1)** may be specified in the permit as the day on which it takes effect.
- (3) Where an appeal has been instituted against the planning authority's decision to grant a permit, the permit does not take effect until the determination or abandonment of the appeal.
- (4) Where any other approvals under this Act or any other Act are required for the proposed use or development to which the permit relates, the permit does not take effect until all those approvals have been granted.
- (5) If the use or development in respect of which a permit was granted is not substantially commenced, the permit lapses –

- (a) at the end of a period of 2 years from –
 - (i) the date on which the permit was granted; or
 - (ii) if an appeal has been instituted against the planning authority's decision to grant the permit, the date of the determination or abandonment of the appeal; or
- (b) if the planning authority has granted an extension under **subsection (5A)**, at the end of a further period of 2 years from the end of the relevant period referred to in ~~paragraph (a)~~. **paragraph (a)**; or
- (c) if the planning authority has granted a further extension under **subsection (5B)**, at the end of a further period of 2 years from the end of the further period of 2 years for which the permit was extended under **subsection (5A)**.

(5A) If the use or development in respect of which a permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under **subsection (5)(a)**, the planning authority may grant (once only) an extension of the period during which that use or development must be substantially commenced.

(5B) If the use or development in respect of which a permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under **subsection (5)(b)**, the planning authority may grant (once only) a further extension of the period during which that

use or development must be substantially commenced.

(5C) An application may be made under subsection (5A) or (5B), for an extension of a period during which a use or development in respect of which a permit was granted must be substantially commenced, at any time before 6 months after the day on which the permit has lapsed and, if the extension is granted, the permit is to be taken to not have lapsed on that day.

- (6) If under a permit an agreement is required to be entered into, the permit does not take effect until the day the agreement is executed.
- (7) The permit referred to in **subsection (1)** remains in effect unless –
 - (a) it lapses under **subsection (5)**; or
 - (b) it expires as a result of a condition or restriction contained in the permit.

54. Additional information

~~(1) A planning authority may, by notice in writing served on the applicant within the period of 21 days from the day on which it receives an application for a permit, require the applicant to provide it with additional information before it considers the application.~~

(1) A planning authority that receives an application for a permit (other than a permit referred to in **section 43A**) may –

-
- (a) if the permit sought is a discretionary permit, by notice in writing served on the

application within the period of 21 days from the day on which it receives the application; or

(b) if the permit sought is not a discretionary permit, by notice in writing served on the application within the period of 14 days from the day on which it receives the application –

require the applicant to provide it with additional information before it considers the application.

- (1A) If the period specified in **subsection (1)** includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the land subject to the application for a permit is situated, that period is to be extended by the number of those days.
- (2) If the planning authority requires the applicant to provide it with additional information, the relevant period referred to in **section 57(6)(b)** or **58(2)** does not run while the request for information has not been answered to the satisfaction of the planning authority.
- (2A) If the Appeals Tribunal determines that –
- (a) a planning authority had, in good faith, required an applicant under **subsection (1)** or **(3)** to provide the authority with additional information; but
 - (b) the planning authority ought to have been satisfied with the information provided to the planning authority by the applicant

before the requirement was served on the applicant –

the relevant period referred to in **section 57(6)(b)** or **58(2)** does not run for the period beginning on the day on which the requirement was served on the applicant and ending at the end of the day that is 7 clear days after the day on which the determination was made by the Appeals Tribunal.

- (3) The planning authority must, within 14 days from the day it receives the additional information under **subsection (1)**, notify the applicant if the request for information has not been answered to its satisfaction and in that notification require the applicant to provide it with the additional information.

55. Correction of mistakes

A planning authority may correct a permit granted by it if the permit contains –

- (a) a clerical mistake or an error arising from any accidental slip or omission; or
- (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the approval.

56. Minor amendments of permits

56. Minor amendments of permits issued by a planning authority

- (1) The owner of land, or a person with the consent of the owner, may request the planning authority in writing to amend a permit which applies to that land and which is a permit issued by the planning authority.
- (2) The planning authority may amend the permit if it is satisfied that the amendment –

~~(a) does not change the effect of any condition required by the Appeal Tribunal; and~~

~~(aa) is not an amendment of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and~~

~~(a) does not change the effect of a condition or restriction, specified in the permit, that is required, imposed or amended by the Appeal Tribunal; and~~

(b) will not cause an increase in detriment to any person; and

(c) does not change the use or development for which the permit was issued other than a minor change to the description of the use or development.

(2A) An amendment to a condition or restriction specified in a permit is not to be taken to contravene subsection (2)(a) by reason only that

other conditions or restrictions have been specified in the permit, or amended, by the Appeal Tribunal.

(2B) A condition or restriction ("the fresh condition or requirement") specified by the planning authority in a permit is not to be taken, for the purposes of this section, to be required or imposed by the Appeal Tribunal if –

(a) the fresh condition or restriction is to the same effect as a condition or restriction that was specified in the permit by the Appeal Tribunal before the planning authority specified the fresh condition or restriction in the permit; and

(b) the fresh condition or restriction is not referred to in the decision, in relation to the permit, of the Appeal Tribunal under section 23 of the *Resource Management and Planning Appeal Tribunal Act 1993*.

(3) If the planning authority amends a permit, it must, by notice in writing served on –

(a) the person who requested the permit to be amended; and

(b) if that person is not the owner of the land, the owner; and

(c) in the case of a permit granted under **section 57**, the owner or occupier of any property which adjoins the land; and

(d) any person who made a representation under **section 57(5)** in relation to the application for the permit –

notify those persons of the amendments made to the permit.

- (4) If the planning authority amends a permit containing a condition or restriction which the Board of the Environment Protection Authority has required under **section 25(5) of the *Environmental Management and Pollution Control Act 1994***, the planning authority must, by notice in writing served on the Board, notify it of the amendments made to the permit.

56A. When amendments to permits take effect

- (1) If a planning authority amends a permit, the amendment, subject to **subsections (5) and (6)**, takes effect on the day on which it is made by the planning authority or, if there is a right of appeal against the amendment, at the expiration of 14 days from the day on which the notice of the amendment was served on the person who has the right of appeal.
- (2) If the person who requested an amendment to a permit is the only person with a right of appeal under **section 61** in relation to the amendment and does not intend to exercise that right, the use or development in respect of which the amendment is made may, subject to **subsection (3)**, be commenced before the expiration of the 14 day period specified in **subsection (1)**.
- (3) If the person referred to in **subsection (2)** proposes to commence the use or development in respect of which the amendment is made before the expiration of the 14 day period

specified in **subsection (1)**, the person must notify the planning authority in writing of his or her intention to commence that use or development.

- (4) If the person who requested an amendment to a permit notifies the planning authority under **subsection (3)**, the person is taken to have forfeited the right to appeal in relation to the amendment.
- (5) The day on which a permit takes effect may be specified in the permit as being a day later than the day on which the permit would otherwise have taken effect under **subsection (1)**.
- (6) If an appeal has been instituted against the planning authority's decision to amend a permit, the amendment does not take effect until the determination or abandonment of the appeal.
- (7) If the amendment requires an agreement to be entered into, the amendment does not take effect until the day on which the agreement is executed.

57. Applications for discretionary permits

- (1) This section applies to an application for a permit in respect of a use or development which, under the provisions of a planning scheme or special planning order –
 - (a) is of a kind specified as being a use or development which a planning authority has a discretion to refuse or permit; or

- (b) may not proceed as proposed by the applicant unless a planning authority waives, relaxes or modifies a requirement of the scheme or order, or otherwise in its discretion consents to the use or development proceeding.
- (2) The planning authority may, on receipt of an application for a permit to which this section applies, refuse to grant the permit and, if it does so –
 - (a) it does not have to comply with **subsection (3)**; and
 - (b) [This component has been omitted.]
 - (c) it must, within 7 days of refusing to grant the permit, serve on the applicant notice of its decision.
- (3) Unless the planning authority requires the applicant to give notice, the authority must give notice, as prescribed, of an application for a permit.
- (4) A notice referred to in **subsection (3)** is, in addition to any other matters required to be contained in it, to name a place where a copy of the application, and of all plans and other documents submitted with the application, will be open to inspection by the public at all reasonable hours during the period for which representations may be made.
- (4A) A person must not obscure or remove a notice of an application for a permit displayed on the land that is the subject of the application within the time period specified in **subsection (5)**.

Penalty: Fine not exceeding 10 penalty units.

- (5) Any person may make representations relating to the application during the period of 14 days commencing on the date on which notice of the application is given under **subsection (3)** or such further period not exceeding 14 days as the planning authority may allow.
- (5AA) If the time period specified in **subsection (5)** includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the land subject to the application for a permit is situated, that period is to be extended by the number of those days.
- (5A) A person may, by notice in writing to a planning authority, withdraw a representation made under **subsection (5)** at any time before the planning authority grants or refuses to grant a permit under **subsection (6)**.
- (5B) If a person withdraws a representation under **subsection (5A)**, that person is taken not to have made a representation under **subsection (5)**.
- (6) Unless the planning authority has refused to grant a permit under **subsection (2)**, it must grant or refuse to grant the permit –
 - (a) not earlier than the expiration of the period of 14 days, or such further period as may be allowed under **subsection (5)**, beginning on the date on which notice of the application for a permit is given under **subsection (3)**; and
 - (b) not later than –

- (i) in a case where the Heritage Council has not, under section 39(3) of the *Historic Cultural Heritage Act 1995*, required extra time to consider the application, on the expiration of the period of 42 days from the day on which the planning authority received the application or such further period as is agreed, in writing, by the planning authority and the applicant before the expiration of that 42-day period; or
 - (ii) in a case where the Heritage Council has, under section 39(3) of the *Historic Cultural Heritage Act 1995*, required extra time to consider the application, on the expiration of the period of 56 days from the day on which the planning authority received the application or such further period as is agreed, in writing, by the planning authority and the applicant before the expiration of that 56-day period.
- (6A) A further period agreed to by a planning authority and an applicant under subsection (6)(b)(i) or (ii) may be extended or further extended by agreement, in writing, between the planning authority and applicant at any time before the expiration of the period to be extended and, when so extended, is taken to be the further period referred to in that subsection.

(7) If a planning authority, on an application for a permit to which this section applies, grants or refuses to grant the permit, it must, within 7 days of granting or refusing to grant the permit, serve notice of its decision –

(a) on the applicant; and

(b) if representations have been made in relation to the application in accordance with this section, on all persons who made representations.

(c) [This component has been omitted.]

(8) [This component has been omitted.]

57A. Mediation

(1) In this section,

"party" means any of the following persons:

(a) a person who made an application to a planning authority for a permit under **section 57**;

(b) the planning authority to whom the application for a permit under **section 57** was made;

(c) any person who made a representation under **section 57(5)** in relation to the application for a permit under **section 57**.

(2) If the applicant for a permit under **section 57** or any person who has made a representation under

section 57(5) requires mediation to be conducted in relation to the application, the applicant or other person must notify, in writing, the planning authority.

- (3) If the planning authority receives notification under **subsection (2)** or wishes mediation to be conducted in relation to an application for a permit under **section 57**, it must notify in writing any other party and seek the agreement of that party for mediation to be conducted in relation to the application.
- (4) If 2 or all parties agree that mediation should be conducted in relation to an application for a permit under **section 57**, the parties must agree on the person who is to conduct the mediation and on any other terms or conditions in relation to the conduct of the mediation.
- (5) If 2 or all parties agree that mediation should be conducted in relation to an application for a permit under **section 57**, the period within which the planning authority must make its decision in relation to the application may be extended under **section 57(6A)**.

58. Application for other permits

- (1) This section applies to an application for a permit in respect of a use or development for which, under the provisions of a planning scheme or special planning order, a planning authority is bound to grant a permit either unconditionally or subject to conditions or restrictions.

- (2) If an application for a permit to which this section applies meets the requirements of the planning scheme to which the application relates, a planning authority must grant the application either unconditionally or subject to conditions or restrictions not later than the expiration of the ~~period of 42 days~~relevant period in relation to the application from the day on which the planning authority received the application or such further period as is agreed to, in writing, by the planning authority and the applicant before the expiration of that ~~42 day~~ period.

(2AA) For the purposes of **subsection (2)**, the relevant period in relation to an application is –

(a) if the application is an application in relation to which notice is required to be given under section 56N of the *Water and Sewerage Industry Act 2008* – 28 days; and

(b) in any other case – 21 days.

- (2A)** A further period agreed to by a planning authority and an applicant under **subsection (2)** may be extended or further extended by agreement, in writing, between the planning authority and applicant at any time before the expiration of the period to be extended and, when so extended, is taken to be the further period referred to in **subsection (2)**.
- (3)** Where a planning authority grants a permit to which this section applies either unconditionally or subject to conditions or restrictions, it must, within 7 days of granting the permit, serve notice of its decision on the applicant.

58A. Permits requiring entering into of agreements

- (1) Without limiting **section 51(3A)** and despite **section 51(4)**, a permit granted by a planning authority under **section 30T** or **section 57** or **58** may include a condition that an agreement is required to be entered into in respect of a use or development.
- (2) If a planning authority grants a permit which includes a condition that an agreement is required to be entered into in respect of a use or development, the planning authority must specify in the condition the matters, and the requirements with respect to those matters, to be included in the agreement.
- (3) If a person is granted a permit which includes a condition under **subsection (1)** and that person is not the owner of the land in respect of which the agreement to be entered into relates, the planning authority must, within 7 days of granting the permit, serve notice of its decision on the owner.

59. Failure to determine an application for a permit

- (1) The failure of a planning authority to determine an application for a permit to which **section 57** or **58** applies before the expiration of the period, or, where applicable, the further period, referred to in **section 57(6)(b)(i)** or **(ii)** or **58(2)** is deemed to constitute a decision to grant a permit on conditions to be determined by the Appeal Tribunal.
- (2) Where the failure of a planning authority to determine an application for a permit to which **section 57** or **58** applies is deemed to constitute a

decision to grant a permit on conditions to be determined by the Appeal Tribunal, the planning authority must, within 7 days of the expiration of the period, or, where applicable, the further period, referred to in **section 57(6)(b)(i) or (ii) or 58(2)**, serve notice—

- (a) on the applicant; and
- (ab) if the Heritage Council has notified the planning authority under section 36(3)(b) of the *Historic Cultural Heritage Act 1995* that it wishes to be involved in the determination of the application, on the Heritage Council; and
- (b) on any person who made representations under **section 57(5)**—

that the permit has been deemed to have been granted on conditions to be determined by the Appeal Tribunal.

- (3) If a planning authority fails to determine an application before the expiration of the relevant period referred to in **section 57(6)(b)(i) or (ii) or 58(2)**, the applicant may apply to the Appeal Tribunal for an order determining the conditions on which the permit is granted.
- (3A) The Appeal Tribunal must notify the planning authority and, if the Heritage Council by reason of section 45(5) of the *Historic Cultural Heritage Act 1995* is joined as a respondent to the application, the Heritage Council of an application for an order under **subsection (3)**.
- (3B) The planning authority must, within 7 days of receiving notification from the Appeal Tribunal

of an application under **subsection (3)**, advise any person who made representations, under **section 57(5)**, of that application unless the person has previously been notified under **subsection (2)**.

(4) After hearing an application under **subsection (3)**, the Appeal Tribunal may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993* –

- (a) grant the permit unconditionally; or
- (b) grant the permit and direct that the permit must contain specified conditions; or
- (c) in the case of an application for a permit to which **section 57** applies or is taken to apply, direct that a permit must not be granted.

(5) Subject to **subsection (5AA)**, after hearing an application under **subsection (3)**, the Appeal Tribunal must direct the planning authority to pay–

- (a) to the Appeal Tribunal an amount determined by the Appeal Tribunal as being the costs of the appeal; and
- (b) to each other party to the appeal an amount determined by the Appeal Tribunal as being the appeal costs of that party.

(5AA) The Appeal Tribunal must not make an order under **subsection (5)** directing a planning authority to pay costs for a failure to determine an application within a period, or a further period, referred to in **subsection (1)**, if the failure

only arose because a purported decision of the authority within that period was of no effect in law.

- (5A) If the Appeal Tribunal makes an order for costs under **subsection (5)**, it –
 - (a) is to specify the time within which those costs are to be paid; and
 - (b) may, by a further order, extend that time if it considers it reasonable in the circumstances.
- (5B) If the Appeal Tribunal makes an order for costs before the end of any proceedings, it may require that the order be complied with before it continues with the proceedings.
- (5C) An order for costs under this section may be registered in a court having jurisdiction for the recovery of debts of the amount ordered to be paid by or under the order.
- (5D) Proceedings for the enforcement of an order for costs under this section may be taken as if the order were a judgment of the court in which the order is registered.
- (6) For the purposes of the *Resource Management and Planning Appeal Tribunal Act 1993*, an application under this section is deemed to be an appeal.
- (7) Notwithstanding the provisions of this Division, a planning authority may make a decision on an application for a permit to which **section 57** or **58** applies at any time before the lodging of an application under **subsection (3)**.

(8) Where a planning authority makes a decision under **subsection (7)** it must, within 7 days of making the decision, serve notice of its decision on the applicant and, where representations have been made in relation to the application under **section 57(5)**, on all persons who made representations.

(9) [This component has been omitted.]

(10) [This component has been omitted.]

60. [This component has been omitted.]

60A. Permit for certain works not required

(1) If a permit for dam works, within the meaning of the *Water Management Act 1999*, is in force under that Act, a permit or special permit for those works is not required under this Act.

(2) A water entity administering a water management plan or a water district is not required to hold a permit or special permit under this Act for any activities which are –

(a) necessary for the operation, maintenance, repair, minor modification, upgrading or replacement of existing works managed or owned by that water entity and will not cause environmental nuisance, material environmental harm or serious environmental harm; or

(b) required urgently to protect persons from injury or those works from damage so

long as the activities will not cause serious environmental harm.

(3) In this section –

"environmental nuisance" has the same meaning as in the *Environmental Management and Pollution Control Act 1994*;

"material environmental harm" has the same meaning as in the *Environmental Management and Pollution Control Act 1994*;

"serious environmental harm" has the same meaning as in the *Environmental Management and Pollution Control Act 1994*;

"water district" has the same meaning as in the *Water Management Act 1999*;

"water entity" has the same meaning as in the *Water Management Act 1999*;

"water management plan" has the same meaning as in the *Water Management Act 1999*.

Division 2A – Special permits for projects of regional significance

60B. Interpretation: Division 2A

In this Division, unless the contrary intention appears –

"application for an ordinary permit" means an application made under **Division 2** of this Part, or **Division 2A** of **Part 3**, for the issue of a permit;

"EMPC Act" means the *Environmental Management and Pollution Control Act 1994*;

"EPA Board" means the Board of the Environment Protection Authority established under **section 13** of the EMPC Act;

"EPA Director" means the Director of the Environment Protection Authority appointed under **section 18** of the EMPC Act;

"Panel", in relation to a project, means the Development Assessment Panel established under **section 60M** in relation to the project;

"project of regional significance" means a project that is declared under **section 60G** to be a project of regional significance;

"proponent", in relation to a project –

- (a) means the person from time to time proposing a project consisting of one or more uses or developments; and
- (b) if a project consists of 2 or more uses or developments that are proposed to be undertaken by different persons, means the

person proposing the project as a whole;

"statement of intent" means a statement of intent that, under **section 60F**, accompanies a proposal from a proponent of a project.

60C. Projects eligible to be declared projects of regional significance

- (1) A project is eligible to be declared to be a project of regional significance if –
 - (a) the project is of regional planning significance; or
 - (b) the project requires high-level assessment; or
 - (c) the project would have a significant environmental impact.
- (2) A project is only of regional planning significance if, in the opinion of the Minister –
 - (a) the project would make a significant economic or social contribution to a region; or
 - (b) the project is of a scale that would be likely to significantly affect the provision of infrastructure, including social infrastructure, in the region.
- (3) A project only requires high-level assessment if, in the opinion of the Minister, the project –
 - (a) is of such a scale or complexity; or

(b) has such characteristics –

that the planning authority that would be required under this Act to assess an application for an ordinary permit in relation to the project is unlikely to have the capability or the resources to adequately perform the assessment.

- (4) A project that is to be situated on an area of land may not be declared to be a project of regional significance except with the consent of the relevant persons.
- (5) For the purposes of **subsection (4)**, the relevant persons are –
- (a) if all or part of the land is Crown land, the Minister responsible for Crown land; and
 - (b) if all or part of the land is owned by a council, the general manager, within the meaning of the *Local Government Act 1993*, of the council; and
 - (c) if all or part of the land is in Wellington Park, the Wellington Park Management Trust.
- (6) A project that is to be situated on an area of land may not be declared to be a project of regional significance unless the relevant persons have been notified.
- (7) For the purposes of **subsection (6)**, the relevant persons are –
- (a) if all or part of the land is land of which the proponent is not the owner, the owner, or owners, of the land; and

- (b) if all or part of the land is land that is not owned by a council but is occupied or administered by a council, the council.
- (8) A project that is to be situated on an area of land may be declared to be a project of regional significance even though a use or development that is proposed to form part of the project is prohibited under –
 - (a) an interim planning scheme; or
 - (b) a planning scheme made under **section 30N** –

that applies in relation to the land, but only if the use or development would be consistent with a regional land use strategy that applies in relation to the land.

- (9) A project that is to be situated on an area of land may be declared to be a project of regional significance even though a use or development proposed to form part of the project is prohibited under a planning scheme (other than an interim planning scheme or a planning scheme declared under **section 30N**) that applies in relation to the land.

60D. Proposals that projects be declared projects of regional significance

- (1) A proponent for a project may, by notice in writing to the Minister, propose that the Minister declare the project to be a project of regional significance.

- (2) A planning authority, by notice in writing to the Minister, may propose that the Minister declare a project to be a project of regional significance.
- (3) A planning authority may only propose a project under **subsection (2)** if the project consists in whole or in part of a use or development that is wholly or partly within the municipal area of the planning authority.
- (4) A planning authority that makes a proposal under **subsection (2)** in relation to an area of land must give notice in writing of the making of the proposal to –
 - (a) the proponent; and
 - (b) the owner, or owners, of the land; and
 - (c) if part of the land is situated within the municipality of another planning authority, that other planning authority.
- (5) If a proposal is made under **subsection (1)**, the Minister must notify each planning authority for the land to which the proposal relates.

60E. Effect of proposal on applications for ordinary permits

- (1) In this section –
 - "relevant time"**, in relation to an application for an ordinary permit that is made in respect of –
 - (a) all or part of the land to which a proposal under **section 60D(1)** relates, means the date on which

the relevant planning authority is notified of the proposal under [section 60D\(5\)](#); or

(b) all or part of the land to which a proposal under [section 60D\(2\)](#) relates, means –

(i) the date on which the proposal is made; or

(ii) if the application is made to a planning authority other than the authority that made the proposal, the date on which the planning authority is notified of the proposal under [section 60D\(4\)\(c\)](#).

(2) This section applies to an application for an ordinary permit in respect of all or part of the land to which a proposal under [section 60D](#) relates, if the application has been made to, but not determined by, a planning authority, before the relevant time.

(3) If this section applies to an application for an ordinary permit, the planning authority must not determine the application unless and until a decision is made under [section 60G\(1\)\(b\)](#) to refuse to declare the project to be a project of regional significance.

(4) A determination of an application for an ordinary permit to which this section applies that is made in contravention of [subsection \(3\)](#) is void.

- (5) If this section applies to an application for an ordinary permit, the period between –
- (a) the relevant time; and
 - (b) the day on which the Minister makes a decision under **section 60G** in relation to the project –

is not, in relation to the application, to be taken into account in any calculation for the purposes of this Act of a period of time beginning on the day on which the application was lodged with the planning authority.

60F. Statement of intent and other information

- (1) A proposal from a proponent of a project under **section 60D(1)** is to be accompanied by a statement of intent for the project.
- (2) A statement of intent for a project is to contain the following information:
 - (a) the name and contact details of the proponent;
 - (b) the name of the project;
 - (c) a description of the project, including its key physical components;
 - (d) an outline of the proposed location of the project and a general site location plan;
 - (e) the anticipated impact, if any, of the project, or infrastructure associated with the project, on other areas;

- (f) a general description of the physical environment that may be affected by the project;
 - (g) the key environmental, health, economic, social and heritage issues that the proponent has identified in respect of the project;
 - (h) the surveys and studies proposed or being undertaken in relation to the key issues in respect of the project;
 - (i) the proposed timetable for the project;
 - (j) how, if at all, the project may make a significant contribution to the economic or social development of the region in which it is proposed to be situated.
- (3) The reference in **subsection (2)(e)** to the anticipated impact of the project or infrastructure on other areas includes –
- (a) both areas that are in, and areas that are outside, the regional area in which the project is to be situated; and
 - (b) the anticipated impact on the provision of social infrastructure, and other infrastructure, in those areas.
- (4) A proposal under **section 60D(2)** from a planning authority is to be accompanied by so much of the information that is in the possession of the planning authority as would be required to be provided by the proponent in a statement of intent under **subsection (1)**, if the proposal were made by the proponent under **section 60D(1)**.

- (5) The Minister may accept a proposal under **section 60D** even though it is not accompanied by all the information required to be specified in the statement of intent required under this section to accompany the application.
- (6) The Minister may request a proponent or a planning authority to provide to the Minister, within the period specified in the request, information of the kind specified in the request that is in the possession of the proponent or authority, respectively.
- (7) Information may only be requested under **subsection (6)** if it is reasonably necessary to enable the Minister to determine whether or not to declare a project to be a project of regional significance.
- (8) A proponent or planning authority to which a request is made under **subsection (6)** is to take all reasonable steps to provide the Minister, as soon as practicable but in any case within the period specified in the request, with the information specified in the request.

60G. Declaration of project of regional significance

- (1) The Minister may, by notice in the *Gazette*, after receiving under **section 60D(1)** or **(2)** a proposal from a person in relation to a project, declare the project –
 - (a) to be a project of regional significance;
or
 - (b) to not be a project of regional significance.

- (2) The Minister is to make a declaration under **subsection (1)** in relation to a proposal within 14 days –
- (a) from the day on which he or she receives notice of the proposal under **section 60D**;
or
 - (b) from the day on which he or she receives further information in accordance with a request made under **section 60F(6)** in relation to the proposal –

whichever is the later.

- (3) The Minister, of his or her own motion, may, by notice in the *Gazette*, declare a project to be a project of regional significance.
- (4) The Minister may only declare a project to be a project of regional significance if the Minister considers the project to be eligible to be declared such a project.
- (5) The Commission must issue guidelines, not inconsistent with this Act, as to the matters to which the Minister is to have regard in determining whether to declare a project to be a project of regional significance.
- (6) In determining whether to declare a project to be a project of regional significance, the Minister is to have regard to the guidelines issued by the Commission under **subsection (5)**.
- (7) A declaration under this section that a project is to be a project of regional significance must specify –

- (a) the land on which the project is to be situated; and
 - (b) the uses or developments that the project proposes for the land; and
 - (c) the proponent of the project; and
 - (d) the grounds on which the Minister declared the project to be a project of regional significance.
- (8) A declaration of a project of regional significance may include any use or development that is necessary for the implementation of the project, whether or not the use or development is to be undertaken by or on behalf of the proponent named in the declaration.
- (9) The Minister may, in a declaration under this section of a project of regional significance that is to take place on an area of land that is not within any municipality, specify that a planning authority nominated in the notice is to be the planning authority in relation to the project.
- (10) The Minister may only nominate, in a notice referred to in **subsection (9)** in relation to an area of land, a planning authority for a municipality that is within a regional area adjacent to the area of land.
- (11) The Minister is to give notice in writing of the making of a declaration of a project under **subsection (1) or (3)** to –
- (a) the proponent; and
 - (b) all planning authorities in the regional area, or regional areas in which the

project to which the declaration relates is to be situated; and

- (c) if the project is to take place on an area of land that is not within any municipality, all planning authorities in the regional area that is adjacent to the area of land; and
- (d) the Commission; and
- (e) if the land on which the project is or was to be situated is situated in Wellington Park, the Wellington Park Management Trust.

- (12) The Minister must ensure that a notice of a declaration under **subsection (1) or (3)** in relation to a project is placed in a newspaper generally circulating in the area in which the project is or was to be situated.

60H. Effect of declaration of project of regional significance

- (1) **Division 2** of this Part and **Division 2A** of **Part 3** do not apply in relation to a use or development that forms part of a project of regional significance.
- (2) A person must not undertake on land a use or development that forms part of a project of regional significance on the land, except under and in accordance with a special permit granted under **section 60T** in relation to the project.

- (3) **Subsection (2)** does not apply in relation to a use or development for the purposes of conducting an assessment under this Division.
- (4) If a project is declared to be a project of regional significance –
 - (a) an application for an ordinary permit, in relation to a use or development forming all or part of the project, that has been made to, but not determined by, the planning authority, is taken to have been withdrawn on the day of the declaration; and
 - (b) the planning authority to which the application was made must, as soon as practicable, refund to the applicant half of any fees that the applicant has paid in respect of the application.

60I. Fees

- (1) The relevant fee, as specified or calculated in accordance with regulations for the purposes of this section, is due and payable to the Commission by the proponent within 30 days after the project is declared under **section 60G** to be a project of regional significance.
- (2) The proponent of a project may, within 30 days after the Panel makes a decision under **section 60T** in relation to the project, apply to the Commission for a review of the amount of the relevant fee paid by the proponent under **subsection (1)** in relation to the project.

- (3) The Commission must, as soon as practicable after receiving an application under **subsection (2)** from a proponent, appoint a State Service employee to conduct a review of the amount of the relevant fee paid by the proponent under **subsection (1)** in relation to the project.
- (4) A person appointed under **subsection (3)** to conduct a review in relation to a project must assess the costs incurred by the Panel in carrying out the Panel's function under this Part of determining whether to grant a special permit in relation to the project.
- (5) If the person is satisfied that the costs referred to in **subsection (4)** in relation to a project are less than the amount the proponent of the project was required to pay as a relevant fee under **subsection (1)**, the person may authorise the refund to the proponent of the difference between the amounts.
- (6) A refund to the proponent is to be made in accordance with an authorisation under **subsection (5)**.
- (7) A person appointed under **subsection (3)** to conduct a review in relation to a project must determine the review within 30 days after he or she is so appointed.
- (8) Regulations for the purposes of this section may prescribe –
 - (a) a maximum and a minimum amount of a relevant fee; or

- (b) that a relevant fee is to be calculated in accordance with a method specified in the regulations –

or both, in respect of a project or of a project of a type specified in the regulations.

60J. Revocation of declaration

- (1) A proponent of a project may at any time, by notice in writing to the Minister, request the Minister to revoke the declaration of a project of regional significance in respect of all or part of the area of land to which the declaration relates.
- (2) The Minister, by notice in the *Gazette*, may revoke a declaration of a project of regional significance in respect of all or part of an area of land –
 - (a) in accordance with a request under **subsection (1)**; or
 - (b) if the Minister is satisfied that the proponent does not intend the project to proceed in relation to the land or the part of the area of land.
- (3) The Minister is to give notice of a revocation of a declaration of a project of regional significance to the persons notified of the declaration of the project under **section 60G(11)**.
- (4) The Minister is to ensure that a notice of the revocation of a declaration of a project of regional significance is placed in a newspaper generally circulating in the area in which the project was, or was to be, situated.

- (5) If a declaration of a project of regional significance is revoked under **subsection (2)** in relation to all or part of an area of land –
 - (a) this Division ceases to apply to the land to which the revocation relates; but
 - (b) a person is not to be taken to have committed an offence under this Act by reason of any action taken, or not taken, before this Division ceased to apply, if the action or failure was lawful under this Division before this Division ceased to apply.

60K. Project to be referred to Director of Environment Protection Authority

- (1) If a project is declared to be a project of regional significance, the Minister must, within 7 days, refer the project to the EPA Director.
- (2) If the Minister refers a project to the EPA Director, the Minister is to forward to the Director –
 - (a) the statement of intent, if any, in relation to the project; and
 - (b) any other information that is provided to the Minister under **section 60F** in relation to the project.
- (3) If a project is referred to the EPA Director under **subsection (1)**, he or she is to determine, within 14 days, whether the EPA Board is to undertake an environmental impact assessment of the project.

- (4) The EPA Director is to notify the Minister of the Director's determination under **subsection (3)**.
- (5) The EPA Director is to be taken to have determined under **subsection (3)** that the EPA Board is to undertake an environmental impact assessment of a project referred to the EPA Director under **subsection (1)**, if the EPA Director has not notified the Minister to the contrary within 14 days after the project is referred to the Director.
- (6) The Minister is to notify the Panel in relation to a project about the determination of the EPA Director under this section in relation to the project.

60L. Environmental impact assessment by EPA Board

- (1) If the EPA Director determines under **section 60K** that the EPA Board is to undertake an environmental impact assessment of a project, the EPA Board, as soon as practicable, must carry out an environmental impact assessment of the project.
- (2) The environmental impact assessment of a project is to be carried out –
 - (a) in accordance with the Environmental Impact Assessment Principles specified in the EMPC Act; and
 - (b) under **Division 1A of Part 3** of the EMPC Act, as modified under **subsection (3)**, and **Part 5** of that Act.

- (3) For the purposes of an environmental impact assessment of a project in accordance with this section, the EMPC Act is modified as follows:
- (a) a reference, in **Division 1A of Part 3** of the EMPC Act, to the planning authority is to be taken to be a reference to the Panel for the project;
 - (b) a reference, in **Division 1A of Part 3** of, or **Part 5** of, the EMPC Act, to an applicant or a proponent is to be taken to be a reference to the proponent of the project;
 - (c) a reference, in **Division 1A of Part 3** of, or **Part 5** of, the EMPC Act, to an activity is to be taken to be a reference to the project;
 - (d) a reference, in **Division 1A of Part 3** of the EMPC Act, to a referral of an application under **section 25(1)** of that Act is to be taken to be a reference to a referral under **section 60K** of this Act;
 - (e) a reference, in **section 27B** of the EMPC Act, to –
 - (i) a person who lodged an application for a permit is to be taken to be a reference to the proponent of the project; and
 - (ii) a notice of intent is to be taken to be a reference to the information provided to the EPA Director under **section 60K(2)**;

- (f) **section 27C** of the EMPC Act does not apply;
 - (g) a reference, in **section 27D** of the EMPC Act, to advice under **section 27C** is to be taken to be a reference to advice under **subsection (4)**;
 - (h) **section 27G(4)** of the EMPC Act does not apply;
 - (i) a reference, in **section 44** of the EMPC Act, to a permit is to be taken to include a reference to a special permit;
 - (j) the reference, in **section 74(4)** of the EMPC Act, to providing the proponent with guidance is to be taken to be satisfied if the guidance is provided to the Panel under **subsection (5)**.
- (4) If the EPA Director determines under **section 60K(3)** that the EPA Board is to undertake an environmental impact assessment of a project, then, within 21 days of the day on which the project is referred to the EPA Director under **section 60K(1)**, the EPA Board is to advise the proponent, and the Minister, of the class of assessment that is proposed to be undertaken under **section 27A** of the EMPC Act.
- (5) The EPA Board is to provide to the Panel the guidance that the EPA Board is required under **section 74(4)** of the EMPC Act to provide to the proponent.
- (6) The Panel must forward to the Director any representations received by the Panel under

section 60Q in relation to the project, as soon as practicable after receiving them.

- (7) The Panel must comply with a direction of the Director under **section 27G** of the EMPC Act.
- (8) On completion of an environmental impact assessment of a project of regional significance, the EPA Board must notify the Panel for the project as to whether the EPA Board –
 - (a) requires any conditions or restrictions to be contained in any special permit that may be granted in relation to the project; or
 - (b) directs the Panel to refuse to grant a special permit in relation to the project.
- (9) The EPA Board must specify in the notice under **subsection (8)** –
 - (a) any condition or restriction, of a kind specified in **section 25(6)** of the EMPC Act, that the EPA Board requires to be imposed on a special permit granted in relation to the project; and
 - (b) the reasons for requiring the condition or restriction or for directing the Panel to refuse to grant a special permit in relation to the project.
- (10) The proponent of a project in relation to which an environmental impact assessment is carried out in accordance with this section is liable to pay to the EPA Board, by the date specified in a notice by the Board to the proponent, the relevant fees for the assessment of the project.

- (11) The relevant fees for the assessment by the EPA Board of a project are the fees that the proponent would have been liable to pay for the assessment of the project if –
 - (a) the proponent had made an application for an ordinary permit in relation to the project; and
 - (b) the environmental impact assessment had been carried out under and in accordance with the EMPC Act as if this section did not apply.

60M. Development Assessment Panel to be established for assessment of project

- (1) The Commission must establish a Development Assessment Panel in relation to a project that is declared to be a project of regional significance.
- (2) A Development Assessment Panel must be established under **subsection (1)** in relation to a project as soon as practicable after the Commission is given notice under **section 60G(11)** of the declaration of the project to be a project of regional significance.
- (3) The Commission is to establish a Panel in relation to a project by appointing to be members of the Panel –
 - (a) a member of the Commission, or any other person nominated by the Commission, who is to be the chairperson of the Panel; and

- (b) a person with the appropriate qualifications and experience who is nominated by the councils for the municipalities that are within any regional areas in which part or all of the project is to take place; and
 - (c) a person who, in the opinion of the Commission, has qualifications or experience that are relevant to the assessment of the project.
- (4) The person appointed under **subsection (3)(a)** must not be a person who is appointed to the Commission under **section 5(1)(g)** or **(h)** of the *Tasmanian Planning Commission Act 1997*.
- (5) A person has appropriate qualifications and experience for the purposes of **subsection (3)(b)** if the person has –
 - (a) qualifications or experience in land use planning, urban and regional development, commerce or industry; or
 - (b) practical knowledge of, and experience in, the provision of buildings or other infrastructure.
- (6) The Commission is to request the councils within all regional areas in which all or part of a project is to take place to together nominate, within 21 days after receiving the request, a person for the purposes of **subsection (3)(b)**.
- (7) If the councils have not nominated a person within 21 days after receiving a request to do so, the Commission may appoint a person for the purposes of **subsection (3)(b)**, even though the

person has not been nominated by the councils, if the person satisfies the requirements of **subsection (5)**.

- (8) If the Commission is of the opinion that the scale, specialist nature or complexity of a project of regional significance makes it desirable to do so, the Commission may appoint to be members of the Panel, in addition to the persons appointed under **subsection (3)**, not more than 2 other persons.
- (9) A person appointed under **subsection (8)** in relation to a project is to be a person who has the qualifications and experience that the Commission thinks appropriate to assist in the assessment of the project.
- (10) The quorum for a Panel is 3.
- (11) Subject to this Division, a Panel is to determine its own proceedings.

60N. Panel to determine guidelines for how assessment is to be made

- (1) The Panel in relation to a project must determine the assessment guidelines in respect of the project.
- (2) The Panel must make a determination under **subsection (1)** in relation to the project before –
 - (a) 35 days after the declaration of the project under **section 60G**; or
 - (b) 5 clear days after the EPA Board provides to the proponent, in accordance with **section 27D** of the EMPC Act as

applied by **section 60L**, guidance in relation to the project; or

- (c) the end of a period approved by the Minister –

whichever period expires later.

- (3) The assessment guidelines in respect of a project are the matters –
 - (a) to be addressed in the project impact statement in relation to the project; and
 - (b) to which the Panel must have regard in assessing whether to grant a special permit in relation to the project.
- (4) The assessment guidelines in respect of a project are only to include matters to be addressed that are reasonably required to enable the proper assessment of –
 - (a) whether a special permit in relation to the project ought to be granted; and
 - (b) if a special permit were to be granted in relation to the project, the conditions or restrictions, if any, to which the permit ought to be subject.
- (5) Before determining the assessment guidelines in respect of a project, the Panel must consult –
 - (a) the Commission; and
 - (b) the planning authorities for any regional area in which part or all of the project is to take place; and

- (c) the State Service Agencies that the Panel believes to have an interest in the project; and
 - (d) if all or part of the land to which the project relates is in Wellington Park, the Wellington Park Management Trust.
- (6) In determining the assessment guidelines in respect of a project that is to be situated on an area of land, the Panel is to have regard to –
 - (a) any planning scheme (whether the scheme is an interim planning scheme, a planning scheme declared under [section 30N](#) or a planning scheme approved under [section 29](#)) that applies to the land; and
 - (b) any special planning order that applies to the land; and
 - (c) any regional land use strategy, if any, for the regional area in which the land is situated; and
 - (d) any applicable State policy.
- (7) If the Panel has been notified under [section 60K\(6\)](#) that the EPA Board is to carry out an environmental impact assessment of the project, the Panel may not determine the assessment guidelines in respect of the project until the Panel –
 - (a) has received guidance in relation to the project from the EPA Board under [section 60L\(5\)](#); or

- (b) has been notified by the Board that the Board does not intend to issue such guidance in relation to the project.
- (8) If the EPA Board has, under **section 60L(5)**, provided to the Panel guidance in relation to a use or development forming part of a project –
 - (a) the assessment guidelines are to include the guidance provided to the Panel by the EPA Board; and
 - (b) the Panel is to provide to the EPA Board a copy of the assessment guidelines in respect of the project.
- (9) As soon as practicable after determining the assessment guidelines in respect of a project, the Panel must give notice of the guidelines in the prescribed manner.

600. Project impact statements to be provided to Panel

- (1) As soon as practicable, and in any case within 7 days, after determining under **section 60N** the assessment guidelines in respect of a project, the Panel must give to the proponent –
 - (a) a copy of the assessment guidelines; and
 - (b) a notice specifying that the proponent is required, within a period specified in the notice, to provide to the Panel a project impact statement in relation to the project.
- (2) A project impact statement is a statement that addresses the matters set out in the assessment guidelines in respect of the project.

- (3) A proponent of a project must provide to the Panel a project impact statement in relation to the project within the period specified in the notice under **subsection (1)(b)**.
- (4) The Panel may, by notice to a proponent, extend the period in which the proponent is to provide a project impact statement to the Panel.
- (5) If the Panel has been notified under **section 60K(6)** that the EPA Board is to carry out an environmental impact assessment of a project, the Panel, as soon as practicable, must provide to the EPA Director a copy of a project impact statement provided to the Panel under **subsection (3)** in relation to the project.

60P. Panel may request information to be provided

- (1) The Panel may request any of the following persons to provide to the Panel, within the period specified in the request, further information of the kind specified in the request:
 - (a) the proponent for a project;
 - (b) a planning authority;
 - (c) the Commission;
 - (d) a State Service Agency;
 - (e) a State authority within the meaning of the *State Service Act 2000*;
 - (f) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*;

- (g) the Wellington Park Management Trust.
- (2) The Panel may only request the proponent to provide further information under **subsection (1)** before 28 days after the Panel has received from the proponent under **section 60O(3)** a project impact statement in relation to the project.
 - (3) The Panel may only request a person to provide further information under **subsection (1)** if the information may assist the Panel to determine –
 - (a) whether to grant a special permit in relation to a project; or
 - (b) if the Panel were to grant a special permit in relation to a project, the conditions or restrictions, if any, to which the permit ought to be subject.
 - (4) A person to whom a request is made under **subsection (1)** is to take all reasonable steps to provide to the Panel, as soon as practicable but in any case within the period specified in the request, the information specified in the request.
 - (5) If the Panel has been notified under **section 60K(6)** that the EPA Board is to carry out an environmental impact assessment of a project, the Panel, as soon as practicable after information in relation to the project is provided to the Panel under **subsection (4)**, must provide a copy of the information to the EPA Director.

60Q. Notification and exhibition of project

- (1) The Panel must give notice, in the prescribed manner, of the public exhibition of a project of regional significance.
- (2) The Commission must place on the Commission's principal website, for the period of the public exhibition, a notice of the public exhibition of a project of regional significance.
- (3) The Panel must give notice under **subsection (1)** as soon as practicable after receiving under **section 60O(3)** a project impact statement in relation to a project, but in any case within 14 days after receiving the statement.
- (4) A notice referred to in **subsection (1)**, in addition to any other matters required by the regulations to be contained in it –
 - (a) is to name a place where a copy of –
 - (i) the assessment guidelines in respect of the project; and
 - (ii) the project impact statement in relation to the project –

will be available for inspection by the public at all reasonable hours during the period for which representations may be made in relation to the project; and
 - (b) is to specify that representations in relation to the project may be made to the Panel during the period that applies to the project under **subsection (7)**; and

- (c) is to specify the address to which a representation may be made.
- (5) After the Panel gives notice in accordance with **subsection (1)**, the Panel, and the planning authority for any land on which part or all of the project is to take place, must arrange, in the prescribed manner, the public exhibition of –
 - (a) the assessment guidelines in respect of the project; and
 - (b) the project impact statement in relation to the project –

at the place, and during the period, specified in the notice.

- (6) A person may make a representation to the Panel in relation to the project.
- (7) A representation may only be made under **subsection (6)** during –
 - (a) the period of 28 days beginning on the date on which notice in relation to the project is given under **subsection (1)**; or
 - (b) despite **paragraph (a)**, if the EPA Director, before the notice in relation to the project is given under **subsection (1)**, issues in relation to the project a direction under section 27G of the EPA Act that specifies a period, that period; or
 - (c) despite **paragraphs (a) and (b)**, if the Panel determines, before the notice in relation to the project is given under **subsection (1)**, a period, of not more than

42 days, in which representations may be made, that period.

- (8) A person must not, within the period specified in the notice under **subsection (1)**, obscure or remove a notice given under **subsection (1)** that is displayed on the land to which the notice relates.

Penalty: Fine not exceeding 10 penalty units.

- (9) If a period referred to in this section includes any days on which the offices of the Commission are closed during normal business hours, that period is to be extended by the number of those days.

60R. Notification and hearings in relation to project

- (1) As soon as practicable after the public exhibition, referred to in **section 60Q(1)**, of the documents in relation to a project begins, the Panel must give notice in the prescribed manner.
- (2) The notice under **subsection (1)** in relation to a project is to be given to –
 - (a) all planning authorities in the regional area in which the land is situated; and
 - (b) all State Service Agencies that have been consulted in respect of the project under **section 60N(5)(c)**; and
 - (c) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*; and

- (d) if all or part of the land is in Wellington Park, the Wellington Park Management Trust.
- (3) The notice under **subsection (1)** is to advise each person to whom it is given about the exhibition of the documents in relation to a project and invite the persons to make representations in relation to the project, including representations as to –
 - (a) whether a special permit ought to be granted in relation to the project; and
 - (b) if a special permit were to be granted in relation to the project, the conditions or restrictions, if any, that ought to be imposed on the permit.
- (4) The Panel must hold hearings in respect of a project, as soon as practicable after the public exhibition of the project under **section 60Q(5)** ends.
- (5) Despite **subsection (4)**, the Panel may dispense with the holding of a hearing in relation to a representation in relation to a project if, after examining the representations received –
 - (a) the Panel is satisfied that all the representations are in support of the project; or
 - (b) the Panel has consulted with a person who made the representation and that person has advised the Panel in writing that he or she does not wish to attend a hearing.

60S. When decision about grant of special permit is to be made

- (1) The Panel is to decide whether to grant a special permit in relation to a project under **section 60T** as soon as practicable after the end of the consultation and hearings, if any, conducted under **section 60R** in respect of the project.
- (2) In any case, if the Panel has been notified under **section 60K(6)** that the EPA Board is not to undertake an environmental impact assessment of the project, the Panel is to decide whether to grant under **section 60T** a special permit in relation to the project –
 - (a) within the 4 month period after the Panel receives the project impact statement in relation to the project under **section 60O(3)**; or
 - (b) within a period specified by the Minister –

whichever is the later.

- (3) If the Panel has requested the proponent under **section 60P** to provide the Panel with further information in relation to a project, the period between the day on which that request is made and the day on which the proponent provides the information to the satisfaction of the Panel is not to be counted in the calculation of the period referred to in **subsection (2)** in relation to the project.
- (4) In any case, if the Panel has been notified under **section 60K(6)** that the EPA Board is to undertake an environmental impact assessment

of the project, the Panel is to decide whether to grant under **section 60T** a special permit in relation to the project within –

- (a) one month after the Panel receives from the EPA Board a notice in relation to the project under **section 60L(8)**; or
- (b) a longer period specified by the Minister.

60T. Grant of special permit

- (1) The Panel may, in accordance with this section –
 - (a) grant a special permit in relation to a project of regional significance; or
 - (b) refuse to grant a special permit in relation to a project of regional significance.
- (2) A special permit may be granted unconditionally or on the conditions or restrictions, specified on the permit, that are imposed on the permit under **section 60U**.
- (3) In deciding under **subsection (1)** whether to grant a permit in relation to a project, the Panel must consider any representations made under **section 60Q** in relation to the project.
- (4) The Panel may only grant a special permit in relation to a project if it is satisfied that –
 - (a) the grant of the permit will further the objectives specified in **Schedule 1**; and
 - (b) the grant of the permit will not contravene any State Policy, planning directive, interim planning scheme or any

planning scheme that is made under [section 30N](#); and

- (c) the assessment guidelines in respect of the project have been satisfied; and
 - (d) the relevant fee required under [section 60I\(1\)](#), and any other fee required under any other Act to be paid for the assessment of the project, have been paid; and
 - (e) the Panel has received under [section 60L\(8\)](#) a notice in relation to the project from the EPA Board and the EPA Board has not directed the Panel to refuse to grant a special permit in relation to the project.
- (5) The Panel may grant a special permit in relation to a project, even though the use or development permitted by the permit would not be permitted under a planning scheme (other than an interim planning scheme or a planning scheme that is made under [section 30N](#)) that applies to the land to which the permit relates.
- (6) The Panel must give to the proponent, and provide on request to a person, a statement of the reasons for granting, or refusing to grant, a special permit under [subsection \(1\)](#).
- (7) If a special permit is granted to the proponent of a project –
- (a) the proponent is liable to pay to the EPA Board the fees that the proponent would have been liable to pay under that Act if

the special permit had been a permit within the meaning of this Act; and

(b) the EMPC Act applies in relation to such fees accordingly.

(8) If a special permit is granted –

(a) the Panel must give in the prescribed manner notice of the grant of the permit; and

(b) the Commission must place on the Commission's principal website a copy of the permit granted.

60U. Special permit may be granted subject to conditions or restrictions

(1) Subject to [section 60V](#), the Panel may impose on a special permit granted under [section 60T\(1\)\(a\)](#) conditions or restrictions on the use or development of the land to which the permit relates.

(2) The Panel must impose on a special permit granted under [section 60T\(1\)\(a\)](#) any conditions or restrictions required under [section 60L\(9\)](#) to be imposed on the permit.

(3) The Panel must not impose on a special permit a condition or restriction that is inconsistent with a condition or restriction required under [section 60L\(9\)](#) to be imposed on the permit.

(4) The Panel must notify, of the conditions or restrictions, if any, imposed on a permit, the persons notified under [section 60V\(2\)](#) in respect of the project to which the permit relates.

- (5) The conditions that may be imposed on a special permit include, but are not limited to including, a condition that all reasonable steps must be taken to enter into an agreement in respect of a use or development forming all or part of the project to which the permit relates.
- (6) If a condition referred to in **subsection (5)** is included, the Panel must specify on the special permit the matters, and the requirements in respect of those matters, to be included in the agreement.
- (7) If –
 - (a) a person is granted a special permit on which is imposed a condition, referred to in **subsection (5)**, that all reasonable steps must be taken to enter into an agreement; and
 - (b) that person is not the owner of the land in respect of which the agreement must be entered into –

the Panel must, within 7 days of granting the permit, serve on the owner of the land notice of the Panel's decision to impose the condition.

60V. Process for determining conditions or restrictions to be imposed on special permits

- (1) In deciding under **section 60U** whether to impose conditions or restrictions on a special permit to be granted in relation to the project, the Panel must consider any representations made under **section 60Q** or this section in relation to such conditions or restrictions.

- (2) At least 14 days before granting under **section 60T(1)(a)** a special permit on which a condition or restriction is imposed under **section 60U**, the Panel must provide to the following persons a copy of the conditions or restrictions that it proposes to impose:
 - (a) the proponent;
 - (b) the planning authority for the land to which the permit is to relate;
 - (c) the EPA Board;
 - (d) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*;
 - (e) if all or part of the land is in Wellington Park, the Wellington Park Management Trust.
- (3) At least 14 days before granting under **section 60T(1)(a)** a special permit on which a condition or restriction is imposed under **section 60U**, the Panel must provide, to those persons who made representations under **section 60Q** in relation to the project, a copy of the condition or restriction that it proposes to impose.
- (4) A person notified under **subsection (2)** or **(3)** may, within 14 days of receiving a copy of a proposed condition or restriction in respect of a proposed special permit, set out, by notice to the Panel –
 - (a) any objections the person may have to the proposed condition or restriction; and

- (b) any other conditions or restrictions that the person thinks ought to be specified on the proposed special permit.
- (5) If a person, in a notice under **subsection (4)**, objects to a proposed condition or restriction that the EPA Board requires, in a notice to the Panel under **section 60L(8)**, to be specified in the permit –
 - (a) the Panel must forward a copy of the objection to the EPA Board; and
 - (b) the EPA Board may, if it thinks fit, within 14 days, by notice to the Panel, amend the notice under **section 60L(8)**.
- (6) If a period referred to in this section includes any days on which the offices of the Commission are closed during normal business hours, that period is to be extended by the number of those days.

60W. When special permit takes effect

- (1) A special permit takes effect on the day on which it is granted or another later day specified in the permit.
- (2) If any other approvals under this Act or another Act are required for the proposed use or development to which a special permit relates, the special permit does not take effect until all those approvals have been granted.
- (3) If it is a condition of a special permit that all reasonable steps be taken to enter into an agreement, the permit does not take effect until –
 - (a) the day the agreement is executed; or

- (b) the day the Commission notifies the proponent in writing under **subsection (4)** that the Commission is satisfied that the proponent has taken all reasonable steps to enter into such an agreement.
- (4) The Commission may, on the application of a proponent of a project, issue a notice in writing to the proponent stating that the Commission is satisfied that the proponent has taken all reasonable steps to enter into an agreement.
- (5) The Commission must give notice of the issue of a notice under **subsection (4)** in relation to a project to the council for the land to which the notice under **subsection (4)** relates.
- (6) If –
 - (a) after a period of 4 years from the date on which a special permit was granted; or
 - (b) where the Commission has granted an extension under **subsection (7)**, after a further period of 2 years –

the principal use or development in respect of which a special permit was granted is not substantially commenced, the permit lapses.
- (7) If the principal use or development in respect of which a special permit was granted is not, or is unlikely to be, substantially commenced before the permit would otherwise lapse under **subsection (6)(a)**, the Commission may grant (once only) a 2-year extension of the period during which that use or development must be substantially commenced.

60X. Amendment, revocation and correction of special permits

- (1) The Commission may, on the application of the proponent of a project, by notice in writing to the proponent, amend a condition or restriction imposed on a special permit granted in relation to the project.
- (2) The Commission may, on the application of –
 - (a) the EPA Director; or
 - (b) the planning authority for the area of land to which the project relates –by notice in writing to the proponent, amend a condition or restriction imposed on a special permit granted in relation to the project.
- (3) The Commission may only amend under **subsection (2)** a condition or restriction imposed on a permit if it has invited the proponent of the project to which the permit relates to show cause why the condition or restriction should not be amended as proposed.
- (4) The Commission may only amend under **subsections (1) or (2)** a condition or restriction imposed on a special permit if, at least 14 days before amending the condition or restriction –
 - (a) the Commission has invited the EPA Director to advise the Commission within 14 days, or a longer period allowed by the Commission, as to whether the EPA Director objects to the condition or restriction being amended as proposed; and

- (b) the EPA Director has not, within the time required under **paragraph (a)**, advised that the Director objects to the condition or restriction being amended as proposed.
- (5) **Subsection (4)** does not apply in relation to an amendment of a condition or restriction imposed on a special permit that has been requested by the EPA Director under **subsection (2)**.
- (6) The Commission may only amend under **subsections (1) or (2)** a condition or restriction imposed on a special permit in relation to an area of land if –
 - (a) at least 14 days before amending the condition or restriction the Panel has provided a copy of the proposed conditions or restrictions to –
 - (i) the planning authority for the area of land; and
 - (ii) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*; and
 - (iii) if all or part of the land is in Wellington Park, the Wellington Park Management Trust; and
 - (b) the Commission has considered any objections in relation to the condition or restriction that it has received under **subsection (7)**.
- (7) A person notified under **subsection (6)** may, within 14 days of receiving the notice, by notice

to the Panel, set out the person's objections to the amendment of the condition or restriction.

- (8) The Commission may only amend under **subsections (1) or (2)** a condition or restriction imposed on a special permit if the amendment –
 - (a) will not cause an increase in detriment to any person other than the proponent; and
 - (b) does not change the use or development for which the permit was issued, other than by changing in a minor way the description of the use or development.
- (9) The Commission may only amend a condition or restriction imposed on a special permit in relation to an area of land if it is satisfied that the condition or restriction of the permit, as so amended, would not be inconsistent with –
 - (a) the objectives set out in **Schedule 1**; and
 - (b) any interim planning scheme, or planning scheme made under **section 30N**, that applies to the land; and
 - (c) a planning directive or State policy.
- (10) If the Commission amends a condition or restriction imposed on a special permit in relation to a project, the Commission is to give notice in writing to –
 - (a) each person notified under **subsection (4) or (6)** of the proposal to amend the condition or restriction; and
 - (b) each person who has made a representation under **section 60Q(6)** in

relation to the conditions or restrictions to be imposed on the special permit.

- (11) The Commission may, on the application of a proponent of a project or the owner of the land to which a special permit relates, by notice in writing to the proponent or owner, as the case may be, revoke a special permit granted in relation to a project.
- (12) The Commission may, by notice in writing to the proponent, correct a special permit if the permit contains –
 - (a) a clerical mistake or an error arising from any accidental slip or omission; or
 - (b) an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the permit.
- (13) If the Commission revokes or corrects a special permit in relation to a project carried out or to be carried out on an area of land, the Commission must give notice in writing of the revocation or correction to –
 - (a) the proponent; and
 - (b) the owner of the land; and
 - (c) the planning authority for the land.
- (14) In this section –

"amend", in relation to a condition of a special permit, means to amend, vary or revoke a condition of the permit or to add a condition to the permit.

60Y. Amendment of planning schemes, &c.

(1) As soon as practicable after a special permit is granted in relation to a project, the Commission must, in consultation with the relevant planning authority, by notice in the *Gazette*, amend –

- (a) any planning scheme; or
- (b) any special planning order –

that applies to the land on which the project is to be situated, so as to remove any inconsistency between the permit and the planning scheme or special planning order.

(2) **Division 2** of **Part 3** does not apply to an amendment made under **subsection (1)**.

(3) If the Commission amends under **subsection (1)** a planning scheme that applies to land on which a project of regional significance is to be situated –

- (a) the amendment is to be taken to have come into operation on the date on which the project was declared to be a project of regional significance; and
- (b) the Commission must give notice, as prescribed in the regulations, of the amendment.

60Z. Review of Division

(1) An independent review of this Division must be commissioned by the Minister as soon as possible after **1 January 2013** to enable consideration of –

- (a) the effectiveness of this Division in approving special permits for projects of regional significance; and
 - (b) the operation of the powers under this Division permitting the Minister to declare a project to be a project of regional significance; and
 - (c) the effectiveness of guidelines issued by the Commission under this Division as to the matters to which the Minister is to have regard as to determining whether a project is to be declared a project of regional significance; and
 - (d) any other matters relevant to the effect of this Division on providing an efficient and effective planning approval process in Tasmania.
- (2) A person or group who undertakes such a review must invite submissions relevant to the review from the public and give due consideration to the content of any such submissions.
- (3) A person or group who undertakes such a review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report of the review to be laid before each House of Parliament within 14 days of the Minister receiving the report.
- (5) In this section –
- "independent review"** means a review undertaken by persons who –

- (a) in the opinion of the Minister possess appropriate qualifications to undertake the review; and
- (b) includes one or more persons that are not employed by the State of Tasmania, a State Service Agency, the Commonwealth, a Commonwealth authority or any entity created under this Act.

Division 3 – Planning appeals

61. Appeals against planning decisions

- (1) [This component has been omitted.]
- (2) [This component has been omitted.]
- (3) An applicant for a permit may appeal to the Appeal Tribunal against a requirement by a planning authority for additional information under **section 54** within 14 days after the day on which notice was served under **section 54(1)** or **(3)**.
- (3A) If a planning authority has amended a permit under **section 43K** or **56**, any person referred to in **section 43K(3), (4) or (5)** or **56(3) or (4)** may appeal to the Appeal Tribunal against the decision of the planning authority within 14 days after the day on which the notice was served under **section 43K(3), (4) or (5)** or **56(3) or (4)**.
- ~~(3B) If a planning authority has amended a permit under **section 30ZA**, any person referred to in~~

~~section 30ZA(3), (4) or (5)~~ may appeal to the Appeals Tribunal against the decision of the planning authority within 14 days after the day on which the notice was served on the person under ~~section 30ZA(3), (4) or (5)~~.

- (4) If a planning authority refuses to grant a permit (~~otherwise than by virtue of the operation of section 30S(3)~~) or grants a permit subject to conditions or restrictions, the applicant for the permit may appeal to the Appeal Tribunal against the decision of the planning authority within 14 days after, as the case may be—
 - (a) the day on which notice was served under ~~section 57(2)~~; or
 - (b) the day on which notice was served on the applicant under ~~section 57(7)~~; or
 - (c) the day on which notice was served under ~~section 58(3)~~; or
 - (d) the day on which notice was served on the applicant under ~~section 59(8)~~.
- (5) If a planning authority grants a permit, any person who or relevant agency which, in respect of the application for that permit, has made a representation under ~~section 57(5)~~ may appeal to the Appeal Tribunal against the grant of the permit within 14 days after, as the case may be –
 - (a) the day on which notice was served on that person under ~~section 57(7)~~; or
 - (b) the day on which notice was served on that person under ~~section 59(8)~~.

- (6) An owner notified of the decision of a planning authority under subsection (3) of section 58A may appeal to the Appeal Tribunal against that decision within 14 days after the day on which notice was served under that subsection.
- (7) [This component has been omitted.]

62. Determination of appeals

- (1) After hearing an appeal, the Appeal Tribunal may, in addition to its powers under the *Resource Management and Planning Appeal Tribunal Act 1993* –
 - (a) [This component has been omitted.]
 - (b) direct that additional information be supplied or that the authority proceed on the basis that the information was supplied; or
 - (c) in the case of an appeal against a grant of a permit, a refusal to grant a permit or a grant of a permit subject to conditions or restrictions –
 - (i) direct the planning authority to grant the permit; or
 - (ii) direct the planning authority to grant the permit and direct the planning authority that the permit must or must not contain any specified conditions; or
 - (iii) direct the planning authority not to grant a permit; or

- (d) in the case of an appeal against the amendment of a permit –
 - (i) direct the planning authority not to amend the permit; or
 - (ii) having regard to the matters specified in—~~section 30ZA(2)~~, ~~section 43K(2)~~ or ~~section 56(2)~~, as the case may be, direct the planning authority to amend the permit in the manner specified by the Appeal Tribunal.
- (2) Where the Appeal Tribunal has determined an appeal, an application for a permit in respect of a use or development which is substantially the same as the use or development to which the appeal related may not, without the leave of the Appeal Tribunal, be made within a period of 2 years from the date on which the Appeal Tribunal made its decision.
- (3) The Appeal Tribunal must determine an appeal in accordance with the planning scheme that was in place at the time the planning authority determined the application for a permit.
- (4) In determining an appeal in accordance with ~~subsection (3)~~, the Appeal Tribunal has the same obligations as a planning authority at the time the planning authority determined the application for the permit.

Division 4 – Offences, remedies, &c.

63. Obstruction of sealed schemes

- (1) [This component has been omitted.]
- (2) A person must not use land in a way, or undertake development or do any other act, that –
 - (a) is contrary to a State Policy, a planning scheme or special planning order; or
 - (b) impedes or obstructs the execution of any such scheme or order; or
 - (c) constitutes a breach of a condition or restriction of a permit imposed by a planning authority pursuant to any such scheme or order or a determination of the Appeal Tribunal; or
 - (d) constitutes a breach of **section 60H(2)** or of a condition or restriction imposed under **section 60U**, as amended, if at all, under **section 60X**, on a special permit granted in relation to the land.
- (3) A person who contravenes **subsection (2)** is guilty of an offence punishable, on summary conviction, in accordance with **subsection (4)**.
- (4) A person convicted of an offence against **subsection (3)** is liable to a fine not exceeding 500 penalty units, and a person who is so convicted in respect of a continuing contravention of **subsection (2)** –

- (a) is liable, in addition to the penalty otherwise applicable to that offence, to a fine for each day during which the contravention continued of not more than 50 penalty units; and
 - (b) if the contravention continues after the person is convicted, is guilty of a further offence against **subsection (3)** and is liable, in addition to the penalty otherwise applicable to that further offence, to a fine for each day during which the contravention continued after that conviction of not more than 50 penalty units.
- (5) Where a person is convicted of an offence against **subsection (3)**, the court may –
 - (a) in addition to any fine imposed under **subsection (4)**, order that the person pay to the planning authority the reasonable cost incurred by the authority in carrying out any work so as to ensure that the use or development is in accordance with the relevant planning scheme, special planning order, permit, special permit or determination; and
 - (b) direct that payment of the amount so ordered to be paid may be enforced in the manner provided by **section 44 of the *Sentencing Act 1997*** as if the person convicted had been adjudged to pay that amount in a conviction or order made by justices.
- (6) The application of **subsection (2)** extends in relation to a permit or a condition or restriction

attaching to a permit under a planning scheme or special planning order where the scheme or order was in force immediately before the commencement of this Act and notwithstanding that the permit or the condition or restriction, if any, was imposed before that commencement.

- (7) Nothing in **subsection (6)** is to be construed as rendering unlawful any use or development that was completed pursuant to a permit in force before the commencement of this Act.

63A. Enforcing compliance with planning schemes and special planning orders

- (1) A planning authority that does not take all reasonable steps to ensure that a planning scheme or special planning order that has effect in respect of an area within its municipal district is complied with is guilty of an offence punishable on summary conviction.
- (2) A planning authority convicted of an offence against **subsection (1)** is liable to a fine not exceeding 500 penalty units, and a planning authority who is so convicted in respect of a continuing contravention of this section –
 - (a) is liable, in addition to the penalty otherwise applicable to that offence, to a fine for each day during which the contravention continued of not more than 500 penalty units; and
 - (b) if the contravention continues after the planning authority is convicted, is guilty of a further offence and is liable, in addition to the penalty otherwise

applicable to that further offence, to a fine for each day during which the contravention continued after that conviction of not more than 50 penalty units.

64. Civil enforcement proceedings

- (1) Where a person contravenes or fails or is likely to contravene or fail to comply with a provision of this Part, the Commission, a planning authority or a person who has, in the opinion of the Appeal Tribunal, a proper interest in the subject matter may apply to the Appeal Tribunal for an order under this section.
- (2) The application may be made *ex parte* and, if the Appeal Tribunal is satisfied that there are sufficient grounds, it must issue a summons requiring the respondent to appear before the Appeal Tribunal to show cause why an order should not be made under this section.
 - (2A) If an application under this section is made by a person other than the planning authority in whose municipal area is situated the land to which the application relates, the planning authority is taken to be a party to the application.
 - (2B) At any time after receiving an application made under this section by a person other than the planning authority in whose municipal area is situated the land to which the application relates, the Appeal Tribunal may direct that the planning authority be made an applicant in the application.

(2C) At any time after receiving an application made under this section by a person other than the Commission, the Appeal Tribunal on the request of the Commission may direct that the Commission be made an applicant in the application.

(3) If –

(a) after hearing–

(i) the applicant and the respondent;
and

(ii) any other person who has, in the opinion of the Appeal Tribunal, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings–

the Appeal Tribunal is satisfied, on the balance of probabilities, that the respondent to the application has contravened or failed or is likely to contravene or fail to comply with a provision of this Part; or

(b) the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard –

the Appeal Tribunal may, by order –

(c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of, or failure to comply with, this Part; and

- (d) preclude, for a period specified by the Appeal Tribunal, the respondent from carrying out any use or development in relation to the land in respect of which the failure to comply or contravention relates; and
 - (e) require the respondent to make good the contravention or default in a manner, and within a period, specified by the Appeal Tribunal.
- (4) Any person with a legal or equitable interest in land to which an application under this section relates is entitled to appear and be heard in proceedings based on the application before a final order is made.
- (5) If, in proceedings under this section, the Appeal Tribunal is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make a temporary order under this section, the Appeal Tribunal may at any time during those proceedings make such an order.
- (6) A temporary order –
 - (a) may be made on an *ex parte* application before a summons has been issued under **subsection (2)**; and
 - (b) may be made subject to such conditions as the Appeal Tribunal thinks fit, including a condition that requires an undertaking by the applicant, not being a planning authority or the Crown, at whose instance the temporary order is granted to pay to the respondent any

damages that the respondent may sustain because of the order; and

(c) is not to operate after the proceedings in which it is made are finally determined.

- (6A) An application for an order for payment of damages is to be made to the Appeal Tribunal.
- (6B) The Appeal Tribunal may order the applicant at whose instance the temporary order is granted to pay all or part of the damages, as determined by the Appeal Tribunal, that the respondent may sustain because of the order.
- (7) A person who contravenes, or fails to comply with, an order or a temporary order under this section is guilty of an offence.

Penalty: Fine not exceeding 500 penalty units.

- (8) Where the Appeal Tribunal makes an order under **subsection (3)(e)** and the respondent fails to comply with the order within the period specified by the Appeal Tribunal, the Commission or a planning authority may, by leave of the Appeal Tribunal, cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt, from the respondent.
- (9) The Appeal Tribunal may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for a permit that should have been but was not made, or to remedy any other default.
- (10) The Appeal Tribunal may, on an application under this section, exercise the powers conferred on it by **section 62(1)** in relation to any use or

development of land as if the application were a hearing of an appeal.

- (11) For the purposes of the *Resource Management and Planning Appeal Tribunal Act 1993*, an application under this section is deemed to be an appeal.
- (12) The Appeal Tribunal must make such orders in relation to the costs of proceedings under this section as it thinks fit and in making such orders must take into account –
 - (a) the result of the proceedings; and
 - (b) whether a party has raised frivolous or vexatious issues at the hearing; and
 - (c) whether any party has unnecessarily or unreasonably prolonged the hearing or increased the costs of it; and
 - (d) the capacity of the parties to meet an order for costs.
- (13) If the Appeal Tribunal is of the opinion that an application under this section is frivolous or vexatious, the Appeal Tribunal must dismiss the application and order the applicant to pay an amount determined by the Appeal Tribunal as being the costs of the proceedings in relation to the application and the costs of any person referred to in **subsection (3)(a)(ii)**.
- (14) An order under **subsection (12)** or **(13)** may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid by or under the order.

- (15) Proceedings for the enforcement of an order under **subsection (13)** may be taken as if the order were a judgment of the court in which the order is registered.
- (16) Proceedings under this section may be commenced at any time within 24 months after the date of the alleged contravention of, or failure to comply with, a provision of this Part.

65. Appeal in respect of decision of Appeal Tribunal under section 64

- (1) Subject to the Rules of the Supreme Court, an appeal lies to the Supreme Court against –
 - (a) an order of the Appeal Tribunal made in the exercise of the jurisdiction conferred by **section 64**; or
 - (b) a decision by the Appeal Tribunal not to make an order under that section.
- (2) An appeal under this section must be instituted within 30 days of the date of the decision or order subject to appeal or such longer period as may be allowed by the Supreme Court.

Division 5 – Compensation and protection from liability

66. Right to compensation

- (1) The owner or occupier of any land may claim compensation in accordance with Part 5 of the ***Land Acquisition Act 1993*** from a planning authority for financial loss suffered as the natural, direct and reasonable consequence of –

- (a) the land being set aside for a public purpose under a planning scheme or special planning order; or
 - (b) the land being shown as set aside for a public purpose in a proposed amendment to a planning scheme which has been publicly exhibited under [section 38](#); or
 - (c) access to land being restricted by the closure of a road by a planning scheme or special planning order.
- (2) The owner or occupier of any land may claim compensation from a planning authority for financial loss suffered as the natural, direct and reasonable consequence of a failure by the authority to grant a permit for the land on the ground that the land is or will be needed for a public purpose.
- (3) A person cannot claim compensation under [subsection \(1\)](#) if the planning authority has purchased or compulsorily acquired the land or part of the land.
- (4) Where a person would be entitled to claim compensation in respect of any matter or thing under this Division and also under any other enactment, the person is not entitled to receive compensation both under this Division and under the other enactment, nor to receive any greater compensation under this Division than the person would be entitled to receive under the other enactment.

67. Power to withdraw or modify planning scheme or interim order after compensation determined

- (1) At any time within one month after the determination of the compensation payable under **section 66**, the planning authority may give notice to the claimant of its intention to withdraw or modify all or any of the provisions of the planning scheme or special planning order which gave rise to the claim for compensation.
- (2) Not later than 3 months after giving notice, the planning authority must –
 - (a) where the notice relates to a planning scheme, submit for the approval of the Commission an amendment of the planning scheme, prepared in accordance with **Division 2 of Part 3**, carrying into effect the withdrawal or modification; and
 - (b) where the notice relates to a special planning order, make another special planning order in accordance with the notice and in substitution for the first-mentioned special planning order.
- (3) On the coming into operation of the amendment of the planning scheme or the substitute special planning order, as the case requires, and on payment by the planning authority of the claimant's costs of and in connection with the making of the claim or the award of compensation, as the case may be, the judgment, order or award for payment of compensation is to be discharged, as prescribed, without prejudice to the right of the claimant to make a further claim for compensation under this

Division in respect of the planning scheme as amended or the substitute special planning order, as the case may be.

68. Enforcement of judgments, &c., for compensation

Compensation under this Division is not to be enforced before the expiration of one month from the date of the determination under **section 66** or, if a notice has been given by the planning authority under **section 67(1)**, until after the expiration of 3 months from the date of the notice or, if within that period a variation of the scheme is submitted to the Commission, until that variation has either come into operation or been disapproved by the Commission.

69. Indemnification of planning authorities for liability to pay compensation

- (1) Where an entitlement to compensation under this Division arises out of the inclusion in a planning scheme or special planning order, at the written request, or with the written consent, of a relevant agency, of a provision reserving land for a public purpose, the planning authority is entitled to be indemnified by the State or the relevant agency, as the case requires, for the payment of that compensation.
- (2) Any sum to which an authority is entitled under **subsection (1)** may be recovered as a debt due to the planning authority in any court of competent jurisdiction.

69A. Protection from liability in respect of bushfire hazard management plans, &c.

A planning authority does not incur any liability for, or in respect of, anything done, or omitted to be done, in accordance with –

- (a) a bushfire hazard management plan, or other prescribed management plan relating to environmental hazards or natural hazards, that has been approved by an accredited person; or
- (b) a certificate issued by an accredited person or a State Service Agency stating that there is insufficient increase in risk from the environmental hazard or natural hazard to warrant any specific protection measures.

Part 5 – Agreements

70. Interpretation: Part 5

In this Part –

"infrastructure" includes services, facilities, works and other uses and developments which provide the basis for meeting economic, social and environmental needs;

"Recorder" means the Recorder of Titles.

71. Planning authority may enter into agreements

- (1) A planning authority may enter into an agreement with an owner of land in the area covered by a planning scheme or a special planning order.
- (2) A planning authority may enter into the agreement on its own behalf or jointly with any other person.
- (3) A planning authority may enter into an agreement under **subsection (1)** with a person in anticipation of that person becoming the owner of the land.
- (4) The planning authority is not entitled to apply to have the agreement referred to in **subsection (3)** registered under **section 78** until the person becomes the owner of the land but the agreement is binding on the parties.

- (5) An agreement is binding on the parties to the agreement on the day on which it is executed.

72. Form and contents of agreement

- (1) An agreement must be under seal and binds the owner to the covenants specified in the agreement.
- (2) An agreement may provide for any one or more of the following matters:
 - (a) the prohibition, restriction or regulation of use or development;
 - (b) the conditions subject to which a use or development may be undertaken;
 - (c) any matter intended to achieve or advance –
 - (i) the objectives listed in **Schedule 1** ; or
 - (ii) any State Policy or draft State Policy upon which a report has been submitted to the Minister in accordance with section 11 (1) of the *State Policies and Projects Act 1993*; or
 - (iii) the objectives of the planning scheme or special planning order, a draft planning scheme which has been publicly exhibited under **section 25** or any amendment to the planning scheme which has been publicly exhibited under **section 38**;

- (d) any matter incidental to any one or more of the matters referred to in paragraphs (a) to (c).

73. Bonds and guarantees

- (1) An agreement may include a condition that the owner is to deposit with the planning authority –
 - (a) a sum of money fixed by or determined in accordance with the agreement; or
 - (b) an undertaking to pay that sum together with security in a form determined by or in accordance with the agreement.
- (2) The agreement may provide that the sum or part of the sum is forfeited if there is any failure by the owner to carry out the agreement to the satisfaction of the planning authority.
- (3) Any money paid must be returned to the owner on a date or dates specified in the agreement to the extent that it has not been forfeited.
- (4) Any money payable under this section is a charge on any land which is the subject of the agreement.

73A. Payments and contributions for infrastructure

- (1) An agreement may include a provision for a payment or other contribution for infrastructure to be made by any party to the agreement.
- (2) Without limiting subsection (1), an agreement may make provision –

- (a) for a payment or other contribution for infrastructure to be made in stages; or
 - (b) for works or other development to be undertaken by the owner on behalf of the planning authority or any other party to the agreement.
- (3) The matters provided for under section 86 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* may be dealt with in whole or in part under an agreement required –
 - (a) as a condition of a permit; or
 - (b) under the provisions of a planning scheme or special planning order.

74. Duration of agreement

- (1) An agreement may provide that the agreement or any specified provision of the agreement comes into operation on or after –
 - (a) the coming into operation of a specified amendment to a planning scheme; or
 - (b) the granting of a permit permitting use or development for a specified purpose; or
 - (c) the happening of a specified event; or
 - (d) a specified time; or
 - (e) the start or completion of a use or development or a specified part of a use or development.

- (2) An agreement may provide that the agreement ends on or after –
 - (a) the happening of any specified event; or
 - (b) a specified time; or
 - (c) the cessation of a use or development for a specified purpose.
- (3) An agreement may be ended by the planning authority with the approval of the Commission or by agreement between the authority and all persons who are bound by any covenant in the agreement.

75. Amendment of agreements

An agreement may be amended by agreement between the planning authority and all persons who are bound by any covenant in the agreement.

76. Agreement to be lodged with Commission

- (1) The planning authority must lodge a copy of an agreement at the office of the Commission without delay after the agreement is made.
- (2) The planning authority must keep a copy of each agreement, indicating any amendment made to it, available at its office for any person to inspect during office hours free of charge.

77. Agreement may not breach planning scheme

An agreement must not require or allow anything to be done which would contravene or not comply with a planning scheme, a special planning order, a permit or a special permit.

78. Registration of agreements, &c.

- (1) A planning authority may lodge with the Recorder an executed copy of an agreement, together with particulars of title to the land to which the agreement relates and must do so if it has made the agreement with an owner of land in respect of which a determination under section 4(1)(c) of the *Crown Lands (Shack Sites) Act 1997* has been made.
- (2) Where an agreement is registered, the planning authority must, as soon as practicable, lodge with the Recorder notification, in a form approved by the Recorder, of the amendment or ending of the agreement, together with particulars of title to any land to which the agreement relates.
- (3) Subject to the provisions of the *Land Titles Act 1980*, the Recorder must register –
 - (a) each agreement; and
 - (b) each notification of the amendment or ending of the agreement –

lodged pursuant to **subsection (1) or (2)** on the folio of the Register, within the meaning of that Act, constituting the title to any land to which the agreement relates.

- (4) If the whole or any part of the land referred to in **subsection (3)** is not under the *Land Titles Act 1980*, the relevant agreement may be dealt with by the Recorder in the same manner as if it were a conveyance on sale within the meaning of section 28 (1) (a) of that Act.
- (5) The Recorder may require the planning authority to deposit with the Recorder –
 - (a) a plan of any land; or
 - (b) a plan of a part of any land –to which an agreement relates.
- (6) For the purpose of **subsection (5)**, the Recorder may require a plan to be made from actual survey and certified correct by a surveyor who is registered under the *Land Surveyors Act 1909*.

79. Effect of registration of agreements, &c.

After the registration of an agreement under **section 78** –

- (a) the burden of any covenant in the agreement runs with the land to which the agreement relates as if it were a covenant to which section 102 (2) of the *Land Titles Act 1980* applies; and
- (b) the agreement is enforceable between the parties to it, and any person deriving title under any such party, as if the agreement were entered into by a fee simple owner of land for the benefit of adjacent land held by the Crown in fee simple that was capable of being benefited by the

agreement and as if that adjacent land continued to be so held by the Crown.

80. Application to Appeal Tribunal

- (1) An owner of land may apply to the Appeal Tribunal for an amendment to a proposed agreement if –
 - (a) under a planning scheme or special planning order, use or development for specified purposes is conditional upon an agreement being entered into under this Part; and
 - (b) the owner objects to any provision of the agreement.
- (2) The Appeal Tribunal may approve the proposed agreement with or without amendments.
- (3) For the purposes of the *Resource Management and Planning Appeal Tribunal Act 1993*, an application under this section is deemed to be an appeal.

80A. Validation of agreements

An agreement in existence immediately before the commencement of the *Land Use Planning and Approvals Amendment Act (No. 2) 1995* is valid and effectual and is always taken to be valid and effectual.

Part 6 – Miscellaneous

81. Reasons for extending period to be given

Where the Minister or the Commission extends the period for the doing of any act or thing under this Act, the Minister or the Commission, as the case may be, must, when required to do so by any person, give to that person, in writing, the reasons for extending the period.

81A. Planning schemes, &c., to be registered in Central Plan Register

Within 14 days of approving or amending a planning scheme or making a special planning order, the Commission must cause a copy of the planning scheme, amendment or special planning order to be registered in the Central Plan Register.

82. Evidentiary provision

Evidence of a planning scheme, a special planning order, a permit or a special permit may be given in any court or tribunal or before any person acting judicially by the production of a document purporting to be a copy of the planning scheme, special planning order, permit or special permit and purporting to be certified as a true copy by a person authorized, in writing, by the Commission or planning authority, as the case may require.

82A. Validation

(1) In this section –

"extension" means the extension purportedly granted under **section 53(5A)** by the Dorset council on **16 August 2006**, in respect of the permit;

"permit" means the permit granted on **21 December 2004** by the Dorset council for the development of a wind farm at Musselroe.

(2) The extension is taken to be valid and effectual and to have always been valid and effectual.

(3) The permit is taken to be valid and effectual and to have always been valid and effectual.

83. Planning schemes, &c., to be judicially noticed

A planning scheme, a special planning order, a permit or a special permit is a public document of which a court or tribunal or person acting judicially must take judicial notice, without formal proof of its contents.

84. Service of notices or other documents

A notice or other document is effectively served under this Act if –

(a) in the case of a natural person, it is –

(i) given to the person; or

- (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the server of the notice or other document; or
 - (iii) sent by way of facsimile to the person's facsimile number; and
- (b) in the case of any other person, it is –
 - (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
 - (ii) sent by way of facsimile to the person's facsimile number.

85. Recovery of fees by municipalities

The power of a municipality to make by-laws under the *Local Government Act 1993* includes the power to make by-laws for or with respect to the recovery of fees paid by the municipality in relation to requests for the amendment of a planning scheme made to it under this Act.

86. Requirement to pay fees

The Commission, the Appeal Tribunal or a planning authority is not required to take any action under this Act, and any application, appeal, submission, representation or document which is lodged under this Act is not valid, unless any requirements imposed by regulations

made under **section 87**, or by-laws referred to in **section 85** or any imposition under **section 205 of the *Local Government Act 1993***, as to the payment of fees in respect of the taking of that action or the lodging of that application, appeal, submission, representation or document have been complied with.

87. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of **subsection (1)**, regulations under this section may –
 - (a) make provision for or with respect to the procedures to be adopted by the Commission and planning authorities; and
 - (b) make provision for or with respect to –
 - (i) the payment and collection of fees by any person (including a planning authority) in relation to any act, matter or thing done or arising under this Act; and
 - (ii) the remission of, or exemption from liability for, any such fees; and
 - (c) be of general or specially limited application; and
 - (d) authorize any act, matter or thing in relation to which the regulations may be made to be from time to time determined,

applied or regulated by such person as is specified in the regulations, being the Minister, the Commission or another person performing duties under this Act.

- (3) Without limiting the generality of **subsection (1)**, regulations under this section may make provision for or with respect to the institution, hearing and determination of civil enforcement proceedings under **section 64**.
- (4) Regulations under this section may be made subject to such conditions, or be made so as to apply differently according to such factors as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.
- (5) Regulations under this section may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.
- (6) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (7) A provision referred to in **subsection (6)** may, if the regulations so provide, take effect from the commencement of this Act or a later date.

87A. Savings and transitional

The savings and transitional provisions specified in **Schedule 4** have effect.

87B. Savings and transitional – Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014

The savings and transitional provisions specified in **Schedule 5** have effect.

88. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Environment and Land Management; and
- (b) the Department responsible to the Minister for Environment and Land Management in relation to the administration of this Act is the Department of Environment and Land Management.

Schedule 1 – Objectives

Sections 5, 8, 20, 32, 44, 51, and 72

Part 1 – Objectives of the Resource Management and Planning System of Tasmania

1. The objectives of the resource management and planning system of Tasmania are –
 - (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
 - (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
 - (c) to encourage public involvement in resource management and planning; and
 - (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
 - (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.
2. In clause 1(a), "**sustainable development**" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

Part 2 – Objectives of the Planning Process Established by this Act

The objectives of the planning process established by this Act are, in support of the objectives set out in **Part 1** of this Schedule –

- (a) to require sound strategic planning and co-ordinated action by State and local government; and
- (b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and
- (c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and
- (d) to require land use and development planning and policy to be easily integrated with environmental, social,

economic, conservation and resource management policies at State, regional and municipal levels; and

- (e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and
- (f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania; and
- (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and
- (h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and
- (i) to provide a planning framework which fully considers land capability.

2. [This component has been omitted.]

3. [This component has been omitted.]

Schedule 4 – Savings and Transitional Provisions

Section 87A

1. Interpretation

(1) In this Schedule –

"prior scheme" means a planning scheme made or deemed to have been made under Part XVIII of the *Local Government Act 1962*.

(2) Unless the contrary intention appears, words and expressions used in this Act have the same respective meanings in this Schedule.

2. Operation date of certain draft planning schemes and amendments

(1) A draft planning scheme which, before the commencement of the *Land Use Planning and Approvals Amendment Act 1995*, was given final approval by the Panel under **section 29** without a specified date of operation is taken to have come into operation on the date of that final approval.

(2) A draft amendment which, before the commencement of the *Land Use Planning and Approvals Amendment Act 1995*, was given final approval by the Panel under **section 42** without a specified date of operation is taken to have come into operation on the date of that final approval.

3. Removal of doubts in relation to prior schemes, &c.

- (1) Any planning scheme or interim order finally approved under Part XVIII of the *Local Government Act 1962* and in force at the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* is valid and effective, from the day on which it was finally approved, in relation to land that is, or has been, Crown land or vested in a State authority.
- (2) For the purposes of subsection (1), "**State authority**" means a body or authority, whether incorporated or not, that is established or constituted under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another State authority.

4. Transitional provisions

- (1) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, a reference to an interim order in any law is, unless the context or subject matter otherwise indicates or requires, taken to be a reference to a special planning order within the meaning of this Act.
- (2) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, the title of an interim order, which is taken to be a planning scheme under **section 46**, is to be read as if the words "**Section 46 Planning**

Scheme" were substituted for the words **"Interim Order"**.

- (3) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, a dispensation –
 - (a) made under Part XVIII of the *Local Government Act 1962* and continued in force as if it had been made under this Act; or
 - (b) granted under **section 47** before the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*; or
 - (c) granted after that commencement under subclause **(4)** of this clause –

is taken to be a provision of the relevant interim order which, at that commencement, is taken to be a planning scheme under **section 46**.

- (4) If before the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995* a planning authority applied to the Panel for approval under **section 47(2)** to grant a dispensation and the planning authority did not grant or refuse to grant the dispensation before that commencement, the dispensation is to continue to be dealt with in accordance with the provisions of **section 47** as in force immediately before that commencement.
- (5) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, any condition on the granting of a dispensation granted before that commencement

which restricts the period for which a dispensation is in force is of no effect.

- (6) On and after the commencement of the *Land Use Planning and Approvals Amendment Act (No.2) 1995*, if any doubt is raised as to the validity of a dispensation granted before that commencement, the person granted the dispensation or the planning authority may refer the matter to the Tribunal.
- (7) The Tribunal is to determine the validity of the dispensation or its terms or conditions as if it were the subject of an appeal under **section 64**.

5. Provisions in relation to schemes

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) a prior scheme continues in force as if it were a planning scheme made under this Act; and
- (b) a scheme provisionally approved under section 727 (1) of the *Local Government Act 1962* is taken to be a draft planning scheme certified under **section 24** of this Act; and
- (c) a scheme publicly notified under section 727 (3) of the *Local Government Act 1962* is taken to be a draft planning scheme publicly exhibited under **section 25** of this Act; and

- (d) an objection to a scheme, notice of which has been given under section 727 (4) of the *Local Government Act 1962*, is taken to be a representation submitted under **section 26(1)** of this Act; and
- (e) the objections to a scheme and the statement of a municipality as to the merit of the several objections forwarded to the Commissioner under section 728 (1) of the *Local Government Act 1962* are taken to be a report forwarded to the Panel under **section 26(2)** of this Act; and
- (f) a report forwarded to the Commissioner under section 728(2) of the *Local Government Act 1962* in relation to a scheme is taken to be a report forwarded to the Panel under **section 26(2)** of this Act; and
- (g) a hearing which has been held and determined by the Commissioner under section 729 of the *Local Government Act 1962* in relation to an objection to a scheme is taken to be a hearing which has been held and determined by the Panel under **section 27(2)** of this Act in relation to a representation; and
- (h) a decision in relation to a scheme made by the Commissioner under section 729A of the *Local Government Act 1962* is taken to be a decision of the Panel under **section 28(1)(b)(ii)** of this Act; and
- (i) a scheme finally approved by the Commissioner under section 730 of the

Local Government Act 1962 is taken to be a planning scheme finally approved by the Panel under **section 29** of this Act.

6. Provisions relating to prior modifications to prior schemes

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) a modification made under Part XVIII of the *Local Government Act 1962* of a scheme made or deemed to have been made under that Part continues in force as if it were an amendment made under this Act to a planning scheme; and
- (b) a modification provisionally approved under section 727(1) of the *Local Government Act 1962* of a prior scheme is taken to be a draft amendment certified under **section 35** of this Act; and
- (c) a modification publicly notified under section 727(3) of the *Local Government Act 1962* of a prior scheme is taken to be a draft amendment publicly exhibited under **section 38** of this Act; and
- (d) an objection to a modification, notice of which is given under section 727 (4) of the *Local Government Act 1962*, of a prior scheme is taken to be a representation submitted under **section 39(1)** of this Act; and

- (e) the objections to a modification of a prior scheme and the statement of a municipality as to the merit of the several objections forwarded to the Commissioner under section 728(1) of the *Local Government Act 1962* are taken to be a report forwarded to the Panel under **section 39(2)** of this Act; and
- (f) a report forwarded to the Commissioner under section 728(2) of the *Local Government Act 1962* in respect of a modification of a prior scheme is taken to be a report forwarded to the Panel under **section 39(2)** of this Act; and
- (g) a hearing which has been held and determined by the Commissioner under section 729 of the *Local Government Act 1962* in relation to an objection to a modification of a prior scheme is taken to be a hearing which has been held and determined by the Panel under **section 40 (2)** of this Act in relation to a representation; and
- (h) a modification finally approved by the Commissioner under section 732 of the *Local Government Act 1962* of a prior scheme is taken to be an amendment finally approved by the Panel under **section 42** of this Act to a planning scheme.

Unvalidated References : section 45(8)(a), section 45(9)

7. Provisions relating to interim orders

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) an order made or deemed to have been made under Part XVIII of the *Local Government Act 1962* continues in force as if it had been made under this Act for a period of 2 years or such longer period as the Panel may allow from the day on which it came into operation under the *Local Government Act 1962*; and
- (b) an order made by a municipality under section 734(2)(a) of the *Local Government Act 1962* is taken to be a draft interim order prepared by the municipality under section 45(1) of this Act; and
- (c) an order approved by the Commissioner under section 734(2A)(a) of the *Local Government Act 1962* is taken to be an interim order approved under section 45(8)(a) of this Act; and
- (d) an order publicly notified under section 734(2A)(b) of the *Local Government Act 1962* is taken to be an interim order notified under section 45(9) of this Act.

Unvalidated References : section 47(8)

8. Provisions relating to dispensations

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) a dispensation made under Part XVIII of the *Local Government Act 1962* continues in force as if it had been made under this Act; and
- (b) an application to the Commissioner for approval under section 734 (2) (b) of the *Local Government Act 1962* is taken to be an application under **section 47(2)** of this Act; and
- (c) the approval of the Commissioner under section 734(2)(b) of the *Local Government Act 1962* is taken to be the approval of the Panel under **section 47(3)** of this Act and is subject to the terms and conditions approved by the Commissioner; and
- (d) a dispensation granted by a municipality under section 734(2)(b) of the *Local Government Act 1962* is taken to be a dispensation granted by the municipality under section 47(8) of this Act.

9. Provisions relating to applications for discretionary planning approvals

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) an application for a planning approval under section 733B(1) of the *Local Government Act 1962* lodged before a specification under this section takes effect is to be dealt with as if this Act had not been enacted; and
- (b) a planning authority must, not later than 3 months after the commencement of **section 49** of this Act, specify in respect of each scheme or order made under Part XVIII of the *Local Government Act 1962* those applications for planning approvals which are to be treated as applications for permits for the purposes of **section 57(1)** of this Act; and
- (c) a planning authority must give notice of the specification to the Panel which may approve or reject it; and
- (d) if it approves the specification, the Panel must publish the specification in the *Gazette* and in such other manner as it considers necessary; and
- (e) on publication the specification takes effect as if it were an amendment of the scheme or order; and
- (f) a specification is to be laid before each House of Parliament within the first 10 sitting days of the House after it has been published; and
- (g) if either House of Parliament passes a resolution, of which notice has been given within the first 15 sitting days of such House after a specification is laid

before it, that the specification be disallowed –

- (i) the specification is of no effect except in relation to any right of appeal accrued by virtue of the operation of the specification; and
- (ii) an application for a planning approval under section 733B(1) of the *Local Government Act 1962* is to be dealt with as if this Act had not been enacted.

10. Provisions relating to applications for planning approvals

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993* –

- (a) an application for a planning approval under a scheme or order made under Part XVIII of the *Local Government Act 1962* is to be treated as an application for a permit under this Act; and
- (b) where a scheme or an order under Part XVIII of the *Local Government Act 1962* requires a planning approval in respect of use or development, that requirement is to be treated as a requirement for a permit in respect of that use or development.

11. Provisions relating to planning approvals

On and from the commencement of the *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993*, where an appeal has been lodged under Part XVIII of the *Local Government Act 1962* before the commencement of the *Resource Management and Planning Appeal Tribunal Act 1993*, the provisions of that Part continue to apply to the appeal as if the relevant provisions of that Part had not been repealed.

12. Provisions relating to environment protection appeals

Where an appeal has been lodged under the *Environment Protection Act 1973* before the commencement of the *Resource Management and Planning Appeal Tribunal Act 1993*, the provisions of the *Environment Protection Act 1973* continue to apply to the appeal as if the relevant provisions of that Act had not been repealed.

Schedule 5 – Transitional provisions – *Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014*

Section 87B

1. Interpretation

In this Schedule –

"amending Act" means the *Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014*.

2. Dispensations and applications for dispensations

(1) If –

(a) an application under section 30Q, as in force immediately before the day on which that section is repealed by the amending Act, for a dispensation in relation to an interim planning scheme has been determined under this Act before that day by granting the dispensation; and

(b) a request in relation to the application has not been made before that day under section 30R, as in force immediately before that day –

the Commission is, as soon as practicable after the day on which this section commences, to direct the planning authority in relation to the land to prepare an amendment to the interim planning scheme under **section 42** that will, in

the opinion of the Commission, best reflect the intended effect of the dispensation.

(2) **Subclause (3)** applies to an application under section 30Q, as in force immediately before the day on which that section is repealed by the amending Act, if –

(a) the application has been determined under this Act before that day by granting the dispensation; and

(b) a request in relation to the application has been made before that day under section 30R, as in force immediately before that day.

(3) If this subsection applies to an application –

(a) the Commission is, as soon as practicable after the day on which this section commences, to direct the planning authority in relation to the land to prepare an amendment to the interim planning scheme under **section 42** that will, in the opinion of the Commission, best reflect the intended effect of the dispensation; and

(b) any permit, to which the application relates, that is granted or confirmed under section 30Y as in force immediately before the day is to be taken to be a permit granted or confirmed, as the case may be, under **section 43H**; and

(c) if the period in which the person could, under section 61(3B), as in force immediately before the amending day,

appeal against an amendment of the permit under section 30ZA as in force immediately before the amending day, has not expired – the person may appeal to the Appeal Tribunal against the decision in relation to the application as if the amending Act had not come into force.

(4) If –

(a) an application under section 30Q, as in force immediately before the day on which that section is repealed by the amending Act, for a dispensation in relation to an interim planning scheme has not, immediately before that day, been determined under this Act; and

(b) a request in relation to the application has not been made before that day under section 30R, as in force immediately before that day –

the application is to be taken to be an application under [section 33\(1\)](#).

(5) If –

(a) an application under section 30Q, as in force immediately before the day on which that section is repealed by the amending Act, for a dispensation in relation to an interim planning scheme has not, immediately before that day, been determined under this Act; and

(b) a request in relation to the application has been made before that day under section

30R, as in force immediately before that day –

the application is to be taken to be an application under section 33(1) and the request is to be taken to be a request under section 43A.

- (6) An amendment to the interim planning scheme under section 42 that is made in accordance with a direction under this section may not alter the zoning of an area of land without the approval of the owner of the area of land.

3. Application of provisions relating to applications and periods in which actions must be taken

- (1) If a period in which an action is required to be taken by a person under this Act as amended by the amending Act has expired before the commencement day, the reference to the period is to be taken to be a reference to a period ending as soon as practicable after the commencement day.
- (2) If an application under this Act made before the commencement day was a valid application, it is not to be taken, after that day, to be invalid by reason only that it is not in the form required under this Act after the commencement day.