



## PLANNING ACT 2002

[Consolidated as at 24 August 2013 on  
the authority of the Administrator and in  
accordance with the *Enactments  
Reprinting Act 1980*]

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### TABLE OF PROVISIONS

#### Section

#### **PART 1 — PRELIMINARY**

1. Short title
2. Commencement
3. Objects
4. The Crown and the Administration
5. Application of other laws
6. Interpretation

#### **PART 2 — NORFOLK ISLAND PLAN**

7. Establishment
8. Declaration of the Plan
9. Preparation of draft Plan
10. Notice of refusal to act on application for variation of the Plan
11. Public consultation
12. Legislative Assembly approval
13. Commencement of approved plan
14. Notice of commencement of approved plan
15. Effect of approval of draft plans
16. Public access
17. Periodic review
18. Consolidation of the Plan

#### **PART 3 — DEVELOPMENT CONTROL PLANS**

19. What is a development control plan?
20. Preparation of draft development control plan
21. Public consultation
22. Minister's decision

23. Notice of Minister's decision
24. Commencement of approved development control plan
25. Effect of approval of draft development control plans
26. Public access to development control plans
27. Consolidation of development control plans
28. Repeal of a development control plan

#### **PART 4 — DEVELOPMENT APPROVALS**

29. Approval not required for permitted (as of right) use or development
30. Approval for permitted use or development or permissible (with consent) use or development
31. Development approval may require further development approval
32. No approval for prohibited use or development

#### **PART 5 — DEVELOPMENT APPROVAL PROCESS**

##### *Division 1 — Development applications*

33. Applicants
34. Formalities
35. Notice of acceptance of application
36. Resumption of application by owner
37. Effect of change of ownership
38. Amendment of application
39. Withdrawal of application
40. Rejection of development applications for permitted use or development if not permitted use or development

##### *Division 2 — Approval*

###### *Subdivision 1 — Permitted use or development*

41. Processing development applications for permitted use or development

###### *Subdivision 2 — Permissible (with consent) use or development*

42. Notice of application for permissible (with consent) use or development to be displayed on land
43. Publication of notice of a development application for permissible (with consent) use or development of land
44. Processing development applications after notice

###### *Subdivision 3 — Environmental impact assessments and statements*

45. Environmental impact assessments and statements

###### *Subdivision 4 — Determining development applications*

46. Matters to be considered

*Division 3 — Notices and time limits*

47. Notice to applicants
48. Notice in Gazette of decisions
49. Time limits for dealing with applications
50. When development approval for permissible (with consent) use or development takes effect

*Division 4 — Modifications to development approvals*

51. Modifications only if development remains substantially the same
52. Applicants for modification of development approvals
53. Formalities for development approval modification application
54. Notice of acceptance of application
55. Withdrawal of development approval modification application
56. Processing development approval modification applications for permitted use or development
57. Processing development approval modification applications for permissible (with consent) use or development
58. Effect of modifications
59. Notice to applicants

*Division 5 — Miscellaneous*

60. Approvals and ownership
61. Revocation of approval
62. When development approval lapses

**PART 6 — DEVELOPMENT CONTRIBUTION SCHEME**

*Division 1 — Preliminary*

63. What is a development contribution scheme?
64. Particulars to be included in a development contribution scheme

*Division 2 — Preparation and approval of development contribution scheme*

65. Preparation of draft development contribution scheme
66. Public consultation
67. Legislative Assembly approval
68. Commencement of approved development contribution scheme
69. Notice of commencement of approved scheme
70. Effect of approval of a draft development contribution scheme
71. Repeal of a development contribution scheme

*Division 3 — Contributions under development contribution scheme*

72. Contribution towards provision or improvement of amenities or services
73. Monetary contributions to be used for the specified purpose

- 74. Use of land given to the Administration under this Division
- 75. Treatment of contributions also required under another enactment

*Division 4 — Accounting for monetary contributions*

- 76. Development contributions register

*Division 5 — Miscellaneous*

- 77. Public access to scheme and register

**PART 7 — ADMINISTRATIVE REVIEW**

- 78. Reviewable decisions
- 79. Review by Administrative Review Tribunal

**PART 8 — ENFORCEMENT**

*Division 1 — Sanctions*

- 80. Development activities
- 81. Compliance order where unapproved development activity
- 81A. Register of compliance orders and court orders
- 82. Court order about costs of restoring land upon unauthorised development activity
- 83. Restitution by Administration
- 84. Recovery of contributions under development contribution scheme
- 85. Documentary evidence
- 86. False information
- 87. Obstruction of officials

*Division 2 — Powers of entry and search*

- 88. Powers of entry
- 89. Entry orders
- 90. Search warrants

**PART 9 — INQUIRY INTO MATTERS**

- 91. Inquiry into development matters

**PART 10 — MISCELLANEOUS**

- 92. Delegation by Minister
- 93. Delegation by Chief Executive Officer
- 94. Authorised officers
- 95. Protecting officials from liability
- 96. Validity of the procedure for the Plan, etc.
- 97. Effect of documents being “available for public inspection”
- 98. Planning certificates
- 99. Minister may refer matters to the Board

100. Regulations

**PART 11 — REPEALS, SAVINGS AND CONSEQUENTIAL AMENDMENTS**

101. Repeal of Planning Act 1996

102. Planning approvals and development approvals

103. Planning applications

104. Amendment of the *Land Administration Fees Act 1996*





## Planning Act 2002

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An Act to provide for a Norfolk Island Plan and associated controls on the use and development of land in Norfolk Island and for related purposes.

### PART 1 — PRELIMINARY

#### Short title

1. This Act may be cited as the *Planning Act 2002*.

#### Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the Gazette.  
(2) The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

#### Objects

3. (1) The objects of this Act are —
  - (a) to promote the conservation of the natural environment and landscape beauty of Norfolk Island; and
  - (b) to promote the conservation and preservation of the unique cultural and built heritage of Norfolk Island; and
  - (c) to preserve the way of life and the quality of life of the people of Norfolk Island; and
  - (d) to promote the proper management, development and conservation of the natural and man-made resources of Norfolk Island for the social and economic welfare of the community and a better environment; and
  - (e) to determine the preferred future use, development and management of Norfolk Island; and
  - (f) to promote and co-ordinate the orderly and economic use and development of land on Norfolk Island and provision of utility and community services and facilities; and
  - (g) to ensure that human health and safety, and the amenity of Norfolk Island, are promoted by activities subject to development approval; and
  - (h) to provide standard development approval procedures.
- (2) In interpreting this Act a construction that would promote the objects of the Act under subsection 3(1) shall be preferred to a construction that would not promote those objects.





### The Crown and the Administration

4. (1) This Act binds the Crown and the Administration.

(2) Nothing in this Act makes the Crown in any capacity or the Administration liable to be prosecuted for an offence.

### Application of other laws

5. Nothing in this Act limits or derogates from the operation of any other enactment.

### Interpretation

6. In this Act, unless the contrary intention appears —

“acceptance date” for a development application or development approval modification application, means the date the Chief Executive Officer gives the applicant notice of acceptance of the application under section 35 or 54;

“approved development control plan” means a draft development control plan which the Minister has, pursuant to section 22, approved;

“approved plan” means a draft plan which the Legislative Assembly has, pursuant to section 12, by resolution approved including any alteration approved by resolution;

“approved scheme” means a draft development contribution scheme which the Legislative Assembly has, pursuant to section 67, by resolution approved including any alteration approved by resolution;

“authorised officer” means a person appointed as such under section 92;

“Board” means the Norfolk Island Planning and Environment Board established by the *Norfolk Island Planning and Environment Board Act 2002*;

“Chief Executive Officer” means the Chief Executive Officer within the meaning of the *Public Sector Management Act 2000*;

“compliance order” means a compliance order given under section 81;

“Court” means the Court of Petty Sessions;

“development” of land means the use of the land or the erection or use of any building or other structure or the carrying out of building, engineering, mining, or other operations in, on, or under the land, or the making of any material change to the use of any premises on the land and includes any one or more of the following —

(a) construction, exterior alteration or exterior decoration of a building or structure;

(b) demolition or removal of a building, structure or works;

(c) construction or carrying out of works;

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

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

(f) construction or putting up for display of a sign or hoarding;

- “development activity” means the use or development of land that under this Act or another enactment requires development approval;
- “development application” means an application for development approval under Part 5;
- “development approval” means an approval under Part 5 to conduct a development activity;
- “development approval modification application” means an application to modify a development approval under section 52;
- “development contribution scheme” means a current development contribution scheme that is in effect under section 69;
- “development control plan” means a current development control plan, as amended or replaced from time to time, that is in effect under section 24;
- “draft development contribution scheme” means a proposed development contribution scheme or proposed replacement for or proposed amendments to a development contribution scheme;
- “draft development control plan” means a proposed development control plan, proposed replacement for or proposed amendments to a development control plan;
- “draft plan” means a proposed new Plan or proposed variation to the Plan;
- “environment” includes all aspects of humankind’s surroundings whether affecting them as individuals or in their social groupings;
- “heritage” means the archaeological, historical, aesthetic, architectural, scientific, natural, cultural or social heritage of Norfolk Island for the present community and for future generations;
- “land” means land above the mean high water mark and includes offshore stacks and water covering land above the mean high water mark;
- “land use zone” means an area specified in the Plan as a zone;
- “Magistrate” means a Magistrate, or the Chief Magistrate, under the *Court of Petty Sessions Act 1960*;
- “owner”, in relation to land, means each of the following —
- (a) a person in whom is vested a freehold estate in the land;
  - (b) a lessee of the land under a Crown lease;
  - (c) a sublessee of the land under a Crown lease, if —
    - (i) the sublease is for a term of 5 years or more; and
    - (ii) the sublease is approved under the *Crown Lands Act 1996*;
  - (d) a person to whom a right to the grant of a Crown lease has been granted under the *Crown Lands Act 1996*;
  - (e) a lessee of the land under a lease for a term of 5 years or more registered under the *Conveyancing Act 1913* or the *Land Titles Act 1996*;

- (f) a sublessee of the land under a sublease for a term of 5 years or more registered under the *Conveyancing Act 1913* or the *Land Titles Act 1996*;
  - (g) in relation to unleased Crown land — the Crown;
- “performance security” has the meaning as prescribed by Regulation;
- “permissible (with consent) use or development” means an activity specified in the Plan as a permissible (with consent) use or development;
- “permitted (as of right) use or development” means an activity specified in the Plan as a permitted (as of right) use or development;
- “permitted use or development” means an activity specified in the Plan or paragraph 29(2)(b) as a permitted use or development;
- “place” includes land, a structure, an aircraft, a vehicle or a vessel;
- “Plan” means the Norfolk Island Plan established by section 9, as replaced or varied from time to time together with any development contribution scheme and all development control plans;
- “prescribed fee” means a fee prescribed by the regulations for the purpose of the provision in which the expression occurs;
- “prohibited use or development” means an activity specified in the Plan as a prohibited use or development;
- “Public Account” means the same as in the *Public Moneys Act 1979*;
- “this Act” includes the regulations;
- “use” of land means the manner of utilising the land, but does not include the undertaking of development.

## PART 2 — NORFOLK ISLAND PLAN

### Establishment

- 7. (1) There shall be a Norfolk Island Plan.
- (2) The Plan shall promote the objects of this Act by indicating planning objectives and development and environmental standards for —
  - (a) Norfolk Island generally; and
  - (b) land use zones.
- (3) Without limiting the generality of subsection 7(2), the Plan shall —
  - (a) specify for each land use zone —
    - (i) use and development which is permitted (as of right) use or development; and
    - (ii) use and development which is permitted use or development; and
    - (iii) use and development which is permissible (with consent) use or development; and
    - (iv) use and development which is prohibited use or development; and

- (b) specify use and development for which development approvals are not required; and
- (c) specify standards, including subdivision standards, for development in each of the land use zones; and
- (d) provide controls and guidelines for managing land use or development decision making on Norfolk Island; and
- (e) set out procedural requirements for development applications consistent with this Act; and
- (f) specify matters the Minister shall consider and actions the Minister shall take in determining development applications and applications to vary the Plan.

#### **Declaration of the Plan**

**8.** The Norfolk Island Plan made by instrument by the Minister consequent upon the Final Draft Norfolk Island Plan, having been tabled in the Legislative Assembly on 20 February 2002 and approved subject to its being altered in a specified manner, is deemed to be the Plan under this Act, and the Plan shall commence on the date notice of its making is gazetted.

#### **Preparation of draft plan**

**9. (1)** The Minister may prepare a draft plan.

**(2)** Without limiting subsection 9(1), if an application is made to the Minister for variation of the Plan to accommodate a specific proposed use or development of land, the application shall be accompanied by details of the proposal and reasons why the Plan should be varied and the prescribed fee.

**(3)** The Minister may cause any aspect of, or proposal for, the Plan to be the subject of an environmental study.

#### **Notice of refusal to act on application for variation of the Plan**

**10. (1)** This section applies if, at the expiration of 28 days after a person applies to the Minister for a variation of the Plan, the Minister has failed to invite public submissions about a draft plan for the proposed variation under section 11.

**(2)** The Minister shall, as soon as practicable after the expiration of the 28 days—

- (a) give the applicant notice of the failure; and
- (b) lay before the Legislative Assembly a statement giving —
  - (i) details of the application; and
  - (ii) the reasons why the public submissions about a draft plan for the proposed variation have not been invited under section 11.

**(3)** After the statement is laid before the Legislative Assembly under paragraph 10(2)(b), the Legislative Assembly may —

- (a) take no action; or
- (b) by resolution direct the Minister to do all or any of the things the Minister may do under this Act in relation to a proposed variation of the Plan as sought in the application.

**Public consultation**

**11. (1)** The Minister shall invite public submissions about a draft plan, by notice published in the Gazette indicating where and when the draft plan is available for inspection.

**(2)** The notice shall also —

- (a) include the aim and intent of draft plan; and
- (b) for a draft plan proposing a variation to accommodate a proposed use or development of land pursuant to an application made under subsection 9(2), state that details of the proposal and reasons for the variation provided under that subsection are also available for inspection; and
- (c) if an environmental study was undertaken into any aspect of a draft plan, state that the reports on the study are also available for inspection.

**(3)** The Minister shall take such other measures as the Minister considers appropriate to ascertain public opinion about the draft plan, notified under subsection 11(1), and to respond to such opinion.

**(4)** The draft plan referred to in subsection 11(1) and, if applicable, the details, reasons and reports referred to in subsection 11(2) shall be available for public inspection.

**(5)** This section does not apply to a draft plan laid before the Legislative Assembly under subsection 12(2).

**Legislative Assembly approval**

**12. (1)** No earlier than 28 days following the notification of the draft plan, under section 11, the Minister shall lay before the Legislative Assembly —

- (a) a copy of the draft plan; and
- (b) a report about the public consultation undertaken in relation to the draft plan, including copies of any submissions about the draft plan received in the course of such consultation.

**(2)** The Minister may lay a draft plan for a proposed variation to the Plan before the Legislative Assembly without prior notification under section 11.

**(3)** If the Minister lays a draft plan before the Legislative Assembly under subsection 12(2), the draft plan shall be accompanied by —

- (a) a statement giving the reasons why —
  - (i) the draft plan was not notified under section 11; and
  - (ii) the variation is appropriate; and
- (b) if the draft plan proposes a variation to accommodate a proposed use or development of land pursuant to an application made under subsection 9(2), details of the proposal and reasons for the variation provided under that subsection.

(4) After the draft plan is laid before the Legislative Assembly under subsection 12(1) or 12(2), the Legislative Assembly may, by resolution —

- (a) approve the draft plan; or
- (b) approve the draft plan subject to its being altered in a specified manner; or
- (c) reject the draft plan.

#### **Commencement of approved plan**

13. (1) The Legislative Assembly shall, by the resolution that approves a draft plan, with or without alteration, or another resolution, declare the date of commencement of the approved plan, which date shall be not earlier than the publication in the Gazette of the notice under section 14 for the approved plan.

(2) On the date of commencement of the approved plan declared by the Legislative Assembly under subsection 13(1) —

- (a) if the approved plan is for a proposed new Plan — the approved plan becomes the Plan in place of the Plan existing immediately before the date of commencement; or
- (b) if the approved plan is for a proposed variation to the Plan — the Plan as varied by the approved plan becomes the Plan in place of the Plan existing immediately before the date of commencement.

#### **Notice of commencement of approved plan**

14. Notice of the commencement of an approved plan shall be published in the Gazette, together with —

- (a) for a draft plan varying the Plan, a statement setting out the aim and intent of the variation; and
- (b) a statement about the commencement of the draft plan pursuant to section 13; and
- (c) a statement indicating where and when the Plan is available for inspection.

#### **Effect of approval of draft plans**

15. (1) The commencement of an approved plan, does not affect the previous operation of the Plan or anything duly done under the Plan before the commencement of the approved plan.

(2) A use or development of land being lawfully carried on before the commencement of an approved plan may continue to be carried on upon the land after the commencement provided the use or development is of the same or substantially similar character, intensity or scale as it was immediately before the commencement.

(3) For subsection 15(2), the approved plan may specify, for particular use or development of land, activities which are, or are not, the same or of substantially similar character, intensity or scale as uses or development immediately before the commencement.

#### **Public access**

16. The Plan shall be available for public inspection.

**Periodic review**

**17. (1)** Before the expiration of each prescribed period, the Minister shall initiate a review of the Plan in order to ascertain its effectiveness in promoting the objects of this Act under section 3.

**(2)** In subsection 17(1), the prescribed period is —

- (a) initially — the period from the commencement of this section determined by resolution of the Legislative Assembly but, if not determined, 5 years; and
- (b) for periods subsequent to the period referred to in paragraph 17(2)(a) — the period, from the end of the previous prescribed period, determined by resolution of the Legislative Assembly but, if not determined, 5 years.

**(3)** The Minister shall initiate a review under subsection 17(1) by —

- (a) causing to be published in the Gazette a notice of the review, inviting public comment on the effectiveness of the Plan in promoting the objects of this Act under section 3; and
- (b) laying a copy of the notice before the Legislative Assembly as soon as practicable after its publication.

**(4)** A review under subsection 17(1) shall be conducted by the Minister —

- (a) in a manner determined by resolution of the Legislative Assembly; or
- (b) in the absence of such a resolution — in a manner determined by the Minister.

**Consolidation of the Plan**

**18. (1)** The Chief Executive Officer may, from time to time, consolidate the Plan incorporating all variations made to the Plan.

**(2)** The consolidated plan is taken to be the current Plan without reference to variations incorporated into the Plan.

**PART 3 — DEVELOPMENT CONTROL PLANS****What is a development control plan?**

**19. (1)** A development control plan is a plan for Norfolk Island or an area of Norfolk Island providing in greater detail than shown in the Plan for —

- (a) a preferred layout and staging for integrated use and development; or
- (b) specific use and development, or design and siting or specific planning requirements.

**(2)** A development control plan shall be consistent with the Plan.

**(3)** A development control plan shall be in the form of a written statement and may include supporting maps, plans, diagrams, illustrations and other materials.

**Preparation of draft development control plan**

**20.** The Minister may prepare a draft development control plan.

**Public consultation**

**21. (1)** The Minister shall invite public submissions about each draft development control plan by notice published in the Gazette indicating where and when the draft development control plan is available for inspection.

**(2)** The Minister shall take such other measures as the Minister considers appropriate to ascertain public opinion about a draft development control plan notified under subsection 21(1), and to respond to such opinion.

**(3)** The draft development control plan referred to in subsection 21(1) shall be available for public inspection.

**Minister's decision**

**22.** No earlier than 28 days following the notification of the draft development control plan under section 21, the Minister may, after considering all public submissions received about the draft development control plan under section 21 —

- (a) approve a draft development control plan in the draft form made available to the public under section 21 or in another form; or
- (b) decide not to proceed with the draft development control plan.

**Notice of Minister's decision**

**23. (1)** Notice of the Minister's decision under section 22 shall be published in the Gazette.

**(2)** The notice in the Gazette of a decision to approve a draft development control plan under paragraph 22(a), shall include —

- (a) a statement about the commencement of the approved development control plan pursuant to section 24; and
- (b) a statement indicating where and when the development control plan is available for inspection.

**Commencement of approved development control plan**

**24. (1)** A provision of an approved development control plan comes into effect on the later of —

- (a) the date of publication in the Gazette of the relevant notice under paragraph 23(2)(a); or
- (b) a later date of commencement specified in the relevant notice.

**Effect of approval of draft development control plans**

**25.** The commencement of an approved development control plan does not affect the previous operation of a development control plan or anything duly done under the Plan before the commencement of the approved development control plan.

**Public access to development control plans**

**26.** The development control plans shall be available for public inspection.



### **Consolidation of development control plans**

**27. (1)** The Chief Executive Officer may, from time to time, consolidate a development control plan incorporating all amendments made to that development control plan.

**(2)** The consolidated development control plan is taken to be the current development control plan without reference to the amendments incorporated into the plan.

### **Repeal of a development control plan**

**28. (1)** The Minister may repeal a development control plan by notice of the repeal published in the Gazette (“the repeal notice”).

**(2)** At least 14 days before publishing the repeal notice, the Minister must publish in the Gazette a notice of the intention to repeal the development control plan.

**(3)** The notice of intention shall state —

- (a)** the reasons for repealing the development control plan; and
- (b)** invite public submissions about the proposed repeal by a specified date being not less than 14 days after the publication of the notice of intention.

**(4)** The Minister shall consider any submissions made in response to an invitation in the notice of intention before publishing a repeal notice.

## **PART 4 — DEVELOPMENT APPROVALS**

### **Approval not required for permitted (as of right) use or development**

**29. (1)** For this Act, development approval is not required for use or development of land if —

- (a)** the use or development is permitted (as of right) use and development for the land; and
- (b)** the use or development is carried out in accordance with any conditions and standards which may be specified in the Plan for such use or development.

**(2)** However, for use or development referred to in paragraph 29(1)(a) for which paragraph 29(1)(b) is not complied with —

- (a)** the use or development is a permitted use or development; and
- (b)** development approval is required.

### **Approval for permitted use or development or permissible (with consent) use or development**

**30.** For this Act, use or development of land has a development approval if —

- (a)** there is a development approval under Part 5 for the use or development; and
- (b)** the use or development is carried out in accordance with any conditions and standards specified in the Plan for such use or development and any conditions and standards specified in the approval.

### **Development approval may require further development approval**

**31.** A development approval may be given subject to a condition that the use or development of the land, or a specified part of the development, shall be subject to another development approval.

### **No approval for prohibited use or development**

**32.** Development approval in respect of land cannot be given for prohibited use or development of that land unless expressly stated in the Plan.

## **PART 5 — DEVELOPMENT APPROVAL PROCESS**

### *Division 1 — Development applications*

#### **Applicants**

**33. (1)** An application for development approval may be made by —

- (a) the owner of the land to which the application relates; or
- (b) another person with the owner's permission; or
- (c) a person eligible to apply under any other enactment.

**(2)** A development application by a person with the permission of the owner of the relevant land shall be accompanied by written confirmation signed by the owner that permission has been granted to the person to make the application.

#### **Formalities**

**34. (1)** A development application shall be made to the Chief Executive Officer.

**(2)** The application shall be accompanied by —

- (a) any information or documents required by the Plan for the application; and
- (b) any information or documents required under any other enactment; and
- (c) if an environmental impact statement is required under section 45 for the use or development, the statement; and
- (d) the prescribed fee (if any) for an application of that type.

**(3)** The Chief Executive Officer may, if the Chief Executive Officer considers it reasonable in the circumstances —

- (a) waive the requirement that an applicant provide any of the information referred to in subsection 34(2); or
- (b) require an applicant to provide relevant information or documents alternative or additional to the information or documents referred to in paragraph 34(2)(a), by written notice to the applicant.

**(4)** A requirement under paragraph 34(3)(b) shall be made within 14 days of receipt of the application.

....

**Notice of acceptance of application**

**35. (1)** Upon the Chief Executive Officer being satisfied that, in relation to a development application —

- (a) all the formal requirements under this Act for development applications for approval of use or development of land specified in the application have been complied with; and
- (b) all relevant information required under this Act for the application has been received by the Chief Executive Officer; and
- (c) if an environmental impact statement is required under section 45 for the use or development, the environmental impact assessment and environmental impact statement are in accordance with that section,

the Chief Executive Officer shall give a written notice to the applicant that the application has been accepted and a decision will be made as required under this Act.

**(2)** The Chief Executive Officer shall give the applicant a notice that the application has not been accepted if a notice under subsection 35(1) is not given by the later of —

- (a) the end of 14 days after the receipt by the Chief Executive Officer of the application; or
- (b) the end of 14 days after further information required under paragraph 35(1)(b) is received.

**Resumption of application by owner**

**36. (1)** A development application referred to in paragraph 33(1)(b) may be taken over by the owner of the land to which the application relates by written notice to the Chief Executive Officer signed by the owner.

**(2)** Where a development application is taken over under this section, the application is to be taken for all purposes to have been made by the owner of the relevant land.

**Effect of change of ownership**

**37. (1)** Where, after a development application is made, the ownership of the land to which the application relates changes, the application lapses unless the new owner, within 21 days of the change, takes over the application by giving the Chief Executive Officer written notice accordingly, signed by the new owner.

**(2)** A development application taken over under this section is to be taken for all purposes to have been made by the new owner of the land.

**Amendment of application**

**38. (1)** A development application may, with the consent of the Chief Executive Officer, be amended by the applicant at any time before its determination.

**(2)** If an amendment results in a change to the proposed use or development of the land to which the application relates, written particulars of the amendment sufficient to indicate the nature of the changed use or development shall be attached to the development application.

**(3)** Where the application relates to permissible (with consent) use or development, the Chief Executive Officer shall publish notice of the amended application in the Gazette.

**Withdrawal of application**

**39. (1)** A development application may be withdrawn at any time up to the time a decision is made on the application under section 41 or paragraph 44(6)(a) or 44(6)(b).

**(2)** The Chief Executive Officer may refund to the applicant the whole or part of the prescribed fee which accompanied the application.

**Rejection of development applications for permitted use or development if not permitted use or development**

**40. (1)** This section applies where —

- (a) a development application seeks development approval for use or development of land as a permitted use or development; and
- (b) the Chief Executive Officer is not satisfied the proposed use or development is permitted use or development of the land.

**(2)** Within 14 days after the application is made, the Chief Executive Officer shall give the applicant a notice refusing the application and specifying the reasons for the refusal.

*Division 2 — Approval**Subdivision 1 — Permitted use or development***Processing development applications for permitted use or development**

**41. (1)** This section applies to development applications for permitted use or development made in accordance with Division 1.

**(2)** The Chief Executive Officer shall advise owners of all properties immediately adjoining the land the subject of the development application that a development application for permitted use or development has been received for that land and the general nature of the proposed use or development.

**(3)** A notice under subsection 41(2) is for information only and any failure to give the notice does not prevent the processing of the application or the making of decisions on it.

**(4)** The Chief Executive Officer shall refer the application to the Minister together with a copy of any relevant documents, a report on the application and the recommendation by the Chief Executive Officer on the application.

**(5)** Upon reference of the application, the Minister, if satisfied the proposed use or development is permitted use or development of the land to which the application relates, shall give development approval for the use or development.

**(6)** An approval may be subject to conditions.

**(7)** Without limiting the conditions which may be imposed, conditions of approval may include —

- (a) conditions requiring the use or development of the land to be achieved within a specified time or stages of the use or development to be achieved at specified times; and
- (b) a condition requiring the provision of performance security for failure to comply with the conditions of the approval.

*Subdivision 2 — Permissible (with consent) use or development*

**Notice of application for permissible (with consent) use or development to be displayed on land**

**42. (1)** As soon as practicable after giving notice of acceptance of a development application for permissible (with consent) use or development under section 35, the Chief Executive Officer —

- (a) shall cause a notice to be displayed on or near the land the subject of the application; and
- (b) may cause other notices to be displayed at such places as the Chief Executive Officer considers appropriate.

**(2)** The notice shall include the matters prescribed by the regulations for such notices.

**(3)** The owner of the land on which a notice is displayed under paragraph 42(1)(a) shall ensure the notice remains as placed on the land until a decision under paragraph 44(6)(a) or 44(6)(b) is made on the development application or the application is withdrawn.

**(4)** A notice under subsection 42(1) is for information only and any failure to give the notice does not prevent the processing of the application or the making of decisions on it.

**Publication of notice of a development application for permissible (with consent) use or development of land**

**43. (1)** The Chief Executive Officer shall cause a notice of a development application for permissible (with consent) use or development of land to be published in the Gazette.

**(2)** The notice shall include—

- (a) a summary of the development application; and
- (b) an invitation for written public submissions to be directed to the Chief Executive Officer within a specified period of not less than 14 days after notification; and
- (c) a statement that the application may be inspected at a specified office of the Administration during usual business hours.

**(3)** An application notified under subsection 43(1) and accompanying documents to the extent specified in the regulations shall be available for public inspection until a final determination is made on the application.

**Processing development applications after notice**

**44. (1)** After the end of the period specified in the notification, the Chief Executive Officer shall refer the application to the Board together with a copy of any public submissions and other relevant documents and a report and recommendations on the application from the Chief Executive Officer.

**(2)** After the application and the recommendation have been referred to the Board, the Board shall make a recommendation about the application.

**(3)** If the Board's recommendation is different to that of the Chief Executive Officer's, the reasons for the difference shall be specified in the Board's recommendation.

(4) The Board shall refer to the Minister the application, its recommendation, and any public submissions and other relevant material including the Chief Executive Officer's report to the Board on the application.

(5) The Board shall forward a copy of its recommendation to the Chief Executive Officer.

(6) Upon reference of the application under subsection 44(4), the Minister shall —

- (a) give development approval for the use and development of the land; or
- (b) refuse to give development approval for the use and development of the land; or
- (c) refer the application back to the Chief Executive Officer with directions to take specified further actions.

(7) An approval may be subject to conditions.

(8) Without limiting the conditions which may be imposed, conditions of approval may include —

- (a) conditions requiring the use or development of the land to be achieved within a specified time or stages of the use or development to be achieved at specified times; and
- (b) a condition requiring the provision of performance security for failure to comply with the conditions of the approval.

(9) An approval may modify development or environmental standards specified in the Plan for that type of use or development provided the modification is consistent with the objectives of the standards specified in the Plan.

(10) The standards as modified under subsection 44(9) shall be taken to be the standards under the Plan for the use or development approved.

### *Subdivision 3 — Environmental impact assessments and statements*

#### **Environmental impact assessments and statements**

45. (1) The Administrator may, under section 100 make regulations prescribing use or development of land to which this section applies (“prescribed use or development”).

(2) Notwithstanding the Plan, prescribed use or development of land is permissible (with consent) use or development.

(3) However, subsection 45(2) does not apply to prohibited use or development of land.

(4) A development application for prescribed use or development of land must be accompanied by an environmental impact statement prepared in accordance with this section.

(5) The environmental impact statement must be prepared —

- (a) in accordance with—
  - (i) the requirements prescribed by the regulations; and
  - (ii) any directions given under subsection 45(6); and
- (b) only after an environmental impact assessment has been carried out.

(6) Before a person undertakes an environmental assessment under this section, the person shall seek directions from the Chief Executive Officer who shall give directions to the proposed applicant about the assessment and statement.

(7) A direction under subsection 45(6) shall include details of the matters to be addressed in the assessment and dealt with by the statement.

(8) If the Chief Executive Officer considers the statement complies with the direction under subsection 45(6), the Chief Executive Officer shall cause a summary of the development application and environmental impact statement to be notified in the Gazette together with —

- (a) an invitation for written public submissions to be given to the Chief Executive Officer within a specified period of not less than 28 days after notification; and
- (b) a statement that the environmental impact statement and development application may be inspected at a specified office of the Administration during usual business hours.

(9) The environmental impact statement and development application shall be available for public inspection.

(10) After the end of the period specified in the notification in the Gazette, the Chief Executive Officer shall process the development application in accordance with the requirements of section 44 relating to the procedures for processing development applications for permissible (with consent) use or development.

(11) Nothing in this section prevents the Chief Executive Officer requiring information under paragraph 34(3)(b) in relation to a development application.

*Subdivision 4 — Determining development applications*

**Matters to be considered**

46. In considering a development application, the Minister shall have regard to the following matters —

- (a) the objects of this Act and objectives of the Plan generally;
- (b) the matters specified in the Plan to be considered in determining whether to give approvals of the kind sought;
- (c) the development and environmental standards specified in the Plan or another enactment for approvals of the kind sought;
- (d) if an environmental impact statement in relation to the application is required under section 45, the statement;
- (e) any public submissions about the application received in accordance with the invitation under subsection 43(2) or 45(8) as the case may be;
- (f) any advice or recommendation received from the Board about the application;
- (g) any recommendations by a person under section 91 relating to the application;

- (h) any matter required by any other enactment to be considered in relation to an approval of the kind sought;
- (i) any other matters considered by the Minister to be relevant.

*Division 3 — Notices and time limits*

**Notice to applicants**

**47. (1)** As soon as practicable and not less than 14 days after the Minister has made a decision about a development application, the Minister shall give the applicant notice of the decision.

**(2)** Where the Minister makes a reviewable decision (within the meaning of section 78) about a development application, notice of the decision shall include —

- (a) a statement of reasons for the decision; and
- (b) if the decision is at variance with the recommendation of the Chief Executive Officer the Board or a person appointed under section 91 to investigate any matters relating to the application — a statement of the reasons why the recommendation was not followed; and
- (c) particulars of the applicant's right to apply to the Administrative Review Tribunal for review of the decision.

**Notice in Gazette of decisions**

**48. (1)** As soon as practicable and not more than 14 days after a decision under subsection 44(6) is made on a development application, notice of the decision shall be published in the Gazette.

**(2)** The notice shall specify —

- (a) whether the application has been approved or refused; and
- (b) if the application is approved whether the approval is subject to conditions; and
- (c) the decision and any accompanying documents are available for public inspection, free of charge, at a specified office of the Administration during usual business hours; and
- (d) where the decision is a reviewable decision within the meaning of section 78, particulars of the right of eligible persons to apply to the Administrative Review Tribunal for review of that decision.

**(3)** The decision and accompanying documents referred to in paragraph 48(2)(c) shall be available for public inspection.

**(4)** A notice under subsection 48(1) is for information only and any failure to comply with this section does not affect the validity of the decision.

**(5)** For subsection 48(2) —

**“eligible persons”** in relation to a development application, mean the applicant and persons who made written public submissions about the application received in accordance with an invitation under subsection 43(2) or 45(8).



**Time limits for dealing with applications**

- 49. (1)** A development application which is not dealt with by way of —
- (a) approval; or
  - (b) approval subject to a condition; or
  - (c) refusal,

within the time limit fixed by this section is to be taken to have been refused approval for the purposes of Part 7.

- (2)** The time limits are as follows —
- (a) for applications for approval of permitted use or development — 28 days beginning on the acceptance date for the application;
  - (b) for applications for approval of permissible (with consent) use or development — 56 days beginning on —
    - (i) if a person is appointed under section 91 to inquire into and make recommendations on matters in relation to the application, the date the recommendations are made; or
    - (ii) where an environmental impact statement in relation to the application is required under section 45, the date the statement is provided to the Chief Executive Officer in accordance with the direction; or
    - (iii) where a survey plan is required of a proposed road project under section 10 of the *Roads Act 2002* or of a subdivision under section 7 of the *Subdivision Act 2002* in relation to the application, the date the survey plan is provided to the Chief Executive Officer in accordance with the requirement; or
    - (iv) in any other case, the acceptance date for the application.

**(3)** The Minister may extend, or further extend, the time limit for dealing with an application by instrument made before the expiry of the time limit, or extended time limit (as the case may be).

**(4)** The aggregate period for any extension or further extension of a time limit under subsection 49(3) is not to exceed twice the length of the period of the time limit.

**When development approval for permissible (with consent) use or development takes effect**

**50.** A development approval for permissible (with consent) use or development takes effect on the later of —

- (a) the expiration of 28 days after the approval is given; or
- (b) if an application under Part 7 for review of the approval decision is made within the 28 days, the final determination of the review,

unless the Administrative Review tribunal declares an earlier effective date.

*Division 4 — Modifications to development approvals*

**Modifications only if development remains substantially the same**

**51.** This Division only applies where a use or development under a development approval is modified as proposed under this Division is generally in accordance with and remains substantially the same use or development as the use or development for which consent was originally granted.

**Applicants for modification of development approvals**

**52. (1)** An application for modification of a development approval may be made by any person who may under section 33 apply for the development approval.

**(2)** A development approval modification application by a person with the permission of the owner of the relevant land shall be accompanied by written confirmation signed by the owner that permission has been granted to the person to make the application.

**(3)** Section 36 (Resumption of application by owner) and section 37 (Effect of change of ownership) apply to development approval modification applications as if they were development applications.

**(4)** Without limiting the modifications that may be made, a modification of a development approval under this Division may include modification to —

- (a) conditions of the development approval; and
- (b) the date specified in the approval under subsection 62(1) on which the approval lapses.

**Formalities for development approval modification application**

**53. (1)** A development approval modification application shall be made to the Chief Executive Officer before the development approval lapses.

**(2)** However, the Minister may allow an application to be made after the development approval has lapsed if the Minister is satisfied that special reasons exist why the application should be proceeded with.

**(3)** The application shall be accompanied by —

- (a) such information or documents required by the Plan for a development application relevant to the proposed modification; and
- (b) any information or documents required under any other enactment; and
- (c) the prescribed fee (if any) for an application of that type.

**(4)** The Chief Executive Officer may, if the Chief Executive Officer considers it reasonable in the circumstances —

- (a) waive the requirement that an applicant provide any of the information referred to in subsection 53(3); or
- (b) require an applicant to provide relevant information or documents alternative or additional to the information or documents referred to in paragraph 53(3)(a), by written notice to the applicant.

**(5)** A requirement under paragraph 53(4)(b) shall be made within 14 days of receipt of the application.

**Notice of acceptance of application**

**54. (1)** Upon the Chief Executive Officer being satisfied that, in relation to a development approval modification application —

- (a) all the formal requirements under this Act have been complied with; and
- (b) all relevant information required under this Act for the application has been received by the Chief Executive Officer,

the Chief Executive Officer shall give a written notice to the applicant that the application has been accepted and a decision will be made as required under this Act.

**(2)** If a notice under subsection 54(1) is not given by the end of 14 days from the later of the receipt by the Chief Executive Officer of the application or further information required under paragraph 53(4)(b), the Chief Executive Officer shall give the applicant a notice that the application has not been accepted.

**Withdrawal of development approval modification application**

**55. (1)** A development approval modification application may be withdrawn at any time up to the time a decision is made on the application under subsection 56(2).

**(2)** The Chief Executive Officer may refund to the applicant the whole or part of the prescribed fee which accompanied the application.

**Processing development approval modification applications for permitted use or development**

**56. (1)** If the original development approval was for permitted use or development, the Chief Executive Officer shall refer a development approval modification application made in accordance with section 52 to the Minister together with a recommendation by the Chief Executive Officer.

**(2)** Upon reference of the application, the Minister may —

- (a) modify the approval; or
- (b) refuse to modify the approval.

**Processing development approval modification applications for permissible (with consent) use or development**

**57. (1)** If the original development approval was for permissible (with consent) use or development, the Chief Executive Officer shall refer the development approval modification application made in accordance with section 52 to the Board with a recommendation by the Chief Executive Officer.

**(2)** After the application and the recommendation have been referred to the Board, the Board shall make a recommendation about the application.

**(3)** If the Board's recommendation is different to that of the Chief Executive Officer's, the reasons for the difference shall be specified in the Board's recommendation.

**(4)** The Board shall refer to the Minister, its recommendation.

**(5)** The Board shall forward a copy of its recommendation to the Chief Executive Officer.

- (6) Upon reference of the application, the Minister may —
- (a) modify the approval; or
  - (b) refuse to modify the approval.

#### **Effect of modifications**

**58. (1)** Modification of a development approval under this Division shall not be construed as giving development approval under Division 2 but a reference in this Act or another enactment to a development approval shall be a reference to the development approval so modified.

(2) Nothing in this section prevents the making and determination of a development application where a development approval exists.

#### **Notice to applicants**

**59. (1)** As soon as practicable after the Minister has made a decision about a development approval modification application, the Minister shall give the applicant notice of the decision.

- (2) The notice of the decision shall include —
- (a) a statement of reasons for the decision; and
  - (b) if the decision is at variance with the recommendation of the Chief Executive Officer under section 56 or the Board under section 57 — a statement of the reasons why the recommendation was not followed; and
  - (c) particulars of the applicant's right to apply to the Administrative Review Tribunal for review of the decision.

### *Division 5 — Miscellaneous*

#### **Approvals and ownership**

**60.** A development approval authorises the owner of the land in relation to which the approval is given to use and develop the land in accordance with the approval, notwithstanding the death or winding up of the estate of the applicant for the approval, or any change in ownership of the land.

#### **Revocation of approval**

**61.** A development approval is only revocable in accordance with the written consent of the owner of the land in relation to which the approval is given.

#### **When development approval lapses**

**62. (1)** This section applies where the land the subject of the approval has not been used and developed in accordance with the approval by the prescribed date.

(2) The development approval lapses on the prescribed date.

(3) In this section —

“prescribed date” in relation to a development approval, means —

- (a) 18 months after the approval is given; or
- (b) a later date specified in the approval.

**PART 6 — DEVELOPMENT CONTRIBUTION SCHEME***Division 1 — Preliminary***What is a development contribution scheme?**

**63. (1)** A development contribution scheme is a scheme providing for contribution by persons who carry out development of land on Norfolk Island towards provision, extension or augmentation of public amenities and community services directly related to needs arising from the use or development of the land.

**(2)** A development contribution scheme shall be in the form of a written statement and may include supporting maps, plans, diagrams, illustrations and other materials.

**Particulars to be included in a development contribution scheme**

**64. (1)** A development contribution scheme shall include particulars of the following —

- (a) the purpose of the scheme;
- (b) the land to which the scheme applies;
- (c) the relationship between the expected types of development in the area and the demand for additional public amenities and community services to meet that development;
- (d) the formulas to be used to determine the contributions required for different categories of public amenities or community services;
- (e) the contribution rates for different types of development, as specified in the scheme;
- (f) a policy concerning the timing of the making of contributions and the conditions which allow deferred or periodic making of contributions;
- (g) a works schedule of the specific public amenities and community services proposed to be provided and an estimate of their cost and staging.

**(2)** A contribution under a development contribution scheme may be one or more than one of payment of money, carrying out works or transfer to the Administration of an interest in land free of cost.

*Division 2 — Preparation and approval of development contribution scheme***Preparation of draft development contribution scheme**

**65.** The Minister may prepare a draft development contribution scheme.

**Public consultation**

**66. (1)** The Minister shall invite public submissions about the draft development contribution scheme by notice published in the Gazette indicating where and when the draft development contribution scheme is available for inspection.

**(2)** The Minister shall take such other measures as the Minister considers appropriate to ascertain public opinion about the draft development contribution scheme notified under subsection 66(1), and to respond to such opinion.

(3) The draft development contribution scheme referred to in subsection 66(1) shall be available for public inspection until a final determination is made on the draft development contribution scheme.

#### **Legislative Assembly approval**

**67. (1)** No earlier than 28 days following the notification of the draft development contribution scheme under section 66, the Minister shall lay before the Legislative Assembly —

- (a) a copy of the draft development contribution scheme; and
- (b) a report about the public consultation undertaken in relation to the draft development contribution scheme, including copies of any submissions about the draft development contribution scheme received in the course of such consultation.

(2) The Minister may lay a draft development contribution scheme for an amendment to a development contribution scheme before the Legislative Assembly without prior notification under section 66.

(3) If the Minister lays a draft development contribution scheme before the Legislative Assembly under subsection 67(2), the draft development contribution scheme shall be accompanied by a statement giving the reasons why —

- (a) the draft development contribution scheme was not notified under section 66; and
- (b) the amendment is appropriate.

(4) After the draft development contribution scheme is laid before the Legislative Assembly under subsection 67(1) or 67(2), the Legislative Assembly may, by resolution —

- (a) approve the draft development contribution scheme; or
- (b) approve the draft development contribution scheme subject to its being altered in a specified manner; or
- (c) reject the draft development contribution scheme.

#### **Commencement of approved development contribution scheme**

**68. (1)** The Legislative Assembly shall, by the resolution that approves a draft development contribution scheme, or another resolution, declare the date of commencement of the approved scheme, which date shall be not earlier than the publication in the Gazette of the notice under section 14 for the approved scheme.

(2) On the date of commencement of the approved scheme declared by the Legislative Assembly under subsection 68(1) —

- (a) if the approved scheme is for a proposed new development contribution scheme — the approved scheme becomes the development contribution scheme in place of the development contribution scheme existing immediately before the date of commencement; or
- (b) if the approved scheme is for a proposed variation to the development contribution scheme — the development contribution scheme as varied by the approved scheme becomes the development contribution scheme in place of the development contribution scheme existing immediately before the date of commencement.

**Notice of commencement of approved scheme**

**69.** Notice of the commencement of an approved scheme shall be published in the Gazette, together with —

- (a) for a draft development contribution scheme varying a development contribution scheme, a statement setting out the aim and intent of the variation; and
- (b) a statement about the commencement of the draft development contribution scheme pursuant to section 68; and
- (c) a statement indicating where and when the development contribution scheme is available for inspection.

**Effect of approval of a draft development contribution scheme**

**70.** The commencement of an approved development contribution scheme does not affect —

- (a) the previous operation of the development contribution scheme or anything duly done under the scheme before the commencement of the approved scheme; or
- (b) conditions imposed on development approvals in accordance with the scheme before the commencement of the approved scheme.

**Repeal of a development contribution scheme**

**71. (1)** The Minister may repeal a development contribution scheme by notice of the repeal published in the Gazette (“the repeal notice”).

**(2)** At least 14 days before publishing the repeal notice, the Minister must publish in the Gazette a notice of the intention to repeal the development contribution scheme.

**(3)** The notice of intention shall state —

- (a) the reasons for repealing the development contribution scheme; and
- (b) invite public submissions about the proposed repeal by a specified date being not less than 14 days after the publication of the notice of intention.

**(4)** The Minister shall consider any submissions made in response to an invitation in the notice of intention before publishing a repeal notice.

*Division 3 — Contributions under development contribution scheme***Contribution towards provision or improvement of amenities or services**

**72. (1)** This section applies if a development contribution scheme specifies that, in relation to the use or development of specified land development approval for use or development of the land shall be subject to contributions specified in the scheme towards provision of public amenities and community services.

**(2)** A development approval in relation to the use or development of such land shall be subject to conditions for the contributions specified in the development contribution scheme.

(3) The Minister may accept one or more of the following in part or full satisfaction of a condition imposed in accordance with subsection 72(1) —

- (a) the transfer to the Administration of an interest in land free of cost;
- (b) the provision of a service or other public benefit (other than the transfer to the Administration of an interest in land or payment of money);
- (c) any interest in land or other money the owner of land has elsewhere transferred to the Administration free of cost or previously paid to the Administration other than in compliance with another condition imposed in accordance with subsection 72(1).

(4) The Minister may only act under subsection 72(3) if the land, service or public benefit, money or interest accepted contributes or has a direct benefit towards the purposes for which under the development contribution scheme the contribution is to be made.

#### **Monetary contributions to be used for the specified purpose**

73. (1) Moneys paid in accordance with a condition imposed in accordance with subsection 72(1), shall —

- (a) be paid into the Trust Fund within the Public Account; and
- (b) be applied towards the use or development for which it was charged, providing public amenities or community services or both within a reasonable time so as to meet the increased demand for those amenities or services or both.

(2) In spite of any other enactment, the Minister is authorised by this section to expend moneys paid into the Public Account under paragraph 73(1)(a) in connection with the purposes referred to in paragraph 73(1)(b).

#### **Use of land given to the Administration under this Division**

74. Land transferred to the Administration in accordance with a condition imposed in accordance with subsection 72(1) shall be made available by the Administration for the purpose of providing public amenities or community services or both within a reasonable time.

#### **Treatment of contributions also required under another enactment**

75. (1) This section applies where —

- (a) a condition imposed in relation to a development approval in accordance with subsection 72(1) has been complied with; and
- (b) the Administration is entitled under another enactment to require, in relation to the development, a transfer to the Administration of an interest in land free of cost or payment of money for the purpose of providing public amenities or community services or both relevant to the development.

(2) Despite the other enactment, compliance with the condition referred to in paragraph 75(1)(a) shall be taken to have satisfied the requirement referred to in paragraph 75(1)(b) to the extent of the value, determined by the Minister of the interest in land transferred or the amount of the money paid in compliance with the condition.



*Division 4 — Accounting for monetary contributions***Development contributions register**

76. (1) If any development approvals are subject to conditions in accordance with section 72, the Administration shall maintain a development contributions register.

(2) The following details shall be recorded in the register in relation to each development approval which is subject to a condition under section 72 —

- (a) particulars sufficient to identify the development approval;
- (b) the nature and extent of each contribution required towards each public amenity or community service;
- (c) the date or dates when any contribution was made and its nature and extent;
- (d) any additional amount earned from investment of contributions received;
- (e) when and what amounts have been applied towards providing the public amenities or community services for which the contributions were made.

*Division 5 — Miscellaneous***Public access to scheme and register**

77. The development contribution scheme and development contributions register shall be available for public inspection.

**PART 7 — ADMINISTRATIVE REVIEW****Reviewable decisions**

78. (1) The following decisions are reviewable decisions for the purposes of this Act —

- (a) decisions the Minister makes under this Act in relation to development applications;
- (b) decisions the Minister makes under subsection 56(2) on a development approval modification application;
- (c) the giving of a compliance order by an authorised officer under section 81.

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**Review by Administrative Review Tribunal**

79. Application may be made to the Administrative Review Tribunal for the review of a reviewable decision within the meaning of section 78.

**PART 8 — ENFORCEMENT***Division 1 — Sanctions***Development activities**

80. (1) A person shall not carry out a development activity without development approval for that activity.

- (2) A person shall not carry out an activity that is prohibited use or development.
- (3) A person shall not carry out a development activity otherwise than in accordance with a development approval including any conditions and standards of the approval or specified in the Plan for that activity.
- (4) A person who contravenes a provision of this section commits an offence.
- Penalty:
- (a) if the offender is an individual — 200 penalty units or imprisonment for 12 months, or both;
  - (b) if the offender is a body corporate — 600 penalty units.

#### **Compliance order where unapproved development activity**

**81. (1)** This section applies where, in the opinion of an authorised officer based on reasonable grounds, a person (the “offending person”) is carrying out, or has carried out a development activity without or otherwise than in accordance with a development approval for that activity.

(2) An authorised officer may by written notice (a “compliance order”) to the person whom the authorised officer believes on reasonable grounds is the offending person order one or more of the following —

- (a) the activity stop;
- (b) the activity be carried out in accordance with the development approval;
- (c) within a specified period any specified action to reverse any effects of the activity or non-compliance be undertaken.

(3) If the person to whom the compliance order is given is not the owner of the land, the authorised officer shall, as soon as practicable, give the owner a copy of the compliance order.

(4) The offending person and the owner of the land shall ensure that the order is complied with.

Penalty for contravention of subsection 81(4):

- (a) if the offender is an individual — 200 penalty units or imprisonment for 12 months, or both; and
- (b) if the offender is a body corporate — 600 penalty units; and
- (c) in addition, a daily penalty not exceeding 5 penalty units.

(5) In this section —

“daily penalty” means a penalty for each day on which any offence is continued, after a compliance order has been given under this section.

(6) Failure to comply with subsection 81(3) does not affect the validity of the compliance order.

**Register of compliance orders and court orders**

**81A. (1)** The Chief Executive Officer shall maintain a Register of Planning Compliance orders.

**(2)** The following details shall be recorded in the register in relation to each compliance order —

- (a) the name and address of the offending person;
- (b) the address of the site the subject of the order;
- (c) the details of the order including:
  - (i) the nature of the activity ordered to be stopped;
  - (ii) the activity be carried out in accordance with the development approval; and
  - (iii) any specified action to reverse any effects of the activity or non-compliance be undertaken within a specified period.
- (d) the name of owner of the land if not the offending person and when the owner was given a copy of the compliance order.
- (e) whether there is an appeal against the order and, if so, the outcome of the appeal.

**(3)** The Register of Planning Compliance orders shall be available for public inspection.

**(4)** In this section —

“compliance order” includes —

- (a) a compliance order as confirmed, revoked or modified on appeal; and
- (b) a court order made under section 80 or 81.

**Court order about costs of restoring land upon unauthorised development activity**

**82. (1)** This section applies where, in relation to a development activity, the Court convicts a person of an offence against section 80 or 81.

**(2)** The Court may, in addition to any other order or penalty it may impose, order the person to pay an amount determined by the Court as the amount reasonably required to cover the restoration cost of land affected by the development activity.

**(3)** The order may direct the amount to be paid to the Administration or a person at whose cost such work has been carried out.

**(4)** The amount ordered to be paid under subsection 82(2) is a debt due and payable to the Administration or the person to whom it is directed to be paid by the person to whom the order was directed, and may be recovered by the Administration or other person, as the case requires, in a court of competent jurisdiction.

- (5) In this section —
- “restoration cost of land” means the cost of work, whether or not the work has been carried out, reasonably necessary to —
- (a) restore the land as close as practicable to its state before the development activity was carried out; and
  - (b) minimise any effect of the development activity that conflicts with the objectives of the Plan; and
  - (c) if the Court considers it is not reasonable to require the land to be restored as close as practicable to its state before the development activity was carried out, to bring the land to a state which reflects the objectives of the Plan.

### **Restitution by Administration**

**83. (1)** If, in the opinion of an authorised officer based on reasonable grounds, a person fails to comply with a compliance order under section 81 the Minister may give written notice to the owner of the land stating that —

- (a) the compliance order has been given; and
- (b) specified works necessary to comply with the order have not been carried out; and
- (c) if the works are not carried out within a specified period —
  - (i) the Administration intends to have the work carried out; and
  - (ii) the cost of carrying out the works is recoverable against the owner.

(2) If the specified works are not carried out within the specified period, the Minister may cause such works to be carried out.

(3) The cost of carrying out works under subsection 83(2) is a debt due and payable to the Administration by the owner of the land and may be recovered by the Administration in a Court of competent jurisdiction.

(4) No action lies against the Crown, the Administration or any person carrying out works under subsection 83(2) for anything done or omitted to be done, in good faith, in relation to the carrying out or purported carrying out of those works.

### **Recovery of contributions under development contribution scheme**

**84.** Any contribution to be made under a condition of a development approval imposed under a development contribution scheme and unpaid when due for payment —

- (a) is an equitable interest held by the Administration in the relevant land; and
- (b) may be recovered from the owner of the relevant land by the Administration in a Court of competent jurisdiction as a debt due and owing to the Administration.

### **Documentary evidence**

**85.** In any civil or criminal proceedings, a copy of a development approval, or of a compliance order under subsection 81(2), is evidence —

- (a) that the approval or order was given; and
- (b) of the contents of the approval or order.

**False information**

**86. (1)** A person shall not knowingly make a false or misleading statement in connection with a development approval application by that person or any other person.

**(2)** A person shall not make a false or misleading statement with the intention of misleading a person performing a function under this Act.

**(3)** A person who contravenes a provision of this section commits an offence.

Penalty: 60 penalty units or imprisonment for 12 months, or both.

**Obstruction of officials**

**87.** A person shall not obstruct or hinder a person performing a function under this Act.

Penalty: 60 penalty units or imprisonment for 12 months, or both.

*Division 2 — Powers of entry and search***Powers of entry**

**88. (1)** An authorised officer may enter a place for the purposes of this Act in any of the following circumstances —

- (a) with the consent of an occupier of the place;
- (b) if the place is open to the public, whether or not on payment of a fee;
- (c) in accordance with an entry order under section 89;
- (d) in accordance with a search warrant under section 90.

**(2)** For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant —

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

**(3)** An authorised officer shall not enter or remain in a place unless —

- (a) if the entry is pursuant to an entry order — the officer produces the order; or
- (b) if the entry is pursuant to a search warrant — the officer produces the warrant; or
- (c) in any other case — the officer produces his or her instrument of appointment, or a copy of that instrument.

**(4)** An authorised officer shall only enter a place for the purposes of obtaining further information in relation to a development application if reasonable steps have been taken to secure the attendance of an occupier of the place.

**Entry orders**

**89. (1)** On information on oath given by an authorised officer, a Magistrate may issue an entry order in relation to a place if satisfied on reasonable grounds that —

- (a) it is reasonably necessary for the officer to enter the place for the purposes of this Act; and
- (b) the entry is not for the purpose of seizing any thing referred to in subsection 90(1); and
- (c) the entry cannot reasonably be effected except in accordance with an entry order; and
- (d) the purpose of the entry cannot reasonably be achieved without an entry order.

**(2)** An entry order authorises the specified authorised officer to enter a specified place, and to inspect the place, with such assistance and by such force as is necessary and reasonable.

**(3)** An entry order does not authorise the seizure of any thing.

**Search warrants**

**90. (1)** On information on oath given by an authorised officer, a Magistrate may issue a search warrant in relation to a place if satisfied on reasonable grounds that —

- (a) any thing in relation to which an offence has been committed is in that place, or will be there within the following 72 hours; or
- (b) any thing which will afford evidence as to the commission of an offence is in that place, or will be there within the following 72 hours; or
- (c) any thing intended to be used for the purpose of committing an offence is in that place, or will be there within the following 72 hours.

**(2)** A search warrant authorises the specified authorised officer to enter the specified place at any time, and to seize any thing of the type specified in the warrant, with such assistance and by such force as is necessary and reasonable.

**(3)** An authorised officer may break open doors and receptacles for the purpose of executing a search warrant, where it is necessary and reasonable to do so.

**(4)** In this section —

“offence” means an offence against this Act which there are reasonable grounds to suspect has been, or is about to be, committed.

**PART 9 — INQUIRY INTO MATTERS****Inquiry into development matters**

**91. (1)** This section applies where —

- (a) an application is made for development approval for permissible (with consent) use or development of land; or
- (b) there is a proposal to replace or vary the Plan; or
- (c) there is a proposal for, or to replace or amend, a development control plan; or

- (d) there is a proposal for, or to replace or amend, a development contribution scheme; or
- (e) the Minister considers a matter may have a significant impact on the implementation of the objects of this Act.

(2) The Assembly, on the recommendation of the Minister, may resolve to appoint a person to investigate any matters specified in the resolution (being matters relating to those to which this section applies) and to make recommendations on those matters. Such resolution shall be published in the Gazette.

(3) Upon publication of the notice, the person has all the powers, privileges and protection of a Commission as described in the *Royal Commissions Act 1928*.

(4) The Administrator may, under section 100 make regulations prescribing the procedures to be followed in the investigation of matters under this section.

## PART 10 — MISCELLANEOUS

### Delegation by Minister

92. (1) The Minister may, by instrument, delegate any of the powers of the Minister under this Act other than this power of delegation.

(2) A delegation under subsection 92(1) may be made —

- (a) to a specified person; or
- (b) to the holder for the time being of a specified office or position.

(3) A delegate, in making a decision in accordance with a delegation under this section, shall comply with the requirements of this Act which the Minister is required to comply with in making such a decision.

### Delegation by Chief Executive Officer

93. (1) The Chief Executive Officer may, by instrument, delegate any of the powers of the Chief Executive Officer under this Act other than this power of delegation.

(2) A delegation under subsection 93(1) may be made —

- (a) to a specified person; or
- (b) to the holder for the time being of a specified office or position.

(3) A delegate, in making a decision in accordance with a delegation under this section, shall comply with the requirements of this Act which the Chief Executive Officer is required to comply with in making such a decision.

### Authorised officers

94. The Minister may, by instrument, appoint persons to be authorised officers for the purposes of this Act.

### Protecting officials from liability

95. (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection 95(1) prevents a civil liability attaching to an official, the liability attaches instead to the Administration.

- (3) In this section —  
“official” means —
- (a) the Minister; or
  - (b) the Chief Executive Officer; or
  - (c) the Board and its members; or
  - (c) an authorised officer; or
  - (e) an employee within the meaning of the *Public Sector Management Act 2000*; or
  - (f) a person acting under the direction of the Chief Executive Officer.

**Validity of the procedure for the Plan, etc.**

96. (1) In this section —  
“statutory document” means —
- (a) the Plan or an approved plan notice of the commencement of which is published in the Gazette in accordance with section 14; or
  - (b) an approved development control plan notice of the approval of which is published in the Gazette in accordance with section 24; or
  - (c) a development approval or a modification of a development approval notice of the approval of which is published in the Gazette in accordance with section 48; or
  - (d) an approved development contribution scheme notice of the commencement of which is published in the Gazette in accordance with section 69.

(2) Upon publication in the Gazette of a notice for the statutory document referred to in subsection 96(1) for the statutory document, the validity of the statutory document shall not be questioned in any legal proceedings except proceedings commenced within 3 months of the publication.

(3) Subsection 96(2) does not apply to proceedings brought before the Administrative Review Tribunal under Part 7.

**Effect of documents being “available for public inspection”**

97. (1) Where a provision of this Act states that any document shall be available for public inspection, the Chief Executive Officer shall ensure that the document is available for public inspection free of charge at the office of the Administration determined by the Chief Executive Officer during usual business hours.

(2) On application by any person accompanied by the prescribed fee, the Chief Executive Officer shall ensure that a copy of a document, or an extract from a document that is available for public inspection, is made available for purchase by the person.

(3) Notwithstanding subsections 97(1) and 97(2), a document or part of a document which contains exempt information is not to be available for public inspection.



- (4) For subsection 97(3)—  
 “exempt information” means information which the Minister is satisfied that —
- (a) would, if disclosed, to a person would disclose trade secrets of another person; or
  - (b) consists of information of a confidential nature that was communicated in confidence, unless its disclosure would, on balance, be in the public interest; or
  - (c) its disclosure could reasonably be expected to —
    - (i) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
    - (ii) endanger the security of a building, structure or vehicle; or
    - (iii) prejudice a system or procedure for the protection of persons, property or environment.

#### **Planning certificates**

**98. (1)** A person may apply to the Chief Executive Officer for a certificate in relation to land specified in the application.

**(2)** The application shall be accompanied by the prescribed fee.

**(3)** The Chief Executive Officer shall, as soon as practicable, issue to the person a certificate setting out the prescribed matters relating to the land.

**(4)** A certificate may include advice on other relevant matters affecting the land of which the Administration is aware.

**(5)** The Chief Executive Officer and the Administration shall incur no liability for any advice given in good faith under subsection 98(4).

**(6)** In any proceedings for an offence against this Act or another enactment taken against the person who received a certificate under this section or who might reasonably be expected to rely on that certificate, the certificate shall, in favour of the person, be evidence of the matters specified in the certificate.

#### **Minister may refer matters to the Board**

**99.** The Minister may refer to the Board —

- (a) any matter relevant to any decision the Minister may make under this Act; or
- (b) any matter relevant to the effective administration of this Act.

#### **Regulations**

**100. (1)** The Administrator may make regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act; or
- (c) necessary or convenient to ensure compliance with a development control plan made under Part 3.

(2) The regulations may prescribe penalties not exceeding 10 penalty units for a contravention of the regulations.

(3) A regulation made in accordance with paragraph (1)(c) must provide that if a breach is capable of being rectified, notice must be given requiring the breach to be rectified within a reasonable period, being not less than 5 days, and in default may provide that a penalty may be imposed at a rate not exceeding that in subsection (2) or a penalty for each day the breach continues not exceeding 2 penalty units per day.

## **PART 11 — REPEALS , SAVINGS AND CONSEQUENTIAL AMENDMENTS**

### **Repeal of Planning Act 1996**

**101.** The *Planning Act 1996* is repealed subject to section 103.

### **Planning approvals and development approvals**

**102.** A planning approval or a development approval under the *Planning Act 1996* and current immediately before the commencement of this section is, on and from the commencement, deemed to be a development approval.

### **Planning applications**

**103. (1)** A planning application in respect of land made under the *Planning Act 1996* before the commencement of this Act and not determined, shall remain an application under the 1996 Act as if it had not been enacted.

(2) In determining an application pursuant to subsection 1, the *Planning Act 1996* together with the regulations shall be applicable.

(3) If an application is determined in accordance with subsections 103(1) and (2) the application as so determined is deemed to be a development approval and has the same force and effect as a deemed development approval under section 102.

### **Amendment of the Land Administration Fees Act 1996**

**104. (1)** Section 8A of the *Land Administration Fees Act 1996* is omitted.

(2) Subsection 9(2) of the *Land Administration Fees Act 1996* is amended by omitting “*Planning Act 1996* and the”.

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**NOTES**

The *Planning Act 2002* as shown in this consolidation comprises Act No. 3 of 2003 and amendments as indicated in the Tables below.

<b>Enactment</b>	<b>Number and year</b>	<b>Date of commencement</b>	<b>Application saving or transitional provision</b>
<i>Planning Act 2002</i>	3 of 2003	- Sections 1 & 2 commenced 9.5.03; - Part 3 comm 15.8.03; - sections 8, 12(2), (3), (4); 13(1), (2); and 14 commenced 10.2.04; Remainder commenced 27.2.04	
<i>Planning (Amendment) Act 2004</i>	26 of 2004	7.1.2005	
<i>Planning (Amendment) Act 2005</i>	16 of 2005	15.7.2005	
<i>[previously consolidated as at 16 August 2005]</i>			
<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]</i>	14, 2012	28.12.12	
<i>Tourist Accommodation (Amendment No. 2) Act 2012</i>	12, 2013	Sec 1 & 2, Item 1 of the Schedule in sec 3, & sec 4 comm 23.8.13; rem comm. 30.6.13	

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**Table of Amendments**

ad = added or  
inserted

am = amended

rep = repealed

rs = repealed and  
substituted

<b>Provision affected</b>	<b>How affected</b>	
9(2)	Am	26, 2004
34(5, (6)	Rep	12, 2013
48(1)	Am	26, 2004
78(2)	Rep	26, 2004
80(4)	Ad	26, 2004
81A	Ad	26, 2004
86	Am	26, 2004
86(3)	Ad	26, 2004
91(2)	Rs	26, 2004
91(3)	Am	26, 2004
100(1)	Am	16, 2005
100(3)	Ad	26, 2004
103(3)	Ad	26, 2004

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