

TASMANIA

**LAND USE PLANNING AND APPROVALS
AMENDMENT (STREAMLINING OF PROCESS)
BILL 2014**

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**LAND USE PLANNING AND APPROVALS
AMENDMENT (STREAMLINING OF PROCESS)
BILL 2014**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
6 November 2014

*(Brought in by the Minister for Planning and Local
Government, the Honourable Peter Carl Gutwein)*

A BILL FOR

An Act to amend the *Land Use Planning and Approvals Act 1993* and the *Local Government (Building and Miscellaneous Provisions) Act 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 Amendment (Streamlining of Process) Act 2014*.

2. Commencement

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

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**PART 2 – LAND USE PLANNING AND APPROVALS
ACT 1993 AMENDED**

3. Principal Act

In this Part, the *Land Use Planning and Approvals Act 1993** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *development*:

discretionary permit means a permit to which section 57 applies;

- (b) by omitting the definition of *dispensation*;

- (c) by inserting the following definition after the definition of *Executive Commissioner*:

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

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- (d) by inserting “or an interim planning scheme made under section 30M,” after “section 30F,” in the definition of *interim planning scheme*;
- (e) by omitting “a planning directive” second occurring from the definition of *planning directive* and substituting “an interim planning directive”.

5. Section 12 amended (Assessment of draft planning directive)

Section 12(4) of the Principal Act is amended by omitting “Part 3 of the *Resource Planning and Development Commission Act 1997*” and substituting “Part 3 of the *Tasmanian Planning Commission Act 1997*”.

6. Section 12A substituted

Section 12A of the Principal Act is repealed and the following sections are substituted:

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

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- (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 that is in the terms of the draft 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

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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 effect, 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).

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- (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, which is to be the day on or after the day on which the notice is so published.
- (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

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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

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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. Revocation or modification 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 –

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- (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.

7. Section 13 amended (Issue of planning directive)

Section 13 of the Principal Act is amended by inserting before subsection (1) the following subsection:

(1AA) In this section –

planning directive does not include an interim planning directive.

8. Section 14 amended (Effect of planning directive)

Section 14 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (2) “by revoking or amending any provision of the scheme or inserting a new provision into the scheme”;
- (b) by inserting the following subsection after subsection (2):
 - (2A) The modification of a planning scheme under subsection (2) may be effected –
 - (a) by revoking or amending any provision of the scheme; or
 - (b) by 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

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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).

9. Section 15 substituted

Section 15 of the Principal Act is repealed and the following section is substituted:

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.

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10. Section 16 amended (Power of Minister to dispense with certain requirements)

Section 16 of the Principal Act is amended by inserting before subsection (1) the following subsection:

(1AA) In this section –

planning directive does not include an interim planning directive.

11. Section 17 inserted

After section 16 of the Principal Act, the following section is inserted in Part 2A:

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 by a planning authority 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

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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 were 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 by a planning authority 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

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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.

12. Section 20 amended (What can a planning scheme provide for?)

Section 20 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “A planning scheme for an area” and substituting “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, in

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the opinion of the relevant decision-maker”;

- (b) by omitting from subsection (1)(a) “must”;
- (c) by omitting from subsection (1)(b) “must be prepared” and substituting “prepare the scheme”;
- (d) by omitting paragraph (c) from subsection (1);
- (e) by omitting from subsection (1)(d) “must”;
- (f) by omitting from subsection (1)(e) “must”;
- (g) by inserting the following subsection after subsection (1):

(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, an interim planning scheme, or an amendment, or a draft

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amendment, of a planning scheme or of an interim planning scheme, is a relevant scheme.

- (h) by omitting from subsection (2) “Without limiting subsection (1), a planning” and substituting “A planning”;
- (i) by inserting the following paragraph before paragraph (a) in subsection (2):
 - (aa) make any provision which relates to the use, development, protection or conservation of any land in the area; and
- (j) by inserting in subsection (3) “be taken (including by virtue of requiring a permit to be obtained) to” after “is to”;
- (k) by inserting in subsection (3A) “be taken to” after “is to”;
- (l) by inserting in subsection (3A) “(including by virtue of requiring a permit to be obtained)” after “prevent”;
- (m) by omitting from subsection (3A) “that does not conform to the scheme” and substituting “, whether or not the use or development conforms to the scheme, or a provision of the scheme, or a planning directive,”;

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- (n) by inserting in subsection (3A)(b) “, the provision of the scheme, or the planning directive, respectively” after “scheme”.

13. Section 21 amended (Co-ordination of planning schemes)

Section 21(1) of the Principal Act is amended by omitting “as far as practicable” and substituting “, in the opinion of the decision-maker, within the meaning of section 20(2A), as far as practicable”.

14. Section 30E amended (Contents of interim planning schemes)

Section 30E(6) of the Principal Act is amended as follows:

- (a) by omitting “A draft” and substituting “Subject to section 20(1), a draft”;
- (b) by omitting “are to be consistent with, and likely to further the objectives and outcomes of,” and substituting “are to be, in the opinion of the decision-maker, within the meaning of section 20(2A), as far as practicable consistent with”.

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15. Section 30EA amended (Overriding local provisions and conflicting local provisions)

The definition of *relevant scheme* in section 30EA(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “section 30M; or” and substituting “section 30M.”;
- (b) by omitting paragraph (d).

16. Section 30F amended (Declaration of interim planning scheme)

Section 30F(5) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “, until a planning scheme is declared under section 30N” and substituting “until an interim planning scheme is made under section 30M”;
- (b) by omitting paragraph (ba).

17. Section 30FA amended (Permit applications not resolved before interim planning scheme in operation)

Section 30FA(3) of the Principal Act is amended by inserting “, other than section 17,” after “of this Act”.

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18. Section 30H amended (Notification and public exhibition of interim planning schemes)

Section 30H of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “2 months” and substituting “42 days”;
- (b) by omitting from subsection (6)(g)(ii) “2 months” and substituting “42 days”.

19. Section 30I amended (Representations in relation to interim planning schemes)

Section 30I of the Principal Act is amended by omitting subsections (3) and (4).

20. Section 30IA amended (Urgent amendment of interim planning schemes)

Section 30IA of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “or is recommended under section 30K(4)(a)” after “required”;
- (b) by omitting from subsection (3) “following purposes:” and substituting “purposes that are specified in section 37(1)(a), or in the notice under subsection (1), and he or she is satisfied that the public interest will not be prejudiced.”;

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- (c) by omitting paragraphs (a), (b), (c), (d) and (e) from subsection (3);
- (d) by omitting from subsection (6)(i) “section 30I, 30J, 30K, 30L, 30M or 30N or Subdivision 4” and substituting “section 30I, 30J, 30K, 30L or 30M”;
- (e) by omitting from subsection (6)(j) “dispensation” first occurring and substituting “amendment”;
- (f) by omitting from subsection (6)(j) “a dispensation” and substituting “an amendment”.

21. Section 30J amended (Report to be provided to Commission)

Section 30J(2)(a) of the Principal Act is amended by omitting “4 months” and substituting “3 months”.

22. Section 30K amended (Commission to consider scheme and representations)

Section 30K of the Principal Act is amended as follows:

- (a) by omitting subsection (1);
- (b) by inserting in subsection (2) “, within 3 months or such longer period as the Minister allows,” after “must”;

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- (c) by omitting paragraph (c) from subsection (3);
- (d) by inserting the following subsection after subsection (3):
 - (4) After considering the applicable matters in relation to an interim planning scheme, the Commission must consider whether to, and may do, either or both of the following:
 - (a) if an authorisation may be issued under section 30IA in relation to a provision of the scheme (including the zoning of an area of land), issue a notice under section 30IA(1) recommending to the Minister that an authorisation be issued in relation to the provision;
 - (b) 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 a provision of the scheme (including the zoning of an area of land).

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23. Sections 30L, 30M and 30N substituted

Sections 30L, 30M and 30N of the Principal Act are repealed and the following sections are substituted:

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 –

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- (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 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 scheme that is prepared or made under this section may –
 - (a) contain a copy of a local provision that is in the existing interim planning scheme; or
 - (b) if the Commission is satisfied that the public interest will not be prejudiced by the modification – contain a copy of a local provision of the existing interim planning scheme, modified as the Commission thinks fit.

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- (4) An interim planning scheme that is prepared or made 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 interim planning scheme, modified to ensure the effective operation of a planning purposes notice; 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 prepared under this section is in order, the Commission, with the approval of the Minister, must make an interim planning scheme consisting of the interim planning scheme that was prepared.
- (6) Apart from sections 20 and 21, Divisions 1, 2 and 2A do not apply in relation to the preparation or making of an interim planning scheme under this section.

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- (7) This Subdivision, apart from sections 30E, 30EA and 30IA, does not apply in relation to an interim planning scheme prepared or 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 effect –
 - (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 an interim planning scheme made under this section in relation to an area of land comes into effect –
 - (a) the existing interim planning scheme that applied to the area of land immediately before that day is revoked; and
 - (b) an application for a permit that –

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

(ii) had not been determined by a planning authority 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 effect 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 that the interim planning scheme made under this section replaces.

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24. Section 30O amended (Amendments under Divisions 2 and 2A of interim planning schemes)

Section 30O of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “made under section 30N”;
- (b) by inserting in subsection (1) “, as far as is, in the opinion of the relevant decision-maker within the meaning of section 20(2A), practicable,” after “amendment is”;
- (c) by omitting from subsection (2) “made under section 30N”;
- (d) by omitting from subsection (4) “made under section 30N”;
- (e) by omitting from subsection (5) “made under section 30N”.

25. Part 3, Division 1A, Subdivision 4 repealed

Subdivision 4 of Division 1A of Part 3 of the Principal Act is repealed.

26. Section 32 amended (Requirements for preparation of amendments)

Section 32(1) of the Principal Act is amended as follows:

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- (a) by omitting “An amendment of a planning scheme” and substituting “A draft amendment of a planning scheme, and an amendment of a planning scheme, in the opinion of the relevant decision-maker within the meaning of section 20(2A)”;
- (b) by omitting paragraphs (a), (b), (c) and (d);
- (c) by inserting the following paragraph after paragraph (e):
 - (ea) must not conflict with the requirements of section 30O; and

27. Section 33 amended (Request for amendment of planning scheme)

Section 33 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “or, if a form has been approved by the Commission, is to be in that form” after “authority”;
- (b) by inserting the following paragraph after paragraph (a) in subsection (2B):
 - (ab) any representation made under section 30I, and any statements in any report under section 30J as to the merit of a representation, that

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may be relevant to the
amendment; and

(c) by inserting in subsection (3) “or such longer time as the Commission may allow” after “a request”;

(d) by inserting the following subsection after subsection (3):

(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 draft amendment under section 35 –

within 42 days of receiving the request or such longer time as the Commission allows.

(e) by inserting the following subsections after subsection (4):

(5) If –

(a) an interim planning scheme has been declared under section 30F or an

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interim 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
subsection (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

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owner or occupier under subsection (1) 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 that applied in relation to the area of land before an interim planning scheme in relation to the area of land was declared; and
 - (d) the planning authority's opinion as to the merits of the proposed alteration of the zoning of the area of land.
- (7) The Commission, within 30 days after receiving from a planning authority a notice under subsection (5) in relation to a request under subsection (1) in respect of 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

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to a planning authority in relation
to the request.

28. Sections 33A and 33B inserted

After section 33 of the Principal Act, the
following sections are inserted in Division 2:

33A. Additional information

- (1) A planning authority may, within the period of 28 days from the day on which it receives from a person a request under section 33(1), 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) or (3AA), whichever is applicable, does not run while the requirement has not been, in the opinion of the planning authority, satisfied.

33B. Review of requirement for additional information

- (1) Where a planning authority requires additional information under section 33A(1) from a person, the person may, within 14 days of receiving notice of that requirement, request the

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Commission to review the process by which the planning authority reached its decision to make the requirement.

- (2) Where the Commission has been requested under subsection (1) to review the process by which the planning authority reached its decision, the Commission may require the planning authority to provide it with any relevant material that is in the possession of the planning authority before the day on which the requirement is made.
- (3) A planning authority must provide the relevant material required by the Commission under subsection (2) within 7 days of receiving notice of the requirement under that subsection.

Penalty: Fine not exceeding 100 penalty units.

- (4) The Commission, not later than 28 days after receiving the request under subsection (1) or such longer period as the Minister may allow, must –
 - (a) direct the planning authority to reconsider the planning authority's decision to require the information under section 33A(1); or

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- (b) determine that the requirement under section 33A(1) was appropriate.
- (5) If the Commission requires a planning authority to provide it with relevant material under subsection (2), the period referred to in subsection (4) does not run while the requirement has not been, in the opinion of the planning authority, satisfied.
- (6) The Commission, within 7 days of making a direction or determination under subsection (4) in relation to a request under subsection (1), must notify the planning authority and the person who made the request.

29. Section 34 amended (Amendment of planning scheme)

Section 34 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (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 an amendment of a planning scheme comes into effect 7 days after the date on which the planning

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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.

30. Section 37 amended (Power of Commission to dispense with certain requirements)

Section 37 of the Principal Act is amended as follows:

- (a) by inserting the following subparagraphs after subparagraph (vi) in subsection (1)(a):
 - (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

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- (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) 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 that most closely corresponds to the former zoning; or
 - (vie) implementing an agreed amendment; or
- (b) by inserting the following subsections after subsection (1):
- (1A) For the purposes of subsection (1)(a)(vie), an agreed amendment is an amendment, to a provision of an interim planning scheme, that –
 - (a) is proposed in a representation that is included in a report under section 30J in relation to

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the interim planning
scheme; and

(b) is not in conflict with any
other representations in
relation to the provision;
and

(c) is agreed to by the
planning authority.

(1B) For the purpose of determining
whether or not the public interest
will be prejudiced in respect of an
amendment of a planning scheme
for a purpose referred to in
subsection (1)(a)(vid) or (vie) –

(a) the Commission must –

(i) cause a copy of
the draft
amendment to be
placed on public
exhibition for a
period of 14 days
or a longer period
agreed to by the
planning authority
and the
Commission; and

(ii) cause an
invitation, for
submissions to be
made within the

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period for which
the draft
amendment is
placed on public
exhibition, to be
publicly exhibited
together with the
copy of the
amendment; and

(iii) advertise, as
prescribed, the
exhibition of the
draft amendment
and the invitation;
and

(iv) cause a copy of
the draft
amendment and
the invitation to be
placed on public
exhibition at its
office for that
period; and

(b) after the end of the period
referred to in
paragraph (a)(i), take into
account any submissions
made in relation to the
amendment under
subsection (1C).

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(1C) A person may, within the period referred to in paragraph (a)(i) in relation to a draft amendment of a planning scheme, make a submission in relation to the draft amendment.

31. Section 38 amended (Public exhibition of draft amendment)

Section 38(1)(a) of the Principal Act is amended by omitting “, being not less than 3 weeks and not more than 2 months, determined by the planning authority” and substituting “of 28 days or a longer period agreed to by the planning authority and the Commission”.

32. Section 40 amended (Consideration by Commission of draft amendment and relevant representations)

Section 40 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) The Commission, in considering the draft amendment, and any representations, in relation to a planning scheme, may also consider –

(a) any representation made under section 30I in relation to the planning scheme; and

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- (b) any statements in a report under section 30J as to the merit of a representation made under section 30I in relation to the planning scheme –

that, in its opinion, are relevant to the draft amendment and the representations.

33. Section 43 amended (Failure to comply with provision of this Division)

Section 43(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “and certification” after “preparation”;
- (b) by inserting in paragraph (b) “and certification” after “preparation”.

34. Section 43A amended (Application for a permit when amendment requested)

Section 43A(2) of the Principal Act is amended by omitting “under section 43A(1)” and substituting “referred to in subsection (1)”.

35. Section 43C amended (Applications referred to in section 43A)

Section 43C(1) of the Principal Act is amended by inserting “, in its opinion” after “authority”.

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36. Section 43E amended (Additional information)

Section 43E of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(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.

(b) by omitting from subsection (2) “section 33(3)” and substituting “section 33(3) or(3AA)”.

37. Section 43EA inserted

After section 43E of the Principal Act, the following section is inserted in Division 2A:

43EA. Review of request for additional information

(1) Where a planning authority requires additional information under section 43E(1) from a person, the person may, within 14 days of receiving notice of that requirement, request the Commission to review the process by

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

- (2) Where the Commission has been requested under subsection (1) to review the process by which the planning authority reached its decision, the Commission may require the planning authority to provide it with any relevant material that was in the possession of the planning authority before the requirement was made.
- (3) A planning authority must provide the relevant material required by the Commission under subsection (2) within 7 days of receiving notice of the requirement under that subsection.

Penalty: Fine not exceeding 100 penalty units.

- (4) The Commission, not later than 28 days after receiving the request under subsection (1) or such longer period as the Minister may allow, must –
 - (a) direct the planning authority to reconsider the planning authority's decision to require the information under section 43E(1); or
 - (b) determine that the requirement under section 43E(1) was appropriate.

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- (5) If the Commission requires a planning authority to provide it with relevant material under subsection (2), the period referred to in subsection (4) does not run while the requirement has not been, in the opinion of the Commission, satisfied.
- (6) The Commission, within 7 days of making a direction or determination under subsection (4) in relation to a request under subsection (1), must notify the planning authority and the person who made the request.

38. Section 43I amended (When does a permit referred to in section 43H take effect?)

Section 43I of the Principal Act is amended as follows:

- (a) by omitting from subsection (4)(b) “years.” and substituting “2 years; or”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (4):
 - (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).

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(c) by inserting the following subsections after subsection (5):

(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 the end of the period of 6 months from 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.

39. Section 43K amended (Minor amendment of permits referred to in section 43H)

Section 43K of the Principal Act is amended as follows:

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(a) by omitting paragraph (a) from subsection (2) and substituting the following paragraphs:

(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 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 Commission or the Appeal Tribunal; and

(b) by inserting the following subsections after subsection (2):

(2A) An amendment of 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 restriction*) specified by the Commission or the Appeal Tribunal in a permit is

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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.

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(c) by inserting the following subsection after subsection (5):

(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.

40. Section 51 amended (Permits)

Section 51 of the Principal Act is amended by inserting after subsection (1A) the following subsection:

(1AA) An application is to be in a form, if any, approved by the Commission.

41. Section 53 amended (When does a permit take effect?)

Section 53 of the Principal Act is amended as follows:

(a) by omitting from subsection (5)(b) “paragraph (a).” and substituting “paragraph (a); or”;

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(b) by inserting the following paragraph after paragraph (b) in subsection (5):

(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).

(c) by inserting the following subsections after subsection (5A):

(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 the end of the period

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of 6 months from 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.

42. Section 54 amended (Additional information)

Section 54 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (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 applicant 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 applicant 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.

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43. Section 56 amended (Minor amendments of permits issued by a planning authority)

Section 56 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and which is a permit issued by the planning authority” after “that land”;
- (b) by omitting paragraph (a) from subsection (2) and substituting the following paragraphs:
 - (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
- (c) by inserting the following subsections after subsection (2):
 - (2A) An amendment of 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

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the permit, or amended, by the Appeal Tribunal.

(2B) A condition or restriction (*the fresh condition or restriction*) 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*.

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44. Section 58 amended (Application for other permits)

Section 58(2) of the Principal Act is amended as follows:

- (a) by omitting “period of 42 days” and substituting “28 days”;
- (b) by omitting “42 day” and substituting “28-day”.

45. Section 61 amended (Appeals against planning decisions)

Section 61 of the Principal Act is amended as follows:

- (a) by omitting subsection (3B);
- (b) by omitting from subsection (4) “(otherwise than by virtue of the operation of section 30S(3))”.

46. Section 62 amended (Determination of appeals)

Section 62(1)(d)(ii) of the Principal Act is amended by omitting “section 30ZA(2),”.

47. Section 87B inserted

After section 87A of the Principal Act, the following section is inserted in Part 6:

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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.

48. Schedule 5 inserted

After Schedule 4 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 5 – TRANSITIONAL PROVISIONS –
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Section 87B

1. Interpretation

In this Schedule –

amending Act means the *Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014*;

dispensation means –

- (a) a dispensation granted under section 30W of this Act as in force before the day on which that section is repealed by the amending Act; or

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- (b) a dispensation that was in force immediately before the previous amending Act came into force;

previous amending Act means the *Land Use Planning and Approvals Amendment Act 2013*;

section 30Q means section 30Q as in force immediately before the day on which that section is repealed by the amending Act;

section 30R means section 30R as in force immediately before the day on which that section is repealed by the amending Act.

2. Validation and savings of certain applications and dispensations

- (1) A dispensation remains in force despite the repeal of section 30W of this Act.
- (2) Any permit that is granted or confirmed and that relates to a dispensation, including a dispensation to which subclause (4) applies, is to be taken to be a permit granted or confirmed, as the case may be, under section 43H.
- (3) Subclause (4) applies in relation to a dispensation, or a purported dispensation, if –

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- (a) an application under this Act for the dispensation was made before the day on which section 19 of the previous amending Act came into force; and
 - (b) the application was not determined, or was purportedly determined, under this Act before that day; and
 - (c) the dispensation has been granted, or purportedly granted, under this Act as in force after that day.
- (4) If this subclause applies in relation to a dispensation –
- (a) the Commission, if it thinks fit, must, as soon as practicable after the day on which this Schedule commences, direct the planning authority to prepare a draft amendment, of the interim planning scheme to which the dispensation relates, that will, in the opinion of the Commission, best reflect the intended effect of the dispensation; and
 - (b) the planning authority must prepare the draft amendment, to the satisfaction of the Commission, as soon as

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practicable after receiving the direction under paragraph (a); and

(c) if the Commission is satisfied with the draft amendment, the Commission must –

(i) approve the amendment of the interim planning scheme; and

(ii) direct the planning authority to give notice of the amendment, and the day on which the amendment comes into effect, in accordance with the directions of the Commission; and

(d) a planning authority that receives a direction under paragraph (c)(ii) must give notice of the amendment in accordance with the direction; and

(e) the amendment of the interim planning scheme comes into effect on the day specified, in the notice in accordance with a direction under paragraph (c)(ii), as the day on which the amendment comes into effect.

(5) If –

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- (a) an application for a permit that accompanied a request for a dispensation under this Act, as in force before the day on which section 19 of the previous amending Act came into force, was not determined before that day; and
- (b) a permit, in relation to that application, was granted or confirmed, or purportedly granted or confirmed, under this Act after that day –

the permit is to be taken to be a permit granted or confirmed, as the case may be, under section 43H.

- (6) An amendment to an interim planning scheme that is made under this clause –
 - (a) in accordance with a direction given in accordance with this clause; or
 - (b) in relation to an application to which this clause relates –

may not alter the zoning of an area of land without the approval of the owner of the area of land.

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3. Dispensations and applications for dispensations

- (1) Subclause (2) applies in relation to an application for a dispensation, under this Act at any time before the day on which section 30Q is repealed, that relates to an interim planning scheme if –
 - (a) hearings under section 30K of the Act in relation to the scheme have been completed before the repeal of section 30K by the amending Act; and
 - (b) the application –
 - (i) has been determined under this Act, before the day on which section 30Q is repealed by the amending Act, by granting the dispensation; or
 - (ii) has not been determined under this Act before the day on which section 30Q is repealed by the amending Act.
- (2) If this subclause applies in relation to an application for a dispensation that relates to an interim planning scheme –

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- (a) the modifications that may be made to the interim planning scheme under section 30M include, but are not limited to including, the modifications, if any, that the Commission thinks fit that will, in the opinion of the Commission, best reflect the intended effect of any dispensation that is granted before the modifications are made; and
 - (b) where the application has not been determined before the hearings under section 30K of the Act in relation to the scheme have been completed – the application is to be taken to be an application to which section 43A applies; and
 - (c) where an application that is made under section 30R accompanies the application for a dispensation – subclause (6) applies in relation to the application under section 30R.
- (3) Subclause (4) applies in relation to a dispensation if –
- (a) an application under this Act, at any time before the day on which section 30Q is repealed by the amending Act, has been

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determined by granting the dispensation; and

- (b) subclause (2) does not apply in relation to the dispensation.
- (4) If this subclause applies in relation to a dispensation –
 - (a) the Commission, as soon as practicable after the day on which this Schedule commences, must direct the planning authority to prepare a draft amendment, of the interim planning scheme to which the dispensation relates, that will, in the opinion of the Commission, best reflect the intended effect of the dispensation; and
 - (b) the planning authority must prepare the draft amendment, to the satisfaction of the Commission, as soon as practicable after receiving the direction under paragraph (a); and
 - (c) if the Commission is satisfied with the draft amendment, the Commission must –
 - (i) approve the amendment of the interim planning scheme; and

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- (ii) direct the planning authority to give notice of the amendment, and the day on which the amendment comes into effect, in accordance with the directions of the Commission; and
 - (d) a planning authority that receives a direction under paragraph (c)(ii) must give notice of the amendment in accordance with the direction; and
 - (e) the amendment of the interim planning scheme comes into effect on the day specified, in the notice in accordance with a direction under paragraph (c)(ii), as the day on which the amendment comes into effect.
- (5) Subclause (6) applies to an application that is made under section 30R if –
- (a) the application under section 30Q that accompanies the application under section 30R has been determined under this Act, before the day on which section 30R is repealed by the amending Act, by granting a dispensation; and

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- (b) the application under section 30R has been determined before that day.
- (6) If this subclause applies to an application that is made under section 30R –
 - (a) any permit, to which the application relates, that is granted or confirmed under section 30Y, as in force immediately before the day on which that section is repealed by the amending Act, is to be taken to be a permit granted or confirmed, as the case may be, under section 43H; and
 - (b) if any period in which the person could have, under section 61(3B) as in force immediately before the amending day, appealed 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.
- (7) If –
 - (a) an application under section 30Q for a dispensation in relation to an

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interim planning scheme has not, immediately before the day on which that section is repealed by the amending Act, been determined under this Act; and

- (b) an application under 30R does not accompany the application under section 30Q –

the application under section 30Q is to be taken to be an application under section 33(1).

- (8) If –

- (a) an application under section 30Q for a dispensation in relation to an interim planning scheme has not, immediately before the day on which that section is repealed by the amending Act, been determined under this Act; and

- (b) an application under 30R accompanies the application under section 30Q –

the application under section 30Q is to be taken to be an application under section 33(1) and the application under section 30R is to be taken to be a request under section 43A.

- (9) An amendment to an interim planning scheme that is made under this clause –

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(a) in accordance with a direction given in accordance with this clause; or

(b) in relation to an application to which this clause relates –

may not alter the zoning of an area of land without the approval of the owner of the area of land.

4. 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 day on which this Schedule comes into effect, the reference to the period is to be taken to be a reference to a period ending as soon as practicable after that day.

(2) If an application under this Act made before the day on which this Schedule comes into effect 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 that day.

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**PART 3 – LOCAL GOVERNMENT (BUILDING AND
MISCELLANEOUS PROVISIONS) ACT 1993
AMENDED**

49. Principal Act

In this Part, the *Local Government (Building and Miscellaneous Provisions) Act 1993** is referred to as the Principal Act.

50. Section 80 amended (Interpretation of Part 3)

Section 80(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of *alley*:

acceptable solution means a matter specified in a planning scheme to be an acceptable solution;

- (b) by inserting the following definition after the definition of *block*:

discretionary permit has the same meaning as it has in the *Land Use Planning and Approvals Act 1993*;

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- (c) by inserting the following definitions after the definition of *movable dwelling unit*:

performance criteria means matters specified in a planning scheme to be performance criteria;

permitted development permit means a permit, within the meaning of the *Land Use Planning and Approvals Act 1993*, that is not a discretionary permit;

- (d) by inserting the following definition after the definition of *plan of subdivision*:

planning scheme has the same meaning as it has in the *Land Use Planning and Approvals Act 1993* and includes a *special planning order* within the meaning of that Act;

51. Section 81 amended (Subdivision)

Section 81 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) A planning scheme may provide that an application for approval of a subdivision plan is to be made as if it were an

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application for a discretionary permit or a permitted development permit.

52. Section 83 amended (Approval of plan of subdivision)

Section 83 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “as a condition of its approval of a plan of subdivision” and substituting “before it approves a plan of subdivision,”;
- (b) by inserting the following subsection after subsection (1):

(1A) A planning scheme –

- (a) may specify that compliance with a requirement specified in this section is an acceptable solution in relation to subdivisions; and
- (b) may enable a permitted development permit to be issued if such an acceptable solution is complied with in relation to a plan of subdivision.

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53. Section 84 amended (Council not to approve subdivision)

Section 84 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “or interim order”;
- (b) by inserting the following subsections after subsection (1):

(1A) A planning scheme –

(a) may specify –

- (i) an acceptable solution, in relation to subdivisions, that relates to a matter referred to in subsection (1)(a), (b) or (c); and
- (ii) performance criteria in relation to subdivisions, that relate to a matter referred to in subsection (1)(a) or (b); and

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(b) may enable a permitted development permit or a discretionary permit to be issued if such an acceptable solution or performance criteria are complied with in relation to a plan of subdivision.

(1B) If a planning scheme specifies an acceptable solution, or performance criteria, in relation to subdivisions, that relate to a matter referred to in subsection (1), that subsection does not apply in relation to the matter in respect of a development that complies with the acceptable solution.

(c) by inserting in subsection (2) “or an acceptable solution,” after “subsection (1)”.

54. Section 85A inserted

After section 85 of the Principal Act, the following section is inserted in Division 2:

85A. Refusal of application for subdivision

(1) A planning scheme –

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- (a) may specify an acceptable solution, or performance criteria, in relation to subdivisions, that relate to a matter referred to in section 85; and
 - (b) may enable a permitted development permit or a discretionary permit to be issued in relation to a plan of subdivision if such an acceptable solution, or performance criteria, are complied with in relation to the plan of subdivision.
- (2) If a planning scheme specifies an acceptable solution, or performance criteria, in relation to subdivisions, that relate to a matter referred to in section 85, that section does not apply in relation to the matter in respect of a development that complies with the acceptable solution.

55. Section 86 amended (Security for payment)

Section 86 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) A planning scheme –
- (a) may specify that compliance with a requirement specified in

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subsection (1) is an acceptable solution in relation to subdivisions; and

- (b) may enable a permitted development permit to be issued if such an acceptable solution is complied with in relation to a plan of subdivision.

56. Section 109 amended (Minimum lots)

Section 109 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or interim order”;
- (b) by omitting from subsection (3) “or interim order”;
- (c) by omitting from subsection (8) “or interim order”.

57. Section 117 amended (Payment instead of increasing public open space)

Section 117 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) A planning scheme –

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- (a) may specify that compliance with a requirement specified in subsection (1) is an acceptable solution in relation to subdivisions; and
- (b) may enable a permitted development permit to be issued if such an acceptable solution is complied with in relation to a plan of subdivision.

58. Section 123 inserted

After section 122 of the Principal Act, the following section is inserted in Division 9:

123. Transitional matters arising under the *Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014*

(1) In this section –

amending Act means the *Land Use Planning and Approvals Amendment (Streamlining of Process) Act 2014*;

commencement day means the day on which the amendments to this Act made by the amending Act come into force.

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- (2) The amendments to this Act made by the amending Act apply in relation to an application for approval of a plan of subdivision that is made before the commencement day but that has not been determined by the issue of, or a refusal to issue, a discretionary permit or a permitted development permit.

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Part 4 – Miscellaneous

PART 4 – MISCELLANEOUS

59. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.