

TASMANIA

**LAND USE PLANNING AND APPROVALS
AMENDMENT (DEVELOPMENT ASSESSMENT
PANELS) BILL 2024**

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*(Brought in by the Minister for Housing, Planning and
Consumer Affairs, the Honourable Felix Ashton Ellis)*

A BILL FOR

An Act to amend the *Land Use Planning and Approvals Act 1993* and to consequentially amend the *Historic Cultural Heritage Act 1995*

Be it enacted by Her 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 (Development Assessment Panels) Act 2024*.

2. Commencement

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

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Part 1 – Preliminary

3. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

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

4. Principal Act

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

5. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting the definition of *discretionary permit* and substituting the following definition:

discretionary permit means a permit to which –

- (a) section 57 applies or to which, but for section 40Y(5), section 57 would apply; or
- (b) Division 2AA of Part 4 applies;

6. Section 8A amended

Section 8A of the Principal Act is amended as follows:

- (a) by renumbering the text of the section as subsection (1);

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(b) by inserting the following subsection after subsection (1):

(2) For the purposes of Division 2AA of Part 4, the Commission may issue guidelines for the purpose of assisting the Minister to determine whether a development includes social or affordable housing or includes a subdivision, within the meaning of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*, that includes social or affordable housing.

7. Section 40BA inserted

After section 40B of the Principal Act, the following section is inserted in Division 2:

40BA. Minister may review certain decisions

- (1) If a person has received notice from the planning authority under section 40B(6)(b) that the planning authority does not intend to prepare a draft amendment to the LPS, the person may apply to the Minister for a review of that decision of the planning authority (the *reviewable decision*).
- (2) An application to the Minister under subsection (1), in respect of a reviewable decision –

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- (a) is to be in a form approved by the Minister; and
- (b) is to contain the information prescribed for the purposes of the application; and
- (c) is to include a copy of the following documents:
 - (i) the notification given by the planning authority under section 40B(6)(b) in respect of the reviewable decision;
 - (ii) the notice of the Commission given to the applicant under section 40B(5) in respect of the reviewable decision;
 - (iii) the notice under section 38(3) to which the reviewable decision relates;
 - (iv) the request under section 37(1) to which the reviewable decision relates;
 - (v) any other prescribed document.

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- (3) If an application is made to the Minister under subsection (1), in respect of a reviewable decision –
- (a) the Minister is to provide a copy of the application to the relevant planning authority and the Commission; and
 - (b) within 7 days after receiving the copy of the application –
 - (i) the relevant planning authority is to provide the Minister, in writing, with its reasons for making the decision under section 40B(6) in respect of the reviewable decision and its opinion as to the merits of the reviewable decision; and
 - (ii) the Commission may provide the Minister, in writing, with any further information that the Commission considers relevant in respect of the reviewable decision.
- (4) After receiving an application under subsection (1) and reviewing the information provided in respect of the

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application under subsection (3), the Minister may –

- (a) in accordance with section 40C, direct the relevant planning authority to prepare a draft amendment on an LPS in relation to the request made under section 37(1) to which the relevant reviewable decision relates; or
 - (b) refuse to take any action in respect of the application.
- (5) The Minister may only make a direction under subsection (4)(a) if, in the opinion of the Minister, the draft amendment meets the LPS criteria.
- (6) Before making a decision under subsection (4) in respect of an application, the Minister may inform himself or herself, in the manner the Minister thinks appropriate, in relation to any matter that is relevant to the application.
- (7) As soon as practicable after making a decision under subsection (4) in respect of an application, the Minister is to give written notice of the decision, and the reasons for the decision, to the relevant planning authority, the Commission and the applicant.

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(8) For the avoidance of doubt, an application may be made under this section in respect of a request under section 40B(1), whether or not an application has also been made under section 40T(1) that relates to the request.

8. Section 40C amended (Direction to prepare draft amendments of LPS)

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

(da) to implement a decision of the Minister under section 40BA(4) to prepare a draft amendment;

9. Part 4, Division 2AA inserted

After section 60A of the Principal Act, the following Division is inserted in Part 4:

Division 2AA – Development Assessment Panels
Subdivision 1 – General

60AA. Interpretation of Division

(1) In this Division –

Assessment Panel, in relation to an application under this Division, means the Development Assessment Panel that –

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(a) is established, in respect of the application, by the Commission under section 60AE or 60AR; and

(b) is constituted in accordance with section 60AB;

city has the same meaning as in section 16A of the *Local Government Act 1993*;

exhibition period, in relation to an application under this Division, means the 14-day period commencing on the day specified in the notice published under section 60AH(1)(b) in respect of the application;

Homes Tasmania has the same meaning as in the *Homes Tasmania Act 2022*;

party, in relation to an application for a discretionary permit, includes –

(a) the proponent for the development to which the application relates; and

(b) the relevant planning authority;

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registered community housing provider has the same meaning as it has in the Community Housing Providers National Law (Tasmania);

reviewing entity, in relation to an application, includes –

- (a) the planning authority for each relevant municipal area to which the application relates; and
- (b) the Heritage Council, within the meaning of the *Historic Cultural Heritage Act 1995*, if the application relates to a development that includes heritage works within the meaning of Part 6 of that Act; and
- (c) the relevant regulated entity, within the meaning of Division 2A; and
- (d) a pipeline licensee, within the meaning of Division 2A, if the application relates to land that is wholly or partly within a gas infrastructure planning corridor, within

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the meaning of the *Gas
Industry Act 2019*;

subdivision, in relation to a
development, has the same
meaning as in Part 3 of the *Local
Government (Building and
Miscellaneous Provisions) Act
1993*.

- (2) For the avoidance of doubt, the *Tasmanian Planning Commission Act 1997* applies to this Division as if a reference in this Division to an Assessment Panel were a reference to the Commission.

60AB. Constitution of Assessment Panel

- (1) In establishing an Assessment Panel under this Division, the Commission is to appoint 3 persons as members of the Assessment Panel.
- (2) Despite subsection (1), the Commission may appoint more than 3 persons, but no more than 5 persons, as members of an Assessment Panel, in respect of a permit application, if the Commission –
- (a) is of the opinion that the scale, specialist nature or complexity of the development to which the application relates requires the Assessment Panel to include

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persons with particular qualifications or experience to assist in the assessment of the application; and

- (b) the Commission is satisfied, on reasonable grounds, that more than 3 persons are required as members of the Assessment Panel to ensure that the Assessment Panel has those qualifications and experience.

*Subdivision 2 – Certain new applications may be
determined by Assessment Panel*

60AC. Certain new permit applications may be made to Commission

- (1) A person may apply to the Commission for an application for a discretionary permit to be determined by an Assessment Panel if –
- (a) the application –
- (i) is being made by, or on behalf of, Homes Tasmania or a registered community housing provider; and
 - (ii) relates to a development that includes social or affordable housing or a

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subdivision that includes
social or affordable
housing; or

- (b) the application relates to a development that is valued in excess of –
 - (i) \$5 000 000 or such other amount as may be prescribed – if all, or any part, of the development is to be located in a city; or
 - (ii) \$2 000 000 or such other amount as may be prescribed – in any other case; or
 - (c) the council is both parties in relation to the application, and the application relates to a development that is valued in excess of \$1 000 000 or such other amount as may be prescribed; or
 - (d) the application falls within a class of applications prescribed for the purpose of this section.
- (2) An application under subsection (1) –
- (a) may only be made by –

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- (i) the applicant for the discretionary permit; or
 - (ii) the relevant planning authority, with the consent of the applicant for the discretionary permit; and
- (b) is to –
 - (i) be in a form approved by the Commission; and
 - (ii) contain the prescribed information; and
 - (iii) be accompanied by evidence that the application meets one or more of the requirements specified in subsection (1).
- (3) An application may not be made under subsection (1) if the application is an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies.
- (4) If the Commission requires further information in respect of whether an application falls under subsection (3), the Commission may seek further information from the Board, within the meaning of the *Environmental*

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*Management and Pollution Control Act
1994.*

- (5) Within 7 days after receiving an application under this section, the Commission is to do one or more of the following:
- (a) request further information from either party to the application;
 - (b) return the application to the applicant if, in the opinion of the Commission –
 - (i) the application is an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies; or
 - (ii) the purported application does not meet the requirements for an application under this section;
 - (c) establish an Assessment Panel under section 60AE in respect of the application.

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60AD. Minister may refer certain new permit applications to Commission

- (1) A party to an application for a discretionary permit may request that the Minister direct the Commission to establish an Assessment Panel in respect of the application if –
 - (a) the application relates to a development that includes social or affordable housing, or a subdivision that includes social or affordable housing, for persons who may otherwise be unable to access suitable accommodation in the private rental or property market; or
 - (b) the application relates to a development that may be considered significant, or important, to –
 - (i) the area in which the development is to be located; or
 - (ii) the State; or
 - (c) either party to the application believes that the planning authority does not have the technical expertise to assess the application; or

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- (d) the application relates to a development that is, or is likely to be, controversial; or
 - (e) the relevant planning authority may have, in respect of the proponent or development –
 - (i) a conflict of interest or a perceived conflict of interest; or
 - (ii) a real or perceived bias, whether for or against the proponent or development; or
 - (f) the application falls within a class of applications prescribed for the purpose of this section.
- (2) An application for a discretionary permit, that is the subject of a request under subsection (1) –
- (a) is to be in a form approved by the Commission; and
 - (b) must include a statement as to why the party to the application is making the request that the Minister refer the application to the Commission; and
 - (c) must be accompanied by evidence that the application

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- meets one or more of the requirements specified in subsection (1); and
- (d) contain the prescribed information.
- (3) If the Minister receives a request under subsection (1) in relation to an application for a discretionary permit that is only made by one party to the application, the Minister is to ensure that each other party to the application is –
- (a) notified of the request and has a copy of the application; and
- (b) notified that the party has a right to respond to the Minister, in respect of the request, within 7 days after the party receives notification under this subsection in respect of the application.
- (4) The Minister may refer an application for a discretionary permit to the Commission if, in the opinion of the Minister –
- (a) the application meets one or more of the requirements specified in subsection (1); and
- (b) the application is not an application to which section 25 of the *Environmental Management*

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and Pollution Control Act 1994
applies.

- (5) Before the Minister refers an application for a discretionary permit under subsection (4), the Minister is to consult with such part of the department, that is responsible for the administration of this Act, in respect of the application.
- (6) The Minister may refuse to refer an application for a discretionary permit to the Commission, under this section, for any reason.
- (7) Within 7 days after receiving an application referred by the Minister under this section, the Commission may –
 - (a) return the application to the applicant if, in the opinion of the Commission –
 - (i) the application is an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies; or
 - (ii) the purported application does not meet an administrative or procedural requirement

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for an application under
this section; or

- (b) establish an Assessment Panel under section 60AE in respect of the application.

60AE. Commission to establish Assessment Panel – new applications

- (1) The Commission is to establish an Assessment Panel to undertake an assessment of an application made under section 60AC, or an application referred to the Commission under section 60AD, if the Commission is satisfied, on reasonable grounds, that –
 - (a) the application is not an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies; and
 - (b) the application meets the relevant requirements of this Division.
- (2) If an Assessment Panel is established under this section in respect of an application, the *Historic Cultural Heritage Act 1995* does not apply in respect of the assessment of the application under this Division.

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***Subdivision 3 – Assessment of new application by
Assessment Panel***

60AF. Applications for permits to be provided to certain entities

- (1) As soon as practical after the Commission establishes an Assessment Panel under section 60AE in respect of an application, the Assessment Panel is to provide a copy of the application to each reviewing entity for that application.
- (2) Within 28 days after being provided a copy of an application under subsection (1) –
 - (a) each planning authority must provide advice, to the Assessment Panel, relating to the application on the following matters:
 - (i) any matters that the planning authority would consider, in respect of the application, under the *Local Government (Building and Miscellaneous Provisions) Act 1993*;
 - (ii) issues and concerns that the planning authority has in respect of the matter to

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which the application relates including, but not limited to, engineering concerns or the impacts on assets or infrastructure owned or operated by the planning authority;

(iii) suggested terms and conditions that should be imposed on a permit if it is granted under the application and the reasons for those terms and conditions;

(iv) any other matter that the planning authority considers relevant to the application; and

(b) each planning authority may provide advice, to the Assessment Panel, relating to the application of the relevant planning scheme to the application; and

(c) each other reviewing entity for the application is to provide advice, to the Assessment Panel relating to the application, on any matter that the reviewing entity considers relevant to the application including, but not limited to, suggested terms and

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conditions that should be imposed
on a permit if it is granted under
the application and the reasons
for those terms and conditions.

- (3) For the purposes of Division 5B of Part 3 of the *Electricity Supply Industry Act 1995* –
- (a) an application under this Division is taken to be an application for a permit within the meaning of that Division of that Act; and
 - (b) if an Assessment Panel is established in respect of an application under this Division, a reference to a planning authority in respect of an application, in that Division of that Act, is taken to be a reference to the Assessment Panel established in respect of the application.

60AG. Additional information may be required

- (1) Within 14 days after receiving a copy of an application under section 60AF(1), a reviewing entity may make a request to the Assessment Panel for further information in respect of the application to enable the reviewing entity to provide advice on the application under section 60AF.

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- (2) A planning authority may only request further information under subsection (1) in relation to the following matters:
- (a) for the purpose of determining the impact of the use and development on the infrastructure of the council in the relevant municipal area if the application were to be approved and the permit issued;
 - (b) any matter that the planning authority considers relevant for the purpose of preparing advice, to the Assessment Panel, relating to the application of the relevant planning scheme to the application;
 - (c) to assist in the preparation of recommended conditions to be imposed on the permit in respect of the impact of the use and development on the infrastructure of the council;
 - (d) any matters that the planning authority is entitled to consider, in respect of the application, under the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

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- (3) If a reviewing entity makes a request for further information under subsection (1) in respect of an application, the Assessment Panel may notify the reviewing entity, in writing –
- (a) that the Assessment Panel believes that the requested information is not relevant to the application; and
 - (b) the reasons for that belief; and
 - (c) that the requested information is not information that will be provided under this section.
- (4) At the expiry of 21 days after providing copies of an application under section 60AF(1), the Assessment Panel is to –
- (a) make a request, in writing, that the applicant provide the further information requested under subsection (1), or such further information requested by the Assessment Panel, in respect of the application, as the Assessment Panel is satisfied that –
 - (i) the information is relevant to the application; and

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- (ii) the Assessment Panel does not already have the information; and
 - (b) send a copy of the written request to the reviewing entities for the application.
- (5) If an applicant provides further information to the Assessment Panel as the result of a request made under subsection (4) –
 - (a) the Assessment Panel is to provide a copy of the further information to all the reviewing entities for the application; and
 - (b) each reviewing entity is to notify the Assessment Panel if –
 - (i) the reviewing entity is satisfied that the additional information provided meets the requests so made; or
 - (ii) in the opinion of the reviewing entity, further information was requested and has not been provided by the applicant.
- (6) Within 7 days after receiving further information as a result of a request under

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subsection (4), the Assessment Panel must –

- (a) determine that –
 - (i) all further information so requested has been provided by the applicant; or
 - (ii) the applicant has provided all the further information so requested that is reasonably able to be provided by the applicant; or
 - (b) notify the applicant that the Assessment Panel is not satisfied that the applicant has complied with all requests under subsection (4) in respect of the application.
- (7) If an Assessment Panel makes a request to an applicant under subsection (4) for further information, all relevant time periods under this Act do not run in respect of the application until, in the opinion of the Assessment Panel, all requests for further information have been answered.
- (8) For the avoidance of doubt, nothing in this section entitles a reviewing entity to request new information, in respect of an

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application under section 60AF(1), if more than 14 days have passed since the Assessment Panel provided the reviewing entity with a copy of the application as required under this section.

60AH. Exhibition of applications

- (1) Within 14 days after the expiry of the period specified in section 60AF(2) in respect of an application, the Assessment Panel is to –
 - (a) prepare a draft assessment report in relation to the application; and
 - (b) ensure that an exhibition notice is published that specifies, in relation to the documents and information specified in paragraph (d) –
 - (i) the day on which the exhibition of the documents and information is to commence; and
 - (ii) that the documents and information are or will be available for viewing by the public during the exhibition period at the premises specified in the notice; and

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- (iii) that the documents and information may be downloaded by the public from the website specified in the notice; and
- (c) provide a copy of a notice under paragraph (b) to all property owners who own land adjoining the land to which the application relates; and
- (d) exhibit the following documents and information, in respect of the application, in accordance with the exhibition notice published under paragraph (b):
 - (i) the application;
 - (ii) each document, or piece of information, provided by a reviewing entity under section 60AF in respect of the application;
 - (iii) any further information provided by the applicant under this Act, including information provided under section 54, in accordance with section 60AG;
 - (iv) the draft assessment report;

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- (v) if the draft assessment report recommends that a permit be granted, a draft permit, including each proposed condition to be imposed in respect of the permit;
 - (vi) the date on which a hearing under section 60AI may be held in respect of the application, being a date that is not less than 10 days after the close of the exhibition;
 - (vii) a statement that the hearing may be cancelled in accordance with section 60AJ.
- (2) An exhibition notice under subsection (1)(b) is to be published as prescribed.
- (3) An exhibition under subsection (1)(d) is to be held for a period of 14 days from the day specified in the notice published under subsection (1)(b), excluding any days on which the premises, where the exhibition is occurring, are closed to the public during normal business hours.

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- (4) A person may make comments, and provide feedback, to the Assessment Panel in respect of an application during the exhibition period for the application.

60AI. Hearings in respect of applications

- (1) The Assessment Panel is to hold a hearing in respect of an application, as specified in the notice published under section 60AH(1)(b) in respect of the application, except where the hearing is cancelled in accordance with section 60AJ.
- (2) A hearing under this section, in respect of an application, is to be open to –
- (a) each party to the application; and
 - (b) each reviewing entity; and
 - (c) all persons who made a representation in respect of the application.
- (3) A hearing under this section in respect of an application, if not cancelled in accordance with section 60AJ, must be completed –
- (a) within 28 days after the close of the exhibition period in respect of the application; and

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- (b) before the Assessment Panel takes an action specified in section 60AL(1) in respect of the application.

60AJ. Hearing may be cancelled in certain circumstances

- (1) The Assessment Panel for an application under this Division may cancel a proposed hearing to be held under section 60AI in respect of the application if –
 - (a) during the assessment of the application, no reviewing entity requested that a hearing be held, under section 60AI, in respect of the application; and
 - (b) during the exhibition period for the application –
 - (i) no representations were made in respect of the application; or
 - (ii) the representations that were made in respect of the application were in support of the application or specified that the person making the representation does not wish to be heard at a

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hearing under
section 60AI.

- (2) If a hearing in respect of an application is cancelled in accordance with subsection (1), the Assessment Panel may direct the relevant planning authority to issue a permit in accordance with the draft assessment report prepared under this Division in respect of the application.
- (3) If the Assessment Panel cancels a hearing under subsection (1) in respect of an application, the Assessment Panel is to give written notice that –
 - (a) the hearing is not to be held, under section 60AI, in respect of the application; and
 - (b) the relevant planning authority has been directed to issue a permit in respect of the application.
- (4) A written notice under subsection (3) that relates to the cancellation of a hearing in respect of an application must be given to –
 - (a) each party to the application; and
 - (b) each reviewing entity for the application; and

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- (c) each person who made a representation in respect of the application.
- (5) For the avoidance of doubt, nothing in this section requires the Assessment Panel to cancel a hearing under subsection (1).

60AK. Frivolous or vexatious representations

If, in the opinion of the Assessment Panel for an application, a representation that is frivolous or vexatious has been made during the exhibition period for the application –

- (a) as soon as practical after forming the opinion, the Assessment Panel is to notify the person who made the representation –
 - (i) that the Assessment Panel is of the opinion that the representation is frivolous or vexatious; and
 - (ii) of the grounds on which the Assessment Panel has formed that opinion; and
- (b) the representation is not a representation for the purposes of this Subdivision.

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60AL. Determination of application by Assessment Panel

- (1) Within 28 days after the close of the exhibition period in respect of an application, the Assessment Panel must –
 - (a) refuse the application and notify the following persons of that decision:
 - (i) each party to the application;
 - (ii) each reviewing entity for the application;
 - (iii) each person who made a representation in respect of the application; or
 - (b) subject to subsection (3), approve the application and subsequently –
 - (i) notify the following persons of that decision:
 - (A) each party to the application;
 - (B) each reviewing entity for the application;
 - (C) each person who made a

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- representation in
respect of the
application; and
- (ii) direct the relevant
planning authority to
issue a permit as specified
by the Assessment Panel
in the direction.
- (2) In making a decision under
subsection (1) in respect of an
application, the Assessment Panel must –
- (a) apply the provisions of the
relevant planning scheme, as in
effect on the day on which the
application was made; and
- (b) seek to further the objectives set
out in Schedule 1; and
- (c) have regard to any advice
provided by a reviewing entity
under section 60AF in respect of
the application; and
- (d) take into consideration –
- (i) such of the prescribed
matters as are relevant to
the development to which
the application relates;
and

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- (ii) the matters set out in representations made to the Assessment Panel, under this Division, in respect of the application; and
 - (iii) the submissions made at any hearing held under section 60AI in respect of the application; and
 - (e) accept any relevant bushfire hazard management plan, or other prescribed management plan relating to environmental hazards or natural hazards, that has been certified as acceptable by an accredited person or a State Service Agency; and
 - (f) if the application relates to any land within Wellington Park, as defined in the *Wellington Park Act 1993*, take into account the standards, values and conditions set out in each management plan, within the meaning of that Act, in force as at the date of the application.
- (3) An Assessment Panel must not make a decision under subsection (1) in respect of an application if, had the application been made to a planning authority under

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section 51, the planning authority would have been unable to make the same decision in respect of the application under that section.

- (4) If an Assessment Panel needs an extension of the period specified in subsection (1), the Assessment Panel may make a request to the Minister that the period be extended in accordance with subsection (5).
- (5) At the request of the Assessment Panel under subsection (4), the Minister may grant one extension, of not more than 21 days, of the period specified in subsection (1) if the Minister considers the extension reasonable in the circumstances.
- (6) Subsections (4) and (5) do not apply to an Assessment Panel if the Assessment Panel and the applicant agree to –
 - (a) an extension of the period specified in subsection (1) in respect of an application; and
 - (b) the duration of that extension.
- (7) If an extension is granted under subsection (5) or agreed under subsection (6) in respect of an application, the Assessment Panel is to notify the following persons that the

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extension has been granted, or agreed,
and the duration of that extension:

- (a) each party to the application;
 - (b) each reviewing entity for the application;
 - (c) each person who made a representation in respect of the application.
- (8) If a permit is granted under this section, section 53 applies to the permit as if a reference in that section to the planning authority were a reference to the Assessment Panel.

Subdivision 4 – Certain existing applications may be referred to Assessment Panel

60AM. Interpretation of Subdivision

In this Subdivision –

permit application, in relation to a transfer application, means the application for a discretionary permit that is the subject of –

- (a) an application to the Commission under section 60AN; or
- (b) a request to the Minister under section 60AO;

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transfer application means an application to the Commission under section 60AN, or a request to the Minister under section 60AO, for an application for a discretionary permit to be determined by an Assessment Panel.

60AN. Certain permit applications may be transferred to Assessment Panel

- (1) A party to a permit application, that is already being considered under this Act by the relevant planning authority, may apply to the Commission for the permit application to be determined by an Assessment Panel if –
 - (a) the permit application falls within one or more of the requirements specified in section 60AC(1); or
 - (b) the permit application falls within a class of applications prescribed for the purpose of this section.
- (2) A transfer application under subsection (1) –
 - (a) may only be made by –
 - (i) the applicant for the discretionary permit; or

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- (ii) the relevant planning authority in respect of the permit application, with the consent of the applicant for the discretionary permit; and
- (b) is to –
 - (i) be in a form approved by the Commission; and
 - (ii) contain the prescribed information; and
- (c) must be accompanied by –
 - (i) the permit application to which the transfer application relates; and
 - (ii) evidence that the permit application meets one or more of the requirements specified in subsection (1); and
- (d) must be accompanied by each of the following, if in existence:
 - (i) each document, or piece of information, provided under this Act in respect of the permit application;

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- (ii) any further information provided by the applicant under this Act, including information provided under section 54, in respect of the permit application;
 - (iii) if the transfer application is made by the planning authority, a statement that details the assessment process that has been undertaken under this Act by the planning authority in respect of the permit application;
 - (iv) all correspondence that has occurred between the applicant and the relevant planning authority in respect of the permit application.
- (3) A transfer application may not be made under subsection (1) if the relevant permit application is an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies.
- (4) If the Commission requires further information in respect of whether a permit application falls under

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subsection (3), the Commission may seek further information from the Board, within the meaning of the *Environmental Management and Pollution Control Act 1994*.

- (5) Within 7 days after receiving a transfer application under this section, the Commission is to do one or more of the following:
- (a) request further information from a party to the permit application;
 - (b) return the purported application to the applicant if, in the opinion of the Commission, the purported application –
 - (i) is an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies; or
 - (ii) does not meet the requirements for an application under this section;
 - (c) notify the applicant of the determination made by the Commission, under section 60AQ, in respect of the permit application.

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60AO. Minister may refer certain existing permit applications to Commission

- (1) A party to a permit application, that is already being considered under this Act by a planning authority, may request that the Minister direct the Commission to establish an Assessment Panel in respect of the permit application if –
 - (a) the permit application relates to a development that may be considered significant, or important, to –
 - (i) the area in which the development is to be located; or
 - (ii) the State; or
 - (b) either party to the application believes that the planning authority does not have the technical expertise to assess the permit application; or
 - (c) the permit application relates to a development that is, or is likely to be, controversial; or
 - (d) the relevant planning authority may have, in respect of the proponent or development –

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- (i) a conflict of interest or a perceived conflict of interest; or
 - (ii) a real or perceived bias, whether for or against the proponent or development; or
 - (e) the application falls within a class of permit applications prescribed for the purpose of this section.
- (2) A request under subsection (1) in respect of a permit application –
- (a) must include a statement as to why the party is making the request that the Minister refer the relevant permit application to the Commission; and
 - (b) must be accompanied by –
 - (i) a copy of the permit application; and
 - (ii) evidence that the permit application meets one or more of the requirements specified in subsection (1); and
 - (c) must be accompanied by each of the following, if in existence:

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- (i) each document, or piece of information, provided under this Act in respect of the permit application;
 - (ii) any further information provided by the applicant under this Act, including information provided under section 54, in respect of the permit application;
 - (iii) if the request is made by the planning authority, a statement that details the assessment process that has been undertaken under this Act by the planning authority in respect of the permit application;
 - (iv) all correspondence that has occurred between the applicant and the relevant planning authority in respect of the permit application.
- (3) If the Minister receives a request under subsection (1) that is only made by one party to the relevant permit application, the Minister is to ensure that each other party to the permit application is –

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- (a) notified of the request and has a copy of the documentation provided under subsection (2) in respect of the request; and
 - (b) notified that the party has a right to respond to the Minister, in respect of the request, within 7 days after the Minister receives the request.
- (4) The Minister may refer a permit application to the Commission for the granting of a discretionary permit by an Assessment Panel if, in the opinion of the Minister –
 - (a) the permit application meets one or more of the requirements specified in subsection (1); and
 - (b) the permit application is not an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies.
- (5) Before the Minister refers a permit application under subsection (4), the Minister is to consult with such part of the department, that is responsible for the administration of this Act, in respect of the application.

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- (6) The Minister may refuse to refer a permit application to the Commission, under this section, for any reason.
- (7) Within 7 days after receiving a permit application referred by the Minister under this section, the Commission may –
 - (a) return the application to the applicant if, in the opinion of the Commission –
 - (i) the application is an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies; or
 - (ii) the purported application does not meet an administrative or procedural requirement for an application under this section; or
 - (b) notify the applicant of the determination made by the Commission, under section 60AQ, in respect of the permit application.

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60AP. Effect of application under this Subdivision

If a person makes a transfer application, or a request under this Subdivision, in respect of a permit application –

- (a) the relevant planning authority is to stop in its assessment of the permit application; and
- (b) all other assessments under this Act, and any other Act, of the permit application are to cease while the transfer application or request is determined under this Subdivision; and
- (c) all timeframes under this Act, and any other Act, that apply to the permit application are paused while the transfer application or request is determined under this Subdivision.

60AQ. Commission may determine status of certain existing applications

- (1) If the Commission is satisfied on reasonable grounds that an Assessment Panel may be established under section 60AR in respect of a permit application, the Commission –

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- (a) is to determine which provisions of Subdivision 3 apply in respect of the permit application; and
 - (b) may determine that a provision of Subdivision 3 does not apply in respect of the permit application, if the Commission is satisfied that the applicant has complied with a similar requirement under this Act in respect of the permit application; and
 - (c) may specify that a time frame applies, to the permit application, in respect of a provision of Subdivision 3, that is different from the timeframe specified in that provision.
- (2) Before the Commission establishes an Assessment Panel in respect of a permit application, the Commission must provide to the applicant in respect of the transfer application a notice, in writing, of –
- (a) each determination made under subsection (1) in respect of the permit application; and
 - (b) each time frame specified, by the Commission under subsection (1) in respect of the permit application.

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- (3) Within 7 days after receiving a written notice under subsection (2), an applicant is to notify the Commission, in writing –
 - (a) that the applicant agrees with the determination; or
 - (b) that the applicant disagrees with the determination.
- (4) If an applicant notifies the Commission under subsection (3)(a) that the applicant agrees with the determination of the Commission –
 - (a) the Commission is to provide a copy of the written notice provided under subsection (2) to the proponent and the relevant planning authority; and
 - (b) the Commission is to establish an Assessment Panel under section 60AE in respect of the permit application to which the determination relates; and
 - (c) this Division applies to the assessment, and determination, of the permit application as specified in the determination of the Commission.
- (5) If an applicant notifies the Commission under subsection (3)(b) that the applicant disagrees with the determination of the

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Commission, or if an applicant fails to take action under subsection (3) within the timeframe specified in the subsection –

- (a) the relevant transfer application is taken to be withdrawn; and
 - (b) all assessments ceased, and all timeframes paused, under section 60AP in respect of the relevant permit application are taken to continue.
- (6) For the avoidance of doubt, a determination of the Commission under subsection (1) in respect of a permit application –
- (a) is final and not subject to appeal; and
 - (b) may be amended by the Commission, or an Assessment Panel established in respect of the permit application; and
 - (c) may require an applicant to complete a process that is identical, or similar, to a process that the applicant has already undertaken under a different provision of this Act.

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- (7) If the Assessment Panel amends a determination in accordance with subsection (6)(b) –
- (a) the Assessment Panel is to give the applicant a written copy of the amended determination; and
 - (b) this section applies to the written copy of the amended determination as if it were a written notice under subsection (2).

60AR. Commission to establish Assessment Panel – existing application

- (1) The Commission is to establish an Assessment Panel to undertake an assessment of a permit application, if –
- (a) the applicant notifies the Commission under section 60AQ(3)(a) that the applicant agrees with the determination of the Commission in respect of the permit application; and
 - (b) the Commission is satisfied that the permit application is not an application to which section 25 of the *Environmental Management and Pollution Control Act 1994* applies.

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- (2) An Assessment Panel established under this section is to assess, and determine, a permit application in accordance with the determination of the Commission, under section 60AQ, in respect of the permit application.

Subdivision 5 – Miscellaneous

60AS. Application may be withdrawn by applicant

- (1) At any stage before an Assessment Panel gives a direction under section 60AJ(2) or section 60AL(1)(b) in respect of an application, the applicant may withdraw the application by written notice to the Assessment Panel.
- (2) If an application has been withdrawn under subsection (1), the Assessment Panel is to notify the following persons that the application has been withdrawn:
 - (a) each reviewing entity who has been provided with the application under section 60AF;
 - (b) if the application was exhibited in accordance with section 60AH, each person who made a representation under that section in respect of the application.

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60AT. Effect of issuing permit in respect of certain applications

- (1) If a planning authority issues a permit at the direction of an Assessment Panel under section 60AJ(2) or section 60AL(1)(b) –
 - (a) the planning authority must issue the permit within 7 days after receiving the direction of the Assessment Panel; and
 - (b) the planning authority may only issue the permit as directed and may not impose any further conditions on the permit; and
 - (c) the permit comes into effect on the day on which it is issued or such later day as is specified by the Assessment Panel; and
 - (d) there is no right of appeal under this Act, in respect of the permit, on merit grounds; and
 - (e) the provisions of this Act relating to enforcement and minor amendments apply to the permit.
- (2) If a planning authority issues a permit at the direction of an Assessment Panel under section 60AJ(2) or section 60AL(1)(b) in relation to a subdivision, within the meaning of Part 3

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of the *Local Government (Building and Miscellaneous Provisions) Act 1993*, a reference in that Part to the council, in respect of a prescribed function or prescribed power of the council under that Part, includes a reference to the Assessment Panel.

60AU. Fees under this Division

- (1) For the purposes of this Division, the regulations may prescribe –
 - (a) the fees payable in respect of an application, matter or assessment under this Division; or
 - (b) the maximum fees that may be payable in respect of an application, matter or assessment performed under this Division by an Assessment Panel or a planning authority; or
 - (c) the method of calculating a fee that may be payable under this Division.
- (2) Nothing in this section limits or restricts a power to make regulations under section 87 in respect of this Division including, but not limited to, making provision for or with respect to a matter specified in section 87(2)(b).

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- (3) The Commission may waive or remit all or any part of a fee that is payable under this Division.
- (4) A planning authority, or reviewing entity, may only charge a fee prescribed under this Act in respect of an application, matter or assessment under this Division.

60AV. Review of Division

- (1) The Minister is to cause a review of the operation of this Division to be carried out as soon as practicable after the fifth anniversary of its commencement.
- (2) A review under subsection (1) may include, but is not limited to, the operation of any time period specified in this Division.
- (3) The persons who carry out the review under subsection (1) are to give the Minister a written report on the outcome of the review.
- (4) The Minister is to cause a copy of the report, given to the Minister under subsection (3), to be tabled in each House of Parliament within 10 sitting-days of that House after the report is given to the Minister.

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Part 3 – Historic Cultural Heritage Act 1995 Amended

**PART 3 – HISTORIC CULTURAL HERITAGE ACT
1995 AMENDED**

10. Principal Act

In this Part, the *Historic Cultural Heritage Act 1995** is referred to as the Principal Act.

11. Section 33 substituted

Section 33 of the Principal Act is repealed and the following section is substituted:

33. Application of Planning Act to heritage works is subject to this Part

- (1) Subject to subsection (2), the provisions of this Part prevail, to the extent of any inconsistency, over the provisions of the Planning Act and any planning scheme or special planning order or planning directive in force under that Act.
- (2) This Part does not apply to –
 - (a) a permit application that is to be determined by an Assessment Panel under Division 2AA of Part 4 of the Planning Act; and
 - (b) heritage works that are to be performed under a discretionary permit that is issued as a result of

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a permit application referred to in
paragraph (a).