

Appendix 1

Extract from SPA

Chapter 5 Designation of land for community infrastructure

Part 1 Preliminary

200 Who may designate land

A Minister or a local government may, under this chapter, designate land for community infrastructure prescribed under a regulation for this section.

Note—

In this chapter, *Minister* includes any Minister. See definition *Minister* in schedule 3 (Dictionary).

201 Matters to be considered when designating land

Land may be designated for community infrastructure only if the Minister or local government is satisfied the community infrastructure will—

- (a) facilitate the implementation of legislation and policies about environmental protection or ecological sustainability; or
- (b) facilitate the efficient allocation of resources; or
- (c) satisfy statutory requirements or budgetary commitments of the State or local government for the supply of community infrastructure; or
- (d) satisfy the community's expectations for the efficient and timely supply of the infrastructure.

202 What designations may include

A designation may include—

- (a) requirements about works or the use of the land for the community infrastructure, including the height, shape,

bulk or location of the works on the land, vehicular access to the land, vehicular and pedestrian circulation on the land, hours of operation of the use, landscaping on the land and ancillary uses of the land; and

- (b) other requirements designed to lessen the impacts of the works or the use of the land for community infrastructure, including procedures for environmental management.

203 How IDAS applies to designated land

Development under a designation is exempt development, to the extent the development is either, or both, of the following—

- (a) self-assessable development, development requiring compliance assessment or assessable development under a planning scheme;
- (b) reconfiguring a lot.

204 Relationship of designation to State Development and Public Works Organisation Act 1971

- (1) Subsection (2) applies if land in a declared State development area under the *State Development and Public Works Organisation Act 1971* is designated under this part.
- (2) Despite section 84 of that Act, use of the land in accordance with the designation—
 - (a) is taken to be a use of the land in accordance with the approved development scheme for the land under that Act; and
 - (b) is not a use that contravenes section 84 of that Act.

205 How infrastructure charges apply to designated land

If a public sector entity that is a department or part of a department proposes or starts development under a

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designation, the entity is not required to pay any charge for infrastructure under chapter 8, part 1 for the development.

206 How designations must be shown in planning schemes

- (1) If a local government designates land, or notes a designation of land by the Minister on its planning scheme, the designation or note must—
 - (a) identify the land; and
 - (b) state the type of community infrastructure for which the land was designated; and
 - (c) state the day the designation was made; and
 - (d) refer to any matters included as part of the designation under section 202; and
 - (e) be shown in the planning scheme in a way that other provisions in the planning scheme applying to the land remain effective even if the designation is repealed or ceases to have effect.
- (2) To remove any doubt, it is declared that—
 - (a) a designation is part of a planning scheme; and
 - (b) designation is not the only way community infrastructure may be identified in a planning scheme; and
 - (c) the provisions of a planning scheme, other than the provision that designates land, applying to designated land remain effective even if the designation is repealed or ceases to have effect.

Part 2 Ministerial designations

207 Matters the Minister must consider before designating land

- (1) Before designating land, the Minister must be satisfied that, for the development the subject of the proposed designation—
 - (a) adequate environmental assessment has been carried out; and
 - (b) in carrying out environmental assessment under paragraph (a), there was adequate public consultation; and
 - (c) adequate account has been taken of issues raised during the public consultation; and
 - (d) for land to which section 204 applies—adequate account has been taken of the approved development scheme mentioned in that section.
- (2) The Minister must also consider—
 - (a) every properly made submission under subsection (4); and
 - (b) for land to which a State planning regulatory provision applies—the provision; and
 - (c) for land in a designated region—the region’s regional plan; and
 - (d) each relevant State planning policy; and
 - (e) each relevant local planning instrument.
- (3) For subsection (1), there has been adequate environmental assessment and public consultation in carrying out environmental assessment if—
 - (a) the assessment and consultation has been carried out as required by guidelines made by the chief executive under section 760 for assessing the impacts of the development; or

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- (b) the processes under chapter 6, part 4 and part 5, division 2, have been completed for a development application for the community infrastructure to which the designation relates; or
- (c) the process under chapter 9, part 2, division 2, has been completed for an EIS for development for the community infrastructure; or
- (d) public notification has been carried out for a planning scheme, or an amendment of a planning scheme, that includes the community infrastructure, under the guideline mentioned in section 117(1); or
- (e) the coordinator-general has, under the *State Development and Public Works Organisation Act 1971*, section 35, prepared a report evaluating an EIS for, or including, development for the community infrastructure; or
- (f) the process under the Environmental Protection Act, chapter 3, part 1 has been completed for an EIS for development for the community infrastructure.

Editor's note—

Environmental Protection Act, chapter 3 (Environmental impact statements), part 1 (EIS process)

- (4) However, if written notice of the proposed designation has not been given to each of the following entities about an action mentioned in subsection (3), the Minister must give written notice of the proposed designation to the entities inviting submissions about the proposed designation—
 - (a) the owner of any land to which the proposed designation applies;
 - (b) each local government the Minister is satisfied the designation affects.
- (5) A notice given under subsection (4) must give the entities at least 15 business days to make a submission.

208 Procedures after designation

- (1) If the Minister designates land, the Minister must give a notice to—
 - (a) each owner of the land; and
 - (b) each local government the Minister is satisfied the designation affects; and
 - (c) the chief executive.
- (2) The notice must state each of the following—
 - (a) that the designation has been made;
 - (b) the description of the land;
 - (c) the type of community infrastructure for which the land has been designated;
 - (d) any matters mentioned in section 202 and included as part of the designation.
- (3) The Minister must also publish a gazette notice stating the matters mentioned in subsection (2)(a) to (c).

209 Procedures if designation does not proceed

If the Minister decides not to proceed with a proposed designation, the Minister must give a notice, stating that the designation will not proceed, to the persons mentioned in section 208(1)(a) and (b).

210 Effects of ministerial designations

A designation made under this part—

- (a) if the designation states that it replaces an existing designation—replaces the existing designation; and
- (b) has effect on and from—
 - (i) the day the designation is notified in the gazette; or

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- (ii) if a later day for the commencement of the designation is stated in the notice—the later day.

211 When local government must include designation in planning scheme

- (1) If a local government receives a notice from a Minister stating that the Minister has made a designation in or near its planning scheme area, the local government must note the designation on—
 - (a) its planning scheme (if any); and
 - (b) any new planning scheme it makes before the designation ceases to have effect.
- (2) The note is not an amendment of the planning scheme.

Part 3 Local government designations

212 Designation of land by local government

- (1) A local government may only designate land by using the process stated in the guideline mentioned in section 117(1) to include the designation as a substantive provision of its planning scheme.
- (2) Subsection (1) applies whether or not the local government owns the land.
- (3) However, land identified in a priority infrastructure plan as land for community infrastructure is not designated land unless it is also specifically identified as designated land.

213 Designating land the local government does not own

- (1) This section applies if the local government proposes to designate land it does not own.

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- (2) Before the start of the consultation period for making or amending a planning scheme intended to include the designation, the local government must give written notice of the proposed designation to the owner of the land.
 - (3) The notice must state the following—
 - (a) the description of the land proposed to be designated, including a plan of the land;
 - (b) the type of community infrastructure for which the designation is proposed;
 - (c) the reasons for the designation;
 - (d) that written submissions about any aspect of the proposed designation may be given to the local government during the consultation period.

Part 4 Duration and reconfirmation of designations

214 Duration of designations

- (1) A designation ceases to have effect—
 - (a) if the designation is made by a Minister—6 years after notice of the designation was published in the gazette (the *designation cessation day*); or
 - (b) if the designation is made by a local government—6 years after the planning scheme or amendment that incorporated the designation took effect (also the *designation cessation day*).
- (2) If, after designating land but before the designation cessation day, a local government makes a new planning scheme and includes an existing designation as a substantive provision of the new planning scheme—

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- (a) the existing designation continues to have effect until its designation cessation day under subsection (1); and
- (b) section 213 does not apply to remaking the designation in the new planning scheme.

215 When designations do not cease

- (1) A designation does not cease to have effect on the designation cessation day if—
 - (a) on the designation cessation day, an entity other than a public sector entity or the local government owns, or has a public utility easement over, the designated land and construction of community infrastructure started before the designation cessation day; or
 - (b) on the designation cessation day, a public sector entity or the local government owns, or has a public utility easement, for the same purpose as the designation, over, the designated land; or
 - (c) before the designation cessation day, a public sector entity or the local government gave a notice of intention to resume the designated land under the Acquisition Act, section 7; or
 - (d) before the designation cessation day, a public sector entity or the local government signed an agreement to take under the Acquisition Act or to otherwise buy the designated land; or
 - (e) for a designation made by the Minister—before the designation cessation day, the Minister gave the local government written notice reconfirming the designation.
- (2) However, if a public sector entity or a local government discontinues proceedings to resume designated land, whether before or after the designation cessation day, the designation ceases to have effect the day the proceedings are discontinued.

- (3) To remove any doubt, it is declared that a designation of land or any notice given to an owner about a designation of land does not constitute a notice of intention to resume under the Acquisition Act, section 7.

216 Reconfirming designation

- (1) If the Minister gives a local government written notice under section 215(1)(e) reconfirming a designation—
- (a) the local government must display the notice in a conspicuous place in the local government's public office; and
 - (b) the Minister must—
 - (i) give the owner of the land a copy of the notice; and
 - (ii) publish the notice in the gazette; and
 - (c) the designation has effect for another 6 years after the notice is published in the gazette.
- (2) When a local government receives a notice from the Minister reconfirming a designation in or near its planning scheme area, the local government must again note the designation on—
- (a) its planning scheme (if any); and
 - (b) any new planning scheme it makes before the designation ceases to have effect.
- (3) The note is not an amendment of the planning scheme.
- (4) A reconfirmation of a designation is taken to be a designation to which sections 214 and 215 apply.

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Part 5 Repealing designations

217 Who may repeal designations

- (1) A Minister may repeal a designation made by the Minister.
- (2) A local government may repeal a designation made by the local government.

218 Notice of repeal

- (1) The repeal of a designation must be made by publishing a notice of repeal of the designation—
 - (a) in the gazette; and
 - (b) in a newspaper circulating generally in the area where the designated land is situated.
- (2) The notice must state the following—
 - (a) that the designation has been repealed;
 - (b) the description of the land to which the designation applied;
 - (c) the purpose of the community infrastructure for which the land was designated;
 - (d) the reasons for the decision.

219 Minister or local government to give notice of repeal to particular entities

- (1) If the repeal is made by a Minister, the Minister must give a copy of the notice to—
 - (a) each local government to which a notice about the making of the designation was given; and
 - (b) if the land is owned by an entity other than the State or the local government—the owner; and
 - (c) the chief executive.

- (2) If the repeal is made by a local government and the land is owned by an entity other than the local government, the local government must give a copy of the notice to the owner.

220 When designation ceases to have effect

The designation ceases to have effect on the day the notice is published in the gazette.

221 Local government to note repeal on planning scheme

- (1) If a local government repeals a designation or receives a notice from the Minister advising that the Minister has repealed a designation, the local government must note the repeal on its planning scheme.
- (2) The note is not an amendment of the planning scheme.

Part 6 Acquiring designated land

222 Request to acquire designated land under hardship

- (1) Subsection (3) applies if the owner of an interest in designated land (the *designated interest*) is suffering hardship because of the designation.
- (2) However, subsection (3) does not apply if—
 - (a) the designated land is land—
 - (i) over which there is an existing public utility easement; or
 - (ii) for which a process has started under the Acquisition Act to acquire a public utility easement; and
 - (b) the designation is for community infrastructure for which the easement exists or is being acquired.

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- (3) The owner may ask the designator to buy—
 - (a) the designated interest; or
 - (b) if the owner has an interest in land adjoining the designated land and retaining the interest without the designated interest would also cause the owner hardship—the designated interest and the interest in the land adjoining the designated land.

223 Decision about request

- (1) The designator must, within 40 business days after the request is received, decide to—
 - (a) grant the request; or
 - (b) take other action under section 226; or
 - (c) refuse the request.
- (2) In deciding whether or not the owner is suffering hardship, the designator must consider each of the following—
 - (a) whether the owner must sell an interest mentioned in section 222(3)(a) or (b) without delay for personal reasons, including to avoid loss of income, and has tried unsuccessfully to sell the interest at a fair market value (disregarding the designation);
 - (b) whether the owner has a genuine intent to develop the interest, but development approval has been, or is likely to be, refused because of the designation;
 - (c) the extent to which development would be viable because of the designation if the owner exercised rights conferred under any development approval.

224 Notice about grant of request

If the designator decides to grant the request, the designator must, within 5 business days after deciding the request, give

the owner a notice stating the designator proposes to buy the nominated interest.

225 Notice about refusal of request

If the designator decides to refuse the request, the designator must, within 5 business days after deciding the request, give the owner a notice stating—

- (a) the request has been refused; and
- (b) the owner may appeal against the decision.

226 Alternative action designator may take

If the designator decides not to buy the nominated interest, the designator may, instead of taking action under section 225 and within 5 business days after deciding the request, give the owner a notice stating that the designator proposes to—

- (a) exchange the nominated interest for property held by the designator; or
- (b) repeal the designation or remove the designation from the designated interest; or
- (c) investigate the removal of the designation from the designated interest.

227 If the designator does not act under the notice

- (1) This section applies if the designator gave a notice under section 224 or 226 and, within 40 business days after giving the notice, the designator has not—
 - (a) signed an agreement with the owner to buy the nominated interest or to take the nominated interest under the Acquisition Act, section 15; or
 - (b) signed an agreement with the owner to exchange the nominated interest; or

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- (c) repealed the designation or removed the designation from the designated interest.
- (2) The designator must, within 5 business days after the end of the period mentioned in subsection (1), give the owner a notice of intention to resume the nominated interest.
- (3) The notice given under subsection (2) is taken to be a notice of intention to resume given under the Acquisition Act, section 7.
- (4) However, the Acquisition Act, sections 13 and 41, do not apply to the resumption.

Editor's note—

Acquisition Act, sections 7 (Notice of intention to take land), 13 (Provision for taking particular additional land), 15 (Taking by agreement) and 41 (Disposal of land)

228 How value of interest is decided

If an interest in designated land is taken under the Acquisition Act, the effect of the designation must be disregarded in deciding the value of the interest taken.

Part 7 Delegation of Minister's functions

229 Ministers may delegate particular administrative functions about designations

A Minister may delegate the Minister's functions under sections 208, 209 and 224 to 227 to—

- (a) the chief executive or a senior executive of any department for which the Minister has responsibility; or
- (b) the chief executive officer of a public sector entity.