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- (3) The chief executive may, by notice, require a local government to include a matter in subsection (2) in a designation made by the local government.

Note—

For the effect of a designation on the categorisation of development, see section 44(6)(b).

36 Criteria for making or amending designations

- (1) To make a designation, a designator must be satisfied that—
- (a) the infrastructure will satisfy statutory requirements, or budgetary commitments, for the supply of the infrastructure; or
 - (b) there is or will be a need for the efficient and timely supply of the infrastructure.
- (2) To make or amend a designation, if the designator is the Minister, the Minister must also be satisfied that adequate environmental assessment, including adequate consultation, has been carried out in relation to the development that is the subject of the designation or amendment.
- (3) The Minister may, in guidelines prescribed by regulation, set out the process for the environmental assessment and consultation.
- (4) The Minister is taken to be satisfied of the matters in subsection (2) if the process in the guidelines is followed.
- (5) However, the Minister may be satisfied of the matters in another way.
- (6) Sections 10 and 11 apply to the making or amendment of the guidelines as if the guidelines were a State planning policy.
- (7) To make or amend a designation, a designator must have regard to—
- (a) all planning instruments that relate to the premises; and
 - (b) any assessment benchmarks, other than in planning instruments, that relate to the development that is the subject of the designation or amendment; and

- (c) if the premises are in a State development area under the State Development Act—any approved development scheme for the premises under that Act; and
- (ca) if the premises are in a priority development area under the *Economic Development Act 2012*—any development scheme for the priority development area under that Act; and
- (d) any properly made submissions made as part of the consultation carried out under section 37; and
- (e) the written submissions of any local government.

37 Process for making or amending designation

- (1) This section is about the process for—
 - (a) making a designation for premises; or
 - (b) amending a designation for premises, including by amending—
 - (i) the area of the premises; or
 - (ii) the type of infrastructure for which the premises were designated; or
 - (iii) a requirement included in the designation under section 35(2).
- (2) If the Minister proposes to make or amend a designation, the Minister must give notice of the proposal to the affected parties.
- (3) However, the Minister need not give the notice to an owner of premises if—
 - (a) a notice has already been given to the owner as part of the consultation for an assessment under section 36(2); or
 - (b) the Minister can not notify the owner after making reasonable efforts.
- (4) A notice under subsection (2) must state the following—

- (a) that a submission about the proposal may be given by an affected party to the Minister;
 - (b) the period, of at least 15 business days after the notice is given, in which the submission may be made;
 - (c) the requirements for a properly made submission.
- (5) If, after considering any properly made submissions, the Minister decides not to proceed with the proposal, the Minister must give a decision notice to the affected parties.
- (6) If a local government proposes to make or amend a designation, the local government must follow the process in the designation process rules, before the local government makes or amends the designation.
- (7) Sections 10 and 11 apply to the making or amendment of the designation process rules as if the designation process rules were a State planning policy.
- (8) In this section—
- designation process rules* means rules made by the Minister and prescribed by regulation.

38 Process after making or amending designation

- (1) If, after considering any properly made submissions, the designator decides to make or amend a designation, the designator must publish a gazette notice that states—
- (a) that the designation has been made or amended; and
 - (b) a description of the designated premises; and
 - (c) the type of infrastructure for which the premises were designated; and
 - (d) for an amendment—the nature of the amendment.
- (2) The designator must give the following things to each affected party and the chief executive—
- (a) a copy of the gazette notice;

- (b) a notice of any requirements included in the designation under section 35(2);
- (c) a notice of how the designator dealt with any properly made submissions.

39 Duration of designation

- (1) A designation stops having effect on the day (the *end day*) that is 6 years after the designation starts to have effect, unless—
 - (a) on the end day—
 - (i) a public sector entity owns, or has an easement for the same purpose as the designation over, the designated premises; or
 - (ii) another entity owns, or has an easement over, the designated premises and construction of the infrastructure for which the premises were designated started before the end day; or
 - (b) before the end day—
 - (i) a public sector entity gave a notice of intention to resume the designated premises under the Acquisition Act, section 7; or
 - (ii) a public sector entity signed an agreement to take designated premises under the Acquisition Act or to otherwise buy the premises; or
 - (iii) the designator complies with subsection (3).
- (2) The designator may extend the duration of a designation, for up to 6 years, by publishing a gazette notice about the extension before the designation stops having effect.
- (3) The designator must give notice of the extension of the designation to—
 - (a) if the Minister is the designator—each of the affected parties and the chief executive; or

- (b) if a local government is the designator—the owner of the premises and the chief executive.
- (4) If a public sector entity discontinues proceedings to resume designated premises, either before or after the end day, the designation stops having effect on the day when the proceedings are discontinued.

40 Repealing designation—designator

- (1) A designator may repeal a designation made by the designator by publishing a gazette notice that states—
 - (a) that the designation is repealed; and
 - (b) a description of the designated premises; and
 - (c) the type of infrastructure for which the premises were designated; and
 - (d) the reasons for the repeal.
- (2) The designator must give a copy of the notice to—
 - (a) if the Minister is the designator—each of the affected parties and the chief executive; or
 - (b) if a local government is the designator—the owner of the premises and the chief executive.
- (3) Any development started under the designation may be completed as if the designation had not been repealed.
- (4) Subject to any requirements under section 35(2), a use of the premises that is the natural and ordinary consequence of the development is taken to be a lawful use.

41 Repealing designation—owner’s request

- (1) An owner of an interest in designated premises may request a designator to repeal a designation made by the designator on the basis that the designation is causing the owner hardship.
- (2) Subsection (1) does not apply if—

- (a) the premises are subject to an easement for the infrastructure for which the premises are designated; or
 - (b) the designation also applies to other premises and relates to a land corridor for the infrastructure; or
 - (c) the premises are a road.
- (3) The request must be in writing, and contain any information that the guidelines made under section 36(3) require.
- (4) The designator must, within 40 business days after receiving the request—
- (a) repeal the designation, using the process under section 40; or
 - (b) decide to refuse the request; or
 - (c) decide to take other action that the designator considers appropriate in the circumstances.
- (5) The designator must, within 5 business days after making a decision under subsection (4)(b) or (c), give a decision notice to the owner.

42 Noting designation in planning scheme

- (1) This section applies if a local government—
- (a) makes, amends, extends or repeals a designation; or
 - (b) receives a notice about the Minister making, amending, extending or repealing a designation.
- (2) The local government must include a note about the making, amendment, extension or repeal in—
- (a) the local government's planning scheme; and
 - (b) any planning scheme that the local government makes before the designation stops having effect.
- (3) The note must—
- (a) identify the premises that were designated; and

- (b) describe the type of infrastructure for which the premises were designated; and
 - (c) state the day when the designation, amendment, extension or repeal started to have effect.
- (4) The local government must include the note in the planning scheme in a way that ensures the other provisions of the scheme that apply to the designated premises remain effective.
- (5) To remove any doubt, it is declared that—
- (a) the note is not an amendment of a planning scheme; and
 - (b) a designation is taken to be part of a planning scheme; and
 - (c) a designation is not the only way that a planning scheme may identify infrastructure; and
 - (d) a designation does not affect the provisions of a planning scheme that apply to designated premises, even after the designation stops having effect.

42A Amending and repealing designations under old Act

To remove any doubt, it is declared that the Minister may, under this part, amend or repeal a designation of land under the old Act made by another Minister.