

DEVELOPMENT ACT 1993 - Council Assessment Panel - CAP

SECTION OF THE ACT	DELEGATED POWERS
Section 6	Change of Land Use Declaration
	<ol style="list-style-type: none"> 1. The power pursuant to Section 6(3) of the Act and in circumstances where a particular use of land has been discontinued for a period of six months or more: <ol style="list-style-type: none"> 1.1. to form the opinion that the revival of that use would be inconsistent with the Development Plan and have an adverse effect on the locality in which the land is situated; and 1.2. to serve written notice on the owner and occupier of the land declaring that a revival of the use will be treated for the purposes of the Act as a change in the use of land.
Section 33	Matters Against Which Development Must be Assessed
	<ol style="list-style-type: none"> 1. The power, as the relevant authority and pursuant to Section 33 of the Act, to assess a development against and grant or refuse consent in respect of each of the following matters (insofar as they are relevant to the particular development): <ol style="list-style-type: none"> 1.1. the provisions of the appropriate Development Plan; 1.2. <i>Not delegated</i> 1.3. in relation to a proposed division of land (otherwise than under the Community Titles Act 1996 or the Strata Titles Act 1988) on the satisfaction of the conditions specified in Section 33(1)(c) of the Act; 1.4. in relation to a division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 on the satisfaction of the conditions specified in Section 33(1)(d) of the Act; 1.5. the requirement that any encroachment of a building over, under, across or on a public place has been dealt with in a satisfactory manner; and 1.6. such other matters as may be prescribed. 2. The power pursuant to Section 33(3) of the Act, when granting development plan consent, to reserve a decision on a specified matter until further assessment of the development under the Act.
Section 35	Special Provisions Relating to Development Plan Assessment
	<ol style="list-style-type: none"> 1. The power pursuant to Section 35(1)(b) of the Act to determine a development that is assessed by a relevant authority as being a minor variation from complying development to be complying development. 2. The power pursuant to Section 35(2) of the Act to assess whether or not a development is seriously at variance with the relevant Development Plan. 3. The power pursuant to Section 35 of the Act to determine that a development application should be classified as complying, non-complying or merit. 4. The power pursuant to Section 35(3)(a) of the Act in appropriate cases to concur in the granting of consent to a development described as a non-complying development.

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Section 37A	Proposed Development Involving Creation of Fortifications
	The power pursuant to Section 37A(2)(b) of the Act to receive the Commissioner's written determination under Section 37A(2)(a) of the Act.
Section 38	Public Notice and Consultation
	1. <i>Not delegated</i>
	2. The power pursuant to Section 38(10)(a) of the Act, in respect of a Category 2 development, to determine whether to allow a person who made a representation to appear personally or by representative before the Delegate.
	3. The power, pursuant to subsection 38(17) of the Act, where a relevant authority is acting under Section 38 of the Act in relation to a Category 2A or Category 2 development, to not take into account under Section 38 of the Act a representation made by a person who is not entitled to be given notice of the relevant application under Section 38 of the Act.
	4. The power, pursuant to subsection 38(18) of the Act, to not take into account under Section 38 of the Act, a representation that is not made in accordance with any requirement prescribed by the Regulations for the purposes of Section 38.
Section 39	Application and Provision of Information
	1. The power pursuant to Section 39(2) of the Act to request an applicant to: <ul style="list-style-type: none"> 1.1. provide such additional documents or information to enable assessment of the application; 1.2. remedy any defect or deficiency in any application or accompanying document or information required by or under the Act; 1.3. consult with an authority or body prescribed by the Regulations; 1.4. (where required by the Regulations) prepare a statement of effect in relation to non-complying development; and 1.5. comply with any other requirement prescribed by the Regulations.
	2. Pursuant to Section 39(3)(b) of the Act, where a request is made under Section 39(2) of the Act and the request is not complied with within the time specified by the Regulations, the power :- <ul style="list-style-type: none"> 2.1. subject to Section 39(3)(b)(ii) of the Act, to refuse the application; and 2.2. refuse the application in prescribed circumstances (including, if the Regulations so provide, in a case involving development that is complying development).
	3 The power pursuant to Sections 39(4)(a) and 39(5) of the Act to permit an applicant to vary an application or vary any plans, drawings, specifications or other documents that accompanied an application.
	4 The power pursuant to Sections 39(4)(b) and 39(5) of the Act to permit an applicant to lodge an application without the provision of any information or document required by the Regulations.
	5 <i>Not delegated</i>
	6 The power pursuant to Section 39(4)(d) of the Act and Regulation 17(3)(a) of the Regulations to refuse an application that relates to a development of the kind that is described as a non-complying development under the Development Plan without proceeding to make an

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	assessment of the application.
	7 <i>Not delegated</i>
	8 The power pursuant to Section 39(7) of the Act to approve of an application for variation of the conditions of the development authorisation previously given under the Act, or to extend the period for which such authorisation remains operative.
	9 <i>Not delegated</i>
	10 <i>Not delegated</i>
	11 Where granting an application for variation of a development authorisation pursuant to section 39(6), the power, pursuant to section 39(7a), to make specific provision for the variation of a condition imposed with respect to the original authorisation in its decision on the application for variation.
	12 The power pursuant to Section 39(8) of the Act to issue a consent which provides for the undertaking of development in stages.
	13 <i>Not delegated</i>
Section 40(3)	Determination of Application
	The power pursuant to Section 40(3) of the Act to extend the period of time within which a development authorisation remains operative.
Section 42	Conditions
	1. The power pursuant to Sections 42(1) and (3) of the Act to attach such conditions as the Delegate thinks it or as may be prescribed by regulation to any decision under Division 1 of Part 4 of the Act.
	2. The power pursuant to section 42(6) of the Act, on the application of an applicant, to determine that the payment of an amount calculated in accordance with the Regulations be made into the relevant fund in lieu of planting one or more replacement trees under section 42(4) of the Act.
	3. The power, pursuant to section 42(8)(b) of the Act, after taking into account any criteria prescribed by the Regulations and if the Minister concurs, to determine that it is appropriate to grant an exemption under Section 42 of the Act in a particular case.
Section 43	Cancellation by a Relevant Authority
	The power pursuant to Section 43 of the Act to cancel a development authorisation previously given by the Council or the Delegate.
Section 45A	Investigation of Development Assessment Performance
	1 The power pursuant to Sections 45A(2) of the Act to explain the council's actions and to make submissions (including, if relevant, an indication of undertakings that the Council is willing to give in order to take remedial action) to the Minister within a period (being at least 28 days) specified by the Minister.
	2 The power pursuant to Section 45A(12) of the Act to make submissions to the Minister on the report on which the action under Section 45A(11) of the Act is based within a period (being at least 28 days) specified by the Minister.
Section 49	Crown Development and Public Infrastructure

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	1. The power pursuant to Section 49(4a) of the Act to receive notice from the Development Assessment Commission containing the prescribed particulars of the development in accordance with the Regulations.
	2. The power, pursuant to Section 49(5) of the Act, to report to the Development Assessment Commission on any matters contained in a notice from the Development Assessment Commission under Section 49(4a) of the Act.
	3. The power, pursuant to Section 49(9) of the Act, to withdraw opposition to a State agency proposed development.
Section 49A	Electricity Infrastructure Development
	4. The power, pursuant to Section 49A(4a) of the Act, to receive notice from the Development Assessment Commission containing the prescribed particulars of the development in accordance with the Regulations.
	5. The power, pursuant to Section 49A(5) of the Act, where notice of a proposal to undertake development for the purposes of the provision of electricity infrastructure has been given to the Council pursuant to Section 49A(4a) of the Act, to report to the Development Assessment Commission on any matters contained in the said notice.
	6. The power, pursuant to Section 49A(9) of the Act, in circumstances where the Council's report to the Development Assessment Commission under Section 49A(5) of the Act expressed opposition to the proposed development, to withdraw that opposition.
Section 50	Open Space Contribution System
	1. The power pursuant to Section 50(1) of the Act, with respect to an application for the division of land into more than 20 allotments (except by a strata plan) where one or more allotments is less than one hectare in area, to require: <ul style="list-style-type: none"> 1.1 that up to 12.5% in area of the relevant area be vested in the Council to be held as open space; or 1.2 that the applicant make a contribution as prescribed by the Regulations in accordance with the requirements of Section 50(7) of the Act; or 1.3 that the land be vested in the Council and that the applicant make a contribution determined in accordance with Section 50(7) of the Act, <p>according to the determination and specification of the Council or delegate.</p>
	2. <i>Not delegated</i>
	3. <i>Not delegated</i>
	4. <i>Not delegated</i>
	5. <i>Not delegated</i>
	4. The power pursuant to Section 50(11) of the Act to determine that the division of land is being undertaken in stages such that Section 50 of the Act does not apply to an application for development authorisation to the extent that an earlier application in respect of the same development has addressed the requirements of Section 50 of the Act in respect of the

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	area of land as a whole.
Section 52A	Avoidance of Duplication of Procedures in Relation to Commonwealth Environment Protection and Biodiversity Conservation Act, 1999
	1 The power pursuant to Section 52A(2)(a) of the Act to accept a document under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (and defined in Section 52A(9) of the Act, as a "Commonwealth Act document") as an application, notice or other document for the purposes of the Act, if (subject to the provisions of Section 52A(7)) the document complies with the requirements of the Act.
	2 The power pursuant to Section 52A(2)(b) of the Act where a document has been accepted for the purposes of the Act, to direct that a procedure taken under the Environment Protection and Biodiversity Conservation Act 1999 in relation to the said document will be taken to have fulfilled the requirements for a procedure in relation to the relevant document under the Act, if the requirements of the Act in relation to the procedure have been complied with under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
	3 The power pursuant to Section 52A(2)(c) of the Act to adopt or accept the whole or part of a document (whether a plan, report, statement, assessment or other document of the same kind or not) used or to be used for the purposes of the Environment Protection and Biodiversity Conservation Act 1999 as the document required under the Act, if (subject to the provisions of Section 52A(7) of the Act) the document has been prepared in compliance with the Act, and complies with the requirements of the Act.
	4 The power pursuant to Section 52A(5) of the Act where a controlled action under the Environment Protection and Biodiversity Conservation Act 1999 is an activity or part of an activity or includes an activity for which a development authorisation is required under the Act to, when considering an application for a development authorisation or for the variation of a development authorisation, for the activity, use information and other material provided to the Commonwealth Minister under the Environment Protection and Biodiversity Conservation Act 1999 for the purposes of the Commonwealth Minister deciding to give approval to the controlled action under the Environment Protection and Biodiversity Conservation Act 1999.
	5 The power pursuant to Section 52A(6)(b) of the Act to attach a condition to the development authorisation that requires compliance with all or some of the conditions attached to the Commonwealth Minister's approval under the Environment Protection and Biodiversity Conservation Act 1999.
Section 101	Seeking of Professional Advice
	The power, pursuant to Section 101(1) of the Act, in the exercise of a prescribed function, to rely on a certificate of a person with prescribed

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TO COUNCIL ASSESSMENT PANEL (CAP)**

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	qualifications.