Queensland

LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT 2000

Act No. 4 of 2000

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TABLE OF PROVISIONS

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Local Government and Other Legislation Amendment Act 2000

Act No. 4 of 2000

An Act to amend certain local government legislation, and for other purposes

[Assented to 16 March 2000]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Local Government and Other Legislation Amendment Act 2000*.

Commencement

2.(1) Sections 19, 24, 25, 46, 72, 77, 78, 80 and 82 are taken to have commenced on 30 March 1998.

(2) Sections 64 to 67, 75 and 85(3) commence on 31 March 2000.

(3) Sections 28, 31(2), 32, 36, 41, 47, 54 and 68 commence on 1 July 2000.

(4) Sections 22, 62 and 85(2) and part 9 commence on a day to be fixed by proclamation.

(5) The remaining provisions commence on assent.

PART 2—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended in pt 2

3. This part amends the *Local Government Act 1993*.

Omission of s 771 (Meaning of relevant business activity)

4. Section 771—

omit.

Amendment of s 772 (Definitions for ch 10)

5. Section 772—

insert—

‘ **“access component”**, of a two-part tariff, means the component fixed for access to water services, independently of the quantity of water supplied.

“consumption component”, of a two-part tariff, means the component based on the quantity of water supplied.

“cost effective”, for a two-part tariff for a relevant business activity, means application of the tariff is likely to result in savings in costs to the business activity for supplying water, including capital costs.

“relevant business activity” means—

(a) a significant business activity providing water or sewerage services; or

(b) an activity of a corporatised corporation providing water or sewerage services that was a significant business activity.’.

Insertion of new s 772A

6. Chapter 10, part 2, after section 772—

insert—

‘**Consumption as the basis for utility charges for water services**

‘**772A.(1)** For this chapter, consumption is the basis for utility charges for water services if a two-part tariff is applied.[1]

‘**(2)** Subsection (1) does not limit the ways in which consumption may be the basis for utility charges for water services.’.

Insertion of new s 783A

7. After section 783—

1 See section 783(b) (Local governments to implement charging and operational arrangements for relevant business activities).

insert—

‘**Implementing resolution under s 780 to apply two-part tariff**

‘**783A.** A resolution under section 780 to apply a two-part tariff for a relevant business activity must be implemented by making and levying a utility charge under chapter 14[2] or the *City of Brisbane Act 1924*, part 3.[3]’.

Insertion of new s 973A

8. After section 973—

insert—

‘**Validity of particular utility charges**

‘**973A.(1)** This section applies to a local government to which chapter 10[4] applies.

‘**(2)** A utility charge made and levied by the local government for supplying water or sewerage services is not invalid merely because the local government did not comply with chapter 10.’.

Insertion of new ch 19, pts 4 and 5

9. After section 1241—

insert—

2 Chapter 14 (Rates and charges)

3 *City of Brisbane Act 1924*, part 3 (Rates and charges)

4 Chapter 10 (Reform of certain water and sewerage services)

‘PART 4—VALIDATION PROVISION FOR LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT 1999

‘Validation for particular rates

‘**1242.** It is declared that a rate levied by a rate notice given by a local government for, or for a period of, the financial year ending 30 June 2000 is not, and never was, invalidly levied merely because the local government—

(a) did not state on the rate notice, as required by section 1008(2)(b),[5] the date by which, or the time within which, the rate must be paid under section 1014(2)(a)[6] if the rate notice complied with sections 1008(2) and 1014(1) as in force immediately before their amendment by the *Local Government and Other Legislation Amendment Act 1999*; or

(b) did not decide, under section 1014, the date by which, or the time within which, the rate must be paid.

‘PART 5—VALIDATION PROVISION FOR LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT 2000

‘Application to Brisbane City Council

‘**1243.** This part applies to the Brisbane City Council.

‘Validation for particular utility charges

‘**1244.(1)** This section applies if—

5 Section 1008 (Levying rates)

6 Section 1014 (Time within which rates must be paid)

(a) before the commencement of this section, a local government—

(i) prepared a two-part tariff report for a relevant business activity for chapter 10,[7] regardless of whether the report complied with chapter 10; and

(ii) made a resolution under section 780[8] to apply a two-part tariff for the relevant business activity (the **"section 780 resolution"**); and

(b) the local government, whether before or after the commencement, makes and levies a utility charge for the relevant business activity on the basis of the section 780 resolution.

'**(2)** It is declared that a utility charge made and levied for the relevant business activity on the basis of the section 780 resolution is not, and never was, invalid merely because the local government did not comply with chapter 10, part 3 or 4, or section 783.[9]

'**(3)** Subsection (2) does not affect a decision of a court before the commencement in relation to the validity of a utility charge levied for a particular person on the basis of the section 780 resolution.'.

PART 3—AMENDMENT OF BUILDING ACT 1975

Act amended in pt 3

10. This part amends the *Building Act 1975*.

7 Chapter 10 (Reform of certain water and sewerage services)

8 Section 780 (Local government to resolve whether to apply two-part tariff)

9 Chapter 10 (Reform of certain water and sewerage services), part 3 (Assessment of cost effectiveness of two-part tariffs for water supply) and part 4 (Decision on two-part tariff reports) and section 783 (Local governments to implement charging and operational arrangements for relevant business activities)

Amendment of s 3 (Definitions)

11. Section 3, definition **"professional misconduct"**—

omit, insert—

' **"professional misconduct"** includes conduct (whether by act or omission) when a building certifier—

(a) seeks, accepts or agrees to accept a benefit, whether for the benefit of the building certifier or another person, as a reward or inducement to act other than—

(i) under this Act; or

(ii) under another Act regulating building certifiers, including private certifiers for building work; or

(b) acts in a way contrary to a duty—

(i) under this Act; or

(ii) stated in another Act for building certifiers, including private certifiers for building work; or

(c) falsely claims the building certifier has the qualifications, necessary experience or accreditation to be engaged as a building certifier; or

(d) acts outside the scope of the building certifier's powers; or

(e) acts beyond the scope of the building certifier's competence; or

(f) contravenes a code of conduct published by an accrediting body; or

(g) acts negligently or incompetently in relation to the certifier's practice.'.

Amendment of s 21 (Show cause notices)

12.(1) Section 21(1), 'the owner of a building or structure'—

omit, insert—

'a person'.

(2) Section 21(1), 'the owner must'—

omit, insert—

'the person must'.

(3) Section 21(1)(b), 'owner'—

omit, insert—

'person'.

Amendment of s 22 (Enforcement notices)

13.(1) Section 22(1), 'building or structure'—

omit, insert—

'building, structure or building work'.

(2) Section 22(2), 'an owner'—

omit, insert—

'a person'.

(3) Section 22(4)—

omit, insert—

'**(4)** However, before a local government or private certifier gives a person an enforcement notice, the local government or private certifier must give the person a show cause notice.'.

(4) Section 22(5), 'person'—

omit, insert—

'local government or private certifier is'.

Amendment of s 24 (Appeals against enforcement notices)

14. Section 24(1), 'An owner'

omit, insert—

'A person'.

PART 4—AMENDMENT OF BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) ACT 1991

Act amended in pt 4

15. This part amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Amendment of s 77 (Duty of assessment manager to sight approved form)

16. Section 77(3)—

omit, insert—

'**(3)** A private certifier who receives a development application under the *Integrated Planning Act 1997*, section 5.3.5(1)[10] must comply with subsection (1) as if the private certifier were the assessment manager.

Maximum penalty—16 penalty units.'.

PART 5—AMENDMENT OF CITY OF BRISBANE ACT 1924

Act amended in pt 5

17. This part amends the *City of Brisbane Act 1924*.

Insertion of new s 58A

18. After section 58—

10 *Integrated Planning Act 1997*, section 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

insert—

‘**Validity of particular utility charges**

‘**58A.** A utility charge made and levied by the council for supplying water or sewerage services is not invalid merely because the council did not comply with the *Local Government Act 1993*, chapter 10.[11]’.

PART 6—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Act amended in pt 6

19. This part amends the *Integrated Planning Act 1997*.

Replacement of s 1.4.3 (Implied and uncommenced right to use premises protected)

20. Section 1.4.3—

omit, insert—

‘**Implied and uncommenced right to use premises protected**

‘**1.4.3.(1)** Subsection (2) applies if—

(a) a development approval comes into effect for a development application; and

(b) when the application was properly made a material change of use, for a use implied by the application, was self-assessable development or exempt development; and

(c) after the application was properly made, but before the use started, a new planning instrument, or an amendment of a planning instrument—

11 *Local Government Act 1993*, chapter 10 (Reform of certain water and sewerage services)

(i) declared the material change of use to be assessable development; or

(ii) changed an applicable code for the material change of use.

'**(2)** The use is taken to be a lawful use in existence immediately before the commencement of the new planning instrument or amendment if—

(a) the development, the subject of the approval, is completed within the time stated for completion of the development in—

(i) a permit; or

(ii) this Act; and

(b) the use of the premises starts within 5 years after the completion.'.

Amendment of s 1.4.6 (Lawful uses of premises protected)

21. Section 1.4.6—

insert—

'**(4)** However, nothing in this section prevents development in relation to the use being assessable or self-assessable development under schedule 8 if the development starts after schedule 8 commences to apply to it.'.

Insertion of new ch 1, pt 4, div 3

22. Chapter 1, part 4, after section 1.4.7—

insert—

'***Division 3—Uses and rights acquired before the commencement of other Acts continue***

'**Application of div 2 to strategic port land**

'**1.4.8.** Division 2 applies to lawful uses of, and buildings and works lawfully constructed on, strategic port land as if a reference to the commencement of a provision of the division were a reference to the commencement of this section.'.

Insertion of new s 2.1.17A

23. After section 2.1.17—

insert—

'**Inconsistency between planning instruments**

'**2.1.17A.** To the extent a planning scheme policy is inconsistent with another planning instrument, the other planning instrument prevails.'.

Amendment of s 3.1.6 (Preliminary approval may override local planning instrument)

24. Section 3.1.6(1)—

omit, insert—

'**3.1.6.(1)** This section applies only to an application for a material change of use—

(a) requiring impact assessment; or

(b) processed as if it were an application requiring impact assessment.[12]'.

Amendment of s 3.1.7 (Assessment manager)

25. Section 3.1.7—

insert—

'**(2A)** If the entity prescribed or decided under subsection (1)(b) is a local government, the local government, in addition to its jurisdiction under the *Local Government Act 1993*, section 25,[13] has the jurisdiction to assess and decide the application.'.

12 See section 6.1.28(2)(a) (IDAS must be used for processing applications).

13 *Local Government Act 1993*, section 25 (Jurisdiction of local government)

Amendment of s 3.2.2 (Approved material change of use required for certain developments)

26.(1) Section 3.2.2(1), 'if'—

omit, insert—

'if, at the time an application is made'.

(2) Section 3.2.2(1)(a)—

omit, insert—

'(a) a structure or works, the subject of an application, may not be used unless a development permit exists for the material change of use of premises for which the structure is, or works are, proposed; and'.

Amendment of s 3.2.3 (Acknowledgment notices generally)

27. Section 3.2.3(2)(e), 'request—'—

omit, insert—

'request under section 3.3.6—'.

Amendment of s 3.2.8 (Public scrutiny of applications)

28.(1) Section 3.2.8(3), definition **"supporting material"**, after paragraph (a)—

insert—

'(aa)any information request for the application; and'.

(2) Section 3.2.8(3), definition **"supporting material"**, paragraphs (aa) and (b)—

renumber as paragraphs (b) and (c).

Replacement of s 3.4.2 (When does notification stage apply)

29. Section 3.4.2—

omit, insert—

‘**When notification stage applies**

‘**3.4.2.(1)** The notification stage applies to an application if any part of the application requires impact assessment.

‘**(2)** Subsection (1) applies even if code assessment is required for another part of the application.

‘**(3)** Even if a concurrence agency advises the assessment manager it requires the application to be refused, the notification stage still applies to the application.’.

Amendment of s 3.5.3 (References in div 2 to codes, planning instruments, laws or policies)

30. Section 3.5.3, ‘division’—

omit, insert—

‘division (other than section 3.5.6)’.

Amendment of s 3.5.15 (Decision notice)

31.(1) Section 3.5.15(3)(b)—

omit, insert—

‘(b) the applicant gives the assessment manager notice of the applicant’s appeal;’.

(2) Section 3.5.15(5), from ‘to the applicant’ to ‘the local government)’—

omit, insert—

‘under subsection (1)’.

Amendment of s 3.5.17 (Changing conditions and other matters during the applicant’s appeal period)

32.(1) Section 3.5.17(2) and (5), after ‘with’—

insert—

'any of'.

(2) Section 3.5.17(5), 'that the conditions have not been changed'—

omit, insert—

'the decision about the representations'.

Amendment of s 3.5.18 (Applicant may suspend applicant's appeal period)

33. Section 3.5.18(4)—

omit, insert—

'**(4)** If the written representations are made within 20 business days after the day written notice was given to the assessment manager—

(a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the balance of the applicant's appeal period restarts the day after the assessment manager receives the notice of withdrawal; or

(b) if the assessment manager gives the applicant a notice under section 3.5.17(5)—the balance of the applicant's appeal period restarts the day after the applicant receives the notice; or

(c) if the assessment manager gives the applicant a negotiated decision notice—the applicant's appeal period starts again the day after the applicant receives the negotiated decision notice.'.

Amendment of s 3.5.35 (Limitations on conditions lessening cost impacts for infrastructure)

34.(1) Section 3.5.35(1)(a)(i), 'development under'—

omit, insert—

'lots, works or uses under'.

(2) Section 3.5.35—

insert—

‘**(1A)** Also, an entity may not impose a condition mentioned in subsection (1) for infrastructure that is not the entity’s infrastructure.’.

Amendment of s 3.6.3 (Effect of direction)

35. Section 3.6.3(1), from ‘must—’—

omit, insert—

‘must comply with the direction.’.

Amendment of s 3.6.5 (When development application may be called in)

36. Section 3.6.5, from ‘only if—’—

omit, insert—

‘only—

(a) if the development involves a State interest; and

(b) within 10 business days after the day the chief executive receives notice of an appeal against the application.’.

Amendment of s 3.7.4 (Plan for reconfiguring that is not assessable development)

37. Section 3.7.4(2), ‘and applicable code’—

omit, insert—

‘relevant to the plan’.

Amendment of s 3.7.8 (Application of pt 7 to acquisitions for public purposes)

38.(1) Section 3.7.8, heading—

omit, insert—

‘**When pt 7 does not apply**’.

(2) Section 3.7.8(1)—

omit, insert—

'**3.7.8.(1)** This part does not apply to a plan (however called) for the reconfiguration of a lot if the reconfiguration is in relation to—

(a) the acquisition, including by agreement, under the *Acquisition of Land Act 1967*, of land by a constructing authority, as defined under that Act, for a purpose set out in schedule 2 of that Act; or

(b) the acquisition by agreement, other than under the *Acquisition of Land Act 1967*, of land by a constructing authority, as defined under that Act, for a purpose set out in schedule 2 of that Act; or

(c) land held by the State, or a statutory body representing the State, for a purpose set out in the *Acquisition of Land Act 1967*, schedule 2, whether or not the land relates to an acquisition; or

(d) a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*.'.

Amendment of s 4.1.8 (Constituting court)

39. Section 4.1.8—

insert—

'**(4)** A failure to notify the name of a District Court Judge under subsection (1) does not, and never has, affected the validity of any decision or order made by the judge constituting, or purporting to constitute, the court.

'**(5)** A decision or order of a District Court Judge constituting, or purporting to constitute, the court after the expiry of the period specified for the judge under subsection (2), is not, and never has been, invalidly made, merely because the decision or order was made after the expiry.'.

Amendment of s 4.1.10 (Rules of court)

40.(1) Section 4.1.10(1), 'Supreme'—

omit, insert—

'District'.

(2) Section 4.1.10(1), 'Justice'—

omit, insert—

'Judge'.

Amendment of s 4.1.21 (Court may make declarations)

41. Section 4.1.21—

insert—

'**(6)** If a person starts a proceeding under this section, the person must, the day the person starts the proceeding, give the chief executive written notice of the proceeding.

'**(7)** The Minister may elect to be a party to the proceeding by filing in the court a notice of election in the approved form.'.

Amendment of s 4.1.23 (Costs)

42.(1) Section 4.1.23(2)(e), before 'procedural requirements'—

insert—

'the court's'.

(2) Section 4.1.23(2)(g), 'appellant'—

omit, insert—

'applicant'.

Amendment of s 4.1.28 (Appeals by submitters)

43. Section 4.1.28—

insert—

'**(5)** If an application is processed under section 6.1.28(2), appeal rights for submitters for the application are available only for the aspects of the development that would have required public notification under the repealed Act.

'**(6)** If an application involves assessment against a concurrence agency

code, appeal rights for submitters for the application are not available against the part of the approval that represents the concurrence agency's response for the code.'.

Amendment of s 4.1.30 (Appeals for matters arising after approval given (co-respondents))

44. Section 4.1.30—

insert—

'**(4)** Also, a person who has made a request mentioned in subsection (1) may appeal to the court against a deemed refusal of the request.

'**(5)** An appeal under subsection (4) may be started at any time after the last day the decision on the matter should have been made.'.

Amendment of s 4.1.31 (Appeals for matters arising after approval given (no co-respondents))

45. Section 4.1.31—

insert—

'**(3)** Also, a person who has made a request mentioned in subsection (1)(a) may appeal to the court against a deemed refusal of the request.

'**(4)** An appeal under subsection (3) may be started at any time after the last day the decision on the matter should have been made.'.

Insertion of new ss 4.1.33A and 4.1.33B

46. After section 4.1.33—

insert—

'**Appeals against decisions to change approval conditions under the repealed Act**

'**4.1.33A.(1)** A person who is dissatisfied with a decision made on an application to change the conditions attached to an approval given under section 2.19(3) or section 4.4 of the repealed Act may appeal to the court

against—

(a) the decision; or

(b) a deemed refusal of the application.

'**(2)** An appeal under subsection (1)(a) must be started within 20 business days after the day notice of the decision is given to the person.

'**(3)** An appeal under subsection (1)(b) may be started at any time after the last day a decision on the matter should have been made.

'**Appeals against local laws**

'**4.1.33B.(1)** An applicant who is dissatisfied with a decision of a local government or the conditions applied under a local law about the use of premises or the erection of a building or other structure permitted by the planning scheme may appeal to the court against the decision or the conditions applied.

'**(2)** The appeal must be started within 20 business days after the day notice of the decision is given to the applicant.'.

Amendment of s 4.1.41 (Notice of appeal to other parties (div 8))

47.(1) Section 4.1.41(1), 'appeal to—'—

omit, insert—

'appeal to the chief executive and'.

(2) Section 4.1.41(2)(b), after 'appeal'—

insert—

'by filing in the court a notice of election in the approved form'.

Replacement of s 4.1.46 (Minister entitled to be represented in an appeal involving a State interest)

48. Section 4.1.46—

omit, insert—

‘**Minister entitled to be party to an appeal involving a State interest**

‘**4.1.46.** If the Minister is satisfied an appeal involves a State interest, the Minister may, by filing in the court a notice of election in the approved form, elect to be a party to the appeal.’.

Replacement of s 4.1.53 (Court must not decide appeal unless notification stage complied with)

49. Section 4.1.53—

omit, insert—

‘**Court may decide appeal even if particular requirements not complied with**

‘**4.1.53.** The court may decide an appeal against an application even if some IDAS requirements have not been complied with, if the court is satisfied the noncompliance has not—

(a) adversely affected the awareness of the public of the existence and nature of the application; or

(b) restricted the opportunity of the public to exercise the rights conferred by the requirements.’.

Amendment of s 4.2.7 (Jurisdiction of tribunals)

50. Section 4.2.7(2)—

omit, insert—

‘**(2)** However, an appeal to a tribunal under this Act may only be about—

(a) a matter under this Act that relates to the *Building Act 1975*; or

(b) a matter prescribed under a regulation.’.

Insertion of new s 4.2.16A

51. After section 4.2.16—

insert—

‘**Notice of appeal to other parties (under other Acts)**

‘**4.2.16A.(1)** For an appeal to the tribunal under another Act, the registrar must, within 10 business days after the day the appeal is started, give written notice of the appeal to any other person the registrar considers appropriate.

‘**(2)** The notice must state the grounds of the appeal.’.

Amendment of s 4.2.17 (Notice of appeal to other parties (div 3))

52. Section 4.2.17(1)(a) and (b)—

omit, insert—

‘(a) if the appellant is an applicant mentioned in section 4.2.9 or a person to whom a notice mentioned in section 4.2.11 has been given—the assessment manager, the private certifier (if any) and any concurrence agency or building referral agency for an aspect of the application the subject of the appeal; or

(b) if the appellant is a building referral agency—the applicant, the assessment manager, the private certifier (if any) and any other entity that was a concurrence agency for an aspect of the application.’.

Amendment of s 4.3.2A (Certain assessable development must comply with codes)

53. Section 4.3.2A, after ‘3.1.2(4)’—

insert—

‘or 3.1.6(6)’.

Amendment of s 4.3.11 (Giving enforcement notice)

54.(1) Section 4.3.11—

insert—

‘**(2A)** If the assessing authority gives the local government a copy of the notice under subsection (2) and the notice is later withdrawn, the assessing

authority must give the local government written notice of the withdrawal.'.

(2) Section 4.3.11—

insert—

'**(3A)** If the assessing authority is the private certifier, the assessing authority must not give an enforcement notice until the assessing authority has consulted with the assessment manager about the giving of the notice.'.

(3) Section 4.3.11(4), 'Subsection (3) does'—

omit, insert—

'Subsections (3) and (3A) do'.

(4) Section 4.3.11(5), 'The assessing authority'—

omit, insert—

'If the assessing authority is the private certifier or the local government, the assessing authority'.

(5) Section 4.3.11(7), 'a local government'—

omit, insert—

'the assessing authority'.

Amendment of s 4.3.18 (Proceedings for offences)

55.(1) Section 4.3.18(1), 'a development offence'—

omit, insert—

'an offence against this part'.

(2) Section 4.3.18(3)—

omit, insert—

'**(3)** However, proceedings may only be brought by the assessing authority for an offence under—

(a) section 4.3.1, 4.3.2 or 4.3.3 about the Standard Building Regulation; or

(b) section 4.3.2A, 4.3.7, 4.3.15 or 4.3.16.'.

Amendment of s 4.3.26 (Effect of orders)

56. Section 4.3.26(1)(d)—

omit, insert—

'(d) to return anything to a condition as close as practicable to the condition it was in immediately before a development offence was committed; or

(e) to do anything about a development or use to comply with this Act.'.

Amendment of s 5.1.16 (Public notice of proposed sale of certain land held in trust by local governments)

57. Section 5.1.16(1), after 'section'—

insert—

'5.1.15(1)(b) or'.

Amendment of s 5.2.2 (Agreements may be entered into about infrastructure)

58. Section 5.2.2(1)(d), 'for a development proposal'—

omit.

Amendment of s 5.2.5 (When infrastructure agreements bind successors in title)

59.(1) Section 5.2.5, subsection (3)—

renumber as subsection (4).

(2) Section 5.2.5—

insert—

'**(3)** However, if the agreement states that if the land is subdivided part of the land is to be released from the development obligations and the land is subdivided—

(a) the part of the land is released from the development obligations; and

(b) the development obligations are no longer binding on the owner of the part of the land.'.

Amendment of s 5.2.6 (Exercise of discretion unaffected by infrastructure agreements)

60. Section 5.2.6, 'a development application'—

omit, insert—

'an existing or future development application'.

Insertion of new s 5.2.7

61. Chapter 5, part 2, after section 5.2.6—

insert—

'**Infrastructure agreements prevail if inconsistent with development approval**

'**5.2.7.** To the extent an infrastructure agreement is inconsistent with a development approval, the agreement prevails.'.

Amendment of s. 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

62.(1) Section 5.3.5, heading, '**and inspect and certify certain works**'—

omit.

(2) Section 5.3.5(2) to (7)—

omit, insert—

'**(2)** However, the private certifier must not decide the application until all necessary development approvals are effective for the aspects of assessable development prescribed under a regulation, under this or another Act, to be approved before the private certifier gives a development approval.

'**(3)** If all stages of IDAS other than the decision stage have been completed for an application and the private certifier is deciding the application under subsection (2), the decision stage for the application starts the day the approvals mentioned in subsection (2) are effective.

'**(4)** If the private certifier gives a development approval, the private certifier may also act as the assessment manager for deciding any of the following requests—

(a) to extend the currency period for the approval;

(b) to change the approval;

(c) to cancel the approval;

(d) to change or cancel conditions of the approval.'.

Amendment of s 5.3.8 (Private certifiers must act in the public interest)

63. Section 5.3.8(2)(b), 'this Act'—

omit, insert—

'this Act or a duty of the private certifier under any other Act under which the certifier is accredited;'.

Replacement of ss 5.6.1 and 5.6.2

64. Sections 5.6.1 and 5.6.2—

omit, insert—

'**Application of pt 6**

'**5.6.1.** This part applies to development for public housing.

'**Definitions for pt 6**

'**5.6.2.** In this part—

"chief executive" means the chief executive of the department in which the *State Housing Act 1945* is administered.

"public housing"—

(a) means housing—

(i) provided by or on behalf of the State or a statutory body representing the State; and

(ii) for short or long term residential use; and

(iii) that is totally or partly subsidised by the State or a statutory body representing the State; and

(b) includes services provided for residents of the housing, if the services are totally or partly subsidised by the State or a statutory body representing the State.'.

Amendment of s 5.6.3 (How IDAS applies to development by commission)

65. Section 5.6.3, heading, '**by commission**'—

omit, insert—

'**under pt 6**'.

Amendment of s 5.6.4 (Commission must publicly notify certain proposed development)

66.(1) Section 5.6.4, heading, '**Commission**'—

omit, insert—

'**Chief executive**'.

(2) Section 5.6.4(1)—

omit, insert—

'**5.6.4.(1)** This section applies to development for public housing the chief executive considers is substantially inconsistent with the planning scheme.'.

(3) Section 5.6.4(2), 'commission'—

omit, insert—

'chief executive'.

(4) Section 5.6.4(3), from 'mentioned in'—

omit, insert—

'is carried out under sections 3.4.4 to 3.4.6.'.

(5) Section 5.6.4(4) and (5)—

omit, insert—

'**(4)** Even though the public notification is to be carried out in the same way as public notification under sections 3.4.4 to 3.4.6, the form of the notice to be used for the public notification under this section is the form approved by the chief executive.

'**(5)** The chief executive must have regard to any submissions received following the public notification before deciding whether or not to proceed with the proposed development.'.

Amendment of s 5.6.5 (Commission must advise local government about all development)

67.(1) Section 5.6.5, heading, '**Commission**'—

omit, insert—

'**Chief executive**'.

(2) Section 5.6.5(1)—

omit, insert—

'**5.6.5.(1)** This section applies to development to which section 5.6.4 does not apply.'.

(3) Section 5.6.4(2), 'starting the development, the commission'—

omit, insert—

'the development starts, the chief executive'.

Amendment of s 5.7.6 (Documents the chief executive must keep available for inspection and purchase)

68.(1) Section 5.7.6—

insert—

‘(ga) each notice of a proceeding given to the chief executive under section 4.1.21;

(gb) each notice of appeal given to the chief executive under section 4.1.41;

(2) Section 5.7.6, paragraphs (ga) to (i)—

renumber as paragraphs (h) to (k).

Amendment of s 6.1.1 (Definitions for pt 1)

69.(1) Section 6.1.1, definitions, **“applicable codes”**, **“assessable development”** and **“ self-assessable development”**—

omit.

(2) Section 6.1.1—

insert—

‘ **“applicable codes”**, for self-assessable development, means—

(a) for building work—the standards and the Standard Building Regulation; or

(b) for development other than building work—the standards.

“assessable development” means—

(a) development specified in schedule 8, part 1; or

(b) development, not inconsistent with schedule 8, that—

(i) under the repealed Act, would have required an application to be made—

(A) for a continuing approval; or

(B) under section 4.3(1) of the repealed Act; or

(ii) because of an amendment to, or the commencement of, a

transitional planning scheme, requires an application for development approval; or

(c) development to which paragraph (b)(i) would apply if, under the repealed Act, the development had not been carried out on State land.

"self-assessable development" means—

(a) development specified in schedule 8, part 2; or

(b) development, not inconsistent with schedule 8, that—

(i) under the repealed Act, would not have required a continuing approval but would have been required to comply with standards; or

(ii) because of an amendment to, or the commencement of, a transitional planning scheme does not require a development approval but is required to comply with standards; or

(c) development to which paragraph (b)(i) would apply if, under the repealed Act, the development had not been carried out on State land.

"standards" means requirements, including a requirement mentioned in section 6.1.23(1A), under a transitional planning scheme or interim development control provision applying to development.

"State land" means all land that is not—

(a) freehold land, or land contracted to be granted in fee-simple by the State; or

(b) subject to a lease, licence or permit issued by the State under the *Land Act 1994.*'.

Insertion of new s 6.1.10B

70. After section 6.1.10A—

insert—

'**Power to purchase or take land to achieve strategic intent of transitional planning scheme**

'**6.1.10B.(1)** A local government may purchase or, with the prior approval of the Governor in Council, take under the *Acquisition of Land Act 1967* any land in its transitional planning scheme area required for a purpose that achieves the strategic intent of its transitional planning scheme.

'**(2)** If the local government acts under subsection (1), the local government has all the powers and functions of an approved local government under the *Acquisition of Land Act 1967*.

'**(3)** Without limiting subsection (1), the local government may act under subsection (1) if the land is required for the development or redevelopment of part of the scheme area.

'**(4)** If the land is required for the development or redevelopment, subsection (1) does not authorise the local government to take the land until the land is included in a zone in which the use for that development or redevelopment is permitted.

'**(5)** If the land is purchased or taken for the development or redevelopment, the local government, with the prior approval of the Governor in Council, may sell all or part of the land, subject to any conditions the Governor in Council decides.

'**(6)** The sale must be under the *Local Government Act 1993*, chapter 6, part 3, division 3.[14]

'**(7)** If the land, or any part of it, is sold before it has been developed or redeveloped by the local government, the terms of sale must ensure the land will be developed or redeveloped according to a design approved by the local government.

'**(8)** In this section—

"transitional planning scheme area" means a local government area for which there is a transitional planning scheme.'.

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14 *Local Government Act 1993*, chapter 6 (General operation of local governments), part 3 (Contracts and Tendering), division 3 (Disposal of land or goods)

Amendment of s 6.1.30 (Deciding applications (other than under the Standard Building Regulation))

71. Section 6.1.30(3)(d), after 'section 5.2(4)'—

insert—

', as if all words in that section after 'conditions' were omitted'.

Insertion of new s 6.1.30A

72. After section 6.1.30—

insert—

'**Deeming of certain applications under transitional planning schemes**

'**6.1.30A.(1)** This section applies if—

(a) a development application is made under a transitional planning scheme; and

(b) the application form indicates the application is for a material change of use only; and

(c) it reasonably can be inferred from the common material that the application also was for development other than the material change of use.

'**(2)** The application, and any development approval for the application, is taken to be also for the other development.

'**(3)** However—

(a) the development approval is taken to be a preliminary approval for the other development unless the development approval states the development approval is a development permit for some or all of the other development; and

(b) for the other development taken to be the subject of the preliminary approval—

(i) for building work—any later development application for the other development does not require assessment against the transitional planning scheme; and

(ii) for development other than building work—to the extent section 6.1.28 applies, any later development application for the other development is taken to be an application to which section 6.1.28(3) applies; and

(c) the other development is refused to the extent the development approval expressly states the other development is refused.

'**(4)** Subsection (2) does not apply to the extent stated in a notice given to the assessment manager by the applicant before or after the development approval was given.'.

Amendment of s 6.1.31 (Conditions about infrastructure for applications)

73.(1) Section 6.1.31(2)(a), 'parts 1 and 2 do'—

omit, insert—

'part 1[15] does'.

(2) Section 6.1.31(3)—

omit, insert—

'**(3)** However—

(a) if a condition imposed under subsection (2)(c) is inconsistent with an infrastructure agreement for supplying the infrastructure, to the extent of the inconsistency, the agreement prevails; or

(b) if the application is being decided under an IPA planning scheme, subsection (2) applies only for 5 years after the commencement of this section.'.

Amendment of s 6.1.32 (Conditions about infrastructure for applications under interim development control provisions or subdivision of land by-laws)

74. Section 6.1.32—

15 Chapter 5 (Miscellaneous), part 1 (Infrastructure charges)

insert—

‘**(3)** To the extent a condition imposed under subsection (2)(b) is inconsistent with an infrastructure agreement for supplying the infrastructure, the agreement prevails.’.

Omission of s 6.1.33 (Conditions about infrastructure for applications about reconfiguring a lot)

75. Section 6.1.33—

omit.

Amendment of s 6.1.34 (Consequential amendment of transitional planning schemes)

76. Section 6.1.34(2), ‘must’—

omit, insert—

‘may’.

Amendment of s 6.1.35A (Applications to change conditions of rezoning approvals under repealed Act)

77.(1) Section 6.1.35A(1), from ‘section 4.4(5)’—

omit, insert—

‘section 2.19(3)(a) or 4.4(5) of the repealed Act.’.

(2) Section 6.1.35A(2)—

omit, insert—

‘**(2)** A person may—

(a) make a development application to achieve the change; or

(b) apply under section 4.3(1) or 4.15(1) of the repealed Act to change the conditions.’.

(3) Section 6.1.35A(3), '(2)'—

omit, insert—

'(2)(b)'.

Replacement of s 6.1.35B (Development approvals prevail over conditions of rezoning approvals under repealed Act)

78. Section 6.1.35B—

omit, insert—

'**Development approvals prevail over conditions of rezoning approvals under repealed Act**

'**6.1.35B.** A development approval given under this Act prevails, to the extent the approval is inconsistent with a condition—

(a) of an approval given under section 4.4(5) of the repealed Act; or

(b) decided under section 2.19(3) of the repealed Act.'.

Amendment of s 6.1.45 (Infrastructure agreements under repealed Act)

79.(1) Section 6.1.45, heading '**under repealed Act**'—

omit.

(2) Section 6.1.45—

insert—

'**(2)** If an infrastructure agreement mentioned in subsection (1) or made under this Act contains permission criteria inconsistent with the *Integrated Planning Regulation 1998*, to the extent of the inconsistency, the agreement prevails.

'**(3)** In this section—

"permission criteria" means criteria under either or both of the following—

(a) the *Transport Infrastructure Act 1994*, section 40,[16] as in force immediately before 1 December 1999;

(b) the *Transport Operations (Passenger Transport) Act 1994*, section 145(4).[17]'.

Amendment of s 6.1.45A (Development control plans under repealed Act)

80.(1) Section 6.1.45A(1)—

omit, insert—

'**6.1.45A.(1)** This section applies to a development control plan made under the repealed Act that includes a process—

(a) for making and approving plans (however named) with which development must comply in addition to, or instead of, the planning scheme; or

(b) that provides for appeals against a decision under the plan.'.

(2) Section 6.1.45A(2), 'making and approval of the plans'—

omit, insert—

'matters mentioned in subsection (1)'.

(3) Section 6.1.45A—

insert—

'**(3)** If the development control plan is changed after the commencement of this section in a way that, if this Act had not commenced, would have given rise to a claim for compensation under the repealed Act, the compensation may be claimed as if this Act had not commenced.'.

16 *Transport Infrastructure Act 1994*, section 40 (Impact of certain local government decisions on State-controlled roads)

17 *Transport Operations (Passenger Transport) Act 1994*, section 145 (Impact of certain decisions by local governments on public passenger transport)

Amendment of s 6.1.46 (Local Government (Robina Central Planning Agreement) Act 1992)

81. Section 6.1.46(2), '31 December 2000'—

omit, insert—

'30 March 2003'.

Insertion of new s 6.1.51A

82. After section 6.1.51—

insert—

'**Certain lawful uses, buildings and works validated**

'**6.1.51A.(1)** Subsection (2) applies if—

(a) at any time before 30 March 1998 section 2.21(2)(c) of the repealed Act applied to premises mentioned in section 2.21(2)(b) of the repealed Act; and

(b) any lawful use of the premises immediately before the section applied to the premises, continued until immediately before 30 March 1998.

'**(2)** To the extent the use continued, the use is a lawful use to which section 1.4.6 applies.

'**(3)** Subsection (2) applies even though the use was not the subject of an order in council made under section 2.21(2)(c) of the repealed Act.

'**(4)** Subsection (5) applies if—

(a) at any time before 30 March 1998 section 2.21(2)(c) of the repealed Act applied to premises mentioned in section 2.21(2)(b) of the repealed Act; and

(b) the premises were a lawful building or works immediately before the section applied to the premises.

'**(5)** A planning scheme or an amendment of a planning scheme must not require the building or works to be altered or removed.

'**(6)** Subsection (5) applies even though the premises mentioned in

subsection (4) were not the subject of an order in council made under section 2.21(2)(c) of the repealed Act.'.

Amendment of sch 1 (Process for making or amending planning schemes)

83. Schedule 1, section 11—

insert—

'**(3A)** However, if the proposal is for the amendment of a planning scheme and State interests are not adversely affected by the proposal, the Minister may delegate the Minister's power under subsection (3)(a) to the chief executive.'.

Amendment of sch 5 (Community infrastructure)

84. Schedule 5, item 1(p)—

omit, insert—

'(p) water cycle management infrastructure;'.

Amendment of sch 8 (Assessable, self-assessable and exempt development)

85.(1) Schedule 8, part 1, item 4(c)—

omit, insert—

'(c) is in relation to the acquisition, including by agreement, under the *Acquisition of Land Act 1967*, of land by a constructing authority, as defined under that Act, for a purpose set out in schedule 2 of that Act; or

(d) is in relation to the acquisition by agreement, other than under the *Acquisition of Land Act 1967*, of land by a constructing authority, as defined under that Act, for a purpose set out in schedule 2 of that Act; or

(e) is in relation to land held by the State, or a statutory body representing the State, for a purpose set out in the *Acquisition of*

Land Act 1967, schedule 2, whether or not the land relates to an acquisition; or

(f) is for the reconfiguration of a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*.'.

(2) Schedule 8, part 1—

insert—

'**4A.** Making a material change of use of premises on strategic port land that is inconsistent with a land use plan approved under the *Transport Infrastructure Act 1994*, section 171.[18]'.

(3) Schedule 8, part 3—

insert—

'**10A.** A material change of use of premises implied by building work, plumbing work, drainage work or operational work if the work was substantially commenced by the State, or an entity acting for the State, before 31 March 2000.'.

(4) Schedule 8, part 3, item 15(c)—

omit, insert—

'(c) is in relation to the acquisition, including by agreement, under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, for a purpose set out in schedule 2 of that Act; or

(d) is in relation to the acquisition by agreement, other than under the *Acquisition of Land Act 1967,* of land by a constructing authority, as defined under that Act, for a purpose set out in schedule 2 of that Act; or

(e) is in relation to land held by the State, or a statutory body representing the State, for a purpose set out in the *Acquisition of Land Act 1967*, schedule 2, whether or not the land relates to an acquisition; or

18 *Transport Infrastructure Act 1994*, section 171 (Approval of land use plans)

(f) is for the reconfiguration of a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*.'.

Amendment of sch 10 (Dictionary)

86.(1) Schedule 10, definitions **"assessing authority"** and **"superseded planning scheme"**—

omit.

(2) Schedule 10—

insert—

' **"assessing authority"** means—

(a) for development under a development permit other than development to which paragraph (c) applies—the assessment manager giving the permit or any concurrence agency for the application, each for the matters within their respective jurisdictions; or

(b) for assessable development not covered by a development permit—an entity that would have been the assessment manager or a concurrence agency for the permit if a development application had been made, each for the matters that would have been within their respective jurisdictions; or

(c) for assessable development for which a private certifier has been engaged to perform the functions of a private certifier under chapter 5, part 3—the private certifier or the local government; or

(d) for self assessable development other than building or plumbing work—the local government or the entity responsible for administering the code for the development; or

(e) for building or plumbing work carried out by or on behalf of a public sector entity—the chief executive (however described) of the entity; or

(f) for any other matter—the local government.

"concurrence agency code", for a concurrence agency, means a code, or part of a code, the concurrence agency is required under this Act or

another Act to assess a development application against.

"superseded planning scheme", for a planning scheme area, means the planning scheme, or any related planning scheme policies, in force immediately before—

(a) the planning scheme or policies, under which a development application is made, were adopted; or

(b) the amendment, creating the superseded planning scheme, was adopted.'.

(3) Schedule 10, definition **"applicable code"**, after 'a code'—

insert—

', including a concurrence agency code,'.

(4) Schedule 10, definition **"deemed refusal"**, paragraph (b), 'an amendment'—

omit, insert—

'a change to'.

(5) Schedule 10, definition **"deemed refusal"**, paragraph (b), 'approval—'—

omit, insert—

'approval or for a request to extend a currency period—'.

(6) Schedule 10, definition **"deemed refusal"**, paragraph (c), '2.6.22'—

omit, insert—

'2.6.19'.

(7) Schedule 10, definition **"development offence"**, after '4.3.2,'—

insert—

'4.3.2A,'.

PART 7—AMENDMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 1998

Act amended in pt 7

87. This part amends the *Integrated Planning and Other Legislation Amendment Act 1998*.

Omission of s 42 (Amendment of s. 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works))

88. Section 42—

omit.

PART 8—AMENDMENT OF SOUTH EAST QUEENSLAND WATER BOARD (REFORM FACILITATION) ACT 1999

Act amended in pt 8

89. This part amends the *South East Queensland Water Board (Reform Facilitation) Act 1999*.

Replacement of s 9 (Board to ensure transfer proceeds are paid to State)

90. Section 9—

omit, insert—

'**Board to ensure payment of transfer proceeds**

'**9.(1)** The board must ensure each prescribed entity is paid an amount

equal to the entity's prescribed percentage of the transfer proceeds.

'**(2)** The payments must be made on the settlement day.

'**(3)** In this section—

"prescribed entity" means—

(a) Brisbane, Gold Coast, Ipswich, Logan or Redcliffe City Council; or

(b) Beaudesert, Caboolture, Esk, Gatton, Kilcoy, Laidley or Pine Rivers Shire Council; or

(c) Queensland Treasury Holdings Pty Ltd (A.C.N. 011 027 295).[19]

"prescribed percentage", of the transfer proceeds for a prescribed entity, means—

(a) for Brisbane City Council—45%; or

(b) for Beaudesert Shire Council—0.50%; or

(c) for Caboolture Shire Council—3.50%; or

(d) for Esk Shire Council—0.75%; or

(e) for Gatton Shire Council—0.75%; or

(f) for Gold Coast City Council—1.25%; or

(g) for Ipswich City Council—10.30%; or

(h) for Kilcoy Shire Council—0.40%; or

(i) for Laidley Shire Council—0.75%; or

(j) for Logan City Council—9.40%; or

(k) for Pine Rivers Shire Council—5.40%; or

(l) for Redcliffe City Council—2%; or

(m) for Queensland Treasury Holdings Pty Ltd (A.C.N. 011 027 295)—20%.

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19 Queensland Treasury Holdings Pty Ltd is a government entity under the *Government Owned Corporations Act 1993*.

"transfer proceeds" means the purchase price under the transfer contract as adjusted under the contract.'.

PART 9—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

Act amended in pt 9

91. This part amends the *Transport Infrastructure Act 1994.*

Replacement of s 172 (Strategic port land not subject to zoning requirements)

92. Section 172—

omit, insert—

'**Strategic port land not subject to planning schemes**

'**172.(1)** Strategic port land is not subject to a planning scheme.

'**(2)** Subsection (1) has effect despite the *Integrated Planning Act 1997*, section 2.1.2.'.

Omission of s 173 (Use of strategic port land to be consistent with approved land use plan)

93. Section 173—

omit.

PART 10—MINOR AMENDMENTS

Minor amendments—schedule

94. The schedule amends the Acts mentioned in it.

SCHEDULE

MINOR AMENDMENTS

section 94

BUILDING ACT 1975

1. Section 3, definition "owner", paragraph (f), 'section 715'—

omit, insert—

'section 1124[20]'.

2. Section 16(7), 'section 661.'—

omit, insert—

'section 1066.[21]'.

3. Section 26, after '(2)'—

insert—

'to an owner'.

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20 *Local Government Act 1993*, section 1124 (Notice of time share scheme to local government)

21 *Local Government Act 1993*, section 1066 (Performing work for owner or occupier)

SCHEDULE (continued)

4. Section 26, 'section 661.'—

omit, insert—

'section 1066.[22]'.

CITY OF BRISBANE ACT 1924

1. Section 3A(2), 'divisions 3 and 4.'—

omit, insert—

'divisions 3 and 4 and part 5.'.

2. Section 14A, heading, 'therefor'—

omit.

3. Section 14A(1), 'shall, subject to this Act,'—

omit, insert—

'must'.

4. Section 134(2), from 'and, where the council'—

omit.

[22] *Local Government Act 1993*, section 1066 (Performing work for owner or occupier)

SCHEDULE (continued)

INTEGRATED PLANNING ACT 1997

1. Section 2.1.16(2)—

omit.

2. Section 4.1.48(1), *'District Court Rules 1968*, part 39'—

omit, insert—

'*Uniform Civil Procedure Rules 1999*, chapter 9, part 4[23]'.

3. Section 4.1.48(3)(c), *'District Court Rules 1968*'—

omit, insert—

'*Uniform Civil Procedure Rules 1999*'.

4. Section 6.1.20, heading, 'polices'—

omit, insert—

'**policies**'.

5. Section 6.1.29(3)(c), 'polices'—

omit, insert—

'policies'.

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23 *Uniform Civil Procedure Rules 1999*, chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

SCHEDULE (continued)

LOCAL GOVERNMENT ACT 1993

1. Section 9(2), 'divisions 3 and 4.'—

omit, insert—

'divisions 3 and 4 and part 5.'.

2. Chapter 10, part 2, heading—

omit, insert—

'**PART 2—INTERPRETATION**'.

3. Section 774, heading, 'resolve'—

omit, insert—

'**decide**'.

4. Section 776, heading, 'implemented'—

omit, insert—

'**applied**'.

LOCAL GOVERNMENT (CHINATOWN AND THE VALLEY MALLS) ACT 1984

1. Section 31(5), 'as prescribed'—

omit, insert—

'approved by the town clerk'.

SCHEDULE (continued)

LOCAL GOVERNMENT (QUEEN STREET MALL) ACT 1981

1. Section 25(5), 'as prescribed'—

omit, insert—

'approved by the town clerk'.