INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The objectives of this Bill are to:

- clarify the intended operation of the *Integrated Planning Act 1997* (IPA) and related legislation, in particular the Integrated Development Assessment System (IDAS), private certification and transitional arrangements;
- simplify aspects of IDAS, in particular for routine applications;
- remove anomalies in the legislation;
- correct typographical and other minor errors in the text of the legislation.

Reasons for the Bill

The IPA was debated and passed by Parliament in November 1997. For the most part, the Act commenced on 30 March, 1998. Building and environmental management systems were integrated into IDAS in April and July, 1998 respectively.

Because of the scope and magnitude of the reform introduced by the IPA, it is to be expected difficulties will be encountered with the operation of the new system in its early stages. Monitoring of the Act's implementation suggests some difficulties being experienced could be quickly overcome by clarifying certain provisions and improving some of the procedures. The proposed amendments are intended to do this. They are operational in character and do not affect the policy intent of the IPA.

Ways in which the objectives are to be achieved

The objectives of the Bill are to be achieved by making modifications to:

- chapter 3 of the IPA to improve the efficiency of IDAS, particularly for minor applications, and to modify or remove some provisions assessment managers are finding difficult or costly to administer;
- chapter 5 of the IPA, particularly for private certification;
- chapter 6 of the IPA (Savings and Transitionals) to clarify its application in areas such as the scope of approvals, the ability to enforce decisions made under the former *Local Government (Planning & Environment) Act 1990* (P&E Act), and to clarify when the compensation arrangements of the P&E Act and the IPA apply;
- the *Environmental Protection Act 1994* (EPA) to clarify the operation of IDAS for Environmentally Relevant Activities (ERAs);
- the *Local Government Act 1993* to allow local governments greater flexibility in making and amending development related local laws, particularly as a result of public interest testing;
- the *Transport Infrastructure Act 1994* to clarify the application of building control in port areas;
- the *Land Title Act 1994* to clarify that certain leases resulting from a development approval under IDAS must be approved by local governments before they are registered.

Alternatives to the Bill

The alternative to the Bill is to allow the continued operation of the IPA, and IDAS in particular, in their present forms. This would compromise their efficient and effective operation and achievement of their potential for administrative reform. Fine tuning of a new administrative system is an important part of its successful operation and is anticipated by the participants in the system.

Administrative cost to government

It is expected that refinements to the operation of IDAS and other IPA processes proposed by the Bill will improve efficiency and so probably reduce administrative costs. However, it is possible there may be some minor administrative costs experienced initially due to adjustment of the current administrative arrangements for issuing acknowledgment notices under IDAS, although these would be outweighed by savings in time and efficiency after this initial period.

Consistency with fundamental legislative principles

The retrospectivity proposed for certain provisions in the Bill merely corrects anomalies in the previous Act amending the IPA (*Building & Integrated Planning Amendment Act 1998*) concerning amendments to the Local Government Act and the Environmental Protection Act.

Also, the proposed amendment of section 6.1.25 in the IPA for building applications in progress at 30 April 1998 (when the amendments to the Building Act commenced) is retrospective. This amendment clarifies these applications may be completed under the former provisions of the Building Act. This validates the approvals and preserves the rights of applicants.

All retrospective amendments are therefore "beneficial provisions" under section 34 of the *Statutory Instruments Act 1992*.

In all other respects there are no matters concerning fundamental legislative principles.

Consultation

The amendments result from feedback from users of the legislation. This included targeted sessions with key stakeholders. Representatives of local government (including the Local Government Association of Queensland), the Urban Development Institute of Australia, the Housing Industry Association, the Queensland Master Builders' Association, and other professionals were invited to form an IPA Implementation Group. The group discussed specific implementation issues and proposed solutions.

Feedback has also been received from:

- attendees at the many seminars, training sessions and presentations conducted by officers of the Department since the

IPA came into effect;

- discussions with officers of other agencies responsible for administering aspects of the IPA;
- consultation with officers of other agencies about the effect of the proposed amendments on their responsibilities; and
- discussions with officers of other agencies when finalising the drafting instructions.

The proposed amendments are based closely on the feedback received from consultation. Where the amendments impact on the administrative or statutory responsibilities of government agencies, these agencies have been consulted and have collaborated in drafting the Bill

PART 1—PRELIMINARY

Short title

Clause 1 describes the short title of the Act as being the *Integrated Planning and Other Legislation Amendment Act 1998*.

Commencement

Clause 2 deals with the commencement of different parts of the Bill. Subclause (1) refers to proposed amendment to section 6.1.25 dealing with building approvals in progress when the relevant parts of the *Building & Integrated Planning Amendment Act 1998* (BIPA) commenced on 30 April 1998. This amendment is proposed to commence from that same day.

Subclause (2) proposes to amend the BIPA to remove a minor amendment that had already been made to the *Local Government Act (1993)* in the IPA. The amendment has been included on the recommendation of the Office of the Parliamentary Counsel.

Subclause (3) deals with a specific requirement of the transitional provisions of the IPA, as well as the majority of amendments to the EPA (other than those mentioned in subclause 4), and states these provisions commence on the date of assent.

Subclause (4) deals with specific provisions of the EPA that correct references to a part of that Act that should have been made as part of the amendments in the BIPA. To clarify the operation of IDAS for applications already made since the integration of environmental approvals on July 1 1998, these sections need to start on that day.

Subclause (5) states that all other provisions are proposed to commence on a day to be fixed by proclamation.

PART 2—*INTEGRATED PLANNING ACT 1997*

Act amended in pt 2

Clause 3 declares that part 2 amends the *Integrated Planning Act 1997* (IPA).

Amendment of s 1.3.5 (Definitions for terms used in "development")

Clause 4 amends the definition of "building work". It is currently limited to development involving building work and associated earth works. This definition fails to recognise other works regulated by the Building Code of Australia such as the drainage and disposal of roof water from buildings and site drainage. These and other forms of work not captured by the current definition of building work are dealt with under the Building Code of Australia. The amendment allows all work regulated by the Standard Building Regulation (which includes the Building Code of Australia) to be categorised as building work. This means that the scope of the definition of building work under the IPA can remain consistent with the scope of the Building Code of Australia and the Standard Building Regulation, even if these documents are subsequently amended.

However, this will not lead to an expansion by regulation of the scope of the definition of development in the IPA, as any works reasonably likely to be covered by the Building Code of Australia and the Standard Building Regulation in future are currently included in the definition of operational works under the IPA.

The definitions of plumbing work and drainage work are proposed to be

amended to exclude respectively from those definitions, a fire service and a stormwater installation regulated by the Building Code of Australia. These proposed amendments are complementary to the proposed amendment of the definition of building work.

Amendment of s 3.2.1 (Applying for development approval)

Clause 5(1) omits subsection (3)(a)(iii) requiring applications to be made with the written consent of all copyright holders to allow the assessment manager to reproduce and sell (to cover the cost of reproduction) all material forming part of the application for any purpose under this Act.

This requirement has caused great confusion and uncertainty. It does not require copyright holders to assign their copyright, nevertheless copyright holders have been concerned that widespread dissemination of copyright material will compromise the value of intellectual property, and make breaches of copyright law more likely.

As IDAS provides for an integrated approval to be sought for many aspects of development, applicants have in some cases been faced with a requirement to obtain approval from many copyright holders in respect of a single application, some of whom the applicant may not have engaged directly in the conceptualisation of the applicant's proposal.

The requirement has also been deficient in that, while it applies to material submitted with an application, it does not apply to material subsequently supplied in response to an information request by the assessment manager or a concurrence agency.

It is proposed the subsection be deleted to overcome the current problems. This does not diminish the effectiveness of the legislation or in any way limit the rights of individuals to view information provided with the applications. This information continues to be available for public inspection.

Subsection (4) is proposed to be amended to remove the requirement for a fee to accompany an application to a private certifier. Fees for private certifiers are negotiated by contractual arrangements under section 5.3.9.

Subsection (8) is proposed to be amended to make it clear that there is a difference between the receipt of an application that is not properly made, and subsequent acceptance of that application by the assessment manager.

The Act currently provides that, if an assessment manager accepts an application that is not properly made, the application is taken to be properly made. There has been concern that this subsection does not distinguish effectively enough between the receipt and the acceptance of an application that is not properly made. In particular, there has been concern that if an assessment manager received in the mail an application that is not properly made, the assessment manager would be obliged to treat it as properly made because it has been "accepted".

The proposed amendment clarifies that receipt and acceptance of an application that is not properly made are two distinct actions. As subsequent IDAS time limits are counted from the day an application is received, any time taken by the assessment manager to determine whether to accept an application that is not properly made is subtracted from the time available to complete the next stage.

Example: For an application that requires an acknowledgment notice to be given, if the assessment manager takes 3 days from the day the application was received to decide to accept the application, the acknowledgment notice must be given within 7 days of the day of the assessment manager's decision to accept the application (i.e. within the normal 10 day acknowledgment period from the receipt of the application).

Amendment of s 3.2.3 (Acknowledgment notices generally)

Clause 6 adds a new subsection (1A) which states that an acknowledgment notice does not need to be issued if each of three circumstances apply. The effect of this amendment is to exempt relatively straightforward applications from requiring acknowledgment notices. This reduces the administrative load for the assessment manager and time delays for the applicant.

For applications involving referrals and/or public notification the acknowledgment notice provides information necessary for the applicant to take the next steps in the IDAS process. However, for other applications there are no further actions the applicant need take. The information simply confirms basic information about the application. While this may be useful, the costs for the applicant and the assessment manager are considered to outweigh the benefits.

Omission of s 3.2.4 (Circumstances when immediate decision notice may be given)

Clause 7 omits section 3.2.4 which is no longer required due to the proposed insertion of section 3.2.3(1A).

Amendment of s 3.2.8 (Public scrutiny of applications)

Clause 8 amends the requirement for an assessment manager to keep available for public inspection and purchase, each development application and any supporting material available.

The general intent of the legislation is that applications are on the public record and should be available for members of the public to inspect. Subsection (2) of the Act places some caveats on this to the extent that sensitive security information or other information not reasonably necessary for a third party to access for the purpose of evaluating or considering the effects of the development, need not be made available for public inspection. There has been uncertainty as to what information can be withheld, in particular, whether the names and addresses of submitters should be available for inspection. Many submitters wish their personal details to be suppressed. Proposed new subsection (2A) makes it clear the assessment manager may remove the name and address from a submission before making the contents of the submission available for inspection and purchase.

Amendment of s 3.2.9 (Changing an application)

Clause 9 is a necessary consequential amendment resulting from the insertion of section 3.2.3(3).

Amendment of s 3.2.12 (Applications lapse in certain circumstances)

Clause 10 amends one of the time limits within which an applicant must take certain actions under IDAS. Subsection (2)(c) presently requires an applicant to commence public notification of an application subject to impact assessment within 10 business days after the applicant became entitled to commence the action.

Operational experience indicates that this period is too short for applicants to organise and undertake the public notification requirements specified in

the Act. This is particularly the case for applications in rural and remote areas where newspaper and postal services may not operate on a daily basis. If the applicant does not start notification within 10 days of becoming entitled to do so, the application lapses. This has created difficulties when assessment managers have issued information requests after the end of the information request period. Applicants are often willing to comply with the information request, but are compelled to start public notification immediately. This means potential submitters could be denied essential information on which to base their submissions.

The extension of the period from ten business days to 20 business days will allow an applicant time to carry out the requirements of the Act, as well as to supply further information necessary to allow potential submitters to assess the proposal. The 20 day period is consistent with subsection 2(a) relating to forwarding material to referral agencies.

Subclause (2) also adds a further time limit, reflecting the requirement for an applicant to provide a certificate of compliance with public notification requirements.

Omission of s 3.2.14 (Service provider notice for reconfiguring a lot)

Clause 11 omits the requirement for an applicant for works associated with reconfiguring a lot to publish a notice in a newspaper advising service providers of the proposed works. The intent of the section was to provide a means by which infrastructure service providers such as Telstra, Optus, Allgas and the like, could be advised of intended subdivision works so that they could make contact with applicants about the timing of their own infrastructure works with the subdivision works.

In practice the service provider notice has proven to be unnecessary from the point of view of service providers and an unduly onerous requirement for applicants. Experience indicates that most service providers make direct contact with local governments on a regular basis to find out future subdivision works intentions. This is considered to be the most efficient and most effective way for service providers to find out about the intended subdivision works.

Replacement of s 3.2.15 (When does application stage end)

Clause 12 is a necessary consequential amendment resulting from the

insertion of section 3.2.3(1A). The new replacement section relates the end of the application stage to whether or not an acknowledgment notice has been given. Also, the present wording contains an error in that it suggests the stage ends when the acknowledgment period has expired, rather than when the acknowledgment notice is issued. This is inconsistent with the intent of IDAS and section 4.1.21(1)(e) (Court may make declarations).

Amendment of s 3.3.3 (Applicant gives material to referral agency)

Clause 13 addresses some confusion that has arisen as to whether the acknowledgment notice issued by the assessment manager is determinative of subsequent aspects of the IDAS process. In particular, it is questioned whether it is the acknowledgment notice which determines the referral agencies to be consulted for an application, or the regulation specifying referral agencies. The intent of the Act is that the regulation be determinative of the referral agencies for an application.

The acknowledgment notice is intended to facilitate a common understanding between the assessment manager and the applicant of the nature and scope of development the applicant is seeking approval for, and to inform the applicant about the applicant's responsibilities for the application. However, it is not intended to be determinative of subsequent aspects of the IDAS process, such as the referral agencies for the application. Accordingly the words "mentioned in the acknowledgment notice" are incorrect and should be deleted.

A new subsection (5) is also proposed. It recognises the situation where the functions of a referral agency have been devolved or delegated to the assessment manager. This subsection clarifies that, in these situations, there is no requirement for the applicant to separately refer the application to the referral agency.

Amendment of s 3.3.4 (Applicant advises assessment manager)

Clause 14 amends section 3.3.4 in relation to the amendment of section 3.3.3. It makes clear for an applicant that a notice to the assessment manager about completion of referrals does not apply in those situations where the assessment manager and the referral agency are the same entity.

Amendment of s 3.3.6 (Information requests to applicant (generally))

Clause 15 replaces subsection (4) and adds a new subsection (4A). This is a necessary consequential amendment resulting from the insertion of section 3.2.3(3) and specifies how the information request period is determined for those applications not requiring acknowledgment notices.

Amendment of s 3.3.14 (Referral agency assessment period)

Clause 16 amends the section in relation to extension of the referral agency assessment period, and clarifies an extension to the referral agency assessment period with the applicant's agreement may only occur if the agreement is obtained before the period ends.

Amendment of s 3.4.4 (Public notice of applications to be given)

Clause 17 amends the requirement for the applicant to publish a notice in a newspaper circulating generally in the local government's area. Uncertainty has arisen over whether the terms "generally" and "in" mean the newspaper must circulate throughout the whole local government area rather than simply in the locality of the land the subject of application. In the context of applications made in the Brisbane metropolitan area in particular, this would prevent local newspapers being used for publishing newspaper notices, and act as a restriction on trade by limiting the available avenues of notification. Accordingly it is proposed to amend the wording to refer to a newspaper circulating generally in the locality of the land the subject of the application.

The term "generally" in the context of the amended provision is intended to refer to a newspaper with a general circulation, as opposed to a newspaper, journal or other periodical with a restricted circulation (for example, a professional or trade journal).

Insertion of new s 3.4.9A

Clause 18 inserts a new section to provide for submissions lodged during the notification period for an application to be carried over and recognised as properly made submissions if that application for any reason has to be re-notified. This continues a provision that existed under the former *Local Government (Planning & Environment) Act 1990* (P&E Act).

Subsection (2) goes on to allow a person to amend their submission during the later notification period, or at any time before the decision is made to withdraw the submission.

Subsection (3) provides for a submission that is not properly made to continue to be part of the common material for the application notwithstanding its re-notification, and for the submission to be withdrawn before a decision is made.

Replacement of s 3.5.1 (When does decision stage start)

Clause 19 is a necessary consequential amendment resulting from the insertion of section 3.2.3(1A). The new replacement section relates the start of the decision stage to whether or not an acknowledgment notice has been given.

If a referral agency is a building referral agency there is no requirement for an acknowledgment notice to be given. However, the information and referral stage still applies. This matter is dealt with in subsection (1). The effect is to require the decision stage to start after the information and referral stage has ended. Subsection (1) also deals with applications requiring acknowledgment notices. Subsection (2) deals with the situation where there are no referral agencies. In this situation all relevant stages of IDAS run concurrently.

Amendment of section 3.5.7 (Decision making period (generally))

Clause 20 amends the section in relation to the decision making period. It is consistent with proposed amendments to section 3.3.14.

Amendment of s 3.5.15 (Decision notice)

Clause 21(1) amends the section to require the assessment manager to advise the applicant on the decision notice for an approved development, of any other codes the applicant may need to comply with for self-assessable development related to the development approved. For example, a planning scheme may include a code covering the design of works for car parking areas and make the carrying out of the works self-assessable. A person must comply with the code but is not required to obtain a development permit. A similar provision currently applies to the issuing of a decision notice by private certifiers under section 5.3.5(3)

The clause also amends the section to require that it be noted on the decision notice whether or not there have been submissions about the application. Paragraph (h) currently requires only the appeal rights of applicants and submitters to be stated. It is necessary for the applicant to know whether there are submitters, as this will affect when development may start and, if the applicant appeals, who the applicant must notify.

It is also proposed to amend the section (subclause 2) to establish when the assessment manager must give a decision notice or negotiated decision notice to submitters, according to whether the decision is to approve or refuse the application. If an application is refused, there is no reason why a decision notice cannot be given to the applicant and any submitters at the same time, however this is not presently provided for.

Amendment of ch 3 pt 5 div 4 heading (Representations about conditions)

Clause 22 amends the heading of this division to reflect amendments to section 3.5.17 broadening the range of matters an applicant may make representations to the assessment manager about.

Amendment of s 3.5.17 (Changing conditions during the applicant's appeal period)

Clause 23 relates to clause 22 and broadens the range of matters about a development approval an applicant may make representations to an assessment manager about. Subsection (1) currently allows an applicant to make representations about conditions of the approval. The amendment allows the applicant to make representations about any matter in a decision notice, other than a refusal or a matter directed by a concurrence agency to be included in the decision notice. For example, this may include:

- the currency period for the approval;
- an aspect of a code or type of assessment stated in a preliminary approval;
- a decision of the assessment manager to give a preliminary approval instead of a development permit.

Applicants may still not make representations to the assessment manager about a refusal of an application. It is more appropriate that a dispute about a

refusal be resolved through the appeal processes in chapter 4 of the Act.

An applicant may also not make representations to the assessment manager about matters a concurrence agency has directed to be included in a decision notice. Applicants may make representations to a concurrence agency about the agency's response under section 3.5.9.

Amendment of s 3.5.19 (When approval takes effect)

Clause 24 amends the section to establish when a development approval takes effect, according to whether an appeal is made to the Planning and Environment Court, or a Building and Development Tribunal.

Currently, this section effectively prevents development starting if the applicant appealed the decision to either the court or a tribunal. However, under the former provisions of the *Building Act 1975*, an applicant could start development, even if the applicant had appealed to Building Tribunal. This reflected the role of the tribunal as a "referee" of particular matters of dispute, as well as the fact that many matters of dispute were unaffected by development commencing. The applicant in any case bore responsibility if an adverse finding in an appeal involved additional work to correct development already commenced.

The proposed amendment to section 3.5.19 reinstates the ability for an applicant to start development, even if an appeal is made to a tribunal. However, if the applicant appeals to the court, development may still not start until the appeal is withdrawn or determined. This reflects the "de novo" jurisdiction of the court, and recognises that starting development may compromise the scope of the court's powers in hearing the matter anew.

Section 3.5.19 still provides that, in the event that there were submitters for the application, development may not start until any submitter appeal is determined, or the submitter's appeal period ends.

Replacement of s 3.5.20 (When development may start)

Clause 25 replaces the section and the proposed new wording links more directly with section 3.5.19. Currently, the relationship between this section and section 3.5.19 is unclear as it seems to imply that development may start even if the applicant has appealed an aspect of an approval.

Amendment of s 3.5.22 (Request to extend currency period)

Clause 26 amends subsection (4) to exclude private certifiers from the application of the subsection. Their fees are negotiated by contractual arrangements under section 5.3.9.

Amendment of s 3.5.24 (Request to change development approval (other than a change of a condition))

Clause 27 amends the section to require a request to change a development approval to be also notified to a building referral agency where the request concerns an aspect of the approval within the jurisdiction of the advice agency.

Subsection (4) is proposed to be amended to exclude private certifiers from the application of the subsection. Their fees are negotiated by contractual arrangements under section 5.3.9.

Amendment of s 3.5.25 (Deciding request to change development approval (other than a change of a condition))

Clause 28 amends the section to require the assessment manager when deciding a request to change a development approval, to also have regard to the advice of a building referral agency where the request concerns an aspect of the approval within the jurisdiction of the agency.

Amendment of s 3.5.26 (Request to cancel development approval)

Clause 29 amends subsection (4) to exclude private certifiers from the application of the subsection. Their fees are negotiated by contractual arrangements under section 5.3.9.

Amendment of s 3.5.33 (Request to change or cancel conditions)

Clause 30 amends subsection (4) to exclude private certifiers from the application of the subsection. Their fees are negotiated by contractual arrangements under section 5.3.9.

Clause 30 also amends the section to require the assessment manager when deciding a request to change or cancel conditions of a development approval, to also have regard to the advice of a building referral agency

where the request concerns an aspect of the approval within the jurisdiction of the agency.

Insertion of a new s 3.7.1A

Clause 31 inserts a new definition of "plan" so that part 7 will also apply to leases of more than 10 years if they divide land into parts (other than a lease wholly contained in a building). This was a requirement under the former P&E Act and it is considered appropriate to carry it forward. See also proposed amendments to the *Land Title Act 1994* in part 6 of the Bill.

Amendment of s 3.7.2 (Plan for reconfiguring under development permit)

Clause 32 clarifies the requirements for a plan of subdivision to be approved by a local government.

Amendment of s 3.7.3 (Plan submitted under condition of development permit)

Clause 33 amends subsection (3) to make clear that the conditions of the development permit to be complied with for the purpose of this section are only those about the reconfiguration. This is to clarify that other conditions on the development approval not related to the reconfiguration are not affected by this provision.

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

Clause 34 clarifies an exemption from the application of part 7, dealing with local government approval of subdivision plans. It was intended that this section carry forward the exemption in the former P&E Act for State agencies lodging plans of subdivision prior to acquiring land. The current wording is unclear and could be read to apply the exemption more broadly. In particular it could be read to apply to anyone, including a private sector entity, carrying out one of the purposes listed in schedule 2. The alteration of the wording clarifies the intent and limits its application to public sector entities.

Amendment of 4.1.21 (Court may make declarations)

Clause 35 modifies the existing declarations powers of the Planning and Environment Court to recognise that, under other proposed amendments to section 3.2.3, an acknowledgment notice is not needed for some development applications.

Amendment of s 4.2.24 (Establishing a tribunal)

Clause 36 amends the section to clarify the role of the registrar in relation to appeals received outside the time started for starting an appeal. The amendment to subsection (1) makes it clear that the registrar must only give a copy of the notice to a chief executive if the appeal has started within time. New proposed subsection (4) covers the situation where a notice of appeal is received out of time. The amendments are consistent with the way the registrar's functions operated previously under the Building Act.

Amendment of s 4.2.27 (Tribunal may allow longer period to take an action)

Clause 37 inserts a new subsection (2) which excludes the application of the section to the registrar for determining whether an appeal has been made within time.

Amendment of s 4.2.34 (Appeal decision)

Clause 38 amends subsection (3) to clarify that the decision of a tribunal is not only taken to be the decision of an assessment manager for a development application, but also the decision of any other entity whose decision may be appealed to the tribunal.

A new subsection (5) is inserted to clarify when the decision of the tribunal takes effect. This amendment is consistent with the way the tribunal operated previously under the Building Act.

Amendment of s 4.3.3 (Compliance with development approval)

Clause 39 inserts a new subsection (4) to allow non-compliance with rezoning conditions to be able to be prosecuted in the same way as

non-compliance with development approval conditions. Because rezoning approvals are not recognised as continuing approvals it is necessary to ensure the enforcement provisions in the Act may be utilised for non-compliances.

Amendment of s 5.1.15 (Alternatives to paying infrastructure charges)

Clause 40 amends subsection (1) to clarify that the written agreement is between the person who received notice of the infrastructure charge, and the local government.

Amendment of s 5.3.3 (What is a private certifier)

Clause 41 amends the section to clarify that a private certifier may be an individual, a corporation, or a public sector entity acting through an individual. The current wording limits private certifiers to being an individual. It is not the intent of the legislation that public sector entities or private corporations be prevented from being private certifiers. The main purpose of the legislation is to ensure that those people performing the functions of a private certifier are either themselves appropriately qualified and/or accredited, or are acting through entities that fulfil those requirements.

Confusion has been expressed as to when a local government is considered to be undertaking private certification. The receipt of an IDAS application is not intended to be considered as a written contract for the purposes of the IPA. A new subsection (4) is proposed to be inserted to clarify that receipt of an IDAS application form only is not a written contract, and additional written engagement is required to undertake private certification.

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

Clause 42 amends the section to require a private certifier to not decide a development application until other aspects of development prescribed under a regulation have been approved and the approval has taken effect.

Many development proposals involve different types of assessable development (e.g. change of use, building work, reconfiguration, etc.).

Because private certifiers in many cases will have jurisdiction to deal only with an aspect of the overall proposal, the IPA requires that certifiers not decide their component of a proposal ahead of any other assessable components.

These earlier approvals are likely to set parameters for the application made to the certifier. Because the private certifier enters the assessment process after the assessment manager has finalised the assessment of other aspects of the proposal, it is important that the certifier ensure the application is consistent with the earlier approvals given.

However, some aspects of a development (such as landscaping and car parking) could be assessed and approved by the assessment manager without influencing the approval of the building work (the number of parking spaces and the layout being assessed previously as part of the material change of use). In those instances a private certifier could be permitted to issue a development permit in advance of the completion of other assessments, on condition those other assessments were approved prior to commencement of building. Such aspects would include certain aspects of plumbing and drainage work and operational works. However other aspects of development would always require assessment by an assessment manager. These are:

- any aspect of development requiring impact assessment, and
- any assessable material change of use (whether code assessment or impact assessment was required).

For aspects of development other than an aspect requiring impact assessment or a material change of use, the amended provision indicates a regulation will identify those aspects that must be approved before a private certifier may decide a development application. This enables the requirements to be specifically documented according to the type of development assessment which may be undertaken by private certifiers. (To date this is only building work assessed under the Building Act but there is the potential under the IPA to extend private certification to other code assessments). This section will not be commenced until the regulation is also commenced. The date will be set by proclamation.

Proposed subsection (3) delays the commencement of the decision stage for applications being assessed by private certifiers to when the private certifier is entitled to make a decision.

Proposed new subsection (4) clarifies that in addition to deciding a

development application, a private certifier may also decide subsequent changes to an approval.

Omission of s 5.3.7 (Entities (including local governments) may undertake private certification)

Clause 43 repeals the existing provision as the proposed amendments to section 5.3.3 now deal with entities undertaking private certification.

Amendment of s 5.3.9 (Engaging private certifiers)

Clause 44 transfers existing section 5.3.5(2) to a new subsection (3) to improve readability of the Act.

Amendment of s 5.7.10 (Standard planning and development certificates)

Clause 45 introduces a new subsection (2) which is intended to clarify which decision notices issued prior to the commencement of the IPA need to be included in a standard planning and development certificate. Subsection (2) clarifies there is no legal obligation to provide details of approvals that were given under the Building Act prior to 30 April 1998 when the building approval process was integrated into IDAS. The reason for this is that there was no system for the public to formally request and obtain details about building approvals issued under the former provisions of the Building Act. Accordingly, local governments' ability to comply with this requirement varies from one to another. It is considered an unnecessary burden on local governments for these prior approvals to now be included in these certificates.

Amendment of s 6.1.1 (Definitions for pt 1)

Clause 46 amends the definitions of "applicable codes" and "transitional planning scheme". Regarding the first definition, the words "including a requirement mentioned in section 6.1.23(1A)" have been inserted to clarify that statements in planning schemes requiring actions to be carried out to the satisfaction of a nominated person (such as landscaping to the satisfaction of the shire engineer), are requirements of an applicable code for

self-assessable development under a planning scheme. There has been confusion as to whether statements of this type require an IDAS application to be made. The intent of the Act was that they be treated as self-assessable development. This amendment clarifies this intention and should be read together with the proposed amendment to section 6.1.23.

Regarding the definition of "transitional planning scheme", the proposed amendment incorporates a reference which was inadvertently omitted.

Amendment of s 6.1.9 (Preparation of planning schemes under repealed Act may continue)

Clause 47(1) corrects a typographical error by replacing the number 10 with number 11.

Subclause (2) inserts a new subsection (3A) to clarify that a planning scheme completed after commencement of the Act, but as if the P& E Act had not been repealed, operates exactly the same as a former planning scheme. In particular, prohibited uses in the planning scheme are taken to be expressions of policy that the use is inconsistent with the intent of the zone. This amendment is made to remove any doubt about the operation of transitional planning schemes made after commencement. It was always the intention that the provision in section 6.1.2(3) apply both to former planning schemes and transitional planning schemes made after commencement.

Amendment of s 6.1.23 (Continuing effect of approvals issued before commencement)

Clause 48 amends the section consistent with the proposed amendment to section 6.1.1.

Amendment of s 6.1.25 (Effect of commencement on certain applications in progress)

Clause 49 amends subsection (1)(b) and clarifies that an approval issued after commencement of the IPA as if the repealed Act had not been repealed, is taken to be a development approval. There has been confusion that local governments are required to assess and decide applications under the repealed Act but issue preliminary approvals or development permits under the IPA. This was not the intent and the amendment clarifies that local governments are to issue approvals as if the repealed Act were still in place.

The approvals are then transitioned into IDAS development approvals by the operation of this section.

Subclause (3) clarifies the intent of the IPA for building applications in progress when amendments to the Building Act commenced (i.e. April 30 1998). This is consistent with the operation of the IPA for planning applications in progress.

Amendment of s 6.1.28 (IDAS must be used for processing applications)

Clause 50 amends a reference in section 6.1.28 to the acknowledgment notice to a reference to any acknowledgment notice, reflecting the proposed amendment to section 3.2.3 omitting the requirement for an acknowledgment notice for certain applications.

Amendment of s 6.1.31 (Conditions about infrastructure for applications)

Clause 51 amends subsection (1)(b)(i) and clarifies that the section applies if the local government has a local planning policy about infrastructure (an instrument made under the former P&E Act) or a planning scheme policy (an instrument made under the IPA). The term local planning policy is used deliberately to avoid doubt. The term transitional planning scheme policy is defined for the part and includes the provisions of a local planning policy that are not inconsistent with chapter 3. However, in the context of this provision, use of this term may introduce doubt as it may be claimed these infrastructure policies do not meet the criteria for being transitional planning scheme policies (because they may be inconsistent with chapter 3).

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

Clause 52 substitutes a new section in place of the current section. The purpose of the amendment is to make the intent of the section clear. That is, the amendment of a transitional planning scheme under this section is to be carried out in the way described in the section. There has been uncertainty as to whether an amendment under this section must follow the whole process set out in schedule 1. This was not intended.

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

Clause 53 amends the section to make clear that the ability to amend conditions attached to an approval given under section 4.4(5) of the repealed Act (i.e. a rezoning approval) applies both to approvals given before and after commencement of this section.

Clause 2(4) provides for this section to commence on assent.

Amendment of s 6.1.35C (Applications requiring referral coordination)

Clause 54 substitutes a new section in place of the current section. The purpose of the amendment is to clarify the intent of the provision. In particular, under section 8.2 of the repealed Act provision was made in section 16 of the regulation to the Act for the local government to not require the EIS process to be undertaken if the local government was satisfied the development was minor or of an ancillary nature. Subclause (1) clarifies that this intent is carried forward. Similarly, under the repealed Act a local government could, by local planning policy, expand the list of designated developments set out in the schedule to the Act. The definition of designated development has been amended to clarify that intent has been carried forward.

Amendment of s 6.1.50 (Right to compensation continued)

Clause 55 inserts a new subsection (3) to clarify that actions giving rise to claims for compensation under the repealed Act must be dealt with in accordance with the compensation provisions under that Act. This is to put beyond doubt that any of the IPA compensation provisions cannot apply to changes made before commencement of this section.

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

Clause 56 amends schedule 1 by deleting references to section 11(3)(a)(1) and (2) to allow the Minister to advise the local government that it need not consult the Minister again during the process of amending a planning scheme. This was the intent of the provision. The current wording

leads to confusion as to the actions of both local governments and the Minister under section 18 of schedule 1.

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

Clause 57(1) clarifies the intent of items 4(b) and (c) by stating the provisions more clearly. Subclause (4) is a necessary adjunct to subclause (1).

Subclause (2) inserts a new item. It is to be noted that subclauses (1) and (2) propose amendments to provisions which have not yet commenced.

Subclause (3) inserts into the list of developments under item 10 a reference to a recently passed Act, the *Offshore Minerals Act 1988*. Including this Act in the list of exemptions is consistent with the status given to all minerals-related legislation.

Amendment of sch 10 (Dictionary)

Clause 58(2) amends the definition of "agency's referral day". It follows from the proposed amendment to section 3.3.3 which deals with the situation where an assessment manager may be both a referral agency and an assessment manager. Subclause (2) also inserts a definition of "building referral agency" consistent with amendments elsewhere in the Bill.

Subclause (3) clarifies that an assessing authority includes the State which may take enforcement action against persons carrying out building work on behalf of the State.

PART 3—*BUILDING ACT 1975*

Act amended in pt 3

Clause 59 declares that part 3 amends the *Building Act 1975*.

Amendment of s 3 (Definitions)

Clause 60 replaces the definition of "building certifier" to include a reference to "a person or a public sector entity". The effect of this will enable accreditation of corporations and public sector entities. This is consistent with the proposed amendment to section 5.3.3 (What is a private certifier) of the *Integrated Planning Act 1997* (IPA).

This clause also introduces a complementary definition of "public sector entity" consistent with the definition in the IPA.

Amendment of s 22 (Enforcement notices)

Clause 61 amends the section to correct a cross reference to subsection (4).

Amendment of s 29 (Function of accrediting bodies)

Clause 62 replaces the word "individuals" with "persons and public sector entities". This is consistent with the proposed amendment to section 5.3.3 (What is a private certifier) of the IPA.

Subclause (2) is amended to make the provisions appropriate for application to corporations and public sector entities.

Amendment of s 30 (Persons must not practice as building certifiers without accreditation)

Clause 63 excludes local government and public sector entities acting as assessment managers but not as private certifiers, from the requirement to be accredited. However, the individuals who perform the building certifying functions will continue to be accredited.

Amendment of s 42 (Chief executive may investigate building certifier)

Clause 64 replaces the word "person" with "building certifier or a complainant" to make it consistent with the term used in section 41 related to this section.

Amendment of s 48 (Information to be supplied by the State)

Clause 65 expands the application of the section to include public sector entities. This will require public sector entities when undertaking self-assessable building work to provide local government with information prescribed under a regulation.

Amendment of s 50 (Prosecution of offences)

Clause 66 proposes a new subsection to remove the constraint of only permitting local government, rather than any person, to lay a complaint against building certifiers.

PART 4—*BUILDING AND INTEGRATED PLANNING ACT 1998*

Act amended in pt 4

Clause 67 declares that part 4 amends the *Building and Integrated Planning Act 1998* (BIPA).

Schedule (Consequential amendments)

Clause 68 amends the BIPA to remove an unnecessary duplication of an amendment previously made as a consequential amendment of the *Integrated Planning Act 1997*.

PART 5—*ENVIRONMENTAL PROTECTION ACT 1994*

Act amended in pt 5

Clause 69 states the intention of the part to amend the Environmental Protection Act (EPA).

Note: In this part an environmentally relevant activity is referred to as an

ERA.

Amendment of s 40A (Application of pt 4)

Clause 70 amends section 40A(1)(d) to clarify that the meaning of "development" in the term "development permit" in the paragraph is confined to development specified as assessable in schedule 8, part 1, section 6 of the *Integrated Planning Act 1997* (IPA).

Section 40A was inserted in the EPA by the BIPA, and determines the circumstances in which an environmental authority (a license or approval) is required under part 4 of the EPA. It was intended that part 4 apply to ERAs that, in order to establish or expand, would not require a development approval under the IPA for development of a type that triggered referral to the administering authority, or for which the administering authority was the assessment manager. Under the Environmental Protection Regulation, this type of development is currently stated as a material change of use for an ERA. However the current wording of section 40A suggests that the section does not apply if <u>any</u> development approval is required to establish the activity.

A new defined term of "schedule 8 development" also has been included, and is used in this section. This replaces the former lengthy reference to a development prescribed in the Environmental Protection Regulation for schedule 8 of the IPA, but does not otherwise change the application of this section.

The term "development approval" in this paragraph has been replaced by "development permit". This more accurately reflects the requirement in the IPA for there to be a development permit in order for any assessable development to start, and establishes a closer link with division 3 of part 4B of the EPA (as amended by this Bill), dealing with development in relation to existing ERAs.

Amendment of s 60F (Application of pt 4A)

Clause 71 amends section 60F to clarify that the meaning of "development" in the term "development permit" in part 4A is confined to development specified as assessable in schedule 8, part 1, section 6 of the IPA. This reflects the amendment made to section 40A.

The amended section clarifies that part 4A applies to the carrying out of a

level 1 ERA only if the administering authority has been the concurrence agency or assessment manager for a development application under the IPA for the ERA. This will occur if the development is of a type specified in the Environmental Protection Regulation for the purposes of the IPA (currently a material change of use for the ERA).

Amendment of s 60Z (Application of pt 4B)

Clause 72 amends section 60Z to replace existing words with the term "schedule 8 development", which is to be defined in the dictionary in the same words.

Amendment of s 60ZA (Assessing application)

Clause 73 amends section 60ZA(1) to clarify its application.

Section 60ZA performs two functions:

- it identifies the matters that are relevant considerations for the administering authority when it is assessing a development application under sections 3.3.15(1)(a) or 3.5.4(3) of the IPA; and
- it provides that, despite the IPA, the administering authority may, within its jurisdiction under the IPA, assess the effects of an entire ERA, even if the development application is for an intensification of an existing activity. This is consistent with the considerations that would previously have been brought to bear under part 4 of the EPA, for a proposed intensification of an existing ERA. The IPA would otherwise permit only an assessment of the effects of the development actually applied for, as it protects all lawfully established uses, buildings and works from further regulation under IDAS.

The amendment simplifies and clarifies the intent of the provision as originally drafted, as well as including an illustrative example.

Amendment of s 60ZB (Conditions of development approval)

Clause 74 amends section 60ZB to clarify its application.

Section 60ZB is intended to perform the same functions with respect to the setting of conditions on a development approval under the IPA by the

administering authority, as section 60ZA performs for the assessment of the development application.

Consequently, a similar amendment has been made to this section as for section 60ZA, simplifying it and providing an illustrative example.

Replacement of ch 3, part 4B, div 3

Clause 75 replaces previous division 3 of part 4B,and applies only to the expansion or intensification of an existing use comprising one or more ERAs (regardless of whether the ERAs are subject to one or more licences or environmental approvals, or to a single environmental authority).

If a development permit takes effect for the material change of use, the permit cancels the environmental authority or authorities for the ERA or ERAs to which the permit relates (including authorities for activities that, under the IPA, are incidental to or necessarily associated with the use proposed to be expanded or intensified).

Under section 60ZB the permit may be conditioned by the administering authority as if the development application was for a material change of use for establishing the entire ERA (including the proposed expansion or intensification). In this way, the conditions of the cancelled environmental authorities effectively transfer to the development permit, to the extent they are about the continuing use of the premises for the ERA or ERAs, or the proposed expansion or intensification.

If the ERA or ERAs are level 1 ERAs, the person conducting the ERA or ERAs will also require one or more licences under part 4A to conduct the activity or activities, as well as the development permit. The licence will deal with aspects of the person's suitability to conduct the activity or activities.

Under the IPA, a development permit lapses if development has not taken place within the currency period for the permit (usually 4 years for a material change of use). However, this clause provides the permit does not lapse to the extent the conditions of the permit apply to the activity or activities already established.

Amendment of s 62 (Administering authority may require additional information)

Clause 76 amends section 62 to clarify that this is a provision of general application to environmental authorities and the administering authority may require additional information from an applicant for a part 4 or a part 4A environmental authority. The current wording simply refers to "this part" but does not make it clear whether that means part 4 or 4A or both. It was always intended that the provision apply to both and this amendment is included to remove doubt. It is also made retrospective (see clause 2) to July 1 1998 to ensure there is no doubt about the procedural correctness of the processes undertaken since commencement.

Amendment of s 64 (Authority may call conference)

Clause 77 amends uncommenced section 64 to clarify that this is a provision of general application to environmental authorities and the administering authority may call a conference with respect to an application for a part 4 or a part 4A environmental authority. The amendment is also proposed to have effect retrospectively for the same reasons as stated above.

Amendment of s 65 (Extensions of time for decision on applications)

Clause 78 amends section 65 to clarify that this is a provision of general application to environmental authorities and the administering authority may extend the time for making its decision on an application for a part 4 or a part 4A environmental authority. The amendment is also proposed to have effect retrospectively for the same reasons as stated above.

Amendment of s 67 (Failure to decide applications taken to be refusal)

Clause 79 amends section 67 to clarify that this is a provision of general application to environmental authorities and if the administering authority fails to make a decision on an application for a part 4 or part 4A environmental authority within the time required for the decision, the application is taken to be refused. The amendment is also proposed to have effect retrospectively for the same reasons as stated above.

Amendment of sch 1 (Original decisions)

Clauses 80(1) and *(2)* amend errors in schedule 1.

Subclause (3) amends schedule 1 by inserting decisions made about applications for the amendment of part 4A licences and level 1 approvals.

The amendment ensures that decisions to amend or refuse part 4A environmental authorities have the same status as original decisions, with rights of review and appeal, as similar decisions for part 4 environmental authorities.

Amendment of sch 4 (Dictionary)

Clause 81 amends schedule 4 by inserting a definition of "schedule 8 development" in the dictionary.

PART 6—*LAND TITLE ACT 1994*

Act amended in pt 6

Clause 82 declares that part 6 amends the *Land Title Act 1994.*

Amendment of s 65 (Requirements of instrument of lease)

Clause 83 inserts a new subsection to reflect the proposed amendments to chapter 3, part 7 of the *Integrated Planning Act 1997* requiring local government approval of a lease of part of a lot for more than 10 years (other than a lease wholly contained in a building).

PART 7—*LOCAL GOVERNMENT ACT 1993*

Act amended in pt 7

Clause 84 declares that part 6 amends the *Local Government Act 1993.*

Amendment of s 854 (Local laws and local law policies about development)

Clause 85 amends the section to provide local government with greater flexibility in relation to local laws dealing with development. Under the

current Act local governments are prevented from making a local law or local law policy about development if the process would be similar to or duplicates all or part of the processes detailed in the IPA. This has unintended consequences.

Firstly, local laws that were in the process of being made at the time the IPA commenced cannot be completed. Also, local governments carrying out public interest tests as part of their National Competition Policy (NCP) reviews are currently prevented from making any changes to local laws dealing with development, even if those changes are necessary to meet NCP requirements. The proposed amendments allow local laws in preparation at the time the IPA commenced to be completed as local laws, and also existing local laws and local law policies to be amended until the time the local government makes its first IPA scheme.

The clause also clarifies the validity of local laws that apply in amalgamated local government areas.

PART 8—*TRANSPORT INFRASTRUCTURE ACT 1994*

Act amended in pt 8

Clause 86 declares that part 6 amends the *Transport Infrastructure Act 1994.*

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

Clause 87 relates to a consequential amendment of section 172 prior to commencement of the IPA to change a reference in that Act from the *Local Government (Planning and Environment) Act 1990* to the IPA. However, in making that consequential change it had an unintended effect in that while building work on strategic port land was required to comply with the Standard Building Regulation, it was unclear whether IDAS applied for building work that is assessable or self assessable against the Standard

Building Regulations. This was not intended and the proposed amendment corrects this anomaly.