

Urban Land Development Authority Bill 2007

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Urban Land Development Authority Bill 2007.

Policy Objectives of the Legislation

Housing Affordability

Housing affordability is a major State and national issue. As part of its commitment to improving housing affordability, government convened the Housing and Land Supply Forum in December 2006 with key state and local government representatives and industry representatives. This forum assisted government in the development of the Queensland Housing Affordability Strategy to specifically address the planning and development system, land supply and infrastructure funding components of housing affordability. It was announced at the forum that the Government would develop a Housing Affordability Strategy for Queensland by mid 2007. On 25 July 2007 the Queensland Housing Affordability Strategy was publicly launched by the Premier and Minister for Trade and the Deputy Premier, Treasurer and Minister for Infrastructure.

The Queensland Housing Affordability Strategy specifically seeks to improve the planning and development system, land supply and infrastructure funding systems to assist in improving housing affordability in Queensland. The Strategy outlines actions to:

- improve the operation of the land supply pipeline from raw land to completed development;
- amend the *Integrated Planning Act 1997* (IPA) to improve the efficiency of the integrated development assessment system until the IPA/Integrated Development Assessment System (IDAS)

Reform Agenda is implemented; enhance the level of involvement of the Queensland government in the land supply pipeline;

- improve the monitoring of the land supply; and
- improve the operation, transparency and accountability of infrastructure funding and charges for new development.

A number of these actions will be delivered through the enactment of the Urban Land Development Authority Bill 2007 (the Bill). They include:

- the establishment of an Urban Land Development Authority (the Authority) to plan, undertake, promote, coordinate and control the development of certain areas of land in Queensland for urban purposes (urban development areas);
- amendments to the *Integrated Planning Act 1997* (IPA) to:
 - enable the Minister responsible for the administration of the IPA (the Planning Minister) to consider and decide conflicts among state referral agencies, local government and the applicant in respect of the Integrated Development Assessment System (IDAS),
 - provide for the Planning Minister to refer infrastructure charges schedules to the Queensland Competition Authority for advice and comment;
 - provide for appeals to the Building and Development Tribunal in relation to the calculation of infrastructure charges for specific developments;
 - enable the planning Minister or the regional planning Minister for a designated region to introduce State planning instruments (to be referred to as State planning regulatory provisions) to affect the operation of planning schemes;
 - provide for the implementation of regional plans across Queensland;
 - extend the use of the Major Development Area (MDA) designations under the South East Queensland (SEQ) Regional Plan to identify areas proposed for urban development (to be renamed master planned areas), and provide for a more efficient planning process for these areas involving the preparation of structure plans and master plans; and

- provide regulatory support for structure plans and master plans through State planning regulatory provisions, including provision to regulate development in a manner that affect the operation of planning schemes;
- provide for state infrastructure charges; and
- a range of consequential amendments.

It is not intended that implementation of these actions will compromise the integrity of the South East Queensland (SEQ) Regional Plan and in particular the Urban Footprint. Amendments to the Urban Footprint will only be considered as part of the five year review program established in the SEQ Regional Plan. However the government will consider the potential to bring forward greenfield lands identified in the Urban Footprint where practical and feasible, but only after appropriate review of the implications and ensuring that state and local government infrastructure costs can be recovered. In addition opportunities exist to better utilise government lands to met the region's housing needs. This particularly applies to meeting infill, redevelopment and Transit Oriented Development (TOD) opportunities.

Regional Planning

Regional plans provide strategic direction for the growth and development in a region over a 20 to 25 year time period. Regional plans consider population and demographic change and the impacts over time. They also identify valuable environmental and natural resources values, including agricultural land. Most significantly, regional plans can resolve issues related to demand for urban land while protecting natural features and values. The objective of the provisions in this Bill relating to regional planning is to facilitate statutory regional plans in regions outside of South East Queensland.

Regional planning in Queensland has historically been voluntary and cooperative, with its outputs being advisor in nature. Regional plans typically focused on the facilitation and coordination of planning activities undertaken by State and local government. The absence of powers to achieve effective implementation of non-statutory regional plans has made it difficult to respond to regional growth pressures.

In 2004 the IPA was amended to enable the South East Queensland Regional Plan 2005-2026 (SEQ Regional Plan) to be a statutory instrument. The amendments also enabled the SEQ Regional Plan to include regulatory provisions as a mechanism for implementation. The

amendments to the IPA created a dual regional planning system for Queensland with different provisions for the SEQ metropolitan region and the rest of the State.

In September 2006 the Government announced the expansion of the statutory regional planning model used for South East Queensland to the rest of the state, commencing with Far North Queensland Regional Plan. The announcement was prompted by the success of the South East Queensland regional planning model that provided statutory and regulatory provisions to ensure development is undertaken in appropriate locations and matched by orderly provision of infrastructure appropriate to the regions needs. Statutory regional plans integrate and balance State interests for a geographic region and therefore will override a State Planning Policy or planning scheme where there is an inconsistency.

In June 2007 Government approved the report *Planning for a Prosperous Queensland: A reform agenda for planning and development in the Smart State*. This report included the implementation of statutory regional plans across the State with priority given to the high growth coastal regions. Consequently provisions are included in the Bill that will amend the IPA to enable the implementation of statutory regional plans across the State. The amendments also improve the regulatory efficiency of the IPA and will reduce the complexity of future amendments associated with the declaration of other regional plans (by insertion into a Regulation rather than amending the IPA). Whilst operating in the fastest and least resource intensive way they will also achieve consistency within the regional planning framework. The Far North Queensland Regional Plan (FNQ2025) will be the first statutory regional plan (outside SEQ) to be implemented, which is in accordance with the Government's election commitments.

Master Planning for particular areas of State Interest

Part 5B of the Bill seeks to address issues relating to the timely and efficient planning and development of land in declared high growth areas. A new process is introduced that combines the features of the land use planning, infrastructure planning, and development assessment systems. It is specifically aimed at high growth areas where binding, detailed planning is both possible and desirable, and where the investment of the combined resources of State and local government upfront in the process can deliver measurable benefits in terms of environmental outcomes and development efficiency. The areas within which this type of detailed, integrated planning will occur are known as *master planned areas*.

The types of areas within which this new process will be applied may include large “greenfield” urban expansion areas or urban areas targeted for comprehensive redevelopment. Part 5B is potentially applicable to areas identified under SEQ regional planning processes as “major development areas”, although it is important to note there is no automatic translation of these areas into master planned areas. The circumstances for master planned areas, particularly in terms of the planning effort required, and the binding and detailed nature of the adopted and approved plans produced requires case by case evaluation of each major development area for its appropriateness for declaration as a master planned area. Transitional provisions are included for major development areas in SEQ.

The process created for master planned areas involves both public and private planning initiatives. Once a declaration is made for a master planned area, the first requirement is the preparation of a *structure plan* for the area. A structure plan is a public planning initiative involving the local government and the State. When adopted the structure plan becomes part of the local government’s planning scheme. In many cases (but not necessarily all) further more detailed plans will be developed for areas identified in the structure plan (e.g the structure plan may identify precincts for different purposes). Known as *master plans*, these plans must comply with the structure plan. This is a private planning initiative in that applicants are responsible for developing these detailed plans for approval by the local government and the State. Development in a master planned area must be carried out in accordance with any approved master plan and the overarching structure plan. The greater rigidity at the development level is possible because of the level of detail involved in the planning process, and in particular, the commitments made by all parties to the supply of infrastructure.

While Integrated Development Assessment System (IDAS) processes under the IPA apply for development in master planned areas once all necessary plans have been prepared, there is one significant difference. Schedule 8 of the IPA is amended to make certain development specified in the schedule as “assessable development” or “self-assessable development”, exempt development in a master planned area. The IDAS State agencies affected by these changes are required to be involved in the structure planning process (and the master planning process, if necessary) with the aim of dealing with and resolving these IDAS interests at the planning stage to streamline development assessment in these areas. However, if following planning, some limited issues still require resolution at the individual development application stage, provision is made for a

regulation to prescribe one or more of these exempted developments to be assessable (or self-assessable).

It is important to note the following about master planned areas:

- master planned areas may be identified by a variety of means, but the processes to create structure plans and master plans can only be carried out if the Minister (for planning or regional planning) has made and published a declaration about a master planned area;
- each declared master planned area must have a structure plan and may have one or more master plans;
- the structure planning process is an integrated State and local government undertaking with local government having primary responsibility for the preparation of the plan, and the State nominating a coordinating agency and participating agencies;
- infrastructure planning is integral and fundamental to the process, and it is envisaged local and State infrastructure agreements will be negotiated for the areas; and

A key feature of the part 5B process is the integration of identified IDAS agencies in the structure planning process in lieu of their normal IDAS assessment manager and referral agency roles with the intention of resolving their IDAS jurisdictional issues to the extent possible during the planning process.

State Planning Regulatory Provisions

The Bill also adopts a new planning instrument (state planning regulatory provision). State planning regulatory provisions can be used in four circumstances:

- to implement a regional plan (in a similar way as the regulatory provisions of the South East Queensland (SEQ) Regional Plan which are to be transitioned as state planning regulatory provisions);
- to implement structure plans for master planned areas (including Major Development Areas in SEQ);
- to allow the planning Minister or the regional planning Minister for a designated region to respond to state issues in local areas by affecting the operation of planning schemes; and
- to apply state infrastructure charges within master planned areas.

Like the regulatory provisions of the SEQ Regional Plan, state planning regulatory provisions will, amongst other things, affect the operation of a planning scheme. They will be able to prohibit development; provide a single overarching planning instrument that can be applied in a range of circumstances; and provide a more transparent approach with public consultation included.

State Infrastructure Agreements

The Bill inserts a new part 3 into Chapter 5 of the *Integrated Planning Act 1997* that deals with contributions for State infrastructure. The purpose of this amendment is to ensure funding for State infrastructure is a transparent and equitable process as identified in an existing Government election commitment. It formalises the Government's intent to collect contributions towards state infrastructure in high growth areas as signalled in the SEQ Regional Plan 2005 – 2026.

Reasons for the Bill

Legislation is required to establish the Urban Land Development Authority (the Authority) to plan, undertake, promote, coordinate and control the development of certain areas of land in Queensland for urban purposes.

Amendments to the *Integrated Planning Act 1997* are required to:

- enable the Minister responsible for the administration of the IPA (the Planning Minister) to consider and decide conflicts among state referral agencies, local government and the applicant in respect of the Integrated Development Assessment System (IDAS),
- provide for the Planning Minister to refer infrastructure charges schedules to the Queensland Competition Authority for advice and comment; and
- provide for appeals to the Building and Development Tribunal in relation to the calculation of infrastructure charges for specific developments;
- enable the planning Minister or the regional planning Minister for a designated region to introduce State planning instruments (to be referred to as State planning regulatory provisions) to affect the operation of planning schemes;
- to provide for the implementation of regional plans across Queensland;

- extend the use of the Major Development Area (MDA) designations under the South East Queensland (SEQ) Regional Plan to identify areas proposed for urban development (to be renamed master planned areas), and provide for a more efficient planning process for these areas involving the preparation of structure plans and master plans; and
- provide regulatory support for structure plans and master plans through State planning regulatory provisions, including provision to regulate development in a manner that affects the operation of planning schemes; and
- provide for state infrastructure charges.

In addition consequential amendments have been made to the following legislation:

- Land Act 1994
- Land Title Act 1994
- Local Government Act 1993
- Nuclear Facilities Prohibition Act 2007
- Public Service Act 1996
- Transport Infrastructure Act 1994
- Vegetation Management Act 1999

Achieving the Objectives

In order to achieve the policy objectives, this Bill creates the appropriate structure and governance arrangements for a statutory body that will have responsibility for the planning, coordination and control of development of certain areas of land in Queensland for urban purposes. The alternative to achieving the policy objective was the creation of a Government Owned Corporation pursuant to the *Government Owned Corporations Act 1993*. The statutory body structure pursuant to this Bill is the preferred model in this case.

In addition the Bill amends the *Integrated Planning Act 1997* (IPA) to improve the efficiency of the integrated development assessment system until the IPA/Integrated Development Assessment System (IDAS) Reform Agenda is implemented; enhance the level of involvement of the Queensland government in the land supply pipeline; improve the monitoring of the land supply; and improve the operation, transparency and

accountability of infrastructure funding and charges for new development. There is no alternative to enactment of amendments to the IPA to give effect to these desired changes.

Administrative costs

Government will fund the establishment of the Urban Land Development Authority from within current budget allocations. Amendments to the IPA are expected to be cost neutral.

Fundamental Legislation Principles

Certain clauses in the Bill raise issues in relation to Fundamental Legislative Principles. They are discussed as follows:

Does the legislation have sufficient regard to the rights and liberties of individuals—*Legislative Standards Act s 4(3)*

(a) Absence of appeal rights concerning development in urban development areas.

Unlike similar provisions about development under the *Integrated Planning Act 1997* (IPA), there is no general right of appeal on the merits against a refusal to grant, or the imposition of conditions on, a UDA development approval. Also if the development approval is granted, there is no general right of appeal by people who have made submissions against the grant of a UDA development approval. Applicants have only a limited right to appeal against particular conditions (those proposed by other governmental entities that the Authority nominates).

The following justifications are provided:

1. The Authority is required to prepare a proposed development scheme by means of a process that requires public notification of the proposed development scheme and the consideration of submissions. Accordingly there is public involvement in the preparation of the proposed development scheme.
2. The Minister is empowered to amend proposed development schemes submitted to the Authority to protect the interests of landowners who may make submissions to the Minister in respect of the proposed development scheme within a certain period of the proposed development scheme being provided to the Minister. This effectively caters for the interests of persons who would typically make submissions about proposed development.

3. Under IPA, there are no appeal rights in respect of code assessable development as applications of this type are not required to be publicly notified and as such are not the subject of submissions. Although the proposed regime does not have the IPA distinction between code assessable development and impact assessable development, under the Bill all development is, in effect, code assessable. Therefore, the absence of appeal rights for submitters is consistent with IPA as IPA allows applicant appeals on code assessable development but there are no appeal rights for submitters.
4. The Minister can call in and re-decide UDA development applications anew. It is open for an aggrieved applicant or submitter to approach the Minister to exercise this power. Further, the Authority is obliged to give notice of the call in to submitters and other interested parties. The Minister can consider additional information from anyone when re-deciding the application.
5. The Bill also prevents the Authority from granting an approval in respect of development that is prohibited by the development scheme or which is inconsistent with the development scheme. Accordingly the jurisdiction of the Authority to approve development is constrained in comparison with the local government which can approve development inconsistent with its planning scheme and which is inevitably impact assessable and therefore subject to third party appeal rights.
6. The purpose of the Act is to address the need for housing affordability in a timely way. Imposition of appeal processes like those under IPA could lead to significant delays in the development of UDAs.
7. UDAs will only apply to small parts of the State, intended for fast-tracking of development in particular areas where there is a State interest. The processes under the Act are more streamlined than IPA and the Act will therefore be to the benefit of developers, as well as the community generally, in terms of facilitating development in a more timely manner.
8. There are similar existing Acts concerning development in particular areas of the State in which there is a State interest and in respect of which there are no appeal rights - the *South Bank Corporation Act 1989* and the *State Development and Public Works Organisation Act 1971*.

9. The *Judicial Review Act 1991* is not excluded.

(b) Absence of appeal rights concerning applications to extend currency period of a UDA development approval:

The Bill provides for applications to extend the period required for development under UDA development approvals to substantially start before the approval lapses. There is no appeal right against a decision on the application. Equivalent provisions under IPA include an appeal right.

The justifications mentioned above also relate to this issue. In addition a right of appeal may tend to frustrate the purposes of the Act that development proceed expeditiously. It is considered that the more appropriate course in the case of a refusal is for the applicant to seek a fresh UDA development approval. This will also prevent the practice of warehousing approvals where there is no intention to carry out development within the currency period of the UDA development approval.

(c) Absence of appeal rights concerning Ministerial directions under IPA:

The amendments to IPA expand existing Ministerial powers to give directions to assessment managers, concurrence agencies and applicants for IPA development approvals, to ensure the stages of IDAS under IPA are carried out in a timely and effective manner. There are no penalties in relation to these Ministerial directions. Where a direction is given in relation to an assessment manager in a situation where the Minister is purporting to act as a concurrence agency, there is an appeal right as is currently the case under IPA.

(d) Penalties: The Bill imposes several penalties for offences of 1665 penalty units, and up to 2 years imprisonment for the contravention of court orders.

It is submitted that the level of penalties can be justified by reference to similar offences under IPA.

(e) Power to enter land without warrant

The Bill proposes to include a provision applying relevant entry powers under the *Local Government Act 1993* for authorised employees or agents. They include the power to enter without warrant. The power will only apply to agents and employees issued with identity cards. The usual provisions about displaying the cards whilst exercising powers apply. The applied power does not apply to residences. The applied provisions also include compensation for damage because of the exercise of the power. Because of these safeguards and because some of the Authority's functions

and powers are similar to those of a local government, the provision is considered reasonable.

Does the legislation have sufficient regard to the institution of Parliament—*Legislative Standards Act* s 4(3)

(a) 'Henry VIII' provisions (definition of development)

Clause 6 of the Bill defines various categories of development. The need for approval under the Bill is triggered by what category the proposed development falls under (i.e. assessable development). The clause leaves it up to particular development schemes for urban development areas to specify the categories for development under each scheme. No substantive differentiation of categories applies in the Act. As such the provision is a 'Henry VIII' provision as defined by the Scrutiny Committee.

It is submitted that the categorization is such that it is not practicable to include it in legislation. Secondly, development schemes are analogous to local government planning schemes under IPA. Subject to specific categories under schedule 8 of IPA, planning schemes generally may designate development categories for that Act. The Bill requires development schemes and amendments to them to be approved by regulation before they can take effect. Further, if the actual text is not in the regulation, the Minister is required to table it within the same time period as for subordinate legislation. It is submitted that because the Parliament has an opportunity to consider the categorization and (by disallowing the approving regulation) could disallow it, it is reasonable that the provision operates as it does. This provides a greater level of scrutiny than currently applies to local government planning schemes.

(b) Effect on IPA, s 6.1.45A:

Existing IPA, s 6.1.45A validates and continues in effect existing development control plans and other planning documents under the repealed 1990 Act. The proposed provision in Proposed IPA s 6.8.12 allows a State planning regulatory provision to transition the validated planning document to a structure plan for a declared master planned area, and a master plan or master plans for the area, under new chapter 2, part 5B. Once done, s 6.1.45A ceases to have effect for them. Given the number, length and complexity of the existing validated documents, it is impossible to provide for the transition in the Act. Those State planning regulatory provisions made under s 6.8.12 are also required to be ratified by Parliament. As the provisions are subject to Parliament scrutiny this arguably equates to them being made by an amendment of the Act itself.

Consultation

The following agencies have been consulted during the development of this Bill:

- Department of the Premier and Cabinet
- Queensland Treasury
- Office of the Public Service Commissioner
- Department of Housing
- Department of Natural Resources and Water
- Queensland Transport
- Department of Main Roads
- Department of State Development
- Department of Primary Industries and Fisheries
- Department of Justice and Attorney-General
- Department of Public Works
- Environmental Protection Agency

In addition targeted consultation was undertaken with a range of industry, local government and community organisation stakeholders.

Part 1 Preliminary**Division 1 Introduction****Short title**

Clause 1 sets out the short title of the Act as the *Urban Land Development Authority Act 2007*.

Commencement

Clause 2 provides that the Act will commence on a day to be fixed by proclamation.

Main purposes of Act and their achievement

Clause 3(1) provides that for achieving its main purposes particular parts of the State will be declared as urban development areas and establishes the Urban Land Development Authority (the Authority) to plan, carry out, promote or coordinate, and control the development of these areas.

Clause 3(2) states that the main purposes of the Act are to facilitate the following in urban development areas:

- (a) the availability of land for urban purposes;
- (b) the provision of a range of housing options to address diverse community needs;
- (c) the provision of infrastructure for urban purposes;
- (d) planning principles that give effect to ecological sustainability and best practice urban design;
- (e) the provision of an ongoing availability of affordable housing options for low to moderate income households.

Clause 3(3) defines “ecological sustainability” consistent with the definition contained within the IPA.

Clause 3(3) also defines *range of housing options*, to address diverse community needs, means the range of housing required to meet the range of community needs, including, for example, housing of different size, type, price, built form, density, cost, adaptability and tenure.

Act binds all persons

Clause 4 provides that the Act will bind the State and, to the extent the legislative power permits, the Commonwealth and the other States. The clause provides that nothing in the Act will make the State liable to be prosecuted for an offence. However, the Authority will be bound by the requirements for development in urban development areas, including the requirement to lodge development applications for assessable development undertaken by the Authority.

Division 2 Interpretation

Definitions

Clause 5 provides that the dictionary in the schedule defines particular words used in the Act.

Development and its types

Clause 6(1) adopts the definition of development contained within section 1.3.2 of the *Integrated Planning Act 1997* (IPA). The IPA definition of development is well understood within the community. Its adoption will provide consistency for persons involved with development in Queensland.

Clause 6(2) provides that *UDA assessable development* is development that a development scheme provides is UDA assessable development.

Clause 6(3) provides that *UDA self-assessable development* is development that a development scheme provides is UDA self-assessable development.

Clause 6(4) provides that development other than UDA assessable development or UDA self-assessable development is *UDA exempt development*.

The purpose of these clauses is to provide that a development scheme can determine whether development is assessable, (ie requires a development approval) or is self-assessable (ie does not require a development approval if it complies with the requirements for self assessable development set out in the development scheme) or is exempt (ie not assessable under the development scheme).

This is consistent with the approach adopted by the IPA, which provides that a planning scheme can determine whether development is assessable against a planning scheme.

Part 2 Urban development areas

Division 1 Declaration and revocation of urban development areas

Declaration

Clause 7(1) provides that a declaration regulation may declare a part of the State to be an urban development area.

Clause 7(2) provides that in making a regulation to declare a part of the State to be an urban development area regard must be had to the purposes of the Act.

Interim land use plan required

Clause 8(1) provides that a declaration regulation must make an interim land use plan regulating development in the urban development area declared under it.

Clause 8(2) provides that the plan may provide for any matter mentioned in clause 23(2)(a) or (3).

The purpose of this provision is to clarify that the interim land use plan is not required to include either an infrastructure plan or an implementation strategy that would otherwise be required under clause 23 (Content of development scheme).

Clause 8(3) provides that until a development scheme for the area takes effect, the plan has effect as if a development scheme were in force for the area and the interim land use plan was the land use plan included in the development scheme.

The purpose of this provision is to provide the Authority with an ability to regulate development in an urban development prior to the notification of a proposed development scheme under clause 25 (Public notification). The interim land use scheme will to ensure that the purposes of the Act are not obstructed by the lodgement of development applications that would compromise the implementation of a development scheme.

Expiry of interim land use plan

Clause 9 provides that an interim land use plan for an urban development area expires 12 months after it commences, and that it can only be replaced by a regulation making a new interim land use plan.

The purpose of this provision is to set a 12 month limit in which the Authority must complete the preparation of the proposed development scheme. Failure to comply with this requirement will mean that a regulation will be required to remake the interim land use plan.

Tabling and inspection of documents adopted in declaration regulation

Clause 10(1) provides that the clause applies if:

(a) a declaration regulation makes an interim land use plan by adopting, applying or incorporating all or part of another document (the ***adopted provisions***); and

(b) the adopted provisions are not part of, or attached to, the regulation.

Under clause 10(2) the Minister must, when the regulation is tabled in the Legislative Assembly under the *Statutory Instruments Act 1992*, section 49, also table a copy of the adopted provisions. The purpose of this provision is provide parliament with an ability to consider the interim land use plan.

Clause 10(3) provides that a failure to comply with the clause does not invalidate or otherwise affect the regulation.

Revocation or reduction of urban development area

The purpose of clause 11 is to ensure an orderly transition of planning responsibility for an urban development area back to the relevant local government once the development contemplated by the development scheme has been completed.

Clause 11(1) provides that clause 11 applies if it is proposed to amend or revoke a declaration regulation (the ***UDA change***) so that land in an urban development area will no longer be in an urban development area.

The purpose of the words “amend or revoke” in clause 11(1) is to clarify that the clause applies to a proposal to change the geographical boundaries of an urban development area as well as a proposal to revoke an urban development area.

Clause 11(2) provides that subject to clause 11(4), the Minister may, by notice to the relevant local government, make an amendment of the local government’s planning instruments to provide for the land (the ***planning instrument change***).

Clause 11(3) provides that on the giving of the notice, the planning instrument change is, for the *Integrated Planning Act 1997*, taken to have been made by the local government.

Clause 11(4) provides that the *Integrated Planning Act 1997*, sections 2.1.5, 2.1.12 and 2.1.19 and schedules 1, 2 and 3 do not apply for the making of the planning instrument change.

Clause 11(5) provides that before making the planning instrument change, the Minister must:

- (a) give the relevant local government the proposed planning instrument change; and
- (b) invite it to, within 40 business days after it is given the proposed amendment, make submissions to the Minister about the proposed planning instrument change; and
- (c) consider any submissions made under paragraph (b).

Clause 11(6) provides that the UDA change may be made only if the Minister has made the planning instrument change.

Clause 11(7) provides that the planning instrument change takes effect at the same time as the UDA change.

Interim local laws

The purpose of clause 12 is to ensure an orderly transition of matters addressed by a by-law made by the Authority under clause 104 (By-laws) upon the revocation of an urban development area.

Clause 12(1) provides that this clause applies if land ceases to be in a UDA and, immediately before the cessation, by-laws applied to the area.

Clause 12(2) provides that a regulation may make a local law (the *interim local law*) for the land, about any matter provided for under the by-laws. The purpose of this provision is to provide a mechanism for by-laws to be converted into interim local laws. This may involve amending the contents of the by-law to allow local government to administer the interim local law, (e.g. replacing a reference to the Authority with a reference to the relevant local government.).

Clause 12(3) provides that the regulation may be made only if the relevant local government has agreed to the making of the regulation. The purpose of this provision is to ensure that the relevant local government is willing to adopt the interim local law.

Clause 12(4) provides that for the *Local Government Act 1993*, the interim local law is taken to have been made by the relevant local government.

Clause 12(5) provides that the interim local law expires 12 months after it commences. The purpose of this provision is to give the relevant local government time to formally adopt a local law to address the matters covered by an interim local law.

Division 2 Relationship with Integrated Planning Act

Subdivision 1 Provisions about the declaration of urban development areas

Existing IPA development applications

Clause 13(1) provides that this clause applies if, immediately before the declaration of an area as an urban development area:

- (a) an IPA development application had been made for land in the area; and
- (b) the application was a properly made application and has not lapsed under that Act; and
- (c) the application had not been decided.

Clause 13(2) provides that despite the declaration, the application must be decided under the IPA, and that Act continues to apply, as if the land were not land in an urban development area. The purpose of this provision is to clarify that the an application lodged under the IPA prior to the declaration of an urban development area must be decided under the IDAS by the assessing Authority that the application was lodged with.

This provision is consistent with the policy of the Act that development rights obtained under a IPA development application lodged prior to the declaration of an urban development area are fully recognised under the Act.

Existing IPA development approvals

Clause 14(1) provides that if, immediately before the declaration of an area as an urban development area, an IPA development approval is in effect for land in the area, the approval continues in effect as an IPA development approval.

This provision is consistent with the policy of the Act that development rights under a IPA development approval obtained prior to the declaration of an urban development area are fully recognised under the Act.

Where the IPA development approval is a preliminary approval clauses 56 (Restrictions on granting approval) and 57 (Matters to be considered in making decision) of the Act require the Authority to give effect to the pre-

existing preliminary approval by granting UDA development approvals that are consistent with the preliminary approval.

15 Community infrastructure designations

Clause 15(1) provides that a community infrastructure designation can not be made for land in an urban development area.

The purpose of this provision is to ensure that the Authority has jurisdiction over all new development proposals within the area, subject to the operation of the IPA, Schedule 8.

Clause 15(2) provides a saving for a community infrastructure designation in force immediately before the declaration of the urban development area continues in force for the land. This provision is consistent with the policy of the Act that development rights obtained prior to the declaration of an urban development area are fully recognised under the Act.

Clause 15(3) provides that clause 15(1) overrides the Integrated Planning Act, chapter 2, part 6.

Subdivision 2 Provisions about the cessation of urban development areas

Conversion of UDA development approval to IPA development approval

Clause 16(1) provides that this clause applies if:

- (a) land ceases to be in an urban development area; and
- (b) immediately before the cessation, a UDA development approval was in force for the land.

Clause 16(2) provides that on the cessation of an urban development area a UDA development approval is taken to be an IPA development approval.

Clause 16(3) specifically provides that appeals commenced under clause 61 (Right of appeal against particular conditions) are unaffected by the revocation of the urban development area. This provision clarifies the relationship of an appeal under clause 61 and clause 18 (Provisions for converted IPA development approval).

Outstanding UDA development applications

Clause 17(1) provides that this clause applies if:

- (a) land ceases to be in an urban development area; and
- (b) immediately before the cessation, a UDA development application had been made for the land but not decided.

Clause 17(2) provides that UDA development applications that have been lodged with the Authority but not decided prior the land ceasing to be in an urban development area will be decided by the Authority as if they were still within an urban development area.

The purpose of this provision is to ensure that the Authority assesses and decides development applications lodged with it prior to the revocation of an urban development area.

Clause 17(3) provides that if a UDA development approval is granted because of the application, the approval is, immediately after it takes effect under this Act, taken to be an IPA development approval. Upon reaching this point the approval has the same effect as an approval referred to under Clause 16 (Conversion of UDA development approval to IPA development approval).

Provisions for converted IPA development approval

Clause 18(1) provides that this clause applies for a UDA development approval that, under section 16(2) or 17(3), becomes an IPA development approval.

Clause 18(2) provides that UDA development conditions stated in the UDA development approval are taken to be conditions of the IPA development approval.

Clauses 18(3)-(4) provide that the IPA, section 4.1.27 does not apply to the converted IPA development approval or to any relevant development condition. The only exception to this general rule relates to appeals commenced under clause 61 (Right of appeal against particular conditions).

Clause 18(5) provide that the assessing Authority under the IPA for the IPA development approval is taken to be the entity that would have been the assessing Authority had:

- (a) the relevant land never been in an urban development area; and

(b) an IPA development application been made for the relevant development when the UDA development application for the UDA development approval was made.

The purpose of this provision is to put an assessing Authority (e.g. a local government) in a position to be able to enforce the obligations imposed by a UDA development approval after the revocation of an urban development Authority.

Clause 18(6) clarifies that only an assessing Authority referred to in clause 18(5) can bring a proceeding under the Integrated Planning Act, section 4.1.21 in relation to the IPA development approval or the conditions.

Lawful uses in urban development area

Clause 19 refers to lawful uses commenced in a urban development area on the basis that they involved exempt or self assessable development and provides that these uses are deemed to be lawful uses for the purposes of the IPA.

Where a use requires approval under the IPA as well as under the Act, both approvals will be required before the use becomes lawful in the urban development area. Relevant examples include approvals under the *Prostitution Act 1999*, and the *Wild Rivers Act 2005*.

Division 3 Relationship with particular Acts about local government

Relationship with the City of Brisbane Act 1924 or the Local Government Act 1993

Clause 20 provides that notwithstanding the declaration of an urban development area the jurisdiction of local governments within these areas is not affected.

Under the Act there are a number of exceptions to the general position including:

1. The ability of the Authority to issue a by-laws. Clause 104 (By-laws) provides that to a by-law issued by the Authority may provide that a stated local law does not apply, or applies with stated changes, within an urban development area.

2. The ability of a Local Government to control development, and impose charges for infrastructure for the area through their planning schemes is removed under the IPA, schedule 9.
3. The ability of the Governor in Council to issue directions to a Local Government under clauses 137 (Direction to government entity or local government to accept transfer) and 138 (Direction to government entity or local government to provide or maintain infrastructure).

The purpose of this provision is to clarify the relationship between the local government and the Authority. The Authority will have responsibility for planning and development approvals within the UDA, and the planning and facilitation of infrastructure. Local government will retain all of its other roles, including collection of rates and provision of services including waste management etc.

Part 3 Development schemes

Division 1 Making development schemes

Application of div 1

Clause 21 provides that division 1 applies on the declaration of an urban development area.

Development scheme required

Clause 22(1) provides that subject to the other provisions of this division, the Authority must make a development scheme for the area as soon as practicable after the making of the declaration.

It is relevant to note that the Authority is required to report on the time taken to produce development schemes in its annual report under clause 134 (Annual report).

Content of development scheme

Clause 23(1) provides that the development scheme may provide for any matter that the Authority considers will promote the proper and orderly planning, development and management of the area.

Clause 23(2) provides that the development scheme must include:

- (a) a land use plan regulating development in the area; and
- (b) a plan for infrastructure in the area; and
- (c) an implementation strategy to achieve the main purposes of this Act for the area, to the extent they are not achieved by the land use plan or infrastructure plan.

The purpose of this provision is to clarify the width of matters that will be addressed by a development scheme under the Act. The policy of the Bill is that the implementation strategy will address issues that are unlikely to be addressed properly in either the land use plan or the infrastructure plan. Examples include:

- (a) the provision of a range of housing options to address diverse community needs;
- (b) planning principles that give effect to ecological sustainability and best practice urban design;
- (c) the provision of an ongoing availability of affordable housing options for low to moderate income households.

Clause 23(3) provides that without limiting subclause (2)(a), the land use plan may:

- (a) provide for any matter about which a planning instrument may provide for an area; or
- (b) prohibit the carrying out of particular assessable development; or
- (c) identify any UDA assessable development or UDA self-assessable development in the area; or
- (d) state that particular development is consistent or inconsistent with the plan; or
- (e) require public notice of UDA development applications for stated UDA assessable development in the area.

Clause 23(4) provides that despite subclauses (1) and (2), the development scheme is subject to part 4, division 2.

Clause 23(5) provides that in making the development scheme, the Authority must consider, but is not bound by, a requirement under any of the following relevant to the area:

- (a) a planning instrument;

(b) a plan, policy or code made under the Integrated Planning Act or another Act.

The purpose of this provision is to clarify the relationship between the development scheme and planning instruments prepared by other State agencies and local governments. This reflects the policy that the Authority will negotiate a whole of government response for government policy on planning issues within an urban development area.

Preparation of proposed development scheme

Clause 24(1) provides that the Authority must, as soon as practicable, prepare a proposed development scheme for the area.

However clause 24(2) provides that before preparing the proposed scheme, the Authority:

(a) must consult, in the way it considers appropriate, with the relevant local government; and

(b) must make reasonable endeavours to consult, in the way it considers appropriate, with any of the following the Authority considers will be likely to be affected by a development scheme for the area:

(i) a government entity or Government Owned Corporation;

(ii) another person or entity.

The purpose of this provision is to ensure that the Authority consults with any one whose interests are likely to be affected by a proposed development scheme.

Public notification

Clauses 25(1) provides that after preparing the development scheme the Authority must publish the proposed scheme on its website and must in gazette notice state that the proposed scheme may be inspected on the Authority's website and invite anyone to make submissions on the proposed scheme within a stated period.

Clause 25(2) provides that the Authority must publish a notice to the same effect as the gazette notice in a newspaper circulating in the relevant local government area.

Clause 25(3) provides that the submission period must end at least 30 business days after it starts.

Submissions on proposed scheme

Clause 26 provides that anyone may make submissions about the proposed scheme within the submission period. The reference to anyone includes state agencies and local government including those entities who were consulted with prior to the publication of the proposed development scheme.

Consideration of submissions

Clause 27(1) provides that the Authority must consider any submissions received within the submission period.

Clause 27(2) clarifies that the Authority may consider a submission made to it after the submission period has ended.

Amendment of proposed scheme

Clause 28(1) provides that after complying with section 27, the Authority may amend the proposed development scheme in any way it considers appropriate.

However, clause 28(2) provides that if the Authority considers the amendment significantly changes the proposed scheme, it must re-comply with clauses 25 (Public notification) and 27 (Consideration of submissions) for the amended scheme.

The purpose of this provision is to ensure that anyone who is affected by a significant change to a development scheme is afforded natural justice.

Initial making and submission of scheme

Clause 29(1) provides that the Authority must, as soon as practicable after complying with section 27 (Consideration of submissions) and 28 (Amendment of proposed scheme), make the development scheme (the *submitted scheme*) and give it to the Minister.

Clause 29(2) provides that the submitted scheme must be accompanied by a report that:

- (a) summarises the submissions considered by the Authority; and
- (b) is about the merits of the submissions; and to what extent the proposed development scheme was amended to reflect the submissions.

Notice of submitted scheme

Clause 30 provides that the Authority must, as soon as practicable after giving the Minister the submitted scheme, give each person (a *submitter*) who made a submission received within the submission period about the scheme a notice stating that:

- (a) the scheme has been made and submitted to the Minister; and
- (b) the Authority's report about the submitted scheme can be inspected on its website; and
- (c) if the submitter is an affected owner for the relevant urban development area—that the submitter may, within 20 business days after receiving the notice, ask the Minister to amend the submitted scheme to protect the owner's interests.

The purpose of this provision is to ensure that submitters are aware that the Authority has made the development scheme and that affected owners are aware of the Minister's powers under clause 31 (Ministerial power to amend submitted scheme at affected owner's request).

Ministerial power to amend submitted scheme at affected owner's request

Clause 31(1) provides that the Minister may amend the submitted scheme in a way the Minister considers appropriate to protect an affected owner's interests.

However, Clause 31(2) provides that the amendment may be made only if:

- (a) the affected owner has, within 20 business days after being given notice of the submitted scheme under clause 30, asked the Minister to amend it to protect the owner's interests; and
- (b) the amendment is made within 40 business days after the submitted scheme was given to the Minister.

Direction to Authority to engage again in public notification and submissions

Clause 32 provides that if the Minister considers an amendment of the submitted scheme significantly changes the submitted scheme, the Minister must give the Authority a written direction to re-comply with clauses 25 (Public notification), 27 (Consideration of submissions), 28 (Amendment of proposed scheme) and 29 (Initial making and submission of scheme) for the submitted scheme as amended.

The purpose of this provision is to ensure that anyone who is affected by a significant change to a development scheme is afforded natural justice.

When proposed scheme takes effect

Clause 33 provides that the development scheme does not take effect until it has been approved under a regulation.

This provision clarifies when a development scheme takes effect. The note to clause 33 clarifies the effect of the proposed development scheme for the purposes of development assessment under clause 57 (Matters to be considered in making decision).

Notice of development scheme

Clause 34 provides that after the development scheme takes effect the Authority must:

- (a) publish the scheme on its website; and
- (b) publish at least once in a newspaper circulating in the area a notice stating that—
 - (i) the scheme has been approved; and
 - (ii) it may be inspected on the Authority's website; and
- (c) give each person who made a submission received in the submission period about the scheme a notice that—
 - (i) the scheme has been approved; and
 - (ii) the Authority's report about the scheme can be inspected on its website.

The purpose of this provision is to ensure that all affected and interested parties have notice that a development scheme has been approved by a regulation.

Division 2 Amendment of development schemes

Subdivision 1 Amendment by Minister

Power to amend at Authority's request

Clause 35(1) provides that the Minister may, at the Authority's request, amend a development scheme if:

- (a) the amendment does not change the land use plan for the relevant urban development area; or
- (b) the amendment changes the land use plan—the Minister considers:
 - (i) the amendment is necessary to ensure the implementation of the scheme complies with this Act; or
 - (ii) there is a significant risk of serious environmental harm, within the meaning of the *Environmental Protection Act 1994*, section 17, or serious adverse cultural, economic or social conditions occurring in the relevant urban development area; or
 - (iii) the amendment corrects an error.

The purpose of this provision is to clarify the Minister's power to amend a development scheme. Under clause 35(1)(a) amendments to the infrastructure plan and the implementation strategy can be made at any time without any limit. This is considered appropriate as these aspects of the plan will not have direct impacts on development rights.

Amendments to the land use plan are limited to where the Minister is satisfied of the matters set out in clause 35(1)(b). The purpose of this provision is to allow the Minister to make necessary changes to the land use plan to protect the State interest. The matters that the Minister must be satisfied of include the implementation of the purposes of the Act [clause 35(1)(b)(i)] and an equivalent power to that provide to Local Governments under temporary local planning instruments and to the State under State planning regulatory provisions [clause 35(1)(b)(ii)].

This power is considered to be necessary to ensure that the purposes of the Act are not frustrated by development proposals that are inconsistent with the purposes of the Act but which are not appropriately addressed by the land use plan.

Clause 35(2) clarifies that an amendment mentioned in clause 35(1)(b) may be made even if it is materially detrimental to someone's interests.

When amendment takes effect

Clause 36 clarifies that an amendment of a development scheme by the Minister does not take effect until it has been approved under a regulation.

Notice of amendment

Clause 37 provides that the Authority must, as soon as practicable after an amendment of a development scheme by the Minister takes effect—

- (a) publish the amended development scheme on its website; and
- (b) publish at least once in a newspaper circulating in the area of the relevant urban development area, a notice stating that:
 - (i) the scheme has been amended; and
 - (ii) the amended scheme may be inspected on the Authority's website; and
- (c) if the amendment was made under clause 31, tell the relevant affected owner that—
 - (i) the scheme has been amended because of the request; and
 - (ii) the amended scheme may be inspected on the Authority's website.

Subdivision 2 Amendment by Authority

38 Division 1 process applies

Clause 38(1) provides that the Authority may amend a development scheme only if procedures under division 1 for making development schemes have been followed.

Clause 38(2) clarifies that division 1 applies to the amendment as if:

- (a) a reference in the division to making a development scheme were a reference to the making of the amendment; and
- (b) a reference in the division to a proposed development scheme were a reference to the proposed amendment.

Subdivision 3 Tabling and inspection of development schemes

Tabling and inspection requirement

Clause 39(1) provides that this clause applies if:

- (a) a regulation under this division approves a development scheme or an amendment of a development scheme; and
- (b) the development scheme or amendment is not part of, or attached to, the regulation.

Clause 39(2) provides that the Minister must, when the regulation is tabled in the Legislative Assembly under the *Statutory Instruments Act 1992*, section 49, also table a copy of the development scheme or amendment.

Clause 39(3) clarifies that a failure to comply with this section does not invalidate or otherwise affect the regulation.

Division 3 Miscellaneous provision

Development scheme prevails over particular instruments

Clause 40 provides that if there is a conflict between a development scheme and any of the following instruments, the development scheme prevails to the extent of the inconsistency:

- (a) a planning instrument;
- (b) a plan, policy or code made under the *Integrated Planning Act 1997* or another Act.

The purpose of this provision is to clarify the relationship between the development scheme and planning instruments prepared by other State agencies and local governments. This reflects the policy that the Authority will negotiate a whole of government response for government policy on planning issues within an urban development area.

Part 4 Development and uses in urban development areas

Division 1 Restrictions on development

Application of div 1

Clause 41 provides that the division subject to division 2.

The purpose of this provision is to clarify that development offences under division 1 will not apply in relation to particular existing uses and rights that are specified in division 2.

Carrying out UDA assessable development without UDA development approval

Clause 42 makes it an offence to carry out UDA assessable development in an urban development area without a UDA development approval for the development.

The penalty provided by the provision is equal to that provided for under the equivalent provision under the IPA, section 4.3.1 (Carrying out assessable development without permit)

Without this provision there would no sanction for conduct within an urban development area that would be an offence outside of an urban development area.

UDA self-assessable development must comply with development scheme

In relation to UDA self-assessable development clause 43 makes it an offence not to comply with the requirements of the development scheme for UDA self-assessable development.

The penalty provided by the provision is equal to that provided for under the equivalent provision under the IPA, section 4.3.2 (Self-assessable development must comply with codes).

Without this provision there would no sanction for conduct within an urban development area that would be an offence outside of an urban development area.

Compliance with UDA development approval

Clause 44 makes it an offence to contravene the requirements of a UDA development approval.

The penalty provided by the provision is equal to that provided for under the equivalent provision under the IPA, 4.3.3 (Compliance with development approval).]

Without this provision there would no sanction for conduct within an urban development area that would be an offence outside of an urban development area.

Offence about use of premises

Clause 45 makes it an offence for a person to use premises in an urban development area if the use is not a lawful use, or is the carrying out of exempt development.

The penalty provided by the provision is equal to that provided for under the equivalent provision under the IPA, section 4.3.5 (Offences about the use of premises).

Without this provision there would no sanction for conduct within an urban development area that would be an offence outside of an urban development area.

Division 2 Protection of particular uses and rights**Exemption for particular IPA development approvals and community infrastructure designations**

The purpose of this clause 46 is to clarify that the carrying out of development or the use of premises under an approval or community infrastructure designation referred to in Part 1, Division 2 of the Act does not constitute a UDA development offence.

Lawful uses of premises protected

Clause 47 provides that where a use of premises was lawful before the commencement of or amendment to a development scheme the use continues to be lawful after the commencement of or amendment.

The purpose of this provision is to clarify that a lawful use of premises is not affected by the declaration of an interim land use plan or the making or amending of a development scheme.

Lawfully constructed buildings and works protected

Clause 48 provides that to the extent a building has been lawfully constructed or works lawfully carried out, neither a development scheme nor an amendment of a development scheme can require the building or work to be altered or removed.

Amendment of development scheme does not affect existing IPA or UDA development approval

Clause 49 provides that if an IPA development approval or an UDA development approval for premises has not lapsed an amendment of the development scheme for the area will not affect development rights under the approval.

The purpose of this provision is to clarify that development approvals that have not lapsed are not effected by an amendment to the development scheme.

Development or use carried out in emergency

Clause 50 provides a limited defence to UDA development offences. The offence provisions will not apply where the development or use is undertaken because of an emergency endangering the life or health of a person or the structural safety of a building. The person carrying out the emergency development must give notice of the development or use, that would otherwise be an urban development area development offence, as soon as practicable after starting the development or use.

Division 3 UDA development applications

Subdivision 1 Making application

How to make application

Clause 51(1) specifies that requirements for making a development application to the Authority.

Clause 51(2) provides that the Authority can refuse to accept an application that does not comply with the requirements of clause 51(1).

The purpose of this provision is to permit the Authority to refuse to consider an application where it does not comply with specified requirements without being bound to accept the application before considering the degree of non-compliance.

Subdivision 2 Processing application

Application of sdiv 2

Clause 52 provides that subdivision 2 applies if the applicant meets the requirements of clause 51 (How to make application).

Information requests to applicant

Clauses 53(1) - (2) provide that the Authority may issue an information request within 20 business days of receiving a UDA development application.

The purpose of these clauses is to allow the Authority to obtain further information it requires to assess a development application.

Clauses 53(3) - (4) provide that the Authority can refuse an application if the applicant does not comply with the request, provided that the Authority gives the applicant at least 10 business days notice of its intention to do so.

The purpose of these clauses is to allow the Authority to refuse a development application where the applicant fails to comply with an information request.

Notice of application

Clause 54(1) sets out the circumstances in which an applicant will be required to give public notice of a UDA development application.

This provision provides a head of power for the Authority to require a development application to be publicly notified. This power is in addition to the ability of a land use plan to require public notification of stated development applications.

Clause 54(2) sets out the public notification requirements for a development application.

Clause 54(3) provides that the notification period can not commence until after the applicant has complied with an information request.

The purpose of this provision is to ensure that relevant material is available to the public during the public notification period.

Clause 54(4) prescribes the content of the notice.

Clause 54(5) provides that the minimum time for publication is 20 business days.

Clause 54(6) provides that the Authority can not require the applicant to give a copy of the notice to each entity unless the Authority considers the entity has an interest in the outcome of the application. Entities may include government entities, Government Owned Corporations, local government, and affected landowners.

Deciding application generally

Clause 55(1) provides that the Authority can not decide the application unless it is satisfied of the following:

- (a) if an information request has been made for the application—the request has been complied with; and
- (b) if Clause 54 (Notice of application) applies for the application—the applicant has complied with this section; and
- (c) the submission period has ended.

Clauses 55(2)-(3) provide that the Authority must decide the application within 40 business days after it is satisfied as mentioned in clause 55(1), but specifically provides that failure to meet this timeframe does not prevent the Authority from deciding the application.

Clause 55(4) provides that the Authority must decide the application and in doing so can either:

- (a) grant all or part of the UDA development approval applied for; or
- (b) grant all or part of the UDA development approval applied for subject to conditions decided by the Authority (each a UDA development condition); or
- (c) refuse to grant a UDA development approval.

Restrictions on granting approval

Clause 56 provides that the Authority can not grant the UDA development approval applied for if the relevant development would be inconsistent with either:

- (a) the land use plan for the relevant urban development area; or
- (b) a preliminary approval under the Integrated Planning Act in force for the relevant land.

The purpose of this provision is to clarify the limitations on the Authority approving development that is not consistent with the development scheme. Assessable development under the development scheme will be the equivalent of code assessable development under the IPA. This is one of the primary justifications for limiting appeal rights to third parties within urban development areas.

Clause 56(b) is consistent with the policy that rights under existing IPA development approvals, including preliminary approvals, will be recognised within urban development areas. Consistent with the position for development assessed against a development scheme the Authority will not be able to approve a development application that is not consistent with a preliminary approval. For example an applicant will not be able to rely on a preliminary approval where the application seeks to amend the effect of the existing preliminary approval.

Matters to be considered in making decision

Clause 57(1) provides that in deciding the application, the Authority must consider the purposes of this Act and any submissions made to it. In addition the Authority must consider the development scheme, the proposed development scheme or an interim land use plan, depending on which is applicable at the time the application is decided, or an IPA preliminary approval under the IPA in force for the relevant land.

Where there is an inconsistency between a preliminary approval and a land use plan, consistent with the policy that existing rights obtained under an IPA development approval, the preliminary approval will over ride the development scheme. As a result applicant's who have existing preliminary approvals will have a choice. They can either rely upon the preliminary approval to obtain the rights they would have obtained under the preliminary approval, or they can lodge an application that seeks to take advantage of the development rights available under the development scheme. Where an applicant elects to take advantage of the development

rights available under the development scheme they will be subject to complying with any conditions imposed by the Authority under the development scheme. This may include being required to make contributions towards infrastructure and affordable housing outcomes specified by either the infrastructure plan or the implementation strategy.

Clause 57(2) provides that the Authority can give weight to a proposed development scheme that was prepared after the development scheme took effect.

Clause 57(3) clarifies that the Authority can consider a submission that is made out of time. The purpose of this provision is to clarify that consideration of late submissions by the Authority will not alone render a decision liable to judicial review on the grounds of taking an irrelevant consideration into account.

Clause 57(4) provides that under this section *proposed development scheme* for the area means a proposed development scheme, or a proposed amendment of a development scheme, for the area published under section 25 (Public notification), or section 25 as applied under section 38, that has not taken effect.

The purpose of this provision is to clarify that upon notification of a proposed development scheme or an amendment to a development scheme under clause 25 (Public notification) the proposed scheme or amendment will be able to be taken into consideration by the Authority when make a decision about a UDA development application.

UDA development conditions

Clause 58 provides that a UDA development condition may:

- nominate a stated entity to be the nominated assessing Authority for the condition; or
- relate to infrastructure, and the payment of contributions or the surrender of land for infrastructure, in an urban development area; or
- require the making of stated improvements to the relevant land; or
- impose a condition or restriction on a disposal of the relevant land.

The purpose of this provision is to provide a non exhaustive list of the conditions the Authority may impose when granting a development approval.

Decision notice

Clause 59 specifies the requirements that the Authority must comply with in issuing a decision notice. Where the decision is to refuse an approval the Authority is required to provide reason. The purpose of this requirement is to facilitate judicial review where an applicant commences proceedings under the *Judicial Review Act 1991* of the Authority's decision to refuse an application.

Restriction on giving decision notice if Authority has a financial interest

Clause 60 specifies that where the Authority has entered into a business arrangement with private enterprise for a proposed development within an urban development area the Authority can not give a decision notice for the application unless the Minister has approved the proposed decision.

The purpose of this provision is to provide an additional check on the Authority's ability to engage in development involving a third party developer. It does not apply to arrangements entered into between the Authority and a government entity, a Government Owned Corporation or a local government.

Subdivision 3 Appeals

Right of appeal against particular conditions

Clauses 61(1) - (2) provide that an applicant may appeal against the Authority's decision to impose a condition where the Authority has under clause 58 (UDA development conditions) nominated an assessing Authority to administer the condition.

The purpose of this provision is to provide applicant's with an opportunity to seek review of operational conditions that are imposed on the advice of an assessing Authority. For example in a development approval for a factory the development Authority could nominate the EPA as a nominated assessing Authority to administer conditions relating to environmentally relevant activity. In this example only the conditions relating to the environmentally relevant activity will be subject to the jurisdiction of the Planning and Environment Court. Specifically the decision of the Authority to grant the development approval for the factory will not be subject to the jurisdiction of the Planning and Environment Court. This is consistent with

the policy of the bill that planning decisions are not subject of appeals to the Planning and Environment Court.

Clause 61(3) provides that the appeal must be started within 20 business days of the applicant being given notice of the decision.

Clause 61(4) provides that the IPA, chapter 4, part 1, divisions 10 to 12, apply to the appeal and provides that the nominated assessing Authority is the only other party to the appeal.

The purpose of this provision is to clarify the procedure for appeals in relation to conditions under this clause, including the ability to access alternative dispute resolution under the IPA, section 4.1.48.

Clauses 61(5)-(6) provide that the Authority may upon being advised of the appeal elect to join the appeal and requires that Authority to give notice of the election to the other parties.

The purpose of this provision is to allow the Authority elect to join an appeal where it considers it is necessary to do so to implement a development scheme or to achieve the purposes of the Act.

Subdivision 4 Ministerial call in

Application of sdiv 4

Clause 62 provides that this subdivision applies if a decision notice is given for a UDA development application.

Minister's power to call in

Clause 63(1) provides that the Minister may call in a decision made by the Authority in relation to a development application within a *relevant period*.

The purpose of this provision is to provide for administrative review of the Authority's decision in relation to a development application.

This right is in addition an applicant's right to seek judicial review under *Judicial Review Act 1991* on the grounds that the Authority's decision was inconsistent with either a preliminary approval or a development scheme.

Clause 63(2) provides that the Minister may only call in a decision notice where if the relevant development involves a State interest.

State interest is defined by the dictionary to include:

- (a) an interest relating to the purposes of this Act; or
- (b) an interest that, in the Minister's opinion, affects an economic or environmental interest of the State or a region.

Clause 63(3) defines 'relevant period' for the purposes of the section.

Call in ends decision, approval and any appeal

Clause 64(1) provides that from the making of a call in notice any UDA development approval granted because of the decision, and any appeal against it have no further effect.

The purpose of this provision is to effectively suspend the development approval and consistent with the call in power under the IPA remove the jurisdiction of the Planning and Environment Court to hear an appeal relating to a UDA development condition.

Clause 64(2) provides that anything done by the applicant prior to the making of the call in notice in reliance upon the development approval is not invalidated by the call in notice.

The purpose of this provision is to clarify that any development carried out prior to the call does not give rise to a UDA development offence.

Notice of call in

Clause 65 provides that the Authority must give a copy of the call-in notice to:

- (a) the person who made the relevant UDA development application; and
- (b) the owner of the relevant land; and
- (c) the relevant local government; and
- (d) any nominated assessing Authority under any UDA development approval granted under the decision; and
- (e) if an appeal relating to the approval has been started in the Planning and Environment Court—that court; and
- (f) anyone who made a submission to the Authority about the application, during the submission period.

The purpose of this provision is to ensure that any person affected by a call in is given notice of the call in.

Minister must re-decide application

Clauses 66(1) - (2) provide that the minister must re-decide the application within 40 business days. Failure to comply with the 40 business days does not prevent the Minister from re-deciding the application.

Clause 66(3) provides that the Minister in re-deciding the application is bound by the requirements of sections 55(4), and 56 to 59 apply for the making of the decision as if a reference to the Authority were a reference to the Minister.

The purpose of this provision is to clarify the process the Minister must adopt when re-deciding the application.

Clause 66(4) provides that in making the decision the Minister can take into account a State interest, including the purposes of the Act.

The purpose of this provision is to clarify that the Minister can take into account a state interest when re-deciding the application.

Clause 66(5) provides that in making the decision the Minister may have regard to information from any source, even if the information was not available to the Authority when it made its decision.

The purposes of this provision is to clarify that the Minister's decision is not subject to judicial review on the basis of taking into account an irrelevant consideration merely because the Minister has regard to information that was not available to the Authority. One consequence of this provision is that persons affected by a UDA development approval may ask the Minister to call in a particular development and may provide the Minister with additional material that can be taken into account both in relation to the decision to call in the application and in re-deciding the application.

Clause 66(6) provides that the Minister can not consider any amendments to a development application once it is called in or approve development that is materially different from the development applied for.

The purpose of this provision is to ensure that persons who may be affected by a UDA development approval granted by the Minister are afforded natural justice insofar as there is no ability for the Minister to grant an approval that is inconsistent with the development scheme, or approves development that is different from what was originally applied for.

Clause 66(7) provides that the decision of the Minister is substituted for the decision of the Authority.

The purpose of this provision is to clarify that the Minister's decision takes effect as if it were a decision of the Authority. The purpose of the reference to section 61(Right of appeal against particular conditions) is to clarify that operational conditions for which a assessing Authority have been nominated by the Minister are not subject to appeal to the Planning and Environment Court. This is consistent with the position under the *Integrated Planning Act 1997*, that there is no appeal from any aspect of a Ministerial call in decision.

Clause 66(8) provides that no right of appeal applies under section 61 in relation to the Minister's decision.

Subdivision 5 Miscellaneous provisions

Approved material change of use required for particular developments

Clause 67(1) refers to a situation where a development application for a structure or works fails to refer to a material change of use component that is required for the development to proceed.

Clause 67(2) provides that the development application is deemed to include the necessary material change of use component.

The purpose of this provision is to clarify that where a material change of use is implied by a UDA development application, but is not specifically applied for, the Authority can consider the application without requiring the applicant to amend the application to include a specific reference to a material change of use.

Changing application

Clause 68(1) provides that a UDA development application may be changed by the applicant only if:

- (a) the applicant has given the Authority notice stating details of the proposed change; and
- (b) the Authority has agreed in writing to the making of the change.

Clause 68(2) provides that the agreement may be given only if the Authority is satisfied the change would not result in the relevant development being materially different.

The purpose of this provision is to restrict an applicant's ability to change a development to cases where the change would not result in a materially different development. This restriction is necessary to ensure that the Authority is not required to spend time and resources considering variations to a development application. It is anticipated that the planning work done in the preparation of the development scheme should mean that the parameters for development applications are significantly reduced and that as a result there should be less need to make amendments to development applications.

Withdrawing application

Clause 69(1) provides that a UDA development application may be withdrawn by the applicant, by notice to the Authority, given at any time before the application is decided.

Clause 69(2) provides that the Authority may refund all or part of any fee paid for the application.

The purpose of this provision is to provide a mechanism for an applicant to withdraw a development application that has not yet been decided. Where an application is withdrawn the Authority will have a discretion to refund all or part of any fee paid to the Authority.

Division 4 UDA development approvals

Subdivision 1 General provisions

What approval authorises

Clause 70 provides that a UDA development approval authorises the carrying out of assessable development to the extent provided for under the approval.

Duration of approval

Clause 71(1) provides that a UDA development approval has effect from when the decision notice for the relevant UDA development application is given.

The purpose of this provision is to clarify when a UDA development approval takes effect.

Clause 71(2) provides that the relevant development may, subject to any relevant UDA development conditions, start when the approval takes effect.

Clause 71(3) provides that the approval ceases to have effect if it is:

- is cancelled under subdivision 2; or
- lapses under subdivision 3.

The Clause inserts a note that a call in notice under division 3, subdivision 4 can also end the effect of a UDA development approval. The purpose of this provision is to clarify when a UDA development approval ceases to have effect.

Approval attaches to the relevant land

Clause 72(1) provides that a UDA development approval attaches to the relevant land, and binds its owner, the owner's successors in title and any occupier of the land.

Clause 72(2) provides that Clause 72(1) applies even if later development, including reconfiguring a lot, is approved for the land, or the land as reconfigured under the UDA development approval.

The purpose of this provision is to clarify that the rights and obligations conferred by a development approval run with the land, even where that land has been reconfigured.

Provision for enforcement of UDA development conditions

Clause 73(1) provides that if there is a nominated assessing Authority for a UDA development condition, the Integrated Planning Act and any other Act applies that refers to an IPA development approval applies to the condition as if:

- (a) the relevant UDA development approval were an IPA development approval; and
- (b) the nominated assessing Authority were an assessing Authority under the Integrated Planning Act for development under the UDA development approval; and
- (c) the reference to a development offence under the IPA Chp 4, pt 3, Divs 2 and 3 were a reference to an offence against this part.

The purpose of this provision is to ensure that a nominated assessing Authority for a UDA development condition has all of the powers that

would have been available to it to administer a development condition that would have been available under outside of an urban development area.

For example where outside of an urban development area the Environmental Protection Agency would have had powers under the *Environmental Protection Act 1994* to administer development conditions relating to environmentally relevant activities made by an assessment manager under the IPA, the Environmental Protection Agency will have those same powers to exercise in relation to their role as a nominated assessing Authority for a UDA development condition.

Clause 73(2) provides that the provision does not limit or otherwise affect the Authority's ability to apply for an enforcement order or to start a proceeding for an offence against this Act relating to the condition.

The purpose of this provision is to clarify the ability of the Authority to take action to enforce a development condition, notwithstanding that it has referred to a nominated assessing Authority for in the UDA development condition.

Subdivision 2 Cancellations and changes

Cancellation

Clause 74(1) provides that the Authority may cancel a UDA development approval only if the owner of the relevant land consents in writing to the cancellation.

The purpose of this provision is to clarify the mechanism for the Authority to cancel a development approval.

Clause 74(2) provides that the Authority can not cancel the UDA development approval if the relevant development has started.

The purpose of this provision is to restrict the cancellation of a UDA development approval after the commencement of development. In these circumstances the applicant will have to apply to amend the UDA development approval under clause 75.

Clause 74(3) provides that the Authority may refund all or part of any fee paid for the relevant UDA development application.

The purpose of this provision is to provide the Authority with a discretion to refund all or part of a development application fee where the development is cancelled. Given that the work required for processing the

development fee will have already been completed refund of a fee under this provision is likely only to occur in exceptional circumstances.

Application to change UDA development approval

Clause 75(1) provides that the owner of land may apply to amend a UDA development approval.

Clause 75(2) provides that the amendment application may be made only if the change would not result a materially different development from that initially proposed.

The purpose of this provision is to limit changes that can be made under this section to amendments of a minor or insubstantial kind. Any substantial change to a development proposal will require the applicant to lodge a fresh development application.

Clause 75(3) prescribes the procedure to be adopted when an applicant wishes to amend a UDA development approval.

Clause 75 (4) provides that clause 54(1)(a) (Notice of application) does not apply for the amendment application.

The purpose of this provision is to clarify that a minor amendment to a development approval will not necessarily require a development application to be publicly notified if this would ordinarily be required by the development scheme.

Subdivision 3 Lapsing

When approval lapses generally

Clause 76(1) makes the operation of this section subject to the ability of an applicant to extend the operation of a UDA development approval under section 78(5) (Deciding extension application).

Clause 76(2) provides that a UDA development approval lapses at the end of its currency period unless:

(a) for development that is a material change of use—the change of use happens before the currency period ends; or

(b) for development that is reconfiguring a lot—the plan for the reconfiguration of the lot is given to the Authority for its approval before the currency period ends; or

(c) for development not mentioned in paragraph (a) or (b)—development under the approval substantially starts before the currency period ends.

Clause 76(3) provides that to the extent the UDA development approval is for development other than a material change of use or reconfiguring a lot, its *currency period* is:

(a) generally—2 years from the day the Authority takes effect. (the *day of effect*); or

(b) if the approval states a different period from when the approval takes effect —the stated period.

Clause 76(4) provides that to the extent the UDA development approval is for development that is a material change of use, its *currency period* is—

(a) the 2 years from the day the approval takes effect; or

(b) if the approval states a different period from when the approval takes effect —the stated period.

Clause 76(5) provides that to the extent the UDA development approval is for development that is reconfiguring a lot, its currency period is:

(a) if the reconfiguring does not require operational work— 2 years from the day of effect; or

(b) if the reconfiguring requires operational work— 4 years from the day of effect; or

(c) if the approval states a different period —the stated period.

The purpose of this provision is to ensure that development rights under a UDA development approval are exercised within nominated time frames. The timeframes proposed in the Act are consistent with those provided for under the IPA.

Application to extend currency period

Clause 77(1) provides that before a UDA development approval lapses under section 76(2), a person having an interest in the relevant land may apply to the Authority to extend the approval's currency period applying under section 76.

The purpose of this provision is to provide a person with an interest in land over which a UDA development approval has been granted to seek an extension to the currency period. Without an extension the rights and obligations attaching to a UDA development approval will lapse.

Clause 77(2) prescribes the requirements for an application to extend a currency period.

Deciding extension application

Clause 78(1) provides that this clause applies if an application for an extension is made under clause 77 (Application to extend currency period)

Clause 78(2) provides that before granting or refusing the extension under this section, the Authority must consult with each nominated assessing Authority under the UDA development approval.

The purpose of this provision is to ensure that each nominated assessing Authority is aware of the proposal to extend the currency period and can make submissions to the Authority on whether an extension is appropriate.

Clause 78(3) provides that the Authority must grant or refuse the extension within 20 business days or a time period agreed with the applicant for the extension.

Clause 78(4) provides that the Authority must, within 5 business days after making the decision, give notice of the decision to the applicant and each nominated assessing Authority under the UDA development approval.

The purpose of this provision is to ensure that anyone affected by a decision to grant or refuse an extension is made aware of the Authority's decision within a reasonable time.

Clause 78(5) provides that despite clause 76 (When approval lapses generally), the UDA development approval does not lapse until the Authority has given the applicant the notice under section 78(4).

The purpose of this provision is to clarify that once an application to extend is made to the Authority the UDA development approval does not lapse until the Authority makes a decision on the application. If the Authority decides to refuse the application to extend the currency period, the UDA development approval lapses from the date of the decision.

Clause 78(6) provides that if the decision was to refuse the extension, the notice must state the reasons for the refusal.

The purpose of this provision is to facilitate judicial review where an applicant commences proceedings under the *Judicial Review Act 1991* of the Authority's decision to refuse an extension.

Division 5 Miscellaneous provisions

Restriction on particular land covenants

Clause 79 provides that a covenant under the *Land Title Act 1994* or the *Land Act 1994* for land in an urban development area is of no effect to the extent the covenant is inconsistent with the development scheme for the area.

The purpose of this provision is to ensure that registered covenants have no effect where they are inconsistent with a development scheme. This provision is consistent with the IPA, section 2.1.25 'Covenants not to conflict with planning schemes'.

Plans of subdivision

Clauses 80(1) - (2) call up and apply the IPA, chapter 3, part 7, to the Act:

- (a) as if a reference in that part to the local government were a reference to the Authority; and
- (b) as if a reference in that part to a development permit were a reference to a UDA development approval; and
- (c) as if a reference in that part to a condition of a development permit were a reference to a UDA development condition of the UDA development approval; and
- (d) as if a reference in that part to the land were a reference to the relevant land for the UDA development approval; and
- (e) as if a reference in that part to assessable development were a reference to UDA assessable development; and
- (f) as if a reference in that part to rates and charges levied for the land included a reference to a special rate or charge.

The purpose of this provision is to put the Authority in the position of a local government for approving plans of subdivision of land within an urban development area.

Part 5 Proceedings and related matters

Division 1 Enforcement proceedings in Planning and Environment Court

Starting proceeding for enforcement order

Clause 81(1) provides that the Authority may start a proceeding in the Planning and Environment Court:

(a) for an enforcement order to remedy or restrain the commission of a UDA development offence; or

(b) if the Authority has started a proceeding under this section for an enforcement order and the court has not decided the proceeding—for an order under clause 82 (Making interim enforcement order).

The purpose of this provision is to provide jurisdiction to the Planning and Environment Court. The jurisdiction is limited to proceedings commenced by the Authority.

Clause 81(2) provides that a proceeding for an enforcement order may be started whether or not anyone's right has been, or may be, infringed by, or because of, the commission of the offence.

The purpose of this provision is to clarify that the Authority may commence a proceeding whether or not anyone's right has been, or may be, infringed by, or because of, the commission of the offence.

Making interim enforcement order

Clause 82(1) provides that the Planning and Environment Court may make an order pending a decision of a proceeding for an enforcement order if the court is satisfied it would be appropriate to make the order.

The purpose of this provision is to clarify that the court can make orders in urgent circumstances to maintain the status quo without fully determining the proceeding.

Clauses 82(2)-(3) provide that the court may make an interim enforcement order subject to conditions, but prevents the court from imposing a condition that requires the Authority to give an undertaking about damages.

Making enforcement order

Clause 83(1) provides that the Planning and Environment Court may make an enforcement order if the court is satisfied the relevant offence:

- (a) is being, or has been, committed; or
- (b) will be committed unless the enforcement order is made.

The purpose of this provision is to clarify the circumstances the court must be satisfied of before it can make an enforcement order.

Clause 83(1) provides that if the court is satisfied the offence is being or has been committed, it may make the order whether or not there has been a prosecution for the offence.

The purpose of this provision is to clarify that a failure to prosecute an offence is not determinative on the question of whether or not the court should make an enforcement order.

Effect of enforcement order

Clause 84(1) provides that an enforcement order may direct a party to the proceeding for the order:

- (a) to stop an activity that constitutes, or will constitute, a UDA development offence; or
- (b) not to start an activity that will constitute a UDA development offence; or
- (c) to do anything required to stop committing a UDA development offence; or
- (d) to return anything to a condition as close as practicable to the condition it was in immediately before a UDA development offence was committed; or
- (e) to do anything about a development or use to comply with this Act.

Clause 84(2) provides a non exhaustive list of examples of orders that the court may make under clause (1). These include:

- (a) the repairing, demolition or removal of a building; or
- (b) for a UDA development offence relating to the clearing of vegetation on freehold land—
 - (i) rehabilitation or restoration of the area cleared; or

(ii) if the area cleared is not capable of being rehabilitated or restored—the planting and nurturing of stated vegetation on a stated area of equivalent size.

Clause 84(3) provides that an enforcement order must state the time by which it must be complied with.

Clause 84(4) provides that an enforcement order may:

(a) be in terms the court considers appropriate to secure compliance with this Act; and

(b) state that contravention of the order is a public nuisance.

The purpose of this provision is to enable the Authority to take remedial action under clause 91 (Authority's power to remedy stated public nuisance)

Clause 84(5) provides that for the purposes of this clause *clearing*, of vegetation:

(a) means removing, cutting down, ringbarking, pushing over, poisoning or destroying it in any way, including by burning, flooding or draining; but

(b) does not include lopping a tree or the destruction of standing vegetation by stock.

Powers about enforcement orders

The purpose of this provision is to provide guidance on the operation of the Planning and Environment Court's enforcement order powers under this Act.

Clause 85(1) provides that the Planning and Environment Court's power to make an enforcement order to stop, or not to start, an activity may be exercised:

(a) whether or not it appears to the court that the person against whom the order is made (the *relevant person*) intends to engage again, or to continue to engage again, in the activity; and

(b) whether or not the relevant person has previously engaged in an activity of the same type; and

(c) whether or not there is danger of substantial damage to property or the environment or injury to another person if the relevant person engages, or continues to engage, in the activity.

Clause 85(2) provides that the court's power to make an enforcement order to do anything may be exercised:

(a) whether or not it appears to the court that the person against whom the order is made (also the relevant person) intends to fail, or to continue to fail, to do the thing; and

(b) whether or not the relevant person has previously failed to do a thing of the same type; and

(c) whether or not there is danger of substantial damage to property or the environment or injury to another person if the relevant person fails, or continues to fail, to do the thing.

Clause 85(3) provides that the court may cancel or change an enforcement order, on the application of the Authority or the person against whom the order is made.

The purpose of provision is to clarify that following the making of an enforcement order the court has jurisdiction to hear applications from the Authority or the person against whom the order is made. On hearing the application the court may cancel or change the conditions of the order.

Clause 85(4) provides that the court's powers under this section are in addition to, and do not limit, its other powers.

The note makes it clear that the court can rely on other powers including the power in relation to costs. Refer to IPA, section 4.1.23.

Clause 85(5) provides that in this section *environment* has the meaning set out in the IPA, schedule 10.

Offence to contravene enforcement order

Clause 86 makes it an offence for a person to fail to comply with an enforcement order and provides a maximum penalty of 3000 penalty units or 2 years Imprisonment.

The penalty provided by the provision is equivalent to that provided for under the IPA, section 4.1.5 (Contempt and contravention of orders).

Division 2 Proceedings for offences

Proceedings for offences

Clause 87(1) provides that offences against clauses 86 (Offence to contravene enforcement order) and 140 (Executive officers must ensure corporation does not commit UDA development offences or contravene particular court orders), to the extent the offence relates to an offence by a corporation against clause 86, are misdemeanours.

Clause 87(2) provides that any other offences against this Act are summary offences.

Clause 87 (3) provides that a proceeding for a summary offence against this Act may be brought only by the Authority or a person acting for the Authority.

The purpose of this provision is to clarify which offences under the Act are summary offences, and which are misdemeanours.

Limitation on time for starting proceeding for summary offence

Clause 88 provides that a proceeding a proceeding for a summary offence against this Act must start:

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed.

Orders Magistrates Court may make in offence proceeding

Clause 89(1) provides that after hearing a complaint for an offence against this Act, the Magistrates Court may make an order against the defendant that the court considers appropriate.

Clause 89(2) provides that the order may be made in addition to, or in substitution for, any penalty the court may otherwise impose.

Clause 89(3) prescribes a non exhaustive list of examples of orders that the court may make requiring the defendant:

- (a) to stop development or carrying on a use; or
- (b) to demolish or remove work carried out; or

(c) to restore, as far as practicable, premises to the condition the premises were in immediately before development or use of the premises started; or

(d) to do, or not to do, another act to ensure development or use of the premises complies with a UDA development approval or a development scheme; or

(e) for development that has started—to make a UDA development application for the development.

Clause 89(4) provides that the order must state the time by which, or period within which, the order must be complied with.

Clause 89(5) provides that the order may state that contravention of the order is a public nuisance. The purpose of this provision is to enable the Authority to take remedial action under clause 91 (Authority's power to remedy stated public nuisance)

Offence to contravene Magistrates Court order

Clause 90 makes it an offence for a person to fail to comply with a order made by the court under section 89 (Orders Magistrates Court may make in offence proceeding) and imposes a maximum penalty of 1665 penalty units or imprisonment for 12 months.

Division 3 Miscellaneous provisions

Authority's power to remedy stated public nuisance

Clauses 91(1) - (2) provide that if an enforcement order or an order under clause 89 (Orders Magistrates Court may make in offence proceeding) states that contravention of the order is a public nuisance and the order is not complied with, the Authority may undertake any work necessary to remove the nuisance.

Clause 91(3) provides that if the Authority carries out works under clause 91(2), it may recover from the person against whom the order was made the reasonable cost of the works, as a debt.

Planning and Environment Court may make declarations

Clause 92(1) provides that the Authority may bring a proceeding in the Planning and Environment Court for a declaration about:

- (a) a matter done, to be done or that should have been done for this Act; or
- (b) the construction of this Act; or
- (c) the lawfulness of land use or development relating to an urban development area.

The purpose of this provision is to provide jurisdiction to the Planning and Environment Court to make declarations about matters affecting the interpretation of this Act and related matters. The jurisdiction is limited in that only the Authority may bring an application for a direction under this clause.

Clause 92(2) provides that the court may make an order about a declaration made under subclause (1).

Part 6 Urban Land Development Authority

Division 1 Establishment

Establishment of Authority

Clause 93 provides for the establishment of the Urban Development Authority.

Authority represents the State

Clause 94 provides that the Authority represents the State and has the status, privileges and immunities of the State.

Application of other Acts

Clause 95 outlines the relationship of the Authority to other Acts.

Clause 95(1)(a) provides that the Authority is a unit of public administration. The purpose of this provision is to make it clear that it is subject to the jurisdiction of the Crime and Misconduct Act.

Clauses 95(1)(b) - (c) and clause 95(2) provide that the Authority must comply with the requirements of the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Division 2 Authority's functions and powers

Main functions and its achievement

Clause 96 sets out the Authority's main functions under the Act in relation to urban development areas.

The purpose of this clause is to provide guidance on the type of functions it is envisaged the Authority will need to undertake to facilitate the purposes of the Act.

General powers

Clause 97(1) provides the Authority with powers:

- (a) necessary or convenient to perform its functions; or
- (b) incidental to the performance of the functions; or
- (c) to help to achieve the purposes of this Act.

Clause 97(2) provides specific examples of things that the Authority has power to do. These include:

- (a) enter into infrastructure agreements under Integrated Planning Act, and other contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants; and
- (e) coordinate or provide infrastructure, services or works on or relating to urban development areas; and
- (f) fix charges and other terms, for infrastructure, services or works it provides, or for which it coordinates others to provide; and
- (g) coordinate, provide or pay for, infrastructure, services or works on land outside urban development area to help the performance of the Authority's functions relating to
urban development areas;
- (h) establish funds to ensure the provision of infrastructure, services or works under development schemes continue to be provided;
- (i) do anything necessary or convenient to be done in the performance of its functions under this or another Act.

Clause 97(3) provides that the Authority can enter into partnerships with other government entities or the private sector in performing its functions.

Clause 97(4) provides that the Authority may derive additional powers conferred on it by a statute.

Conditional disposal of land

Clause 98 provides that the Authority may impose conditions when disposing land.

The purpose of this clause is to empower the Authority to be able sell land subject to conditions. Examples of conditions include a requirement to make improvements on the land. The purpose of this example is make it clear that the Authority can require a transferee of land to undertake specific construction on the land, including the size or type of dwellings, the provision of a mixed use development, including commercial and residential uses. The power will also support the provision of specific items of infrastructure as a part of an agreement;

The clause provides for the enforcement of conditions through contractual remedies.

This power is considered appropriate in light of the significant investment in public infrastructure that will be made for urban development areas. Developers who successfully tender for the purchase of land within an urban development will be required to make significant contributions to achieving government policy within urban development areas.

Roads and road closures

Clause 99(1) provides that the Authority may perform functions or exercise powers for a road in an urban development area that the Authority considers necessary or desirable to perform its other functions.

This provision allows the Authority to perform a function or exercise a power for a road in an urban development area if the Authority considers such performance or exercise is needed. For example, a function of the Authority includes coordinating the provision of infrastructure for urban development areas. The provision of such infrastructure may require the permanent or temporary closure of a road.

Clause 99(2) provides that without limiting subsection (1), the Authority may, by gazette notice, permanently or temporarily close all or part of a road in an urban development area.

This provision allows the Authority, by gazette notice, to close a road permanently or temporarily. Closure of the road means that the public can not use the road.

Under clause 99(3) before the closing of the road takes effect, the Authority must publish a notice the Authority considers appropriate about the closure in a newspaper circulating in the urban development area.

Clause 99(4) provides that the Authority may do everything necessary to stop traffic using a road or part of a road closed under this section.

In the interests of public safety, this provision allows the Authority to do anything necessary to stop the public from using a closed road or part of a closed road.

To remove any doubt, clause 99(5) clarifies that this provision applies whether or not a road is a State-controlled road under the *Transport Infrastructure Act 1994*; and whether or not the *Land Act 1994* applies to a road.

Power to vest land in permanently closed road or unallocated State land in urban development areas

Clause 100 allows for the Authority to be granted a deed of grant over unallocated State land in an urban development area. The deed will be granted to allow for the Authority to develop the land for urban purposes and, where it is considered appropriate, to transfer the land. The permanent closure of a road under the *Land Act 1994* results in the land becoming unallocated State land.

Clause 100(1) provides that the Authority may, by gazette notice, declare that any of the following land in an urban development area is vested in the Authority, in fee simple:

- (a) land that comprised a road under the *Land Act 1994* that has been permanently closed under clause 99 (Roads and road closures);
- (b) unallocated State land under the *Land Act 1994*.

The purpose of this provision is to restrict the power to vest land in the Authority to unallocated State land or a road under the *Land Act 1994* that has been permanently closed road under this Bill.

Clause 100(2) provides that the chief executive of the department in which the *Land Act 1994* is administered must, under that Act, register the vesting if the Authority lodges in the land registry under that Act:

- (a) a request under that Act to register the vesting; and

(b) if that chief executive so requires—a plan of subdivision under that Act for the land the subject of the vesting; and

(c) a copy of the gazette notice.

This provision directs the chief executive under the *Land Act 1994* to record the vesting of the land in the land registry under that Act and ensures that, if a plan of subdivision is required to define the bounds of the vested land, the Authority must also lodge a plan of subdivision.

Clause 100(3) provides that on the registration of the request to vest, the Governor in Council may issue to the Authority a deed of grant under the *Land Act 1994* for the land the subject of the vesting.

This provision allows for the issue of a deed of grant under the *Land Act 1994* to the Authority over the (registered) vested land. The issue of a deed of grant to the Authority will ensure the rights and reservations of the State remain reserved to the State. In accordance with section 47 of the *Land Title Act 1994*, the deed of grant will be lodged in the land registry and, following the recording of the particulars of the grant in the freehold land register, the registrar of titles will create an indefeasible title for the land in the name of the Authority.

Clause 100(4) provides that despite the *Land Act 1994* and the *Land Title Act 1994*, no fee is payable by the Authority in relation to the registration of the vesting or to give effect to it.

The purpose of this provision is to clarify that no fee is payable by the Authority under the *Land Act 1994* or the *Land Title Act 1994* to give effect to the vesting in the Authority of the unallocated State land (including any permanently closed road).

Special rates or charges

Clause 101 provides that the Authority may, with the Minister's written approval, make and levy a special rate on owners and occupiers of land.

The purpose of this provision is to put the Authority in the same position as the local government in relation to the provision of infrastructure that provides a special benefit to an identifiable group of land owners over and above the general population.

The clause effectively replicates section 971 of the *Local Government Act 1993* and limits the Authority's ability to levy a special rate to situations where:

(i) the land, or the occupier of the land, has or will specially benefit from, or has or will have special access to, the service, facility or activity; or

(ii) the occupier of the land, or the use made or to be made of the land, has, or will, specially contribute to the need for the service, facility or activity

Before imposing a special levy the Authority must prepare an overall plan and

(a) identify the rateable land to which the rate or charge applies; and

(c) describe the service, facility or activity; and

(d) state the estimated cost of implementing the overall plan; and

(e) state the estimated time for implementing the overall plan.

Application of special rate or charge

Clause 102(1) provides that a special rate or charge collected for a particular service, facility or activity must be used for that purpose. However the special rate or charge need not be held in trust.

Application of local government entry powers for Authority's functions or powers

Clause 103 provides that employees or agents of the Authority may enter land or premises without a warrant.

The power is modelled on existing powers contained within the *Local Government Act 1993*, sections 1063, 1070 and 1071 of the Act. Given the similarity in the roles of local government and the Authority it is considered that the *Local Government Act* powers are appropriate for exercise by the Authority, its employees and agents.

Additional safeguards have been added to the Act that require the employee or agent of the Authority to:

(a) identify himself or herself to the occupier;

(b) tell the occupier the purpose of the entry;

(c) seek the consent of the occupier to the entry;

(d) tell the occupier the officer is permitted under this Act to enter the place without the occupier's consent.

By-laws

Clause 104(1) provides that the Authority may make by-laws under this Act for urban development areas about any matter for which a local law may be made, including the creation of offences.

However, clause 104(2) provides that a by-law can not fix a penalty of more than 20 penalty units for an offence against the by law.

Clause 104(3) provides that a by-law may provide that a stated local law does not apply, or applies with stated changes, within an urban development area.

Clause 104(4) clarifies that if a by-law provides that a stated local law does not apply, or applies with stated changes, within an urban development area, the local law does not apply, or applies with the stated changes, within the area.

Clause 104(5) provides that a by-law must be approved by the Governor in Council. The note to this section clarifies that the effect of clause 104(5) is that a by-law is subordinate legislation.

Division 3 Membership of Authority

Members

Clause 105(1) provides that the Authority consists of 9 persons (each a *member*), made up of:

- the chairperson (an *appointed member*);
- the chief executive of the department in which the *State Development and Public Works Organisation Act 1971* is administered;
- the chief executive of the department in which the *Financial Administration and Audit Act 1977* is administered; and
- 6 other members (each also an *appointed member*).

Clause 105(2) provides that appointed members are to be appointed by the Governor in Council.

Clause 105(3) provides that an appointed member may be appointed on a full-time or part-time basis.

Clause 105(4) provides that appointed members are appointed under this Act and not the *Public Service Act 1996*.

Eligibility for appointment

Clause 106(1) provides that a person is eligible for appointment as an appointed member only if the person has extensive knowledge of and experience in 1 or more of the following:

- local government;
- architecture, urban design or planning;
- social policy or community development;
- law, economics or accounting;
- the construction or development industries;
- natural resource and environmental management.

In addition a person is eligible for appointment if the person has other knowledge and experience the Governor in Council considers appropriate.

Clause 106(2) provides that at least 2 appointed members must have local government experience.

Duration of appointment

Clause 107(1) provides that subject to sections 109 and 110, an appointed member holds office for the term stated in the member's instrument of appointment. The term stated in the instrument of appointment must not be longer than 5 years.

Terms and conditions of appointment

Clause 108(1) provides that an appointed member is to be paid the remuneration and allowances decided by the Governor in Council. An appointed member holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

Resignation

Clause 109 provides that an appointed member may resign by signed notice given to the Minister.

Termination of appointment

Clause 110(1) provides that the Governor in Council may end an appointed member's appointment if the member:

- is convicted of an indictable offence;
- is or becomes an insolvent under administration under the *Corporations Act*, section 9;
- the person is disqualified from managing corporations under the *Corporations Act*, part 2D.6;
- becomes incapable of being a member because of physical or mental incapacity; or
- is guilty of misconduct of a type that could warrant dismissal from the public service if the member were an officer of the public service;
- does not, without reasonable excuse, comply with section 111; or
- fails to comply with section 135.

The clause notes the *Corporations Act*, part 2D.6 (Disqualification from managing corporations) and Section 135 (Privacy).

Disclosure of interests

Clause 111(1) This section applies if a member, or a close relative of a member, has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Authority and the interest could conflict with the proper performance of the member's functions for the matter.

Clause 111(2) requires the member to disclose the interest, as soon as practicable. If the person is the chairperson, the person must disclose the interest to all the other members; or if the person is another member, the person must disclose the interest to the chairperson.

Clause 111(3) provides that if a member has disclosed an interest relating to a matter, the member must not participate in the Authority's consideration of the matter.

Clause 111(4) provides a maximum penalty of 100 penalty units for failure to comply.

Clause 111(5) defines close relative of a member to mean the member's spouse; parent or grandparent; brother or sister; or child or grandchild.

Protection of members from civil liability

Clause 112 (1) provides that a member, or a person acting in the office of a member, is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act or a direction or a requirement under this Act.

Clause 112(2) provides that if subsection (1) prevents a civil liability attaching to the member or person, the liability attaches instead to the State.

Division 4 Meetings and other business of Authority**Conduct of business**

Clause 113(1) provides that a regulation may provide for how the Authority must conduct its business, including its meetings.

Clause 113 (2) provides that subject to subsection (1) and this division, the Authority may conduct its business, including its meetings, in the way it considers appropriate.

Times and places of meetings

Clause 114(1) provides that Authority meetings are to be held at the times and places the chairperson decides. However, the chairperson must call a meeting if asked, in writing, to do so by at least two members. Also, the chairperson must call a meeting at least once in each quarter.

Quorum

Clause 115 provides that the quorum for an Authority meeting is more than half of the number of members.

Presiding at meetings

Clause 116(1) provides that the chairperson is to preside at all Authority meetings at which the chairperson is present. Otherwise, the member chosen by the members present is to preside.

Conduct of meetings

Clause 117(1) provides that the Authority may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.

Clause 117(2) provides that a person who takes part in an Authority meeting under subsection (1) is taken to be present at the meeting.

Clause 117(3) provides that a decision at an Authority meeting must be a majority decision of the members present.

Decisions outside meetings

Clause 118 provides that a decision of the Authority, other than a decision at an Authority meeting, may be made only with the written agreement of a majority of the members.

Minutes and record of decisions

Clause 119 provides that the Authority must keep minutes of its meetings and a record of any decisions under section 118.

Division 5 Staff of Authority**Chief executive officer**

Clause 120(1) provides that the Authority must appoint and employ a chief executive officer.

Clause 120(2) provides however, that before appointing a chief executive officer, the officer's remuneration and allowances and other terms and conditions of the employment must be approved by the Governor in Council.

Clause 120(3) provides that the chief executive officer is employed under this Act and not the *Public Service Act 1996*.

Preservation of rights of chief executive officer

Clause 121(1) provides that this section applies if an officer of the public service is appointed as the chief executive officer.

Clause 121(2) provides that the person keeps all rights accrued or accruing to the person as an officer of the public service as if service as the chief executive officer were a continuation of service as a public service officer.

Clause 121 (3) provides that at the end of the person's term of office or resignation as the chief executive officer, the person has the right to be appointed to an office in the public service at a salary level no less than the current salary level of an office equivalent to the office the person held before being appointed as the chief executive officer; and the person's service as the chief executive officer is taken to be service of a like nature in the public service for deciding the person's rights as an officer of the public service.

Other staff

Clause 122(1) provides that the Authority may employ other staff it considers appropriate to perform its functions. The Bill provides that these staff are appointed under the *Public Service Act 1996*. In addition clause 122(3) provides that the chairperson may arrange with the chief executive of a department, or with another unit of public administration, for the services of officers or employees of the department or other unit to be made available to the Authority.

Division 6 Identity cards for particular employees and agents

Issue of identity card

Clause 123(1) provides that the chief executive officer must issue an identity card to each individual whom the Authority authorises to enter premises, under section 103. This clause also inserts a note explaining that section 103 refers to the application of local government entry powers for Authority's functions or powers.

Clause 123(2) provides that the identity card must contain a recent photo of the individual; a copy of the individual's signature; identify the individual as an individual who is authorised by the Authority; and must state an expiry date for the card.

Clause 123(3) provides that this section does not prevent the issue of a single identity card to a person for this Act and other purposes.

Note: section 103 (Application of local government entity powers for Authority's functions or powers)

Production or display of identity card

Clause 124(1) provides that in exercising a power under this Act in relation to another person, the individual must produce his or her identity card for the person's inspection before exercising the power; or have the identity card displayed so it is clearly visible to the person when exercising the power.

Clause 124(2) provides that, if it is not practicable to comply with subsection (1), the individual must produce the identity card for the person's inspection at the first reasonable opportunity.

Return of identity card

Clause 125 provides that if the individual ceases to be authorised as mentioned in section 123, the individual must return the individual's identity card to the chief executive officer within 20 business days after ceasing to be so authorised unless the individual has a reasonable excuse. The clause provides for a maximum penalty of 20 penalty units for failure to comply with this section.

Division 7 Miscellaneous provisions

Report about person's criminal history for particular appointments

Clause 126(1) provides that to decide whether to recommend to the Governor in Council a person for appointment as an appointed member, the Minister may ask the commissioner of the police service for a written report about the person's criminal history and a brief description of the circumstances of any conviction mentioned in the criminal history.

Clause 126(2) provides that to decide whether a person is appropriate to be appointed as the chief executive officer, the Authority may ask the commissioner of the police service for a written report about the person's criminal history; and a brief description of the circumstances of any conviction mentioned in the criminal history.

Clause 126(3) provides that the commissioner of the police service must comply with a request under subsection (1) or (2).

Clause 126(4) provides that the Minister or Authority may make a request about a person under subsection (1) or (2) only if the person has given the Minister or Authority written consent for the request.

Clause 126(5) provides that the duty imposed on the commissioner of the police service to comply with the request applies only to information in the commissioner's possession or to which the commissioner has access.

Clause 126(6) provides that the Minister or Authority must ensure a report given to the Minister or Authority under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

Clause 126(7) provides that the Minister may delegate the Minister's powers under this section to an appropriately qualified public service officer.

Clause 126(8) provides that in this section "criminal history of a person", means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than for a spent conviction. "Spent conviction" means a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act and that is not revived as prescribed under section 11 of that Act.

Recovery of special rate or charge

Clause 127(1) provides that a special rate or charge does not become owing until 20 business days after the owner or occupier on whom the charge is levied receives a notice from the Authority stating the special rate or charge and its amount.

Clause 127(2) provides that if there is more than 1 owner or occupier of the land, all the owners or occupiers are jointly and severally liable to pay the amount.

Clause 127(3) provides that if the amount becomes owing under subsection (1), the State may recover it from the owner or occupier as a debt.

Clause 127(4) also provides that the State may recover the amount from the owner for the time being of the land.

Clause 127(5) provides that if the State may recover the amount under this section, the *Local Government Act 1993*, section 1018 and chapter 14, parts 6 and 7, apply for the amount as if:

- the special rate or charge were a rate under that Act;

- a reference to an overdue rate were a reference to the amount;
- a reference to a local government were a reference to the Authority;
- a reference to the chief executive officer of a local government were a reference to the chief executive officer of the Authority.

This clause also notes the reference to the *Local Government Act 1993*, section 1018 (Overdue rates may bear interest) and chapter 14, parts 6 (Concessions) and 7 (Recovery of rates)

Application fees

Clause 128(1) provides that this section applies if the Authority is deciding the fee for an application under this Act.

Clause 128(2) provides that the fee can not be more than the actual cost of considering and processing the application.

Clause 128(3) provides however, that for the following applications the fee may also include a reasonable component to recover the Authority's costs of making or amending the relevant development scheme:

- a UDA development application;
- an application under section 62 to change a UDA development approval.

Giving information about roads to relevant local government

Clause 129(1) provides that this section applies if the Authority performs a function or exercises a power relating to a road or former road in an urban development area.

Clause 129(2) The Authority must give the relevant local government the information the Authority has to allow the local government to comply with its obligation for its map and register of roads under the *Local Government Act 1993*, section 921.

Ministerial directions or guidelines to the Authority

Clause 130(1) provides that the Minister may give the Authority a written direction about the performance of its functions (a *Ministerial direction*) or guidelines to help the Authority perform its functions.

Clause 130(2) [provides that the Minister must, within 14 sitting days after giving a Ministerial direction, table a copy of it in the Legislative Assembly.

Clause 130(3) provides that the Authority must comply with the direction.

Ministerial access to information

Clause 131 provides that the Minister may by notice require the Authority to give the Minister stated information or stated documents, or copies of documents, in the Authority's possession and the Authority must comply with the requirement.

Registers

Clause 132(1) requires the Authority to keep a register of:

- interim land use plans as amended from time to time;
- each proposed development scheme or proposed amendments of development schemes under part 3;
- reports on development schemes, under section 24(2);
- development schemes that have taken effect;
- UDA development applications;
- UDA development approvals; and
- by-laws; and
- special rates and charges;
- Ministerial directions; and
- annual reports under section 118.

Clause 132(2) provides that the Authority may also keep a register of other documents or information relating to this Act that the Authority considers appropriate. Whilst the Authority may keep a register in the way it considers appropriate, the documents included in the registers must also be published on the Authority's website.

Access to registers

Clause 133(1) requires the Authority to do all of the following:

- keep each register open for inspection by the public during office hours on business days at the places the chief executive officer considers appropriate;
- allow a person to search and take extracts from the register; and
- give a person who asks for it a copy of all or part of a document or information held in the register, on payment of the fee decided by the Authority.

The fee can not be more than the actual cost of giving the copy.

Annual report

Clause 134(1) provides that the Authority must prepare and give the Minister a written report about the performance of its functions each financial year.

Clause 134(2) provides that the report must be given as soon as practicable after the end of the financial year, but within 4 months after the year ends.

Clause 134(3) provides that without limiting subsection (1), the report must include:

- a copy of any Ministerial directions given during the year;
- information about compliance by the Authority with the timeframes with which this Act requires the Authority to comply;
- information about any development schemes made during the year and how long it took to make them; and
- any other matter prescribed under a regulation.

Clause 134(4) provides that to remove any doubt, it is declared that this section does not limit or otherwise affect any obligation the Authority has to give a report under the *Financial Administration and Audit Act 1977*.

Privacy

Clause 135(1) provides that this section applies to a person who is, or has been, a member or a person employed by the Authority; and who obtains in the course of, or because of, the performance of a function of the Authority, personal or confidential information that is not publicly available.

Clause 135(2) provides that the person must not make a record of the information; divulge or communicate the information to anyone else, whether directly or indirectly; or use the information to benefit any person.

Clause 135(2) provides a maximum penalty of 100 penalty units for non-compliance with this section.

Clause 135(3) provides however, that subsection (2) does not apply if the record is made or the information is divulged, communicated or used for, or as a part of, a function of the Authority; or with the consent of the person to whom the information relates; or as required by law.

Delegations

Clause 136(1) The Authority may delegate its functions under this Act to a member; the chief executive officer; or the chief executive officer or an appropriately qualified officer of a government entity or local government.

Clause 136(2) provides that the Authority can not delegate the function of making by-laws or development schemes.

Clause 136(3) provides that a delegation to the chief executive or an appropriately qualified officer of a government entity or local government under clause 120(1)(c) may be made only if the Minister has approved the making of the delegation.

Clause 136(4) provides that a member, other than an appointed member, may delegate the member's functions as a member to an appropriately qualified public service officer. Appointed members are the chairperson and the other members other than the chief executive of the department in which the *State Development and Public Works Organisation Act 1971* is administered and the chief executive of the department in which the *Financial Administration and Audit Act 1977* is administered.

Clause 136(5) provides that in this section "functions" includes powers.

Part 7 Miscellaneous provisions

Division 1 Directions by Governor in Council

Direction to government entity or local government to accept transfer

Clause 137(1) provides that the Governor in Council may give a government entity or local government (the directed entity) a written direction to accept the transfer to it of stated land owned by the Authority; or a stated fund the Authority has established to ensure the provision of infrastructure relating to the stated land owned by the Authority.

Clause 137(2) provides however, that the direction may be given only if the Governor in Council is satisfied the transfer is reasonably necessary for the purposes of this Act.

Clause 137(3) provides that the direction may state conditions on which the transfer must be made.

Clause 137(4) provides that the directed entity must do every thing reasonably necessary to comply with the direction.

Clause 137(5) provides that if the directed entity is a local government, on the making of the transfer, the stated land is taken to be land that the local government holds on trust in fee simple to which the *Integrated Planning Act 1997*, section 5.1.34 applies.

Direction to government entity or local government to provide or maintain infrastructure

Clause 138(1) The Governor in Council may give a written direction to a government entity or local government (the directed entity) to provide or maintain stated infrastructure in, or relating to, a stated urban development area.

Clause 138(2) provides however, that the direction may be given only if the Governor in Council is satisfied the provision or the maintenance of the infrastructure by the directed entity is necessary for the carrying out of the development scheme for the urban development area.

Clause 138(3) provides that the direction may state conditions on which the infrastructure must be provided or maintained and subsection (4) provides that the directed entity must comply with the direction.

Clause 138(5) provides that subsection (4) applies despite any other Act or law.

Division 2 Other miscellaneous provisions

Exchange of documents and information with other entities with planning or registration functions

Clause 139(1) provides that subsection (2) applies on the declaration of an urban development area if a government entity, Government Owned Corporation (GOC) or local government has planning or registration functions for land or development in the area.

Clause 139(2) provides that the Authority may ask the government entity, GOC or local government to give the Authority the documents or information the government entity, GOC or local government has that the Authority reasonably needs to perform its functions.

Clause 139(3) provides that the entity must comply with the request within a reasonable period.

Clause 139(4) provides that if land ceases to be in an urban development area, the Authority must give each entity performing functions mentioned in subsection (1) the documents or information the Authority has that the entity needs to perform its functions.

Clause 139(5) provides that the documents or information required to be given under this section must be given free of charge.

Executive officer must ensure corporation does not commit particular offences

Clause 140(1) provides that the executive officers of a corporation must ensure the corporation complies with the following provisions of this Act:

- a provision of this Act the contravention of which constitutes a UDA development offence;
- clause 72 (Offence to contravene enforcement order); and
- section 76 (Offence to contravene Magistrates Court order).

Clause 140(2) provides that if a corporation commits an offence against a designated provision, each of its executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies

with the provision. Clause 140(2) provides that the maximum penalty for this offence is the maximum penalty for the contravention of the provision by an individual.

Clause 140(3) provides that evidence that the corporation has been convicted of an offence against a designated provision is evidence that each of its executive officers committed the offence of failing to ensure the corporation complies with the provision.

Clause 140(4) provides however, that it is a defence for an executive officer to prove that if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or if the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Clause 140(5) provides that in this section “executive officer of a corporation”, means a person who is concerned with, or takes part in, its management, whether or not the person is a director or the person’s position is given the name of executive office.

Giving Authority a false or misleading document

Clause 141(1) provides that a person must not, in relation to the performance of the Authority’s functions, give the Authority a document containing information the person knows is false or misleading in a material particular. Clause 141(1) provides for a maximum penalty of 1665 penalty units.

Clause 141(2) provides that a complaint against a person for an offence against subsection (1) is sufficient if it states that the document was false or misleading to the person’s knowledge, without specifying whether it was false or whether it was misleading.

Evidentiary aids

Clause 142 provides that a certificate purporting to be signed by or for the chief executive officer stating any of the following matters is

evidence of the matter:

- (a) a decision, direction or notice under this Act;
- (b) a thing that must or may be included in a register;
- that a stated document is another document kept under this Act;

- that a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
- that on a stated day:
 - (i) a stated person was given a stated decision, direction or notice under this Act; or
 - (ii) a stated direction or requirement under this Act was made of a stated person; or
- that on a stated day, or during a stated period, a UDA development approval was, or was not, in force.

Application of provisions

Clause 143 provides that this section applies if a provision of this Act applies any of the following (the applied law) for a purpose:

- another provision of this Act;
- another law;
- a provision of another law.

Clause 143(2) provides that the applied law and any definition relevant to it apply with necessary changes.

Clause 143(3) provides that subsection (2) is not limited merely because a provision states how the applied law is to apply.

Review of Act

Clause 144(1) provides that the Minister must, within 5 years after this section commences, carry out a review of the operation and effectiveness of this Act.

Clause 144(2) provides that in carrying out the review, the Minister must have regard to the effectiveness of the Authority's operations; and the need to continue its functions.

Clause 144(3) provides that the Minister must, as soon as practicable after the review is finished, cause a report of the outcome of the review to be laid before the Legislative Assembly.

Approved forms

Clause 145 provides that the Authority may approve forms for use under this Act.

132 Regulation-making power

Clause 146(1) provides that the Governor in Council may make regulations under this Act.

Clause 146(2) provides that a regulation may provide for any matter for which by-laws, or may impose a penalty of no more than 20 penalty units for contravention of a regulation.

**Part 8 Amendment of Integrated
Planning Act 1997**

Clause 147 provides that this part amends the *Integrated Planning Act 1997*.

Amendment of s 1.4.4 (New planning instruments can not affect existing development approvals)

Clause 148 amends 1.4.4 to insert a note alerting readers to new s 2.5B.19 (new planning instrument can not affect master plan) which has the same effect for master plans that s 1.4.4 has for planning schemes.

Amendment of s 2.1.3 (Key elements of planning schemes)

Clause 149 inserts a note to highlight that a structure plan must be prepared for a declared master plan area.

Insertion of new s 2.1.4A

Clause 150 relates to Chapter 2, part 1, division 3, which deals with the making, amending and consolidation of planning schemes. This new section is necessary to clarify that a different process applies for the making of structure plans in declared master plan areas.

Amendment of s 2.1.10 (Extent of effect of temporary local planning instrument)

Clause 151 amends s. 2.1.10.

Amendment of s 2.1.23 (Local planning instruments have force of law)

Clause 152 inserts reference to Chapter 2 Part 5B, which is the new part inserted to deal with the master planned areas.

Amendment of s 2. 5.1 (What are regions)

Clause 153 amends 2.5.1(a).

Replacement of ch 2, pt 5A

Clause 154 inserts chapter 2, part 5A, part 5B and part 5C as described in the following clauses.

Part 5A Regional planning in designated regions**Division 1 Preliminary****Application of pt 5As 2.5A.1 and 2.5A.2**

Clause 2.5.A.1 applies this part to a designated region. Ch 2, part 5A is currently limited to the SEQ region. The intention of the changes is to allow statutory regional planning under this part to be carried out in regions other than SEQ.

Clause 2.5A.2 defines a designated region.

Division 2 Regional coordination committees

Clauses 2.5A.3 – 2.5A.6 provide for the establishment, function, membership and dissolution respectively of regional coordination committees.

Clauses 2.5A.7 – 2.5A.10 provide for the conduct of the business of regional coordination committees.

Division 3 Regional plans for designated regions

Clause 2.5A.10 defines a regional plan for a designated region as an instrument made under section 2.5A.14(2).

Clause 2.5A.11 sets out the key elements of the regional plan.

Division 4 Preparing and making regional plans

Clause 2.5A.12 provides that the regional planning Minister must prepare a draft regional plan for the designated area and must consult with the designated region's regional coordinating committee about preparing the draft.

Clause 2.5A.13 provides for the public consultation process of the draft regional plan for the designated region.

Clauses 2.5A.14 and 2.5A.15 provides for the consideration of submissions, the process for making and notifying a regional plan. It also sets out when a regional plan for a designated region takes effect.

Division 5 Amending or replacing regional plans

Clauses 2.5A.16 – 2.5A.17 provide for the amendment or replacement of a regional plan and sets out the public consultation requirements.

Clause 2.5A.18 provides a shortened amendment process for minor amendments and the inclusion of documents that implement the regional plan.

Division 6 Effect of regional plans

Clause 2.5A.19 clarifies that a regional plan is a State interest for planning and development.

Clause 2.5A.20 sets out that local government must amend their planning scheme to reflect the regional plan. It also provides the power for the regional planning Minister to make the necessary amendments to a local government planning scheme if the action is not taken by the local government.

Clause 2.5A.21 sets out the effect of regional plans in planning and development and their relationships with other planning instruments. It provides for regional plans to be the pre-eminent instrument after State planning regulatory provisions.

Part 5B Master planning for particular areas of State interest

Division 1 Preliminary

Clause 2.5B.1 provides a purpose statement for this part. It provides a summary of the process required to identify and designate master planned areas, the process of making structure plans, the process to prepare and approve master plans and the approach to ongoing IDAS referral requirements.

Division 2 Master planned areas

Clause 2.5B.2 sets out the process and options for identifying master planned areas. It provides option for identification in planning schemes,

regional plans, State regulatory provisions (see part 5C) and Ministerial direction.

Clause 2.5B.3 states the matters a master planned area declaration must identify. In particular, subsection (2)(c) requires the declaration to state the IDAS jurisdictions of participating agencies. This is essential as it links to clause 2.5B.63 (Modified application of sch 8 if application related to particular development), in division 7 which affects the way schedule 8 operates for certain development. IDAS agencies affected by this section must be involved in the structure planning process to ensure their IDAS interests are addressed through the planning process. The declaration may also be associated with the creation of a State planning regulatory provision (see part 5C, division 1).

Clause 2.5B.4 restricts making of applications to preliminary approval to which section 3.1.6 applies in master planned areas to certain circumstances.

Applications for preliminary approval to which section 3.1.6 applies are restricted so they do not vary the effect of a structure plan for the master planned area.

Clause 2.5B.5 requires local government to note any master planned area identified.

Division 3 Structure plans for master planned areas declared by the Minister

Clause 2.5B.6 states that this division only applies to master planned areas that have been declared by the Minister.

Clause 2.5B.7 establishes the obligation for a structure plan to be prepared for a master planned area.

Clause 2.5B.8 reinforces that a structure plan is part of a planning scheme and sets out the requirements for a structure plan. In addition to setting out the overall planning intent for the area, a structure plan must also establish each participating agency's jurisdiction as stated in the master planned area declaration. This requirement is related to the role of the structure plan in addressing certain IDAS assessment roles in the master planned area. It also sets out the requirements for any future master plans.

Clause 2.5B.9 sets out that a structure plan must be consistent with schedules 8 and 9 unless modifying the elements documented in section 2.5B.63.

Clause 2.5B.10 establishes that structure plans must be prepared as required by guidelines prescribed under a regulation and must be made under the process set out in schedule 1A.

Clause 2.5B.11 provides for situations where a local government introduces a new planning scheme before a structure plan being prepared under the old planning scheme is completed. The section provides the Minister with power to approve the inclusion of the structure plan in the new planning scheme without requiring the local government to re-comply with schedule 1A. The section also deals with the situation where a structure plan exists under a planning scheme and the local government proposes to make a new planning scheme. Subsection (4) allows the Minister to approve the inclusion of the structure plan in the new planning scheme if the Minister agrees the new plan is substantially consistent with the existing plan.

Clause 2.5B.12 states that a structure plan comes into effect the day the plan is notified in the gazette or the commencement date stated in the plan, which ever is the latter day.

Division 4 General provisions about master plans

Clause 2.5B.13 provides for master plans as required by a structure plan for a declared master planned area.

Clause 2.5B.14 provides that all master plans prepared under a structure plan require local government and, if required State government, approval using the process set out in division 5.

Clause 2.5B.15 sets out the matters a master plan must include as well as matters a master plan may deal with.

Clause 2.5B.16 sets out that a structure plan must be consistent with schedules 8 and 9 unless modifying the elements documented in section 2.5B.63

Clause 2.5B.17 provides for the master plan to override the planning scheme in certain circumstances regarding levels of assessment and assessment criteria.

Clause 2.5B.18 clarifies that a master plan attaches to all land in the master planning unit.

Clause 2.5B.19 states that once a master plan has been approved, a new planning instrument or any amendment to a planning instrument cannot change or affect a master plan.

Clause 2.5B.20 establishes that as development is completed in a master planning unit, the master plan for the unit progressively “dissolves” and underlying provisions of the structure plan in the planning scheme take effect. This concept ensures that master plans do not exist in perpetuity. When their task is completed (i.e. when development is completed) the master plan ceases to have effect.

Division 5 Applying for and obtaining approval of proposed master plan

Subdivision 1 Application stage for proposed master plan

Clauses 2.5B.21 – 2.5B.22 sets out the requirements for making a master plan application.

Subdivision 2 Information and response stage

Clauses 2.5B.23 – 2.5B.26 sets out the process for providing information requests to the applicant from the key parties (local government, coordinating agency and participating agencies). The coordinating agency, as the name suggests, is the State agency that coordinates the input of nominated participating agencies (also State agencies). The applicant receives a single request for information from the local government, which incorporates any requests from the coordinating agency. The local government is also the conduit through which the applicant responds to the requests. The local government must pass the relevant parts of the response to the coordinating agency, which in turn passes the relevant parts to each participating agency.

Subdivision 3 Consultation stage

Clauses 2.5B.27 – 2.5B.33 sets out the requirements for public consultation. Not all master plan applications necessarily trigger this stage. The structure plan states when public notice is required. However, public consultation is always required if the proposed master plan seeks to reduce

the level of assessment of particular impact assessable development stated in the structure plan. This subdivision also provides the requirements for notification, the making of submissions and their distribution by the local government to the coordination agency.

Subdivision 4 State government decision stage

Clauses 2.5B.34 – 2.5B.39 provide the process for the State to inform the local government of its requirements. As with concurrence agencies in the IDAS process, the State (acting through the coordinating and participating agencies) has certain defined powers in the master plan assessment and decision process. A point to note is that under the structure planning process, it is envisaged that agencies with an IDAS jurisdiction would, if the master plan were a development application, deal with and incorporate any assessment requirements into the structure plan.

Subdivision 5 Local government decision stage

Clauses 2.5B.40 – 2.5B.48 provides for the local government to assess and decide the master plan application and attach reasonable and relevant conditions. If the coordinating agency directs an action within the defined scope of their powers (e.g. to attach stated conditions or to refuse the application) the local government must comply with the direction. The subdivision also contains provisions for the issuing of the notice of decision and for the applicant to suspend their appeal period to make representations about conditions and other matters.

Subdivision 6 Ministerial directions about application

Clauses 2.5B.49 – 2.5B.50 provides the Minister with powers to direct the local government or applicant to undertake an action in the master plan assessment process if it has not been done.

Subdivision 7 Miscellaneous provisions

Clauses 2.5B.51 – 2.5B.57 provides for a range of necessary matters about master plans, including provisions about the Commonwealth Native Title Act, provisions for changing and withdrawing applications, public scrutiny and the seeking of additional advice or comment.

Division 6 Miscellaneous provisions about master plans

Clause 2.5B.58 states that the infrastructure charging and conditioning arrangements in chapter 5, part 1 apply as if the master plan application were a development application (subject to certain stated modifications). Master plans are an applicant driven planning process that have similarities to development assessment. Accordingly, it is appropriate the infrastructure regime applying to development also apply to these plans.

Clauses 2.5B.59 - 2.5B.60 provide administrative and operational matters about amending and cancelling master plans. A master plan application can be amended by the applicant without consent of the land owner. A local government may cancel a master plan application if the land owner consents and development has not commenced.

Division 7 Development applications in declared master plan areas

Clause 2.5B.61 provides for division 7 to apply to all development applications for land in a declared master planned area.

Clause 2.5B.62 sets out the requirements and application of IDAS for a development application in a declared master planned area.

Clause 2.5B.63 states that some parts of schedule 8 apply to the development only if enabled by a regulation. While this makes the operation of the sch 8 developments listed in subsection (1) subject to regulation, this approach is consistent with other existing items of development in schedule 8. In particular, part 1, table 2, items 9 and 10 (Material change of use for public passenger transport and for railways) already operate such that their operation in schedule 8 is subject to regulation. The alternative would be to exclude the development entirely from schedule 8 in master planned areas. However, this would not be a satisfactory outcome as it would preclude any potential for these matters to apply for IDAS applications in these areas.

Clause 2.5B.64 provides for the operation of schedule 8 in master planned areas.

Clauses 2.5B.65 – 2.5B.73 provide for matters relevant for the operation of IDAS in master planned areas and describe necessary modifying

arrangements to take account of the structure planning and master planning processes carried out in these areas, such as modified decision rules for applications involving code and impact assessment.

Division 8 Funding of master planning

Clauses 2.5B.74 – 2.5B.75 provide a power for a local government, by resolution, to make and levy on the owner or occupier of land in a declared master planned area, a special charge to fund the cost of preparing the structure plan for the area. It also provides the opportunity for the local government to enter into an infrastructure agreement to fund the cost of preparing a structure plan for the area. The carrying out of integrated planning under part 5B will be expected to generally have significant beneficial financial effects for land owners in the declared area. The detailed and comprehensive nature of the planning and the likely beneficial financial effects for land owners distinguishes structure planning under this part from other more general land use planning undertaken elsewhere in a local government's area. Accordingly it is considered appropriate to allow the cost of the planning to be recouped from land owners, even though this is not allowed for other plan making under the Act.

Part 5C State planning regulatory provisions

Division 1 General provisions

Clause 2.5C.1 provides the power for the Minister (in this part Minister means the Minister administering this Act and in a designated region, the regional planning Minister for the region) to make a State planning regulatory provision.

Clause 2.5C.2 sets out that a state planning regulatory provision may be made about a range of matters relating to regional planning and structure planning as well as a power to make provisions for other areas and situations subject to the Minister being satisfied of an adverse risk test (which is the same test that applies for the Minister to approve the making of a temporary local planning instrument by a local government).

Clause 2.5C.3 sets out content of a State regulatory planning provision, which like the current SEQ regional plan regulatory provisions has the ability to prohibit development.

Clauses 2.5C.4 – 2.5C.6 provide for relationship of a State planning regulatory provisions with local planning instruments (e.g. planning schemes), which is in one respect is similar to a temporary local planning instrument in that a provision varies but does not amend a local planning instrument. However, a State planning regulatory provision prevails to the extent of any inconsistency with a local or state planning instrument. It reinforces that a State planning regulatory provision is a statutory instrument that has the force of law and is not subordinate legislation.

Clause 2.5C.7 provides for State planning regulatory provisions relating to regional plans to be tables and ratified by Parliament. This is consistent with the requirements applying now for the SEQ regional plan regulatory provisions, which are transitioned under these amendments to be State planning regulatory provisions.

Clause 2.5C.8 provides for State planning regulatory provisions not related to regional plans to be subject of disallowance as if they were subordinate legislation.

Division 2 Making State planning regulatory provisions

Clauses 2.5C.9 – 2.5C.11 sets out the process for making these instruments. It provides for the relevant Minister to prepare a draft of any proposed State planning regulatory provision. The making process involves public consultation and the consideration of any submissions lodged. The consultation period is stated as a period of at least 30 business days, which is the same as for a planning scheme amendment.

Division 3 Effect of drafts and draft amendments

Clause 2.5C.12 sets out the effect of draft regulatory provisions and amendments. A draft regulatory provision takes effect as soon as the Minister publishes a notice in the gazette and in a newspaper circulating in the relevant area (see division 2). In other words, the draft regulatory provision is in operation and effective while public consultation is carried out and submissions about the provision are considered. This is necessary to avoid any potential adverse consequences involved in proposing a State planning regulatory provision.

The explanatory notes attached to the Integrated Planning and Other Legislation Amendment Bill 2004 which introduced the provisions

covering the SEQ regional plan regulatory provisions made the following comments in relation to these provisions having immediate effect:

“The key reason for the regulatory provisions to have effect is to ensure that the provisions can implement a “holding pattern” with respect to key regional development outcomes pending the finalisation of the regional plan, amendment or replacement.”

The same reasons apply for provisions made to support regional plans under the amendments to part 5A in this Bill. These reasons are also valid in relation to the preparation of structure plans and master plans and to address the matters covered by the adverse risk test in section 2.5B.2 (Restriction on making State planning regulatory provision). It is also to be noted that temporary local planning instruments (which are subject to this adverse risk test) also have immediate effect.

Division 4 Amendment or repeal of State planning regulatory provisions

Clauses 2.5C.13 - 2.5C.15 provides for the amendment or repeal of State regulatory planning provisions, including the making of minor amendments.

Amendment of s 2.6.7 (Matters the Minister must consider before designation land)

Clause 155 is an amendment to include necessary references to the expanded regional planning arrangements in chapter 2, part 5A, the new master planning arrangements in chapter 2, part 5B and the new State planning regulatory provision arrangements in part 5C.

Amendment of s 3.1.1 (What is IDAS)

Clause 156 inserts a note to draw attention to the modified IDAS arrangements applying in declared master planned areas.

Amendment of s 3.1.2 (Development under this Act)

Clause 157 enables structure plans made under chapter 2, part 5B to modify the operation of certain elements of schedule 8.

Amendment of s 3.1.3 (Code and impact assessment for assessable development)

Clause 158 inserts a note to draw attention to the new chapter 2, part 5B about master planned areas.

Amendment of s 3.1.4 (When is a development permit necessary)

Clause 159 is an amendment to include necessary references to master plans and State planning regulatory provisions.

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

Clause 160 inserts a note as a reminder that in a master planned area (new chapter 2, part 5B) a development application for a preliminary approval can on be made if it is permitted by a structure plan.

Amendment of s 3.1.8 (Referral agencies for development applications)

Clause 161 inserts a note that states that for declared master plan areas, also see s.2.5B.64.

Amendment of 3.2.1 (Applying for development approval)

Clause 162 is an amendment to include a necessary reference to State planning regulatory provisions. It also inserts a note to draw attention to the provisions of the new chapter 2, part 5B that restricts the making of development applications for preliminary approval to when they are permitted by a structure plan.

Amendment of s 3.3.15 (Referral agency assesses application)

Clause 163 is a consequential amendment to include necessary references to regional plans under the expanded chapter 2, part 5A arrangements and State planning regulatory provisions.

Amendment of s 3.3.17 (How concurrence agency may change it response)

Clause 164 is an amendment to provide for a change in a concurrence agency response as a result of a direction given by the Minister under the new section 3.6.2.

Amendment of s 3.5.4 (Code assessment)

Clause 165 is an amendment to include necessary references to regional plans under the expanded chapter 2, part 5A arrangements and State planning regulatory provisions.

Amendment of s 3.5.5 (Impact assessment)

Clause 166 is an amendment to include necessary references to regional plans under the expanded chapter 2, part 5A arrangements and State planning regulatory provisions. It also inserts a note to draw attention to the new assessment process for master plan applications under the new chapter 2, part 5B.

Amendment of s 3.5.5A (Assessment for s 3.1.6 preliminary approvals that override a local planning instrument)

Clause 167 is an amendment to include necessary references to regional plans under the expanded chapter 2, part 5A arrangements and State planning regulatory provisions.

Amendment of s 3.5.11 (Decision generally)

Clause 168 is an amendment to include a necessary reference to State planning regulatory provisions. It also inserts a note to draw attention to the decision rules for master plan applications under the new chapter 2, part 5B.

Amendment of s 3.5.13 (Decision if application requires code assessment)

Clause 169 is an amendment to include necessary references to regional plans under the expanded chapter 2, part 5A arrangements and State planning regulatory provisions. It also inserts a note to draw attention to the decision rules for master plan applications under the new chapter 2, part 5B.

Amendment of s 3.5.14 (Decision if application requires impact assessment)

Clause 170 is an amendment to include necessary references to regional plans under the expanded chapter 2, part 5A arrangements and State planning regulatory provisions. It also inserts a note to draw attention to the decision rules for master plan applications under the new chapter 2, part 5B.

Amendment of s 3.5.14A (Decision if application under s 3.1.6 requires assessment)

Clause 171 is an amendment to include necessary references to regional plans under the expanded chapter 2, part 5A arrangements and State planning regulatory provisions.

Amendment of s 3.5.15 (Decision notice)

Clause 172 is an amendment to include necessary references to regional plans under the expanded chapter 2, part 5B arrangements and State planning regulatory provisions. It also inserts a note to draw attention to the decision rules for master plan applications under the new chapter 2, part 5B.

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

Clause 173 is an amendment to enable a regulated State infrastructure charges schedule to be amended or replaced.

Amendment of s 3.5.20 (When development may start)

Clause 174 is an amendment to insert an updated cross reference to the new chapter 2, part 5B.

Amendment of s 3.5.27 (Certain approvals to be recorded on planning scheme)

Clause 175 is an amendment to draw attention that structure plans for declared master plans are required to be notated in a planning scheme under the new chapter 2, part 5B.

Amendment of s 3.5.31 (Conditions generally)

Clause 176 is an amendment to enable the application of conditions as part of an infrastructure agreement.

Replacement of chapter 3, pt 6, div 1

Clause 177 omits the current ch3, pt 6, division 1, dealing with the power of the Minister to make directions with a new division redefining and expanding the powers of the Minister to make directions. It is important to note that the directional powers that enabled the Minister to act as a concurrence agency where there were not powers of jurisdiction by a concurrence agency have been retained.

The new clause 3.6.1 enables the Minister to direct assessment managers to undertake any action in IDAS that is their responsibility and has not been done before the application has been decided. It sets out the actions the Minister can take and the process for giving the direction.

Clause 3.6.2 enables the Minister to provide a direction to a concurrence agency if: there are inconsistencies in two or more responses, the response is unreasonable or beyond their jurisdiction or an action under IDAS has not been done. The direction may require a concurrence agency to reissue their response or take action. The process for providing the direction is also set out.

Clause 3.6.3 enables the Minister to give a direction to an applicant if they have not complied with an action in IDAS. It sets out the process for the direction.

Amendment of s 3.6.7 (Effect of call-in)

Clause 178 is an amendment to include necessary references to regional plans under the expanded chapter 2, part 5A arrangements.

Amendment of s 4.1.21 (Court may make declarations)

Clause 179 clarifies that the court's power to make declarations includes declarations about master plans.

Amendment of s 4.1.23 (Costs)

Clause 180 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 4.1.26 (Evidence of planning schemes)

Clause 181 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Insertion of new s 4.1.30A (Appeals by applicant for approval of a proposed master plan)

Clause 182 is a consequential amendment to address the changes introduced about master planning under the new chapter 2, part 5B. As stated previously in relation to master plans, there are similarities between master plans and development approvals. As such, it is appropriate applicants have the right to appeal master plan decisions in the same way they have rights to appeal development application decisions.

Replacement of s 4.1.36 (Appeals about infrastructure charges)

Clause 183 changes the appeal rights for applicants in relation to infrastructure charges levied under an infrastructure charges notice under s 5.1.8. The current rights relate to an appeal about the methodology used to establish the charge in the infrastructure charges schedule or an error in the calculation of the charge. The changes to the process for making infrastructure charges schedules set out in clause 212 of the Bill, including the added rigour of the input of the Queensland Competition Authority makes an appeal against the methodology inappropriate. Instead a new appeal right is introduced stating that appeals must not be about the methodology but an appeal may be made about whether the charge in the schedule is so unreasonable that no reasonable local government could have imposed the charge. While this is a higher test at law it is consistent with the tests applied to other local government charges. The current appeal against an error in the calculation of the charge is retained, although it is to be noted a person will be able to take this appeal to a building and development tribunal instead of the court (see clause 202).

Amendment of s 4.1.42 (Notice of appeal to other parties div. 9))

Clause 184 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 4.1.43 (respondents and co-respondents for appeals under div 8)

Clause 185 is a consequential amendment to insert an updated cross reference.

Amendment of s 4.1.50 (Who must prove case)

Clause 186 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 4.1.52 (Appeal by way of hearing anew)

Clause 187 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 4.2.7 (Jurisdiction of tribunals)

Clause 188 should be read together with the amendments under clause 52A. For technical appeals about the accuracy of an infrastructure charges calculation, an appeal is proposed to a building and development tribunal.

Replacement of s 4.3.5A (Compliance with the SEQ regional plan)

Clause 189 is a consequential amendment to reflect changes made to the regional planning arrangements under chapter 2, part 5A.

Insertion of new s 4.3.5B (Compliance with master plans)

Clause 189 also inserts a new s 4.3.5B to reflect changes made to introduce master planning under the new chapter 2, part 5A. The offences are similar to those applying to development approvals, and in particular approvals to which s 3.1.6 apply.

Amendment of s 4.3.6 (General exemption for emergency development or use)

Clause 190 is a consequential amendment to insert updated cross references.

Amendment of s 4.3.7 (Giving a false or misleading document)

Clause 191 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 4.3.13 (Specific requirements of enforcement notice)

Clause 192 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 4.3.16 (Processing application required by enforcement or show cause notice)

Clause 193 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 4.3.20 (Magistrates Court may make orders)

Clause 194 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 4.4.13 (Evidentiary aides generally)

Clause 195 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 5.1.1 (Purpose of pt 1)

Clause 196 inserts a note in the purpose statement relating to infrastructure planning and funding alerting readers to the modified application of infrastructure arrangements under master plans.

Amendment of s 5.1.5 (Making or amending infrastructure charges schedules)

Clause 197 reflects and gives effect to policy changes about the way infrastructure charges schedules are made and amended. In order to introduce greater rigour and accountability into the process, charges schedules must be made and amended under the schedule 1 process (which involves consideration of any adverse effects on State interest by the Minister) instead of the schedule 3 process as at present (which does not involve State interest considerations). Additionally, provision is made for the Minister, as part of the State interest consideration under schedule 1, s

11 to also seek advice and comment from the Queensland Competition Authority.

Amendment of s 5.1.15 (Regulated infrastructure charge)

Clause 198 expands the existing section to enable a state planning regulatory provision to provide a regulated infrastructure charge.

Amendment of s 5.1.16 (Adopting and notifying regulated infrastructure charges schedule)

Clause 199 expands the existing section to enable a state planning regulatory provision to provide a regulated infrastructure charge.

Amendment of s 5.2.3 (Matters certain infrastructure agreements must contain)

Clause 200 clarifies that an agreement may also include the cost of the making of a structure plan. However, any amount included must take account of any amount payable under chapter 2, part 5B, division 8 relating to special charges for making structure plans (see clause 2.5B.75).

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

Clause 201 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Amendment of s 5.2.7 (Infrastructure agreements prevail if inconsistent with development approval)

Clause 202 is a consequential amendment to include necessary references to master plans and associated matters under the new chapter 2, part 5B.

Insertion of new chapter 5, pt 3

Clause 203 inserts a new part 3 dealing with contributions for State infrastructure

Part 3 Funding of State infrastructure in master planned areas

Clause 5.3.1. sets out the purpose of the section to ensure funding for State infrastructure is a transparent and equitable process as identified in an existing Government election commitment. It formalises the Government's intent to collect contributions towards state infrastructure in high growth areas as signalled in the SEQ Regional Plan 2005 – 2026. Section 8.9 of the SEQ Regional Plan states that “where the Queensland Government is providing major new infrastructure to lead development and it is ahead of full anticipated demand, land owners and developers of new areas who stand to benefit will be required to contribute to infrastructure provision ...”. This policy now applies across the State.

Clause 5.3.2 introduces one of the possible mechanisms for funding infrastructure: - a state infrastructure charges schedule and outlines that the Minister may seek advice from the Queensland Competition Authority on the methodology of an infrastructure charges schedule.

Clause 5.3.3 sets out what a regulated State infrastructure charges schedule for a master plan must include to ensure transparency and consistency across the State.

Clause 5.3.4 outlines the mandatory content of a State infrastructure charges notice to ensure transparency and consistency across the State, Subsection (4) ensures there is no duplication of charging.

Clause 5.3.5 sets out the timeframe for when the charge is payable.

Clause 5.3.6 provides that the charge levied must be used to provide the infrastructure. For the purposes of this section, all defined State infrastructure is regarded as a network (e.g. schools are regarded as part of a network).

Clause 5.3.7 clarifies that infrastructure charges collected do not need to be held in trust. This means the Government could use these funds for other purposes, provided it is able to supply the infrastructure when required.

Clause 5.3.8 provides an option to allow a person to enter into an infrastructure agreement as an alternative to paying a regulated State infrastructure charge. While the *Integrated Planning Act 1997* (IPA) (s.5.1.33) allows the state and development parties to enter into voluntary infrastructure agreements, this section removes ambiguity.

Clause 5.3.9 empowers a State infrastructure provider to recover a regulated State infrastructure charge that has not been paid or satisfied in the same way that local government can recover an outstanding rate under the *Local Government Act 1993*.

Amendment of s 5.4.4 (Limitations on compensation under ss 5.4.2 and 5.4.3)

Clause 204 is inserted to ensure the status quo is maintained in relation to structure plans prepared under the new part 5B and the structure planning process currently carried out by local governments in SEQ under the SEQ regional plan.

Structure plans prepared under the SEQ regional plan become part of the SEQ regional plan. As this plan is a statutory instrument for which compensation is not payable, local governments giving effect to these structure plans are not exposed to compensation by virtue of s 5.4.4(1)(a).

These arrangements need to be carried forward and applied to the revised structure planning arrangements set out in chapter 2, part 5B of this Bill in order to ensure the same policy outcomes are achieved in relation to compensation.

Amendment of s 5.5.1 (Local government may take or purchase land)

Clause 205 is amended to make reference to structure plans and master plans prepared under chapter 2, part 5B. This simply reinforces that existing powers and process available for local government also apply for structure plans that are part of the planning scheme.

Amendment of s 5.7.2 (Document local government must keep available for inspection and purchase)

Clause 206 is a consequential amendment to include necessary references to regional plans under the changed chapter 2, part 5A arrangements, part 5B arrangements for master planned areas and part 5C arrangements for State planning regulatory provisions.

Amendment of s 5.7.3 (Document local government must keep available for inspection only)

Clause 207 is a consequential amendment to include necessary references to regional plans under the changed chapter 2, part 5A arrangements, part

5B arrangements for master planned areas and part 5C arrangements for State planning regulatory provisions.

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

Clause 208 is a consequential amendment to include necessary references to regional plans under the changed chapter 2, part 5A arrangements, part 5B arrangements for master planned areas and part 5C arrangements for State planning regulatory provisions.

Amendment of s 5.7.9 (Limited planning and development certificates)

Clause 209 is a consequential amendment to include necessary references to regional plans under the changed chapter 2, part 5A arrangements and part 5C arrangements for State planning regulatory provisions.

Amendment of s 5.7.10 (Standard planning and development certificates)

Clause 210 is a consequential amendment to include necessary references to regional plans under the changed chapter 2, part 5A arrangements, part 5B arrangements for master planned areas and part 5C arrangements for State planning regulatory provisions.

Amendment of s 5.7.11 (Full planning and development certificates)

Clause 211 is a consequential amendment to include necessary references to ensure consistency between development approvals and master plans in relation to the issuing of full certificates.

Amendment of s 5.8.1 (When EIS process applies)

Clause 212 is a consequential amendment to reflect the changes introduced chapter 2, part 5B.

Amendment of s 5.8.2 (Purpose of EIS process)

Clause 213 is a consequential amendment to reflect the changes introduced chapter 2, part 5B.

Amendment of s 5.8.3 (Applying for terms of reference)

Clause 214 is a consequential amendment to reflect the changes introduced chapter 2, part 5B.

Amendment of s 5.8.4 (Draft terms of reference for EIS)

Clause 215 is a consequential amendment to reflect the changes introduced chapter 2, part 5B.

Amendment of s 5.8.5 (Terms of reference for EIS)

Clause 216 is a consequential amendment to reflect the changes introduced chapter 2, part 5B.

Amendment of s 5.8.7 (Public notification of draft EIS)

Clause 217 is a consequential amendment to reflect the changes introduced chapter 2, part 5B.

Amendment of s 5.8.9 (Chief executive evaluates draft EIS, submissions and other relevant material)

Clause 218 is a consequential amendment to reflect the changes introduced chapter 2, part 5B.

Amendment of s 5.8.13 (Who the chief executive must give EIS and other material to)

Clause 219 is a consequential amendment to reflect the changes introduced chapter 2, part 5B.

Amendment of s 5.9.9 (Chief executive may issue guidelines)

Clause 220 is a consequential amendment to reflect the changes introduced chapter 2, part 5B and allows the chief executive to make guidelines about the form copies of adopted structure plan must be in when sent to the chief executive for record keeping and archiving purposes.

Amendment of s 6.1.29 (Assessing applications (other than against the building assessment provisions))

Clause 221 inserts an editor's note to make a cross reference to other regional planning transitional provisions.

Amendment of s 6.1.30 (Deciding applications (other than under the building assessment provisions))

Clause 222 inserts an editor's note to make a cross reference to other regional planning transitional provisions.

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

Clause 223 inserts an editor's note to make a cross reference to the transitional provisions for the Bill.

Insertion of new chapter 6, pt8

Clause 224 inserts transitional provisions for the provisions in the Bill.

Division 1 sets out the transitional provisions required to ensure the operation of the SEQ regional plan as a result of the changed provisions of chapter 2, part 5A to enable statutory regional plans to be prepared outside South East Queensland.

Division 2 sets out the transitional provisions for the new chapter 2, part 5B arrangements for master planned areas. Section 6.8.11 provides for master plans to override conditions of a rezoning given under the repealed Act if there is an inconsistency. Section 6.8.12 enables development control plans under the repealed act to be transitioned into current planning schemes as a master plan using a State regulatory planning provision. Currently IPA planning schemes do not contain development control plans under the repealed act, which effectively keeps the transitional planning scheme current for those areas. This provision enables the provisions of an approved development control plan to be included into an IPA planning scheme.

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

Clause 225 is a consequential amendment to reflect the changes introduced in chapter 2, part 5A . It also enables the Minister to shorten the process for preparing a planning scheme amendment to include an infrastructure charges schedule if it is associated priority infrastructure plan that is already part of the planning scheme

Insertion of new schedule 1A

Clause 226 inserts a new schedule for making structure plans in declared master planned areas. While structure plans are part of the local government's planning scheme, the process for making these plans differs significantly from the normal scheme making and amendment process and accordingly, the process in schedule 1 is not appropriate for structure plans under chapter 2, part 5B.

Part 1 sets out the roles for local government and the State in preparing a structure plan. The local government must prepare a structure plan for a declared master planned area. The State must participate in the preparation of a structure plan, either as a coordinating or participating agency. The coordinating agency coordinates the input of the participating agencies. This part also sets out a conflict resolution process.

Part 2 provides a process for the consideration of state interests for the structure plan. It also sets out a consultation process for the preparation of an infrastructure agreement. This part also sets out a conflict resolution process.

Part 3 provides for a process for public notification of the structure plan and associated infrastructure agreements, once approval has been obtained from the State.

Part 4 sets out the process for submitting the proposed structure plan as a result of the outcomes from public notification for consideration by the Minister. It also sets out the process for adoption and notification of the structure.

Amendment of schedule 8 (Assessable development and self-assessable development)

Clause 227 inserts an editor's note to reflect the ability for structure plans of modify the application of schedule 8 in the new chapter 2, part 5B. It also provides consequential amendments for the urban development area of the urban land development Authority.

Amendment of schedule 9 (Development that is exempt for assessment against a planning scheme)

Clause 228 provides consequential amendments for the urban development area of the urban land development Authority

Amendment of schedule 10 (Dictionary)

Clause 229 amends schedule 10 to introduce, or modify definitions consistent with the provisions of the Bill.

Part 9 Amendment of Land Act 1994**Act amended in pt 9**

Clause 230 provides that part 9 amends the *Land Act 1994*.

Amendment of s 16 (Deciding appropriate tenure)

Clause 231 inserts a new provision into section 16.

Before land may be allocated under the Land Act 1994, the chief executive must evaluate the land to assess the most appropriate tenure and use for the land. The evaluation must take account of State, regional and local planning strategies and policies and the object of the Land Act 1994. This clause ensures any evaluation of land under section 16 of the Land Act 1994 must take account of, and give primary consideration to, any development scheme or interim land use plan under the Act that applies to the land.

Amendment of s 33 (Revocation of reserve)

Clause 232 inserts a new provision into section 33(1).

Section 33(1) of the *Land Act 1994* sets out when the Minister may revoke a reserve under that Act. For example, a reserve may be revoked if the reserve is no longer needed for a community purpose. This clause allows the Minister under the Land Act 1994 to revoke all or part of a reserve if the reserve is situated in a declared urban development area and it is intended the land will be developed for urban purposes.

Amendment of s 38 (Cancelling a deed of grant in trust)

Clause 233 inserts a new provision into section 38(1).

Section 38(1) of the *Land Act 1994* sets out when the Governor in Council may cancel a deed of grant in trust under that Act. For example, a deed of grant in trust may be cancelled if the land is used in a way inconsistent with

the purpose of the trust. This clause allows the Governor in Council under the *Land Act 1994* to cancel a deed of grant in trust if the land is situated in a declared urban development area and it is intended the land will be developed for urban purposes.

Amendment of s 122 (Deeds of grant of unallocated State land)

Clause 234 inserts new text into section 122(1).

The purpose of this provision is to clarify that a deed of grant of unallocated State land may be made to the Authority without going through a competitive process.

Amendment of s 290J (Requirements for registration of plan of subdivision)

Clause 235 inserts a new provision into section 290J.

Clause 235 allows for a plan of subdivision of non-freehold land to be registered under the *Land Act 1994* without the consent of the Minister responsible for administration of that Act or anyone else whose consent would otherwise be required (for example, if registration of the plan would affect the interest of a registered grantee of an easement, the registered grantee must consent to the plan). It is intended this clause will primarily be used to identify the boundaries of unallocated State land declared as vested in the Authority.

Amendment of schedule 6 (Dictionary)

Clause 236 inserts definitions of ‘urban development area’ and ‘Urban Land Development Authority’ into the *Land Act 1994*, Schedule 6 (Dictionary).

Part 10 Amendment of Land Title Act 1994

Act amended in pt 10

Clause 237 provides that part 10 amends the *Land Title Act 1994*.

Amendment of s 50 (Requirements for registration of plan of subdivision)

Clause 238 incorporates the term *relevant planning body* into section 50 in order to include a reference to the Authority in addition to local government.

The purpose of this amendment is to allow the Authority to undertake a function that was previously undertaken by the relevant local government.

Amendment of s 65 (Requirements of instrument of lease)

Clause 239 amends section 65(3A) to include a reference to the Authority in addition to local government.

The purpose of this amendment is to allow the Authority to undertake a function that was previously undertaken by the relevant local government.

Amendment of s 83 (Registration of easement)

Clause 240 amends section 83(2) to include a reference to the Authority in addition to local government.

The purpose of this amendment is to allow the Authority to undertake a function that was previously undertaken by the relevant local government.

Amendment of schedule 2 (Dictionary)

Clause 241 inserts definitions of ‘relevant local government’, ‘urban development area’ and ‘Urban Land Development Authority’ into the *Land Act 1994*, Schedule 2 (Dictionary).

Part 11 Amendment of Nuclear Facilities Prohibition Act 2007**Act amended in pt 11**

Clause 242 provides that part 11 amends the *Nuclear Facilities Prohibition Act 2007*.

Amendment of s 8 (No development approval or mining tenement for a nuclear facility)

Clause 243 Amends section 8 to clarify that reference to a development approval under the *Nuclear Facilities Prohibition Act 2007* means a development approval under the IPA or a UDA development approval.

The purpose of this provision is to clarify that the *Nuclear Facilities Prohibition Act 2007* applies to land within an urban development area.

Part 12 Amendment of Public Service Act 1996**244 Act amended in pt 12**

Clause 244 provides that part 12 amends the *Public Service Act 1996*.

Amendment of schedule 1 (Public service offices and their heads)

Clause 245 inserts a new item 12D relating to the Authority into the *Public Service Act 1996*, Schedule 1.

Part 13 Amendment of Transport Infrastructure Act 1994**Act amended in pt 13**

Clause 246 provides that part 13 amends the *Transport Infrastructure Act 1994*.

Amendment of s 49 (Assessment of impacts on State-controlled roads from certain activities)

Clause 247 inserts a new provision into section 49(1)(b) to include a reference to ‘development in an urban development area under the *Urban Land Development Authority Act 2007*’.

The purpose of this provision is to exclude development in an urban development area from the operation of section 49 of the *Transport Infrastructure Act 1994*.

248 Amendment of s 50 (Ancillary works and encroachments)

Clause 248 inserts the words ‘the *Urban Land Development Authority Act 2007*’

into section 50(7).

The purpose of this insertion is to clarify that section 50 of the *Transport Infrastructure Act 1994* does not apply to anything done that is permitted under the Act.

Part 14 Amendment of Vegetation Management Act 1999

249 Act amended in pt 14

Clause 249 provides that part 14 amends the *Vegetation Management Act 1999*.

Amendment of s 22A (Particular vegetation clearing applications may be assessed)

Clause 250 inserts a new provision into section 22A(2).

The purpose of this provision is to clarify that development with an urban development area is deemed to be for a relevant purpose under section 22A of the *Vegetation Management Act 1999*.

Schedule Dictionary

The Schedule - Dictionary defines certain terms in the Bill.