Sustainable Planning Bill 2009

Explanatory Notes

Introduction

Short title of Bill

Sustainable Planning Bill 2009

Objectives of Bill

The object of the Bill is to seek to achieve ecological sustainability by:

- managing the process by which development happens;
- managing the effects of development on the environment (including managing the use of premises); and
- coordinating and integrating planning at the local, regional and State levels.

Policy rationale

The Bill is a key part of implementing a broad planning and development reform process which originated in February 2006 with the IPA/IDAS reform project (the improvement project). The improvement project involved extensive stakeholder consultation through a series of forums, stakeholder meetings and public consultation, and culminated in the release of a discussion paper (*Dynamic Planning for a Growing State: Options for Improving Queensland's Integrated Planning Act 1997 and Integrated Development Assessment System*). The discussion paper was published in August 2006, and contained 86 proposed improvements grouped under 22 strategies.

The improvement project was based on an expectation that the current *Integrated Planning Act 1997* (current IPA) would be amended to reflect the proposed improvements. However, the results of both consultation exercises indicated that although there was widespread support for the fundamentals of the current IPA, there was a need to extend the scope of

the review beyond the improvements contained in the discussion paper. The extended scope of the review indicated a need for new legislation to replace the current IPA.

The expanded proposals for reforming Queensland's planning and development assessment system were contained in a further paper released publicly in August 2007 – *Planning for a Prosperous Queensland – A Reform Agenda for Planning and Development in the Smart State* (the reform agenda). Of the 80 reform actions identified in the reform agenda, 42 involved significant legislative change. Some of these reforms were contained in amendments to the current IPA in the *Urban Land Development Authority Act 2007*, such as extended powers of Ministerial direction and call in, an expanded regional planning framework, and the introduction of State planning regulatory provisions. These reforms, together with most of the other legislative initiatives contained in the reform agenda, are reflected in this Bill.

Outcomes to be achieved by the Bill are a significantly improved and streamlined land use planning and development framework and systems that reduce costs and get development on the ground sooner through:

- **streamlining** – at plan-making and development assessment levels leading to simpler, clearer and better integrated planning that produces more certain development assessment. This results in greater certainty, faster processing, and reduced costs for both applicants and the local government. Broad economic benefits are realised including the State's commitment to the Housing Affordability Strategy.
- **clarity** – in plan-making that "front loads" plans with consistent provisions and structure, and clearer and better integrated State interests in planning. This certainty and integration enables faster development assessment and cost benefits.
- **greater flexibility and responsiveness** – the streamlined systems including the movement of processes out of a regulatory framework gives the State greater flexibility to adjust the framework and its State level planning interests to meet emerging needs of the State and other stakeholders

Plan making is improved by:

- enhancing mechanisms to achieve State level planning outcomes such as accelerated and clearer State planning policy development processes and enhanced Ministerial powers to intervene in the

planning and development process, such as directly amending local planning instruments where an urgent issues arises;

- clarifying and confirming the precedence and relationship between State planning instruments;
- introducing limited prohibition to apply in prescribed circumstances enhancing the certainty of development outcomes;
- making the infrastructure charging regime even more transparent and equitable including through more flexible plan development process; and
- streamlining the plan-making process for local government including through the introduction of standard planning scheme provisions. Moving components of the plan making processes from the legislation to subordinate legislation and statutory instruments offers the State greater flexibility and responsiveness to emerging issues in plan making.

Development assessment processes are enhanced by the clarity and certainty achieved by improved plan making through a potential reduction in the number of applications entering the system; more applications progressing through simpler processes (such as the new compliance assessment track); greater certainty in making applications; and more reliable and compliant applications being made. Time and cost benefits with flow-on economic effects result in faster better integrated development on ground. This is achieved through:

- streamlining and simplifying development assessment processes such as shortened timeframes for taking certain actions, including times for responding to requests for information, greater flexibility regarding lapsed applications, changes to provide for electronic application and assessment processes, deemed approval for certain code assessable applications, and measures to improve the quality of applications; and
- enhancing access to more options for dispute resolution, for example, by expanding the jurisdiction of what was previously known as the Building and Development Tribunals (now called the Building and Development Dispute Resolution Committee) and giving the courts powers in the case of vexatious appeals.

How objectives are to be achieved

As with the current IPA, a key theme of the Bill's object is integration. The Bill's sustainability outcomes are to be achieved through integrating processes and outcomes in the following ways:

- by providing for an integrated framework of State, regional and local performance-based planning instruments with statutory effect;
- by maintaining and reforming the Integrated Development Assessment System (IDAS) to improve its efficiency and effectiveness; and
- by providing for integrated approaches to dispute resolution and enforcement.

The Bill also contains other mechanisms for achieving its objects such as:

- planning partnerships between the State and local government through the master planning process, to facilitate a flexible, cooperative and efficient approach to achieving planning outcomes;
- the ability for a Minister to designate land for community infrastructure to facilitate efficient provision of key infrastructure;
- a funding system for trunk infrastructure through infrastructure charges schedules and regulated infrastructure charges schedules;
- infrastructure agreements to facilitate a flexible cooperative approach between public and private sectors in providing key infrastructure;
- a balanced and accountable system of compensation for injurious affection; and
- limited and accountable processes for planning authorities to acquire land for planning purposes.

These mechanisms are also available under the current IPA.

Alternative method of achieving the policy objectives

All of the initiatives described above require legislative support to provide the necessary level of community confidence in Queensland's planning and development assessment system. Consequently there is no viable alternative for achieving the Bill's objectives.

However this Bill is only one component of a broader reform agenda. Reform of Queensland's planning system requires not only legislative

change, but broad procedural and cultural changes to underpin the Bill's facilitative and performance-based approach. These other reforms are not alternatives to the legislation, but are intended to complement its effective implementation.

Estimated cost to government of implementation

As with the current IPA, the Bill proposes an integrated planning and development assessment system with a very broad scope, and will be administered across many State agencies.

This Bill will be administered from within current budget allocations, and will not require allocation of significant additional funds for its implementation.

Consistency with fundamental legislative principles

Administrative power and review

The principle administrative system under the Bill is IDAS. Administrative functions under IDAS are subject to clear jurisdictional, procedural and time limits and are subject to extensive appeal rights and rights of review. Under the reform agenda, some of these rights of review and appeal are to be extended, for example by expanding the jurisdiction of what was previously the Building and Development Tribunals (now called the Building and Development Dispute Resolution Committee).

Other administrative functions include:

- assessment of applications for approval of a master plan (chapter 4);
- assessment of applications to acquire designated land under hardship (chapter 5, part 6); and
- assessment of applications for compensation for injurious affection (chapter 9, part 3).

These functions also give rise to extensive rights of review and appeal.

Chapter 6, part 11 provides for significant powers of Ministerial direction and call-in with respect to development applications. Chapter 6, part 11, division 1, enables the Minister to issue a direction to an assessment manager to not decide an application for a specified period. The purpose of this power is to enable the Minister to consider whether further action is needed in relation to the application. The Minister can not call in the

application after the period stated in the direction. This ensures that the rights of the applicant are protected by limiting the ability of the Minister to intervene in the process. The Minister also has the power to direct assessment managers, applicants and concurrence agencies to take an action under IDAS and to direct an assessment manager to impose conditions on an application in limited circumstances.

There is no penalty associated with the giving of a direction by the Minister – so there is no financial hardship or prejudice to be suffered by the person who is the subject of a direction.

The Minister's powers of direction are designed to put into place the policy decisions of executive government, and are intended to protect or give effect to a State interest. These powers are intended to allow a more pro-active and management-based approach to Ministerial involvement in matters of State significance.

The powers of direction are not subject to statutory rights of review or appeal. However it is subject to extensive Parliamentary oversight, primarily through a requirement for the Minister to report to Parliament upon their use (clause 422). Further discussion of the directions powers is set out below.

Chapter 6, part 11, division 2 enables the Minister to call-in a development application. This is a reserve power of the State which allows the Minister to protect the interests of the State in relation to development applications and approvals. This power is intended to allow the government to intervene in the development assessment process, where State interests are involved, and to be the final arbiter on State interest matters (see further detail below).

Delegation of administrative functions

Many of the functions exercised under the Bill will be carried out under delegated authority, primarily by virtue of:

- for local government, the delegation arrangements under the *Local Government Act 1993*; and
- for State agencies, the delegation arrangements for chief executives and other officers under the *Public Service Act 2008*.

Both of these legislative frameworks contain extensive checks and balances to ensure the accountable exercise of delegated authority.

Under the Bill, the Minister may delegate any of the Minister's powers or functions to an appropriately qualified public service officer. Since this is the delegation of administrative power to appropriate persons, it is not a breach of fundamental legislative principles. This ability to delegate administrative functions has been a long standing feature of the current IPA.

Natural justice and the rights and liberties of individuals

Requirements for public consultation

The policy and administrative frameworks in the Bill include extensive arrangements to ensure procedural fairness. For example, processes for making planning instruments include statutory guarantees of substantial public consultation. IDAS balances a need for a streamlined and efficient development assessment system with rights of public consultation, and significant opportunities for applicants to respond to adverse outcomes without the need to initiate expensive legal action (for example through seeking a negotiated decision notice).

In a limited number of instances, planning instruments can take effect before consultation with affected parties. For example, temporary local planning instruments can be made immediately with the Minister's agreement to address a pressing issue. State planning regulatory provisions can also have immediate effect when they are publicly notified, however, only in situations where immediate effect is necessary to prevent harm or the implementation of a regional plan or structure plan being compromised. In these instances, the draft instrument can have effect for a maximum of 12 months, to ensure that these instruments do not remain in effect indefinitely. In this situation, a reduction in procedural fairness for individuals has been balanced with a need to achieve good planning outcomes for the community at large.

Judicial review

Clause 757 ousts the jurisdiction of the *Judicial Review Act 1991* (JRA) in relation to the making of decisions. However it also provides that a person who has been denied an opportunity of making an application under the JRA can apply for a statement of reasons for the decision. In addition, any person who is aggrieved by a decision or action made under the Bill, has full review and appeal rights to the Planning and Environment Court and/or the Building and Development Dispute Resolution Committee (except in the limited case of Ministerial call-ins and directions about a development application).

Further, under clause 456, any person may bring proceedings in the Planning and Environment Court for a declaration about a matter that has been done, will be done or should have been done under this Bill (except in the limited case of Ministerial call-ins and directions about a development application). The Bill provides extensive declarations and orders powers to the Planning and Environment Court, which give the same rights of review of administrative decisions as are available under the JRA. These are in addition to the comprehensive appeal rights available to applicants and submitters under the Bill. In addition, the Bill contains an expanded jurisdiction for what was previously the Building and Development Tribunal (now called the Building and Development Dispute Resolution Committee), including the ability to make declarations about specific matters.

The Planning and Environment Court and the Building and Development Dispute Resolution Committee are expert jurisdictions that can deal with the review of applications expeditiously, as they are familiar with the planning and development assessment system. In this respect, it is considered that the Bill enhances the ability to seek review of administrative decisions, particularly for the general public, by allowing such reviews to occur in an accessible expert jurisdiction.

The combined effect of these provisions ensures that the ousting of the jurisdiction of the JRA does not operate to the prejudice of any person.

Ministerial call in powers

Clause 424 provides that the Minister may "call in" a development application. The call-in power may be exercised either before or after an application has been decided by an assessment manager. This is a reserve power of the State which allows the Minister to protect the interests of the State in relation to development applications and approvals. This power is intended to allow the government to intervene in the development assessment process, where State interests are involved, and to be the final arbiter on State interest matters. This power is not intended to be used routinely or often. However, occasions may arise where a State interest (such as an important environmental value) could be severely affected by the implementation of a development approval. In these situations, exercising the reserve power to call the application in and assess and decide, or reassess and re-decide, the application allows the Minister to redress what otherwise could become a serious problem for the community.

Under the Bill, there is no right of appeal against the Minister's decision on the application. It is also not possible for declaratory proceedings to be brought (except by the assessment manager in limited circumstances). If there was an ability to appeal or to bring declaratory proceedings in respect of an application which has been called in, this would be inconsistent with the intent of the Bill to allow the State to be the final arbiter on matters of State interest. Appeal rights are precluded because decisions made under this part of the Bill are effectively policy decisions of executive government made to protect or give effect to a State interest

The Minister is directly accountable to Parliament, and must prepare a report providing an analysis of any submissions made on the application and the Minister's reasons for the decision. The Minister must table a copy of this report in the Legislative Assembly within 14 sitting days of making the decision.

The combined effect of these provisions is to provide certainty about Ministerial call-ins, and finality about decisions regarding State interests. It is the only way to ensure that State interests are not prejudiced or threatened by the potential for ongoing litigation. It also ensures that accountability for decisions in relation to Ministerial call-ins is allocated to Parliament.

There are similar existing Acts dealing with development involving a State interest, which have no appeal rights, such as the *State Development and Public Works Organisation Act 1971*, under which a person may not appeal against the Coordinator-General's decision under the Act or the relevant law. The call-in arrangements are also the same as for the current IPA.

Ministerial directions

Under the Bill, the types of directions the Minister can give about a development application have been reduced. The directions powers now relate mainly to procedural issues (e.g. requiring an applicant to take an action within a certain timeframe). There is no right to appeal or seek declarations in relation to these directions. Because these direction powers are intended to give the Minister the power to "speed up" the IDAS process, any appeal rights or ability to seek a declaration would frustrate these objectives.

In addition to these procedural-type directions, the Minister can also direct an assessment manager to impose conditions on any approval, but only where the proposed development affects a State interest. Again, there is no right to appeal or seek declarations in relation to these directions for the

same reasons given in relation to Ministerial call in powers. However, as with a Ministerial call in, the Minister is required to table a report about the direction in the Legislative Assembly.

Superseded planning schemes

The Bill provides that a person may ask a local government to apply a superseded planning scheme to proposed development. This request must be made within 1 year of the new planning scheme being made. Under the current IPA, the application has to be made within 2 years. This reduction of time may be seen as a restriction on the rights of the individual.

Consultation with stakeholders resulted in a commitment by the State government to review the mechanism for making a development application under a superseded planning scheme and to consider the option of reducing the time period for lodgement from 2 years to 1 year. Throughout consultation, there was support from State and local government stakeholders to reduce this timeframe.

The reduced timeframe is intended to give the new planning scheme, which reflects current planning standards, its full effect more quickly. The reduced timeframe also ensures that any right to compensation is limited to those persons with an immediate intention to realise their development rights and reduces the amount of time the superseded planning scheme has effect. In any event, the transitional provisions (chapter 10) ensure that where a planning scheme was changed or amended prior to the commencement of the new legislation, the 2 year timeframe continues to apply. Also, if a person makes a request to a local government to apply a superseded planning scheme, the person then has a further 6 months to lodge a development application or request for compliance assessment.

Existing use rights

Like the current IPA, the Bill contains comprehensive arrangements for protecting existing development and use rights against the commencement of the Bill, and instruments made under it. For example, clause 681 ensures that if an existing use of premises was lawful prior to the commencement of this Bill as an Act, then the use will remain lawful. Clause 682 protects a lawful use of premises from anything in a planning instrument which may stop, change or further regulate the use if it was a lawful use immediately before the commencement of the planning instrument. Clause 685 protects existing implied rights to use premises where the use has not started immediately before the commencement of a new planning instrument.

The combined effect of these provisions is to ensure that the Bill does not adversely affect the existing rights and liberties of any person under the current IPA.

Changes to code assessment

The current IPA confers an apparent presumption in favour of approval for development applications requiring code assessment. Over time the effect of this presumption has been diminished, for example through the introduction of requirements to give weight to State planning policies and regional plans in code assessment, and the restriction on making decisions contrary to the State planning regulatory provisions.

The new assessment and decision rules in the Bill clarify and accurately reflect the current status by removing this apparent presumption in favour of approval. Instead, the Bill is based on the view that planning instruments such as codes should "speak for themselves" in the sense that they state how applications are to be assessed against the instrument, the weight to be given to the instrument and whether compliance with the instrument is mandatory. Furthermore, instead of a presumption in favour of approval, the Bill contains a presumption in favour of policy, in the sense that decisions may conflict with a planning instrument only in limited circumstances.

Prohibitions

As a result of extensive feedback during public consultation, the Bill makes limited provision for prohibition of certain development. The current IPA and other legislation, such as the *Vegetation Management Act 1999*, contain "prohibitions" in the sense that they prevent applications for certain types of development being made. Prohibitions which are currently set out in other legislation have been consolidated into schedule 1 of the Bill. In addition, State planning regulatory provisions can already state development that may not occur.

However, the Bill also includes the possibility of future prohibitions being included in planning schemes, temporary local planning instruments and structure plans, if the standard planning scheme provisions provide that the development can be prohibited. In this way, prohibitions will be limited and controlled by the State, consistent with maintaining the fundamental performance basis of the planning and development framework. Limited prohibitions reflect a balance between affecting the rights and liberties of individuals and protecting the community from undesirable impacts of development.

This consolidation of prohibitions in schedule 1 of the Bill is not a breach of fundamental legislative principles, since it involves simply grouping together existing provisions from disparate pieces of legislation, and putting them all in the one place for ease of reference. There has been no change to existing provisions.

The making of planning schemes and structure plans is subject to public consultation and so the public is given the right to make submissions about any proposed prohibitions. The standard planning scheme provisions are also subject to public consultation. If a planning scheme or a structure plan includes a prohibition, a person is given 1 year from the date of commencement of the relevant instrument within which they may ask the local government to apply the superseded planning scheme. If this request is refused, the person has a right to seek compensation. Temporary local planning instruments are not subject to public consultation, however they have effect for a maximum of 12 months, after which time a planning scheme amendment must be made. A declaration about the exercise of any of these powers to include a prohibition in a planning instrument can be sought in the Planning and Environment Court under clause 456 of the Bill.

Legal representation in the Building and Development Dispute Resolution Committee

Clause 560 prevents an agent representing a person before a Building and Development Dispute Resolution Committee from being a lawyer. This has been a long standing feature of the Building and Development Tribunal (now called the Building and Development Dispute Resolution Committee), and is generally acknowledged by users as contributing to this entity's efficiency in dealing with essentially technical matters.

Assessment against later planning instruments

The Bill allows for policy documents made after a development application is made but before it is determined to be given weight in development assessment by assessment managers, referral agencies and appeal bodies. This function is circumscribed by judicial authority, in particular to ensure instruments are not made with the express purpose of prejudicing assessment of development applications. The weight given to a particular policy instrument is proportionate to the stage of its development, and particularly community awareness.

Laws and policies can be implemented over time to reflect changing public attitudes. Clause 317 is designed to ensure that these new laws and policies can be considered in the assessment of development applications. This is

particularly important since time frames for consideration of an application may be extensive. This provision is an extension of the long-standing "non-derogation" doctrine applied by the courts to cases where new policies are being developed at the time a development application is being considered.

The Planning and Environment Court has kept a careful watch on matters where this provision has been used, and has ensured that it is applied fairly in circumstances where its application is warranted. In particular the Court will not allow an assessment manager to give weight to any code, law or policy that appears to have been developed specifically in response to the application itself.

The Bill does not provide for the retrospective application of new laws and policies. It simply allows these laws and policies to be considered and, if warranted, given appropriate weight.

Powers of entry, search and seizure

The only power of entry afforded in the Bill is for the purpose of implementing aspects of a development approval or compliance permit if a local government is satisfied the person with the benefit of the approval or permit has taken all reasonable steps to secure the agreement of another owner. For example, this allows a local government to enter property to carry out downstream drainage works necessary for implementing a development approval upstream of the premises. There have been instances in the past of owners unreasonably withholding access to land for these purposes, with the result that planning outcomes for the development of an area are compromised.

Clause 715 provides for the assessment manager or local government to enter land to undertake works if the assessment manager or local government is satisfied that the applicant has tried to obtain the agreement of the owner, but has been unsuccessful, and that this is necessary to implement the development approval or compliance permit. This power of entry provision does not allow for the seizure of documents or other property. The powers are in fact intended to avoid a circumstance where a local government would otherwise have to acquire the private property for the purpose of undertaking works to facilitate downstream drainage. This legislatively authorised interference with another person's property is complemented by a right of compensation under clause 716 which will operate to alleviate the effects of this power of entry. Clause 716 provides that any person who suffers a loss as a result of the assessment manager

entering land to undertake works, is entitled to be paid reasonable compensation.

The Bill contains no powers of search or seizure. Although the Bill provides for an integrated framework of offences and penalties, it specifically recognises that other legislation which provides the jurisdiction for entities to act within the integrated development assessment framework contains its own arrangements in this regard.

Onus of proof

Onus on applicants

The Bill provides that in an appeal involving a development application (whether by the applicant or submitters) it is the applicant who must prove their case. This has been a long-standing feature of Queensland planning legislation, as it affords the applicant the opportunity of establishing their case first in a proceeding. In most planning appeals, there is no particular disadvantage to an applicant in bearing the onus of proof. By allowing the applicant to state their case first, a context is established for the court's consideration of the matters in dispute, allowing the court to address the issues more expeditiously.

These provisions exist in the current IPA, and were strongly supported by environmental and community sector interests, and were not opposed by development and local government sectors.

This shifting of the onus of proof is considered to be consistent with fundamental legislative principles since it ensures that persons affected by a decision are not further disadvantaged in an appeal by having to establish their case. Similar provisions exist in the *Urban Land Development Authority Act 2007* (sections 42, 44, 45, 86, 90, 141).

Executive officers of corporations

Clause 611 deems that each of a corporation's executive officers commits an offence if the corporation commits an offence. The clause provides that the following is a defence to this offence: if the executive officer can prove that he was not in a position to influence the corporation's conduct, or exercised due diligence. This has the effect of reversing the onus of proof.

The reversal of the onus of proof is justified for the following reasons:

- the matter that is the subject of proof is peculiarly within the defendant's knowledge, and it would be very difficult or expensive for the State to attempt to prove this;

- the relevant fact is inherently impractical to test by alternative evidentiary means, and the defendant is particularly well-positioned to disprove guilt;
- this provision does not relieve the prosecution of proving the elements of the offence in every case. Rather, it attempts to mitigate the capacity of individuals to use corporate structures to avoid legal responsibility for their actions;
- this provision simply relieves the prosecution, (after having proved the elements of an offence), from having to further prove conspiracy among, or individual liability of, the company's officers;
- the available defence is broad and would not be difficult to establish in cases where it is appropriate.

Offences under the Bill can potentially have serious environmental repercussions (e.g. the release of pollutants or toxins contrary to the conditions of a development approval). Where corporations are involved in such offences, it is appropriate that there is effective accountability at a corporate level.

Further, the process of development of a particular site can involve many individuals acting in a representative or contractual capacity. It would not be appropriate to prosecute only the individual directly responsible for the offence, if that person was acting under instructions of another. The provision does not indicate that a person is presumed guilty – merely that certain events are evidence that the person has committed an offence. (Note: the provision does not state that this is conclusive evidence of the commission of an offence.)

The Bill also provides the standard defences for an officer of a corporation, namely: it is a defence for the officer to prove the officer exercised reasonable diligence, or that the officer was not in a position to influence the course of the conduct of the corporation in relation to the offence.

Acts or omissions of representatives

Clause 624 provides that, if a person's representative performs an act, then the person is deemed to have performed that act. The clause allows for the defence that the person was not in a position to prevent the act. This appears to reverse the onus of proof in criminal proceedings.

The reversal of the onus of proof is justified for the following reasons:

- the matter that is the subject of proof is peculiarly within the defendant's knowledge, and it would be very difficult or expensive for the State to prove this;
- the relevant fact is inherently impractical to test by alternative evidentiary means, and the defendant is particularly well-positioned to disprove guilt;
- this provision does not relieve the prosecution of proving the elements of the offence in every case;
- this provision simply relieves the prosecution, (after having proved the elements of an offence), from having to further prove conspiracy among or individual liability of each of the representatives;
- the available defence is broad and would not be difficult to establish in cases where it is appropriate.

Offences under the Bill can potentially have serious environmental repercussions (eg: the release of pollutants or toxins contrary to the conditions of a development approval). Where corporations are involved in such offences, it is appropriate that there is effective accountability at a corporate level. Further, the process of development of a particular site can involve many individuals acting in a representative or contractual capacity. It would not be appropriate to prosecute only the individual directly responsible for the offence, if that person was acting under instructions of another.

The provision does not indicate that a person is presumed guilty – merely that certain events are evidence that the person has committed an offence (note: the provision does not state that this is conclusive evidence of the commission of an offence).

The Bill also provides the standard defences of proving that the person exercised reasonable diligence, or was not in a position to influence the person's representative.

Retrospectivity

Under the transitional provisions of the Bill, a person who received an acknowledgement notice stating that they may carry out development under a superseded planning scheme, may apply to extend the timeframe within which the development may be carried out. Under the current IPA, there is no ability to extend this timeframe. Extending this ability to rights obtained under the current IPA enhances the rights available to persons, and is designed to enhance and clarify their rights by addressing

deficiencies in the existing provisions. As such, it does not adversely affect rights or liberties, nor does it impose obligations retrospectively. Curative retrospective legislation, without significant effects on the rights and liberties of individuals, is justified to correct unintended legislative consequences.

Immunity

The Bill affords no powers of immunity from prosecution other than those normally afforded to the State under legislation (see clause 14). This clause provides that the Act binds all persons, including the State of Queensland, the Commonwealth and all other States. However, clause 14(3) provides that the Act does not bind the functions and powers of the Coordinator-General under the *State Development and Public Works Organisation Act 1971*.

The Coordinator General's actions are regulated by the *State Development and Public Works Organisation Act 1971*. Clause 14 is not saying that the Coordinator-General is immune from the Bill; it is simply saying that the Bill does not bind his functions and powers. As such, the Bill does not confer immunity from proceeding or prosecution to any person.

Acquisition and compensation

The Bill includes provisions dealing with acquisition and/or compensation in 3 respects:

- Acquisition of designated land under hardship (chapter 5, part 6). These provisions allow for a person to seek early acquisition of designated land on the basis of hardship, such as a pressing need to sell the land for personal reasons. Compensation is calculated using the provisions of the *Acquisition of Land Act 1967.*

  The Bill ensures procedures for designating land for public purposes cannot blight the land indefinitely, provides statutory rights to request early acquisition of designated land on hardship grounds and requires land to be taken under the *Acquisition of Land Act 1967* within a reasonable time of its designation.

- Compensation for injurious affection (chapter 9, parts 3 and 4). These arrangements provide for compensation in circumstances where an owner's property values have been injuriously affected by the implementation of a planning scheme by a local government. The arrangements require an owner to first submit a request to carry out development or assess development under a superseded planning

scheme. Compensation is only claimable if the local government refuses the request. Clause 704 provides that reasonable compensation may be claimed for a reduction in the value of an interest in land if a change to a planning scheme or planning scheme policy reduces the value of an owner's interest in the land. Clause 711 establishes criteria for determining the reasonable amount of compensation payable.

An assessment manager may enter land to undertake works if he is satisfied that the applicant has tried to obtain the agreement of the owner, but has been unsuccessful, and that this is necessary to implement the development approval. Clause 716 provides that any person who suffers a loss as a result of the assessment manager exercising these powers of entry, is entitled to be paid reasonable compensation.

The current IPA has a limitation on the amount of compensation that can be awarded. The new Bill simply continues this limitation. Further, the Bill provides that any person who is dissatisfied with a decision relating to the payment of compensation, can appeal to the Planning and Environment Court against this decision.

- Acquisition of land or entry onto land for planning purposes, or to facilitate works (chapter 9, part 4). The Bill includes power of entry provisions, which do not allow for the seizure of documents or other property. The powers are in fact intended to avoid a circumstance where a local government would otherwise have to acquire the private property for the purpose of undertaking works to facilitate downstream drainage. This legislatively authorised interference with another person's property is complemented by a right of compensation under clause 716 which will operate to alleviate the effects of this power of entry. Clause 716 provides that any person who suffers a loss as a result of the assessment manager entering land to undertake works, is entitled to be paid reasonable compensation.

In all of the above cases, detailed provision is made for just compensation and for appeal rights for persons dissatisfied with the terms of compensation.

Aboriginal and islander custom

This Bill does not adversely impact upon Aboriginal or Islander custom. Special procedural arrangements are afforded for the assessment of development applications and applications for compliance permits or

certificates where these procedures conflict with notifying future acts under the Commonwealth *Native Title Act 1993.*

Clause 310 recognises and accommodates disparities between the IDAS process and processes for notifying native title parties under the Commonwealth *Native Title Act 1993* (NTA). The clause enables procedural rights to be provided to native title parties within the IDAS process by, in effect, "stopping the clock" of the particular IDAS stage until the procedural rights have been provided.

Most native title notifications under the NTA are likely to occur during the process of granting tenure or other access to a State resource, prior to any development application affecting the resource. As these processes may result in indigenous land use agreements which map out arrangements about the form and impacts of subsequent development, notification of the "future acts" of development assessment is likely to be unnecessary, and is hence unlikely to affect IDAS. However, because the NTA deals with notification for "future acts" which may affect native title interests other than on the premises proposed for development, they may not be preceded by a resource allocation process, and hence may affect the IDAS process.

Clause 89 states the three core matters for preparation of a planning scheme:

- land use and development;
- infrastructure;
- valuable features.

The phrase "valuable features" is defined to include areas of cultural heritage significance, including areas of indigenous cultural significance, to the present generation or past or future generations.

Delegation of legislative power and Parliamentary scrutiny

The Bill provides for Parliamentary scrutiny of key instruments made by the Minister with prohibitive effect. In particular, State planning regulatory provisions made in support of a regional plan are required to be tabled in Parliament and are subject to disallowance (clause 66).

The Bill provides extensively for certain matters to be prescribed under a regulation. These matters are administrative arrangements concerned with implementing IDAS, such as the identification of assessable development, assessment managers and referral agencies. Any amendments to the regulation, for example to expand the scope of assessable development,

will be subject to the normal requirements of the *Statutory Instruments Act 1992* for regulatory impact assessment and Parliamentary scrutiny and disallowance.

Some matters currently prescribed under a schedule to the current IPA are instead provided for under a regulation under this Bill. In particular the identification of assessable and self-assessable development, and the identification of assessment managers, currently contained in schedules 8 and 8A of the current IPA, are now provided for under a regulation. The inclusion of these arrangements in the current IPA reflected stakeholder uncertainty at the time about how the new planning and development assessment framework would work. They are nevertheless matters of a mechanical nature best located together with other mechanical aspects of IDAS under a regulation.

Clauses 232(1), (2) and (3), 299(4), 397(1), 415 and 730(3)(g) authorise the making of regulations about matters of significance. The operation of IDAS depends on the detail provided in the regulation. For example, for the compliance assessment, the regulation prescribes development, documents or works required to be assessed for compliance, and other details. These are not matters that would normally require the attention of Parliament, given the mechanism of disallowance is available. The extent of this delegation of legislative power is appropriate in the circumstances, and provides the level of detail necessary to ensure the provisions of the Bill are workable.

Any amendment to an Act of Parliament should be made by Parliament itself amending the Act, rather than by the Executive Government via subordinate legislation. However, a clause which may have this effect may be excusable in the following instances, where it is clear that the clause is designed to facilitate:

- immediate executive action;
- the effective application of innovative legislation;
- transitional arrangements;
- the application of national schemes of legislation.

The instances noted here (clauses 232(1), (2) and (3), 299(4), 397(1), 415 and 730(3)(g)) involve the facilitation of the effective application of innovative legislation, and therefore come within the guidelines previously outlined by the Committee.

The Bill (clause 871) provides a transitional regulation making power which expires 5 years after commencement. This is longer than the period usually provided for under legislation with transitional arrangements. This Bill substantially amends many aspects of the current IPA and complex transitional arrangements are required to protect rights acquired under the existing legislation. Problems in matters relating to development can take some time to become apparent. It is therefore necessary to provide an appropriate time frame for the expiry of any transitional regulation to ensure that individuals' rights are not prejudiced. This transitional provision is designed to preserve rights acquired under the current IPA in a post-IPA environment.

The extent of this delegation of legislative power is appropriate in the circumstances, and provides the level of detail necessary to ensure the provisions of the Bill are workable.

Amendment authorised only by Act

The Bill contains no arrangements authorising amendment by subordinate legislation or statutory instrument.

Consultation

Widespread community consultation, including local government, business and industry, was held across Queensland during the development of the reform agenda and there was widespread stakeholder support for the reform actions.

A series of stakeholder workshops was held involving representatives from State and local government and industry to discuss and develop key aspects of the legislation.

Consultation with key stakeholders continued throughout the development of the legislation through:

- regular meetings of the Planning Reform Reference Panel, consisting of local government, industry and community representatives;
- legal peer review workshop which consisted of solicitors and barristers from the Queensland Environmental Law Association and the Queensland Law Society; and
- professional planner peer review workshops attended by planning professionals from local government, private practice and industry.

Notes on Provisions

Chapter 1 Preliminary

This chapter:

- provides for the short title and commencement arrangements for the Bill;
- establishes the Bill's purpose and how the purpose may be advanced;
- defines the key terms of ***development***, ***ecological sustainability*** and ***lawful use***;
- provides supporting definitions for aspects of development;
- explains the concept of ecological sustainability;
- establishes particular rules of interpretation for the meaning of words in the Bill and instruments made under it;
- establishes the scope and application of the Bill.

Part 1 Introduction

Short title

Clause 1 provides for the short title of the Bill.

Commencement

Clause 2 states the Bill commences on a day to be fixed by proclamation.

Part 2 Purpose and advancing the purpose

Purpose of Act

Clause 3 states that the purpose of the Bill is to seek to achieve ecological sustainability in three ways:

- managing the process by which development takes place, including ensuring that the process is accountable, effective and efficient and delivers sustainable outcomes;
- managing the effects of development on the environment (including managing the use of premises); and
- continuing to coordinate and integrate planning at the local, regional and State levels.

Ecological sustainability is defined in clause 8.

Managing the process by which development occurs is a key aspect of the Bill. Chapter 6 establishes the integrated development assessment system (IDAS). IDAS is a single, integrated system for development assessment involving both local and State levels of government. Its purpose is to achieve decision-making which is efficient, accountable and coordinated, and which provides opportunities for community involvement. IDAS ensures the outcomes of integrated planning are achieved by testing proposed development against the policy benchmarks established in planning instruments.

IDAS also allows for the effects of development on the environment to be managed. This is achieved through ensuring proposed development conforms to appropriate standards of design, health, amenity and safety, and by managing the ongoing effects of development on the environment after development occurs. To achieve this, the Bill treats the ongoing use of premises (which is not in itself development), as an impact of development. This allows for the management of the ongoing use of premises through, for example, conditions of development approvals.

Clause 3(c) emphasises the coordination and integration of planning at the three levels at which it occurs in Queensland. Planning at the local and State levels are directly associated with the respective levels of government. Regional planning is primarily the responsibility of the State (clause 25 provides a regional plan is a State interest), however in practice,

regional planning is a cooperative activity between local and State governments, through regional planning committees.

Coordination of planning refers to the linking of planning activity within and between levels of government, and the linking of different aspects of planning such as natural resource planning, land use planning and infrastructure planning. The Bill facilitates coordination of planning by:

- providing for robust communication and consultation within and between levels of government as part of the processes it establishes for making planning instruments;
- establishing bodies such as regional planning committees to coordinate planning at a regional level; and
- establishing the scope of planning instruments in a way which requires or facilitates coordination of different aspects of planning.

Integration refers to the combination and rationalisation of planning outcomes, and their presentation in an integrated way. The Bill facilitates integrated planning by establishing a clear hierarchy of planning instruments which interact in such a way as to result in integrated planning outcomes. For example, some State planning instruments have effect in development assessment only until such time as their outcomes are integrated in planning schemes. The planning scheme remains the key document in the Bill for integrating State, regional and local planning outcomes and depicting them in a spatial way at a local level.

The Bill's theme of integration is further reflected in:

- integrated development assessment (chapter 6); and
- integrated dispute resolution and enforcement (chapter 7).

Advancing Act's purpose

Clause 4 requires entities to advance the Act's purpose in performing functions or exercising powers under the Bill. Such functions or powers include making planning instruments, designating land for community infrastructure, or acting as an assessment manager under IDAS.

However, if an entity other than a local government is acting as an assessment manager or referral agency, or if a local government is acting as a referral agency under devolved or delegated powers, the entity is required, not to advance the Bill's purpose but to have regard to it. This acknowledges these entities have jurisdictions under other legislation and

must advance the purposes of that legislation in exercising functions or powers under this Bill.

Example 1 - The Department of Environment and Resource Management (DERM) may be a concurrence agency under this Bill for development applications that involve taking or interfering with water under the Water Act 2000. In discharging this function under this Bill, DERM would be primarily advancing the purposes of the Water Act 2000 relating to sustainable management of the State's water resources. However in doing so, DERM would also be required to have regard to the purposes of this Bill relating to ecological sustainability through managing development and its effects.

Example 2 - Local governments exercise devolved responsibilities under the Environmental Protection Act 1994 for particular environmentally relevant activities under that Act. A local government may be the assessment manager for a development application for an industrial activity because development for that activity is assessable development under its planning scheme. The local government may also have jurisdiction as the administering authority under the Environmental Protection Act 1994 because that activity is a devolved environmentally relevant activity under that Act. In exercising its jurisdiction under the Environmental Protection Act 1994, the local government is advancing the purposes of that Act relating to minimising environmental harm through managing the release of contaminants such as air, noise and water pollutants, while also having regard to the purposes of this Bill. In exercising its assessment manager jurisdiction under this Bill, the local government is required to advance the purposes of this Bill relating to ecological sustainability. Discharging these functions in an integrated development assessment framework means the outcome can optimise achievement of the purposes of both pieces of legislation.

Clause 4 also states that the requirement to advance or have regard to the Act's purpose does not apply to code assessment or compliance assessment. This is because code assessment and compliance assessment are bounded and therefore inconsistent with the open, discretionary nature of assessment required by this clause. However, in preparing a code, or a standard for compliance assessment, an entity must advance the purpose of the Act in accordance with this clause.

What advancing Act's purpose includes

Clause 5 identifies seven ways that the purpose of the Bill may be advanced. Although not an exhaustive list, it indicates the breadth of relevant matters and serves as an illustrative guide to entities performing a function or exercising a power under the Bill. In advancing the Act's purpose, the matters specified in this clause are to be taken into account during the making of planning instruments and the assessment of development applications. It is necessary to deal with these matters in the making of planning instruments to provide a comprehensive framework for managing the effects of development. This is the most efficient and effective means to deal with the short and long-term cumulative effects of development, and provides an appropriate context within which development assessment can occur.

Part 3 Interpretation

Division 1 Dictionary

Definitions

Clause 6 states the dictionary defines particular words used in the Bill.

Division 2 Key definitions

Meaning of *development*

Clause 7 defines ***development*** by reference to five distinct actions.

Development is a broad concept covering a wide range of actions affecting the physical environment, including carrying out building work and making a material change in the use of land. Development is defined to be an action rather than the result of an action. For example, development is the carrying out of building work and the making of a material change of use rather than the results of those actions, which are a building and a use of premises.

Meaning of *ecological sustainability*

Clause 8 defines ***ecological sustainability*** as a balance that integrates three separate elements. This term has been defined for the purposes of this Bill, that is, with relevance to its planning and development assessment functions. It draws on the goal, core objectives and guiding principles of the national strategy for ecologically sustainable development endorsed by the Council of Australian Governments on 7 December 1992. Additionally, because this is planning legislation, the meaning of the term has been expanded to include planning concepts about amenity, including the social and physical wellbeing of people and communities.

Meaning of *lawful use*

Clause 9 defines ***lawful use*** and establishes its relationship to development and to development in accordance with the Act. This is an important issue to clarify as the Bill deals with the process of "development" (as defined), and also, as referred to in the purpose statement, the effects of development which include the use of premises.

Accordingly, the Bill establishes a framework for regulating a use (e.g. through the imposition of conditions on development approvals (for assessable development), and through the need to comply with codes dealing with use (for self-assessable development)). However, in many situations there will be no need to regulate the consequent use, whether or not the development (including a material change of use) requires a development permit. For example, it is likely once the building of a house is completed in accordance with a development permit, the consequent use of the house will not be further regulated by way of conditions on the development permit or a code. It should be noted that consequences of use which in themselves constitute "development", such as operational works for a forestry use, are regulated as development.

Division 3 Supporting definitions and explanations for key definitions

Definitions for terms used in *development*

Clause 10 defines the five aspects of development and other terms used in the definition of development. The five aspects are mutually exclusive – for example, an aspect of development cannot be both building work and

operational work. However, a particular project or proposal may involve two or more aspects of development.

Example - A proposal to develop a vacant lot for a dwelling house involves:

- *a material change of use (the start of a new use of premises);*
- *building work (the structural aspects of the dwelling);*
- *plumbing and drainage work (the plumbing and sanitary drains to and from the lot boundary); and*
- *operational work (driveways and landscaping).*

However not all of this development will necessarily be assessable, self-assessable, or require compliance assessment. Chapter 6, part 1 establishes which development requires a development approval or compliance permit.

Building work is development involving the building, repairing, altering, underpinning, moving or demolishing of buildings, and associated incidental earthworks. Building work includes excavation in connection with building work, or that may affect the stability of a building or other structure. However other excavation is operational work.

Items 2 and 3 define building work specifically for administering IDAS in relation to a Queensland heritage place under the *Queensland Heritage Act 1992*. This part of the definition includes matters which may not be building work for other purposes under the Bill (such as painting, or altering, repairing or moving historic artefacts), but which are defined as building work specifically for the purpose of applying IDAS to such activities.

Item 4 clarifies matters that are not covered by building work such as the building of a retaining wall in connection with reconfiguring a lot (a retaining wall in connection with other building work is building work). Amendments to the definition of *"building work"* in 2006 sought to distinguish the building of retaining walls in relation to other building work from the building of such walls for other purposes, in particular reconfiguration of a lot. The changes in this Bill are intended to further clarify this distinction.

A material change of use is development that involves:

- the start of a new use of premises;
- the re-establishment of a use that has been abandoned; or

- a material increase in the character, intensity or scale of the use of the premises.

A new use may start on premises when development occurs on vacant land, or when a new use starts that is not incidental to or necessarily associated with an existing use of premises.

Example - The extension of a service station to include motor vehicle repairs would be the start of a new use of the premises, as the repair function is not incidental to or necessarily associated with the service station function.

The test of whether a former use has been abandoned is intended to establish a "high bar", including evidence of an intention to abandon the use.

Example - A shop or factory which remains vacant for a lengthy period due to difficult market conditions has not been abandoned.

Whether a change in the character, intensity or scale of a use is "material" must be considered in the context of the use. Some uses involve regular or irregular change which is a normal feature of the use. This normal "ebb and flow" of use is not a material change of use.

Example 1 - The use of holiday accommodation may vary considerably according to seasons and holiday periods. Such variations which are normal and expected would not constitute a material change of use.

Example 2 – Extractive industries by their nature can involve significant fluctuations in activity according to demand for the quarry material. Normal fluctuations in response to market demand would not constitute a material change of use. A substantial and permanent increase in the scale of production (such as in response to a major and permanent new source of demand or planned expansion of market reach), may however constitute a material increase in intensity or scale.

Operational work is development, other than building, drainage or plumbing work, that materially affects premises or their use. This is a broad category of work which covers a range of development activities. Examples of operational work are given in the definition, and include extracting sand and gravel, earthworks for drainage purposes and constructing free-standing advertising signs. The key aspect determining the broad application of this definition is item 1(e) (undertaking work in, on, over or under premises that materially affects the premises or their use). This is a "catch all" aspect of the definition intended to imply the broadest

reasonable application of the term. The other aspects in item 1 of this definition are included to clarify either the application of the definition to particular activities (such as extractive activities or placing an advertising device), or the application of the definition to activities progressively made assessable under schedule 8 of the *Integrated Planning Act 1997* (current IPA) (such as carrying out tidal works or constructing waterway barrier works) as part of integrating those activities into IDAS.

Reconfiguring a lot is development that involves the subdivision, amalgamation or rearrangement of a lot, dividing land by agreement and the creation of an access easement.

Subsection (2) provides that for the definition of building work in subsection (1), item 1, paragraph (b), work includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure. This provision is intended to cover matters that are management procedures under the fire safety standard relating to a budget accommodation building.

Explanation of terms used in *ecological sustainability*

Clause 11 explains each of the three elements used in the definition of ecological sustainability. Ecological sustainability is defined in clause 8, and is a balance that integrates the protection of ecological processes, economic development, and the maintenance of the wellbeing of people and communities.

The protection of natural systems is achieved by protecting biological diversity and the life supporting capacities of ecosystems.

Economic development is achieved by creating diverse, efficient, resilient and strong economies to enable communities to meet their needs.

The cultural, economic, physical and social wellbeing of communities is achieved by creating well serviced and healthy communities, conserving or enhancing areas and places of built and cultural heritage, and providing public areas. It is also maintained by seeking to reduce adverse impacts on climate change, such as greenhouse gas emissions, through sustainable development.

An important principle integrated into these elements is intergenerational equity. The need to consider and provide for future generations is explicitly addressed. Intergenerational equity is also implicitly addressed by the need to protect, conserve or enhance over time the qualities which

constitute ecological sustainability. These requirements are consistent with the national strategy for ecologically sustainable development.

Division 4 General matters

Meaning of words in Act prevail over planning instruments

Clause 12 establishes the precedence of the meaning of a word in the Act over the meaning of the same word in a planning instrument where there is an inconsistency.

References in Act to particular terms

Clause 13 states how terms used in the Bill are to be interpreted. This clarifies their meaning in particular contexts and enables the use of less complex wording throughout the main text of the Bill.

Part 4 Application of Act

Act binds all persons

Clause 14 states that to the extent that it is able, this Bill binds all persons in Queensland and Australia.

This provision establishes that the Bill binds both State and local government. For example, IDAS is designed to create a single development assessment system that allows all existing development approval systems to be integrated (such as planning, building, environmental management, etc), and imposes duties and responsibilities on State and local government under that system (such as requirements for dealing with applications within time limits, etc). Consequently it is essential that the Bill binds these entities so that the processes, time limits and decision-making obligations are met.

Subclause (3) clarifies the relationship between the Bill and the *State Development and Public Works Organisation Act 1971*. One of the purposes of this subclause is to preserve the Coordinator-General's statutory immunity from the Bill's approval requirements when the Coordinator-General exercises the powers and performs the functions of

the Coordinator-General under the *State Development and Public Works Organisation Act 1971*. The subclause has the effect that the Coordinator-General is able to undertake development without having to obtain a development permit or compliance permit where the development is undertaken under a power or a function of the Coordinator-General under the *State Development and Public Works Organisation Act 1971*.

Chapter 2 State planning instruments

This chapter provides for the following instruments to be made by the State (State planning instruments):

- State planning regulatory provisions
- Regional plans
- State planning policies
- Standard planning scheme provisions.

State planning instruments are statutory instruments under the *Statutory Instruments Act 1992*. State planning instruments prevail over local planning instruments to the extent of any inconsistency.

Each State planning instrument plays a different role under the Bill, and is intended to serve a different purpose. For example, regional plans relate to specific regions and are intended as a high level integrated and spatial expression of State strategic policy in those regions, whereas State planning policies relate to specific State interests. It is intended that State planning instruments should inform each other. For example, in preparing a State planning policy, regard should be had to any State planning regulatory provisions and regional plans which are in effect. However, despite this, there may be situations where State planning instruments conflict. For the purposes of both planning and development assessment, the Bill therefore includes provisions to identify which instruments prevail in the case of conflict. The "hierarchy" of State planning instruments is reflected in the structure of chapter 2, in descending hierarchy.

Significant features of chapter 2

Chapter 2 contains the following significant features:

- introduces standard planning scheme provisions (SPSP's), as a new State planning instrument;
- provides for State planning policies and State planning regulatory provisions to be made by any Minister (jointly with the planning Minister);
- identifies and establishes a temporary State planning policy, as a State planning instrument that is made by the planning Minister (or jointly by an eligible Minister and the planning Minister) for a limited period of time (less than 12 months) and is not subject to public notification;
- introduces a single, streamlined and performance-based process for making all State planning instruments.

Standard planning scheme provisions

Part 5 of this chapter provides for the Minister to prepare and make standard planning scheme provisions to be progressively reflected in local government planning schemes as they are made under the Bill. This is a new type of State planning instrument which takes a prescriptive approach to facilitate consistency across schemes and greater certainty for users who interpret local planning schemes. The standard planning scheme provisions may contain both mandatory and non-mandatory components, such as a mandatory structure and format, standardised use and administrative definitions, a suite of standard zones, limited prescribed levels of assessment, a suite of standard overlays, standardised infrastructure planning provisions, and standardised codes. The standard planning scheme provisions can also be used to effectively integrate State interests.

The standard planning scheme provisions may also include provision for limited prohibitions. A local government may specify in its planning scheme that development is prohibited development, but only to the extent that the standard planning scheme provisions state that a planning scheme may do so. In general terms, development may be specified as prohibited development where it is clearly detrimental to the strategic objectives and where the impact of such development cannot be mitigated. The use of prohibitions will, however, remain limited to retain Queensland's performance-based planning system. This will continue to allow for innovation and improved technology to resolve potential impacts, whilst

providing more certainty of development outcomes. If a local government wishes to propose other limited prohibitions, the local government may approach the Minister and request that the standard planning scheme provisions be amended. This is not a formal process provided for in the Bill.

Joint making of State planning policies and State planning regulatory provisions

Under the current IPA, State planning policies may only be made by the Minister administering the Act, however in practice, other agencies have usually taken the lead in developing and implementing State planning policies. State planning regulatory provisions may be made by the planning Minister or the regional planning Minister for a matter relating to regional planning. Policy work leading to the introduction of this Bill found that this is one reason why State agencies have tended not to use State planning instruments as a planning tool, with only seven State planning policies being made since 1992. Instead, other State agencies have made other laws and policies which are able to be taken into account under the current IPA.

To ensure State agencies continue to administer policies relevant to their portfolios, the Bill provides for State planning policies and State planning regulatory provisions to be made by any Minister, subject to certain requirements. These requirements include, that any proposed State planning policy or State planning regulatory provision requires the joint endorsement of both the relevant Minister and the planning Minister. The endorsement of the planning Minister is necessary at two points in the process for plan making, namely prior to publicly notifying the proposed State planning policy or State planning regulatory provision, and prior to making the proposed State planning policy or State planning regulatory provision. The intention of this requirement is to provide for a collaborative and coordinated approach in developing State planning policies and State planning regulatory provisions.

Temporary State planning polices

A temporary State planning policy may only be made where there is an urgent need to protect or express a State interest, and may only have effect for one year or less. While the current IPA does provide for a State planning policy to be made in similar circumstances, this Bill strengthens the current mechanism by defining temporary State planning policies in

their own right and enabling these to suspend or to otherwise affect the operation of an existing State planning policy (see part 4, division 3).

Single process for making State planning instruments

The current IPA provides for three types of State planning instrument – State planning policies, regional plans and State planning regulatory provisions. The processes for making these instruments under the current IPA vary between prescriptive and more performance-based processes.

Chapter 2, part 6 of this Bill establishes a single process for the making of all State planning instruments. In keeping with the performance-based approach, the process for preparing State planning instruments under this Bill seeks to limit the statutory process for the making of these instruments to expressions of key performance outcomes including:

- minimum guaranteed public notification periods and consultation requirements;
- public access to proposed State planning instruments; and
- arrangements for considering and reporting on submissions.

Role of State planning instruments in planning and development assessment

State planning regulatory provisions

Because these instruments have a regulatory or prohibitive effect, to the extent that there is any inconsistency between a State planning regulatory provision and any other planning instrument made under the Bill, the Bill provides that the State planning regulatory provision prevails to the extent of the inconsistency (clause 19).

While there is no requirement to include the State planning regulatory provisions in other planning instruments, regard should be had to the State planning regulatory provisions in preparing any local or State planning instrument. It is anticipated that State planning regulatory provisions will generally be made to support a regional plan or master plan or to provide for infrastructure charges. They may also be used where it is necessary to protect planning scheme areas from adverse impacts, for instance, where there is an urgent need to protect an area from serious environmental harm (see clause 20(2) to (3)).

Regional plans

State planning policies and regional plans will inform each other during the preparation of planning instruments. For example, a new State planning policy about a particular issue should be made in consideration of the treatment of that issue in any relevant regional plan, and vice versa. If a new State planning policy reflects a deliberative intent to change a previous policy approach reflected in one or more regional plans, amendments to the regional plans should be considered to coincide with the introduction of the State planning policy.

For development assessment, regional plans prevail over State planning policies and all local planning instruments to the extent of any inconsistency (see clause 26). To the extent that a regional plan is reflected in a planning scheme or a structure plan (in the case of an application for approval of a master plan or an application in a master planned area), the regional plan does not apply in assessing and deciding the application (see clauses 173, 180, 313, 314 and 316).

State planning policies

Under this Bill, State planning policies prevail over local planning instruments to the extent of any inconsistency. For planning instrument preparation, when a local planning instrument is prepared, regard must be had to a State planning policy unless it is reflected in a regional plan.

To the extent that a State planning policy is reflected in a planning scheme, a structure plan (in the case of an application for approval of a master plan or an application in a master planned area) or a regional plan, the State planning policy does not apply in assessing and deciding the application (see clauses 173, 180, 313, 314 and 316).

Standard planning scheme provisions

The Bill provides that a local planning instrument (except an amendment to an existing local planning instrument made under the current IPA) may only be made if the planning Minister is satisfied that the local planning instrument is consistent with the standard planning scheme provisions. To the extent a local planning instrument is inconsistent with the standard planning scheme provisions, the local planning instrument will have no effect and the standard planning scheme provisions will be deemed to apply in its place. Structure plans and master plans made under this Bill must also be consistent with the standard planning scheme provisions.

Under this Bill, the Minister has powers to direct the local government to amend a local planning instrument to reflect the standard planning scheme provisions. The process for making this direction and consequences of failing to comply are the same as those that currently apply under the Minister's direction powers in the current IPA. In addition to these powers of direction, this Bill also includes provisions to enable the Minister to directly alter one or more schemes to reflect the standard planning scheme provisions or to urgently reflect a State interest. For example, if a change is made to a definition in the standard planning scheme provisions, the Minister may amend all of the planning schemes which have adopted the standard planning scheme provisions at one time. This is a more efficient process than requiring the local governments to make the changes.

Part 1 Preliminary

What are State planning instruments

Clause 15 lists four types of State planning instruments:

- a State planning regulatory provision;
- a regional plan;
- a State planning policy; and
- the standard planning scheme provisions.

As noted above, under this Bill, State planning instruments are statutory instruments prepared by the State and are made by the process set out in part 6.

Part 2 State planning regulatory provisions

Division 1 Preliminary

What is a *State planning regulatory provision*

Clause 16 provides that a State planning regulatory provision is an instrument made under division 2 and part 6 for an area to advance the purpose of the Act. This clause goes on to state the ways this instrument may be used – to provide regulatory support for regional planning or master planning; to provide for charges for infrastructure; or to protect planning scheme areas from adverse impacts. This clause relates directly to the power of the Minister to make a State planning regulatory provision in clause 20, and is to be read in conjunction with clause 20.

Any existing State planning regulatory provisions (made under the current IPA) will continue in force (see chapter 10).

Status of State planning regulatory provision

Clause 17 states that a State planning regulatory provision is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law. A State planning regulatory provision is not subordinate legislation.

State interest

Clause 18 states that a State planning regulatory provision is taken to be a State interest for the purposes of this Act.

Relationship with other instruments

Clause 19 provides for the relationship between State planning regulatory provisions and other instruments, including instruments made under another Act.

Subclause (1) states that to the extent of any inconsistency between a State planning regulatory provision and any other planning instrument, or a plan, policy or code under another Act, the State planning regulatory provision prevails.

Subclause (2) allows for a State planning regulatory provision to suspend or otherwise affect the operation of another planning instrument, but not to amend the instrument. This is similar to a temporary local planning instrument, which may suspend or otherwise affect a local planning instrument. Not all State planning regulatory provisions will have this effect. The instrument itself will indicate the effect it is intended to have with respect to other planning instruments.

Division 2 General matters about State planning regulatory provisions

Power to make State planning regulatory provision

Clause 20 provides the power for the Minister to make a State planning regulatory provision. For the purposes of subclauses (1) and (2), ***Minister*** means the Minister administering this Act and, in a designated region, the regional planning Minister for the region.

Subclause (3) sets out the circumstances in which a State planning regulatory provision may be jointly made by the Minister administering this Act and another Minister (an eligible Minister). A State planning regulatory provision may be made for the State or a part of the State.

This clause also sets out that a State planning regulatory provision may be made about a range of matters relating to regional planning and structure planning. The Minister (or the Minister jointly with an eligible Minister) may also make a State planning regulatory provision for other areas and situations subject to the Minister administering this Act being satisfied of an adverse risk test.

Content of State planning regulatory provision

Clause 21 sets out the content of a State planning regulatory provision. A State planning regulatory provision may:

- specify categories of development, including prohibited development;
- require code assessment or impact assessment or both;
- include a code for IDAS, or other development assessment criteria;
- otherwise regulate development by, for example, stating that development may not occur until a master planning exercise has been carried out;
- provide for matters mentioned in clause 20.

The current IPA effectively already includes prohibitions, but the Bill specifically includes prohibitions as a category of development. The inclusion of a specific reference to prohibited development in this clause recognises the introduction of prohibitions as a category of development.

Part 3 Regional plans

Division 1 Preliminary

What is a *designated region*

Clause 22 defines a designated region.

Division 2 Regional plans for designated regions

Subdivision 1 Preliminary

What is a *regional plan*

Clause 23 defines a regional plan for a designated region as an instrument made under subdivision 2 and part 6 by the regional planning Minister for the region and that advances the purpose of the Act by providing an integrated planning policy for the region.

Regional plans made under the current IPA will continue in force when this Bill commences (see chapter 10).

Status of regional plan

Clause 24 states a regional plan for a designated region is an instrument under the *Statutory Instruments Act 1992* that has the force of law.

State interest

Clause 25 states that a regional plan is a State interest for this Bill.

Relationship with other instruments

Clause 26 sets out the effect of regional plans in planning and development assessment, and their relationships with other planning instruments, and instruments made under another Act. It provides for regional plans to prevail to the extent of any inconsistency with another instrument other than State planning regulatory provisions.

Subdivision 2 Requirement to make, and key elements of, regional plans

Requirement to make regional plan

Clause 27 provides that the regional planning Minister for a designated region must, under part 6, make a regional plan for the region.

Key elements of regional plan

Clause 28 sets out the key elements of the regional plan.

Subdivision 3 Requirement to amend planning schemes to reflect regional plans

Amending planning schemes to reflect regional plan

Clause 29 states that a local government within the designated region must amend its planning scheme to reflect the regional plan for the designated region, unless the regional planning Minister gives the local government a written direction to the contrary. Subclause (2) states the local government must amend its planning scheme in accordance with the process set out in the guideline made under clause 117(1). This clause 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.

Division 3 Regional planning committees

What are regions

Clause 30 states that there are no fixed geographical areas of the State constituting regions, other than a designated region (see clause 22). Regions will vary according to the issues to be dealt with and the area required to coordinate planning for that issue. A region may be the combined area of all or parts of two or more local government areas and may also include an area not in a local government area.

Establishment of regional planning committee

Clause 31 provides for the establishment of regional planning committees for designated regions and regions that are not designated regions.

Subclause (1) provides that the Minister may create as many regional planning committees as the Minister considers appropriate. These committees may be established by creating a new group or recognising an existing group. Accordingly, there is considerable flexibility in allowing committees to be "purpose-built" to meet the requirements of specific regional issues, or for advantage to be taken, where appropriate, of any existing regional structures.

Subclause (2) requires the regional planning Minister for a designated region to establish a regional planning committee for the region.

Subclauses (3) and (4) provide that existing regional planning committees for a region that is not a designated region are taken to be regional planning committees for the designated region if they cover the same or substantially the same area as the designated region.

Subclause (5) specifies what the Minister must do before establishing a regional planning committee for a region that is not a designated region:

- prepare draft terms of reference;
- identify the proposed region and local governments likely to be affected; and
- consult with the local governments and relevant interest groups on the draft terms of reference, the membership of the committee, and the extent of local, State and Commonwealth government participation in, and support for, the committee.

Explicit determination of these matters will ensure that the functions and outcomes of a regional planning committee are focused on the regional issue in question, and all participants are aware of and accept their respective responsibilities. It is possible that an entity represented on more than one committee may participate to a different extent on each and offer varying support.

Subclause (6) requires the Minister to state the following for a committee for a region that is not a designated region:

- the committee's name;
- the membership of the committee;

- the area covered by the region; and
- the terms of reference.

Functions of regional planning committee

Clause 32 states that the function of a designated region's regional planning committee is to advise the regional planning Minister about the development and implementation of the regional plan for the designated region. The function of a regional planning committee for a region that is not a designated region will be specified in the terms of reference.

Membership of regional planning committee

Clause 33 provides for the membership of a regional planning committee.

In the case of a regional planning committee for a designated region, the membership is determined by the regional planning Minister and specified in a gazette notice.

Subclause (2) limits the nature and qualifications of a committee member. However, subclause (3) provides these limitations do not apply in the case of a regional planning committee for a non-designated region taken to be a regional planning committee for a designated region, once that region is designated.

Subclause (4) and (5) relate to regional planning committees for regions that are not designated regions. The membership of a regional planning committee for a non-designated region is flexible, and may be identified in general or specific terms. For example, the Minister may refer to an individual or to an organisation, or to the relative proportions of representation rather than specific numbers. However, it is stated that membership must include representatives from local governments. This last point affirms the importance of local government in regional planning. This is also evident in clause 31(5) which requires the Minister to consult with affected local governments before a committee is established. However, a local government may choose not to be represented on the committee.

Changing particular committee

Clause 34 applies to a regional planning committee, other than a committee for a designated region. This clause states that after consulting with the committee and any other entities the Minister considers appropriate, the Minister may change any aspect of a committee – its name, the region, the terms of reference and membership are given as examples.

This clause ensures that committees can be tailored to meet the particular requirements of specific regional issues. It may be that over time these requirements change and aspects of the committee will need to change accordingly. This clause also recognises the importance of consultation before making any such significant changes to a committee.

Dissolution of regional planning committee

Clause 35 allows the Minister to dissolve a regional planning committee for a non-designated region at any time. A regional planning committee for a designated region can be dissolved by the regional planning Minister at any time.

Quorum

Clause 36 provides for the quorum of a regional planning committee.

Presiding at meetings

Clause 37 provides for the regional planning Minister, or in the absence of the regional planning Minister, a member nominated by the regional planning Minister, to preside at all meetings of a regional planning committee for a designated region.

Conduct of meetings

Clause 38 establishes the way in which meetings of a regional planning committee for a designated region must be conducted.

Reports of particular committee

Clause 39 states that a regional planning committee for a region that is not a designated region must report its findings under its terms of reference to the Minister and the local governments of its region. This ensures that the committee's findings may be considered as part of the planning framework applicable to an area. It allows local governments to incorporate recommendations in their local planning instruments so that they may influence development assessment in the local government's area. It also allows the State to incorporate any recommendations into its own policy framework.

It needs to be emphasised that the reports of a committee are non-statutory and do not have effect merely because they have resulted from a regional process. It is envisaged that agreed outcomes from a regional process will be picked up and incorporated into planning schemes by local governments through the normal amendment and review process. Equally, it is envisaged that the State will incorporate relevant agreed outcomes into its own State

planning instruments. Depending on the terms of reference or perhaps assignment of new terms of reference, the committee may continue or disband following completion of its report.

Part 4 State planning policies

Division 1 Preliminary

As noted in the introductory notes, this Bill provides the power for State planning policies to be made by the Minister, or by another Minister with the Minister's endorsement (refer to expanded definition of Minister and new term 'eligible Minister' in the dictionary).

What is a *State planning policy*

Clause 40 defines a State planning policy. Paragraph (a) states a State planning policy may be made in one of two ways:

- as a temporary State planning policy under clause 47; or
- in the same way as for other State planning instruments under part 6 of this chapter.

Under the current IPA it has been possible to make a State planning policy without first publicly consulting, if the policy has effect for no more than a year. The reform agenda included a proposal to make temporary State planning policies more 'visible' by recognising them as a specific defined instrument. This is reflected in clauses 46 to 49, which allow for the making of a temporary State planning policy, and provide for its effect and duration.

Clause 40 also states a State planning policy advances the purposes of the Act by stating the State's policy about a matter of State interest.

Status of State planning policy

Clause 41 states a State planning policy is a statutory instrument and has the force of law.

Area to which State planning policy applies

Clause 42 states a State planning policy has effect throughout the State unless the policy states otherwise.

Relationship with local planning instruments

Clause 43 establishes the effect of State planning policies within the hierarchy of planning instruments, and states a State planning policy prevails over a local planning instrument to the extent of any inconsistency with the local planning instrument.

Clauses 19 and 26 establish the hierarchical relationships between State planning policies and State planning regulatory provisions and regional plans. State planning regulatory provisions and regional plans prevail over State planning policies to the extent of any inconsistency.

Division 2 General matters about State planning policies

Power to make State planning policy—generally

Clause 44 provides the power for the Minister to make a State planning policy under part 6. Subclause (2) provides that the Minister and an eligible Minister may jointly make a State planning policy under part 6 if the State interest addressed by the policy is a matter administered by the eligible Minister.

Duration of State planning policy made under pt 6

Clause 45 provides that a State planning policy made under part 6 ceases to have effect on the day the State planning policy is repealed or, if it is not repealed, 10 years after the day the State planning policy had effect. This 10 year period aligns State planning policies with general legislative standards about an appropriate "life" for a statutory instrument. It is intended that a review of the relevant State planning policy be commenced 8 years after the day the State planning policy had effect.

Under subclauses (2) and (3), the life of a State planning policy may be extended by a regulation, to a maximum period of 12 years after the day the State planning policy had effect. This provision is intended to ensure that the life of a State planning policy can be extended if, due to unforseen and exceptional circumstances (such as a machinery of government change

which occurs when the State planning policy is 9 years old), it is not possible to make a new State planning policy to replace the existing policy prior to its expiry date.

It should be noted that a temporary State planning policy has effect for only 12 months, or less (see clause 49).

Division 3 Temporary State planning policies

This Bill provides for a temporary State planning policy to have effect for one year or less, where there is an urgent need to protect or give effect to a State interest. The consultation phase that normally applies to making a State planning instrument does not apply to the preparation of a temporary State planning policy.

The current IPA provides for the Minister to make a State planning policy on an interim basis with effect for one year or less, without having to first publicly notify the draft policy (see current IPA, schedule 4, section 6). This is similar to a temporary local planning policy, but is less "visible" as the current IPA does not actually characterise it as a temporary State planning policy, and there is no separate process for making it. Division 3 of this part better identifies and strengthens this mechanism by providing for the temporary State planning policy to have effect in its own right.

Power to make temporary State planning policy

Clause 46 provides that a temporary State planning policy may be made if the Minister considers the policy is urgently required to protect or give effect to a State interest. A temporary State planning policy may be made by the Minister, or jointly by the Minister and an eligible Minister. The process in chapter 2, part 6 for making a State planning instrument does not apply to a temporary State planning policy. However, chapter 2, part 6, divisions 4 and 5 about when a State planning instrument takes effect and the process for repealing a State planning instrument, continue to apply.

Making temporary State planning policy

Clause 47 sets out the process for the Minister to make, or the Minister and an eligible Minister to jointly make, a temporary State planning policy. The proposed policy must be notified by publication in the gazette and a newspaper circulating generally in the State or the part of the State to which the policy is to apply.

Subclause (2) provides that where the temporary State planning policy is jointly made, the policy is validly made if the eligible Minister complies with subsection (1) and the policy is endorsed by both Ministers prior to the policy being notified.

Effect of temporary State planning policy

Clause 48 provides that a temporary State planning policy may suspend or otherwise affect the operation of a State planning policy, but does not amend the State planning policy.

Duration of temporary State planning policy

Clause 49 provides that the temporary State planning policy has effect for the period stated in the policy, of not more than one year.

Part 5 Standard planning scheme provisions

The Bill gives the Minister a new power to make standard planning scheme provisions.

Standard planning scheme provisions are a statutory instrument and have the force of law. They will be progressively reflected in local government planning schemes as new schemes are made under the Bill. Local governments must amend planning schemes made under the Bill to reflect standard planning scheme provisions, however existing IPA planning schemes are not required to be consistent with the standard planning scheme provisions.

Standard planning scheme provisions prevail over local planning instruments, to the extent of any inconsistency. The standard planning scheme provisions do not regulate or affect development in their own right. Standard planning scheme provisions only have effect once they are incorporated into a local planning instrument. However, if a local planning instrument is inconsistent with the standard planning scheme provisions, the standard planning scheme provisions take effect in place of the local planning instrument to the extent of the inconsistency.

Standard planning scheme provisions will contain both mandatory and non-mandatory parts, and will provide for mandatory structure and format,

standard use and administrative definitions, a suite of standard zones and codes, limited prescribed levels of assessment and a suite of standard overlays.

This change is intended to overcome the complexity, uncertainty and inconsistency associated with many local planning schemes. There has been an identified scope for greater standardisation of key elements of planning schemes across the State. In a submission to the Productivity Commission in 2003, the Local Government Association of Queensland (LGAQ) estimated $25 million had been spent on planning scheme preparation. The process of ensuring each local government has an IPA compliant planning scheme has been extremely slow and in June 2007 (prior to the release of the reform agenda), there were still four outstanding IPA compliant planning schemes in the State. The process of preparing planning schemes has been too complex and time consuming.

Currently, local governments expend substantial resources on matters such as the format, structure and definitions for their planning schemes, rather than focusing on strategic analysis and planning outcomes. The current approach also results in inconsistency across planning schemes and complicates their interpretation.

Also, State interests are not always consistently reflected in planning schemes and standard planning scheme provisions will assist in improving consistency in this regard. It is anticipated that State agency reviews will become simpler and faster with the introduction of standard planning scheme provisions. Issues such as formatting and workability will be less complicated and more consistent.

Currently, if the Minister wishes to affect the operation of a local planning instrument to reflect a State interest urgently, the Minister must seek the local government's representations before directing the local government to make a temporary local planning instrument. This can cause delay and frustrate the urgent protection of State interests. The standard planning scheme provisions will give the Minister the power to affect the operation of a local planning instrument more quickly and directly.

Division 1 Preliminary

What are *standard planning scheme provisions*

Clause 50 defines the standard planning scheme provisions as the provisions made under division 2 and part 6 by the Minister (under this part, the Minister that administers this Act) that advance the purpose of the Act by providing for a consistent structure for planning schemes and standard provisions for implementing integrated planning at the local level. Local governments must adopt the mandatory components in their planning schemes and ensure that their scheme appropriately reflects the standard planning scheme provisions. Under chapter 3, part 6, the Minister has powers to direct a local government to amend its planning scheme or directly amend one or more local planning instruments to ensure the scheme adequately reflects the standard planning scheme provisions. The standard planning scheme provisions may include the following elements, which may be mandatory or optional:

- standard planning scheme composition and structure (incorporating the integration of strategic elements, local plans and State interests);
- standard use and administrative definitions;
- a suite of standard zones;
- a suite of standard overlays;
- limited prescribed levels of assessment, including prohibition;
- standard codes for a limited range of uses;
- standardised infrastructure planning provisions;
- mandatory and optional provisions to incorporate local content and variation.

Status of standard planning scheme provisions

Clause 51 states that the instrument containing the standard planning scheme provisions is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law.

Effect of standard planning scheme provisions

Clause 52 states that the standard planning scheme provisions do not regulate or affect development in their own right. Standard planning scheme provisions only have effect once they are incorporated into a local planning instrument. However, clause 53 gives standard planning scheme provisions limited effect in specific circumstances.

Relationship with local planning instruments

Clause 53 provides for circumstances where a local planning instrument is inconsistent with the standard planning scheme provisions. The standard planning scheme provisions will prevail to the extent of the inconsistency and take effect in place of the local planning instrument, but only to the extent of the inconsistency. For example, a planning scheme may include a definition of gross floor area that is inconsistent with the definition of gross floor area contained in the standard planning scheme provisions. In this situation, the planning scheme would be read as if the definition of gross floor area in the standard planning scheme provisions applied, instead of the definition in the planning scheme.

Where there is an inconsistency with the local planning instrument, the standard planning scheme provisions will also only apply to the extent the local planning instrument applied to the planning scheme area. This provision is intended to ensure that the standard planning scheme provisions do not apply to areas that the planning scheme could not apply to, such as strategic port land under the *Transport Infrastructure Act 1994* or airport land under the *Airport Assets (Restructuring and Disposal) Act 2008*.

This clause does not apply to a local planning instrument made under the current IPA (see chapter 10).

Division 2 General matters about standard planning scheme provisions

Power to make standard planning scheme provisions

Clause 54 gives the Minister the power to make standard planning scheme provisions.

Local governments to amend planning schemes to reflect standard planning scheme provisions

Clause 55, subclause (1) states that a local government must ensure each of its local planning instruments is consistent with the standard planning scheme provisions.

Subclause (2) specifies the process a local government must follow to ensure any amendments to the standard planning scheme provisions are reflected in its planning scheme.

Subclause (3) provides the power for the Minister to make the necessary amendments to a planning scheme if the action is not taken by the local government.

Subclause (7) provides that the requirement in subclause (2) does not apply if the Minister amends the local government's planning scheme under clause 129.

Again, this clause does not apply to a local planning instrument made under the current IPA (see chapter 10).

Part 6 Making, amending and repealing State planning instruments

Under the current IPA, the processes for making State planning instruments (State planning policies, regional plans and State planning regulatory provisions) vary between prescriptive and more performance-based processes. As noted above, this Bill introduces the standard planning scheme provisions as an additional State planning instrument and includes a single, streamlined and performance-based process for making, amending and repealing all State planning instruments.

The process for making a State planning instrument may be summarised as follows:

- preparation of a draft State planning instrument;
- notification and public consultation by the Minister who prepared the draft State planning instrument (unless the draft State planning instrument is a temporary State planning policy, or a minor or administrative amendment of a State planning instrument);
- consideration of submissions;
- possible preparation of a modified instrument in response to submissions;
- adoption of the State planning instrument, or decision not to proceed;

- notification of the adoption or decision not to proceed;
- copies of State planning instrument to be given to the relevant local governments;
- particular State planning regulatory provisions to be tabled in the legislative assembly.

The process for amending State planning instruments is similar to the process above, however the consultation period is reduced in some cases. If the amendment is a minor or administrative amendment, a shortened process applies.

This change creates a streamlined process for making, amending and repealing all State planning instruments. Under the current IPA, the process for making State planning instruments vary between prescriptive and more performance-based processes. The performance-based process leaves more potential for innovative approaches to community engagement. It is also simpler, because now there is just one process instead of three.

As stated above, the process also now enables Ministers other than the planning Minister and the regional planning Minister to make State planning policies and State planning regulatory provisions. However, the eligible Minister must have the planning Minister's endorsement prior to public notification of the draft instrument and prior to making the draft instrument.

The process for repealing and replacing State planning instruments may be summarised as follows:

- A decision is made by the Minister to repeal a State planning instrument, other than a regional plan. If the State planning instrument was made jointly by two Ministers, the decision to repeal the instrument must be jointly made by both Ministers.
- Notification of the repeal in the gazette and a newspaper.
- Copies of the notice of repeal must be given to the relevant local governments.

Division 1 Preliminary

Process for making, amending or repealing State planning instrument

Clause 56 states the process that must be followed for making, amending or repealing a State planning instrument. Subclauses (2) and (3) provide for a regulation to specify additional requirements that must also be complied with.

Compliance with divs 2 and 3

Clause 57 states that a State planning instrument made or amended in substantial compliance with the process in divisions 2 and 3 is valid, provided any non-compliance has not adversely affected public awareness or the opportunity of the public to make submissions.

Division 2 Process for making State planning instruments

Division 2 sets out the process that must be used for making a State planning instrument.

Preparation of draft instrument

Clause 58 states the requirement for the Minister to prepare a draft proposed instrument.

Subclause (2) specifies a further requirement for the regional planning Minister to consult with the region's regional planning committee about preparing a draft regional plan.

Subclause (3) makes it clear that an eligible Minister is responsible for preparing the draft instrument where the State instrument is proposed to be made jointly by more than one Minister (this relates to the making of State planning policies or specific State planning regulatory provisions).

Endorsing particular draft instrument

Clause 59 provides that if a draft State planning policy or State planning regulatory provision is prepared by an eligible Minister, the Minister and the eligible Minister must endorse the instrument before the eligible Minister carries out notification of the draft instrument under clause 60.

Notice about draft instrument

Clause 60 requires the Minister who prepared the draft State planning instrument to publish a notice in relation to the draft instrument in the gazette and in a newspaper circulating generally in the State (if the draft

instrument is to have effect throughout or is made for the whole of the State) or part of the State (if the draft instrument is to have effect only in part of the State).

Subclause (2) sets out the details that must be included in the notice. This sets the standard requirements for public notification for the purpose of consultation on the draft instrument. The term ***available for inspection and purchase*** is defined in clause 723.

Subclause (3) specifies the consultation period.

Subclause (4) provides that the Minister who prepares the draft State planning instrument must give copies of the notice and the draft to certain persons or entities. This depends on the type of State planning instrument being proposed. If draft standard planning scheme provisions are proposed, a copy of the draft provisions must be provided to all local governments. For any other draft State planning instrument, the Minister must provide a copy of the draft to each local government whose local government area includes part of the State in which the draft instrument is to have effect. If another person or entity is prescribed under a regulation, the Minister must also provide a copy of the instrument to that person or entity.

Keeping draft instrument available for inspection and purchase

Clause 61 requires the Minister who prepared the State planning instrument to maintain public access to the draft State planning instrument during the consultation period, for the purposes of inspection and purchase.

Dealing with draft State planning regulatory provision

Clause 62 relates to the making of draft State planning regulatory provisions and provides that the Minister who prepared a draft provision may, during the consultation period, amend, replace or remove the draft provision. However if the draft provision is prepared by an eligible Minister, any amendment or replacement must be endorsed by both the eligible Minister and the Minister.

Making State planning instruments

Clause 63 requires the Minister who prepared the draft instrument to consider every properly made submission and, if the instrument is a proposed regional plan for a designated region, to consult with the designated region's regional planning committee about the making of the regional plan.

Provided subclause (1) is complied with, the Minister may then:

- make the State planning instrument; or
- make the instrument with any amendments the Minister considers appropriate; or
- for a State planning instrument other than a regional plan, decide not to make the State planning instrument.

Subclause (3) sets out the responsibilities for each Minister under subclause (2) where a State planning instrument is prepared by an eligible Minister. The eligible Minister and the planning Minister must jointly make the instrument as provided for in subclause (2)(a) and (b) or jointly decide not to make the instrument.

Subclause (4) clarifies when a State planning instrument is taken to be jointly made – namely, when the instrument is endorsed by both Ministers.

Notice about making State planning instrument

Clause 64 requires the Minister who prepared the draft State planning instrument to publish a notice about its making in the gazette and in a newspaper circulating generally in the State (if the instrument has effect throughout the State or is made for the whole of the State) or in a newspaper circulating generally in a part of the State (if the instrument is to have effect only in that part).

Subclause (2) sets out the requirements for the notice.

Subclause (3) requires the Minister who prepared the draft State planning instrument to give a copy to each local government (in the case of the standard planning scheme provisions) or each local government whose local government area includes a part of the State in which the instrument has effect (in the case of all other State planning instruments).

Notice about decision not to make State planning instrument

Clause 65 requires the Minister who prepared a State planning instrument to publish a notice in the gazette about any decision not to make the instrument.

Particular State planning regulatory provisions to be ratified by Parliament

Clause 66 provides for State planning regulatory provisions relating to regional plans to be tabled and ratified by Parliament. This clause provides for the Minister who made the State planning regulatory provision to table

a copy of the provision in the Legislative Assembly within 14 sitting days after it is made.

Subclause (3) provides that if the provision is not ratified by Parliament within 14 sitting days after the copy is tabled, the provision ceases to have effect.

State planning regulatory provisions that are subject to disallowance

Clause 67 provides for State planning regulatory provisions not related to regional plans to be subject to disallowance as if they were subordinate legislation.

Division 3 Amending State planning instruments

Subdivision 1 Administrative and minor amendments, and particular amendments to reflect documents

This Bill includes a simple process for making less significant amendments of a State planning instrument. These may include administrative amendments (for example, correcting spelling errors or to change the format of the instrument), or in cases where the instrument is amended to reflect another State planning instrument and the Minister or the regional planning Minister (for an amendment to a regional plan or a State planning regulatory provision made by the regional planning Minister) is satisfied the subject of the proposed amendment has undergone adequate consultation.

Amendments which constitute minor amendments under the current IPA would now fall within the definition of ***administrative amendment*** in schedule 3 (Dictionary). The term ***administrative amendment*** better reflects the nature of these amendments. The definition is similar to the definition of ***minor amendment*** in the current IPA, but contains additional items for making corrections and changes to the instrument (i.e. spelling errors, inconsistent numbering of provisions and incorrect cross-references).

The Bill also contains a new category of minor amendments (see the definition of ***minor amendment*** in schedule 3), which includes

amendments made to a State planning instrument to reflect another State planning instrument if the Minister is satisfied there has already been adequate public consultation about the matter. An example of this might be where the standard planning scheme provisions are being amended to include a code which is currently contained in a State planning policy. As the code will have already gone through public consultation during the making of the State planning policy, it should not be necessary for public consultation to be repeated where the code is simply being replicated in the standard planning scheme provisions. The definition also includes amendments of a minor nature that are prescribed under a regulation.

This change avoids duplication and enables State planning instruments to be responsive to each other. For example, if a new regional plan commences, it may be necessary to amend other State planning instruments to ensure consistency with the regional plan. The changes implement a simpler way to achieve this.

Administrative and minor amendment or amendment to reflect other documents

Clause 68 provides that the Minister who made the State planning instrument may make an administrative amendment or minor amendment of the instrument. The terms ***administrative amendment*** and ***minor amendment*** are defined in schedule 3 (Dictionary).

Subclause (2) clarifies that for these types of amendments, the Minister who made the instrument must make the amendment and, in the case where the instrument is made jointly by two Ministers, the amendment must be made by those Ministers jointly, if the amendment is a minor amendment. A minor amendment is taken to be jointly made when the amendment is endorsed by both Ministers. An administrative amendment to an instrument which was jointly made, can be made either by the Minister or the eligible Minister – that is, the amendment is not required to be endorsed by both Ministers.

Subclause (3) provides for the regional planning Minister for a designated region to amend the region's regional plan for the purpose of including documents made by public sector entities. This is subject to the following: the document must demonstrate how the regional plan will be implemented; and the regional planning Minister must be satisfied the document has undergone adequate public consultation.

Subclause (4) states that division 2 does not apply to the making of a minor or administrative amendment. This ensures the normal process for

amending State planning instruments (which includes public consultation) will not apply.

Notice of amendment under s 68

Clause 69 sets out the requirements for notifying an amendment made under this subdivision.

The Minister who made the amendment must publish a notice in the gazette and in a newspaper circulating generally in the State (if the draft instrument is to have effect throughout the State or is made for the whole of the State) or part of the State (if the draft instrument is to have effect only in part of the State). If the amendment was jointly made, the eligible Minister must publish the notice.

The notice must state the day the amendment was made and where a copy of the amended instrument may be inspected and purchased.

Subdivision 2 Other amendments

Other amendments

Clause 70 sets out the process for amending State planning instruments, other than making a minor or administrative amendment.

Subclause (2) clarifies that if the State planning instrument being amended was jointly made by two Ministers, the amendment must be jointly made by both Ministers.

The process for amending a State planning instrument is similar to the process for making a State planning instrument, with only small changes.

Decision not to proceed with amendment of regional plan

Clause 71 provides for a regional planning Minister who has prepared a regional plan under division 2 to make a decision not to proceed with an amendment of the regional plan. While it is mandatory for the regional planning Minister of a designated region to prepare a regional plan, this provision makes clear the Minister is not required to adopt an amendment of the regional plan.

Division 4 When State planning instrument or amendment has effect

When State planning instrument or amendment has effect

Clause 72 provides that a State planning instrument or an amendment of a State planning instrument has effect on the day the notice about the making of the instrument or amendment is notified in the gazette, or a later day stated in the instrument or amendment.

Effect of draft State planning regulatory provision and draft amendments

Clause 73 gives the Minister the ability to specify that particular draft State planning regulatory provisions or draft amendments to a State planning regulatory provision take effect immediately on notification of the draft. However, the Minister may only specify that a draft has effect immediately if the Minister is satisfied that any delay in the commencement of the State planning regulatory provision would increase the risk of:

- serious harm to the environment or serious adverse cultural, economic or social conditions occurring in a planning scheme area;
- compromising the implementation of a regional plan, structure plan or proposed regional plan or structure plan.

Subsection (3) sets out the effect of a draft State planning regulatory provision or an amendment of a State planning regulatory provision which the Minister has stated will have immediate effect. The draft provision has effect as if it were a State planning regulatory provision and takes effect as soon as the notice of the draft instrument or amendment is gazetted until the earlier of the following happens:

- the Minister decides to make a State planning regulatory provision relating to the draft provision and the State planning regulatory provision takes effect;
- the Minister makes a decision not to make a State planning regulatory provision relating to the draft provision, and notice of the decision is gazetted;
- the day that is 12 months after the date of gazettal ends.

In other words, the draft provision is in operation and effective while public consultation is carried out and submissions about the provision are

considered. However, the 12 month time limit ensures that the draft State planning regulatory provision does not continue to have effect indefinitely.

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 in this Bill. These reasons are also valid in relation to the preparation of structure plans.

It is also to be noted that temporary local planning instruments and temporary State planning policies (which are subject to this adverse risk test) also have immediate effect (by virtue of not requiring public notification before coming into effect).

Division 5 Repealing and replacing State planning instruments

Notice of repeal

Clause 74 enables the Minister to make a decision to repeal a State planning instrument, other than a regional plan, and sets out the requirements for notification of the repeal.

Subclause (2) makes it clear that if the State planning instrument was made jointly by two Ministers, the decision to repeal the instrument must be made jointly by both Ministers.

Subclause (3) provides that a State planning instrument may only be repealed by publishing a notice in the gazette and in a newspaper circulating generally in the State (if the draft instrument is to have effect throughout or is made for the whole of the State) or part of the State (if the draft instrument is to have effect only in part of the State).

Subclauses (4) and (5) set out the details that must be included in the notice and the entities that the Minister must give a copy of the notice to.

Subclause (6) clarifies that if the State planning instrument being repealed was jointly made by two Ministers, the eligible Minister must carry out the actions under subclauses (3) and (5).

When repeal has effect

Clause 75 states the repeal of a State planning instrument has effect from the day the notice of the repeal is gazetted.

Replacement of regional plans

Clause 76 provides for a regional plan replacing an existing regional plan to replace the former plan from the day it has effect.

Chapter 3 Local planning instruments

A new chapter 3 has been created so that all provisions about local planning instruments are located in the same chapter. This change has been made to improve readability and to make the location of the provisions more logical. This restructuring also reflects the hierarchy of instruments, with State instruments prevailing over local planning instruments to the extent of any inconsistency.

Part 1 Preliminary

Local planning instruments under Act

Clause 77 states that a local planning instrument is any of the following:

- a planning scheme;
- a temporary local planning instrument;
- a planning scheme policy.

This change has been made for the purposes of clarification and to ensure that important concepts are set out clearly in the Bill.

Infrastructure intentions in local planning instruments not binding

Clause 78 establishes that a local government or the State is not obligated to provide infrastructure in accordance with the intentions shown on a local planning instrument. These instruments are intended to express intentions for some time in the future. They do not prescribe the future but identify strategic outcomes and the measures for achieving those outcomes. In this context, indications of intentions for the provision of infrastructure both inform and respond to development decisions that are made. Accordingly, it is not appropriate to bind local governments to such intentions but to allow them the necessary flexibility to respond to changing circumstances. The requirement for regular reviews of planning schemes should prevent infrastructure intentions shown on schemes becoming significantly outdated.

Part 2 Planning schemes

Division 1 Preliminary

What is a *planning scheme*

Clause 79 states that a planning scheme is an instrument made by a local government under division 2 and part 5 that advances the purposes of the Act by providing an integrated planning policy for the local government's planning scheme area.

The Minister also has powers to make and amend a planning scheme under part 6.

Status of planning scheme

Clause 80 states that a planning scheme is a statutory instrument and has the force of law.

Under the *Statutory Instruments Act 1992* a statutory instrument may both regulate and prohibit. However, this Bill enables local governments to adopt only limited prohibitions in their planning schemes and temporary local planning instruments (see clauses 88(2)(d) and 106(1)(c)).

Effects of planning scheme

Clause 81 provides that a planning scheme made under part 5 becomes the planning scheme for the area and replaces any existing planning scheme.

Area to which planning scheme applies

Clause 82 requires that a planning scheme cover all of a local government area (the ***planning scheme area***).

Subclause (2) provides that the local government may apply its planning scheme for assessing prescribed tidal work in its tidal area to the extent stated in a code for prescribed tidal work. This provision was originally inserted into the current IPA to facilitate the integration of approvals for prescribed tidal works under the *Coastal Protection and Management Act 1995* into IDAS, and the requirement for local government to be assessment manager for prescribed tidal works. This subclause allows a planning scheme to vary a code for prescribed tidal works, even though the works may be outside the planning scheme area.

Relationship with planning scheme policies

Clause 83 states that if there is an inconsistency between a planning scheme and a planning scheme policy for a planning scheme area, the planning scheme prevails to the extent of the inconsistency. The note to this clause contains a reference to the relevant provisions of chapter 2, which state the relationship between planning schemes and State planning instruments.

Division 2 General provisions about planning schemes

Power to make planning scheme

Clause 84 gives local governments power to make a planning scheme for their planning scheme area under part 5. As stated above, the Minister may also make or amend a planning scheme (see part 6).

Documents planning scheme may adopt

Clause 85 refers to section 23 of the *Statutory Instruments Act 1992* which allows a statutory instrument to apply, adopt or incorporate the provisions of an Act, statutory instrument, other law, or another document.

This clause limits the generality of section 23 of the *Statutory Instruments Act 1992* by stating that the only documents made by a local government which can be applied, adopted or incorporated into a planning scheme, are a planning scheme policy, a structure plan, a priority infrastructure plan or

an infrastructure charges schedule. The purpose of this clause is to ensure that a planning scheme can only "call up" local documents that have gone through an appropriate public consultation process.

Subclause (2) clarifies that, for the purposes of this clause, ***documents*** does not include a development approval (which includes a development approval given under the Bill or the current IPA, or taken to be a development approval under the current IPA), a master plan or certain types of approvals given under the repealed *Local Government (Planning and Environment) Act 1990* and mentioned in section 6.1.26 of the current IPA.

Relationship between planning schemes and Building Act

Clause 86 provides that a planning scheme must not deal with building work to the extent the work is regulated under the building assessment provisions under the *Building Act 1975* (Building Act) unless permitted under the Building Act. The note to this section provides an example of sections 32 and 33 of the Building Act.

The building assessment provisions are defined in section 30 of the Building Act to include, among other things, chapters 3 and 4 of the Building Act, the Building Code of Australia, the fire safety standard in the Queensland Development Code and, subject to section 33, other parts of the Queensland Development Code. Section 31 of the Building Act provides that the building assessment provisions are codes for the purposes of IDAS for the carrying out of building assessment work and self-assessable building work.

The current version of section 31 of the Building Act was inserted in 2006 through the *Building and Other Legislation Amendment Act 2006*. The intention of the section as expressed in the explanatory notes "*A local government can not make additional building assessment provisions either through local laws, planning instruments or by resolution except as provided in sections [32 or 33 of the Building Act]"*.

Sections 32 and 33 of the Building Act permit a local government to include certain matters in their planning schemes. These currently include, for example, designating land liable to flooding for floor level heights of habitable rooms, designating bushfire prone areas, and requiring larger water tanks and dual reticulation as additional water savings to those provided in the Queensland Development Code MP 4.2 (Water Savings Targets).

However, sections 32 and 33 of the Building Act are intended to prevent a local government from including matters already addressed by building codes such as the Queensland Development Code and the Building Code of Australia in their local laws, planning schemes or council resolutions, unless this is specifically permitted by a regulation or a method is specified in the Queensland Development Code. Building matters covered by the codes include structural, safety and amenity standards; requirements for buildings in flood prone areas; water and energy efficiency standards for all building types; access for people with a disability, and other standards addressed in the Queensland Development Code such as the functional layout of child care centres.

The purpose of clause 86 is to make it clear that a planning scheme must not be inconsistent with the requirements of the Building Act – that is, it must not address matters already addressed by the building assessment provisions, unless permitted under the Building Act through provisions such as sections 32 and 33 of the Building Act. To the extent that a planning scheme deals with building work regulated under the building assessment provisions, it is of no effect. This clause will apply to existing and new planning schemes where there is inconsistency.

Covenants not to conflict with planning scheme

Clause 87 provides that certain covenants under the *Land Act 1994* or the *Land Title Act 1994* will be of no effect to the extent they conflict with a planning scheme. There must be an actual conflict between the planning scheme and a covenant for the covenant to be of no effect. If the planning scheme is silent on the matter the subject of a covenant, while they could be viewed as inconsistent, they are not in conflict. This clause is subject to clause 349.

The effect of this clause is that if, as a condition of a development approval, an applicant is required to enter into a statutory covenant, the covenant may conflict with the planning scheme. The Bill therefore envisages that in certain circumstances, justifiable on planning grounds, a condition may be in conflict with a planning scheme.

Division 3 Key concepts for planning schemes

Key elements of planning scheme

Clause 88 states six key elements which a local government and the Minister must be satisfied that a planning scheme does or includes.

Subclause (1)(a) relates to the standard planning scheme provisions. Under this Bill, a local planning instrument or an amendment to a local planning instrument can only be made if the planning Minister is satisfied that the local planning instrument or amendment appropriately reflects the standard planning scheme provisions. If a planning scheme is made under the Bill, the local government must also ensure any changes to the standard planning scheme provisions are adopted by an amendment to the local planning instrument. The standard planning scheme provisions will contain both mandatory and non-mandatory parts. A planning scheme must contain the mandatory parts. The requirement to reflect the standard planning scheme provisions does not apply to a planning scheme made under the current IPA, or an amendment of a planning scheme made under the current IPA.

Subclause (1)(b) requires a planning scheme to identify the strategic outcomes for the planning scheme area. Strategic outcomes should focus on the environmental, social and economic outcomes which the local government considers are desirable for the planning scheme area.

Subclause (1)(c) requires planning schemes to also include measures that facilitate the achievement of these strategic outcomes. Subclause (2) explains that such measures include the identification of categories of development (self-assessable development, development requiring compliance assessment, assessable development requiring code and/or impact assessment, and limited prohibitions).

Subclause (1)(d) relates to an overall approach which arises directly from the object of the Act: a planning scheme must coordinate and integrate all the matters it deals with. These matters include the core matters (see clause 89) and may have State, regional or local dimensions as described in clause 90.

Subclause (1)(e) provides that a planning scheme must include a priority infrastructure plan.

Subclause (1)(f) requires a planning scheme to include a structure plan for any parts of the planning scheme area that are within a declared master planned area.

Subclause (2) provides that measures facilitating the achievement of the strategic outcomes include the identification of development as

self-assessable development, development requiring compliance assessment, assessable development and prohibited development. However, a planning scheme may state that development is prohibited development, only if the standard planning scheme provisions state the development may be prohibited development. For example, the standard planning scheme provisions may include a "suite" of development types that a local government may choose to prohibit if the prohibition would assist in achieving the strategic outcomes for the area. A local government cannot include any other prohibitions in its planning scheme.

Core matters for planning scheme

Clause 89 states the three core matters for preparation of a planning scheme:

- land use and development;
- infrastructure;
- valuable features.

Land use and development and ***valuable features*** are defined inclusively in subclause (2). ***Infrastructure*** is defined in the dictionary in schedule 3. Subclause (2) also sets out some particular matters that are included in this term.

For the purposes of paragraph (e) of the definition of ***land use and development***, development constraints may include such matters as identification of areas subject to flooding, areas containing acid sulphate soils, etc.

Valuable features extends to both terrestrial and aquatic resources and areas listed in paragraphs (a) to (d).

State, regional and local dimensions of planning scheme matters

Clause 90 provides that a matter, including a core matter, in a planning scheme may have local, regional or State dimensions. The following table provides an example of how the different dimensions may possibly be identified with respect to clause 89(2), paragraph (a) of the core matter of valuable features.

Core matter – valuable features	Local dimension	Regional dimension	State dimension
Resources or areas that are of ecological significance e.g. an area of ecological significance within a wildlife corridor	A local creek system containing an area of scenic value in a coastal area	A wildlife corridor identified in a regional plan	A protected area included in a national park

Division 4 Reviewing planning schemes

Local government must review planning scheme every 10 years

Clause 91 states the minimum time within which a local government must review its planning scheme. Under the current IPA, local governments are required to review their planning schemes at least every 8 years. This has been changed to at least every 10 years. This change is intended to promote forward planning and to more closely align with the period of growth that a priority infrastructure plan must cover, and the planning horizon of regional plans.

Subclause (2) requires the local government to, as part of the review, assess the achievement of the strategic outcomes in the planning scheme. The review should also consider the following:

- Does the planning scheme still achieve the purposes of the Act, i.e. ecological sustainability?
- Is the planning scheme still contemporary? For example, have the dynamics or circumstances of the planning scheme area changed, such as through major population growth or industry development? Have new social, economic or environmental issues arisen since the planning scheme was introduced (e.g. significant economic growth or decline)?

- Are the underlying assumptions of the planning scheme still relevant to the planning scheme area?
- Are the measures in the planning scheme for achieving the strategic outcomes still effective?
- Does the planning scheme still adequately coordinate and integrate State, regional and local dimensions?
- Does the planning scheme adequately reflect the regional plan, State planning policies and the standard planning scheme provisions? It should also be noted that local governments are required to amend their planning schemes on an ongoing basis to reflect regional plans (or amendments to regional plans) and amendments to the standard planning scheme provisions (see clauses 29 and 55).

Action local government may take after review

Clause 92 sets out the three possible options for a local government after reviewing its planning scheme. The local government must by resolution propose to prepare a new scheme or amend the existing one, or decide that the planning scheme is suitable as it is and to take no further action.

Report about review if decision is to take no action

Clause 93 specifies requirements for a report if the local government decides to take no further action following review of its planning scheme.

Notice about report to be published

Clause 94 states that after preparing a report about the review, the local government must publish and display a notice stating that the report is available for inspection and purchase.

Division 5 Application of superseded planning schemes

The Bill introduces a new process for an applicant to make a request to the local government for a proposed development to be carried out under a superseded planning scheme or for a development application or request for compliance assessment to be assessed under a superseded planning scheme. Under the current IPA, a person wishing to carry out development under a superseded planning scheme or have a development application assessed under a superseded planning scheme must make a development

application to the local government, making the request. This process is confusing and creates an artificial situation in the case of a request to carry out development under a superseded planning scheme, by requiring a development application for development that does not require a development approval. The Bill simplifies this process by enabling a person to make a direct request to the local government to determine whether development may be undertaken or an application assessed under a superseded planning scheme. The Bill also ensures that these provisions apply to requests for compliance assessment.

These provisions relate to the right to compensation in chapter 9, part 3. In this regard, it is important to note that the timeframe within which a request to apply a superseded planning scheme can be made has been reduced from 2 years under the current IPA, to 1 year. Consultation prior to this Bill resulted in a commitment by the State government to review the mechanism for making a development application under a superseded planning scheme and to consider the option of reducing the time period for lodgement from two years to 12 months.

Throughout consultation, there was support from State and local government stakeholders to reduce the timeframe to lodge a development application proposed for assessment under a superseded planning scheme. The reduced timeframe is intended to give the new planning scheme, which reflects current planning standards, its full effect more quickly. The reduced timeframe also ensures that the right to compensation is limited to those persons with an immediate intention to realise their development rights and reduces the amount of time the superseded planning scheme has effect.

Request for application of superseded planning scheme

Clause 95 enables a person to ask the local government, by written notice, to apply a superseded planning scheme to the carrying out of development that, under the new or amended planning scheme, is assessable development, prohibited development or development requiring compliance assessment but which was exempt development or self-assessable development under the superseded planning scheme. If the local government agrees to the request, the person will be able to carry out the development without having to apply for a development approval or make a request for compliance assessment in the case of development that is now assessable development or development requiring compliance assessment under the new or amended planning scheme. In the case of

development which is prohibited development, the person will be able to carry out the development if the local government agrees to the request.

This clause also enables a person to ask a local government to assess and decide a proposed development application under a superseded planning scheme where the proposed development requires impact assessment under the new or amended planning scheme, but required code assessment under the superseded planning scheme. A person may also ask a local government to accept, assess and decide a proposed development application where the proposed development is prohibited under the new or amended planning scheme, but was assessable development under the superseded planning scheme.

This clause also applies to development requiring compliance assessment. In particular, it applies where:

- Development requires compliance assessment under both the existing planning scheme and the superseded planning scheme, but the matters or things against which the request must be assessed have changed. In this situation, the person may ask the local government if the request for compliance assessment can be assessed and decided under the superseded planning scheme.
- Development requires compliance assessment under the existing planning scheme, but was self-assessable or exempt development under the superseded planning scheme. The person may ask the local government to apply the superseded planning scheme to the carrying out of the development.
- Development is assessable development or prohibited development under the existing planning scheme, but required compliance assessment under the superseded planning scheme. The person may ask the local government to accept a request for compliance assessment for the development, and to assess and decide the request under the superseded planning scheme.

Subclause (2) provides that the notice may be given to the local government only within 1 year after the day the planning scheme, planning scheme policy, or amendment of a scheme or policy creating the superseded planning scheme took effect.

Subclause (3) sets out the requirements for the notice. In the case of a request to assess an application or a request for compliance assessment against a superseded planning scheme, it is intended that the applicant

would generally attach a copy of the proposed development application or request. However, in recognition of the reduced timeframe for making a request, this may not always possible. In any event, the person making the request must provide sufficient information about the proposed development to enable the local government to properly consider the request.

Decision on request

Clause 96 gives the local government the discretion to decide whether or not to agree to the request.

The request must be decided within 30 business days after the request is received by the local government, however this period can be extended (see subclauses (2), (3) and (4)).

Subclause (5) provides that the local government is deemed to have agreed to the request if the request is not decided within the 30 business day period, or the extended period.

If the local government agrees to a request to assess an application under the superseded planning scheme and the local government refuses the application, the owner of the land is not entitled to claim compensation from the local government. However, if the local government refuses the request and the application is assessed against the new or amended planning scheme and is either refused, approved in part, or approved subject to conditions, the owner may make a claim for compensation.

If a request to assess and decide a request for compliance assessment under a superseded planning scheme is refused, and the request is assessed against the new or amended planning scheme and is approved subject to conditions, the owner may make a claim for compensation.

In the case of development which is prohibited development under the new or amended planning scheme but not prohibited development under the superseded planning scheme, the right to claim compensation will arise as soon as the request to carry out the development under the superseded planning scheme, or to assess an application or request for compliance assessment under the superseded planning scheme, is refused. Chapter 9, part 3 describes how and under what circumstances compensation is payable under the Bill.

Notice of decision

Clause 97 requires the local government to give the person making the request written notice of its decision within 5 business days after making the decision.

When development under superseded planning scheme must start

Clause 98 applies where a request was made to carry out development under a superseded planning scheme. If the local government agrees, or is taken (under clause 96(5)) to have agreed to the request, the development the subject of the request must be carried out:

- in the case of a material change of use - within 4 years after the person was given, or was entitled to be given notice of the local government's decision;
- in the case of reconfiguring a lot – within 2 years after the person is given, or was entitled to be given notice of the local government's decision;
- in all other cases – within 2 years after the person is given, or was entitled to be given notice of the local government's decision.

Subclause (2) provides that a person may ask the local government to extend the period above.

Subclause (3) provides that a request to extend the period must be made in the form required by local government and must be accompanied by the required fee. A request to extend the period may not be withdrawn.

Subclause (4) provides that the local government must decide the request for extension within 30 business days after receiving the request.

Subclause (5) ensures that the timeframe for carrying out the development does not lapse in the situation where a request for extension has been made, but has not yet been decided, by the local government.

When development application (superseded planning scheme) can be made

Clause 99 applies where a request was made to assess and decide, or accept, assess and decide, an application against the superseded planning scheme. If the local government agrees, or is taken to have agreed to the request, the development application (superseded planning scheme) for the development must be made to the assessment manager within 6 months

after the day the person is given, or was entitled to be given, notice of the decision.

Subclause (3) clarifies that a development application can be made for development that is prohibited development under the new or amended planning scheme despite clause 239 if the local government agrees to a request to assess and decide a development application under the superseded planning scheme. This only applies, however, if the proposed development the subject of the application was not also prohibited under the superseded planning scheme.

When request for compliance assessment under a superseded planning scheme can be made

Clause 100 applies where a request was made to assess and decide, or accept, assess and decide, a request for compliance assessment against the superseded planning scheme. If the local government agrees, or is taken to have agreed to the request, the request for the development must be made within 6 months after the day the person is given, or was entitled to be given, notice of the decision.

Subclause (3) clarifies that a request for compliance assessment can be made for development that is prohibited development under the new or amended planning scheme despite clause 239 if the local government agrees to a request to accept, assess and decide a request under the superseded planning scheme. This only applies, however, if the proposed development the subject of the request was not also prohibited under the superseded planning scheme.

Part 3 Temporary local planning instruments

Division 1 Preliminary

What is a *temporary local planning instrument*

Clause 101 states that a temporary local planning instrument is an instrument made by a local government under division 2 and part 5 that

advances the purpose of this Act by protecting a planning scheme area from adverse impacts.

The current IPA definition of temporary local planning instrument only defines it by reference to the part under which it is made. This would not be workable now that all local planning instruments are made under the same provision, so a distinguishing feature was required to give meaning to the definition.

This provision is to be read in conjunction with clause 105 of the Bill, which provides that a temporary local planning instrument can only be made if the Minister is satisfied of a number of things, such as the requirement that there is a significant risk of serious environmental harm or serious adverse cultural, economic or social conditions occurring in the planning scheme area and the delay in amending the planning scheme would increase this risk.

The Minister also has powers to make a temporary local planning instrument under part 6.

Status of temporary local planning instrument

Clause 102 states that a temporary local planning instrument is a statutory instrument and has the force of law.

Under the *Statutory Instruments Act 1992* a statutory instrument may both regulate and prohibit. However, this Bill enables local governments to adopt only limited prohibitions in their planning schemes and temporary local planning instruments (see clauses 88(2)(d) and 106(1)(c)).

Area to which temporary local planning instrument applies

Clause 103 states that unlike a planning scheme, a temporary local planning instrument may apply to either all or part of the planning scheme area.

This reflects the different role of the temporary local planning instrument which is to address a specific issue rather than to be a comprehensive planning instrument.

Relationship with planning scheme

Clause 104 states that a temporary local planning instrument may suspend or otherwise affect the operation of a planning scheme for up to 1 year. However, the temporary local planning instrument does not amend the planning scheme, and is not a change to a planning scheme under clause 703.

The note to this clause contains a reference to the relevant provisions of chapter 2, which state the relationship between planning schemes and State planning instruments.

Division 2 General matters about temporary local planning instruments

Power to make temporary local planning instrument

Clause 105 gives local governments the power to make a temporary local planning instrument for all or part of a planning scheme area in certain circumstances. Before a temporary local planning instrument can be made under part 5, the Minister must be satisfied:

- there is a significant risk of serious environmental harm, or serious adverse cultural, economic or social conditions occurring in the planning scheme area;
- the risk would increase if the process in the statutory guideline for amending a planning scheme was used to amend the planning scheme due to the delay involved;
- State interests would not be adversely affected by the proposed temporary local planning instrument; and
- the proposed instrument appropriately reflects the standard planning scheme provisions.

Content of temporary local planning instrument

Clause 106, subclause (1), states that a temporary local planning instrument may declare development to be self-assessable development, development requiring compliance assessment, or assessable development requiring impact and/or code assessment. The instrument may also state that development is prohibited development, provided the standard planning scheme provisions state the development may be prohibited development. The purpose of subclause (1) is to make it clear that a temporary local planning instrument can state categories of development.

Subclause (2) is intended merely to recognise that a temporary local planning instrument may do other things besides specifying categories of development (e.g. identify a code for development).

Documents temporary local planning instrument may adopt

Clause 107 refers to section 23 of the *Statutory Instruments Act 1992* which allows a statutory instrument to apply, adopt or incorporate the provisions of an Act, statutory instrument, other law, or another document.

This clause limits the generality of section 23 of the *Statutory Instruments Act 1992* by stating that the only documents made by a local government which can be applied, adopted or incorporated into a temporary local planning instrument, are a planning scheme policy or a structure plan. The purpose of this clause is to ensure that temporary local planning instruments can only "call up" local documents that have gone through an appropriate public consultation process.

Subclause (2) clarifies that, for the purposes of this clause, ***documents*** does not include a development approval (which includes a development approval given under the Bill or the current IPA, or taken to be a development approval under the current IPA), a master plan or certain types of approvals given under the repealed *Local Government (Planning and Environment) Act 1990* and mentioned in section 6.1.26 of the current IPA.

Part 4 Planning scheme policies

Division 1 Preliminary

What is a *planning scheme policy*

Clause 108 states that a planning scheme policy is an instrument made by a local government under division 2 and part 5 that:

- supports the local dimension of a planning scheme;
- supports local government actions under this Bill for IDAS and for making or amending its planning scheme.

Planning scheme policies are intended to merely support the scheme. Substantive planning policies are intended to be contained within the planning scheme itself.

Status of planning scheme policy

Clause 109 states that a planning scheme policy is a statutory instrument and has the force of law. Despite this, the Bill provides that planning scheme policies may only deal with limited matters (see clause 114).

Effect of planning scheme policy

Clause 110 states what it means for a planning scheme policy to be made for the planning scheme area—it becomes a policy for the area and replaces any existing policy, if that is the intention.

Area to which planning scheme policy applies

Clause 111 states that a planning scheme policy may apply to all or only part of a planning scheme area. This reflects the flexible nature of planning scheme policies and their role in reflecting only the local dimensions of matters dealt with by schemes, which may or may not apply across the entire scheme area.

Relationship with other planning instruments

Clause 112 provides that where a planning scheme policy and any other planning instrument deal with the same matter in an inconsistent way, the other planning instrument will prevail over the planning scheme policy to the extent of the inconsistency.

Division 2 General matters about planning scheme policies

Power to make planning scheme policy

Clause 113 gives local governments the power to make, under part 5, a planning scheme policy for all or part of its planning scheme area.

Content of planning scheme policy

Clause 114 states the matters that a planning scheme policy may deal with. A planning scheme policy cannot deal with any other matters, other than those specified in this clause, despite the fact that it is a statutory instrument.

Planning scheme policy can not adopt particular documents

Clause 115 provides that a planning scheme policy must not apply, adopt or incorporate another document made by the local government.

Subclause (2) clarifies that, for the purposes of this clause, ***document*** does not include a development approval (which includes a development approval given under the Bill or the current IPA, or taken to be a development approval under the current IPA), a master plan or certain types of approvals given under the repealed *Local Government (Planning and Environment) Act 1990* and mentioned in section 6.1.26 of the current IPA.

Part 5 Making, amending or repealing local planning instruments

Division 1 Preliminary

Under the current IPA, the process for making or amending local planning instruments is included in the Act (schedules 1, 2 and 3). Under this Bill, the process for making and amending a local planning instrument will be included in a statutory guideline made by the Minister, however the Bill identifies some basic guarantees for effective consultation and notification of the local planning instrument (where applicable). It also specifies minimum guarantees to ensure the approval of the Minister for new planning schemes. The movement of the process for making planning schemes to a statutory guideline will enable more flexibility in changing the process, to ensure that plan-making is continuously improved. It is consistent with current drafting standards to include detailed processes in a regulation or statutory guideline, rather than in the Act.

Application of pt 5

Clause 116 states that part 5 does not apply to amendments of a local government's planning scheme to include a structure plan. The process for amending a planning scheme to include a structure plan applies to declared master planned areas and is provided for in a separate part of the Bill relating to declared master planned areas (see chapter 4).

Division 2 Making or amending local planning instruments

Process for making or amending local planning instruments

Clause 117, subclause (1) states that for making or amending a planning scheme or a planning scheme policy, a local government must follow the process set out in a guideline made by the Minister and prescribed under a regulation.

Subclause (2) states that for making a temporary local planning instrument, a local government must follow the process set out in a guideline made by the Minister and prescribed under a regulation.

This clause has been structured in this way, to make it clear that a temporary local planning instrument cannot be amended.

Content of guideline for making or amending local planning instrument

Clause 118 sets out the minimum requirements to be included in the statutory guideline. Some of these requirements are minimum guarantees to ensure effective public consultation and notification, whereas other requirements are needed to ensure that certain administrative or process steps are undertaken (e.g. notification of the making of the instrument in the gazette or newspaper, as the commencement of these instruments is linked to these steps). This clause refers mainly to consultation requirements in respect of making planning schemes and planning scheme policies. This is not to say that public consultation will not be required in respect of certain types of amendments to planning schemes and planning scheme policies. These requirements (if any) will be set out in the statutory guideline.

As with the current IPA, public consultation will not be required in respect of temporary local planning instruments.

This clause also requires the local government to provide the Minister with a summary of the issues raised during public consultation and how the issues have been dealt with by the local government.

Compliance with guideline

Clause 119 states the requirement for validity of a planning scheme, a planning scheme policy, a temporary local planning instrument, or an

amendment of a scheme or policy—substantial compliance with the process stated in the guideline mentioned in clause 117.

A planning scheme or planning scheme policy or an amendment of these instruments is still valid so long as non-compliance has not:

- adversely affected the public's awareness of the existence and nature of the proposed instrument or amendment;
- restricted the opportunity of the public to make properly made submissions under the guideline about the proposed instrument or amendment; or
- for a planning scheme or amendment of a planning scheme – restricted the opportunity of the Minister to consider whether State interests would be adversely affected.

It is recognised that in following detailed processes there is potential for procedural mistakes to be made. Therefore, a "public effects" test has been included to avoid the potential for unproductive and expensive litigation about process detail. Subject to any non-compliances satisfying this test, a local planning instrument is still valid even if there have been some procedural non-compliances.

When planning scheme, temporary local planning instrument and amendments have effect

Clause 120, subclauses (1) and (2) provide that a planning scheme or temporary local planning instrument made under this part has effect on and from the day the making of the planning scheme or temporary local planning instrument is notified in the gazette or, if a later day is stated in the planning scheme or temporary local planning instrument, the later day.

Subclause (2) states that a planning scheme amendment has effect on and from the day the making of the amendment is notified in the gazette or, if a later day is stated in the amendment, the later day.

Subclause (3) states that a temporary local planning instrument has effect until the instrument expires or is repealed.

When planning scheme policy and amendments have effect

Clause 121 specifies the day on and from which a planning scheme policy or an amendment of a policy takes effect (either the day the adoption is first notified in a local newspaper or a later day if stated in the policy or amendment).

Consolidating planning schemes

Clause 122 states that a planning scheme may be consolidated by a local government. Under clause 127, the Minister may also direct a local government to prepare a consolidated planning scheme. A definition of a consolidated planning scheme is provided in the dictionary (schedule 3). Essentially this is a combination of all scheme amendments without changing a person's existing rights and obligations. As there is no change to the substance of the current scheme, the clause also states that the guideline mentioned in clause 117, which prescribes the process for making a scheme, does not apply.

The purpose of this clause is to ensure that local governments are able to prepare up to date planning scheme documents as a service to users with a minimum of procedural fuss. A consolidated scheme is a bit like a reprint of an Act. It includes all amendments made to the instrument since it was first made.

Division 3 Repealing local planning instruments

This division deals only with repealing temporary local planning instruments and planning scheme policies. Planning schemes cannot be repealed – they can only be replaced by making a new scheme.

Repealing temporary local planning instruments

Clause 123 states that there are two ways in which temporary local planning instruments may be repealed. The first way provides for the local government to repeal it by resolution, followed by publication of a notice in a local newspaper and in the gazette, with a copy of the notice going to the chief executive. If the instrument was made by the local government following a direction of the Minister under clause 126, made by the Minister under clause 128, or made by the Minister under clause 129, the Minister's written approval is required to make a resolution to repeal.

The second way to repeal a temporary local planning instrument is by adoption of a planning scheme or an amendment of a planning scheme that specifically repeals the instrument. This last course provides a permanent way of dealing with the matters originally dealt with by the temporary local planning instrument. The repeal takes effect from the day the resolution is notified in the gazette or, if the temporary local planning instrument is

repealed by the making of a planning scheme or a planning scheme amendment, the day the planning scheme or amendment takes effect.

Repealing planning scheme policies

Clause 124 states that a local government may repeal a planning scheme policy (other than one replaced by another) by resolution. This must be followed by providing the Minister with a copy of the resolution, placing a public notice in a local newspaper and giving the chief executive a copy of the notice.

The repeal takes effect on the day the notice is published in the newspaper or, if the notice states a later day, on the later day.

This clause also states that when a new planning scheme (other than an amendment of a planning scheme) is made, all existing planning scheme policies are cancelled from the day the planning scheme takes effect. The purpose of this is to ensure that planning scheme policies are always directly relevant to and supportive of the scheme they are attached to. Where it is appropriate for an existing planning scheme policy to roll over to a new planning scheme, it may be remade as part of the process for making the new planning scheme.

Part 6 Powers of State in relation to local planning instruments

Division 1 Direction to take action about local planning instruments

Under the current IPA, the Minister can direct local governments to make or amend a local planning instrument, however the Minister must first give written notice to the local government of his or her intention to exercise the power. The local government can then make representations about the proposed direction. If the local government does not comply with the direction, the Minister can make or amend the local planning instrument himself or herself.

Under the new Bill, this power has been expanded to enable the Minister to direct a local government to amend a local planning instrument to make it consistent with the standard planning scheme provisions.

In addition, the Bill now enables the Minister to make or amend a local planning instrument where urgent action is necessary to protect or give effect to a State interest, without first giving a direction to the local government.

The Bill also enables the Minister to amend a local planning instrument, or multiple local planning instruments, to reflect the standard planning scheme provisions without first giving a direction to the local government.

Procedures before exercising particular power

Clause 125 applies in relation to a power exercised by the Minister under clause 126 or 127. Before exercising the power in these clauses, the Minister must first give written notice to the local government to be affected by the exercise of the power. A notice is not needed if the local government has requested the Minister to exercise the power.

The notice is required to state the reasons for the proposed exercise of power and the time within which the local government may make a submission. The Minister must consider any submission made within the stated time and decide whether or not to exercise the power. If the power is exercised, the local government must be advised and provided with the reasons.

Power of Minister to direct local government to take particular action about local planning instrument

Clause 126 states that if the Minister is satisfied that it is necessary to protect or give effect to a State interest, or to ensure a local planning instrument or a proposed local planning instrument is consistent with the standard planning scheme provisions, a local government may be directed to take action about its local planning instruments or a proposed local planning instrument. This action varies according to the type of instrument and may be as general or specific as the Minister considers appropriate—planning scheme (review, make anew or amend), temporary local planning instrument (make anew or repeal), planning scheme policy (make anew, amend or repeal). The provision also allows a direction to be made about a proposed local planning instrument, not merely a local planning instrument already in effect. The direction must also state the

reasonable time by which the local government must comply with the direction.

Power of Minister to direct local government to prepare a consolidated planning scheme

Clause 127 states that the Minister has the power to direct a local government to prepare a consolidated scheme.

Power of Minister if local government does not comply with direction

Clause 128 states that the Minister may take the action a local government was directed to take if the local government does not comply within the reasonable time stated in the direction. If the Minister takes the action it has the same effect as if it were done by the local government. The Minister may also recover the cost of taking the action from the local government. This clause, together with equivalent clauses elsewhere, ensures that there are sanctions for non-compliance with the Bill or with directions arising from application of the Bill.

Division 2 Making or amending local planning instrument without direction

Power of Minister to take action about local planning instrument without direction to local government

Clause 129 provides that if the Minister is satisfied urgent action is necessary to protect or give effect to a State interest, the Minister may make or amend a local planning instrument without first having to give the local government a direction under clause 126. This new power has been included in the Bill as a result of feedback received during consultation carried out as part of the planning reform improvement project. The consultation indicated public support for the Minister taking a more proactive role in developing and delivering good planning and development outcomes. This change will facilitate more effective protection and promotion of State interests through local planning instruments. In particular, it will ensure that the Minister can act to urgently protect State interests. Where urgent action is not required, the Minister should use the powers in clause 126.

Clause 129 also enables the Minister to amend a local planning instrument without first giving a direction under clause 126, where the Minister is

satisfied a local planning instrument does not appropriately reflect the standard planning scheme provisions. The power in clause 129 will generally be the appropriate power to use where multiple local planning instruments need to be amended. For example, this power could be used where there is a change to a definition in the standard planning scheme provisions, which affects all local government planning schemes. In this situation, it is more efficient for the Minister to amend the local planning instruments, instead of requiring or directing each local government to separately amend its planning scheme.

Division 3 Process for dealing with local planning instruments under part 6

Process for Minister to take action under pt 6

Clause 130 provides that the statutory guideline for making or amending a local planning instrument must state the process the Minister must follow if he or she takes the action the Minister directed the local government to take under division 1, or makes or amends a local planning instrument under division 2. The Minister is required to follow this process in taking these actions.

Chapter 4 Planning partnerships

Part 1 Master planning for particular areas of State interest

Division 1 Preliminary

Chapter 4 contains the substance of provisions previously contained in chapter 2, part 5B of the current IPA, dealing with master planning arrangements through the preparation of structure plans and master plans.

Under this Bill, these arrangements are included in a chapter entitled "Planning partnerships", reflecting the intent that structure plans and master plans are planning documents developed in a collaborative way and involving State and local government and private individuals.

The introduction of master planning arrangements under the *Urban Land Development Authority Act 2007* was a key component of the Government's housing affordability strategy, and brings the substantial resources and expertise of the private sector to the planning of key urban development areas in order to improve the quality and timeliness of planning outcomes in these areas. By involving State and local governments and the private sector in the planning for these areas, significant time and cost savings can be made "downstream" in the development assessment process.

Structure plans are characterised as a key component of planning schemes, however they can also affect matters related to assessable development normally dealt with under the Bill and regulation.

Master plans are essentially a planning document, but one in which there is significant private sector involvement, and for which an approval process involving both State and local government is established.

Purpose of ch 4

Clause 131 provides a purpose statement for this part. It provides a summary of the process required to identify and designate master planned areas, the process for making structure plans, and the process for preparing and approving master plans.

Division 2 Master planned areas

Identification of master planned areas

Clause 132 sets out the process and options for identifying master planned areas. It provides options for identification in planning schemes, regional plans, State planning regulatory provisions and Ministerial declarations.

Master planned area declarations

Clause 133 states how a master planned area declaration is made and the matters a master planned area declaration must include. In particular, subclause (2)(c) requires the declaration to state the IDAS jurisdictions of

participating agencies. This is essential as it links to the new schedule in the regulation (previously schedule 8 of the current IPA), which affects how certain development is assessed.

The current IPA includes a separate provision which provides that certain triggers may not apply in declared master plan areas (current IPA, section 2.5B.63). An equivalent clause has not been included in this Bill, as the exceptions that were included in section 2.5B.63 of the current IPA are integrated into the schedule under the regulation to this Bill identifying assessable development. As under the current IPA, entities that would otherwise be referral agencies under IDAS may be nominated as coordinating agencies or participating agencies for structure planning. If so, they cease to become IDAS referral agencies.

Restriction on particular development applications in master planned area

Clause 134 restricts the making of applications for preliminary approval to which clause 242 applies in master planned areas to certain circumstances. Applications for preliminary approval to which clause 242 apply are restricted so they do not vary the effect of a structure plan for the master planned area.

Notation of master planned areas on planning scheme

Clause 135 requires local governments to note any master planned area on their planning schemes.

Part 2 Structure plans for master planned areas declared by the Minister or regional planning Minister

Division 1 Preliminary

Application of pt 2

Clause 136 states that this part only applies to master planned areas that have been declared by the Minister. While a master planned area may be

identified in a way described under clause 132, the majority of arrangements in this chapter apply only in master planned areas the subject of a declaration under clause 133.

What is a *structure plan*

Clause 137 defines a structure plan for a declared master planned area as the structure plan for the area made under division 4.

Relationship with regulation under s 232

Clause 138 requires a structure plan to be consistent with a regulation made under clause 232(1) or (2) establishing categories of development.

Relationship with State planning instruments

Clause 139 provides that if there is an inconsistency between a structure plan and a State planning instrument, the State planning instrument prevails to the extent of the inconsistency.

This provision has been inserted to establish a clear hierarchy of instruments under the Bill, and will assist referral agencies and assessment managers in resolving conflicts between structure plans and State planning instruments

Division 2 General matters about structure plans

Local government's obligation to have structure plan

Clause 140 establishes the obligation for a structure plan to be prepared by a local government for a declared master planned area.

Content of structure plan

Clause 141 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. It also sets out the requirements for any future master plans. As the structure plan forms part of the planning scheme, the structure plan must appropriately reflect the standard planning scheme provisions.

Prohibited development under structure plan

Clause 142 states that the structure plan may only state development is prohibited development if the standard planning scheme provisions state the development may be prohibited development. This is consistent with provisions for planning schemes and temporary local planning instruments in the Bill. This change accounts for the introduction of limited prohibitions as a new category of development.

Division 3 Funding for structure plans

Agreement to fund structure plan

Clause 143 allows a local government to enter an agreement with owners or occupiers of land in a declared master planned area to fund the preparation of a structure plan. Any agreement must be in accordance with a policy of the local government that prescribes the basis on which the funding is provided.

Special charge for making a structure plan

Clause 144 provides 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. The carrying out of integrated planning under this chapter 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 chapter 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 Bill.

Subclause (9) provides that section 1035A of the *Local Government Act 1993* applies to a special charge under this clause. Section 1035A of the *Local Government Act 1993* enables local governments to grant concessions to classes of land owners, such as pensioners and not-for-profit organisations.

Division 4 Making structure plans

Making structure plan

Clause 145 establishes that structure plans must be prepared as required by guidelines made by the Minister and prescribed under a regulation.

Content of guideline for making structure plan

Clause 146 sets out the minimum requirements to be included in the statutory guideline. Some of these requirements are minimum guarantees to ensure effective public consultation and notification, whereas other requirements are needed to ensure that certain administrative or process steps are undertaken (e.g. notification of the making of the structure plan in the gazette, as the commencement of structure plans is linked to these steps).

Compliance with guideline

Clause 147 is a "substantial compliance" provision stating that a structure plan is valid if it is made in substantial compliance with the guideline, so long as any non-compliance has not adversely affected public awareness or the opportunity to make submissions.

When structure plan takes effect

Clause 148 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, whichever is the later day.

Provisions for new planning schemes

Clause 149 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 clause provides the Minister with power to approve the inclusion of the structure plan in the new planning scheme without requiring the local government to repeat the process for making the structure plan.

This clause 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. Subclause (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.

Part 3 Master plans

Division 1 Preliminary

Application of pt 3

Clause 150 provides that this part applies if the structure plan for a declared master planned area requires a master plan.

What is a *master plan*

Clause 151 defines master plan as a plan approved under clause 181 that is still in effect. A master plan includes any conditions included in the plan.

Relationship with regulation under s 232

Clause 152 provides that a master plan must be consistent with any regulation made under clause 232(1) or (2) establishing categories of development.

Relationship with other planning instruments

Clause 153 sets out the relationship between a master plan and other planning instruments. If there is an inconsistency between a master plan and a State planning instrument, the State planning instrument will prevail to the extent of the inconsistency. However, this clause is subject to clause 154.

If a master plan is different to a local planning instrument to the extent that it provides for categories of development or codes for development, the master plan will prevail.

New planning instruments can not affect approved master plan

Clause 154 states that once a master plan has been approved, a new planning instrument or any amendment to a planning instrument can not change or affect a master plan.

Division 2 General matters about master plans

Content of master plan

Clause 155 sets out the matters a master plan must include as well as matters a master plan may deal with. In summary, the master plan must:

- include a master plan area code;
- appropriately reflect the standard planning scheme provisions;
- state categories of development;
- state codes for development and when development must be completed.

Subclauses (2), (3) and (4) establish the circumstances in which a master plan may vary the structure plan.

Subclause (5) provides that the master plan may require later master plans.

Master plan attaches to land in master planning unit

Clause 156 clarifies that a master plan attaches to all land in the master planning unit.

Local government approval required

Clause 157 provides that all master plans prepared under a structure plan require local government approval under division 3.

When master plan ceases to have effect

Clause 158 establishes that, as development is completed in a master planning unit, the master plan for the unit progressively "dissolves". 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. However, if the master plan states a time within which the development must be completed, the master plan will cease to have effect at this time, even though the development may not yet be completed.

Division 3 Applying for and obtaining approval of proposed master plan

Subdivision 1 Application stage for proposed master plan

Who may apply

Clause 159 enables any person to apply to a local government for approval of a master plan for a declared master plan area.

Requirements for application

Clause 160 sets out the requirements for making a master plan application.

Subdivision 2 Information and response stage

Local government gives application to coordinating agency

Clause 161 establishes arrangements for the local government to give a copy of a properly made master plan application to the coordinating agency for the application, and for the coordinating agency to give a copy of the application to participating agencies.

Request for information from applicant

Clause 162 provides for the local government, the participating agencies and the coordinating agency to make information requests of the applicant. The coordinating agency coordinates the requests from the State and provides the coordinated request to the local government. The local government must give any information request to the applicant within the times indicated in subclause (5).

Applicant responds to any request for information

Clause 163 establishes the arrangements for applicants providing a response to a request under clause 162. The applicant has three options in responding to the information request:

- option 1 – give all of the information requested;
- option 2 – give part of the information requested;

- option 3 – not give any of the information requested.

Under the current IPA, the timeframe for responding to the request for information is 12 months. Under the Bill, this is reduced to 6 months. This is consistent with the changes to the timeframe for responding to an information request in the IDAS.

Lapsing of application if applicant does not respond

Clause 164 provides a master plan application lapses if the applicant does not respond under clause 163 within the times provided under that clause.

If the application is revived under clause 165, the application will again lapse if the applicant does not comply with clause 165(2) (i.e. if the applicant does not give the response mentioned in clause 163) within the timeframe specified in clause 165(2). In this circumstance, the application cannot be further revived (see clause 165).

When application taken not to have lapsed

Clause 165 provides that a lapsed master plan application may be "revived" upon request by the applicant within 5 business days of the application lapsing. In this situation, the applicant must undertake the required action within 5 business days or the further period agreed between the local government and the applicant.

If an application had previously lapsed under clause 164 and then been revived under this clause, the application will again lapse if the applicant still fails to respond to the information request within the timeframe specified in clause 165. In this circumstance, the application cannot be further revived. This supports the intention of this provision, namely to prevent accidental lapses due to administrative oversights.

Subdivision 3 Consultation stage

When consultation is required

Clause 166 provides for circumstances when public notification is required for the master plan application, and requires the applicant to undertake the notification, and give a copy of the public notice to the local government.

Content requirements for public notice

Clause 167 sets out the requirements for the content of a public notice under clause 166, and establishes the consultation period for the master plan application.

When public notice must be given

Clause 168 establishes when the public notice must be given under clause 166. The time for the notice to be given is linked to the end of the period for requesting information under clause 162.

Notice to comply with public notice requirement

Clause 169 provides for the local government to give the applicant a notice requiring the applicant to give public notice of the master plan application, if the applicant has failed to do so.

Lapsing of application if notice not complied with

Clause 170 provides for the lapsing of a master plan application if the applicant does not comply with a notice under clause 169.

Making submissions

Clause 171 provides for any person to make a submission about a master plan application during the consultation period for the application. The submission requirements are similar to those for development applications under chapter 6, part 4.

Distribution of submissions

Clause 172 provides for a coordinating agency to request a local government to give it copies of submissions, and for the coordinating agency to distribute the copies among participating agencies. This clause also contains arrangements for local governments and coordinating agencies to advise of any submissions that are withdrawn.

Subdivision 4 State government decision stage

Assessment by participating agency and coordinating agency

Clause 173 provides for the matters against which the coordinating agency and any participating agencies must assess the master plan application. Subclause (2) provides for an agency to give weight to documents that

come into effect after the application was made, but before its response is given.

When participating agency's response must be given

Clause 174 establishes the time (the ***required period***) within which a participating agency's response about a master plan application must be given. This time is dependent on whether the agency made a request for information.

Participating agency's response powers

Clause 175 establishes a participating agency's response powers. Any conditional response is subject to clause 183, which establishes the agency's jurisdiction to impose conditions.

Coordinating agency's assessment

Clause 176 establishes the responsibilities of the coordinating agency upon receipt of participating agency responses. The coordinating agency must identify any conflicts in the participating agency responses and its own assessment and seek to resolve any conflicts it identifies with the relevant participating agencies.

Resolution of conflict by Minister

Clause 177 provides for the coordinating agency to refer any unresolved issues arising from the process under clause 176 to the Minister. In resolving conflicts, the Minister must either establish a committee to report on the matter or decide the matter having regard to the written views of the parties. However the Minister's decision cannot be contrary to any law.

Coordinating agency's decision

Clause 178 establishes timeframes for the coordinating agency to advise the local government of its decision, and the form the decision may take.

Subdivision 5 Local government decision stage

Decision-making period

Clause 179 establishes the period within which a local government must make a decision about a master plan application. The period depends upon whether there was a coordinating agency for the master plan application.

Assessment by local government

Clause 180 establishes the matters against which the local government must assess the master plan application.

The local government may give weight to documents approved after the master plan application was made but before it makes its decision.

Local government's decision generally

Clause 181 establishes the parameters within which the local government's decision about the master plan application must be made.

If the coordinating agency directs an action within the defined scope of their powers (e.g. to attach stated conditions) the local government must comply with the direction.

Restrictions on giving approval

Clause 182 prevents a local government from giving an approval to a master plan application if it conflicts with specified State planning instruments, the strategic outcomes for the local government's planning scheme, the structure plan under which the application has been made, or any other master plan applying for the master plan unit.

Also, the local government must not approve the master plan before another master plan the structure plan requires to be approved first, is approved. If the application for the other master plan is refused, so must the application for the master plan.

The current IPA provides that a local government cannot approve a proposed master plan if it conflicts with a State planning policy not appropriately reflected in the structure plan. The Bill includes this, with the additional proviso that a local government cannot approve a proposed master plan if it conflicts with a regional plan. This amendment recognises that State planning policies can be reflected in a regional plan, in which case they do not apply in assessing a master plan.

Conditions

Clause 183 establishes limits on the conditioning powers for master plan approvals, and indicates the type of conditions that may be imposed.

Notice of decision

Clause 184 requires the local government to give written notice of its decision to the applicant and coordinating agency, and states requirements for the notice. A coordinating agency must give a copy of any notice it

receives under this clause to each participating agency for the master plan application.

Representations about conditions and other matters

Clause 185 provides for an applicant to make representations about a decision about a master plan application to the local government or coordinating agency, and for a new decision in the form of a negotiated notice to be given.

Applicant may suspend applicant's appeal period

Clause 186 allows for an applicant to suspend the applicant's appeal period in order to make representations under clause 185.

When approval takes effect

Clause 187 establishes when a master plan approval takes effect. This is dependent upon whether or not the applicant chooses to appeal.

The provisions in the Bill about when an approval takes effect have been changed to account for the situation where an appeal is withdrawn, since there is some uncertainty about this under the current IPA.

Effect on decision stage if action taken under Native Title Act (Cwlth)

Clause 188 extends the decision stage for a master plan application if notification of a future act under the Commonwealth *Native Title Act 1993* is undertaken.

Subdivision 6 Ministerial directions about application

Ministerial directions to local government

Clause 189 provides for the Minister to make directions to a local government about actions taken in connection with a master plan application.

Ministerial directions to applicant

Clause 190 provides for the Minister to make directions to an applicant about actions taken in connection with a master plan application.

Subdivision 7 Changing or withdrawing applications

Changing application

Clause 191 allows for an applicant to change a master plan application at any time before it is decided by giving the local government notice of the change. The local government must give a copy of the notice to any coordinating agency for the application. If the applicant changes the application, the assessment steps already completed must be repeated, unless the change is one or more of the types of change stated in subclause (5).

Withdrawing application

Clause 192 allows an applicant to withdraw a master plan application.

Subdivision 8 Miscellaneous provisions

Agreements about master plan

Clause 193 provides for an applicant for a master plan to enter into agreements with an entity, including a local government, coordinating agency or participating agency to secure performance or establish obligations under an approval for the plan.

Substantial compliance

Clause 194 states that a master plan made in substantial compliance with the process set out in this division is valid so long as any non-compliance has not affected public awareness of the proposed plan, the capacity for any individual to make submissions, or the capacity of a coordinating agency, participating agency or local government to perform their functions in relation to the application.

Additional third party advice or comment

Clause 195 clarifies that a local government may seek additional third party advice or comment about a master plan application at any time before it is decided.

Modified application of provisions about infrastructure for master plan

Clause 196 states that the infrastructure charging and conditioning arrangements in chapter 8, parts 1 and 3 apply as if the master plan application were a development application (subject to certain stated modifications).

Master plan applications are applicant-driven planning processes that have similarities to development assessment. Accordingly, it is appropriate the infrastructure regime applying to development also apply to these plans.

Notation of master plan on planning scheme

Clause 197 requires a local government to notate an approved master plan on its planning scheme and give the chief executive notice of the notation.

Subclause (2) provides the note is not an amendment to the local government's planning scheme.

Division 4 Amending or cancelling master plans

Application to amend master plan

Clause 198 provides for amendments to master plans using the process under division 3, as if the amendment were an application for approval of the plan.

Subclause (3) provides that the written consent of the owner of the land is not required if, in the local government's opinion, the amendment does not materially affect the land.

Cancellation of master plan by local government

Clause 199 allows a local government to cancel a master plan in limited circumstances. All affected owners must agree to the cancellation, and development under the plan must not have started.

Chapter 5 Designation of land for community infrastructure

The provisions about designation of land for community infrastructure have been included in a separate chapter because community infrastructure designations are a distinct and unique planning tool.

Part 1 Preliminary

Who may designate land

Clause 200 states that a Minister (in this chapter any Minister of the State) or a local government may be a ***designator*** i.e. they may designate land for community infrastructure. What constitutes community infrastructure will be listed in a regulation to the Bill. The Minister may designate land for community infrastructure that exists or that the State or another entity intends supplying. Similarly, local governments also may designate land for infrastructure that exists or that the local government or another entity intends supplying.

The key feature of designation is that the infrastructure must be for community infrastructure. It is not necessary that the infrastructure be publicly owned.

Matters to be considered when designating land

Clause 201 establishes four public benefit criteria, at least one of which must be satisfied in order for land to be designated for community infrastructure.

These criteria are concerned with:

- environmental protection or ecological sustainability;
- efficient allocation of resources;
- satisfying statutory requirements or budgetary commitments of the State or local government;
- the community's expectations for the efficient and timely supply of infrastructure.

What designations may include

Clause 202 gives guidance on the requirements, plans, programs or the like, that may be incorporated into a designation of land for community infrastructure. For example, if land were designated for a hospital, plans may accompany the designation showing what the building would look like and the proposed site layout including vehicular access and circulation, the size and location of car parks, landscaping, and the location of emergency service areas. Another designation, perhaps for a community centre, may include written details describing the floor area of the building and the nature of activities for which the building will be used. In another case, perhaps for a sewage treatment plant, a specific environmental management plan may be included in the designation to ensure that impacts of the infrastructure are reduced.

Such details on the design and operation of proposed community infrastructure may be necessary for determining the suitability of a site for the intended use and ensuring that the infrastructure when finally built is compatible with its surroundings. The need to impose design requirements, an operational program or similar, may arise in response to consideration by a designator about whether a designation should proceed.

Clause 582 includes an offence for carrying out development for designated purpose other than in accordance with a designation. This ensures any requirements in relation to the development included in a designation under this clause are enforceable.

How IDAS applies to designated land

Clause 203 states that development under a designation is, to the extent the development is self-assessable development, development requiring compliance assessment or assessable development under a planning scheme, exempt development. This means the planning scheme does not apply to designated land. This is because the designation of land involves a public consultation process and also requires major environmental effects to be taken into account.

However, despite that, if development is self-assessable, development requiring compliance assessment or assessable development under a regulation made under clause 232(1), these provisions still apply. For example, if the regulation provides that a material change of use for carrying out an environmentally relevant activity is assessable development, then clause 203 will not apply to make the development exempt.

The only exception is for reconfiguring a lot (paragraph (b)). Designation of network infrastructure may involve the reconfiguration of substantial numbers of lots, sometimes in several local government areas. Applying for reconfiguration in these circumstances would be onerous. For this reason reconfiguration for a designated purpose is exempt development in all circumstances under this clause.

Relationship of designation to State Development and Public Works Organisation Act 1971

Clause 204 provides that this clause applies if a designation is made for land included within a State development area declared under the *State Development and Public Works Organisation Act 1971*.

Subclause (2) states that despite section 84 of the *State Development and Public Works Organisation Act 1971*, use of the designated land for purposes consistent with the designation is taken to be a use consistent with the intent of the development scheme for the State development area, and is not a use that contravenes section 84 of that Act (particularly in terms of subsections (2) and (4)).

This means development for the designated purpose does not require approval under the development scheme for the State development area.

How infrastructure charges apply to designated land

Clause 205 states that infrastructure charges do not apply to public sector designated development. This is consistent with current government policy which does not subject public entity proposals to council charges. Presently, government policy is for the costs of infrastructure to be shared equally between local and State governments.

How designations must be shown in planning schemes

Clause 206 specifies how a designation by the local government or a Minister must be shown in a planning scheme.

The following must be shown:

- the land affected;
- the type of community infrastructure;
- the day the designation was made;
- a reference to any matters included in the designation about the design and operation of the community infrastructure (under clause 202);

- that the planning scheme provisions which apply to the land remain effective if the designation is repealed or ceases to have effect.

This ensures that all essential information about a designation is shown on planning schemes enabling those inspecting a scheme to be aware of their existence and nature.

A statement is included in the clause to remove any doubt that:

- A local government's designation is part of a scheme, that is, it has the same status and significance as any other part of the scheme (for example, it is a relevant consideration in development assessment).
- Designation is not the only way community infrastructure may be identified in a planning scheme. For example, land may be shown in a scheme as having a preferred use for particular infrastructure and certain provisions of the scheme would apply in accordance with that preferred use.
- The planning scheme provisions which apply to the land affected remain if the designation is repealed or ceases to have effect. This makes it clear that designations operate like an overlay within a scheme, and should they cease or be repealed, do not leave a "hole" in the scheme. It also emphasises the need to consider an alternative use of designated land if designations are being introduced into a new scheme.

Part 2 Ministerial designations

Matters the Minister must consider before designating land

Clause 207 states the process which must be followed by a Minister when designating land. Before designating land, the Minister must be satisfied adequate environmental assessment and consultation has been completed for the development the subject of the proposed designation. The current IPA provides that there has been adequate environmental assessment and public consultation if, among other things, public notification has been carried out for a planning scheme or structure plan under schedules 1 or 1A. Schedules 1 and 1A have not been included in the new Bill. Instead the Minister will have the power to make statutory guidelines about making

and amending planning schemes, and amending planning schemes to include a structure plan.

Subclause (3) sets out the conditions that constitute adequate environmental assessment and public consultation for carrying out an environmental assessment. In general, this depends on whether the subject of the proposed development has already undergone an environmental assessment or been publicly notified. For example, this may apply to a development application that includes the community infrastructure and has been publicly notified in accordance with the IDAS process in chapter 6.

Subclause (3) is not an exhaustive list of the ways a Minister may carry out environmental assessment and consultation in the course of designation. Ultimately the adequacy of environmental assessment and public consultation is a matter for the Minister under subclause (1). Subclause (3) merely lists seven ways of carrying out consultation and environmental assessment that would be adequate for subclause (1). It does not limit the ways in which the Minister may be satisfied under subclause (1).

Subclause (2) states additional matters the Minister must consider before making the designation. These include any relevant State or local planning instruments or master plans (for land in a declared master planned area) that may apply to the land that is the subject of the proposed designation.

The Minister must also consider every properly made submission made under subclause (4). This requires the Minister to give written notice of the proposed designation to any local government the Minister is satisfied is affected by the designation or to an owner of any land to which the designation applies, if the entity or owner has not been given written notice under subclause (3). The notice must invite submissions about the proposed designation and provide at least 15 business days for the entity or land owner to make a submission.

Procedures after designation

Clause 208 requires a Minister who designates land to advise each owner, each relevant local government and the chief executive of the designation.

Subclause (2) states the content of the notice advising the above entities of the designation, including any particular requirements for the development of the land included in the designation under clause 202. This ensures that the entities receiving the notice can form an accurate impression of the nature and impacts of the designation, particularly as any requirements

under clause 202 may have been included in the designation in response to consultation or environmental assessment, and may not have been part of the proposal originally consulted upon.

Subclause (3) requires the designating Minister to publish a notice in the gazette stating the matters listed in subclause (2)(a) to (c).

Procedures if designation does not proceed

Clause 209 provides the process to be followed if designation is proposed but does not proceed. The relevant Minister must notify each owner of the land and each relevant local government of the Minister's decision not to proceed.

Effects of ministerial designations

Clause 210 states that a designation replaces any existing designation, if the designation contains a statement to that effect. It also specifies the day on and from which the designation takes effect (either the day the designation is first notified in the gazette or a later day if stated in the designation). Such statements are necessary to settle any query as to the applicability of a designation at a particular time.

When local government must include designation in planning scheme

Clause 211 requires a local government to note a designation by a Minister on its planning scheme (whether the designation is in or near the planning scheme area), and on any new scheme it makes before the designation ceases to have effect. Subclause (2) establishes that, unlike a designation made by a local government, the notation of a designation on a planning scheme under this clause is not a planning scheme amendment.

This amendment has been made for the purpose of clarification and consistency with other provisions in the legislation, which specifically state that certain notations made on a planning scheme are not amendments to the planning scheme.

Part 3 Local government designations

Designation of land by local governments

Clause 212 states that a local government may only designate land by including the designation as a substantive provision of its planning scheme,

i.e. by either making or amending the planning scheme. This ensures a means of introduction which is accountable and consistent with how a local government incorporates other significant provisions affecting planning and development in its local area. The same process applies whether or not the land is owned by the local government.

Designating land the local government does not own

Clause 213 requires a local government to give written notice of its intentions to designate land if it is not the owner of the land. As the designation is achieved through the scheme making or amending process, the clause specifies that the notice be given before the start of the consultation period. This ensures that the owner is aware of the proposed designation, and of the opportunity to make a submission during the consultation period.

This clause specifies what the notice must state:

- the description of the land to be designated, including a plan;
- the type of community infrastructure proposed;
- the reasons for the designation; and
- that submissions may be given to the local government during the consultation period.

Part 4 Duration and reconfirmation of designations

Duration of designations

Clause 214 states that a designation ceases to have effect after six years. The last day is referred to as the ***designation cessation day***. If a new planning scheme is made, a current designation included in the new scheme continues to have effect until its designation cessation day. As the designation already exists and requirements to notify the owner have previously been completed, clause 213 does not apply again when the new scheme is being made.

When designations do not cease

Clause 215 identifies five circumstances when a designation does not cease to have effect on the designation cessation day:

- the land is not owned by the State or local government and construction of the community infrastructure has started;
- the land is owned on the day by the State or a local government;
- a notice has been given by the relevant public sector entity to resume the land under section 7 of the *Acquisition of Land Act 1967* (ALA);
- an agreement has been signed to take the land under the ALA or to otherwise buy it; or
- it is a designation by the Minister which has been reconfirmed.

However subclause (2) states that, should proceedings to resume the designated land discontinue, then the designation ceases to have effect. The purpose of this clause is to ensure that if the designation of privately owned land has not been acted upon after a reasonable period then it does not continue to influence the use of the land for other purposes.

Subclause (3) is included to remove any doubt that designation or a notice of designation does not constitute a notice of intention to resume under the ALA. Actions under the ALA arising from a designation will occur separately and follow the procedures specified by that Act.

Reconfirming designation

Clause 216 specifies the procedure for reconfirming a designation so that a designation does not cease after 6 years. This clause:

- relates to a designation by the Minister;
- makes the designation effective for another 6 years;
- requires the Minister to:
  - — give a copy of the notice reconfirming the designation to the owner of the land;
  - — publish the notice in the gazette;
- requires the local government to again note the designation on its planning scheme and on any new scheme it makes before the designation ceases to have effect; and

- is subject to the duration and cessation provisions for a designation under clauses 214 and 215.

Subclause (3) makes it clear that this note on a planning scheme regarding the designation, is not an amendment of the planning scheme. This amendment has been made for the purpose of clarification and consistency with other provisions in the legislation, which specifically state that certain notations made on a planning scheme are not amendments to the planning scheme.

Part 5 Repealing designations

Who may repeal designations

Clause 217 provides that designations may be repealed by the entity that created them.

Notice of repeal

Clause 218 requires the repeal of a designation to be notified by publishing a notice in the gazette and a newspaper circulating generally in the locality of the designation.

Subclause (2) contains requirements about the content of the notice.

Minister or local government to give notice of repeal to particular entities

Clause 219 contains requirements for the giving of notice of the repeal of a designation.

Subclause (1) deals with the repeal of a designation made by the Minister, and requires a copy of the notice of the repeal to be given to:

- each local government notified about the making of the designation;
- the owner (unless the land is owned by the State or a local government); and
- the chief executive.

Subclause (2) deals with the repeal of a designation made by a local government, and requires a copy of the notice of the repeal to be given to

the owner, if the land is owned by an entity other than the local government.

When designation ceases to have effect

Clause 220 provides that a repealed designation ceases to have effect from the day the notice of the repeal is notified in the gazette.

The opportunity to remove a designation quickly allows a Minister or local government to act as soon as practicable once it has been determined that a designation is no longer appropriate, rather than wait for the designation to lapse or for a local government to review its scheme. This prevents a designation being a relevant consideration in planning and development assessment when it has been determined that certain proposed infrastructure will definitely not be proceeding.

Local government to note repeal on planning scheme

Clause 221 requires a local government to note the repeal of a designation made by the local government or a Ministerial designation on its planning scheme. Again, the notation is not an amendment to the planning scheme.

Subclause (2) makes it clear that this note on a planning scheme of the repeal of a designation, is not an amendment of the planning scheme. This amendment has been made for the purpose of clarification and consistency with other provisions in the legislation, which specifically state that certain notations made on a planning scheme are not amendments to the planning scheme.

Part 6 Acquiring designated land

Request to acquire designated land under hardship

Clause 222 states that an owner of an interest in designated land may request the designator to buy the interest. This clause makes it clear that a land owner affected by a designation is entitled to seek action from the relevant government authority to clear themselves of property which has limited potential for new private development.

Decision about request

Clause 223 specifies a decision-making period of 40 business days and certain matters about the owner's circumstances to consider in making a decision. The designator must decide to:

- grant the request;
- take other action under clause 226 (exchange the interest for property held by the designator, remove the designation or investigate removal of the designation); or
- refuse the request.

Notice about grant of request

Clause 224 applies if the designator decides to grant the request and buy the interest. It requires the designator to give the owner a notice of its intention within 5 business days of making the decision.

Notice about refusal of request

Clause 225 applies if the designator decides to refuse the request. It requires the designator to give the owner a notice, within 5 business days of making the decision, advising that the request has been refused and that the owner may appeal against the decision.

Clause 477 allows a person to appeal to the court against a decision to refuse a request. A failure to decide the request within the specified time is also appealable on the basis of a deemed refusal. Because the request to purchase the interest arises out of hardship on the part of the owner, it is appropriate that court costs associated with any appeal be treated sympathetically. Accordingly, clause 457 states that costs must be paid by the relevant Minister or local government if the appeal is against a deemed refusal or an appeal against a decision is upheld.

Alternative action designator may take

Clause 226 specifies alternative decisions to either granting or refusing the request to buy the interest:

- exchange the interest for property held by the designator;
- repeal the designation or remove the designation from the interest; or
- investigate removal of the designation from the interest.

Consistent with the requirements for other possible decisions on the request, the designator must give the owner a notice of its intention within 5 business days of making the decision.

If the designator does not act under the notice

Clause 227 requires the designator to give a notice of intention to resume an interest in designated land under section 7 of the *Acquisition of Land Act 1967*, if within 25 business days the designator has not:

- signed an agreement with the owner to buy or exchange the interest; or
- repealed the designation or removed the designation from the interest;

as stipulated in the notice given under clause 224 or 226.

How value of interest is decided

Clause 228 deals with the value of an interest in designated land if the land is taken under the *Acquisition of Land Act 1967*. This clause states that the effect of designation must be disregarded in deciding the value of the interest taken.

Part 7 Delegation of Minister's functions

Ministers may delegate particular administrative functions about designations

Clause 229 provides that some functions of a Minister with respect to designation may be delegated to the chief executive or a senior executive of any Department for which the Minister has responsibility, or the chief executive officer of a public sector entity. These functions are in clauses 208, 209 and 224 to 227.

Chapter 6 Integrated development assessment system (IDAS)

Part 1 Preliminary

Chapter 6 establishes the integrated development assessment system, or IDAS. IDAS has been a key feature of Queensland's planning and development assessment system since 1998. Like the current IPA, the Bill seeks integration in three broad areas:

- integrated planning;
- integrated development assessment;
- integrated dispute resolution and enforcement.

IDAS is in many senses the centrepiece of this integrated system. It links integrated policies expressed through a range of instruments established under chapters 2, 3 and 4 with real outcomes "on the ground" through a flexible, responsive and accountable performance-based development assessment system.

Key characteristics of IDAS are:

- **Comprehensive:** IDAS covers approvals for almost all development in Queensland (including Queensland waters). Exceptions include approvals for mining and petroleum-related activities (which are given under the *Environmental Protection Act 1994*), and development in certain locations, such as urban land development areas under the *Urban Land Development Authority Act 2007*. The broad scope of the definition of ***development*** (see clauses 7 and 10) means that IDAS covers the broadest possible range of development. This approach is necessary if a truly integrated approach to development assessment is to be achieved.
- **Scalable:** IDAS is capable of applying at any scale of development from minor works (for example a vehicle crossing or pergola) to complex, major staged proposals such as master planned communities.

- **Modular:** IDAS consists of four basic stages which are modular in character – i.e. not all stages apply to all development applications. A simple application may involve only two stages (application and decision), whereas a more complex proposal may involve 4 stages (application, information and referral, notification and decision). IDAS also involves the compliance stage. For development requiring compliance assessment only, this will be the only stage that applies to the development.
- **Performance-based:** IDAS is a performance-based development assessment system. It effectively establishes a right for a person to bring forward any proposal and have it tested against the policy benchmarks set under the planning instruments established in chapters 2 and 3, structure plans and master plans made under chapter 4 and other policy benchmarks. Proposals that comply or "perform" will generally be approved. However, the Bill does introduce limited prohibitions and prevents applications from being made in respect of this prohibited development.
- **Balanced:** IDAS balances the need for effective and timely approvals with the rights of the community to be informed and to comment on key proposals. IDAS includes checks and balances to ensure any obligations imposed on participants are balanced with rights of redress. For example, the capacity for an assessment manager to seek further information in support of an application is balanced with the right of applicants to provide some or none of the information, and seek a final decision, so that any disputes about the adequacy of the information can be independently arbitrated through an appeal or review process.
- **Accountable:** IDAS includes accountabilities on all participants to ensure the process is timely, transparent and fair. All processes under the Bill have clear end points specified with a right of appeal or review attached.

Since IDAS was first introduced in 1998, over 60 amendments were made to the current IPA to progressively integrate into IDAS approvals previously given under separate processes in a range of primary and subordinate legislation. Upon commencement of the current IPA, approvals under planning schemes and about reconfiguring a lot were already integrated. Early integrations included the building approvals system under the *Building Act 1975* and a range of approvals under the *Environmental Protection Act 1994.* Other approvals include coastal development, heritage

approvals, development related to water resources, vegetation management, fisheries resources, port land, contaminated land, rail infrastructure, State roads and public passenger transport.

Integration of development approvals into IDAS has involved the amendment of other legislation to remove stand-alone processes. Removing stand-alone processes from other legislation has meant the removal of substantial amounts of legislated process. It has also involved other legislative changes to separate and rationalise development assessment processes from other processes under other legislation, including resource allocation and personal licensing processes.

Development assessment and resource allocation

Resource allocation decisions are concerned with establishing rights of access to resources owned or managed by another party, be they a private resource holder or the State government. Such resources include land, water, forest products and extractive materials. Ownership of, and access to State resources, and proprietorship generally are not considerations under IDAS.

However the allocation of a State resource is most often followed by its development, so resource allocation often precedes and intersects with development assessment under IDAS in several key respects. For example, a development application for development of a State resource must often be accompanied by evidence of an entitlement to the resource.

Matters considered in resource allocation are also different to those for development assessment. Allocation of a State resource involves consideration of the highest and best use of the resource in the community's interests, and is essentially a policy decision of government. Development assessment is an administrative process aimed at determining the suitability of a particular proposal in light of a policy framework.

Development assessment and personal licensing

Personal licensing systems are concerned with evaluating the skills, competencies, or record of individuals for the carrying out of certain activities. Examples include liquor licensing under the *Liquor Act 1992* or environmental authorities under the *Environmental Protection Act 1994*. IDAS is not concerned with the personal qualities of the applicant, and a development approval under IDAS does not attach to a person, but to premises. However many development approvals are followed by personal licensing processes to establish the competencies of operators.

Consultation and the reform agenda

Consultation carried out in the course of developing the reform agenda established that there was strong support for the fundamentals of the current IPA and IDAS, and their underpinning philosophies are sound. However difficulties with IDAS were identified in the following areas:

- Difficulties in correctly determining referral agencies.
- Lodgement of poor quality or incomplete development applications.
- Non-compliance with IDAS timeframes.
- A focus on process and timeframes rather than good development outcomes.
- Issues associated with procedural actions, such as changing development applications or conditions of approvals.

The reform agenda responded with 24 specific recommendations for legislative improvements to IDAS, most of which are reflected in this Bill. Key among these are:

- Streamlining and simplifying assessment and referral triggers, and locating them all in the regulation.
- Simplifying the application stage and making the responsibilities of the assessment manager and applicant clearer.
- Re-ordering the current arrangements for the lapsing of development applications to make them easier to find and understand. The Bill also enables a small "window of opportunity" for applications to be revived, in order to prevent applications being "thrown out" of the system due to a minor, administrative error or oversight.
- Requiring the submission of identified supporting information as part of a properly made application for assessable development and preventing the acceptance of incomplete applications. This reform action is intended to "raise the bar" for the quality and content of development applications. The greater onus on applicants for submitting properly made applications is balanced with a requirement for assessment managers to inform applicants if their applications cannot be accepted, and the necessary remedies. Applicants are afforded additional time to remedy deficiencies in their applications without further fees. The jurisdiction of the Building and Development Dispute Resolution Committee (previously called the Building and Development Tribunal) under chapter 7, part 2 of this

Bill has been expanded to deal with certain declaratory matters about development applications.

- Reducing the default time for an applicant to respond to an information request from 12 months to 6 months (except for applications required as the result of an enforcement notice, which will continue to have a prescribed timeframe of 3 months).
- Greater clarity and improved flexibility about changing development applications before they are determined.
- Specific arrangements for dealing with missed referrals identified prior to an application being decided.
- Consolidation and simplification of assessment and decision rules.
- Reforms to preliminary approvals that override a planning scheme to ensure they are used in appropriate circumstances, and that the rights they confer are exercised within a reasonable time after approval.
- Consolidating, simplifying and allowing more flexible arrangements for changing development approvals, including addressing inconsistencies between changing conditions and other aspects of an approval, and introducing the concept of a "permissible change".
- Expansion of the current compliance assessment process to create a technical assessment stream, including incorporation of current processes for approving plans of subdivision within the compliance assessment process.
- Introduction of limited prohibitions. Prohibitions which are currently set out in other legislation have been consolidated into schedule 1 of the Bill. The Bill also provides for limited prohibitions at a local level.
- Introduction of deemed approvals for certain types of code assessable applications, if they are not decided within the IDAS timeframes.
- Numerous other improvements, and restructuring of chapter 6 to create a clearer and more logical sequence.

The reforms to IDAS also respond to evolving practice in the broader planning and development assessment environment, particularly the advent of electronic development assessment and document management systems such as e-IDAS.

Division 1 Introduction

What is IDAS

Clause 230 states IDAS is the system detailed in this chapter for integrating State and local government assessment and approval processes for development.

Categories of development under Act

Clause 231 states the five categories of development under this Bill. Categories (a), (b) and (d) (exempt, self-assessable and assessable development) are the same as under the current IPA. Categories (c) (development requiring compliance assessment) and (e) (prohibited development) are new categories under this Bill.

Subclause (2) establishes that the "default" category is exempt development. Consequently, any other category of development must be declared under one or more of several instruments under the Bill.

While many development activities are captured within the concept of development, it does not mean that these activities are automatically regulated. Development is only regulated if it is made self-assessable development, development requiring compliance assessment, assessable development or prohibited development under a regulation, planning instrument or master plan.

Regulation may prescribe categories of development or require code or impact assessment

Clause 232 provides that a regulation may prescribe:

- the category of development (self-assessable development, development requiring compliance assessment or assessable development);
- development a planning scheme, temporary local planning instrument, preliminary approval to which clause 242 applies, or a master plan, cannot make self-assessable development, development requiring compliance assessment, assessable development or prohibited development;
- the type of assessment for assessable development (code or impact assessment, or both code and impact assessment).

Subclause (2) provides that a regulation may prescribe development that a planning scheme, a temporary local planning instrument, a preliminary approval to which section 242 applies or a master plan can not declare to be self-assessable development, development requiring compliance assessment, assessable development or prohibited development. This has the effect that the relevant development is effectively exempted from assessment against the local planning instrument or other instrument.

A regulation is not the only instrument that may prescribe the category of development or type of assessment for development. The note to subclause (3) sets out other instruments which the Bill enables to specify categories of development.

Relationship between regulation and planning scheme, temporary local planning instrument or local law

Clause 233 states that a regulation mentioned in clause 232(1) or (2) prevails over a planning scheme or a temporary local planning instrument to the extent of any inconsistency.

Subclause (2) provides that in the case of an inconsistency between a regulation made under clause 232(1) and a planning scheme or temporary local planning instrument arising because the regulation prescribes development as assessable, but the planning scheme or temporary local planning instrument prescribes the development as self-assessable, the self-assessable codes in the planning scheme or temporary local planning instrument are not taken to be applicable codes, but must be complied with. This provision ensures that any codes in the planning scheme or temporary local planning instrument continue to be binding, however they will not be relevant to the assessment of the application (unless specifically called up by the regulation).

Subclauses (3) to (5) state a planning scheme or temporary local planning instrument cannot require impact assessment instead of code assessment for an aspect of development a code is about, if the regulation requires code assessment, whether or not the planning scheme or temporary local planning instrument is made before or after the regulation.

Subclauses (6) and (7) allow for a regulation under this Bill or another Act to nominate a code as a complete code – i.e. a code that cannot be changed by a local planning instrument or local law.

Relationship between sch 1 and planning instruments

Clause 234 states that if a planning instrument provides for any matter with regard to development that is prohibited development under schedule 1 then, to that extent, the planning instrument has no effect. For example, if a planning scheme states that a development specified in schedule 1 is self-assessable development and requires compliance with specific codes in the planning scheme, these provisions of the planning scheme would have no effect. It is an offence to carry out development which is prohibited development (see chapter 7, part 3).

Division 2 Particular provisions about categories of development

Exempt development

Clause 235 deals with exempt development. Subclauses (1) and (2) establish the effect of exempt development.

Subclause (1) establishes a development permit is not required for exempt development.

Subclause (2) establishes that the only instrument under the Bill that can directly affect exempt development is a State planning regulatory provision (for example by imposing direct requirements on the way the development is to be carried out).

Subclause (3) establishes that subclauses (1) and (2) do not stop a planning instrument, a master plan for a declared master planned area, a development approval or a compliance permit affecting exempt development indirectly if the exempt development is the natural and ordinary consequence of other development which is self-assessable development, development requiring compliance assessment or assessable development, and the effect is concerned with mitigating the effects of the development.

An example is provided of the effect of subclause (3).

Self-assessable development

Clause 236 provides that a development permit is not necessary for self-assessable development, but this development must comply with the applicable codes.

Development requiring compliance assessment

Clause 237 makes it clear that where development requires compliance assessment, a development permit is not necessary, but a compliance permit is required.

Assessable development

Clause 238 states a development permit is necessary for assessable development.

Prohibited development

Clause 239 states a development application or a request for compliance assessment cannot be made for prohibited development.

It also confirms that if any part of a development application or request for compliance assessment involves prohibited development, then the application or request is taken not to have been made, and IDAS does not apply to it.

Division 3 Approvals for IDAS

Subdivision 1 Preliminary

Types of approval

Clause 240 identifies the types of approval obtainable under IDAS - a preliminary approval, a development permit, a compliance permit and a compliance certificate. The reason there are four types of approvals is to ensure IDAS may operate with the flexibility needed to deal with the wide range of potential application scenarios that will be encountered. These will range from straightforward house extension applications to complex, large-scale mixed use proposals. Some points to note about preliminary approvals and development permits include:

- both are legally binding approvals;
- a development permit authorises assessable development to occur;
- a preliminary approval approves assessable development but does not authorise the development to occur;
- a preliminary approval is optional;

- the IDAS process is the same regardless of whether a preliminary approval or development permit is sought;
- if development is assessable, a development permit must be obtained prior to the development being carried out;
- both preliminary approvals and development permits can condition development.

Explanatory notes about compliance permits and compliance certificates are set out below (see the notes for chapter 6, part 10).

Subdivision 2 Preliminary approvals

Preliminary approvals

Clause 241 establishes the concept of a preliminary approval. Key aspects of preliminary approvals are:

- They approve development (not merely assessable development as for a development permit). The reference to development rather than assessable development reflects the fact that preliminary approvals are often conceptual in nature, and are not for development that is identifiably assessable.

  Example - A preliminary approval may seek a conceptual approval for a "residential precinct" or an "industrial precinct". Concepts like these may encompass a range of assessable, self-assessable or exempt development under various planning instruments.

- They approve development to the extent, and subject to the conditions, stated in the approval. However, they do not authorise assessable development to occur. A conceptual or general application for a preliminary approval would result in a conceptual or general approval. The more specific the proposal in the development application, the greater specificity any resulting approval is likely to have.

  Example - A preliminary approval may approve a "residential precinct" as described in the previous example, but may not state the nature or density of the development. In other words, the approval only goes so far as to approve the concept of a residential use for the premises, but does not authorise the nature, scale or density. These

aspects of the development would be the subject of further preliminary approvals or development permits.

- There is no requirement to obtain a preliminary approval. It is a matter entirely for the applicant to decide.

Preliminary approval may affect a local planning instrument

Clause 242 allows a preliminary approval to vary the effect of a planning scheme on land the subject of the approval, and substitute different provisions on that land for the life of the approval or until the approved development is completed. This is in addition to the basic provisions mentioned in clause 241.

This form of preliminary approval has several potential applications under IDAS. If a large master-planned housing estate is proposed on land currently zoned for future urban purposes, this clause allows a preliminary approval to be given providing detail about how the particular development will be carried out.

Example – The preliminary approval may identify different development precincts, broad land use intentions for each of the precincts and the major infrastructure networks for the estate. Also, under this clause, the approval may establish a different regime of exempt development, self-assessable development, development requiring compliance assessment and assessable development on the land. For example, in a non-urban zone, certain agricultural or animal husbandry activities may be exempt development. If the land is to be used for residential purposes those activities would probably be unacceptable. By altering the nature of assessable development, development requiring compliance assessment, self-assessable development and exempt development on the land, the preliminary approval can bring the development potential of the land into line with the nature of development intended.

Subclauses (2) and (3) provide that if an application is for a material change of use and the preliminary approval approves the application, the preliminary approval may state that the material change of use is exempt development, self-assessable development, development requiring compliance assessment, or assessable development requiring code or impact assessment, or both code and impact assessment. The preliminary approval may also identify codes (for example, by referring to a code in a planning scheme) or include new codes for the development. The preliminary approval may also do these things for development relating to the material change of use.

Subclauses (4) and (5) provide that if an application is for development other than a material change of use and the preliminary approval approves the development, the preliminary approval may state that the development is exempt development, self-assessable development, development requiring compliance assessment, or assessable development requiring code or impact assessment, or both code and impact assessment. The preliminary approval may also identify codes (for example, by referring to a code in a planning scheme) or include new codes for the development.

Subclause (6) provides that to the extent the preliminary approval does either of the things mentioned in subclauses (3) or (5), it will prevail to the extent of any inconsistency with a local planning instrument.

However, subclauses (3) and (5) no longer apply once the development is completed or the time limit for completing the development ends (subclause (7)).

Subclause (8) provides that a preliminary approval will have no effect to the extent it is inconsistent with a regulation made under clause 232 (1), (2) or (3).

Subdivision 3 Development permits

Development permits

Clause 243 provides that development permits authorise assessable development to take place to the extent stated in the permit, subject to any conditions in the permit and any preliminary approval for the development.

Some points to note about development permits:

- they are legally binding approvals;
- a development permit authorises assessable development to occur (whereas a preliminary approval approves assessable development, but does not authorise development to occur);
- the IDAS process is the same regardless of whether a preliminary approval or development permit is sought;
- if development is assessable, a development permit must be obtained prior to the development being carried out;
- a development permit can impose conditions on development.

Subdivision 4 Other matters about development approvals

Development approval includes conditions

Clause 244 provides that a development approval includes:

- the conditions imposed by the assessment manager;
- the conditions contained in any concurrence agency's response for the application;
- any conditions that the Minister has directed the assessment manager to attach to any development approval under clause 419;
- any conditions that, under another Act, must be imposed on the approval. An example of this is the conditions taken to be imposed under the *Building Act 1975,* chapter 4, part 5, division 1.

Development approval attaches to land

Clause 245 states that a development approval attaches to the land and binds the owner, the owner's successors in title and any occupier of the land. This approach makes it clear that changes of ownership do not affect the validity of a development approval. Also, by stating that the approval is binding both on the owner and the occupier it makes it clear that if someone other than the owner of the land is exercising the rights conferred by the approval, they are responsible for complying with the conditions of the approval.

Example - An inner city building contains a cinema complex leased and operated by a national cinema chain. The building is owned by an investment company. The development approval that authorised the establishment of the cinema complex contains operating conditions. These conditions are binding on the cinema chain as the operator. Because the owner also is bound, there is a clear responsibility for the owner to make each operator aware of the operating conditions attached to the land. If another operator subsequently takes over the operation of the cinemas, the conditions are binding on the new operator. Also, if the investment company sells the property to another person, the approval is still valid as it remains attached to the land.

Division 4 Assessment managers and referral agencies

Subdivision 1 Assessment managers

Who is the assessment manager

Clause 246 defines the assessment manager as the entity prescribed under a regulation.

Subclause (2) provides that the regulation can require the assessment manager to be determined by the Minister. This may happen when proposed development involves complex jurisdictions, or is not wholly within a local government area.

Subclause (3) provides that if the assessment manager is decided by the Minister, the Minister can determine the matter by directing the development application be split into two or more applications. For example, it would be possible under IDAS for a commercial operation with numerous franchises to apply for development for a number of outlets in different local government areas in one development application. In this case the regulation would prescribe no particular assessment manager and the assessment manager would need to be determined by the Minister.

Role of assessment manager

Clause 247 makes it clear that, while the assessment manager administers and decides an application, the assessment manager may not always assess all aspects of development for an application. Where part of an application, had it been lodged as a separate development application, would have required a different assessment manager, then that part of the application must not be assessed by the assessment manager (see clause 312). This reflects the fact that the jurisdiction for assessing different aspects of a development application may rest with several entities.

Example - A development application may involve several industrial activities, some of which are assessable under the relevant local government's planning scheme, and some of which are exempt under the scheme. However one of the exempt industrial activities may be an environmentally relevant activity under the Environmental Protection Regulation 2008, and consequently assessable development under the regulation to this Bill. The assessment manager will be the relevant local

government on account of some of the activities being assessable under the planning scheme. However, the Department of Environment and Resource Management will exercise a concurrence jurisdiction over the environmentally relevant activity, and the assessment manager will not assess the part of the application relating to that activity, but will include any conditions of the Department of Environment and Resource Management in the final development approval.

Jurisdiction of local government as assessment manager for particular development

Clause 248 provides for the circumstance where the local government is the assessment manager in respect of development which is not completely within the local government's planning scheme area. This clause makes it clear that the local government is the assessment manager for the development, notwithstanding any provision in the *Local Government Act 1993*.

When assessment manager also has jurisdiction as concurrence agency

Clause 249 clarifies that if an entity is the assessment manager, and could also have been a concurrence agency, then the entity is not a concurrence agency for the development, but is the assessment manager in respect of each jurisdiction that the entity would have had as a concurrence agency.

This prevents procedural duplication in cases where an entity is prescribed as both an assessment manager and has one or more referral jurisdictions.

Subdivision 2 Referral agencies

Who is an *advice agency*

Clause 250 provides for advice agencies to be prescribed under a regulation for particular development applications. Paragraph (b) recognises that it is possible to devolve or delegate the functions of an advice agency to another entity, and provides for the other entity to be an advice agency under those circumstances.

Who is a *concurrence agency*

Clause 251 provides for concurrence agencies to be prescribed under a regulation for particular development applications. Paragraph (b) recognises that it is possible to devolve or delegate the functions of a

concurrence agency to another entity, and provides for the other entity to be a concurrence agency under those circumstances.

Example - Under the Environmental Protection Act 1994, some of the functions of the "administering authority" are devolved to local governments. For referrals in relation to these devolved functions, the local government, acting as the "administering authority" is the concurrence agency.

Who is a *referral agency*

Clause 252 explains a referral agency is the generic term for an advice agency or a concurrence agency.

Exclusion of particular entities as referral agency for a master planned area

Clause 253 provides for varied arrangements for referral agencies in declared master planned areas. This clause provides that, if an agency that would otherwise be a referral agency, has been a participating agency or coordinating agency for the structure plan or master plan for the area, the agency is not a referral agency for development in the area unless a regulation provides otherwise.

Jurisdiction of referral agencies for applications—generally

Clause 254 establishes the jurisdiction of referral agencies.

Concurrence agencies if Minister decides assessment manager

Clause 255 applies if the Minister decides an assessment manager for an application. This clause allows the Minister to determine that an entity that could have been assessment manager for the application is a concurrence agency for that application.

The most likely example of the Minister exercising this option would be for a development application for premises extending over two or more local government areas. The Minister may decide one of the local governments is the assessment manager on the basis of the area of the premises in that local government's area, its capacity to administer the application, or on other grounds. This clause would allow the Minister to nominate the other local government or local governments as concurrence agencies for the application, reflecting the assessment jurisdiction those local governments would have had as an assessment manager.

Subclause (1) establishes the circumstances in which the Minister may exercise the option of nominating a concurrence agency under this clause.

Subparagraph (b) requires the Minister to form an opinion about the likelihood that another entity than the one chosen as assessment manager could also have been chosen. This reflects the intention that this clause should be limited in its application to entities that were potential assessment managers, and not be a basis for the Minister to identify any entity as a concurrence agency for such an application.

Factors the Minister might consider in identifying whether an entity is a "candidate" assessment manager under this clause include:

- the total number of candidates;
- the extent of the premises located within the candidate's jurisdiction;
- the nature and extent of the candidate's jurisdiction for the application compared to that of the entity chosen as assessment manager; and
- the capacity of each candidate to administer the application as assessment manager.

Subclause (2) provides for the Minister to identify the candidate as a concurrence agency.

Subclause (3) confirms a concurrence agency identified under this clause has the jurisdiction it would have had as assessment manager. The jurisdiction of a concurrence agency chosen in this way would not be stated in the regulation.

Subdivision 3 Additional third party advice or comment about applications

Assessment manager or concurrence agency may seek advice or comment about application

Clause 256 deals with an assessment manager or a concurrence agency being able to seek advice or comment about an application from any person, so long as it does not extend any stage. This clause is intended to put beyond doubt that an assessment manager or concurrence agency may seek advice or comment from any person as a means of assisting them in their assessment of an application. However, including this clause is not intended to imply that anything not explicitly provided for in the Bill is prohibited.

It is normal practice for assessing authorities to seek advice from persons who have particular knowledge about or interest in an application. For example, local governments will often seek advice from local officers in the Department of Employment, Economic Development and Innovation when dealing with applications for proposals that may impact on existing farming practices in an area. Also, local governments may seek input from neighbours. These are not formal statutory referrals. IDAS does not prevent assessing authorities from seeking advice from any person the authority believes can assist them in their assessment of the application. Any advice received in this way is characterised as common material for assessing the development application, and may be had regard to in the assessment process (see clauses 313, 314 and 316).

Subclause (2) states that a request for advice or comment may be made by publicly notifying the application.

Subclause (3)(b) makes it clear that public notification under this clause is not notification under part 4, division 2 which gives submitters rights of appeal.

Division 5 Stages of IDAS

Stages of IDAS

Clause 257 states that IDAS involves the following possible stages:

- application stage
- information and referral stage
- notification stage
- decision stage
- compliance stage

A compliance stage has been included as a further stage after the decision stage, but may also apply independently of the other stages.

Division 6 Application of IDAS in declared master planned areas

Exclusion of particular provisions about making application for declared master planned area

Clause 258 describes the provisions of this Bill and other legislation that do not apply to a development application in a master planned area where there is a structure plan in effect. This clause prevails despite any other Act and prevails to the extent of any inconsistency with another provision of chapter 6.

Division 7 Giving notices electronically

Giving notices using e-IDAS

Clause 259 provides for applications made using e-IDAS. If an application is made using e-IDAS, this clause clarifies that any subsequent notices (such as, for example, information requests, requests to extend the information request period, or notices of compliance under clause 301) can be given using e-IDAS, despite the requirement for the notice to be given in writing.

Part 2 Application stage

Division 1 Application process

Subdivision 1 Applying for development approvals

Applying for development approval

Clause 260 describes the process for applying for development approval.

Subclause (1) states that applications must be made to the assessment manager in the approved form or electronically. The chief executive may

approve forms for use under the Bill. Subclause (1) also sets out other matters and things that must be included in or must accompany an application, namely:

- any mandatory supporting information required by the approved forms;
- the relevant fee;
- the owner's written consent or a declaration that the owner consents to the application being made, if required under clause 263;
- the evidence mentioned in clause 264(1), if required under clause 264(1).

Subclause (2) states that the approved form:

- must contain a mandatory requirements part; and
- may make provision for mandatory supporting information for the application.

These provisions are not to be interpreted as limiting the ability of the assessing authorities to ask for further information. The IDAS process makes specific provision for this. Also, it is recognised that it is good practice for assessment managers and referral agencies to encourage applicants to have pre-lodgement discussions with them in order to assist them to properly conceptualise and prepare their applications.

To the extent that an application relates to prohibited development, it is taken not to have been made (see clause 239(2)).

When application is a *properly made application*

Clause 261 identifies the circumstances under which a development application is properly made.

Special provision about electronic applications

Clause 262 makes it clear that an application can be made using e-IDAS where access to e-IDAS is available, that is, where an assessment manager has adopted e-IDAS.

Where an application is made using e-IDAS, electronic communications for carrying out actions involved in IDAS can also be made using e-IDAS.

This clause also provides for situations where the e-IDAS system fails and therefore becomes unavailable. The effect of this clause is that any system failure of e-IDAS will not have any adverse consequences. If an action

under IDAS has not yet been carried out on the last day for taking that action and e-IDAS fails to operate on that day, the person required to take the action may take the action up to 2 business days after e-IDAS begins to operate again. At the same time as taking the action, the person must give a written notice to all other parties (the applicant, the assessment manager and any referral agencies to whom the action relates) advising that the timeframe for taking the action has been extended. This written notice has the effect of automatically extending the period for taking the action until the time that the action is taken and the notice is received.

To clarify, the period for taking the action can only be extended by a maximum of 2 business days after the end of the day on which e-IDAS begins to operate again.

Example – An application is made using e-IDAS. Under clause 272, the applicant is required to give a copy of the application material to each referral agency within 20 business days after receiving the acknowledgement notice. On day 20, e-IDAS suffers a system failure and the applicant is therefore not able to send the application material to the referral agencies using e-IDAS. e-IDAS continues to be unavailable for a further 3 days, and does not become available until 3pm on a Monday. The applicant then has until the end of the following Wednesday (2 business days later) to give the material under clause 272. If the applicant takes the action on the Tuesday and, at the same time, gives a notice to the assessment manager and all referral agencies for the application, the period for taking the action is extended until the time the action was taken on the Tuesday.

When owner's consent is required for application

Clause 263 establishes when an owner's consent is required for a development application. An owner for the purposes of this clause is defined in the dictionary. Broadly, owner's consent is not required for development applications for building work, plumbing and drainage work, or operational work, however subclause (1)(b) and (c) contains two exceptions involving certain work below high-water mark and certain work on rail corridor land.

Also, owner's consent is not required:

- for any part of the premises subject to an easement, where the development the subject of the application is not inconsistent with the terms of the easement. This is to ensure that the proprietors of land the subject of, say, an access easement cannot unreasonably prevent the

submission of a development application over premises including the easement;

- to the extent the development application requires a "resource manager's" consent under either clause 264 or another Act;
- to the extent the land is acquisition land and the application relates to the purpose for which the land is to be taken or acquired.

Development involving a State resource

Clause 264 provides for the equivalent of an "owner's consent" to a development application to the extent the application involves a State resource. This clause requires that, for a State resource prescribed under a regulation, the application must be supported by one or more of three types of evidence prescribed for that resource under the regulation.

This requirement effectively replaces owner's consent for the part of an application involving a State resource. The types of evidence required are specified in this clause to ensure there is guidance about the sorts of grounds upon which the consent may or may not be given.

Subclause (2) allows for the document containing the evidence to also specify a time of at least 6 months after which the evidence referred to in this clause may not be used with a development application. To clarify, this subclause is only requiring that the application is made prior to this date. It does not require that the application must be decided before this date. This subclause accommodates possible changing circumstances in relation to the resource to which the consent applies.

Approved material change of use required for particular developments

Clause 265 only applies if a material change of use of the premises is assessable development in a particular case. This clause establishes that development for a material change of use that is assessable development, must be dealt with in the same application as other development for the use proposed to be made of the premises, unless the change of use has already been approved. If this requirement were not in the Bill, it could mean that work (e.g. building work), could be approved and carried out without the use of the work having been approved. A person could therefore lawfully erect a building (and in doing so spend a considerable amount of money) and then find that they have no right to use the building. If use approval were not ever given, the building would remain empty. This is clearly unacceptable. It is considered that establishing a right to use premises is a fundamental prerequisite of the development assessment system. The

environmental impacts and amenity considerations related to a proposed use are usually more fundamental and far reaching than those associated with other aspects of development associated with the use, such as the building work. It is important to ensure these use considerations are dealt with at the outset.

Subdivision 2 Notices about receipt of applications

Notice about application that is not a properly made application

Clause 266 provides that in the event a development application is not properly made, the assessment manager must give the applicant a notice within 10 business days of the application being made advising of the action necessary for the application to be properly made. The application lapses if the applicant does not take the action within 20 business days of receiving the notice. However the applicant and the assessment manager can agree to extend this period.

A key part of the reform agenda involves "raising the bar" in terms of the quality and content of development applications received by assessment managers. The current IPA sets a deliberately low bar for a properly made application, in order to allow for applications to be further conceptualised and worked up in an iterative process during the first two stages of IDAS.

However consultation in the course of developing the reform agenda elicited strong stakeholder support for more rigorous requirements for properly made applications, and a move towards more responsibility on the applicant for ensuring applications are well conceptualised before they are made.

This clause responds to these more rigorous requirements by requiring assessment managers to tell applicants if their applications are not properly made, and the actions necessary to correct the deficiencies. This provides for a more structured, yet simple way of dealing with applications that do not meet the requirements for being properly made.

Notice about properly made application

Clause 267 relates only to a properly made application. If the application is a properly made application, the assessment manager must give the applicant an acknowledgement notice, unless the application relates to development which requires code assessment only and there are no referral

agencies or all referral agencies have stated that they do not require the application to be referred to them.

The acknowledgement notice serves a number of purposes including:

- providing an applicant with a formal acknowledgement that their application has been received;
- providing the applicant with some basic information about the application, including confirmation of the development applied for, and whether the application will be assessed as requiring code assessment or impact assessment (or both);
- providing useful information about the application for the consideration of any referral agencies (as a copy of the acknowledgement notice must be given to each referral agency by the applicant under clause 272).

One item of information not included in the acknowledgement notice is whether the application is for preliminary approval or a development permit. This is because this basic information is to be provided by the applicant on the application form. It is for the applicant to choose whether they seek a preliminary approval or a development permit. However, under clause 324(6) an assessment manager may give a preliminary approval even though a development permit was applied for.

Subclause (2) states that an acknowledgement notice does not need to be issued if each of two circumstances apply. The effect of this is to exempt relatively straightforward applications from requiring acknowledgement notices. This reduces the administrative load for the assessment manager and time delays for the applicant. For applications involving referrals and/or public notification the acknowledgement notice provides information necessary for the applicant to take the next steps in the IDAS process. However, for other applications there are no further actions the applicant need take. The information simply confirms basic information about the application. While this may be useful, the costs for the applicant and the assessment manager are considered to outweigh the benefits.

Subclause (3) sets out the timeframes for issuing an acknowledgement notice. The day on which the assessment manager receives the properly made application should be interpreted as the last day on which the assessment manager receives all parts of the application making it a properly made application. For example, if an application is made using e-IDAS, but the applicant later hand-delivers a cheque for the relevant fee

to the assessment manager (because, for example, e-IDAS did not support the payment of the fee), the properly made application would be taken to have been received on the day the cheque was delivered.

Content of acknowledgement notice

Clause 268 sets out the content of an acknowledgement notice. It should be noted that while the assessment manager is required to state in the acknowledgement notice the names of all referral agencies for the application, it is the applicant's responsibility to ensure that the application is referred to all referral agencies for the application.

Division 2 End of application stage

When does application stage end

Clause 269 sets out when the application stage ends. It is necessary to establish the end of this stage as other stages of IDAS, principally the decision stage, cannot start until this stage has ended.

Part 3 Information and referral stage

Division 1 Preliminary

Purpose of information and referral stage

Clause 270 outlines the two purposes of the part:

- It provides an opportunity for the assessment manager and any concurrence agencies to ask the applicant for more information.
- It provides for referral agencies (both concurrence and advice agencies) to be involved in the assessment of a development application.

The referral process is an important part of IDAS as it allows entities that otherwise would have administered a separate assessment and approval process to instead be part of the IDAS process.

Summary of referral process

The normal IDAS referral process requires the applicant to give a copy of the application and other specified material to each referral agency. Each agency then has a period of time (the ***referral agency's assessment period***) within which to respond to the assessment manager (and give a copy to the applicant). However, a concurrence agency may, before responding to the assessment manager, request further information from the applicant if this is needed to assess the application. An information request must be made within the first 10 days of the referral agency's assessment period (although provision exists for the information request period to be extended under clause 277). The assessment period stops when the agency requests the information. It restarts when the applicant responds to the request.

The concurrence agency then must assess the application in the context of its jurisdiction and respond to the assessment manager (and give a copy to the applicant) within the time remaining in the referral agency's assessment period. As with the information request phase, provision is made under clause 284 for the referral agency's assessment period to be extended in certain situations.

Example - If the assessment period is the normal 30 business days and the information request was given after 8 business days had elapsed, the concurrence agency has 22 business days to respond to the assessment manager once it receives the applicant's response to the information request.

Referral agencies will be identified in the regulation. The regulation will also prescribe the jurisdiction of each agency and the triggers for referral. It is important to note that a referral to a referral agency is only required if an application activates the referral trigger.

Example - An application to carry out building work on a Queensland heritage place under the Queensland Heritage Act 1992 may activate a referral to the Department of Environment and Resource Management. The assessment function of each referral agency will relate to its jurisdiction. In this case for example, the jurisdiction will relate to the conservation of Queensland's cultural heritage.

Referral agency responses before application is made

Clause 271 states that nothing in this Bill stops a referral agency from giving a referral agency's response on a matter within its jurisdiction about

a development before an application for the development is made to the assessment manager.

This clause allows for a person to approach a referral agency seeking its response to a proposal before a formal application is made.

Subclause (3) makes it clear that, if a concurrence agency gives a referral agency's response before an application for the development is made, then the applicant must, if asked by the concurrence agency, give to that agency its application fee as required under clause 272.

Division 2 Giving material to referral agencies

Applicant gives material to referral agency

Clause 272 requires the applicant to give specified information (the ***referral agency material***) to each referral agency. Subclause (2) requires the information to be given to each agency within a specified timeframe. This is to ensure referral assessments occur expeditiously.

One of the benefits of an integrated assessment system is a comprehensive assessment process, which avoids a system of assessments being made in a vacuum, and a separate series of approvals. While a referral agency must operate within the limits of its jurisdiction, it must do so in the context of the overall application and the extent of the assessment being carried out. In this context it is important that the respective referral assessments occur expeditiously.

Subclause (3) provides for the situation where an agency has given its response and stated that it does not wish to see the application.

It should be noted that while the assessment manager is required to state in the acknowledgement notice the names of all referral agencies for the application, it is the applicant's responsibility to ensure that the application is referred to all referral agencies for the application.

Lapsing of application if material not given

Clause 273 provides for the lapsing of an application if the applicant does not give the specified information to each referral agency in accordance with clause 272.

The purpose of the lapsing provisions is to ensure that the applicant undertakes required actions within the IDAS process in a timely way, in

order to minimise unnecessary delays. However, this needs to be balanced with minimising the occurrence of "accidental" lapses due to minor administrative oversights. Applications should only lapse when inaction affects the proper and timely assessment of the application.

The new provisions require assessment managers and referral agencies to include information about when an application will lapse in acknowledgement notices and information requests, so that applicants are aware of their obligations.

If an application lapses due to a minor administrative oversight which did not affect the proper and timely assessment of the application, the Bill allows for the assessment manager to "revive" the application within a reasonable timeframe (see clause 274). However, subclause (2) makes it clear that if the application is revived and the applicant still fails to carry out the action in clause 272 within the timeframe specified in clause 274, the application will again lapse. In this circumstance, the application cannot be further revived (see clause 274).

When application taken not to have lapsed

Clause 274 provides for circumstances under which a lapsed application is revived.

The lapsing provisions ensure that the applicant undertakes required actions within the IDAS process, in order to minimise unnecessary delays. However, this needs to be balanced with minimising the occurrence of "accidental" lapses due to minor administrative oversights. Applications should only lapse when inaction affects the proper and timely assessment of the application.

The new provisions will require the assessment manager to include information about when an application will lapse in acknowledgement notices, so that applicants are aware of their obligations.

If an application lapses due to a minor administrative oversight which did not affect the proper and timely assessment of the application, clause 274 allows for an application to be "revived" at the request of the applicant within a reasonable timeframe.

A lapsed application may be revived upon request by the applicant within 5 business days of the application lapsing. In this situation, the applicant must undertake the required action within 5 business days or the further period agreed between the assessment manager and the applicant, and the application will continue through the IDAS process.

If an application had previously lapsed under clause 273 and then been revived under this clause, the application will again lapse if the applicant still fails to carry out the action in clause 272 within the timeframe specified in clause 274. In this circumstance, the application cannot be further revived. This supports the intention of this provision, namely to prevent accidental lapses due to administrative oversights.

Applicant to advise assessment manager when material given

Clause 275 requires the applicant to notify the assessment manager of the day it gave each referral agency the referral agency material mentioned in clause 272. Under IDAS, referral agencies must respond within the referral agency's assessment period and the agency's referral day is critical in deciding when the period starts. If an agency does not respond within this period:

- the information and referral stage ends (see clause 293); and
- the assessment manager must decide the application on the basis that the agency had no requirements or advice (see clause 286).

Division 3 Information requests

Information request to applicant

Clause 276 sets out the requirements for the assessment manager or a concurrence agency to make an information request. For a concurrence agency, the 10 business day period within which an information request may be made is part of (not additional to) the overall time allocated to the agency to assess the application (i.e. the ***referral agency's assessment period*** defined in clause 283).

Subclause (6) makes it clear that an assessment manager or concurrence agency may, in the information request, include advice to the applicant about how the applicant can change the application.

Extending information request period

Clause 277 states the information request period may be extended by another 10 days, without the applicant's agreement. The information request period may, with the applicant's agreement, be further extended.

Applicant responds to any information request

Clause 278 outlines the applicant's responsibilities if an information request is given.

The applicant may provide all information requested, or alternatively part or none of the information requested accompanied by a notice asking the assessing authority to proceed with the assessment.

If the information request is made by a concurrence agency, subclause (2) requires the applicant to give a copy of the response to the assessment manager. The reason for this is to ensure the assessment manager has a complete package of information available for inspection. (Under IDAS, the assessment manager is the keeper of all relevant information about an application). The assessment manager must keep the application and any supporting material (including responses to information requests) available for inspection and purchase. For applications requiring impact assessment, the availability of this information is particularly important to ensure the public has access to the relevant information submitted to the assessing authorities.

Lapsing of application if no response to information request

Clause 279: An information request must include a notice to the applicant outlining the requirement to respond to an information request and advising that, should this not be done, the application will lapse (see subclause (1)).

The applicant must respond to the information request within 3 months after receiving the information request if the development application is in response to an enforcement notice or a show cause notice, or 6 months in any other circumstance. An extension to these timeframes may be obtained by agreement.

Subclause (2) makes it clear that if the application is revived under clause 280 and the applicant still fails to respond to the information request within the timeframe specified in clause 280(2), the application will again lapse. In this circumstance, the application cannot be further revived (see clause 280).

When application taken not to have lapsed

Clause 280 provides that a lapsed application may be "revived" upon the applicant giving a written notice to the assessment manager and the concurrence agency that made the information request within 5 business days of the application lapsing. In this situation, the applicant must

undertake the required action within 5 business days or the further period agreed between the assessment manager and the applicant, and the application will continue through the IDAS process.

If an application had previously lapsed under clause 279 and then been revived under this clause, the application will again lapse if the applicant still fails to respond to the information request within the timeframe specified in clause 280. In this circumstance, the application cannot be further revived. This supports the intention of this provision, namely to prevent accidental lapses due to administrative oversights.

Referral agency to advise assessment manager of response

Clause 281 requires each referral agency to advise the assessment manager of the day it received the response from the applicant. This is necessary to ensure the assessment manager knows when a referral agency's assessment period recommences (under clause 283 the agency's assessment period stops during the period the agency is waiting for a response to its information request), as it can affect when the assessment manager's decision period starts.

Division 4 Referral agency assessment

Subdivision 1 Assessment generally

Referral agency assesses application

Clause 282 outlines the requirements for referral agencies when assessing applications.

Subclause (1) requires the referral agency to assess the application against the regional plan (if it is not reflected in the planning scheme) and other State planning instruments applied by the referral agency. State planning policies are only relevant to the extent they are not identified in a planning scheme or the regional plan as being appropriately reflected in these instruments. Subclause (1) also requires a concurrence agency to assess the application against any applicable concurrence agency codes that are identified as a code for IDAS in this Bill or another Act, and the relevant laws and policies administered by the referral agency. This is a generic way of describing the matters that the agency has responsibility for administering within its referral jurisdiction.

Subclause (2) also requires referral agencies to have regard to other State planning instruments not applied by the referral agency, structure plans, master plans, temporary local planning instruments and planning schemes.

The relationship between each of the instruments listed in subclauses (1) and (2) is set out in chapters 2, 3 and 4. Generally, subclauses (1) and (2) reflect this relationship between the instruments, with an instrument higher in the list prevailing over an instrument lower in the list to the extent of any inconsistency. However, details of the relationship between these instruments must be obtained from chapters 2, 3 and 4. The exception to this general rule is applicable codes that are identified under this or another Act as a code for IDAS and the laws and policies applied by the referral agency. To determine the weight and precedence to be given to these instruments, it is necessary to have regard to the relevant instrument, or the Act under which the instrument is made. Having said this, it is also necessary to consider clauses 19 and 26 which provide that State planning regulatory provisions and regional plans prevail over plans, policies and codes under another Act to the extent of any inconsistency.

IDAS is concerned with achieving integrated assessment. Planning schemes are intended to reflect local and State planning intentions, and referral agencies will have contributed to its preparation. Accordingly, it is important that referral agencies have regard to this instrument when carrying out their own assessments. Subclause (2) ensures that referral agencies have regard to the broader planning context.

Referral agency's assessment period

Clause 283 sets out the period within which a referral agency must respond with its requirements and/or advice (if a concurrence agency), or advice (if an advice agency). This is the ***referral agency's assessment period***—normally 30 business days.

Subclause (1)(a) states that a different assessment period may be prescribed under a regulation. It is recognised that not all referrals are going to be identical. Some will deal with technical code assessment issues. Others will deal with broad impact assessment issues. For technical code assessment, 30 business days is likely to be unnecessary. Accordingly, provision is made for shorter periods to be prescribed.

The referral agency's assessment period does not include the time the agency is waiting for a response from the applicant (subclause (4)(b)). However, the assessment period does include the information request period (subclause (2)). However, as is prescribed in subclause (4)(a), if an

extension of time is given during the information request phase this does not impact on the number of days remaining in the assessment period.

Example - If a concurrence agency has not given an information request after the initial 10 business day request period has elapsed, but instead has given notice that it has extended the information request period by 10 business days (under clause 284), these extra 10 business days (and any further extensions agreed to by the applicant) do not affect the period remaining for the agency to assess the application once the applicant responds to the request.

Extending referral agency's assessment period

Clause 284 makes it clear that the referral agency's assessment period may be extended by up to 20 days (or a lesser period prescribed under a regulation), without the applicant's agreement. The referral agency's assessment period may, with the applicant's agreement, be further extended. The referral agency's assessment period can only be extended before the period ends. Subclause (4) requires the concurrence agency to advise the assessment manager of any extension of the referral agency's assessment period.

Subdivision 2 Concurrence agency responses

When concurrence agency must give response for particular matters

Clause 285 deals with responses by concurrence agencies. If a concurrence agency wants its requirements to be followed and/or imposed by the assessment manager, the agency must give its response before the end of the referral agency's assessment period (see clause 283), including any extension of that period. This clause is intended to ensure that all concurrence agency requirements are given in a timely way.

A note has been included at the end of this clause to clarify that if a concurrence agency provides a response under clause 271 (before the application is made), its response is still binding. Without the note, it could be interpreted that the concurrence agency must give its response to the assessment manager during the referral agency's assessment period in order for its response to be binding.

Effect if concurrence agency does not give response

Clause 286 provides if a concurrence agency does not respond within time, the assessment manager must decide the application on the basis that the agency had assessed the application and had no concurrence agency requirements.

However, subclause (2) provides for a deemed refusal for certain types of building development applications where the local government is the concurrence agency.

Despite this clause, it is possible for a concurrence agency to give a late response (see clause 290).

Concurrence agency's response powers

Clause 287 sets out the response powers of a concurrence agency. A concurrence agency may, within the limits of its jurisdiction, tell the assessment manager:

- its requirements for any approval, being one or more of the following:
  - — the conditions to be attached;
  - — that the approval must be for part only of the development;
  - — that the approval must be for a preliminary approval only;
  - — a different period for lapsing of the approval if development is not started; or
- it has no concurrence requirements; or
- to refuse the application.

If the application is for a preliminary approval mentioned in clause 242 that states the way in which the applicant seeks approval to vary the effect of any applicable local planning instrument, the concurrence agency may, within the limits of its jurisdiction, tell the assessment manager to refuse the variations sought or, if an approval is given, to approve only some of the variations sought or approve different variations from those sought.

Also, a concurrence agency may offer advice about the application. While a concurrence agency has powers to impose requirements for any approval or to refuse an application, it does not have the ability to direct approval. The decision to approve an application is a matter for the assessment manager alone.

Limitation on concurrence agency's power to refuse application

Clause 288 states that the concurrence agency, when assessing the effects of development on designated land, may only tell the assessment manager to refuse the application if:

- the concurrence agency is satisfied the development would compromise the intent of the designation; and
- the intent of the designation could not be achieved by imposing conditions on the development approval.

Subclause (2) states that a local government exercising a concurrence jurisdiction about the amenity and aesthetics of a building or structure (i.e. under the *Building Act 1975*) may only direct refusal of a development application in circumstances of extremely adverse effects on amenity or character.

Concurrence agency's response to include reasons for refusal or conditions

Clause 289 provides that a concurrence agency must give reasons for its responses where:

- the concurrence agency tells the assessment manager to refuse the application (other than a deemed refusal under clause 286(2)), or impose conditions on a development approval; or
- the concurrence agency tells the assessment manager to refuse the variations sought, approve only some of the variations sought or approve different variations to those sought.

How a concurrence agency may change its response or give late response

Clause 290 states a concurrence agency may give or amend its response after the end of the referral agency's assessment period, but before the application is decided, if the applicant agrees.

IDAS is designed to be a flexible system able to respond to changing needs and circumstances. For example, clause 320 provides applicants with the ability to stop the assessment manager's decision-making period to make representations to a referral agency about its response. If the process under clause 320 is to be able to result in a meaningful outcome (e.g. a change to a concurrence agency condition), then there needs to be a head of power for the agency to change its response. Because the time for giving a response has expired, it is reasonable for any proposed change to be subject to the

applicant's agreement. If the applicant's agreement was not needed, the time limits imposed on referral agencies would be meaningless and the efficiency of the assessment system would be compromised.

Despite this, this clause also enables a concurrence agency to give a response or change its response without the applicant's agreement in limited circumstances, namely:

- where the Minister has given the concurrence agency a direction under clause 420; or
- where the applicant has changed its application in response to a properly made submission or a request for information.

In relation to the second dot point, it should be noted that this only applies to a change to a concurrence agency's response. Once the concurrence agency has received notice of the change under clause 352, the concurrence agency has 5 business days within which to consider the change and notify the applicant and the assessment manager of its intention to change its response. The concurrence agency then has a further 10 business days to give the changed response. The changed response must relate directly to the changes made to the application. If the changed response is not given within the 10 business day period, the assessment manager can proceed with deciding the application.

Subdivision 3 Advice agency responses

When advice agency must give response for particular matters

Clause 291 states that in order for an advice agency's response to be considered by the assessment manager, the response must be given before the end of the advice agency's assessment period.

A note has been added to this clause to clarify that if an advice agency provides a response under clause 271 (before the application is made), its response must still be considered by the assessment manager. Without the note, it could be interpreted that the advice agency must give its response to the assessment manager during the referral agency's assessment period otherwise the assessment manager is not required to consider the response in assessing an application.

Advice agency's response powers

Clause 292 sets out the response powers of an advice agency. Consistent with the role of this type of agency, the powers of an advice agency are limited to offering advice and recommendations. An advice agency is unable to direct an outcome as a concurrence agency can.

Division 5 End of information and referral stage

When does information and referral stage end

Clause 293 outlines when the referral stage ends. It is necessary to establish the end of the stage as other stages of IDAS, principally the decision stage, cannot start until this stage has ended.

Part 4 Notification stage

Division 1 Preliminary

Purpose of notification stage

Clause 294 describes the purpose of the notification stage. Public notification under this part gives a person the opportunity to make submissions about a development application, and also secures for that person the right of appeal to the court about the assessment manager's decision.

Public involvement in the planning and development assessment system is an essential component of the system.

The Bill provides many opportunities for public involvement in the overall system. For example, the processes for making planning instruments include opportunities for public involvement in framing these policy and regulatory instruments.

This part sets out the requirements for formal public notification in relation to development applications. IDAS has been designed to reflect this high level of public involvement in planning and development assessment.

Applications that are specified to require assessment of the environmental effects of the development (i.e. impact assessments) require public notification.

When notification stage applies

Clause 295 describes when the notification stage applies. Public notification under this part only applies to an application:

- requiring impact assessment; or
- to which clause 242 applies, unless a preceding development approval for an application under clause 242 makes provision for development on the premises in a way stated in this clause.

Also, particular arrangements are made for public notification of certain aquaculture proposals under chapter 9, part 7. Consequently public notification under this part is not required for such proposals.

Subclause (2) goes on to state that public notification is still required even if code assessment is required for part of the application, or a concurrence agency has directed the assessment manager to refuse the application. This provision ensures that an application is subject to full scrutiny and assessment. For example, a concurrence agency may direct refusal based on a technical ground alone. Members of the public may have wider concerns that, in the event of any appeal by the applicant, should also be considered by the court. Of course, an applicant is not compelled to continue with an application if a refusal is directed. The applicant may, at any time, withdraw the application and terminate the assessment process (see clause 356).

When notification stage can start

Clause 296 states when notification under this part may be carried out. The applicant has the obligation to carry out the public notification. This is consistent with the shared responsibilities approach adopted for IDAS. However, this service may be provided by local governments (see clause 297).

If an information request is made, the applicant needs to wait until all information request responses have been given prior to commencing public notification.

Division 2 Public notification

Applicant or assessment manager to give public notice of application

Clause 297 describes the requirements for public notification. In the interests of consistency and certainty, the requirements are prescriptive. Provision is made for the assessment manager to carry out the notification on behalf of the applicant. For the purposes of subclause (1)(c) (giving notices to adjoining owners), the term ***owner*** is defined. It is a more specific definition that overcomes potential uncertainties regarding who is an adjoining owner in certain situations, particularly situations where there are complex titling and ownership arrangements in place.

The applicant or, with the applicant's agreement, the assessment manager, must carry out the notification. If the assessment manager carries out the notification for the applicant, the assessment manager may require the applicant to pay a fee.

Notification period for applications

Clause 298 specifies the notification period. Generally, it must be at least 15 business days. However, the notification period must be at least 30 business days if any of the following apply:

- there are 3 or more concurrence agencies;
- all or part of the development is assessable under a planning scheme and is prescribed under a regulation;
- all or part of the development is the subject of an application for a preliminary approval mentioned in clause 242.

The notification period does not include the period immediately before and after Christmas to overcome any reduced effectiveness which may result from notification over this significant holiday period.

Requirements for particular notices

Clause 299 has two purposes:

- First, it sets out requirements for the various components of the notification process.
- Second, subclause (4) makes provision for a regulation to prescribe different notification requirements for applications on land outside a local government area (e.g. this could involve development over

water) or within a local government area where compliance would be unduly onerous or would not give effective public notice.

Applicant to give assessment manager notice about particular matters

Clause 300 provides the applicant must give written notice to the assessment manager stating the day the last of the actions mentioned in clause 297 was carried out. This must be done within 5 business days after the last of the actions outlined in clause 297(1) is carried out. This will enable the assessment manager to remain informed of the progress of the application and to calculate when the notification period commenced. This information is also necessary for the purposes of determining when an application will lapse (see clause 302).

Notice of compliance to be given to assessment manager

Clause 301 requires the applicant, if carrying out the notification, to give a notice to the assessment manager that the applicant has complied with the requirements of this division. This is to allow the process of assessment to proceed on the basis that this essential element, the responsibility of the applicant, has been properly completed. Under clause 587, giving a false or misleading notice is an offence attracting a maximum penalty of 1665 penalty units.

For applications requiring notification, the timeframe for giving the assessment manager a written notice of compliance has been reduced from 3 months after the notification period ends under the current IPA to 20 business days. This new time limit will ensure the application is finalised within a reasonable timeframe following public notification. The current 3 month timeframe is excessive, given that this is a simple, procedural step.

Application lapses if notification not carried out or notice of compliance not given

Clause 302 provides that, for an application requiring public notification, the application will lapse if the last action under clause 297(1) is not carried out within 20 business days after the applicant was entitled to start the notification stage.

This timeframe of 20 business days may be extended if the assessment manager agrees to the extension.

An application will also lapse if the applicant has not complied with clause 301.

The purpose of the lapsing provisions is to ensure that the applicant undertakes required actions within the IDAS process, in order to minimise unnecessary delays. However, this needs to be balanced with minimising the occurrence of "accidental" lapses due to minor administrative oversights. Applications should only lapse when inaction affects the proper and timely assessment of the application. Therefore, the Bill includes an opportunity for applications to be revived (see clause 303 below). However, subclause (2) makes it clear that if the application is revived under clause 303 and the applicant still fails to carry out the relevant actions within the timeframe specified in clause 303(2) or (3), the application will again lapse. In this circumstance, the application cannot be further revived (see clause 303).

When application taken not to have lapsed

Clause 303 provides for a lapsed application to be "revived" upon request by the applicant within 5 business days of the application lapsing. In this situation, the applicant must undertake the required action within 5 to 10 business days (depending on which clause resulted in the lapsing of the application) or the further period agreed between the assessment manager and the applicant. The application will then continue through the IDAS process.

If an application had previously lapsed under clause 302 and then been revived under this clause, the application will again lapse if the applicant still fails to carry out the relevant actions within the timeframe specified in clause 303(2) or (3). In this circumstance, the application cannot be further revived. This supports the intention of this provision, namely to prevent accidental lapses due to administrative oversights.

Assessment manager may assess and decide application if some requirements not complied with

Clause 304 provides discretion for an assessment manager to assess and decide a development application even if there has not been full compliance with the requirements of this division. The assessment manager may only exercise that discretion if the assessment manager considers the non-compliance has not:

- adversely affected the awareness of the public of the existence and nature of the application; or
- restricted the opportunity of the public to make submissions during the notification period.

The notification requirements are detailed and prescriptive. It is considered that unnecessary and costly litigation could result from technical non-compliances even though no one has been adversely affected by the non-compliance.

Example - The notices published in the newspaper and sent to adjoining owners correctly showed the property description of the land, but the notice placed on the land contained an error in the description. In this case, the assessment manager might consider exercising the given discretion because the sign was located on the correct land, all other notices were correct and the application clearly applied to the land on which the notice was erected.

Subclause (2) makes it clear that, unless a lapsed application is revived, the assessment manager cannot assess and decide that application.

Division 3 Submissions about applications

Making submissions

Clause 305 outlines matters about making a submission.

Subclause (2) states that a submission must be accepted if it is a properly made submission. The term properly made submission is defined in the dictionary.

Subclause (3) allows an assessment manager to accept a submission even if it is not a properly made submission. However, while the assessment manager may have regard to such a submission when assessing and deciding the application, the person making the submission has no right of appeal to the court—this right is only extended to properly made submissions.

Subclause (4) makes provision for a person to withdraw their submission. For example, if the person who made the submission is subsequently satisfied that a particular matter will be dealt with to their satisfaction they may wish to withdraw their submission. This may have such benefits as allowing an approved development to commence without waiting for the appeal period to pass. This subclause also provides that the person who makes a submission may amend the submission during the notification.

Subclauses (3) and (4) make it clear that all submissions, withdrawals and amendments of submissions, must be in writing. To be accepted by the

assessment manager a submission must meet this requirement even if it does not meet the other requirements of a properly made submission.

Submissions made during notification period effective for later notification period

Clause 306 provides for submissions lodged during the notification period for an application to be carried over and recognised as properly made submissions if that application for any reason has to be re-notified.

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

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

Division 4 End of notification stage

When does notification stage end

Clause 307 outlines when the notification stage ends. This is necessary to establish as the decision stage cannot start until the notification stage has ended.

Part 5 Decision stage

Division 1 Preliminary

Assessment necessary even if concurrence agency refuses application

Clause 308 requires the assessment manager to assess and decide an application even if the outcome (i.e. refusal) has been directed by a concurrence agency.

When does decision stage start

Clause 309 relates the start of the decision stage to whether or not an acknowledgement notice has been given.

Subclause (1) states that if an acknowledgement notice is required, the decision stage for the application starts the day after all of the other stages applying for the application (other than the compliance stage) have ended.

Subclause (2) deals with the situation where an acknowledgement notice is not required (because the application requires only code assessment and there are no referral agencies).

Subclause (3) states that the assessment manager may start assessing an application before the decision stage has formally started. It is important to ensure that the staged nature of the IDAS process does not imply that assessment cannot start until other stages have been completed.

Effect on decision stage if action taken under Native Title Act (Cwlth)

Clause 310 recognises and accommodates disparities between the IDAS process and processes for notifying native title parties under the Commonwealth *Native Title Act 1993* (NTA). The clause enables procedural rights to be provided to native title parties (under section 24HA – management or regulation of water and air space, and section 24KA – construction of infrastructure facilities for the public, of the NTA) within the IDAS process by, in effect, "stopping the clock" of the particular IDAS stage until the procedural rights have been provided.

Most native title notifications under the NTA are likely to occur during the process of granting tenure or other access to a State resource, prior to any development application affecting the resource. As these processes may result in indigenous land use agreements which map out arrangements about the form and impacts of subsequent development, notification of the "future act" of development assessment is likely to be unnecessary, and is hence unlikely to affect IDAS. However, because sections 24HA and 24KA of the NTA deal with notification for "future acts" which may affect native title interests other than on the premises proposed for development, they may not be preceded by a resource allocation process, and hence may affect the IDAS process.

Division 2 Assessment process

References in div 2 to planning instrument, code, law or policy

Clause 311 states that in this division a reference to a planning instrument, code, law or policy is a reference to a planning instrument, code, law or policy in effect at the time the application was properly made.

It is a basic requirement of IDAS that assessment managers and referral agencies assess applications on the basis of the law in place when an application is properly made, but may give weight to planning instruments, codes, laws or policies that came into effect after the application was made, but before it was decided (see clause 317).

When assessment manager must not assess part of an application

Clause 312 clarifies the extent of an assessment manager's jurisdiction for assessing a development application. Subclause (1) states the clause applies to any part of a development application for which, were it the subject of a separate application, there would be a different assessment manager. This part of an application is called the "coordinated part" because it will be the subject of a concurrence agency's response for a matter that is not within the assessment manager's assessment jurisdiction. The response will therefore be included in the assessment manager's decision, but the assessment manager will not be required to tailor its consideration to achieve an integrated outcome.

Subclause (2) confirms the assessment manager has no jurisdiction to assess the coordinated part. This is consistent with clause 247 which states the assessment manager "administers and decides the application, but may not always assess all aspects of development for the application".

Code assessment—generally

Clause 313 describes the way code assessment must be carried out.

It is important to note that under IDAS, an application may be subject to both code and impact assessment. This is because different assessments may be integrated into the one application.

Under the current IPA, code assessment was originally limited to assessment against applicable codes only. However additional instruments have been introduced since the current IPA commenced that are required to be taken into account in code assessment. Generally these are a range of

State instruments which prevail over the relevant code to the extent of any inconsistency.

Under the current IPA, the effect of other instruments in code assessment is not apparent, as the relevant provisions are distributed throughout the Act. This clause consolidates all of the relevant considerations in code assessment into a single provision.

Subclause (2) lists each of the matters or things that an application requiring code assessment must be assessed against. The relationship between each of the instruments listed in subclause (2) is set out in chapters 2, 3 and 4. Generally, subclause (2) reflects this relationship between the instruments, with an instrument higher in the list prevailing over an instrument lower in the list to the extent of any inconsistency. However, details of the relationship between these instruments must be obtained from chapters 2, 3 and 4. The exception to this general rule is applicable codes that are identified under this or another Act as a code for IDAS. To determine the weight and precedence to be given to these codes, it is necessary to have regard to the instrument containing the code, or the Act under which the code is made. Having said this, it is also necessary to consider clauses 19 and 26 which provide that State planning regulatory provisions and regional plans prevail over plans, policies and codes under another Act to the extent of any inconsistency.

A regional plan cannot be considered in assessing an application requiring code assessment if it is identified in the planning scheme as being appropriately reflected in the planning scheme.

Also, a State planning policy cannot be considered if it is identified in the planning scheme or a regional plan as being appropriately reflected in the scheme or plan.

The assessment manager can only have regard to applicable codes in a structure plan, master plan, temporary local planning instrument, preliminary approval to which clause 242 applies and a planning scheme. In this respect, code assessment is still "bounded" because it does not enable the assessment manager to consider the whole of the instrument.

In addition to the matters set out in subclause (2), the assessment manager must also carry out the assessment having regard to:

- the common material;
- any development approval for, and any lawful use of, premises the subject of the development application or adjacent premises;

- any referral agency's response for the application;
- the purposes of any instrument containing an applicable code.

The assessment manager is required to assess the application against the matters stated in subclause (2), but having regard to the matters stated in subclause (3). This reflects the fact that the matters under subclause (2) are the criteria against which the development the subject of the application is measured to determine its level of performance, whereas the matters stated in subclause (3) are contextual in character – in other words they provide the context within which the performance assessment under subclause (2) can be carried out.

Subclause (4) provides that if the assessment manager is not a local government (generally this will apply to a State agency) its codes are the laws and policies it administers.

Subclause (5) requires that the assessment must not be carried out against or having regard to any matter other than a matter under this clause. This underscores that, despite the addition of various State instruments to code assessment over time, it is still essentially a "bounded" assessment.

Subclause (6) provides that an application involving assessment against the *Building Act 1975* will not require assessment against State planning instruments.

Impact assessment—generally

Clause 314 describes the way impact assessment must be carried out.

Subclause (2) sets out the matters or things against which the part of the application requiring impact assessment must be assessed. As for code assessment, the instruments in subclause (2) are generally listed in order of hierarchy, however details of the relationship between each of the instruments must be obtained from chapters 2, 3 and 4. The exceptions to this general rule are the laws that are administered by and policies applied by the assessment manager that are relevant to the application. To determine the weight and precedence to be given to these instruments, it is necessary to have regard to the Act under which the instrument is made. Having said this, it is also necessary to consider clauses 19 and 26 which provide that State planning regulatory provisions and regional plans prevail over plans, policies and codes under another Act to the extent of any inconsistency.

A regional plan cannot be considered in assessing an application requiring impact assessment if it is identified in the planning scheme as being appropriately reflected in the planning scheme.

Also, a State planning policy cannot be considered if it is identified in the planning scheme or a regional plan as being appropriately reflected in the scheme or plan.

In addition to the matters set out in subclause (2), the assessment manager must also carry out the assessment having regard to:

- the common material;
- any development approval for, and any lawful use of, premises the subject of the development application or adjacent premises;
- any referral agency's response for the application.

In code assessment there is no special provision for assessment of development which is not in a planning scheme area, whereas the provisions relating to impact assessment make allowance for this circumstance.

Code and impact assessment—superseded planning scheme

Clause 315 provides for the assessment of a development application (superseded planning scheme) against the superseded planning scheme instead of the planning scheme in effect when the development application was made. However the clause provides for the calculation of any infrastructure charges or contributions as if the current planning scheme was in effect.

Subclause (2) states this clause applies despite clauses 81, 120 and 121. Clause 81 provides that a planning scheme comes into effect and replaces any former planning scheme. Clause 315 effectively acts as an exception to this arrangement by providing for superseded planning schemes to be considered in development assessment.

Assessment for s 242 preliminary approvals that affect a local planning instrument

Clause 316 establishes criteria for assessment of the part of an application under clause 242 that seeks to vary the operation of a local planning instrument.

Although clauses 313 and 314 establish criteria for the assessment of all development (including development the subject of an application under

clause 242), this clause provides guidance about assessing the part of such an application that seeks to vary the local planning instrument.

Subclauses (1) to (3) establish the context for assessment of the different parts of an application for a preliminary approval under clause 242. In particular, subclause (3) states that subclause (4) establishes the matters to consider for the part of an application that seeks to vary the effect of a local planning instrument.

Subclause (4) states the criteria for consideration for the part. These are:

- The common material.
- The result of the assessment manager's assessment of the development under clauses 313 or 314. Any variation to the scheme approved will depend initially upon the approval of the development for which the variation is sought.
- State planning instruments that are relevant to the application.
- The consistency of the proposed variations with aspects of the planning scheme other than those sought to be varied. The proposed variations must be legible and consistent with the existing framework of the planning scheme.
- The effect of the variation on potential future submission rights, particularly with regard to the supporting material available to submitters for the current application. An assessment manager may decide not to approve a variation if the information available to submitters for the current application was insufficient for submitters to form a reasoned opinion of the proposal as a whole.
- Any referral agency's response for the application.

The location and substance of this clause in relation to clauses 313 and 314 is intended to clarify that the development the subject of the application must be assessed under the code or impact assessment rules in clauses 313 and 314 before the assessment for the part of the application dealt with under this clause is carried out. In other words, the assessment of the proposed development is not carried out against the planning instruments as they are proposed to be varied, but as they are at the time the application is made. Only if the development is to be approved are the proposed variations considered under this clause.

Assessment manager may give weight to later planning instrument, code, law or policy

Clause 317 relates to clause 311, which states that in this division a reference to an instrument is a reference to an instrument in effect at the time the application was made. It is a basic requirement of IDAS that assessment managers and referral agencies assess applications on the basis of the law in place when an application is made, but may give weight to planning instruments, codes, laws or policies that came into effect after the application was made, but before the decision stage is started (or re-started, if it is stopped at some point).

Subclause (2) makes it clear that in the case of a development application (superseded planning scheme), the existing local planning instruments cannot be considered in assessing the application (i.e. the assessment manager can only consider the superseded planning scheme). The only exception to this is the infrastructure provisions of the existing planning scheme or a planning scheme policy about infrastructure. If infrastructure provisions or a planning scheme policy come into effect after the development application (superseded planning scheme) is made, but before the decision stage starts (or re-starts), they may be given weight in assessing the application.

Division 3 Decision

Subdivision 1 Decision-making period

Decision-making period – generally

Clause 318 requires the assessment manager to decide an application within 20 business days of the decision stage starting. As for other stages, an assessment manager may extend the decision-making period once without the applicant's consent, and further with the agreement of the applicant. The only exception to this is the situation where the Minister has directed the assessment manager to decide the application within the 20 business day period under clause 418(1)(c). In this situation, the assessment manager cannot extend the decision-making period under subclauses (2) or (4).

Subclause (5) applies to applications involving concurrence agencies. It states that the decision must not be made before 10 business days after the day the information and referral stage ends, unless the applicant gives the assessment manager written notice that it does not intend to take action under clause 320 or 321. This is to allow an applicant to make representations to a concurrence agency about its response before the application is decided, or to the chief executive if the applicant considers 2 or more concurrence agency's responses contain inconsistent conditions.

Decision-making period - changed circumstances

Clause 319 states that the decision-making period starts again from the beginning in certain situations. IDAS is designed to be a flexible process and care has been taken to provide applicants with opportunities to resolve disputes about referral agency's responses and assessment manager conditions without having to go to appeal. This clause deals with the situations involving referral agency's responses.

Paragraph (a) refers to the situation where, under clause 290, a concurrence agency gives a response or an amended response after the end of the referral agency's assessment period.

Paragraph (b) refers to the situation where the applicant stops the decision-making period under clause 320 to make representations to a referral agency.

Paragraph (c) refers to the situation where the applicant stops the decision-making period under clause 321 to request the chief executive's assistance to resolve inconsistent concurrence agency's responses.

The reason matters under clauses 290, 320 and 321 are dealt with before rather than after the assessment manager decides the application, is to ensure the assessment manager has the benefit of each concurrence agency's final response when assessing and deciding the application.

Applicant may stop decision-making period to make representations

Clause 320 allows an applicant to stop the decision-making period to make representations to a referral agency about its response. If the dispute can be resolved by the parties, and a change to the response is agreed, a referral agency may use powers under clause 290 to change its response. The assessment manager's decision-making period starts again the day after the changed response is received by the assessment manager (see clause 319).

Example - For an application for approval of an extractive industry, a concurrence agency with an environmental management jurisdiction may

impose a requirement that the proposed crushing plant be located a specified distance from the site boundary to minimise noise impacts on adjacent properties. The applicant may consider the specified location to be undesirable for operational reasons and may propose a location closer to the boundary with attenuation works to ensure noise levels at the boundary meet the necessary standards. If this alternative is acceptable, the concurrence agency may change its response using clause 290.

Applicant may stop decision-making period to request chief executive's assistance

Clause 321 provides for an applicant to seek assistance from the chief executive of the Department of Infrastructure and Planning to resolve 2 or more concurrence agencies' responses containing conditions the applicant considers to be inconsistent. The power of the chief executive to alter concurrence agencies' responses is limited to the situation where responses are inconsistent. It is not possible for an applicant to seek the assistance of the chief executive to resolve concurrence responses the applicant considers unreasonable.

Example - Adapting the extractive industry/crushing plant example used in the previous clause, it may be that 2 concurrence agencies have imposed conditions about the location of the plant. One agency may have required it be located on a specified part of the site to minimise the potential for environmental harm. Another agency with a different jurisdiction may have required it to be located on another part of the site. The conditions are clearly inconsistent as both conditions cannot be complied with at the same time. If the chief executive did not have this power to resolve the difficulty and decide the matter from a whole-of-government perspective, the matter would have to be decided by the court.

Decision-making period suspended until approval of master plan

Clause 322 suspends the decision-making period for a development application in a declared master planned area where the structure plan requires a master plan. Until the master plan is approved, the assessment manager cannot decide the application and the decision-making period is suspended.

It is possible under the master planning arrangements in chapter 4 to submit both a master planning application and one or more development applications at the same time. This clause ensures any such development applications are consistent with master planning approvals to which they relate.

Subdivision 2 Decision rules—generally

Application of sdiv 2

Clause 323 states that subdivision 2 does not apply to the part of an application for a preliminary approval mentioned in clause 242 which states the way the applicant seeks approval to vary the effect of any local planning instrument for the land.

Decision generally

Clause 324 establishes basic rules for deciding development applications. A development application must either be approved in whole or in part or it must be refused. At the same time the assessment manager may approve the application subject to conditions decided by the assessment manager. However, the assessment manager's decision must not be inconsistent with a State planning regulatory provision.

Subclauses (4) and (5) clarify that a development application which requires a master plan must be refused if the master plan application is refused.

Subclause (6) is included to remove any doubt about certain matters. It states that an assessment manager may give a preliminary approval (other than a preliminary approval to which clause 242 applies) even though a development permit was applied for. Preliminary approvals are one of the tools provided in IDAS. They can be used in a range of situations. One potential use is outlined in the example below. If the mechanism was not available, an applicant would need to provide, at the outset, the full scope of information needed to grant a permit for the particular development (which may be unduly onerous and unnecessary in some situations), or alternatively, the assessment manager would have to refuse the application. If a preliminary approval is given, it is a binding, tradeable approval. A further application is needed to deal with the aspects of the development not finalised by the preliminary approval (see also clause 243 which describes development permits).

Example - An application is made for a development permit for reconfiguring a lot to create lots for a large residential housing estate. The assessment manager, after assessing the application, may consider that there is sufficient information to approve the overall concept (e.g. lot size, maximum lot yield, etc) but the subdivision design submitted is not suitable to authorise reconfiguration (e.g. the detailed lot design and road layout

may be considered to have deficiencies). While the assessment manager could ask for more detailed plans during the information request phase, another option would be for the assessment manager to give a preliminary approval covering the aspects of the proposal considered suitable. The preliminary approval is binding and tradeable. However, a follow-up application covering the outstanding aspects of the original application (e.g. a detailed lot design in accordance with the yield and lot size measures approved in the preliminary approval) would be needed before a development permit could be given authorising the reconfiguration. Before the site works associated with the reconfiguration could begin, a further development permit for those works would be necessary.

Subclause (6) also makes it clear that if the assessment manager approves only part of an application, then the balance of the application is refused.

Effect of concurrence agency's response

Clause 325 states the obligations of the assessment manager with respect to concurrence agencies' responses. This clause only applies where the concurrence agency's response is given before the end of the referral agency's assessment period or under clause 290 (which allows a late response, or amended response to be given in certain circumstances).

Subclause (1) clarifies that conditions imposed by a concurrence agency must be attached to the assessment manager's decision notice in the form provided by the agency and that the assessment manager must not retype, reformat or amend the conditions in any way.

Subclause (4) clarifies that, if a concurrence agency directs the refusal of an application, the assessment manager must refuse the application. This clause makes it clear that an assessment manager must comply with the direction of a concurrence agency to refuse a development application.

Subclauses (2) and (3) relate to other requirements of the concurrence agency, such as a requirement to give only a preliminary approval or a part approval, or to impose a different period for the approval. Again, the assessment manager must comply with the concurrence agency's requirements.

If an application is deemed to have been approved under clause 331 and the assessment manager fails to issue a decision notice, any requirements of the concurrence agency will automatically apply to the deemed approval (see clauses 331 and 332(5)).

Other decision rules

Clause 326 establishes that an assessment manager's decision must not conflict with a relevant instrument unless certain circumstances exist. ***Relevant instrument*** is defined in subclause (2) for this clause as a matter or thing under clauses 313 or 314 (other than a State planning regulatory provision) against which code assessment or impact assessment is carried out.

Experience with implementing the current IPA and consultation during development of the reform agenda identified several issues with the current decision rules, particularly for code assessment:

- Code assessment was originally designed as a "bounded assessment" against only applicable codes. However since the commencement of the current IPA, there have been numerous amendments which have introduced additional considerations into code assessment. In particular, code assessment now includes assessment against State planning regulatory provisions, regional plans and State planning policies. State planning regulatory provisions and regional plans currently prevail over codes to the extent of any inconsistency. Also, a decision cannot be made if it is contrary to the State planning regulatory provisions. Structure plans and master plans may also prevail over codes. In this sense, code assessment is no longer a "bounded assessment" under the current IPA.

- The decision rules for code assessment under the current IPA were designed in the expectation that code assessment would be used predominantly for "technical" assessments for which there would generally always be a "correct" solution. This is reflected particularly in the rule requiring applications to be approved if they comply with applicable codes, even where the assessment manager may need to "find" conditions to achieve compliance. In practice, code assessment has been used for both technical and broader planning assessments, involving the exercise of broad discretion.

- There have been continuing issues with assessment managers departing from relevant instruments, and particularly codes, in instances where departure is not warranted.

- There has been insufficient guidance about departing from relevant instruments in cases where such instruments conflict.

The decision rules in this clause are designed to address these issues. In particular:

- Code and impact assessment decision and departure rules have been combined into a single set of rules. This recognises the evolution of assessment rules under the current IPA has resulted in a narrowing of the differences between code and impact assessment decision and departure rules.
- Subclause (1) states that the assessment manager's decision must not conflict with a relevant instrument **unless** paragraphs (a), (b) or (c) apply. This clause is intended to reflect the existing position under the current IPA that departures from relevant instruments should be on a "by exception" basis.
- The requirement to approve complying applications for code assessment has been removed, however this must be seen in the context of several other reforms in the Bill, in particular the introduction of compliance assessment, which has been designed as a true bounded "technical" assessment for which there is no capacity to refuse an application. Many existing code assessments can potentially be moved into compliance assessment. In addition progressive standardisation of code requirements, in particular through the standard planning scheme provisions, will allow for codes themselves to more clearly establish the circumstances in which approval can be expected. The current requirement to approve complying applications should also be considered in light of the impact that State planning instruments currently have on this requirement, particularly in the case of State planning regulatory provisions where an assessment manager's decision cannot be contrary to a State planning regulatory provision.
- Specific departure rules have been included to accommodate conflicts within and between instruments.

Clause 326 should be interpreted as a presumption in favour of policy – that is, the assessment manager's decision must, as a general rule, be consistent with a relevant instrument. As stated above, departures from these relevant instruments should only be by exception. The only circumstances in which an assessment manager's decision may conflict with a relevant instrument are where:

- the conflict is necessary to ensure compliance with the State planning regulatory provisions;

- there are sufficient grounds to justify the decision, despite the conflict; or
- the conflict arises because of a conflict between 2 or more relevant instruments of the same type and the decision best achieves the purpose of the instruments (for example, a conflict between two State planning policies), or because of a conflict between 2 or more aspects of any 1 relevant instrument, and the decision best achieves the purposes of the instrument (for example, a conflict between two codes within a planning scheme).

Under clause 759, the Minister has the power to make a statutory guideline about what constitutes sufficient grounds for the purposes of the second dot point above.

The decision rules in the Bill are drafted to reflect the position that planning instruments should "speak for themselves". This means that planning instruments are intended to state how they are to be considered in assessing an application and the weight to be given to those applicable parts of the instrument. For example, planning instruments should state which parts are relevant to the assessment of the application. The planning instruments should also state whether a particular part of the instrument must be complied with, and whether particular provisions are intended to prevail over other provisions, in the case of inconsistency. If a planning instrument required mandatory compliance with particular provisions of the planning instrument, then it would be very difficult to establish sufficient grounds for departing from the instrument.

Subdivision 3 Decision rules—application under section 242

Decision if application under s 242 requires assessment

Clause 327 provides particular rules for assessing the part of an application for a preliminary approval that seeks to vary the effect of a planning scheme. The development the subject of such an application is assessed first, using the assessment and decision rules in clauses 313, 314 and 324 to 326. The outcome of that assessment then informs assessment and deciding of the part of the application seeking to vary local planning instruments under clauses 316 and 327 to 329. If the development applied for under

other parts of the application is refused, any variation relating to the development must also be refused (see subclause (4)).

Effect of concurrence agency's response

Clause 328 makes it clear that if a concurrence agency requires that an action be taken, or that variations be refused, then the assessment manager must either take that action, or refuse the application. The actions that a concurrence agency may require are set out in clause 287(5)(b).

Other decision rules

Clause 329 establishes that an assessment manager's decision must not conflict with a relevant instrument unless certain circumstances exist. ***Relevant instrument*** is defined in subclause (2) for this clause as a matter or thing under clause 316 (other than a State planning regulatory provision) the assessment manager must have regard to in assessing the part of the application.

Subclause (1) states that the assessment manager's decision must not conflict with a relevant instrument **unless** paragraphs (a), (b) or (c) apply. As with clause 326, the decision rules should be interpreted as a presumption in favour of policy – that is, the assessment manager's decision must, as a general rule, be consistent with a relevant instrument. This clause is intended to emphasise that departures from relevant instruments should only be on a "by exception" basis. The only circumstances in which an assessment manager's decision may conflict with a relevant instrument are where:

- the conflict is necessary to ensure compliance with the State planning regulatory provisions;
- there are sufficient grounds to justify the decision, despite the conflict; or
- the conflict arises because of a conflict between 2 or more relevant instruments of the same type and the decision best achieves the purpose of the instruments (for example, a conflict between two State planning policies), or because of a conflict between 2 or more aspects of any 1 relevant instrument, and the decision best achieves the purposes of the instrument (for example, a conflict between two codes within a State planning policy).

Under clause 759, the Minister has the power to make a statutory guideline about what constitutes sufficient grounds for the purposes of the second dot point above.

Subdivision 4 Deemed decisions for particular applications

Application of sdiv 4

Clause 330 provides that the deemed approval provisions apply to applications requiring code assessment only – that is, they do not apply in the situation where an application involves both code and impact assessment. These provisions also do not apply to the types of code assessable applications listed, or applications for preliminary approval to which clause 242 applies.

Deemed approval of particular applications

Clause 331 provides that applications to which this subdivision apply will be deemed to have been approved if they are not decided within the decision-making period. To determine exactly what has been approved, it is necessary to look at the application (including any changes made to the application). The approval will be for the development as applied for in the application.

The deemed approval is not automatic. Under subclause (1), if the applicant wants the development application to be treated as having been approved by the assessment manager, the applicant must give the assessment manager a deemed approval notice. A deemed approval notice can only be given after the decision-making period (or extended decision-making period) ends. However, it must be given before the assessment manager decides the application.

Example – The decision-making period for an application ends. The assessment manager does not decide the application within the decision-making period. However, the assessment manager decides the application after the decision-making period ends, but has not yet given the applicant a decision notice. The applicant cannot give the assessment manager a deemed approval notice.

Subclause (2) provides that the deemed approval notice must be in the approved form.

Subclause (3) provides that the applicant must also give a copy of this notice to any other party to whom a copy of any decision notice would be given.

The remainder of the subclauses apply if the applicant gives the assessment manager a deemed approval notice for the application.

Subclause (5) provides that if the applicant gives a deemed approval notice, the assessment manager will be taken to have decided to approve the application. The decision to approve will be taken to have been made on the day that the deemed approval notice is received by the assessment manager.

If the assessment manager receives a deemed approval notice, the assessment manager is required to issue a decision notice (subclause (6)). This is the assessment manager's opportunity to impose conditions on the approval, despite the fact that it has been deemed to have been approved. However, the decision notice must be given to the applicant within 10 business days of receiving the deemed approval notice (this 10 day timeframe applies despite the normal 5 day requirement under clause 334(2)).

If the assessment manager fails to issue a decision notice, standard conditions will automatically apply (see clause 332 below).

If a decision notice is given, the decision notice must be a development permit, a preliminary approval or a combined preliminary approval and development permit, depending on what the applicant applied for. Similarly, if no decision notice is given, the deemed approval itself will be taken to be a development permit, a preliminary approval or a combined preliminary approval and development permit, depending on what the applicant applied for. The effect of this is that, in the case of a deemed approval, the assessment manager loses its ability to issue a preliminary approval even though the applicant applied for a development permit. The only exception to this is the situation where a concurrence agency has directed the assessment manager to give a preliminary approval only. In this situation, the deemed approval must be a preliminary approval, to give effect to the concurrence agency's response.

If a concurrence agency's response tells an assessment manager a different period for section 341(1)(b), (2)(c) or (3)(b), this different period will apply to the deemed approval (subclause (9)). Again, this ensures that the concurrence agency's response is given effect despite the deemed approval.

Standard conditions for deemed approvals

Clause 332 provides that if the assessment manager does not issue a decision notice within the relevant timeframe, standard conditions will

apply to the deemed approval. The standard conditions will be taken to be conditions imposed by the assessment manager.

The standard conditions will be made by the Minister in the process outlined in subclauses (2) and (3).

If a concurrence agency has required that conditions be imposed on any approval, or the Minister has directed the assessment manager to attach conditions, these will also apply to the deemed approval, in addition to the standard conditions. See also clause 244 which lists other types of conditions which a development approval includes.

Limitation on giving deemed approval notice

Clause 333 sets out limitations on the ability of an applicant to give a deemed approval notice.

Subclause (1) prevents an applicant from giving a deemed approval notice (despite the fact that the decision-making period has lapsed) if another Act provides that the assessment manager cannot decide the application until an action or event occurs. For example, a provision of another Act may provide that the assessment manager cannot decide an application until the applicant gives evidence that building insurance has been paid. It is important to prevent the applicant from seeking a deemed approval in these situations, as a way of ensuring that these other requirements continue to apply.

Subclause (2) prevents an applicant from giving a deemed approval notice where the Minister has given a direction to an assessment manager to decide an application within a prescribed timeframe. The applicant cannot seek a deemed approval, until this period has ended.

Division 4 Notice of decision

Assessment manager to give notice of decision

Clause 334 requires the assessment manager to give written notice of the decision on the application to the applicant, each referral agency and other parties specified in subclause (1) within 5 business days of the decision being made.

Content of decision notice

Clause 335 establishes the content of a decision notice.

Subclause (1) sets out information that must be included in the decision notice. The information required to be included is intended to be sufficient to allow the applicant, referral agencies and submitters to understand the effect of the decision.

Subclause (1)(l) provides for applicants to be notified of the names and addresses of any submitters for the application.

Subclause (3) requires approved drawings to be included in the decision notice if it is for a building development application.

Subclause (4) clarifies that if the application is taken to have been approved under clause 331, the decision notice need not include the matters mentioned in subclause (1)(m) or (n). It is intended that, where an application has been approved under clause 331, the assessment manager should not be required to state in the decision notice whether the decision conflicts with a relevant instrument.

Material to be given with decision notice

Clause 336 sets out material which must be given with a decision notice.

Paragraph (a) clarifies that the assessment manager must give, with the decision notice, a copy of any relevant appeal provisions in relation to the decision notice.

Paragraph (b) requires the assessment manager to give a copy of approved plans and specifications with the decision notice.

Assessment manager to give copy of decision notice to principal submitter

Clause 337 establishes circumstances where an assessment manager must give copies of a decision notice to principal submitters.

Under subclause (1), because provision is made under clause 361 for the applicant to make representations to the assessment manager during the applicant's appeal period about conditions imposed by the assessment manager, the notices to submitters do not get sent until 5 business days after:

- the applicant gives a notice saying no representations will be made;
- the applicant appeals; or
- the applicant's appeal period ends.

Subclause (2) states that, if the application is refused, then the assessment manager must give a copy of the decision notice to each principal submitter at about the same time as the decision notice is given to the applicant.

Subclause (3) clarifies that the relevant appeal provisions must be given with each copy of the decision notice.

Decision notice given by private certifier

Clause 338 provides that a decision notice given by a private certifier, is given subject to the *Building Act 1975*, chapter 4, part 6 (Regulation of building assessment work and the issuing of building development approvals by private certifiers).

Division 5 Approvals

When approval takes effect

Clause 339 states when a development approval takes effect. As the clause describes, this varies depending on the circumstances. In summary, the requirements are:

- if there is no submitter and the applicant does not appeal the decision—from the time the decision notice (or, if relevant, the negotiated decision notice) is given;
- if there is a submitter and the applicant does not appeal the decision—either when the submitter's appeal period expires or the day the last submitter gives the assessment manager written notice that the submitter will not be appealing the decision (whichever is the earlier);
- if an appeal is made—when the decision of the court or building and development committee is made (if an approval results) or the appeal is withdrawn.

Subclause (1)(b) allows a submitter to advise the assessment manager that the submitter will not be appealing the decision. The ability for a submitter to advise that the submitter will not be appealing is linked to decision notice and appeal arrangements designed to streamline post-approval processes in cases where submitters do not wish to appeal.

Subclause (1)(c) clarifies that if an appeal is made to the court or a building and development committee, the decision regarding approval of the development application takes effect from the date that the decision is

made by the court or building and development committee. If the appeal is withdrawn, the approval will take effect from the date it is withdrawn.

Subclause (2) sets out particular rules for approvals relating to land that was acquisition land to which clause 263(2)(d) applied when the application was made.

Subclause (3) provides for the circumstance where a decision notice or a negotiated decision notice is not given for an application to which a deemed approval relates, and clarifies when the deemed approval has effect.

Subclause (4) requires the assessment manager to notify the applicant if a submitter advises the submitter will not be appealing.

Subclause (5) defines submitter for this clause.

When development may start

Clause 340 provides that development may start when a development permit for the development takes effect, but notes that there is an additional restriction on the starting of development in relation to development in a declared master planned area.

Subclause (1)(b) clarifies that, where an application for a development permit is taken to have been approved under section 331 and the assessment manager does not give a decision notice, development may start when the deemed approval for the application has effect.

When approval lapses if development not started

Clause 341 establishes default time limits for approvals.

While the clause outlines the default time limits for approvals, provision is made for the development approval to vary those times. This flexibility is important. As an example, a large, complex residential project may have one or more preliminary approvals covering conceptual aspects about the use and reconfiguring of the land. It is important that these overarching approvals remain in place for the life of the construction phase of the project, which could be planned to occur over a 15 - 20 year period. A different default time period is allowed for a material change of use and reconfiguring a lot requiring operational works (4 years) compared with other development (2 years). If a material change of use is assessable development, clause 265 requires the change of use to be dealt with in the same application as, or approved before, the other development is approved. Because the establishment of a new use in most cases will also

involve the carrying out of works (e.g. erecting a building etc) it is necessary for the currency period of the change of use approval to be long enough to cover:

- the necessary works approvals being obtained after the change of use is approved; and
- the construction phase involved in the erection of a building or the carrying out of other works.

Also, while this clause only deals with time limits for development starting, clause 346(1)(e) allows conditions to be imposed on development approvals requiring development to be completed within a particular time.

This clause is intended to clarify that an approval is preserved if the first use or the first plan under a staged approval starts or is submitted. Although the start of the first use or lodging of the first plan preserves the approval under these subclauses, the lapsing of staged approvals in these circumstances may also be influenced by any conditions about completion times, provided for under clause 346.

Clauses 341, 342 and 343 are grouped together to provide all of the arrangements in the Bill for the lapsing of approvals. This is intended to provide a more complete picture of the range of tools available to assessment managers to manage the currency and lapsing of approvals.

The beginning of the relevant periods for approvals for material changes of use and reconfiguring a lot will "roll forward" in some circumstances to align with the beginning of those for related approvals. A ***related approval*** is defined for both material change of use and reconfiguring a lot approvals at the end of the clause, and contains the following key elements:

- It is an approval for an application made to a local government or private certifier, or a compliance permit for a request for compliance assessment made to a local government or entity nominated by a local government. Approvals given by other assessment managers or compliance assessors (e.g. State entities) are not related approvals. Although other assessment managers are required to give relevant local governments copies of development approvals, an effective requirement for local governments to track the course of such approvals for a given project may create administrative difficulties, if the local government does not for example link such approvals to particular premises or approvals given by the local government itself.

- The application for the approval must be made within two years of a previous related approval taking effect. This is intended to ensure the "rolling forward" arrangements apply only for projects which continue to progress towards completion. Approvals for which there is no related approval will effectively default to the arrangements in subclauses (1) and (2), which are essentially the same as the previous arrangements. Similarly, if the chain of related approvals is broken (i.e. if a further application is not made within 2 years of the last related approval taking effect) the lapsing of the earlier approval will stay linked to the last related approval, and any necessary extensions will need to be sought under clause 383.

- The definitions of related approval each consist of three parts. The first part relates to the first related approval for a given approval, while the second and third parts relate to successive related approvals. This structure reflects the relationship between preliminary approvals for material changes of use and reconfiguring a lot, and the first development permits or compliance permits for this development. A preliminary approval for a material change of use or reconfiguring a lot will "roll forward" to align with the first development permit or compliance permit for the development. Both the preliminary approval and its related development will then "roll forward" together to align with successive related works permits. A development permit for a material change of use or reconfiguring a lot will "roll forward" to align with the first related works approval and subsequently with any further works approvals. Paragraph (a)(ii) of the definition of ***related approval*** also makes particular provision for preliminary approvals given under clause 242(3)(a)(i) or (ii). These are preliminary approvals with provisions overriding the effect of a planning scheme by making otherwise assessable material changes of use self-assessable or exempt. As there will be no further development permit or compliance permit for these material changes of use, the preliminary approval will "roll forward" directly to align with the first related works permit.

- Assessment managers can still vary the currency period as part of the approval, and condition for the completion of projects within a reasonable time. Where the assessment manager varies the currency period as part of the approval, it is the varied period and not the default period that will "roll forward" to align with a related approval under the limited circumstances described above.

When approval lapses if development started but not completed—general

Clause 342 provides that if a development approval establishes a completion time for assessable development and the development is not completed within the time, the approval lapses to the extent it relates to the assessable development.

Subclause (3) confirms that security paid in respect of a development approval that lapses through a condition mentioned in this clause may still be applied to complete the development. Clause 578 ensures that, if security is applied to completing development in this way, a development offence is not committed. These arrangements for applying security to complete the development contrast with clause 341(5) which requires security to be released if an approval lapses before development under the approval starts.

Subclause (4) clarifies that this clause does not apply to a preliminary approval under clause 242.

When approval lapses if development started but not completed—preliminary approval

Clause 343 introduces lapsing arrangements for preliminary approvals that vary the effect of local planning instruments where development under the approval has started but is not completed within the period nominated by the applicant in their development application. If the applicant does not nominate a time, a condition of the approval may state a period within which the development must be completed. The assessment manager can also override the period specified by the applicant in the application by imposing a condition on the approval that states a period different to that specified in the application.

In the event there is no period nominated by the applicant or stated in a condition of the approval, a "default" lapsing period of 5 years after the day the preliminary approval or any related approvals took effect, will apply.

The current IPA provides for conditions to establish completion and lapsing arrangements for development approvals, however in many cases these arrangements were not used by assessment managers with the result that many development approvals have indefinite effect once development under the approval substantially starts. This is particularly problematic in the case of preliminary approvals which affect planning schemes, as these approvals often authorise large, multi-stage proposals with very long time

horizons. If these proposals are not subject to completion and lapsing arrangements, the form of development may ultimately not conform with contemporary community expectations about the nature and standard of development.

Consequently, this clause establishes arrangements designed to ensure the applicant and assessment manager both contribute to establishing a reasonable lapsing period for such development. It provides for applicants to nominate a period as part of their application, and the default lapsing period will provide an incentive for doing so. If an assessment manager disagrees with the nominated period, it can condition any approval for the application with an alternative time. Any such condition is appealable by the applicant.

These arrangements provide a strong incentive for both the applicant and assessment manager to become engaged in establishing a reasonable lapsing period for staged proposals through what effectively becomes a negotiation process. However in the event neither of them act to establish lapsing arrangements, a default arrangement will apply. This default period of 5 years is relatively short, and is intended in itself to provide an incentive for applicants to nominate an alternative period in their application if they do not believe it suits the needs of their proposal.

Division 6 Conditions

Application of div 6

Clause 344 states that division 6 deals with the powers provided under IDAS to impose conditions on development approvals. This division covers conditions:

- imposed by the assessment manager under the direction of a concurrence agency;
- decided by the assessment manager; or
- attached to the approval under the direction of the Minister.

Conditions must be relevant or reasonable

Clause 345 requires conditions to be relevant, and not an unreasonable imposition, or to be reasonably required.

Subclause (1) refers to conditions relating to both development and the subsequent use of premises.

The inclusion of a reference to use makes it clear that operating conditions relevant to the use resulting from approved development must also be relevant or reasonable as required by the clause. Such conditions may be about, for example, operating hours, how access is to be used, etc.

Subclause (2) clarifies that the test in subclause (1) applies even if the laws and policies applied by the assessment manager or concurrence agency require a particular condition to be imposed on an approval. Despite the law or policy, if the condition does not meet the test in subclause (1), it cannot be imposed.

Conditions generally

Clause 346 states that conditions may be imposed regarding:

- the continuance of a use or works;
- the starting time and completion dates for a development;
- compliance with an infrastructure agreement;
- compliance assessment of a document or work; or
- the payment of security.

Conditions that can not be imposed

Clause 347 deals with the converse of the previous clause—conditions that can not be imposed.

Subclause (1)(a) prevents a condition being imposed that is inconsistent with a condition of an earlier development approval or compliance permit.

Example - A preliminary approval is given for a change of use from rural to residential and a condition is imposed that specifies the maximum dwelling density for the land. The preliminary approval dealt with the broad conceptual aspects of the change of use and contemplated a range of dwelling types and densities up to the maximum density specified. A subsequent application is required to allocate those different dwelling types and densities around the site. Any subsequent application could not be conditioned to set a different maximum dwelling density. That has already been set and any conditioning on a subsequent application purporting to set a new limit would be inconsistent with the earlier approval.

Subclause (1)(b) prevents conditions being imposed to require monetary contributions or works for community infrastructure other than as provided under the clause. This is because community infrastructure is intended to be funded only in the ways provided for in the Bill (see subclause (2)(a), and chapter 8, parts 1 and 2 for details).

Subclause (1) also provides that conditions cannot be imposed:

- requiring works to be carried out by an entity other than the applicant;
- requiring an access restriction strip;
- limiting the time a development approval has effect for a use or work formatting part of a network of community infrastructure, other than State owned or State controlled transport infrastructure.

Agreements

Clause 348 deals with agreements about conditions of development approvals. An applicant can enter into an agreement with an assessment manager, a concurrence agency or another entity (e.g. an adjoining local government) about the obligations or performance of a party to the agreement about a condition of a development approval.

Covenants not to be inconsistent with development approvals

Clause 349 provides that a covenant entered into in relation to a development approval is of no effect unless it is entered into as a requirement of a condition of the approval or under an infrastructure agreement. This is intended to prevent covenants being entered into in anticipation of an approval, and provides applicants with rights of appeal if they consider a requirement for a covenant is unwarranted.

Part 6 Changing or withdrawing development applications

Part 6 sets out a simpler, clearer and more flexible process for changing development applications than the process in the current IPA. This new process allows a broader category of minor changes to be made, without having to stop the IDAS process. It also provides for changes to be made in response to submissions and information requests without significantly

delaying the IDAS process, and allows a single process for making all other changes.

Division 1 Preliminary

Meaning of *minor change*

Clause 350 defines a ***minor change***. A change is a minor change if it involves:

- a change that merely corrects a mistake about the name or address of the applicant or owner;
- a change of applicant, if the change would not adversely affect the ability of a person to assess the changed application;
- a change that merely corrects a spelling or grammatical error.

Further, subclause (1)(d) provides a change is a minor change if the change does not:

- result in a substantially different development;
- require referral to any additional referral agencies;
- alter the type of development approval sought; and
- if the original application did not require impact assessment, involve impact assessment for the changed application.

In order to assist an assessment manager in deciding whether a change results in a substantially different development, the Minister has the power to prepare a statutory guideline on this issue (see clause 759). In general terms, it is considered that this term should be given its ordinary, common-sense meaning and will need to be considered on the facts of each case. It is difficult to establish black-and-white criteria, otherwise the test for whether an application can be changed becomes arbitrary and inflexible. However, changes which may result in a development being substantially different include:

- changes which involve a new use (for example, an application for a material change of use for a cinema which is changed to include a residential component);
- changes which involve a significant increase in gross floor area;

- changes which involve a significant increase in the number of lots or storeys above ground level proposed.

Subclause (2) provides that, for determining a minor change under subclause (1)(d) the planning instruments or law in effect at the time the time the change was made apply. That is, in determining whether, if the application were remade including the change, it would trigger any new referral agencies or require impact assessment, the planning instruments that existed at the time the change is made, or the legislation or law in force at the time the change is made (the ***applicable law***) must be considered.

However, subclause (3) seeks to clarify that what is relevant is whether it is the change itself which causes the need for referral to additional referral agencies or impact assessment. It is not the intention to prevent a change being made simply because, since the original application was made, there has been a change to the legislation or a planning instrument, which has the effect that the application as originally made would now trigger additional referral agencies or require impact assessment – it is only intended to prevent changes being made if the change itself is the reason why the new referral agency is triggered or impact assessment is required.

Division 2 Procedure for changing applications

Changing application

Clause 351 sets out the process for changing an application.

Subclause (1) provides that the applicant may change the application at any time before the application is decided by giving the assessment manager written notice of the change. For the sake of certainty, it should be noted that an assessment manager or a concurrence agency may request that an application be changed (see the note to subclause (1)). For example, this could be done as part of an information request. However, the applicant is not obliged to make the change.

Subclause (2) makes it clear that a change cannot be made if:

- the change would have the effect that, if the application were re-made including the change, it would not be a properly made application; or
- it results in the application involving prohibited development.

However, despite subclause (2)(a), subclause (3) makes it clear that if the change has the effect of making the application not properly made, the applicant can take whatever action is necessary to make it a properly made application. For example, if the change has the effect that a higher fee would have been required, the applicant is able to make the change if they pay the difference in fees.

Subclause (4) clarifies that a change to an application that involves a change to the name of the applicant must be accompanied by the consent of the original applicant.

Assessment manager to advise referral agencies about changed applications

Clause 352 states that when the assessment manager receives notice of the change, the assessment manager must advise any referral agencies for the original application and any referral agencies which are triggered by the change, of the change and the effect of the change on IDAS. The effect of the change on IDAS is set out in division 3.

Division 3 Changed applications—effect on IDAS

Effect on IDAS—minor change

Clause 353 establishes that the IDAS process does not stop if the change is a minor change.

Where a minor change is made to an application which originally required public notification and the change was made during the notification stage or after the notification stage had ended, the public notification stage does not have to be repeated or restarted.

Effect on IDAS—changes about matters relating to submissions or information requests

Clause 354 applies to changes which are not minor changes but which the assessment manager is satisfied are made in response to a properly made submission or an information request. In this situation, IDAS does not stop. However, if the application (prior to the change) had already required public notification and the change is made during the notification stage or after the notification stage had ended, the default rule is that the application

will need to be renotified. The only exception to this is if the assessment manager is satisfied that the change would not be likely to attract a submission objecting to the thing comprising the change if the notification stage were to apply to the change. The application cannot be decided until the renotification has been carried out.

Effect on IDAS—other changes

Clause 355 makes provision for other changes to an application, not covered by clauses 353 and 354. If the change is not a minor change, and the assessment manager is satisfied that the change does not deal only with a matter raised in a properly made submission or is not in response to an information request, then the IDAS process stops on the day the notice of the change is received by the assessment manager and starts again from the start of the acknowledgement period.

If the application (prior to the change) had already required public notification and the change is made during the notification stage or after the notification stage had ended, the default rule is that the application will need to be renotified unless the assessment manager is satisfied that the change would not be likely to attract a submission objecting to the thing comprising the change if the notification stage were to apply to the change.

Division 4 Withdrawing applications

Withdrawing an application

Clause 356 states that an applicant may withdraw their application at any time before the application is decided by the assessment manager.

This clause also allows submissions on an earlier application, which has been withdrawn and is not substantially different, to carry over to the later application.

Part 7 Missed referral agencies

Under the current IPA, a change to an application to include a missed referral requires the IDAS process to stop and start again from the start of

the acknowledgement period. A missed referral also usually has the effect of making an application lapse.

The reform agenda proposes reforming IDAS to provide a simpler process for changing an application to include a missed referral. In particular, it is intended that the entire application should not have to return to an earlier stage (acknowledgement stage). Once a missed referral has been identified, it is proposed that the IDAS process continue while allowing for the missed referral to "catch up". However the application cannot be decided by the assessment manager until the missed referral agency has had an opportunity to assess the application. The Bill also makes it clear that an application will not lapse as a result of a missed referral, where action is taken using this process to pick up the missed referral.

For the purposes of part 7, it is intended that the term ***missed referral agency*** would include the situation where the referral jurisdiction of a referral agency has been missed – for example, the application may have been referred to the Department of Environment and Resource Management's coastal protection division, but not its contaminated lands division.

Notice of missed referral agency

Clause 357 applies where an applicant fails to refer an application to a referral agency as required under clause 272. Any party to the application (i.e. the applicant, assessment manager or a referral agency, including the missed referral agency) can identify that the applicant did not refer the application to the missed referral agency. The entity identifies the missed referral by giving written notice to all other parties to the application (including the missed referral agency) of the missed referral.

Effect of missed referral agency on information and referral stage and notification stage

Clause 358 provides that if the missed referral is identified during either the information and referral stage or the notification stage:

- the application does not lapse as a result of clause 273;
- the IDAS process does not stop and is able to continue up until the start of the decision stage.

The decision stage will not start until:

- the information and referral stage is carried out in relation to the missed referral agency;

- all referral agencies' responses (including the response of the missed referral agency) have been received, or all referral agencies' assessment periods (including the assessment period of the missed referral agency) have ended; and
- the notification stage has ended.

Public notification does not have to be repeated if the missed referral is identified during the notification stage or after public notification has been carried out.

Effect of missed referral agency on decision stage

Clause 359 provides that if a missed referral is identified after the decision stage starts, but before a decision is made, the application does not lapse as a result of clause 273. However, the decision cannot be made until the information and referral stage is carried out in respect of the missed referral agency.

The applicant is not required to repeat the notification stage.

The decision stage must re-start from the start of the decision stage – it restarts on the day that the referral agency's response of the missed referral agency has been received by the assessment manager or, if the missed referral agency does not give a response, the referral agency's assessment period of the missed referral agency has ended.

If a missed referral is only identified after a decision is made, there is no ability to include the missed referral using this process.

If the development application is the subject of an appeal before the Court when the missed referral is identified, the Court is empowered to make orders requiring the applicant to deal with the missed referral before the matter is heard and determined.

Part 8 Dealing with decision notices and approvals

Division 1 Changing decision notices and approvals during applicant's appeal period

Application of div 1

Clause 360 states that the provisions in the division only apply during the applicant's appeal period. The purpose of the division is to provide the applicant with the opportunity to make representations about the matters decided by the assessment manager or the standard conditions applying to a deemed approval (concurrence agency conditions are dealt with under clauses 319 to 321). The assessment manager has the ability to issue a new decision notice if it agrees with the representations. This mechanism potentially avoids the need for disputes about conditions to be resolved through the formal appeal process.

Applicant may make representations about decision

Clause 361 gives applicants the ability to make written representations to the assessment manager about a matter stated in the decision notice. For example, an applicant may make representations about:

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

Subclause (1)(b) clarifies that an applicant can also make written representations to the assessment manager about the standard conditions imposed on a deemed approval in the situation where the assessment manager does not give a decision notice. This ensures that applicants are able to negotiate with the assessment manager about standard conditions which apply automatically if the assessment manager does not issue a decision notice.

Applicants may not make representations to the assessment manager about a refusal of an application. It is more appropriate that a dispute about refusal is resolved through the appeal processes in chapter 7 of the Bill. An applicant may also not make representations to the assessment manager about matters a concurrence agency has directed to be included in a decision notice. Applicants may make representations to a concurrence agency about the agency's response under clauses 319 to 321.

Further, under subclause (2), applicants cannot make representations to the assessment manager about conditions required to be imposed under a **d**irection of the Minister.

Assessment manager to consider representations

Clause 362 states that the assessment manager must consider any representations made to the assessment manager under clause 361.

Decision about representations

Clause 363 sets out the assessment manager's powers following the receipt of representations from the applicant. A new decision notice called a ***negotiated decision notice*** must be given to the applicant if the assessment manager agrees with any of the representations. In relation to a deemed approval for which no decision notice was given, the assessment manager can still issue a negotiated decision notice.

In addition to the applicant, the assessment manager must give the negotiated decision notice to each principal submitter and each referral agency and, if the assessment manager is not the local government, to the local government.

If the assessment manager does not agree with the representations made, subclause (5) allows the assessment manager to respond to the applicant by written notice that it does not agree with the representations.

Giving new infrastructure charges notice or regulated infrastructure charges notice

Clause 364 allows a local government to issue a new infrastructure charges notice or regulated infrastructure charges notice if the development approved by a negotiated decision notice is different from the development approved in the decision notice or deemed approval in a way that affects the amount of the infrastructure charge or regulated infrastructure charge for the development.

Giving new regulated State infrastructure charges notice

Clause 365 is similar to clause 364 and enables a new regulated State infrastructure charges notice to be given.

Applicant may suspend applicant's appeal period

Clause 366 provides the applicant with the ability to suspend the applicant's appeal period to make representations. The purpose of the division is to provide a mechanism for applicants and assessment managers to resolve disputes about conditions and other matters through a negotiated decision notice outside the formal appeal system.

However, it is not intended that the making of representations under this division should deny an applicant the right to appeal the decision. Sufficient time needs to be provided to allow discussions to take place and for the assessment manager to consider any representations made. This is achieved by allowing the applicant to suspend the appeal period.

To ensure efficiency of process, a 20 business day time limit is included for the making of representations after the appeal period has been suspended. If representations are not made in this period, the appeal period restarts.

If representations are made within time, subclause (4) provides for the balance of the appeal period to restart when the representation process has been completed by:

- the applicant withdrawing the notice to make representations; or
- the assessment manager either giving a new negotiated decision notice or a notice stating that it does not agree with the representations.

Subclause (4)(c) provides that if the assessment manager gives the applicant a negotiated decision notice the applicant's appeal period starts again the day after the applicant receives the notice.

Division 2 Changing approvals — request for change after applicant's appeal period ends

Subdivision 1 Preliminary

Under the current IPA, there are separate processes for changing a development approval and changing a condition of an approval (sections 3.5.24, 3.5.25 and 3.5.33).

Representations received in the course of developing the reform agenda indicate that the rules for changing development approvals are too complex and restrictive. Several decisions of the Planning and Environment Court have also limited the scope to change approvals under the current IPA. Consequently this Bill consolidates, simplifies and allows more flexible arrangements for changing development approvals, including conditions.

A change can only be made to an approval if it is a permissible change. If a change is a permissible change, then a specific process follows as outlined in subdivisions 2 and 3.

What is a *permissible change* for a development approval

Clause 367 provides that a permissible change for a development approval is defined as a change to the approval that would not:

- result in a substantially different development;
- if the application were re-made including the change:
  - — require referral to additional concurrence agencies; or
  - — cause assessable development previously not requiring impact assessment to require impact assessment; or
- for assessable development that previously required impact assessment— be likely, in the responsible entity's opinion, to cause a person to make a properly made submission objecting to the proposed change, if the circumstances allowed; or
- cause development to be prohibited development.

Subclause (2) provides that, for determining a permissible change under subclause (1)(b) or (d), the planning instruments or law in effect at the time

the time the change was made, apply. That is, in determining whether, if the application were remade including the change, it would trigger any new concurrence agencies or require impact assessment, the legislation or law in force at the time the change is made (the ***applicable law***) must be considered.

However, subclause (3) seeks to clarify that what is relevant is whether it is the change itself which causes the need for referral to additional concurrence agencies or impact assessment. It is not the intention to prevent a change being made simply because, since the original application was made, there has been a change to the applicable law, which has the effect that the application as originally made would now trigger additional concurrence agencies or require impact assessment – it is only intended to prevent changes being made if the change itself is the reason why the new concurrence agency is triggered or impact assessment is required.

Notice about proposed change before request is made

Clause 368 provides that if a person proposes to make a request for a permitted change to be made to the approval, the person may advise any relevant entity about the proposal.

Subclause (3) provides the relevant entity may give the person a notice stating whether or not the entity objects to the proposed change.

Subclause (4) defines ***relevant entity*** for the purposes of this clause.

This provision is intended to give the holder of the approval the opportunity to seek the agreement of other parties to the change, prior to actually making the request, as a way of making the process quicker.

Subdivision 2 Procedure for changing approvals

Request to change development approval

Clause 369 provides that if a person wants to make a permissible change to an approval, the person must by written notice ask the responsible entity to make the change. The responsible entity could be the Minister, the concurrence agency, the court or the assessment manager, depending on who gave the approval or whether the change relates to a concurrence agency condition only.

Subclauses (2) and (3) enable the Minister to refer a request to change an approval, given by the Minister as a result of a Ministerial call-in, to the original assessment manager if the Minister is satisfied that the change does not affect a State interest. The original assessment manager is then taken to be the responsible entity for the approval.

Generally, any person can make the request (subject to the owner's consent – see clause 371). However, if the development approval is for building work or operational work for the supply of community infrastructure on land designated for the community infrastructure, only the person who intends to supply, or is supplying, the infrastructure can make the request.

Notice of request

Clause 370 provides that if the responsible entity has a form for the request, the request must be in the form. The request must also be accompanied by the relevant fee, a copy of any pre-request response notice relevant to the request, and evidence to show the person making the request has complied with clause 372.

Subclauses (3) and (4) provide that the request must be accompanied by the written agreement of the chief executive from whom evidence would need to be obtained under clause 264(1) if this evidence would be required to support the application if it were re-made.

Subclause (5) provides that the request may be accompanied by any other information the person making the request considers relevant.

When owner's consent required for request

Clause 371 provides that if the person is not the owner of the land to which the approval attaches, the request must be accompanied by the owner's consent. Paragraphs (a) to (e) provide several exceptions to the need for owner's consent, including where it would not be practicable because the premises has been subdivided and is now in multiple ownerships or the owner has unreasonably refused to give his or her consent.

Copy of request to be given to particular entities

Clause 372 provides that, at the same time as making the request, the person must give a copy of the request to other relevant parties.

Subdivision 3 Assessing and deciding request for change

Particular entities to assess request for change

Clause 373 provides that an entity identified in clause 372 must assess the request for change and send a response to the responsible entity advising that it has no objection to the change being made, or that it objects to the change. If the entity objects to the change, it must give reasons. If the entity does not provide a response within 20 business days after receiving the copy of the request, the responsible entity must decide the request as if the other entity had no objection.

Responsible entity to assess request

Clause 374 provides that the responsible entity must have regard to the information provided with the request, and assess the request as if it were a development application. The responsible entity must also have regard to any submissions made about the original application and any pre-request response notice or notice given under clause 373. The assessment should be carried out against the planning instruments, plans, codes, laws or policies in effect at the time the original application was approved. However, the responsible entity may consider and give weight to planning instruments, plans, codes, laws or policies in effect at the time the request was made.

Responsible entity to decide request

Clause 375 provides that the responsible entity must decide to approve the request (with or without conditions) or refuse the request. If conditions are imposed, the conditions must relate to the changes. For example, the responsible entity cannot use the request to impose conditions that they omitted to impose the first time around. Also, the conditions must meet the tests in clause 345.

This clause also sets out the timeframe for deciding a request. The timeframe does not apply if the responsible entity is the court.

Notice of decision

Clause 376 provides that the responsible entity must give written notice of its decision to the various parties. If the request is refused, the notice must state the reasons for the refusal, and advise the person who made the request of the rights of appeal or an entity that gave a notice under clause

373 or a pre-request response notice (if the responsible entity is the assessment manager) of any appeal rights.

When decision has effect

Clause 377 provides that the change takes effect from the day the written notice of the decision is given to the person who made the request or, if the decision is appealed to the court or building and development committee, the day the appeal is decided or withdrawn.

Division 3 Changing or cancelling particular conditions—other than on request

When condition may be changed or cancelled by assessment manager or concurrence agency

Clause 378 provides a limited capacity for entities to change or cancel conditions of development approvals unilaterally (without the consent of the persons with the benefit of the approval).

Subclause (1) limits the application of the clause to development conditions under another Act if, under the other Act development condition is defined with reference to a development approval.

Subclause (2) provides that if, under the other Act, the entity is authorised to change or cancel conditions of a development approval in a different way, the other Act prevails to the extent of any inconsistency.

Subclause (3) provides that an entity can only change or cancel a development condition imposed by that entity on a development approval (e.g. a concurrence agency may only change a condition imposed by the concurrence agency), or if the entity did not impose the condition, the entity with jurisdiction for the condition. In the case of the latter, an example may be the Planning and Environment Court.

Subclause (4) states that the condition may be changed or cancelled on a ground mentioned in the other Act. For example, see section 73C of the *Environmental Protection Act 1994*.

Subclause (5) provides that the consent of the owner and any occupier of the land are not required for the change or cancellation.

Subclause (6) requires that the changed condition must, like all other conditions, satisfy the tests of reasonableness and relevance under clause 345.

Subclauses (7), (8) and (9) provide for how notice of the intended change or cancellation should be given to the owner and any occupier of the land. Submissions may be made by the owner and any occupier about the intended change or cancellation and, if made, must be taken into consideration by the entity in deciding whether to proceed with the change or cancellation. Further notice of the entity's final decision must be given to the owner and the occupier.

Subclause (10) provides for the assessment manager for the development application to be notified.

Subclause (11) provides for when the changed condition or cancellation takes effect.

Division 4 Cancelling approvals

Request to cancel development approval

Clause 379 provides for a development approval to be cancelled upon application being made to the assessment manager by the owner (or another person with the owner's consent). The request must be accompanied by the appropriate fee.

Subclause (3) limits when an owner of land, the subject of a designation for community infrastructure, can cancel a development approval. The owner must be the entity who intends, or intended, to supply the community infrastructure. Consequently, in circumstances where the entity supplying the community infrastructure is not yet the owner of the land, the current owner of the land is not able to cancel a development approval obtained by the entity for the purpose of giving effect to the designated purpose.

Restriction on making request

Clause 380 makes it clear that a cancellation cannot be requested if the development has already started. Further, the cancellation cannot be requested in certain circumstances, unless the consent is given by the relevant person.

Example - If the land is in the process of being sold, the purchaser must give written consent to the cancellation.

Assessment manager to cancel approval

Clause 381 states that, after receiving the request for cancellation, the assessment manager must cancel the approval and give notice of this cancellation to the person who applied for it, and to each concurrence agency.

Release of monetary security

Clause 382 clarifies the situation regarding any monetary security given in relation to the approval - if the approval is cancelled, the security must be released.

Division 5 Extending period of approvals

Request to extend period in s 341

Clause 383 establishes a process for the extension of the period of an approval. Because the application will be made some years after the application was originally approved, this clause does not refer to the applicant, rather it refers to a person (who may or may not be the owner). If they are not the owner, they must obtain the consent of the owner unless the owner's consent was not required for the original application. The owner's consent is also not required if the assessment manager is satisfied that it is not practicable to obtain the owner's consent (e.g. where the land has been subdivided and is now owned by multiple persons).

If the application for the approval were remade at the time the request is made and evidence under clause 264(1) would be required to support the application, the request must be accompanied by the written agreement of the chief executive from whom evidence would need to be obtained or, alternatively, evidence showing that the person has asked the chief executive for their written agreement. As the time within which a request to extend the period of an approval can be made is limited (i.e. it must be made before the approval lapses under clause 341), it is appropriate that the person should not be prevented from making a request as a result of any delay on the part of the chief executive in providing the relevant written agreement. If, after the request is made, the chief executive states that they

do not agree to the request, the assessment manager must refuse the request (see clause 386).

The person making the request must also give notice to any concurrence agency consulted on the original application. This ensures the views of the concurrence agency are considered in the assessment of the request.

Request can not be withdrawn

Clause 384 clarifies that a request under this division cannot be withdrawn.

Concurrence agency may advise assessment manager about request

Clause 385 clarifies that, where a concurrence agency is given a notice about a request to extend an approval, the concurrence agency may notify the assessment manager that it has no objection to the extension, or that it does object to the extension, and give reasons for the objection.

Deciding particular requests

Clause 386 requires the assessment manager to refuse the request for extension if the request was accompanied by evidence the person seeking the request asked a chief executive to agree to the request, and the chief executive gives the assessment manager written notice the chief executive does not agree with the request. If the chief executive agrees to the extension, the assessment manager must decide the request within 30 business days after receiving the written agreement. This timeframe overrides the timeframe specified in clause 387.

Assessment manager to decide request

Clause 387 establishes the process and timeframes for deciding a request.

This clause provides that the assessment manager must approve or refuse the request for an extension of the period of an approval within 30 business days of receiving the request, or a longer time agreed by the assessment manager and the person making the request.

However under subclause (2), a concurrence agency has 20 business days within which it may advise whether or not it objects to the period being extended. The assessment manager must not approve or refuse the request for extension until this period has elapsed.

Subclause (4) provides that the assessment manager may decide the request even if the development approval was given by the court. This contrasts with changing other aspects of a development approval under clause 369. Clause 369 requires requests to change other aspects of development

approvals to be made to the responsible entity (including for example, the court). For the court, this protects the integrity of the court's decision, and recognises that other entities, such as referral agencies or assessment managers, may not have agreed with the court's original decision.

However, extending the period of a development approval generally will not affect the content and integrity of the approval itself. It is more efficient for such requests to be considered by the original assessment manager and concurrence agencies. The court has declaratory powers available to it in cases where a party considers such an extension would be unlawful or contrary to the court's original decision.

Deciding request

Clause 388 states the following matters that the assessment manager must consider in deciding the request for extension:

- The consistency of the approval with current laws and policies, and with any infrastructure contributions or charges currently payable. The older a development approval becomes, the less it is likely to conform with current community expectations, reflected in the relevant laws and policies applying for assessment of such development. Equally, infrastructure contributions or charges previously payable may not reflect the scope or quantum of charges now payable.

- The community's current awareness of the development approval. In some localities, population changes may mean that a significant proportion of the current community may not originally have had an opportunity to comment or make submissions about the development, and may be unaware of the development and its likely impact on its neighbourhood. This is particularly important if the development was inconsistent with the relevant planning scheme and other laws and policies at the time of approval, or has since become inconsistent.

- Whether, if the request was refused, the community would acquire further rights to make submissions about the development, and the extent to which those rights might be exercised. This criteria is closely related to the previous point, as it may be more likely that the community would exercise available rights to make a submission if a significant proportion of the current community did not live in the area when the original application was considered and consequently did not previously exercise rights to make a submission.

- The views of any concurrence agency for the approval. As for the first point above, the development may no longer conform with current laws and policies upon which a concurrence agency would base its decision if an application for the development were made now.

Subclause (2) makes it clear that if the assessment manager does not receive a notice from a concurrence agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must decide the request as if the concurrence agency had no objection to the request.

However, subclause (3) clarifies that this is not the case if the development approval is subject to a concurrence agency condition about the period mentioned in clause 341.

Subclause (4) states that if the assessment manager receives a notice under clause 385 from a concurrence agency within the relevant timeframe, the assessment manager must take the concurrence agency advice into account when deciding the request.

Assessment manager to give notice of decision

Clause 389 provides that, after deciding the request the assessment manager must give written notice of the decision to the person asking for the extension, and to any concurrence agency that gave the assessment manager a notice under clause 385.

Approval does not lapse until request is decided

Clause 390: If a request is undecided when the period expires, this clause protects the approval during the period the request is being processed and decided.

Division 6 Recording approvals on planning scheme

Particular approvals to be recorded on planning scheme

Clause 391 provides for an approval, other than a deemed approval, to be recorded on the planning scheme if it is given by a local government as assessment manager, and the local government considers the approval to be inconsistent with the planning scheme. This ensures that the public is aware of approvals that are at variance with the planning scheme.

The local government must also note on its planning scheme:

- any preliminary approvals given by it that vary the effect of a planning scheme under clause 242;
- a decision to agree to a request for a superseded planning scheme to apply for a particular development, including a deemed approval of such a request.

The local government must also give the chief executive written notice of the notation. This ensures that the chief executive can keep up-to-date copies of scheme information available for public scrutiny.

Subclause (3) confirms a notation is not an amendment of the planning scheme.

Subclause (4) confirms the approval or decision is still valid if the requirements of subclause (2) are not met.

Part 9 Applying IDAS to mobile and temporary environmentally relevant activities

Mobile and temporary environmentally relevant activities

Clause 392 relates specifically to applying IDAS to mobile and temporary environmentally relevant activities (ERA's). This clause ensures that mobile and temporary ERA's are taken to be development for the purpose of using IDAS to assess and condition proposed ERA's of this type.

Mobile and temporary ERA's are taken to be development to enable the IDAS process to be used but are only development for the purpose of assessing and conditioning the ERA. Mobile and temporary ERA's are not development for any other purposes in the Bill and therefore would still need relevant approvals for any other development undertaken by the activity - for example a requirement under a planning scheme or for operational works relating to vegetation clearing.

Subclause (2) provides that in applying IDAS to assessable development for mobile and temporary ERA's some changes to IDAS apply:

- A description of the land is not a mandatory part of the approved form.
- Clause 263, which requires that the application must be accompanied or supported by the consent of the owner of the land, does not apply.
- The development approval will not attach to land as with other development approvals for ERA's (clause 245), rather the development approval would attach to the registered operator/ plant /equipment.
- The development approval applies for the activity wherever it is carried out. As the activity may be carried out at a number of premises the development approval must cover the carrying out of the activity at any premises. This removes the need for a mobile and temporary ERA to apply for a development approval every time the activity moves to new premises. This requirement would be unworkable for mobile activities. The development approval may however limit the scope of the operation of the activity, by allowing the ERA to be carried out only in certain local government areas, road networks, regional areas etc.
- The development approval applies to and binds any person carrying out the activity under the approval.
- The written consent of the applicant is required for any one who carries out the activity under the approval, other than in the case of agents or employees of the applicant. This clause clarifies that a person can apply for the development approval for other persons who wish to carry out the activity under the approval. Applicants, their employees and agents are entitled to operate under the development approval. This is to ensure that, as development approvals for mobile and temporary ERA's do not attach to the land, unrelated persons cannot operate under a non site-based development approval without first getting the consent of the person who applied for the development approval in the first instance.

Part 10 Compliance stage

Division 1 Preliminary

The reform agenda contains a reform action to expand the current compliance assessment process to apply to a wider range of compliance matters (not merely compliance with some conditions as at present).

A new compliance assessment process and a compliance stage have been included in the Bill. The application of the compliance stage will mean that certain development, documents or work will need to be approved for compliance with certain criteria.

The intended outcome of these proposed changes is to ensure that the Bill contains a new compliance stage to enable certain development to be dealt with under IDAS more simply and effectively without compromising the benefits of integrated development assessment.

Currently, the only assessment processes available under IDAS are impact and code assessment for assessable development, and self-assessment. Assessable development differs from self-assessable development in that assessment (and approval) of one or more aspects of that development is required by the relevant assessment manager. Self-assessable development is not approved as it is the proponent's responsibility to ensure compliance with the relevant codes. Self-assessment is appropriate only for non-technical matters. Even though the processes in IDAS are streamlined, with clear timeframes and outcomes, they still do not suit some simple or purely technical proposals. This is particularly relevant where the only assessment would be compliance against certain provisions in planning instruments. Based on this, a far simpler assessment process would be more suitable for certain types of development. Compliance assessment will provide a quick process for purely technical issues. The expansion of compliance assessment in this way is consistent with the development assessment forum's leading practice model for development assessment.

There are also certain actions arising from previous approvals that require compliance assessment, and which are not adequately covered in the IDAS process. These include conditions of development approvals (i.e. completed works or management plans) and development consequential to preliminary approvals.

Compliance assessment would be suitable for development for which:

- clear technical standards are available;
- the exercise of broad discretion in determining compliance is unnecessary;
- integrated referral arrangements are unnecessary.

Purpose of compliance stage

Clause 393 provides that the compliance stage allows for development, a document or work relating to development to be assessed for compliance (***compliance assessment***) against a matter or thing prescribed under a regulation, a planning instrument, a master plan or a condition of a development approval.

Compliance permit

Clause 394 defines compliance permit. A compliance permit authorises development to the extent stated in the permit and subject to the conditions stated in the permit. If a request for compliance assessment of development is approved, the compliance assessor must give a compliance permit. A compliance permit can only be given in respect of development.

Compliance certificate

Clause 395 defines compliance certificate. A compliance certificate approves the documents or work to the extent stated in the certificate, and subject to the conditions stated in the certificate. If a request for compliance assessment of documents or work is approved, the compliance assessor must give a compliance certificate. A compliance certificate can only be given in respect of documents and works.

What does compliance stage apply to

Clause 396 states that the compliance stage applies for development, documents or work nominated as requiring compliance assessment.

Nominating a document or work for compliance assessment—generally

Clause 397 provides that the following can nominate documents or work as requiring compliance assessment:

- a regulation;
- a State planning regulatory provision;

- a structure plan or a master plan;
- a preliminary approval under clause 242;
- a temporary local planning instrument; or
- a planning scheme.

A regulation made under clause 232(1) can state that development requires compliance assessment.

The regulation made under clause 232(1) or 397, or the instrument mentioned in subclause (2) must also state the matters or things against which the development, document or work must be assessed, and the entity to whom the request must be made (the ***compliance assessor***).

The regulation or other instrument may also state, for document and work, when the request for compliance assessment must be made. For example, in the case of work, the regulation or instrument may require the request for compliance assessment to be made within 2 weeks of the work being completed, or within 3 months of a development approval or compliance permit being given.

Nominating document or work for compliance assessment—condition of development approval

Clause 398 provides that a condition of a development approval can nominate documents or work only as requiring compliance assessment. That is, a condition of a development approval cannot state that development requires compliance assessment.

The condition must state the matters or things against which the document or work must be assessed. However, the matters or things that the development must be assessed for compliance against must be contained or referenced in a regulation or another instrument specified in clause 397(2). This is to provide applicants with certainty as to the codes and standards against which the documents or work can be assessed within the relevant planning scheme area.

The condition must also state the compliance assessor for the request and when the request for compliance assessment must be made (for example, within 2 months of the development approval being given).

Who may carry out compliance assessment

Clause 399 requires compliance assessment to be carried out by a local government, an entity nominated by a local government or a State entity.

The decision whether or not to nominate an entity as a compliance assessor is at the discretion of the local government – that is, it is not something that can be imposed on local governments by the State through a regulation, a State planning regulatory provision or the standard planning scheme provisions. However, allowing local governments to nominate entities to carry out compliance assessment will enable local governments to utilise external resources in assessing development, documents and work.

When compliance stage starts

Clause 400 provides that the compliance stage starts on the day a request for compliance assessment is made.

Division 2 Compliance assessment

Subdivision 1 Request for compliance assessment

Request for compliance assessment

Clause 401 requires a request for compliance assessment to be made to the compliance assessor. The request must be in the approved form. It must also be supported by the appropriate fee and, for works yet to be completed, any relevant document that must be assessed for compliance.

Where a local government is the compliance assessor, the fee is that fixed by resolution of the local government. If the compliance assessor is a public sector entity, the fee is that prescribed under a regulation. Where the compliance assessor is a nominated entity of a local government, the fee is that agreed between the person making the request and the nominated entity.

Subdivision 2 Referring request to local government

Aspects of development requiring compliance assessment to be referred to local government

Clause 402 establishes a referral process to local governments in cases where the compliance assessor is a nominated entity of the local government. This is intended to allow local governments to use nominated

entities in the broadest possible range of contexts, including where there may be aspects of the development the local government wishes to assess itself. However, it is intended that these referrals be established by local governments in only limited circumstances, more as an exception to the rule, as compliance assessment is intended to provide a quicker, more efficient process.

Importantly, this referral process is only available for development requiring compliance assessment. It cannot be used for documents or work requiring compliance assessment.

Under clause 399 a relevant instrument of a local government may identify a nominated entity to carry out compliance assessment. This clause also provides for the relevant instrument to identify any aspects of the development which must be referred to the local government.

Subclauses (1) and (2) establish the circumstances in which a referral must take place.

Subclause (3) limits the local government's jurisdiction to an assessment of the aspect of development referred to the local government. This makes it clear that the local government is not able to assess all of the proposed development.

Subclause (4) confirms the local government must assess the aspect of development only against the matters or things stated for the request in clause 403. These matters or things are stated in the relevant instrument.

Subclause (5) establishes a 10 business day time limit for the local government's response.

Subclause (6) states the local government's options for the types of response it may give.

Subclause (7) states the local government must give reasons if the response states the development does not achieve compliance, and must also state the action required for the development to comply.

Subclause (8) states the consequences if the local government does not give its response in 10 business days.

Subclause (9) enables the local government to charge a fee for its assessment under this clause.

Subdivision 3 Compliance assessor to assess and decide request

Assessment of request

Clause 403 requires the compliance assessor to assess the development, document or work only against the matters or things specified in the instrument or approval.

Assessment of request under a superseded planning scheme

Clause 404 provides that where a local government has agreed to a request to assess and decide a request for compliance assessment under a superseded planning scheme, the request must be assessed against the superseded planning scheme instead of the planning scheme in effect when the request was made. However this clause provides for the calculation of any infrastructure charges as if the current planning scheme was in effect.

Subclause (2) states this clause applies despite clauses 81,120 and 121. Clause 81 provides that a planning scheme comes into effect and replaces any former planning scheme. Clause 404 effectively acts as an exception to this arrangement by providing for superseded planning schemes to be considered in assessment.

Deciding request

Clause 405: Subclauses (1) and (2) provide that if the compliance assessor is satisfied the development, document or work achieves compliance or would achieve compliance if particular conditions were complied with, the compliance assessor must approve the request, unless a local government has (under section 402) told the compliance assessor that it considers the development does not achieve compliance. The request can be approved with or without conditions (subclause (3)).

However, the compliance assessor cannot approve the request where:

- the compliance assessor is a nominated entity;
- the request was required to be referred to the local government under clause 402; and
- the local government told the compliance assessor that it considers the development does not achieve compliance assessment.

In this situation, the compliance assessor must issue an action notice (subclause (5)).

Also, if the compliance assessor is satisfied the development, document or work does not achieve compliance, the compliance assessor must issue an action notice.

Subclause (5) sets out the requirements for an action notice. In particular, the action notice must state:

- the reasons why the development, document or work does not achieve compliance;
- the action required for the development, document or work to comply;
- the reasonable period within which the person may take the action and then again make a request for compliance assessment.

If the person takes the action and again makes a request for compliance assessment, no additional fee will be payable (subclause (7)).

A compliance request cannot be refused.

Conditions must be relevant and reasonable

Clause 406 establishes parameters for the conditions a compliance assessor may impose on a compliance permit or certificate.

Subclause (1) applies to development or work, and requires that conditions be relevant to, or reasonably required by the development or work. These tests are essentially the same as for development approvals under clause 345.

For a document subject to compliance assessment, subclause (2) requires a condition be relevant to the matters dealt with in the document. This differs from the test in subclause (1) as a document will not of itself have impacts in the physical environment that reasonably require mitigation. Also, the requirement for a document to require compliance assessment is most likely to be the subject of a condition of a development approval which is itself the subject of the "reasonableness and relevance" test under clause 345.

Subclause (3) establishes that conditions of a compliance permit or certificate must meet the test of reasonableness and relevance despite the "laws and policies" administered by the compliance assessor.

Compliance assessor to give compliance permit or certificate on approval of request

Clause 407 requires that, in the event the assessor approves the request, the assessor must give the person making the request:

- if the request was for approval of development - a compliance permit; or
- if the request was for approval of a document, or work carried out - a compliance certificate.

The compliance permit or compliance certificate must state the conditions, if any, imposed on the permit or certificate. In the case of a compliance permit, the permit must also include any conditions that a local government has required be imposed on the approval under clause 402.

When notice about decision must be given

Clause 408 sets out the timeframes for deciding a request for compliance assessment and either issuing a compliance permit or compliance certificate (if the request is approved), or issuing an action notice (if the development, document or work does not achieve compliance).

If the compliance assessor gives a written notice of the action required for the development, document or work to comply, the written notice must be given within the timeframe prescribed under a regulation.

If the compliance assessor approves the development, document or work, the compliance assessor must issue the compliance permit or compliance certificate within the timeframe prescribed under a regulation.

If the compliance assessor is a nominated entity of a local government and the request was referred to the local government under clause 402, the compliance assessor must not decide the request until at least 15 business days after giving the request to the local government. This ensures that the local government has time within which to provide a response, before the request is decided.

If the compliance assessor does not comply with the above timeframes, it will be deemed to have approved the request without conditions. The compliance assessor is still required to issue a compliance permit or compliance certificate so that the person making the request for compliance assessment has evidence of the approval.

Duration and effect of compliance permit

Clause 409 states that a compliance permit has effect from the day it is given, unless the person who requested the permit appeals to the court or

the building and development committee. In this case, the compliance permit will take effect when the appeal is finally decided or withdrawn.

The compliance permit has effect for the period stated in a condition of the permit or, if no period is stated in a condition of the permit, for the period prescribed under a regulation.

A compliance permit attaches to the land, the subject of the request, and binds the owner, the owner's successors in title, and any occupier of the land.

A compliance permit has effect for:

- the period prescribed under a regulation; or
- if no period is prescribed under a regulation, 2 years from the day the compliance permit or compliance certificate is given.

If the development starts while the compliance permit has effect, the permit continues to have effect.

There is no equivalent provision for compliance certificates, because they are approving something which has already occurred (i.e. a document that has been prepared or works carried out), rather than authorising an activity.

When development may start

Clause 410 provides that development requiring compliance assessment may start when a compliance permit for the development takes effect.

Subdivision 4 Lapsing of request

When request for compliance assessment lapses

Clause 411 provides for a request for compliance assessment to lapse if the person requesting compliance assessment does not take an action in response to an action notice and again apply for compliance assessment within the period stated in the notice. This clause also takes into account the situation where the person may make written representations about the action notice. If, as a result of the representations, the person is given a new action notice, the request will lapse if the person does not again apply for compliance assessment within the time stated in the new action notice. If the compliance assessor does not agree with the representations, the notice advising of this disagreement must state a new period within which

the person must again make a request for compliance assessment. If the request is not made within this time, the request will lapse.

Division 3 Changing notices, compliance permits and certificates

Changing and withdrawing action notice

Clause 412 sets out the method and process of changing and withdrawing an action notice.

Subclause (2) provides that the person given the action notice may make written representations to the compliance assessor about the following matters stated in the notice:

- the reasons the development, document or work does not achieve compliance;
- the action required for the development, document or work to comply;
- the reasonable period within which the person may again make a request for compliance assessment.

If the compliance assessor agrees with the person that the development, document or work achieves compliance, the compliance assessor must withdraw the action notice and decide the request. In this circumstance, the compliance assessor would then give a compliance permit or compliance certificate (i.e. the compliance assessor could not issue a new action notice).

If the compliance assessor agrees with some, but not all, of the representations made by the person about whether the development, document or work achieves compliance, the compliance assessor must give a new action notice.

If the compliance assessor agrees with representations about the action required for compliance or the reasonable period within which the person may again make a request for compliance assessment, the compliance assessor must give a new action notice.

Where the compliance assessor is a nominated entity of a local government, the compliance assessor cannot withdraw the action notice or give a new action notice if the representations relate to the response of a local government under clause 402.

Only one new action notice may be given. The new action notice replaces the original action notice.

If the compliance assessor does not agree with all of the representations and therefore decides to take no action (i.e. it does not withdraw the action notice or issue a new action notice), it must give the person written notice of its decision.

Changing compliance permit or compliance certificate

Clause 413 allows a person to request that a compliance permit or compliance certificate be changed. The request must generally be made to the compliance assessor for the original request for compliance assessment. However, if the original compliance assessor was a nominated entity of a local government and that entity is no longer a nominated entity (because for example, the nominated entity no longer exists or the local government has removed the entity from its list of nominated entities), the request for change can be made to the local government.

The request for change must be made in writing to the compliance assessor. The compliance assessor must, as soon as practicable after receiving the request, make a decision as to whether to change or refuse to change the compliance permit or compliance certificate. If the compliance assessor agrees to make the change, it must issue a new compliance permit or compliance certificate. If the compliance assessor does not agree to make the change, it must issue a written notice to the person requesting the change, stating that it does not agree to make the change. This notice must state the reasons for the decision for refusing to change the compliance permit or compliance certificate, and must also set out the rights of appeal for the person seeking the change.

If the compliance assessor is a nominated entity of a local government and the change is to a condition imposed by a local government through the referral process, the compliance assessor cannot change the condition without the written agreement of the local government.

When decision about change has effect

Clause 414 provides that the change to a compliance permit or compliance certificate has effect on the day the new compliance permit or compliance certificate is given or, if an appeal is made to a court or building and development committee about the decision, the day the appeal is decided or withdrawn.

Division 4 Other matters

Regulation may prescribe additional requirements and actions

Clause 415 states that a regulation may prescribe things that are mandatory or discretionary in carrying out the compliance assessment. This might include the form for documents, scale of plans and paper size. A regulation may also prescribe additional actions to be taken by the compliance assessor, such as the need to give approved documents to another entity. Finally, a regulation may require the compliance permit or compliance certificate to be given in a particular form (for example, in the case of a plan of subdivision, the compliance certificate may be required to be in a form approved under the *Land Title Act 1994* to enable registration of the plan).

Effect on deciding request if action taken under Native Title Act (Cwlth)

Clause 416 recognises and accommodates disparities between the IDAS process and processes for notifying native title parties under the Commonwealth *Native Title Act 1993* (NTA). The clause enables procedural rights to be provided to native title parties (under section 24HA – management or regulation of water and air space, and section 24KA – construction of infrastructure facilities for the public, of the NTA) within the IDAS process by, in effect, stopping the clock of the compliance assessment until the procedural rights have been provided.

Most native title notifications under the NTA are likely to occur during the process of granting tenure or other access to a State resource, prior to any development application affecting the resource. As these processes may result in indigenous land use agreements which map out arrangements about the form and impacts of subsequent development, notification of the "future act" of development assessment is likely to be unnecessary, and is hence unlikely to affect IDAS. However, because sections 24HA and 24KA of the NTA deal with notification for "future acts" which may affect native title interests other than on the premises proposed for development, they may not be preceded by a resource allocation process, and hence may affect the IDAS process.

Part 11 Ministerial IDAS powers

Division 1 Ministerial directions

Ministerial directions to assessment managers – future applications

Clause 417 enables the Minister to make a direction requiring copies of all future applications (i.e. all applications made after the date of the direction) of a specified type, to be given to the Minister. For example, the direction may require that copies of all applications for developments of a particular type or for development in a particular area, be given to the Minister. A direction of this type may only be made where the type of application specified in the direction involves a State interest.

The direction must specify the point in the IDAS process when the application must be referred to the Minister – for example, after the application is made, or before the application is decided.

The direction must state the reasons for deciding to give the direction and the State interest giving rise to the direction.

The direction must be notified in the gazette and a newspaper generally circulating within the State.

The Minister must give a copy of the direction to any entity the Minister considers is likely to be an assessment manager or referral agency for the type of application.

The purpose of this power is to enable the Minister to consider whether further action is needed in relation to the application. For example, the Minister may consider whether to call in the application, or issue a further direction.

Ministerial directions to assessment managers—particular applications

Clause 418 sets out the types of directions the Minister can give to an assessment manager in relation to a particular application.

Subclause (1) provides that the Minister may give a direction:

- to not decide the application for a stated period;

- to decide the application within a stated period if the assessment manager has not decided the application within the IDAS timeframes;
- to decide the application within the decision-making period (without any extensions to that period), if the proposed development involves a State interest;
- to decide whether to give a negotiated decision notice within a stated period;
- to take an action under IDAS within a reasonable period if the assessment manager has not taken the action within the IDAS timeframes;
- to take an action under IDAS if the proposed development involves a State interest.

A direction under subclause (1)(a) to not decide the application for a stated period can only be given where the assessment manager has not yet decided the application and the development involves, or may involve, a State interest. This direction power may be used where, for example, the Minister wishes to stop the IDAS clock in order to give the Minister time to decide whether to call in the application. Under subclause (5), the direction has the effect of stopping the IDAS clock. However, the maximum period for which the direction may stop the IDAS clock is 20 business days. Before the end of this period, the Minister must either issue a new direction or call in the application. If the Minister does not issue a new direction or call in the application, the IDAS clock re-starts and the assessment manager may continue towards deciding the application. The Minister must not call in the application after the period stated in the direction ends. This ensures that the rights of the applicant are protected, by limiting the number of times the Minister can intervene.

Subclause (1)(b), (c), (d), (e) and (f) enable the Minister to direct assessment managers to undertake any action in IDAS that is their responsibility and has not been done.

Subclause (1)(b) enables the Minister to direct an assessment manager to decide an application within a specified timeframe, if the assessment manager fails to decide the application within the decision-making period.

Subclause (1)(c) enables the Minister to direct an assessment manager to decide an application within the decision-making period (i.e. 20 business days from the start of the decision stage) if the development involves a State interest. If a direction is given under this provision, the assessment

manager cannot seek to extend the decision-making period, even with the applicant's agreement (see clause 318(6)). Unlike the direction power in subclause (1)(b), this direction can be given at any time prior to the application being decided.

Subclause (1)(d) enables the Minister to direct an assessment manager to make a decision about representations made by the applicant under clause 361.

Subclause (1)(e) gives the Minister a general power to be able to direct assessment managers to take any actions under IDAS within a specified period, if the assessment manager has failed to comply with timeframes under the Bill.

Subclause (1)(f) gives the Minister a broad power to be able to direct assessment managers to take any actions under IDAS within a specified period, if the development involves a State interest. It is intended that if the Minister gives a direction under this provision, the assessment manager cannot seek to extend the relevant period for taking the action, even with the applicant's agreement. Unlike the direction power in subclause (1)(e), this direction can be given at any time prior to the application being decided.

Subclause (2) provides that the direction must state the reasons for deciding to give the direction. If the direction is given under subclause (1)(a), the direction must also state the State interest giving rise to the direction and that the Minister may call in the application or give a further direction. If the direction is given under subclause (1)(c) or (f), the direction must state the State interest giving rise to the direction.

Subclause (3) provides that the Minister must give a copy of the direction to the assessment manager and any referral agency for the application.

Subclause (4) provides that the assessment manager must comply with the direction.

Ministerial directions to assessment managers - conditions

Clause 419 enables the Minister to give a direction to an assessment manager requiring the assessment manager to attach a condition to any development approval given by the assessment manager, including a deemed approval. This direction power can only be exercised where the development involves a State interest and the assessment manager has not yet decided the application, or a deemed approval has not yet taken effect under clause 339. Also, to avoid any potential for conflict with

concurrence agencies, the direction power is limited to matters outside the jurisdiction of any concurrence agency involved in the application.

In relation to deemed approvals, this provision is intended to enable the Minister to impose conditions on the approval, even after an applicant has given a deemed approval notice to the assessment manager.

Ministerial directions to concurrence agencies

Clause 420 enables the Minister to provide a direction to a concurrence agency if:

- there are inconsistencies in two or more concurrence agencies' responses;
- a concurrence agency's response is beyond its jurisdiction or contains a condition that does not meet the test of reasonableness or relevance in clause 345 or comply with clause 347;
- the concurrence agency has not properly assessed the application;
- an action under IDAS has not been done within the timeframes prescribed under the Bill; or
- the development involves a State interest.

The direction may require a concurrence agency to reissue their response or take action. The process for providing the direction is also set out.

Subclause (6) clarifies that if the Minister gives a direction under this section, the assessment manager must not decide an application until the concurrence agency's response is reissued or the action is taken.

Ministerial directions to applicants

Clause 421 enables the Minister to give a direction to an applicant if they have not complied with a stage of IDAS, or an aspect of a stage of IDAS. This clause sets out the process for giving the direction and states the effect of a direction. In particular, the notice may state the point in the IDAS process from which the process must restart. If the applicant complies with the direction, then the IDAS process will restart from that point.

Report about decision

Clause 422 provides that a report about the Minister's decision to give a direction under clause 419 must be prepared and tabled in Parliament within 14 sitting days after the Minister's decision is made. This provision is based on the equivalent provision for Ministerial call in powers (clause

432). This provision has been included to provide some accountability for the Minister's decision to impose conditions on any approval, as the exercise of this power is not able to be appealed (see chapter 7).

Division 2 Ministerial call in powers

Definitions for div 2

Clause 423 defines ***Minister*** for the purposes of the division. The effect is to allow the call-in powers to be exercised by the Minister administering the *State Development and Public Works Organisation Act 1971* in addition to the Minister administering this Bill and the regional planning Minister. This is in recognition of the wide coordinating role already available under the *State Development and Public Works Organisation Act 1971.*

This clause also defines assessment and decision provisions for the purposes of this division.

When a development application may be called in

Clause 424 sets out the requirements for the call in power to be exercised. It is to be noted that the call in power may be exercised either before or after an application has been decided by an assessment manager or is taken to have been approved under clause 331. It must be stressed this is a reserve power of the State. It is not intended to be used routinely or often. However, occasions may arise where a State interest (such as an important environmental value) could be severely affected by the implementation of a development approval. In these situations, exercising the reserve power to call the application in and assess and decide, or reassess and re-decide, the application provides the Minister with an ability to redress what otherwise could become a serious problem for the community as a whole.

The Minister may only call in an application if it involves a State interest. ***State interest*** is defined in schedule 3.

With regard to timeframes, the Minister may call in a development application at any time between when it was made and the later of the following:

- 15 business days after the day the chief executive receives notice of an appeal against the application;

- if there are submitters – 50 business days after the decision notice or negotiated decision notice is given to the applicant;
- if there are no submitters – 25 business days after the decision notice or negotiated decision notice is given to the applicant.
- if the application is taken to have been approved under clause 331, and a decision notice or negotiated decision notice is not given – 25 business days after the day the decision notice was required to be given to the applicant under clause 331(6).

The proposed time limits of 50 and 25 days correspond to the aggregate time limits for giving the applicant and submitters copies of the decision notice or negotiated decision notice, and their respective 20 day appeal periods.

Notice of call in

Clause 425 gives the Minister the power to call in an application and sets out the process for calling in an application.

The call in must be by written notice given to the assessment manager.

Subclause (2) sets out the matters the call in notice must state. In particular, if the Minister intends to assess and decide the application having regard to State interests only, the notice must state this.

If the application is called in after the assessment manager makes a decision on the application, the notice must state the point in the process from which IDAS must restart.

If the application is called in before the assessment manager makes a decision on the application, the Minister may also, as part of the call in notice, direct the assessment manager to assess or continue to assess the application on behalf of the Minister and then refer the application to the Minister, along with its recommendations, so that the Minister can decide the application. However, this option is not open to the Minister if the Minister indicates in the call in notice his or her intention to assess and decide the application on the basis of State interests only.

The call in notice must be given to the assessment manager and copies must be given to the applicant, any concurrence agency, and any submitter.

Minister's action on calling in application

Clause 426 gives the Minister the power to:

- if the application is called in before it is decided by the assessment manager – assess and decide the application in the place of the assessment manager, or direct the assessment manager to assess or continue to assess the application, with the Minister having the ultimate power to decide the application;
- if the application is called in after it is decided by the assessment manager – re-assess and re-decide the application in the place of the assessment manager.

Under the current IPA, the Minister had the power to call in the application and either assess and decide the application (if it had not already been decided by the assessment manager) or re-assess and re-decide the application (if it had already been decided by the assessment manager). This clause has been changed to provide for a third scenario – i.e. the Minister now also has the power to, if the application has not already been decided by the assessment manager:

- require the assessment manager to assess the application (once the decision stage of the IDAS process starts); or
- if the assessment manager has already started assessing the application at the time the application is called-in, to continue assessing the application.

However, the Minister reserves for himself or herself the power to decide the application. In this situation, the IDAS process will continue, and so the timeframes for assessing the application will continue to apply to the original assessment manager (including the ability to extend the decision-making period). After assessing the application, the assessment manager must forward its assessment to the Minister (including its recommendations e.g. whether the application should be refused and the reasons for the refusal, approved in whole or part and any conditions that should be attached to the approval). The Minister then decides the application. However, the Minister cannot exercise this power if the Minister intends to assess and decide the application on the basis of State interests only.

The Minister also has the power to assess and decide, or re-assess and re-decide the application having regard only to the State interest for which the application was called in, rather than having to assess and decide the application in accordance with the assessment and decision provisions.

Effect of call in

Clause 427 establishes that the Minister is the assessment manager from the time an application is called in. This means the Minister must follow the IDAS process in assessing and deciding the application (other than the assessment and decision provisions, if the call in notice states that the application will be assessed and decided on the basis of State interests only – see subclause (8)).

This ensures called in applications are subject to the same process as normal development applications. However, as stated in subclause (5), there is no right of appeal against the Minister's decision. Also, any appeals made before the application was called in are of no further effect (subclause (6)).

The IDAS process continues from the point at which the application was called in if the application had not been decided prior to the call in, or at a point decided by the Minister (but before or at the start of the decision stage) if the application was called in after a decision by the assessment manager.

Any concurrence agencies for the application are taken to be advice agencies for the call in, until the application is decided by the Minister.

Subclause (7) clarifies that the deemed approval provisions in part 5, division 3, subdivision 4 do not apply in the case of a Ministerial call-in. This ensures that an application is not deemed to be approved if the Minister does not decide the application within time.

If the Minister assesses and decides, or re-assesses and re-decides the application having regard to State interests only, the assessment and decision provisions do not apply, however the Minister may still have regard to the common material and any other matter the Minister considers is relevant to the State interest that provided the reason for calling in the application.

Original assessment manager to assist Minister

Clause 428: The entity that was the original assessment manager must give the Minister all reasonable assistance including giving the Minister all available material about the application.

Minister's decision notice

Clause 429 requires the Minister to give the original assessment manager a copy of the decision notice given to the applicant.

Subclauses (2) and (3) clarify that the decision notice given by the Minister does not have to state some of the matters usually included in a decision notice, as these matters are not relevant in the case of a call in.

Provision for application called in by regional planning Minister

Clause 430 includes additional provisions for a development application called in by the regional planning Minister, which allow the regional planning Minister to call in and "hold" a development application during the process of making a regional plan. These powers are intended to prevent approval of development applications made before a regional plan comes into effect that may compromise the outcomes of a plan.

Subclauses (1) to (4) establish the arrangements for suspending the IDAS process for, and ultimately determining a development application called in by the regional planning Minister.

Subclause (5) provides that, for assessing the development application, the normal requirements for using the regional plan, or planning scheme provisions reflecting the regional plan, in effect at the time the application was made do not apply. This means that the development application can be assessed against the regional plan or corresponding planning scheme requirements, whereas using the normal rules of development assessment, the regional plan could not be considered.

Process if call in decision does not deal with all aspects of the application

Clause 431 allows the Minister to refer aspects of an application that has been called in back to the assessment manager for decision. For example, an application that is called in may deal with two aspects of development (e.g. change of use and building work) as they relate to the requirements of the planning scheme. After deciding those aspects, the Minister may refer the remaining aspects back to the assessment manager, i.e. those aspects requiring assessment of the building work for its compliance with the *Building Act 1975.* The Minister must specify where in the IDAS process the undecided aspects of the application must restart from.

Report about decision

Clause 432 requires that, after deciding the application, the Minister must prepare a report about the decision on the called in application, and must include in this report a copy of the application, an analysis of any submissions made about the application, a copy of the decision notice and the Minister's reasons for decision. The Minister must then table a copy of

the report in the Legislative Assembly within 14 sitting days after having made the decision.

Report about compliance with development approval

Clause 433 provides that the Minister may require a report from the assessment manager about a person's compliance with a development approval given by the Minister for those aspects of the application which were decided by the Minister. The assessment manager must comply with this request from the Minister.

This ensures that the Minister has the power to direct a local government to report to the Minister about compliance with an approval granted by the Minister pursuant to a Ministerial call in.

The purpose of this change is to provide a feedback loop to the Minister in respect of approvals granted by the Minister, to ensure that they are being complied with and to give the Minister the necessary information to decide whether to commence enforcement action in the case of non-compliance.

Part 12 Miscellaneous provision

Refunding fees

Clause 434 is intended to put beyond doubt that an assessment manager or concurrence agency may refund all or part of any fee paid to it to assess an application. However, there is no obligation on assessment managers or concurrence agencies to do so.

Chapter 7 Appeals, offences and enforcement

This chapter sets out provisions dealing with jurisdiction, procedures and appeal matters of the Planning and Environment Court and Building and Development Dispute Resolution Committee (building and development committee).

This chapter also contains provisions dealing with development offences and the enforcement mechanisms available to address them.

Many of the provisions mirror those contained in chapter 4 of the current IPA. However, this Bill also:

- expands the discretionary powers of the court to award costs against commercial competitors and to determine whether a matter of procedural non-compliance can be excused;
- changes the name of the Building and Development Tribunal to the "Building and Development Dispute Resolution Committee";
- expands the jurisdiction of the building and development committee;
- allows for appeals, offences and enforcement to facilitate the introduction of compliance assessment; and
- gives assessing authorities a broader discretion to proceed directly to issuing an enforcement notice, without first issuing a show cause notice.

Part 1 Planning and Environment Court

Division 1 Establishment and jurisdiction of court

Continuance of Planning and Environment Court

Clause 435 states the continuance of the existing Planning and Environment Court.

Jurisdiction of court

Clause 436 establishes the jurisdiction of the court. This clause allows for other Acts as well as this Bill to confer jurisdiction on the court.

The jurisdiction of the court under this Bill is exclusive. However, there are two exceptions. One exception is set forth in division 14 of this part, and allows for an appeal to the Court of Appeal about an error of law, or the jurisdiction of the Planning and Environment Court in making a decision.

The second exception, set out in clause 508, establishes the jurisdiction of a building and development committee, and allows the committee to hear a range of technical matters. For these matters, both the Planning and Environment Court and a building and development committee will have jurisdiction. However an appellant, having made a choice of jurisdiction for an appeal, is unable to also appeal in the alternative jurisdiction, unless the appeal is about a matter of law or jurisdiction from a building and development committee to the Planning and Environment Court (see clause 479).

Proceedings open to public

Clause 437 requires that all matters be heard and decisions given in open court, unless the rules of court provide otherwise.

Division 2 Powers of court

Subpoenas

Clause 438 describes the manner in which the court can obtain evidence. The court can gather evidence by ordering the production of documents or by examining witnesses. The court also has powers to punish for non-compliance with a summons. The powers of a judge of the Planning and Environment Court are the same as those of a District Court Judge under the *District Courts Act 1967* for the purposes of this clause.

Contempt and contravention of orders

Clause 439 states that a judge of the court has the same powers to punish for contempt as in the District Court. The contempt powers in section 129 of the *District Courts Act 1967* apply in the Planning and Environment Court the same way they apply to the District Court.

This clause also establishes that a failure to comply with an order of the court is a contempt of the court. This is intended to clarify that the court has the power to enforce its own orders.

How court may deal with matters involving non-compliance

Clause 440 provides the court with broad discretionary powers to relieve against any non-compliance, partial non-compliance or non-fulfilment of any provision of the Bill.

This clause enables the court to give relief in response to proceedings commenced for that purpose or in the context of other proceedings; and to give that relief notwithstanding any other provision of the Bill, including provisions which would otherwise provide that an application had lapsed.

The purpose of this clause is to ensure a person's rights to hearings are not compromised on the basis of technicalities concerning processes. The term "provision" is intended to be interpreted broadly and is not limited to circumstances where there is a positive obligation to take a particular action.

The court's power is not restricted to proceedings before it. This allows access to the court for declarations and orders about procedural disputes which do not form part of wider proceedings.

Subclause (3) makes it clear that the clause applies in relation to a development application which has lapsed or is not a properly made application.

Terms of orders etc.

Clause 441 states that if the court is authorised to make an order, give leave or do anything else, it may do so on the terms and conditions it considers appropriate.

Taking and recording evidence etc.

Clause 442 establishes the ways in which the court must take evidence, and requires the court to record the evidence.

Division 3 Constituting court

Constituting court

Clause 443 describes the notification process and manner in which the Governor in Council commissions the court, with one or more District Court Judges.

Jurisdiction of judges not impaired

Clause 444 provides that the judge serving on the court is not prevented from continuing to hear matters in the District Court.

Division 4 Rules and orders or directions about proceedings

Rules of court

Clause 445 provides that matters relating to court procedure will be set forth in the Planning and Environment Court Rules. The rules are subordinate legislation made by the Governor in Council under this Bill, and with the concurrence of the Chief Justice of the Supreme Court and one or more other Supreme Court judges.

This clause allows the Planning and Environment Court Rules to apply the Uniform Civil Procedure Rules for matters not otherwise provided for in the Planning and Environment Court Rules.

Orders or directions

Clause 446 sets out the court's broad power to make orders or directions about the conduct of a proceeding.

Division 5 Parties to proceedings and court sittings

Where court may sit

Clause 447 states that a court may convene at any place.

Appearance

Clause 448 provides that a party may appear personally before the court or be represented by a lawyer or agent. It will be presumed that the representative has the authority to bind the party.

Adjournments

Clause 449 provides that the court may close or postpone proceedings to another time and venue.

What happens if judge dies or is incapacitated

Clause 450 describes what will occur if the presiding judge dies or cannot continue with a proceeding for any reason. This clause applies where the judge is unable to continue with a proceeding for any reason, including

leave of absence. This provision is intentionally broad to cover a broad range of circumstances that may lead to a judge being unable to continue with a proceeding.

Another judge, in consultation with the parties, can postpone the proceedings until the original judge can continue, or order the matter to be heard again. This clause also allows for the second judge, with the consent of the parties, to make an order about a decision, or about completing the hearing and the decision. A decision issued in this manner will be considered as a decision of the court.

Stating case for Court of Appeal's opinion

Clause 451 describes the manner in which a judge may submit an issue of law, which has arisen during a proceeding, to the Court of Appeal.

The issue may only be stated during a proceeding, and the court must not make a decision about the matter while the question is pending, or proceed in a way, or make a decision inconsistent with the Court of Appeal's opinion on the question.

Division 6 Registry and other court officers

Registrars and other court officers

Clause 452 establishes that the registrars, deputy registrars and officials of the District Court will be the registrars, deputy registrars and officials for the Planning and Environment Court.

Registries

Clause 453 states that the each District Court registry is the registry of this court. This clause also allows for the establishment of a principal registry which will be under the control of the senior deputy registrar. It also allows the senior deputy registrar to give directions to other deputy registrars and other officers of the court, other than the registrar.

Court records

Clause 454 requires the registrar to keep minutes of proceedings and records of decisions which must be kept in the custody of the registrar.

Judicial notice

Clause 455 requires that judicial notice be taken of the appointments and signatures of the registrars and court officials acting under this part.

Division 7 Other court matters

Court may make declarations and orders

Clause 456 describes the power of the court to hear and decide declaratory matters under this Bill or to make orders about a declaration made by the court. This clause allows for any person to initiate a proceeding for a declaration. The court has jurisdiction to hear and decide a proceeding about the following matters:

- a matter done, or to be done, or that should have been done under this Bill (other than a matter relating to a direction by the Minister or a Ministerial call in under chapter 6, part 11 of the Bill);
- the construction of the Bill and the planning instruments and master plans under the Bill;
- the construction of a land use plan under the *Airport Assets and (Restructuring and Disposal) Act 2008*, and chapter 3, part 1 of that Act; and
- the lawfulness of land use or development.

Subclause (2) provides for an assessment manager to bring a proceeding about a matter done, to be done, or that should have been done in relation to an application that has been called in by the Minister under chapter 6, part 11, division 2. However, this clause only applies if, at the time the application was called in, the assessment manager had refused the application or not made a decision on the application.

A proceeding may be brought in a representative capacity with the consent of the person on whose behalf the proceeding is brought.

Subclause (5) provides that a person on whose behalf the proceeding is brought may contribute to or pay the legal costs incurred by the person bringing the proceeding.

Subclause (7) states that the court may also make an order about a declaration made by the court.

Subclause (8) requires the person who starts the proceeding to give written notice of the proceeding to the chief executive the day the person starts the proceeding.

Subclause (9) provides that the Minister may elect to be a party to the proceeding if the Minister is satisfied the proceeding involves a State interest. The Minister may elect to be a party by filing a notice of election in the approved form in the court.

Costs

Clause 457 requires parties to an appeal or proceeding to bear their own costs. However the court may order costs against a party in specified circumstances. These include:

- If the court considers a proceeding was instituted, or continued by the party bringing the proceeding, primarily to delay or obstruct. This allows the court to consider the motivations behind the initial proceeding or the continuance of the proceeding in determining whether costs should be awarded. For example, in the case of an application for a commercial development, costs might be awarded against a submitter who owned a competing commercial interest, and who appealed, if the court considered that despite the grounds stated in the appeal, the primary purpose of the appeal was to obstruct or delay the proposed development.

- If the court considers the proceeding to have been frivolous or vexatious. In contrast to the ground of obstruction or delay, this ground allows the court to consider the merits of the substance of the proceeding itself.

- If an assessment manager, referral agency, coordinating agency for a master plan application, compliance assessor or local government has a responsibility to take an active part in a proceeding but does not do so.

- If an applicant, submitter, referral agency, assessment manager, coordinating agency for a master plan application, a compliance assessor, a person requesting compliance assessment or a local government fails to properly discharge their responsibilities in a proceeding. This ground applies to a wider variety of participants than the previous ground, and goes beyond the requirement to take an active part in proceedings. For example, an assessment manager may

take an active part in a proceeding, but present evidence that is poorly researched or not relevant to the issue at appeal.

In addition to setting out circumstances in which the court has discretion to award costs, subclauses (3) to (7) detail certain situations in which the court must award costs.

The Bill provides ways in which persons adversely affected by the decisions of government entities (or in some cases the lack of a decision) can seek relief from the court. In some situations it is considered unfair to require the costs of those actions to be met by the aggrieved party. These clauses ensure that costs must be awarded in favour of the aggrieved party in stated situations (e.g. the failure of a designator under chapter 5, part 6 to decide a request for the acquisition of designated land on hardship grounds).

Subclause (7) also prevents the court awarding costs against an assessment manager or compliance assessor that has successfully applied to the court to withdraw from the appeal because the appeal exclusively concerns a concurrence agency's response or a local government response under clause 402.

It is also provided that an order of costs may be made an order of the District Court and therefore enforced in that court (subclause (10)).

Privileges, protection and immunity

Clause 458 is derived from the *District Courts Act 1967* and provides the judge, lawyer, agent or witness to a proceeding the same protection and immunity as granted by the District Court.

Payment of witnesses

Clause 459 provides for the payment of reasonable expenses to witnesses.

Evidence of local planning instruments or master plans

Clause 460 allows for the evidentiary certification of a document purporting to be a true copy of a local planning instrument or a master plan. Such a certified document is then admissible as if it were the original instrument or plan.

Division 8 Appeals to court relating to development applications and approvals

This division outlines what matters in relation to development applications and approvals may be appealed to the court. Each clause also outlines the period within which appeals must be started.

Non-determinative decisions made in the course of assessing a development application are not appealable under this division. However, the declaratory powers of the court under division 7 of this part are available to applicants in respect of non-determinative decisions.

Appeals by applicants

Clause 461 lists the matters about which an applicant for a development approval may appeal to the court. These are appeals about determinative decisions made about development applications under the IDAS process.

Appeals by submitters—general

Clause 462 describes the appeal rights of submitters concerning the impact assessable part of a development approval. This clause affords appeal rights to submitters who made a properly made submission during the IDAS notification period, provided that the submission was not withdrawn.

Additional and extended appeal rights for submitters for particular development applications

Clause 463 provides a right of appeal to the Planning and Environment Court for a submitter to either impact assessable or code assessable special GBRMP aquaculture development under the notification stage pursuant to chapter 9, part 7. The applicant's right to appeal is confined to the concurrence agency's response of:

- the chief executive administering the *Environmental Protection Act 1994* if the development is for an aquaculture ERA;
- the chief executive administering the *Fisheries Act 1994* if the development is for making a material change of use of premises for aquaculture or operational works that is marine plant disturbance.

Appeals by advice agency submitters

Clause 464 describes the right of an advice agency to appeal only if the application involves impact assessment and the advice agency previously informed the assessment manager to treat its response as a properly made submission.

Appeals about decisions relating to extensions for approvals

Clause 465 gives appeal rights to a person given a notice under clause 389 (except a notice for a decision under clause 386(2)).

Notices under clause 389 must be given to the person asking for the extension and any concurrence agency that gave the assessment manager a notice under clause 385.

Under clause 383, a request to extend the period of an approval may be accompanied by evidence showing that the person asking for the extension has asked the chief executive from whom evidence would need to be obtained under clause 264(1), for the chief executive's written agreement. This is instead of attaching the actual written agreement of the chief executive. If the chief executive then does not agree to the extension, the assessment manager must refuse the request for extension. There is no appeal right in this situation.

Appeals about decisions relating to permissible changes

Clause 466 is gives appeal rights in relation to decisions about permissible changes to the person who made the request for change or, if the responsible entity for making the change is the assessment manager, an entity that gave a notice under clause 373 or a pre-request response notice about the request. This clause also includes a right of appeal for the person who made the request for change against a deemed refusal of the request.

Appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency

Clause 467 gives appeal rights to a person who is given notice that the conditions of an approval have been changed or cancelled unilaterally by an assessment manager or concurrence agency.

Division 9 Appeals to court about compliance assessment

Appeals against decision on request for compliance assessment

Clause 468 gives appeal rights to a person given an action notice under clause 405(5) about a request for compliance assessment.

Appeals against condition imposed on compliance permit or certificate

Clause 469 gives appeal rights to a person given a compliance permit or compliance certificate, subject to conditions. The provision allows the person to appeal against the decision to impose the condition.

Appeals against particular decisions about compliance assessment

Clause 470 gives appeal rights to a person given a notice of a decision on a request to change or withdraw an action notice or a notice about a decision to refuse a request to change a compliance permit or compliance certificate.

Division 10 Appeals to court about other matters

Appeal by applicant for approval of a proposed master plan

Clause 471 gives a person appeal rights against a matter stated in the notice of decision for an application for a proposed master plan or a refusal (or deemed refusal) of a proposed master plan.

Appeal about extension of period under s 98

Clause 472 gives a person who requested an extension to the timeframe for carrying out development under a superseded planning scheme a right to appeal against a refusal of that request.

Subclause (2) provides that the appeal must be started within 20 business days after the day the person is given notice of the refusal.

Subclause (3) also enables an appeal against a deemed refusal of the request. An appeal about a deemed refusal may be started at any time after the decision should have been made.

Subclause (5) limits the grounds on which an appeal under this clause may be made. The only ground for appealing the decision is whether it was so

unreasonable that no reasonable relevant local government could have refused the request.

Appeals against enforcement notices

Clause 473 states that the recipient of an enforcement notice may appeal against the giving of the notice.

Stay of operation of enforcement notice

Clause 474 states that lodging an appeal against the giving of an enforcement notice stays the operation of the notice until the appeal is withdrawn or dismissed, or the court decides otherwise in response to an application by the entity that issued the notice.

However, the operation of certain enforcement notices is not stayed by an appeal made under clause 473. These circumstances are set out in subclauses (2)(a) to (g).

Failure to stay the operation of an enforcement notice in these cases may render the outcome of the appeal meaningless.

Appeals against local laws

Clause 475 allows an applicant who is dissatisfied with a decision of a local government or the conditions applied under a local law about specified matters, to appeal to the court against the decision or the conditions applied.

Appeals against decisions on compensation claims

Clause 476 provides appeal rights for claimants dissatisfied with the outcome of a compensation claim under clause 710 or 716.

Appeals against decisions on requests to acquire designated land under hardship

Clause 477 provides appeal rights for owners dissatisfied by the decision of a designator about a request for early acquisition on hardship grounds of designated land under clause 223.

See also clause 457 which requires the court to award costs in favour of the appellant in certain situations.

Appeals about particular charges for infrastructure

Clause 478 provides the appeal rights for persons in relation to infrastructure charges levied under an infrastructure charges notice, a regulated infrastructure charges notice or a regulated State infrastructure

charges notice. An appeal against the methodology used to establish the charge is inappropriate, given the process for making infrastructure charges schedules and the added rigour of the Queensland Competition Authority. The appeal right states 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 relevant local government, State infrastructure provider or coordinating agency could have imposed the charge.

A person given a charges notice may also appeal against an error in the calculation of the charge, although it is to be noted a person is also able to take this appeal to a building and development committee instead of the court.

Appeals from building and development committees

Clause 479 provides the grounds for an appeal from a building and development committee. This right of appeal is limited to those issues based on points of law as opposed to issues involving the merits of a matter considered by the committee. An appeal may also be brought contesting the jurisdiction of the committee to hear the matter or make a decision.

Court may remit matter to building and development committee

Clause 480 allows the court to remit a matter within the jurisdiction of a building and development committee to a committee. This clause allows a person to make a single appeal to the court covering all matters in dispute. However, the clause requires the court to remit to a building and development committee the matters the court is satisfied should be dealt with by a committee.

Division 11 Making an appeal to court

How appeals to the court are started

Clause 481 describes the procedure for initiating an appeal and lodging a written notice stating the grounds of the appeal and facts upon which it is based. The person lodging the appeal must also comply with the rules of court. However, the court may hear an appeal even if the rules have not been complied with.

Notice of appeal to other parties – development applications and approvals

Clause 482 requires an appellant under division 8 to give written notice of the appeal to other parties. The parties to be notified vary depending upon the nature of the appeal. This clause specifies which parties must be notified by the appellant and what information must be included in the notice. Furthermore, the notice must state that the recipient of the notice has 10 days to elect to become a co-respondent in the appeal, if the recipient is not automatically a respondent or co-respondent to the appeal by virtue of clause 485.

Notice of appeals to other parties – compliance assessment

Clause 483 is similar to the previous clause, but it relates to appeals under division 9. The notice of appeal need only state the grounds of the appeal. Parties given the notice of appeal do not have a right to elect to become a co-respondent. In most cases, these parties are already respondents or co-respondents under clause 486.

Notice of appeal to other parties – other matters

Clause 484 is similar to the previous clause, but it relates to appeals under division 10. The notice of appeal need only state the grounds of the appeal. Parties given the notice of appeal do not have a right to elect to become a co-respondent. In most cases, these parties are already respondents or co-respondents under clause 487.

Respondent and co-respondents for appeals under div 8

Clause 485 states that, for the purposes of appeals under clauses 461 to 464, the respondent to any appeal, made by either the applicant or a submitter, is always the assessment manager. If the appeal is started by a submitter, the applicant is a co-respondent. Any submitter may also elect to become a co-respondent. If the appeal involves the response of a concurrence agency, the concurrence agency is a co-respondent to the appeal automatically. By making the assessment manager the initial point of contact, it is intended to reduce procedural problems in identifying the proper party to nominate as respondent. This will also allow the assessment manager to always be aware that an appeal has been made.

This clause also allows for an assessment manager to apply to the court to withdraw as the respondent if the matter only involves issues relating to the concurrence agency. The effect of this clause is that the entity responsible

for a particular decision or condition is also responsible for defending that decision or condition on appeal.

For an appeal under clause 465 (appeals about decisions relating to extensions for approvals), the assessment manager is the respondent, the person asking for the extension is a co-respondent (if not the appellant) and any other person given notice of the appeal may elect to be a co-respondent.

For an appeal under clause 466 (appeals about decisions relating to permissible changes), the responsible entity for making the change is the respondent. If the responsible entity is the assessment manager, the person who made the request for the change is a co-respondent (if not the appellant) and any other person given notice of the appeal may elect to be a co-respondent.

For an appeal under clause 467 (appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency), the respondent is the entity given notice of the appeal.

Respondent and co-respondents for appeals under div 9

Clause 486 states that if the appeal is against a decision to give an action notice (clause 468) or against a condition imposed on a compliance permit or certificate (clause 469), the respondent to any appeal is the compliance assessor. If the compliance assessor is a nominated entity of a local government, the local government is a co-respondent.

If the appeal is against particular decisions about compliance assessment under clause 470 (i.e. a decision on a request to change or withdraw an action notice, or a decision to refuse a request to change a compliance permit or compliance certificate), the respondent is the entity that gave the notice to which the appeal relates. If that entity is a nominated entity of a local government and the local government did not agree to the request, the local government is a co-respondent.

Similar to clause 485, this clause allows a compliance assessor to apply to withdraw from the appeal if the appeal is only about a matter required by a local government (e.g. a requirement of the local government to issue an action notice or impose a condition on a compliance permit).

Respondent and co-respondents for appeals under div 10

Clause 487 has the same effect as the previous clause but with fewer procedural requirements because in most cases there will only be two parties to any appeal under the division.

How an entity may elect to be a co-respondent

Clause 488 allows persons such as submitters to become respondents by following the rules of court for election. The entity must elect to be a co-respondent within 10 business days after notice of the appeal is given to the entity.

Once a party has properly elected to join as a respondent, it has the right to be heard in the appeal.

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

Clause 489 states the Minister is entitled to be represented at any appeal if the Minister is satisfied that the appeal involves a matter of State interest.

There will be occasions when decisions are made affecting State interests and a State entity is not the assessment manager or a referral agency. The power under this clause provides a mechanism for the State to be involved in applications affecting a State interest.

This clause makes it clear that the Minister can join the appeal at any time before it is decided.

Lodging appeal stops particular actions

Clause 490 states that if an appeal (other than an appeal about an extension in relation to a development approval, a decision relating to a permissible change or a decision in relation to changing or cancelling conditions imposed by an assessment manager or a concurrence agency) has been started under division 8, the development must not be started until the appeal is decided or withdrawn.

Similarly, in the case of appeals about conditions imposed on a compliance permit, the development must not be started until the appeal is decided or withdrawn.

However, it is recognised that this could be unnecessarily restrictive in some cases, such as an appeal about a specific condition that does not involve submitters or other co-respondents. The court may allow the development (or part of the development) to proceed before the appeal is decided but only if the court considers the outcome of the appeal would not be affected.

The capacity to allow development or an aspect of development to proceed recognises that an approval under IDAS may cover a range of development, some of which is not at issue in the appeal. It also recognises that IDAS encourages the inclusion in approvals of management conditions that may

previously have been established through other statutory mechanisms such as licences.

For example, if an appeal about a proposed shopping centre development concerned aspects of operational works associated with access or parking, the court may allow building work for the shopping centre to proceed if it does not affect the outcome of the appeal about the operational works. Also, if an appeal concerned a condition about the ongoing management or use of a premises after development had been completed (such as hours of operation), the court may decide that the development could proceed because the building of the structure itself is unrelated to the substantive issues of the appeal before the court.

Division 12 Alternative dispute resolution

ADR process applies to proceedings started under this part

Clause 491 provides that the alternative dispute resolution (ADR) provisions of the *District Court of Queensland Act 1967* and the *Uniform Civil Procedure Rules 1999* (other than rule 321) will apply to proceedings under this part.

Subclause (2) provides interpretive guidance in applying the provisions to a proceeding under this part. The ADR provisions will provide alternative, lower cost options for resolving disputes. ADR allows for matters at dispute to be mediated or heard under case appraisal. Case appraisal involves the hearing of a matter by a case appraiser, who can reach a decision on matters at dispute. Parties to the dispute may agree to mediation or case appraisal, or the court may order either mediation or case appraisal.

The court may give orders to give effect to mediated outcomes, or to the decisions of case appraisers.

Parties to an appeal where case appraisal has been undertaken may elect to take the matter to a hearing before the court, but there are cost penalties if the court's decision is consistent with that of the case appraiser.

Division 13 Court process for appeals

Hearing procedures

Clause 492 provides that hearing procedures are to conform to the rules of court and in the event that there is no provision, or an insufficient provision, governing a particular issue or matter, then the judge may make a direction.

Who must prove case

Clause 493 establishes who must prove the case in an appeal to the court.

In most situations the appellant has the responsibility for establishing that the appeal should be upheld. However, there are some important exceptions to this that need to be noted.

If the appeal is brought by a submitter (including an advice agency that is taken to be a submitter), it is for the applicant to establish that the appeal should be dismissed (i.e. the onus remains with the applicant). In most planning appeals, there is no particular disadvantage to an applicant in bearing the onus of proof, and by allowing the applicant to state their case first, a context is established for the court's consideration of the matters at dispute, allowing quicker proceedings.

If the appeal is about the giving of an enforcement notice, it is for the entity giving the notice to establish that the appeal should be dismissed.

In an appeal about a claim for compensation, it is for the local government that decided the claim to establish that the appeal should be dismissed.

If an appeal is about a designation (i.e. a request for early acquisition on the grounds of hardship) it is for the designator to establish that the appeal should be dismissed.

In each case, the alteration of the onus of proof is considered to be consistent with fundamental legislative principles. It ensures that persons affected by a decision are not further disadvantaged in an appeal.

Court may hear appeals together

Clause 494 allows the court to combine two or more appeals into one appeal. This ensures that an appeal by a submitter may be dealt with in the same hearing as an appeal by the applicant.

Appeal by way of hearing anew

Clause 495 establishes that an appeal is to be heard by the court by way of hearing anew, or as if the court "stands in the shoes" of the administering authority.

However, if the appellant is the applicant or a submitter for a development application or an applicant for an approval of a proposed master plan, the court must decide the matter based on the laws and policies in effect at the time that the application was made, although the court may give consideration to laws and policies made subsequently if appropriate.

Similarly, subclause (3) applies the same rule if the appellant is a person who made a request for compliance assessment.

This clause is not intended to prevent the court from applying the "Coty" principle (or non-derogation doctrine) whereby the court may also give weight to laws and policies not yet in effect when an appeal is heard.

However, if the appellant is the applicant or a submitter for a development application, or is a person who has applied for approval of a proposed master plan, the court also must not consider a development proposal which is different from the one originally considered by the assessment manager, unless the change is a minor change. ***Minor change*** is defined in clause 350.

For an appeal about a development application, this clause also confirms that:

- while the court "stands in the shoes" of the assessment manager, this does not mean that, like the assessment manager, the court is bound to apply concurrence agency conditions, or refuse an application on the basis of a concurrence agency's response;
- if an assessment manager decided to assess a development application as if it were made under a superseded planning scheme, the court must also consider the matter on this basis and disregard the planning scheme in place when the application was made.

For an appeal about a proposed master plan, while the court "stands in the shoes" of the local government, this does not mean that the court is bound to apply any conditions stated in a coordinating agency's response, or to refuse or approve the master plan on the basis of the coordinating agency's response.

Similarly, for an appeal about a request for compliance assessment, while the court "stands in the shoes" of the compliance assessor, this does not mean that the court is bound to issue an action notice or to apply the conditions stated in the compliance permit or certificate on the basis of a local government's response. This clause also confirms that if the local government decided to assess the request for compliance assessment under a superseded planning scheme, the court must also consider the matter on this basis and disregard the planning scheme in place when the request was made.

Appeal decision

Clause 496 describes the ways in which the court may decide the appeal. The court may confirm the original decision of the administering authority, change the decision, or set aside the original decision and make a new decision to be substituted for the decision which was set aside.

In the event that the court acts to change the original decision or make a new decision to be substituted, then this decision is taken to be the decision of the entity making the decision. If the appeal was about the decision of a building and development committee, the court may remit the matter to the committee with a direction to make its decision according to law.

Court may allow longer period to take an action

Clause 497 allows the court to grant extensions of time for actions, if the court determines there are sufficient grounds for the extension.

Division 14 Appeals to Court of Appeal

Who may appeal to Court of Appeal

Clause 498 provides that the grounds for an appeal to the Court of Appeal must be based on:

- error or mistake in law;
- that the court had no jurisdiction over the matter of appeal; or
- that the court exceeded its jurisdiction in making a decision.

The party appealing the matter to the Court of Appeal must first seek leave from the Court of Appeal or a judge of Appeal. This is intended to discourage actions taken for the primary purpose of obstruction or delay.

When leave to appeal must be sought and appeal made

Clause 499 requires that an appeal to the Court of Appeal must be initiated within 30 business days after the Planning and Environment Courts decision is given to the party.

Power of Court of Appeal

Clause 500 specifies the manner in which the Court of Appeal can decide a matter. As is appropriate, the Court of Appeal has broad powers available to it including the power to make any orders it considers appropriate.

Lodging appeal stops particular actions

Clause 501 mirrors clause 490 in its effect.

Part 2 Building and development dispute resolution committees

Under the current IPA, the building and development tribunal has jurisdiction to hear appeals about matters that relate to the *Building Act 1975* or the *Plumbing and Drainage Act 2002*, errors in the calculation of infrastructure charges and regulated State infrastructure charges and other matters prescribed under the *Integrated Planning Regulation 1998*.

This Bill changes the name of the tribunal to the Building and Development Dispute Resolution Committee and expands the jurisdiction of this body to provide a wider range of persons with the option of using the building and development committee's inexpensive and timely dispute resolution process.

The jurisdiction of the building and development committee has been expanded to include declarations about:

- whether an application is properly made;
- matters stated in acknowledgement notices;
- lapsing of requests for compliance assessment;
- whether a change to a development approval is a permissible change.

The jurisdiction of the building and development committee has also been expanded to cover appeals against:

- specified decisions made in relation to an application for a material change of use for a prescribed building;
- specified decisions made in relation to a request to extend the period of a development approval;
- a decision relating to a request to make a permissible change to an approval for a material change of use of premises that involves the use of a prescribed building;
- conditions of development approvals for class 2 buildings if three storeys or less and the development involves 60 or less sole-occupancy units;
- decisions on requests for compliance assessment (i.e. a decision to issue an action notice);
- conditions imposed on a compliance permit;
- a notice of a decision on a request to change or withdraw an action notice; and
- a notice about a decision to refuse to change a compliance permit or compliance certificate.

Expanding the jurisdiction of the building and development committee will not replace the jurisdiction of the court. Parties will be able to elect to initiate proceedings in the building and development committee or the court. Also, an appeal from a committee decision to the court will remain available on the grounds that the committee made an error or mistake in law or where the committee has exceeded its jurisdiction.

It is also worth noting that the building and development committee will not deal with appeals about impact assessable development applications, where a properly made submission was received.

Division 1 Establishment, constitution and jurisdiction of committees

Establishing building and development dispute resolution committees

Clause 502 provides for the establishment of a building and development committee by the chief executive.

Subclause (2) allows for the nomination of up to five referees as members of the committee.

Subclause (3) requires the chief executive to consider the matters with which the committee must deal, when establishing the committee.

However, subclause (4) provides that a committee may be established by the appointment of three aesthetic referees as members of the committee if the committee is established only to hear an appeal against a referral agency's response decision about the amenity and aesthetic impact of a building or structure.

Subclause (5) specifies the requirements for the appointment of referees under subclause (4).

Multi-member committees are necessary in order that a committee may comprise members with varying expertise. Appeals to committees deal with a range of highly technical matters requiring the nomination of multiple referees, each with different technical expertise, so that the matters in dispute may be adequately dealt with.

Consultation about multiple member committees

Clause 503 requires the chief executive to consult with the Local Government Association of Queensland about nominating a member if a building and development committee is to be made up of more than one member. If the committee includes more than one member, the chief executive is to appoint one member as chairperson. The requirement to consult with the Local Government Association of Queensland is appropriate because local governments are usually the assessment manager for assessable development under IDAS.

Same members to continue for duration of committee

Clause 504 requires that a committee consist of the same members to hear a matter. However, if the members are unable to complete a decision on a matter, then the chief executive can constitute another committee to hear the matter from the beginning.

Referee with conflict of interest not to be member of committee

Clause 505 establishes conflict of interest criteria for referees appointed to building and development committees. Building and development committees are formed each time an appeal is made. The members of each committee are drawn from a pool of referees. They operate as members in a part time capacity only. There is potential for conflicts of interest to arise

and it is therefore important that the Bill contain suitable provisions to protect the standing of committees.

Referee not to act as member of committee in particular cases

Clause 506 provides that a referee must not act as a member of a building and development committee if the member has a conflict of interest.

Remuneration of members of committee

Clause 507 provides for the payment of committee members in an amount to be determined by the Governor in Council. If a member is a public service officer, the member is not entitled to remuneration for serving on the committee during the ordinary times of the member's public service duty, but he or she may be entitled to be reimbursed for expenses incurred while serving as a member.

Jurisdiction of committees

Clause 508 provides for a building and development committee to deal with a range of matters, namely:

- to hear and decide a proceeding for a declaration about a matter mentioned in division 3, other than a matter done for chapter 6, part 11;
- to decide any matter that may be appealed to a committee under divisions 4 to 7;
- to decide any matter that under another Act may be appealed to a committee.

Division 2 Other officials of building and development committees

Appointment of registrar and other officers

Clause 509 provides for the appointment of a registrar and other officers to help building and development committees perform their functions. Appointments are made by the chief executive. Notice of any appointments must published in the gazette.

Division 3 Committee declarations

Subdivision 1 Declarations

Declaration about whether development application is properly made

Clause 510 provides for an applicant who has made a development application to bring a proceeding before a building and development committee for a declaration about whether the application is a properly made application.

Subclause (2) provides that the applicant must bring the proceeding before a committee within 20 business days after receiving the notice under clause 266 that the application is not a properly made application.

Subclause (3) provides for the assessment manager to bring a proceeding for a declaration about whether the application is a properly made application. The proceeding must be brought within 10 business days after the assessment manager receives the development application. The assessment manager has been given the right to bring this proceeding because it may not be sure whether the application is properly made and may wish to have the matter determined. This is particularly important given that assessment managers are no longer be able to accept applications that are not properly made. This clause is intended to ensure that an easier, more accessible means of resolving disputes about whether an application is properly made, is available to both applicants and assessment managers.

Subclause (4) states that the clause does not apply to a dispute about whether:

- a development application includes or is supported by the written consent of the owner of the land the subject of the application; or
- if the development involves a State resource prescribed under a regulation for clause 264(1), the application is supported by evidence prescribed under the regulation for the development.

Declaration about acknowledgement notices

Clause 511 applies to a development application if it is an application only for a material change of use of premises that involves the use of a prescribed building. ***Prescribed building*** is defined in schedule 3.

An applicant may bring a proceeding before a committee for a declaration about a matter stated in the acknowledgement notice for the application. The proceeding must be commenced within 20 business days after the applicant receives the acknowledgement notice.

Declaration about lapsing of request for compliance assessment

Clause 512 states that a person requesting compliance assessment of development, a document or work, or the compliance assessor for the request, may seek a declaration about whether the request has lapsed. The proceeding for the declaration may be commenced at any time.

Declaration about change to development approval

Clause 513 provides for a person to bring declaratory proceedings in relation to an application for a development approval if it is an approval only for a material change of use for a prescribed building. The declaration is about whether a proposed change to an approval is a permissible change. ***Prescribed building*** is defined in schedule 3. However, a proceeding cannot be brought if the responsible entity for making the change is the Minister or the court.

Subclause (3) provides that if the responsible entity for making the change is other than the Minister or the court, the responsible entity may bring a proceeding before a committee for a declaration about whether a proposed change to the approval is a permissible change.

Subdivision 2 Proceedings for declarations

How proceedings for declarations are started

Clause 514 provides that a person starts a proceeding for a declaration by lodging an application for the declaration in the approved form and accompanied by the fee prescribed under a regulation with the registrar of the building and development committee.

Fast track proceedings for declarations

Clause 515 provides for a person who is entitled to bring a proceeding under this division to ask the chief executive to appoint a building and development committee to start hearing the appeal within two business days after starting the proceeding. The request must be in writing and

accompanied by the fee prescribed by a regulation. The chief executive is given the power to grant or refuse the request.

Subclauses (4) provides that the request may only be granted if there is written agreement to the request by all the parties to the proceeding, including any person who could elect to become a co-respondent.

Subclause (5) provides that if the chief executive grants the request, the chief executive may, as a condition of granting the request, require the person making the request to pay the reasonable costs of the respondent and any co-respondents for the proceeding after the request is granted, and an additional committee fee prescribed under a regulation.

Subclause (6) provides that if the request is granted, any notice of the proceeding to be given under the subdivision must be given before the proceeding starts.

As applications for declarations in this jurisdiction are of a technical nature, the provision to fast track proceedings is an important mechanism to ensure these matters may be resolved as quickly as possible so that there is minimum disruption to the development process.

Notice of proceedings to other parties

Clause 516 states that the registrar must give written notice of a proceeding within 10 business days after the proceeding is started under the division. This clause sets out who the notice must be given to for each type of proceeding under the division, which depends on which party starts the proceeding.

Respondent for declarations

Clause 517 specifies who the respondent is in a proceeding for the different types of declarations under the division.

Subclause (7) states that the respondent for a proceeding for a declaration is entitled to be heard in the proceeding as a party to the proceeding.

Minister entitled to be represented in proceeding involving a State interest

Clause 518 provides for the Minister to be represented in a proceeding for a declaration if the Minister is satisfied the proceeding involves a State interest.

Division 4 Appeals to committees about development applications and approvals

Subdivision 1 Appeals about particular material changes of use

Appeal by applicant - particular development application for material change of use of premises

Clause 519 provides a general right of appeal to the building and development committee in relation to a development application if it is an application only for a material change of use of premises that involves the use of a prescribed building. ***Prescribed building*** is defined in schedule 3. In this clause, the appeal can be about a refusal (or refusal in part), including a deemed refusal, a condition of the approval, a matter stated in the development approval, a decision to give a preliminary approval when a development permit was applied for and the length of period before the approval lapses (clause 341).

This clause is similar to clause 461, which relates to appeals to the court. However, this clause does not allow a person to appeal against the identification or inclusion of a code under clause 242 and does not apply to development applications requiring impact assessment if any properly made submissions have been received.

The appeal must be started within 20 business days after the day the decision notice or negotiated decision notice is given to the applicant (unless the appeal is about a deemed refusal). If no decision notice is given (because the approval is a deemed approval for which no decision notice or negotiated decision notice was given), then the appeal must be started within 20 business days after the day the decision notice was required to be given to the applicant under clause 331(6).

Appeal about decision relating to extension for development approval

Clause 520 provides a right of appeal to the building and development committee in relation to a development application if it is an application only for a material change of use of premises that involves the use of a prescribed building. In this clause, the appeal is against a decision relating to an extension of a development approval.

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

Appeal about decisions relating to permissible changes

Clause 521 provides a right of appeal to the building and development committee in relation to a development approval if it is an approval only for a material change of use of premises that involves the use of a prescribed building. In this clause, the appeal is against a decision on a request to make a permissible change to the development approval, but does not apply to a deemed refusal of the request.

The appeal must be started within 20 business days after the day the person is given notice of the decision on the request.

Subdivision 2 Appeals about conditions of particular development approvals

Appeal by applicant—condition of particular development approval

Clause 522 provides a right of appeal to the building and development committee in relation to a development application if it is an application only for a material change of use that involves the use of a building classified under the Building Code of Australia as a class 2 building. However, it is limited only to those buildings where the proposed development is for premises of three storeys or less and involves 60 or less sole-occupancy units.

Again, this clause does not give appeal rights if any part of the application required impact assessment and any properly made submissions were received.

The appeal rights are limited, in subclause (3), to appeals against a condition of the development approval.

The appeal must be started within 20 business days after the day the decision notice (or negotiated decision notice) is given to the applicant or, if no decision notice is given (because the approval is a deemed approval for which no decision notice or negotiated decision notice was given), then the appeal must be started within 20 business days after the day the decision notice was required to be given to the applicant under clause 331(6).

Division 5 Appeals to committees about compliance assessment

This division contains provisions which complement the expansion of compliance assessment to enable a person to appeal to the building and development committee in relation to the following:

- the decision to give an action notice;
- a condition imposed on a compliance permit or certificate;
- a decision on a request to change or withdraw an action notice;
- a decision to refuse to change a compliance permit or compliance certificate.

In all cases, the appeal must be started within 20 business days after the day the notice, permit or certificate (whichever applies) is given to the person.

Appeal against decision on request for compliance assessment

Clause 523 provides for a person who is given an action notice about a request for compliance assessment of a development, document or work to appeal to a building and development committee against the decision in the notice.

Subclause (2) states that the appeal must be started within 20 business days after the notice is given to the person.

Appeal against condition imposed on compliance permit or certificate

Clause 524 provides that a person who is given a compliance permit or compliance certificate, subject to any conditions, may appeal to the building and development committee against the decision to impose the conditions.

Subclause (2) states that the appeal must be started within 20 business days after the person is given the compliance permit or compliance certificate.

Appeals against particular decisions about compliance assessment

Clause 525 provides that a person may appeal to the building and development committee against the decision in any of the following notices:

- a request to change or withdraw an action notice;

- a notice refusing to change a compliance permit or compliance certificate.

Subclause (2) states that the appeal must be started within 20 business days after the notice is given to the person.

Division 6 Appeals to committees about building, plumbing and drainage and other matters

Subdivision 1 Preliminary

Matters about which a person may appeal under div 6

Clause 526 limits what an appeal to a building and development committee under division 6 may be about. The appeals under division 6 may only be about:

- a matter under the Bill that relates to the *Building Act 1975*, other than a matter under that Act that may or must be decided by the Building Services Authority;
- a matter under the Bill that relates to the *Plumbing and Drainage Act 2002*;
- a matter that, under another Act, may be appealed to the building and development committee;
- a matter prescribed under a regulation.

Subdivision 2 Appeals about development applications and approvals

Appeals by applicants

Clause 527 establishes the scope of appeal rights for applicants for development applications that are within the jurisdiction of a building and development committee under division 6. This clause also states the time for appeals to be started, namely 20 business days after the decision notice

or negotiated decision notice is given. If the appeal is on the basis of a deemed refusal, then it is at any time after the last day a decision should have been made. Alternatively, if no decision notice is given (because the approval is a deemed approval for which no decision notice or negotiated decision notice was given), then the appeal must be started within 20 business days after the day the decision notice was required to be given to the applicant under clause 331(6).

Appeal by advice agency

Clause 528 provides for an advice agency to appeal to a building and development committee about the giving of a development approval if the development application involves code assessment for the aspect of the building work to be assessed against the *Building Act 1975*.

This clause also provides that the appeal must be started within 10 business days after the day the decision notice or negotiated decision notice is given to the advice agency. Alternatively, in the case of a deemed approval where no decision notice or negotiated decision notice is given, then the appeal must be started within 20 business days after the advice agency receives a copy of the deemed approval notice from the applicant. In this situation, the 20 business days is the sum of the 10 business day period within which the assessment manager is required to issue a decision notice, plus a further 10 business days.

Appeal about decision relating to extension for development approval

Clause 529 provides appeal rights to the building and development committee about the giving of a notice of decision on a request to extend the period of an approval.

The clause also provides that the appeal must be started within 20 business days after the day the notice of decision is given to the person.

Appeal about decision relating to permissible changes

Clause 530 provides appeal rights about a decision on a request to make a permissible change to an approval, other than a deemed refusal of the request.

Appeals about changing or cancelling conditions imposed by assessment manager or concurrence agency

Clause 531 provides appeal rights to a building and development committee for a person given a notice for a decision to change or cancel a condition of a development approval under clause 378(9)(b).

This clause also provides that the appeal must be started within 20 business days after the day the notice of decision is given to the person.

Subdivision 3 Other matters

Appeals for building and plumbing and drainage matters

Clause 532 provides appeal rights for building, plumbing and drainage matters. The appeal rights apply to a person who has been given:

- an information notice under the *Building Act 1975* or the *Plumbing and Drainage Act 2002*;
- a decision under the *Building Act 1975* by a building certifier or a referral agency about inspection of building work the subject of a building development approval.

A person may also appeal against the lack of a decision on an application under the *Building Act 1975* that is not a building development application.

Appeals against enforcement notices

Clause 533 sets out appeal rights to the building and development committee against the giving of an enforcement notice.

This clause also provides that the appeal must be started within 20 business days after the day the notice is given to the person.

Stay of operation of enforcement notice

Clause 534 is similar to clause 474 and states that the lodging of an appeal against the giving of an enforcement notice stays the operation of the notice until the appeal is withdrawn or dismissed, unless the building and development committee decides otherwise.

However, the operation of certain enforcement notices is not stayed by an appeal under clause 534. These circumstances are set out in subclause (2)(a) to (g).

Division 7 Appeals about particular charges

Appeals about charges for infrastructure

Clause 535 provides for appeals to be made to a building and development committee about an error in the calculation of a charge in an infrastructure charges notice, a regulated infrastructure charges notice or a regulated State infrastructure charges notice.

This clause establishes that only a person who has been given a charges notice may appeal to a building and development committee about an error in the calculation of the charge. This effectively means there are no 'third party' appeals to a building and development committee about the charges paid by another person.

Subclause (3) requires that an appeal under this clause must be initiated within 20 business days of the day the notice was given to the person.

Subclause (5) makes it clear that an appeal under this clause cannot be made about the methodology used to establish a charge stated in the relevant schedule.

Division 8 Making appeals to building and development committees

How appeals to committees are started

Clause 536 describes the manner in which the process of appeal is started. The notice of appeal must state the grounds of the appeal and be accompanied by the appropriate fee.

Fast track appeals

Clause 537 provides for an appellant to ask the chief executive to appoint a building and development committee to start hearing the appeal within two business days after starting the appeal.

Notice of appeal to other parties (under other Acts)

Clause 538 requires the registrar to give notice of an appeal that may be appealed to the building and development committee under another Act, to parties the registrar considers are affected by the appeal within 10 business days after the appeal is started. Subclause (2) states that the notice must state the grounds of the appeal.

Notice of appeal to other parties (div 4)

Clause 539 deals with appeals under division 4 and requires the registrar to carry out the notification function. The parties to be notified about the appeal depend on the nature of the appeal.

Notice of appeal to other parties (div 5)

Clause 540 deals with appeals under division 5 and requires the registrar to carry out the notification function. The parties to be notified about the appeal depend on the nature of the appeal.

Notice of appeal to other parties (div 6)

Clause 541 deals with appeals under division 6 and requires the registrar to carry out the notification function. The parties to be notified about the appeal depend on the nature of the appeal.

Notice of appeal to other parties (s 535)

Clause 542 deals with appeals under clause 535 and requires the registrar to carry out the notification function. The notice of appeal must be given to the entity that gave the relevant notice.

Respondent and co-respondents for appeals under s 519, 522 or 527

Clause 543 sets out who the respondent and co-respondents are for appeals under clauses 519, 522 or 527. In all cases the assessment manager is the respondent for the appeal. If the appeal is about a concurrence agency's response, the concurrence agency is a co-respondent for the appeal.

This clause gives the assessment manager the opportunity to withdraw from an appeal if the appeal is only about a concurrence agency's response.

Respondent and co-respondents for appeals under s 520 or 529

Clause 544 sets out who the respondent and co-respondents are for appeals under clauses 520 or 529. In both cases, the assessment manager is the respondent. The person asking for the extension is a co-respondent (if not the appellant), and any other person to whom a notice of appeal is given may elect to be a co-respondent.

Respondent and co-respondents for appeals under s 521 or 530

Clause 545 sets out who the respondent and co-respondents are for appeals under clauses 521 or 530. In both cases, the responsible entity for making the change is the respondent for the appeal. If the responsible entity is the assessment manager, the person who made the request for change is the

co-respondent (if not the appellant), and any other person given notice of the appeal may elect to become a co-respondent.

Respondent and co-respondents for appeals under s 528

Clause 546 sets out who the respondent and co-respondents are for appeals under clause 528. The assessment manager is the respondent for the appeal, the applicant is co-respondent, and any other person to whom a notice of the appeal is given may elect to become a co-respondent.

Respondent and co-respondents for appeals under s 531, 532, 533 or 535

Clause 547 sets out who the respondent and co-respondents are for appeals under clauses 531, 532, 533 or 535. The entity that is given notice of the appeal is the respondent for the appeal.

Respondent and co-respondents for appeals under div 5

Clause 548 sets out who the respondent and co-respondents are for appeals under division 5. The compliance assessor is the respondent. If the appeal relates to a matter required by a local government, the local government is a co-respondent. The compliance assessor has an opportunity to withdraw from the appeal if the appeal is only about a matter required by the local government.

How a person may elect to be co-respondent

Clause 549 describes how a person who receives notice of an appeal may elect to join as a co-respondent.

Respondent and co-respondent to be heard in appeal

Clause 550 provides that the respondent and co-respondent in an appeal are entitled to be heard as parties to the appeal.

Registrar must ask assessment manager for material in particular proceedings

Clause 551 requires the registrar to request information relevant to the deemed refusal or deemed approval of an application from the assessment manager. The information includes a statement of the reasons the assessment manager had not decided the application during the decision-making period or extended decision-making period.

The assessment manager must comply with this request within 10 business days.

Minister entitled to be represented in an appeal involving a State interest

Clause 552 is similar to clause 489 except that clause 552 allows the Minister to be represented in an appeal, whereas clause 489 allows the Minister to elect to be a co-respondent in an appeal. Both provisions allow the Minister to be involved in an appeal, in order to protect matters of State interest. There will be occasions when decisions are made affecting State interests and a State entity is not the assessment manager or a referral agency. The power under this clause provides a further and less intrusive way for the State to be involved in applications affecting a State interest.

Lodging appeal stops particular actions

Clause 553 is similar to clause 490 except that it relates to the building and development committee and only relates to appeals under clauses 519, 522, 527, 528 or appeals about a condition imposed on a compliance permit. This clause allows the building and development committee to permit development to be started before the appeal is decided, if satisfied that the outcome of the appeal would not be affected if the development (or part of the development) is started.

Division 9 Process for appeals or proceedings for declarations in building development committees

Establishing a building and development committee

Clause 554 states that upon receipt of a notice of an appeal, or an application for declaration, the registrar must give a copy of the notice or application to the chief executive. The chief executive must then establish a building and development committee to decide the appeal or hear the proceeding for the declaration.

After the committee has been established, the registrar must give each party to the proceeding written notice that a committee has been established.

This clause also provides that, if the notice of appeal or application for declaration is not received within the prescribed timeframe for starting the proceeding, the registrar must give the appellant notice that it is of no effect.

Procedures of committees

Clause 555 allows building and development committees some discretion in conducting proceedings, if a regulation does not prescribe a certain manner or procedure. Committees are meant to be less formal in procedure than the court.

Costs

Clause 556 states that each party must bear their own costs. This is included to make it clear that a building and development committee does not have a power to award costs.

Committee may allow longer period to take an action

Clause 557 is similar to clause 497 except that it relates to the building and development committee, not the court. The clause allows the committee to grant an extension of time for an action if appropriate. However, unlike clause 497, the power is not applicable to circumstances where the notice of appeal or application for declaration is not received within the prescribed timeframe for starting the proceeding.

Appeal or other proceedings may be by hearing or written submission

Clause 558 allows the chairperson of the building and development committee to hold a hearing with parties present, or to decide an appeal based on written submissions if the parties agree to such procedure. This is included to provide flexibility for committees and to allow appeals to be dealt with as cost effectively as possible.

Appeals or other proceedings by hearing

Clause 559 states that in the event that a hearing will be conducted, the chairperson is required to fix the time and place and give written notice of such to the listed parties.

Right to representation at hearing

Clause 560 states that a party to an appeal or a proceeding for declaration may appear in person or be represented by an agent. However, a person may not be represented by an agent who is a lawyer. This is designed to ensure the informality of building and development committee hearings and recognises that matters before a committee are of a less complex nature.

Conduct of hearings

Clause 561 specifies how a building and development committee hearing may be conducted. Subclause (2) states that the committee may hear the appeal or declaration proceeding without hearing a person if the person is not present or represented at the time and place appointed for hearing the person. The person may make a written submission about the matter to the building and development committee.

Appeals or other proceedings by written submission

Clause 562 states that if the appeal or application for declaration is to be decided upon written submissions, the chairperson must first set the time for acceptance of written submissions and provide written notice to the listed parties that the decision will be made upon written submissions.

Matters committee may consider in making a decision

Clause 563 states that the building and development committee must decide the appeal or application for declarations based on the laws and policies applying when the development application or request for compliance assessment was made, but may give the weight it thinks appropriate to any new laws and policies.

Unlike the court, the jurisdiction of the committee is not "de novo", and is more in the nature of an arbitration of a pre-existing decision.

Appeal decision

Clause 564 describes the methods in which a building and development committee can make a decision or issue an order or direction in reference to a decision. In particular, if the matter deals with a deemed refusal, subclause (2)(d) allows the committee to order the assessment manager to make a decision, and in the event of non-compliance, the building and development committee can decide the application.

Committee may make orders about declaration

Clause 565 provides that a building and development committee may make orders about a declaration made by the committee.

Declaration decision

Clause 566 requires the chairperson of the building and development committee to give all parties to a proceeding for a declaration a written notice of the committee's declaration and any orders made by the committee for the declaration.

When decision may be made without representation or submission

Clause 567 states the circumstances where the building and development committee may decide the appeal or application for declaration without the representations or submissions of a person given a notice under clause 559(b) or clause 562(1)(b).

Notice of compliance

Clause 568 requires an assessment manager (or a private certifier acting as an assessment manager), or a compliance assessor to provide the registrar with notification that a direction or order of a building and development committee has been carried out.

Publication of committee decisions

Clause 569 provides that the registrar may publish decisions of a building and development committee under arrangements, and in the way approved, by the chief executive. The committees decision has been made publicly available, to provide guidance to potential applicants and also to provide a resource for committees' referees.

Division 10 Referees

Appointment of referees

Clause 570 provides that the Minister may by gazette notice appoint the number of persons the Minister considers appropriate to be referees.

This establishes a pool of people who are then available for nomination for committees. The nomination of a referee as a member of a committee will depend on the matters before the committee and the particular qualifications and expertise of the referee.

Qualifications of general referees

Clause 571 states that a referee must hold the specified qualifications and/or experience prescribed under a regulation.

Term of referee's appointment

Clause 572 allows the Minister to set the term of appointment for a referee. For a general referee, the term of appointment cannot be greater than three years and must be set out in the notice of appointment. For an aesthetics referee, the person may be appointed for hearing one or more decisions

about the amenity and aesthetics of a building. A referee may be reappointed and may resign by giving written notice. A referee can also be removed under this provision by the Minister and an aesthetics referee may be removed by the chief executive.

General referee to make declaration

Clause 573 requires an appointed person to sign and send a declaration to the chief executive prior to sitting as a committee member.

Part 3 Provisions about offences, notices and orders

Division 1 Particular offences and exemptions

Subdivision 1 Development offences

Self-assessable development must comply with codes

Clause 574 provides that a person must comply with applicable codes for self-assessable development and specifies the penalty for a breach of this clause. Subclause (2) states that the offence under this clause does not apply where the contravention is for not complying with a standard environmental condition of a code of environmental compliance under the *Environmental Protection Act 1994*. This ensures consistency in enforcement for all environmentally relevant activities, whether under a development approval or a code of environmental compliance.

Carrying out development without compliance permit

Clause 575 specifies the offence and penalty for carrying out development requiring compliance assessment without a compliance permit.

Compliance with compliance permit or compliance certificate

Clause 576 specifies the offence and penalties for contravening a compliance permit (including any condition in the permit) or a compliance certificate.

Making request for compliance assessment

Clause 577 specifies the offence and penalty for failing to make a request for compliance assessment within the period specified under regulation or other instrument.

Carrying out assessable development without permit

Clause 578 specifies the offence and penalty for assessable development carried out without a development permit. Subclause (3) provides a higher penalty if the assessable development is on a Queensland heritage place or local heritage place.

Particular assessable development must comply with codes

Clause 579 provides for the offence of failing to comply with codes for the development under a planning scheme when the development is made assessable under the regulation.

Compliance with development approval

Clause 580 provides the offence and penalty for contravening a development approval, including any condition. The offence is subject to subdivision 2, which sets out exemptions. Also, the offence does not apply to a contravention of a condition of a development approval imposed or required to be imposed by the administering authority under the *Environmental Protection Act 1994*.

Offence to carry out prohibited development

Clause 581 provides the offence and penalty for carrying out prohibited development. However, the offence does not apply if the person is carrying out development under a development approval given for a development application (superseded planning scheme) or a compliance permit given for a request assessed and decided under a superseded planning scheme. Also, this offence does not apply in certain emergency situations under section 584.

Offences about the use of premises

Clause 582 specifies the offence and penalty for an unlawful use of premises.

Compliance with master plans

Clause 583 states the offences and penalties for carrying out development in a declared master planned areas that is contrary to the master plan for the

area, or if the structure plan for the area requires that the development cannot be carried out until there is a master plan for the development.

Subdivision 2 Exemptions

General exemption for emergency development or use

Clause 584 states that the offence provisions under clauses 575, 576, 578, 580, 581, 582 and 583 do not apply to a person carrying out development because of an emergency which endangers life or health, or the structural safety of a building. In this instance written notice is required to be given to the local government as soon as practicable after starting the development or use.

Coastal emergency exemption for operational work that is tidal works

Clause 585 applies to operational work (the emergency work) that is tidal works and which normally would have required a development permit or a compliance permit, if the work is necessary to ensure the following are not, or are not likely to be, endangered by a coastal emergency:

- the structural safety of an existing structure for which there is a development permit or compliance permit for operational work that is tidal works;
- the life or health of a person; or
- the structural safety of a building.

This clause provides that clauses 575, 576, 578, 580 and 582 do not apply if the person has made, and complies with, a safety management plan for the emergency work and complies with the other prescribed requirements in subclause (2)(c), (d) and (e).

As soon as practicable after starting the emergency work, the person must make a development application or a request for compliance assessment that would otherwise be required for the work and give the assessment manager or compliance assessor written notice of the work and a copy of the safety management plan.

The exemption ceases to apply if the development application is refused. The person must then remove the emergency work as soon as practicable. It is an offence to fail to remove the emergency work, with a maximum penalty of 1665 penalty units.

Exemption for building work on Queensland heritage place or local heritage place

Clause 586 provides an exemption for emergency building work on a Queensland heritage place or a local heritage place. This clause sets out a process that ensures work can be carried out in an emergency but the impact of the work on the cultural heritage significance is minimised.

Subclauses (3) and (4) provide that the exemption will not apply if the person is required by an enforcement notice to stop carrying out the emergency work or if the development application is refused.

Subclause (5) requires the person to remove the emergency work as soon as practicable if the exemption ceases to apply because the development application is refused. This subclause also states penalty for failing to comply.

Subdivision 3 False or misleading documents or declarations

False or misleading document or declaration

Clause 587 states the penalty and offence for providing false or misleading information to relevant entities or making a false or misleading declaration to an assessment manager under several clauses under chapters 6 and 9.

Division 2 Show cause notices

Giving show cause notice

Clause 588 provides that an assessing authority must, before giving an enforcement notice, give a person a show cause notice if the assessing authority reasonably believes the person has committed or is committing a development offence.

However, subclause (3) provides an exception to this general rule. If the assessing authority reasonably considers that it is not appropriate to give a show cause notice in the circumstances, the assessing authority may proceed directly to issuing an enforcement notice.

The current IPA requires a person to issue a show cause notice before an enforcement notice, inviting the person to show cause why the enforcement notice should not be given, except in a limited range of circumstances (see section 4.3.8 of the current IPA). However, there are several circumstances where a show cause notice may diminish the effectiveness of the enforcement notice as an enforcement tool. Further, this requirement can also create extra red tape and lengthen enforcement processes. To allow compliance issues to be resolved more quickly and effectively, this Bill is intended to give assessing authorities greater flexibility to proceed directly to issuing an enforcement notice, if the circumstances warrant this. For example, if an offence poses a threat to public health and safety, it would be appropriate for the assessing authority to proceed directly to issuing an enforcement notice. Another example where this would be appropriate is a situation where issuing a show cause notice would reduce the effectiveness of the enforcement notice.

General requirements of show cause notice

Clause 589 sets out the requirements for a show cause notice.

Division 3 Enforcement notices

Giving enforcement notice

Clause 590 allows an assessing authority to give notice to a person reasonably believed to be committing a development offence. The notice requires the person to do either or both of the following: refrain from committing the offence, or remedy the situation in the way stated in the notice. If the offence is occurring in a local government area and the assessing authority is not the local government, a copy of the notice must also be given to the local government.

Restriction on giving enforcement notice

Clause 591 provides that if the assessing authority elects to give a show cause notice, the assessing authority may give the enforcement only if, after considering all representations made by the person about the show cause notice within the time stated in the notice, the authority still believes it is appropriate to give the enforcement notice.

Specific requirements of enforcement notice

Clause 592 provides a list of the types of requirements which may be included in an enforcement notice. This list is not exhaustive and the notice may require other reasonable types of action.

Subclause (2) is a limitation on a notice requiring the demolition or removal of a work. The effect of this subclause is to require an assessing authority to consider reasonable alternatives before ordering demolition or removal of a building or work in which there may be significant investment.

General requirements of enforcement notices

Clause 593 specifies the general requirements of an enforcement notice. It provides that in the event the notice requires action, the notice must include details of the work to be performed. If the notice is to require a person to refrain from doing something, it must include a period of time for which the requirement applies, or state that the requirement applies until further notice.

Subclauses (4) and (5) require that the notice state the time period or periods for the performance of an act or acts if specified.

Offences relating to enforcement notices

Clause 594 specifies the offence and penalty for not complying with an enforcement notice or for interfering with an enforcement notice given under clause 590(8).

Processing application or request required by enforcement notice or show cause notice

Clause 595 provides that in the event that the enforcement notice or show cause notice requires a person to apply for a development approval, make an application for a master plan approval or make a request for compliance assessment, the person must take all reasonable steps to enable the application or request to be decided, and failure to do so is an offence.

Assessing authority may take action

Clause 596 allows the assessing authority (other than a local government) that issued the notice to perform an action if a person contravenes the notice by not doing that action. Subclause (2) allows the recovery of costs and expenses for performing the ordered action

Division 4 Offence proceedings in Magistrates Court

Proceedings for offences

Clause 597 in subclause (1) provides that any person may file a complaint to prosecute a development offence.

Subclause (2) establishes the right of open standing. This provision refers to open standing for any person in the community to prosecute for a development offence.

Subclause (3) prevents open standing from applying to certain offences.

Proceeding brought in a representative capacity

Clause 598 allows a complaint under clause 597 to be brought by a representative of a person or entity if appropriate consent is first obtained.

Magistrates Court may make orders

Clause 599 allows the court to issue an order on the defendant after a hearing.

Subclause (2) clarifies that the order may be made in addition to or instead of any other penalty the court may impose.

Subclause (3) identifies the sorts of orders the court can make if appropriate.

Subclause (4) requires the order to state a time or period for compliance.

Subclause (5) makes it an offence for a person to contravene the court's order and this is punishable by a fine or imprisonment.

Also, subclauses (6) and (7) state that provided the order specifies that the failure to comply is a public nuisance, then the administering authority is authorised to act and can recoup costs for work carried out pursuant to the order.

Costs involved in bringing proceeding

Clause 600 allows for the payment of costs and expenses of a representative.

Division 5 Enforcement orders of court

Proceeding for orders

Clause 601 allows for open standing to bring a proceeding to have the court order an action to remedy or restrain the commission of a development offence. However, if the offence is in relation to the building assessment provisions, then the appropriate party to bring the complaint is the local government or relevant State referral agency.

Proceeding brought in a representative capacity

Clause 602 allows for a proceeding under clause 601 to be brought in representative capacity if the appropriate consent is obtained.

Making interim enforcement order

Clause 603 allows the court to make an interim enforcement order, pending the determination of a proceeding for an enforcement order. The interim enforcement order may be made subject to appropriate conditions, including the condition that the applicant gives an undertaking as to costs.

Making enforcement order

Clause 604 allows for a proceeding to be brought if it appears that a development offence may be committed and thus the court can issue an enforcement order to stop or remedy the offence. This differs from enforcement notices and actions in the Magistrate's Court which only apply when an offence has been committed. Under this provision the court is allowed remedial power and the power to restrain or enjoin an offence prior to its occurrence.

Subclause (2) clarifies that it is not necessary for there to be a prosecution (in the Magistrate's Court) for an offence prior to an enforcement order being issued.

Effect of orders

Clause 605 specifies the directions an enforcement order may include. The court is also allowed to make an order requiring certain activity such as repairing or demolition of a structure. The enforcement order may be in any terms the court considers to be appropriate and must state a time for compliance.

Court's powers about orders

Clause 606 specifies the court's powers about enforcement orders or interim enforcement orders.

Subclause (1) allows the court broad powers in issuing an enforcement order or interim order to cease work, or to prevent the start of work. The court is allowed to disregard a person's previous actions or activity.

Subclause (2) allows the court to issue an enforcement order or interim enforcement order to do anything regardless of the person's past or present actions or activities.

Subclause (3) allows the court to cancel or change either an enforcement order or interim order if appropriate.

Subclause (4) provides that the power of the court under this clause exists concurrently with other powers of the court.

Costs involved in bringing proceeding

Clause 607 allows for the payment of costs and expenses to the representative.

Division 6 Application of Acts

Application of other Acts

Clause 608 lists specific circumstances where provisions in another Act may be in conflict or inconsistent with the provisions of this part. In such a situation, the provisions of the other Act will prevail or have precedence. The intention of this provision is to allow other Acts to either add to or vary provisions of this part in recognition of the specific requirements for enforcement in relation to individual forms of development.

Part 4 Legal proceedings

Division 1 Proceedings

Summary proceedings for offences

Clause 609 provides that a proceeding for an offence against this Bill may be instituted in a summary way under the *Justices Act 1886*. Summary offences are heard in the Magistrate's Court. Part 3, division 4 of this chapter already provides that offence proceedings for development offences must be taken in the magistrates court. However, this chapter also specifies offences other than development offences.

Limitation on time for starting proceedings

Clause 610 specifies that a prosecution for an offence against this Bill must be commenced within 1 year after the commission of the offence, or at any later time, but within 6 months after the offence comes to the complainant's knowledge.

Executive officers must ensure corporation complies with Act

Clause 611 provides that executive officers of a corporation must ensure that the corporation complies with this Bill.

Subclause (2) provides that if the corporation commits an offence, then the corporation's executive officers commit a separate offence of failing to ensure compliance. The maximum penalty for contravention of subclause (2) is the penalty for the original offence.

Subclause (3) provides that a conviction of the corporation is evidence of the offence of the corporation's executives stated in subclause (2).

Subclause (4) provides a defence for the corporation's executive if it can be proved the executives exercised reasonable diligence to ensure corporation compliance, or that the executive was not in a position to influence the conduct of the corporation concerning the offence.

Division 2 Fines and costs

When fines payable to local government

Clause 612 provides for the payment of a fine to a local government unless another person prosecutes the offence.

Order for compensation or remedial action

Clause 613 allows the court to order a person convicted of a development offence to compensate other affected persons, and/or to take remedial action, if appropriate, for loss of income or reduction in the value of or damage to property, or for costs incurred. These orders can be in addition to the imposition of a penalty under this Bill. This clause does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Recovery of costs of investigation

Clause 614 allows the court to order a person convicted of an offence against this Bill to pay the assessing authority reasonable costs and expenses incurred by the authority if the assessing authority applied for such an order and the court considers it appropriate. This clause does not limit the courts powers under the *Penalties and Sentences Act 1992* or another law.

Division 3 Evidence

Application of div 3

Clause 615 provides for this division to apply to a proceeding under this Bill.

Appointments and authority

Clause 616 provides that it is not necessary to prove the appointment or the authority of a chief executive of an assessing authority.

Signatures

Clause 617 provides that a signature purporting to be the signature of the chief executive of an assessing authority is evidence of the signature it purports to be.

Matter coming to complainant's knowledge

Clause 618 provides that a statement about when a matter came to a complainant's knowledge is evidence of the matter.

Instruments, equipment and installations

Clause 619 provides that any instrument, equipment, or installation prescribed and used in accordance with any regulations is taken to be accurate and precise unless there is evidence to the contrary.

Analyst's certificate or report

Clause 620 provides that a certificate or report purported to be signed by an analyst is evidence of certain matters that it states, such as the analyst's qualifications and the results of the analysis.

Evidence of planning instruments or notices of designation

Clause 621 provides that in a proceeding, a certified copy of a planning instrument or notice of designation is evidence of the content of the instrument or notice, and requires all persons acting judicially to take judicial notice of such instruments.

Planning instruments presumed to be within jurisdiction

Clause 622 states that unless the matter is raised, the competence of local governments and the Minister to make planning instruments may be presumed.

Evidentiary aids generally

Clause 623 specifies that if a certificate contains any of the specified matters, such as whether or not a development permit was in force on a stated day, it is considered to be evidence of the matter.

Responsibility for acts or omissions of representatives

Clause 624 gives the meaning of ***representative*** and ***state of mind*** for this provision and describes that in proving state of mind in a proceeding under this Bill, it is enough to show that a representative was acting within the scope of the representative's authority and the representative had the relevant state of mind.

Subclause (3) provides that in the instances of a representative acting within the scope of the representative's authority, any acts or omissions committed are considered to be those also of the person being represented unless the person can prove that the person could not have reasonably prevented the act or omission.

Chapter 8 Infrastructure

Part 1 Infrastructure planning and funding

A key way by which the Bill's purpose may be advanced is through the coordinated, efficient and orderly supply of infrastructure (see clause 5).

This part establishes a mechanism for funding "user pays" infrastructure (that is, infrastructure for which an end user can be readily identified), while at the same time encouraging an integrated approach to infrastructure planning, and land use and development decision-making.

The scope of infrastructure for which funding can be obtained under this part has been determined on the basis of basic essential infrastructure that communities would reasonably expect to be available, and which is usually supplied by public sector entities as monopoly suppliers. In this way, the charging mechanism is intended to promote the greatest possible choice by communities about the infrastructure they wish to have supplied. It also acts as a price signalling mechanism in circumstances where the nature of the infrastructure discourages open market competition between multiple suppliers.

This part does not deal with the funding of social infrastructure such as schools, State roads (other than the local component of State roads), and police and emergency services. The funding of State infrastructure in master planned areas is dealt with in part 3 of this chapter.

The infrastructure charging mechanism provided for in this part has the following features:

- Infrastructure charges are levied as a user charge, not a condition on development approval. This is reflected in the location of provisions about infrastructure charges in chapter 8 of the Bill, rather than in conjunction with chapter 6 (IDAS). However, conditions can be imposed about necessary trunk infrastructure (division 6) and additional trunk infrastructure costs (division 7). State infrastructure providers can also impose conditions for infrastructure (division 8).

- Charges may only be levied for development infrastructure, or basic services for an identifiable user, such as water supply, sewerage, roads and parks, and not for social infrastructure, for which an end user cannot be identified in advance.
- Charges may only be set for items in a priority infrastructure plan which forms part of a planning scheme, justifies the use of charging over alternative funding methods, and sets the method for calculating charges.
- Charges must be calculated to avoid over-specification, and be fairly apportioned among anticipated users.

The advantages of this approach are that it:

- encourages integration of infrastructure programs with land use planning and development decision making;
- promotes fairness and transparency in calculating contributions and charges;
- provides greater certainty for applicants and industry about the infrastructure costs they would be liable for when undertaking a project;
- discourages costly litigation and delays to development approvals by clearly separating charging and impact mitigation considerations;
- is a more consistent and logical basis for identifying items which may, and may not be, funded through charges; and
- minimises the costs of access to services for home buyers, and affords them greater choice in the range and price of services they use.

Division 1 Preliminary

Purpose of pt 1

Clause 625 outlines the purpose of this part, which is to:

- seek to integrate land use and infrastructure plans;
- establish an infrastructure planning benchmark;
- establish an infrastructure funding framework that is fair and accountable;

- integrate State infrastructure providers into the framework.

The note relating to infrastructure planning and funding refers to the modified application of infrastructure arrangements under master plans.

Division 2 Non-trunk infrastructure

This division outlines the parameters within which assessment managers may exercise their powers to impose conditions on development approvals (as set out in chapter 6, part 5, division 6) for lower order (or non-trunk) infrastructure.

Non-trunk infrastructure is that which is intended primarily to provide direct user connections to the infrastructure network. Examples of non-trunk infrastructure include internal reticulation networks, internal local streets, stormwater quality improvement devices servicing the site and external works to connect to services.

By comparison, trunk infrastructure is higher order infrastructure that is intended primarily to provide network distribution and collection functions, or provide services to a catchment larger than the proposed development such as a local park.

Local governments are required to define what they consider to be trunk infrastructure in their priority infrastructure plans and to plan for the provision of this infrastructure. Consequently, for a particular local government area, non-trunk infrastructure comprises those elements of an infrastructure network not defined as trunk infrastructure.

Conditions local governments may impose for non-trunk infrastructure

Clause 626 allows local governments to impose conditions on development approvals for non-trunk infrastructure under certain circumstances. Further, it requires a condition for non-trunk infrastructure to specify the infrastructure to be provided and when.

Division 3 Trunk infrastructure

This division sets out general planning and funding requirements for trunk infrastructure. As noted above, trunk infrastructure is higher order infrastructure that is intended primarily to provide network distribution and collection functions. Local governments plan for the supply of trunk infrastructure as part of their priority infrastructure plans, which in turn form part of the infrastructure component of their planning schemes.

While the water cycle management and transport infrastructure networks will contain both trunk and non-trunk infrastructure, all public park and community land is considered to be trunk infrastructure, as even the smallest park must be of a minimum size and services a significant number of users.

Priority infrastructure plans for trunk infrastructure

Clause 627 requires each priority infrastructure plan to be prepared in accordance with prescribed guidelines. It is important that there is clarity and certainty about how these plans are prepared. The costs and impacts of supplying infrastructure to service development proposals are very significant. The overall content of a priority infrastructure plan is set out in the definition of the term in the dictionary in schedule 3.

Local government must review its priority infrastructure plan every 5 years

Clause 628 provides the time frame for each local government to review its priority infrastructure plan.

The review period for a priority infrastructure plan is shorter than for a planning scheme generally, reflecting the dynamic nature of urban development. It is envisaged a review will include an updated evaluation of the following:

- population and employment growth projections;
- the suitability of the current priority infrastructure area;
- planning assumptions about the type, scale, location and timing of development;
- infrastructure demand projections;
- plans for trunk infrastructure and the schedule of works, including the identification of any new infrastructure; and

- the infrastructure charges schedule, including recalculating establishment cost and updating charge rates.

Funding trunk infrastructure for local governments

Clause 629 establishes the power for a local government to levy infrastructure charges.

Subclause (1) states that a local government can levy a charge for trunk infrastructure under either an infrastructure charges schedule or a regulated infrastructure charges schedule. It should be noted local governments have other mechanisms available to them under other legislation, such as the *Local Government Act 1993*, under which they can charge for infrastructure or connections to infrastructure networks.

Subclause (2) allows a local government to have more than one infrastructure charges schedule for each infrastructure network, and to introduce schedules for different networks or different parts of a network at different times. Subclause (2) also recognises that:

- a local government may choose not to levy charges for a part of a trunk infrastructure network; and
- a local government may have both an infrastructure charges schedule and a regulated infrastructure charges schedule for different parts of its trunk infrastructure network.

Division 4 Trunk infrastructure funding under an infrastructure charges schedule

This division is primarily about creating an efficient, transparent and equitable charging mechanism in the form of the infrastructure charges schedule.

Preparing and making or amending infrastructure charges schedules

Clause 630 specifies the process and other matters for preparing or amending an infrastructure charges schedule.

Subclause (1) requires an infrastructure charges schedule to be prepared or amended in accordance with guidelines prescribed in a regulation.

Subclause (2) provides for matters that must be included in the guideline, namely the approval of the Minister and the notification of the making or amending of an infrastructure charges schedule.

Subclause (3) allows for the guideline to provide for the phasing in of infrastructure charges, adjustment of charges for inflation over time, and matters in respect of which credits may be given in relation to the calculation of the charge.

Subclause (4) clarifies when a schedule becomes part of the planning scheme and takes effect.

Subclause (5) provides for the Minister, as part of deciding whether to approve an infrastructure charges schedule or an amendment of an infrastructure charges schedule, to seek advice and comment from the Queensland Competition Authority.

Subclause (6) clarifies that seeking the advice or comment of the Queensland Competition Authority does not stop the process for making or amending the infrastructure charges schedule.

Key elements of an infrastructure charges schedule

Clause 631 identifies the key elements of an infrastructure charges schedule.

Subclause (1)(b) requires the local government to decide what proportion of the cost of the network will be recovered through the charge.

Subclause (1)(c) requires the identification of each area in which an infrastructure charge applies.

Subclause (1)(d) requires the guideline to identify, for each area identified under subclause (1)(c), the proportion of the cost of the infrastructure to be funded by a charge, the estimated demand for the infrastructure, and the charge rate used for calculating the charge.

Subclauses (1)(e), (f) and (g) require the infrastructure charges schedule to identify the method used to decide the charge rates, the types of development to which the charge applies, and how the charges are calculated.

Subclause (2) clarifies matters about the levying of charges for certain infrastructure. Subclause (2)(b) allows a charge to be levied for trunk infrastructure not owned by the local government if the owner of the infrastructure agrees. This would allow a local government to levy charges on behalf of a private infrastructure provider such as a corporatised water

business. Arrangements between the parties as to how the charges are to be imposed, collected and transferred would need to be settled as part of the agreement.

Subclause (2)(c) allows a local government to levy infrastructure charges for trunk infrastructure the local government has provided on a State-controlled road. For example, a local government may have constructed trunk drainage infrastructure that runs under a State-controlled road. Subclause (2)(c) is intended to remove any doubt as to the local government's ability to charge for the infrastructure. Similarly, a local government may have constructed or upgraded a road that subsequently became a State-controlled road. Subclause (2)(c) would allow the local government to recover the cost of the road works through infrastructure charges or payments, provided the local government had not been paid for the cost of the road works in some other way (such as the State compensating the local government for the cost of the road when it became a State-controlled road).

Subclauses (3) and (4) allow for an infrastructure charges schedule to provide for charges to be adjusted for inflation, and for the means of adjustment to be identified.

Infrastructure charges

Clause 632 states that an infrastructure charge must be for trunk infrastructure that services, or is planned to service premises, and is identified in the priority infrastructure plan. Subclause (1)(b) clarifies that the charge must be apportioned to the premises, and specifies what must be taken into account in determining this apportionment.

Subclause (2) is intended to ensure that an infrastructure charge levied for an existing lawful use can only be for the current share of usage of the infrastructure network by the existing use at that time and not future uses having regard to the planning scheme provisions for the site or the infrastructure provided.

Subclause (3) allows a landowner and local government to enter into an agreement to pay charges not based on the existing use. Such a situation may arise if the local government provided discounts for the early payment of charges or the landowner wanted to pay the charges in advance to increase the value or sale/development potential of the land.

Subclause (4) prevents charges being levied for works or uses authorised under the *Mineral Resources Act 1989*, the *Petroleum Act 1923*, the

Petroleum and Gas (Production and Safety) Act 2004 or the *Greenhouse Gas Storage Act 2009*.

Infrastructure charges notices

Clause 633 defines an infrastructure charges notice, what it must state and who it must be given to in particular circumstances.

Subclauses (2) and (3) specify when, and to whom, the notice must be given depending on whether the notice is issued as the result of a development approval or compliance permit issued by the local government or another entity.

Subclause (2) clarifies that in the case of a deemed approval where the assessment manager does not issue a decision notice, the infrastructure charges notice must be given within 20 business days after the deemed approval notice is received by the local government. This will ensure that local governments are still able to issue infrastructure charges notices in the case of a deemed approval.

Subclause (4) clarifies that if a charge is issued in association with a development approval or compliance permit, the charge cannot be recovered unless the entitlements in the approval or permit are exercised.

Subclause (5) states the notice of charge lapses if the development approval or compliance permit stops having effect. This may include the approval or permit lapsing or being cancelled.

When infrastructure charges are payable

Clause 634 specifies when charges have to be paid, if the charges are associated with applications for certain types of development or a request for compliance assessment. The aspects of development listed operate in a hierarchical manner, on the basis that infrastructure to service the development is most likely to be required, and should be paid for, while the works for reconfiguring a lot or building work are being carried out. Subclauses (a) to (c) in effect determine when the local government should state the charge is payable in the infrastructure charges notice. If subclauses (a) to (c) do not apply, subclause (d) requires the charge to be paid at the time stated in the infrastructure charges notice or negotiated infrastructure charges notice.

Application of infrastructure charges

Clause 635 clarifies that charges levied and collected for a particular infrastructure network must be used for supplying infrastructure for that

network, so that there is no cross subsidisation between networks. Similarly, this clause also requires that charges levied and collected by a local government for works required to address the local function of a State-controlled road, must be used to provide works on the State-controlled road infrastructure. While different items or works could be provided, the intention is that charges levied specifically for the local function of State-controlled roads must be spent on works to improve the local function of the State-controlled road.

Subclause (2) provides flexibility for local governments and the Department of Transport and Main Roads to spend charges on the infrastructure that delivers the best outcome for users regardless of ownership of the road. It allows charges levied for works for the local function of State controlled roads to be spent on local government roads.

This provision is an extension of clause 629 which allows a local government to provide different infrastructure to the items identified in the priority infrastructure plan, provided the infrastructure delivers the same standard of service. Because the planned infrastructure relates to the State controlled road network, the owner of the State controlled road must be consulted about and agree to the different infrastructure. An example of this might be constructing a new local government road to provide alternative access to an area in lieu of providing additional capacity on the existing State controlled road running through the area.

Accounting for infrastructure charges

Clause 636 clarifies a number of issues associated with accounting for infrastructure charges.

Subclause (1) is intended to ensure that charges, or the proportion of charges, levied and collected for local works on State infrastructure are separately accounted for so the amount available for this purpose can be easily determined. This is important for cases where a development might be subject to a condition, imposed by the provider of the State infrastructure, to construct the planned infrastructure item(s) for which the charge was being collected. In these cases it is expected an infrastructure agreement would be entered into between the applicant, the local government and the provider of the State infrastructure, under which any funds already collected by the local government for the item(s) would be made available to the applicant to construct the infrastructure. The agreement should also detail the arrangements for refunding to the applicant charges to be collected by the local government from other users

of the infrastructure in the future for their share of use of the item(s) and any contribution from the State infrastructure provider towards the cost of the item(s).

Subclause (2) clarifies that infrastructure charges collected by the local government do not need to be held in trust. This means the local government could use these funds for other purposes, provided it is able to supply the infrastructure when required.

Agreements about, and alternatives to, paying infrastructure charges

Clause 637 provides for local governments and persons to whom an infrastructure charges notice or negotiated infrastructure charges notice has been given to enter into written agreements about alternatives to aspects of the charges regime established in preceding clauses. These agreements are characterised as infrastructure agreements under chapter 8, part 2 (see clause 660).

Subclauses (2) to (5) deal with when and how land for public parks infrastructure or local community facilities is to be given to the local government in lieu of paying all or part of the charge. If the site is identified as being required for public park purposes and the amount of the land required is more than that which can be attributed to the development on the site or exceeds the value of the development's charge for public parks infrastructure, it is expected the local government will acquire the land it requires for public parks infrastructure. Costs associated with the acquisition can be recovered through infrastructure charges.

Local government may supply different trunk infrastructure from that identified in a priority infrastructure plan

Clause 638 is included to allow a local government to supply a different item of infrastructure to that specified in the priority infrastructure plan provided the infrastructure provides the same standard of service.

The provision has been included to provide a degree of flexibility for local governments in providing infrastructure to take account of changes in technology, standards and similar matters, but safeguards the community and persons who have paid charges by requiring the same standard of service to be delivered.

Infrastructure charges taken to be a rate

Clause 639 states that, for the purposes of recovery, an infrastructure charge is, under subclause (1) taken to be a rate. This means local

governments can use the powers under the *Local Government Act 1993* for recovering unpaid rates to recover unpaid infrastructure charges.

Subclause (2) recognises that an applicant and the local government may enter into an agreement stating the charge is a debt owing to the local government by the applicant in which case the option of recovering the unpaid charge as a rate is not available.

Division 5 Trunk infrastructure funding under a regulated infrastructure charges schedule

This division makes provision for a simple and basic charging mechanism for small and low growth local governments. The mechanism is a system of regulated infrastructure charges that are set by the State. The regulated charges are prescribed, and establish a maximum amount the local government can charge for each network. Local governments can adopt charges up to the regulated maximum without the need to prepare an infrastructure charges schedule. Regulated infrastructure charges are most suitable for those local governments where:

- the infrastructure network(s) being charged for already exist;
- limited growth or future development is anticipated;
- significant expansion of the network(s) is unlikely to be required;
- there is little or no need for the rigor, cost or complexity of even a basic infrastructure charges schedule and limited capacity to recover the cost of preparing an infrastructure charges schedule from future development;
- there is limited capacity within the local government to prepare an infrastructure charges schedule.

Regulated infrastructure charges are available to all local governments but are not mandatory for any. The amount of the regulated charges is intended to provide a reasonable funding source for smaller local governments whilst ensuring those local governments where the current population or future growth is sufficient to warrant an infrastructure charges schedule, do actually prepare one. Limiting regulated charges to a reasonable amount

will also minimise the risk of development being over-charged, given a rigorous cost apportionment exercise will not be undertaken.

Regulated infrastructure charge

Clause 640 establishes that the State may, by regulation or a State planning regulatory provision, prescribe a charge for the supply of trunk infrastructure in a local government's area, and to also specify the development for which the charge can be levied.

The regulation will prescribe a charge for each development infrastructure network for a variety of common land use types. The regulation may also include standard conversion formulae to calculate the regulated charge for other forms of development.

Adopting and notifying regulated infrastructure charges schedule

Clause 641 details the process to be followed by a local government for adopting a schedule of regulated infrastructure charges.

Subclause (1) establishes that a local government may by resolution adopt a regulated infrastructure charges schedule. This can only be used for the establishment cost of trunk infrastructure. This means charges cannot be used for operating or maintaining the infrastructure.

Subclause (2) requires that the amount of the charge stated in the schedule cannot exceed the amount prescribed in the regulation or State planning regulatory provision.

Subclause (3) requires that the schedule state the amount of the charge for each network for which a charge applies and the development and areas to which the charge applies.

Subclauses (4) and (5) deal with the requirements for giving notice about the adoption of the schedule and providing copies of the schedule to the chief executive.

Subclause (6) establishes when the schedule takes effect.

Subclause (7) requires that the local government attach a copy of the schedule to each copy of its planning scheme. This is to ensure users of the planning scheme are aware of the existence and content of the schedule and how it might relate to their premises.

Subclause (8) clarifies that the schedule does not form part of the local government's planning scheme.

Regulated infrastructure charges

Clause 642 defines a regulated infrastructure charge and provides further information on setting a regulated infrastructure charge.

Subclause (1) requires that the charge be for trunk infrastructure that services, or will service, the premises and is identified in the priority infrastructure plan.

Subclause (2) provides that regulated infrastructure charges do not apply to activities authorised under specific Acts.

Regulated infrastructure charges notice

Clause 643 defines a regulated infrastructure charges notice, deals with its content, and specifies when it must be given.

Under subclause (1) a regulated infrastructure charges notice must state the amount of the charge, the land to which it applies, when it is payable, and the trunk infrastructure network for which the charge has been imposed. The things that must be stated in the regulated infrastructure charges notice are considerably reduced compared to an infrastructure charges notice under clause 633 due to the limitations on the application of regulated infrastructure charges compared to infrastructure charges under an infrastructure charges schedule.

Subclause (2) clarifies that in the case of a deemed approval where the assessment manager does not issue a decision notice, the regulated infrastructure charges notice must be given within 20 business days after the deemed approval notice is received by the local government. This will ensure that local governments are still able to issue regulated infrastructure charges notices in the case of a deemed approval.

Subclauses (2) to (4) are similar to the requirements of clause 633 regarding infrastructure charges notices, with the exception of clause 633(3) which relates primarily to charges on existing lawful uses which is not possible under a regulated infrastructure charges schedule.

When regulated infrastructure charges are payable

Clause 644 is the equivalent of clause 634 and specifies when regulated infrastructure charges must be paid. The requirements regarding timing of the payment are the same.

Application of regulated infrastructure charges

Clause 645 is the equivalent of clause 635 and clarifies that charges levied and collected for a particular infrastructure network must be used for supplying infrastructure for that network, so that there is no cross subsidisation between networks. There is no equivalent of clause 635(1)(b) because it is not anticipated regulated infrastructure charges will include a component for State infrastructure.

Accounting for regulated infrastructure charges

Clause 646 is equivalent to clause 636(2) and clarifies that infrastructure charges collected by the local government do not need to be held in trust. This means the local government could use these funds for other purposes, provided it is able to supply the infrastructure when required. There is no equivalent of clause 636(1), as it is not anticipated regulated infrastructure charges will include a component for State infrastructure.

Agreements about, and alternatives to, paying regulated infrastructure charges

Clause 647 is the equivalent of clause 637 with regard to the ability to enter into an agreement to do other things as an alternative to paying a regulated infrastructure charge. The range of alternatives is limited compared to clause 637 due to the more limited scope of regulated infrastructure charges previously noted. There are no arrangements relating to infrastructure, which are necessary, but not yet available, to service the premises, as a regulated infrastructure charge is primarily intended to be levied in relation to an existing network.

Regulated infrastructure charges taken to be a rate

Clause 648 is the equivalent of clause 639 and the same provisions apply.

Division 6 Conditions local governments may impose for necessary trunk infrastructure

Conditions local governments may impose for necessary trunk infrastructure

Clause 649 provides for situations where infrastructure required to service a particular premises the subject of a development application or request

for compliance assessment is not yet available, and will also service other premises.

Example - A small catchment is identified as a priority infrastructure area in a priority infrastructure plan. A development application is received at the head of the catchment and is separated from trunk infrastructure by undeveloped land lower in the catchment.

This clause allows a local government to act as "banker" by requiring the applicant to supply the required trunk infrastructure, and refunding the applicant the cost of the infrastructure not attributable to the premises as infrastructure charges are received for the subsequent development of other premises.

Subclause (1) details when conditions for necessary trunk infrastructure can be imposed as follows—

- existing trunk infrastructure necessary to service the development is not adequate (subclause (1)(a));
- trunk infrastructure is necessary to service the development but is not yet available (subclause (1)(b)); or
- trunk infrastructure identified in the priority infrastructure plan crosses or traverses the premises (subclause (1)(c)).

In all cases, the planned trunk infrastructure that either services or crosses the premises must be identified in the priority infrastructure plan.

Subclause (2) clarifies that a condition under subclause (3) requiring the applicant to construct trunk infrastructure can be imposed even if the item of infrastructure required is different from the item identified in the priority infrastructure plan, provided the item delivers at least the same standard of service. For example, the priority infrastructure plan may indicate an area was expected to be serviced by a 375 mm diameter sewer. However detailed design has revealed site conditions that mean the sewer must be constructed at a flatter grade and consequently a 450 mm diameter sewer is required. Subclause (2) allows the local government to require construction of the 450 mm sewer.

Subclause (3) allows a condition to be imposed requiring the applicant to construct trunk infrastructure even if the infrastructure will service other premises. For example, a development site may be a few lots removed from the existing development 'front', and water supply and sewerage services do not extend to the development site. Under the current arrangements, the local government could in this situation impose a

condition to provide a non-trunk infrastructure connection to the existing infrastructure networks, in addition to the applicant paying charges for planned trunk infrastructure that will service the area, including the development site.

For example, the non-trunk connections might be a 100 mm diameter water main and 150 mm diameter sewer, while the trunk infrastructure planned to service the premises, and for which charges will be imposed, might be 300 mm diameter water and sewer mains. However, it may be more cost effective and efficient, for both the applicant and the local government, for the local government to be able to condition the applicant to supply the planned trunk infrastructure and offset its cost against the charges for those networks. This would be instead of constructing a non-trunk infrastructure connection, which will most likely have to be duplicated or replaced, in addition to paying charges that are, in part, for the planned 'ultimate' infrastructure required. The only significant difference in the cost of providing a non-trunk connection as opposed to the planned trunk infrastructure is likely to be the cost of the larger pipe.

Subclause (4) requires the condition to state what infrastructure must be constructed and when.

Subclauses (5) and (6) establish that if the infrastructure constructed under a condition under subclause (3) services other premises and its value is more than the value of the charge, the applicant is not required to pay a charge for that network and is entitled to obtain, on agreed terms, a refund from the infrastructure provider for the proportion of the cost of the infrastructure that can be attributed to other users and is collected under an infrastructure charges schedule.

Example - If an applicant was required, under a condition under this clause, to construct 100m of 300 mm diameter trunk water main with a value of $170 000, and the water charge for the development was $95 000, the applicant could enter into an agreement to obtain a refund for $75,000 (the difference between the value of the infrastructure and the value of the charge), to be collected by the local government under the water infrastructure charges schedule from other development, as and when it occurs, for its proportion or share of use of the water main.

Subclause (7) applies where the value of the infrastructure is less than the value of the charge and requires that the local government offset the value of the infrastructure required to be constructed under the condition against any charge levied for the network the infrastructure will be part of.

Example - Using the previous example, if the value of the trunk water main was $170 000 and the water charge for the development was $195 000, the applicant would only be required to pay a water charge of $25 000, or the difference between the value of the infrastructure and the total water network charge, in addition to constructing the main.

Subclause (8) qualifies the normal "reasonableness and relevance" test for conditions under clause 345 or clause 406. A condition for subclauses (1)(a) or (b) is reasonable and relevant if the infrastructure is necessary to service the development and providing the planned trunk infrastructure is the most efficient and cost effective means of servicing the development. Therefore, before imposing a condition under these clauses, the local government must be satisfied requiring construction of the infrastructure specified in the condition and identified in the priority infrastructure plan is the most efficient and cost effective means of servicing the development, taking into account the likely cost of the non-trunk infrastructure connection which would otherwise have to be supplied to service the premises and any charges which would also be applicable in these circumstances. A condition for subclause (1)(c) is reasonable and relevant to the extent the infrastructure required to be constructed is not an unreasonable imposition on the development or the subsequent use of the premises.

Example - A condition for subclause (1)(c) might be unreasonable if it imposed severe restrictions on the type or scale of development possible on the premises, or effectively precluded any development from occurring.

Division 7 Conditions local governments may impose for additional trunk infrastructure costs

The triggers for additional cost assessment are tied to elements of the priority infrastructure plan. An important point to note is that this division deals with costs of providing infrastructure. It does not seek to deal with the merits of a proposal. While the cost of providing infrastructure is affected by development being proposed inside or outside the priority infrastructure area, the fact that costs are higher or lower is not of itself to be taken to mean that a particular proposal should be approved or refused. The decision about whether to approve or refuse a proposal is a development assessment decision that must be made according to the

planning merits of the proposal in accordance with the decision making rules of IDAS. Similarly, the willingness of an applicant to pay the additional costs for trunk infrastructure for development outside the priority infrastructure area is not, of itself, reason to approve an application if there are other planning considerations that have not been satisfactorily resolved. Additional cost conditions for unplanned or out-of-sequence development are simply a "price signalling" mechanism that may affect the timing or viability of a project, depending on its location and extent to which it is out-of-sequence.

Conditions local governments may impose for additional trunk infrastructure costs

Clause 650 establishes the parameters for local governments imposing conditions for additional trunk infrastructure costs.

Subclause (1) establishes a local government's right to impose a condition for the payment of additional trunk infrastructure costs in the specified circumstances. Subclause (1)(a) refers to development being inconsistent with the assumptions in the priority infrastructure plan.

Examples -

- *development for a different type of use being proposed (e.g. light industrial use instead of commercial as assumed in the priority infrastructure plan);*
- *development for a different scale or location (e.g. medium density residential at 18 dwellings per hectare instead of low density residential at 10 dwellings per hectare as assumed in the plan); or*
- *development that imposes different infrastructure timing requirements (e.g. an anticipated expansion of a commercial centre occurring before the assumed time in the plan or causing an infrastructure capacity threshold to be reached earlier than anticipated and as a consequence bringing forward the construction of planned trunk infrastructure).*

Further, development on land that is wholly or partly outside the priority infrastructure area triggers assessment under this division, as detailed infrastructure planning may not have been undertaken for the land because it is at least partly outside the priority infrastructure area (and therefore outside the area for which trunk infrastructure planning must be carried out as part of the plan making process).

The ability of a local government to impose a condition requiring an applicant to pay the additional costs of supplying trunk infrastructure is dependent on the provider's ability to demonstrate, in accordance with subclause (1)(b), that there will be additional costs in supplying the infrastructure, taking into account income from infrastructure charges levied on the development and any infrastructure supplied or to be supplied by the applicant or person requesting compliance assessment. As additional costs are recovered through conditions of a development approval or compliance permit, they are challengeable in the Court on appeal.

Subclause (2) details the matters an additional cost impact condition must state. Item (a) requires the infrastructure provider to identify the nature of the additional costs the development would impose for the infrastructure provider. Item (f) gives the applicant or person requesting compliance assessment the option of supplying all or part of the infrastructure instead of making a payment. Item (g) requires that any further approval requirement (for the works to establish the infrastructure) be identified. This is to ensure the condition is not taken to be an approval or authorization to construct the infrastructure without any other necessary approvals being obtained.

If the infrastructure the subject of the condition is necessary to service the premises, subclause (3) requires the payment to be made on the day works associated with the development commence. Paying for necessary infrastructure at the time construction commences is intended to ensure the infrastructure is available by the time construction for the development is completed. Otherwise, the payment must be made prior to plans of subdivision being approved or the use commencing.

Subclauses (4) and (5) clarify when an additional cost payment must be repaid. For an additional cost payment to be repaid, the development approval or compliance permit in respect of which the payment was required must no longer have effect (i.e. it has lapsed, been cancelled etc), the additional cost payment must have been made, and the infrastructure for which the payment was made had not been supplied. If these requirements are met, subclause (5) requires the local government to repay the payment. If however the local government had already supplied or commenced supplying the infrastructure for which the payment was required, it is only required to repay the proportion of the payment not spent on or committed to (through detailed design costs or construction contractual arrangements) supplying the infrastructure.

Subclause (6) allows an infrastructure provider to impose conditions related to future infrastructure and funding taking into account the intended future development of the area or catchment and the trunk infrastructure required to service the future development, even though these requirements may be in excess of those required to service the particular premises.

Subclause (7) prevents a local government imposing an additional cost condition for a supplier of State infrastructure (such as a local government imposing a condition for additional costs for State schools). This is because those State infrastructure providers intended to have an additional infrastructure cost jurisdiction will be given specific powers under division 8 of this part.

Subclause (8) clarifies that an additional cost condition applies as well as any routine infrastructure charges or conditions regarding the supply of non-trunk infrastructure or necessary trunk infrastructure.

Local government additional trunk infrastructure costs in priority infrastructure areas

Clause 651 deals with additional cost conditions under clause 650 within priority infrastructure areas. If the additional costs are the result of the local government having to supply trunk infrastructure to service the development earlier than anticipated in the priority infrastructure plan, subclause (1)(a) allows the local government to require the applicant to pay the difference between the establishment cost of the infrastructure and any charges made by the applicant or person requesting compliance assessment for that item.

Example - The priority infrastructure plan indicates water and sewer mains would be extended to a new emerging area in year 10 of the plan period. If development occurs in this area in year 2 instead of year 10 as assumed, the trunk water and sewerage infrastructure must be provided earlier than anticipated in the plan. If the establishment cost of this trunk infrastructure is $100,000, the infrastructure charges levied on the applicant for trunk water and sewerage amount to $62,000 overall, and $10,000 of this amount represents the applicant's share of the mains mentioned above. Because the mains are needed to service the development proposal, they must be provided earlier than anticipated. Subclause (1)(a) provides for the local government to impose a condition requiring the applicant to pay, in addition to their infrastructure charges (i.e. the $62,000), the difference between the establishment cost of the infrastructure that is being supplied earlier than anticipated and the amount of any charge paid for this

infrastructure (i.e. $100,000—$10,000). This would result in an additional cost of $90,000 in this instance. It also means the applicant effectively pays the full cost of the infrastructure that needs to be supplied earlier than anticipated.

However, under subclause (2), the applicant or person who requested compliance assessment is entitled to obtain, on agreed terms, a refund from the infrastructure provider for the proportion of the cost of the infrastructure that can be attributed to other users and is collected under an infrastructure charges schedule.

If the additional costs are the result of development for a different type of use (e.g. light industrial instead of commercial use as assumed in the plan), or development for a greater scale or intensity than anticipated, subclause (1)(b)(i) establishes parameters for the additional costs to be determined. In these circumstances, the applicant or person requesting compliance assessment must pay for any additional infrastructure required to service the premises. For example, if a residential proposal proposed higher residential densities than assumed in the plan and this proposal triggered the need for larger diameter trunk water and sewer mains and increased capacity at the sewerage pump station in order to maintain the stated desired standard of service, the local government could impose a condition requiring the applicant to pay the extra costs of providing this upgraded infrastructure. These costs would be additional to the amounts levied under the local government's infrastructure charges schedule.

If the additional costs are the result of development for a lesser scale or intensity of use (e.g. lower than planned for residential densities), subclause (1)(b)(ii) establishes parameters for the local government to require the applicant to pay the difference between the cost of the infrastructure identified in the plan and the cost of the infrastructure necessary to service the development.

Example - If trunk infrastructure for a residential area was planned at a density of 15 dwellings per hectare and development at 8 dwellings per hectare was proposed, the local government could impose a condition requiring the applicant to pay the difference between the planned for infrastructure and the infrastructure actually required by the development. If the change in density resulted in different (i.e. 'smaller') trunk infrastructure being provided, this provision allows the local government to impose a condition requiring the applicant to pay the difference between the smaller trunk infrastructure actually provided, and the trunk infrastructure the local government planned to provide. This would be in

addition to paying the amounts set out in the infrastructure charges schedule for the development.

If the infrastructure required to service the proposal was not actually different from the planned infrastructure, this provision would have the effect of allowing the local government to charge the applicant as if the proposal were for development for the planned density of 15 dwellings per hectare. However, if the local government had not actually expended funds on the proposed infrastructure or was not committed to providing infrastructure at the planned standard, it would be more difficult to justify imposing such a condition as the local government would not have been financially disadvantaged by the lesser scale of development. Additional costs are recovered by way of conditions and as such are open to challenge in the Court if there is not a reasonable basis for imposing the condition. Demonstrating additional costs in these types of situations will depend on how the charges are calculated under the relevant infrastructure charges schedule.

Clause 651(2)(b) requires an infrastructure provider to take into account charges when determining if a proposal will result in additional costs.

For subclause (2) agreements it is expected the local government would continue to levy charges for the area and refund these to the applicant according to the terms of the agreement. In this way the applicant or person requesting compliance assessment is responsible for bearing the cost of supplying the infrastructure ahead of time or to a different standard and effectively becomes the "banker" for the infrastructure, but is also able to use the agreement mechanism to ensure that over time they only end up paying for their share of the infrastructure (assuming the area is fully developed). The applicant or person requesting compliance assessment bears an element of risk and financial exposure in this regard in that the area may not be fully developed or developed within a reasonable timeframe.

Local government additional trunk infrastructure costs outside priority infrastructure areas

Clause 652 deals with additional costs a local government can recover, for each infrastructure network servicing the premises, as they apply for development wholly or partly outside the priority infrastructure area.

Subclause (1) effectively allows a local government to impose a condition requiring an applicant to construct all infrastructure necessary to service the development. Subclause (1)(a) allows the local government to recover

the costs of providing any trunk infrastructure made necessary by the development. Subclause (1)(b) relates to temporary infrastructure made necessary by the development and includes under subparagraph (i) any infrastructure necessary to ensure the safe and efficient operation of infrastructure provided under subclause (1)(a), while subparagraph (ii) deals with any temporary infrastructure made necessary by the development and provided instead of the 'ultimate' infrastructure provided under subclause (1)(a).

Examples - Temporary infrastructure for subclause (1)(b)(i) may include items such as an oxygen injection system for an under-utilized sewer, a re-chlorination system for an under-utilized water main, or temporary intersection treatments on a road. Temporary infrastructure under subclause (1)(b)(ii) might include 150 mm diameter water and sewer mains instead of the 450 mm diameter mains ultimately required, an on site detention basin instead of catchment drainage works, or a two lane road instead of the four lane road ultimately required.

Subclause (1)(c) allows the local government to also recover the decommissioning, removal and rehabilitation costs for any temporary infrastructure provided under subclause (1)(b). The maintenance and operating costs, for a period of up to five years, for any infrastructure supplied under subclauses (1)(a) or (b) can also be recovered under subclause (1)(d).

Example - Maintenance costs might include the periodic cleaning of a sewer or the routine repair of a road that has been made necessary by the development. Operating costs may include the cost of electricity to operate a sewage pump station made necessary by the development.

Subclauses (2) and (3) refer to development of land in areas that, while outside the priority area, are still earmarked for development for urban purposes in the longer term.

In these areas subclause (3) states that the trunk infrastructure made necessary by the development under subclause (1)(a) includes the infrastructure necessary to service the balance of the area earmarked for urban purposes. In some cases it may not be practical or desirable for the 'ultimate' infrastructure to be supplied for a single development. In these cases temporary infrastructure may be more appropriate together with a contribution for the development's share of the cost of the 'ultimate' trunk infrastructure required to service the area. In such cases the contribution towards the cost of the ultimate trunk infrastructure is only a proportion of

the costs the local government could recover under subclause (1)(a), while the temporary infrastructure required would fall under subclause (1)(b)(ii).

Examples -

- *provision of a temporary 100 mm diameter water main to the development until the larger 300 mm diameter water main required to service the catchment is provided, together with a contribution for the share of the cost the 300 mm diameter main reasonably attributable to the development;*
- *the cost of a temporary signalized intersection plus a contribution towards a grade separated intersection; and*
- *provision of a temporary detention basin on site plus a contribution to the cost of drainage works for the catchment.*

Outside the priority infrastructure area, provision is also made for maintenance and operating costs of the necessary infrastructure and the establishment, operating and maintenance costs of temporary infrastructure. This is to minimise the costs to local governments for development occurring in areas that have not necessarily been planned for in terms of the supply of infrastructure. The 5 year maintenance and operating period is a sufficient time for a local government to update its infrastructure planning and introduce amended and updated priority infrastructure plans and areas that take account of development approved by the local government outside the priority infrastructure area. Where temporary infrastructure is required, the local government is also able to recover the cost of decommissioning and removing the infrastructure and rehabilitating the site. These provisions effectively mean applicants for development outside the priority infrastructure area are responsible for paying the full cost of infrastructure made necessary by the development. This includes paying for infrastructure necessary to service the wider catchment area if the planning scheme identifies the land as being part of an area earmarked for longer-term urban growth.

As noted above, these provisions, among others, create pricing signals that are designed to promote development in areas where infrastructure is available or planned to meet anticipated future development demands. Ad hoc urban growth that occurs without regard for the planning and supply of essential supporting trunk infrastructure imposes significant costs on the community and, over time, constrains governments' ability to provide residents and businesses with necessary services at the desired standards for those services. The provisions in this clause do not prevent development

occurring outside priority areas or in ways not anticipated in the plans, as these must still be assessed on their planning merits. Rather this clause is about ensuring the proponent, not the community as a whole, meets the additional infrastructure costs of unplanned development. A proponent is not entitled to a refund from the local government in these circumstances but such a refund arrangement could still be entered into if both parties agree through an infrastructure agreement.

The list of aspects of urban development in subclause (2) differs slightly from that in the current IPA, in order to achieve consistency with the treatment of such development in the definition of *priority infrastructure area* in schedule 3. The priority infrastructure area encompasses a full range of urban development types. For dealing with urban development outside priority infrastructure areas, there should be consistency with the treatment of such development inside the area. The changed list is not significantly different from that in the current IPA, the main difference being the inclusion of community and government purposes servicing other forms of development in the list.

Division 8 Conditions State infrastructure providers may impose for infrastructure

This division outlines the conditioning powers for State infrastructure providers and general requirements for imposing conditions. These powers include 'routine' conditions and additional infrastructure cost conditions for referred applications. The ability to impose such conditions relies on the agency being a State infrastructure provider, which is a concurrence agency that supplies State infrastructure.

Conditions State infrastructure provider may impose

Clause 653 outlines the types of conditions a State infrastructure provider can impose in respect of a referred application. Under subclause (1) the condition must relate either to the infrastructure or works to protect the operation of the infrastructure. Under subclause (2), a condition can only be for protecting or maintaining the safety or efficiency of the provider's network, or additional infrastructure costs, or protecting or maintaining the safety and efficiency of public passenger transport.

Examples of conditions relating to protecting the operation of the infrastructure -

- *A deceleration lane and entry access to a shopping centre development - Any development has to undertake works to provide safe access where directly accessing a State-controlled road. Maintaining the safe and efficient operation of the State-controlled road may require the construction of a deceleration lane approaching the access.*
- *Traffic signals at an intersection 1 block from a shopping centre development - The road impact assessment for a proposed development can highlight the need for works to address the impacts of the development on State-controlled roads remote from the proposed development site. In this instance, a set of traffic signals may be required 1 block from the proposed shopping centre to facilitate the safe movement of the increased number of vehicles making a right turn from the State-controlled road to visit the proposed shopping centre.*
- *Upgrading transverse drainage under a State-controlled road because of increased hard stand parking area from development - Many developments result in large sealed concrete or bitumen surface areas that were previously able to soak up rainfall. This can result in larger stormwater flows under the State-controlled road, often reducing the flood immunity of the road, affecting both the safety and efficiency of its operation. The flood immunity of the road can be restored by the developer increasing the size of transverse drainage under the road.*
- *Road shoulder widening added to reconstruction of a road because of increased traffic loading to stop road edge fretting (wear) - Often, the existing pavement structure on a State controlled road is not capable of providing ongoing safe service where a development generates significant truck traffic. A development can not only be conditioned to upgrade the pavement structure to accommodate these increased loads, but also to widen the shoulders or the bitumen surface to maintain safety for the increased number of trucks involved in passing and overtaking movements.*

Example of a condition for additional State infrastructure costs is a contribution for the construction of road works on a State controlled road when rural land not in the priority infrastructure area is developed as a large townhouse estate, such as for the provision of footpaths, kerb and

channel with ancillary drainage and a landscaped noise buffer—Development located outside the priority infrastructure area should pay the cost of infrastructure improvements needed to service the development so it is consistent with planning requirements.

The example illustrates some of the costs that may arise and could be applied when a large unanticipated development occurs. A large townhouse development would require works on the adjacent State controlled road such as footpaths, kerb and channel, drainage and landscaped noise buffering. These works would not normally exist or be provided in a rural area, yet would be planned and supplied by infrastructure providers to service development of this type.

Subclause (3) allows a State infrastructure provider to impose a condition requiring infrastructure to be supplied to a different standard to that stated in the priority infrastructure plan, or require different infrastructure to be provided. Under the definition of development infrastructure, local governments are able to plan and charge for the local function of State-controlled roads. Where a local government chooses to exercise this ability, the priority infrastructure plan will identify proposed 'local works' (most likely intersection treatments to address local traffic needs) on State controlled roads. Subclause (3) is specifically intended to allow the Department of Transport and Main Roads to require different infrastructure, or infrastructure of a different standard, where this is necessary to ensure the continued safe and efficient operation of the State-controlled road for its State or regional transport functions.

Subclause (4) defines when a local government may have to give the money it has collected for an item to a supplier of State infrastructure to be used for the provision of a different item. This is limited to situations where the infrastructure required to be supplied under a condition in accordance with subclause (2) replaces infrastructure the local government planned to provide (subclause (4)(a)), and provides at least the same standard of service as the replaced item (subclause (4)(b)).

If this is the case, subclause (5)(a) requires that the local government provide any charges (or the component of any charges) collected for the infrastructure it planned to supply to the State infrastructure provider to be used either to—

- provide the 'new' infrastructure, or reimburse the person who constructed the 'new' infrastructure; or alternatively

- enter into an agreement between the local government, the person required to construct the infrastructure and the State infrastructure provider about the construction of the item and the reimbursement to the person of charges collected from other users for their share of use of the item.

It is important to note these provisions are intended to apply to charges already collected and to be collected in future for the infrastructure the local government had intended to supply.

Example - A local government may have planned to install traffic signals at the intersection of a State-controlled road with a major local road. However, the infrastructure provider (Department of Transport and Main Roads) may have instead required a developer to construct, under a condition imposed under this division, a grade-separated interchange to meet State or regional transport needs. The local government should make available to either the developer or the State infrastructure provider the funds it has already collected from other users for the proposed signalised intersection. The developer or the State infrastructure provider must use these funds to provide the grade separated interchange. The local government would continue to collect charges from other users for the signalised intersection, since this is the standard of infrastructure required to meet local transport needs, and refund these charges to the developer or State infrastructure provider who constructed the infrastructure. The local government is not required to amend its charges schedule to recover the balance of the cost of the grade separated interchange, because this was provided to meet State or regional transport needs, and State or regional transport functions of State controlled roads cannot be charged for.

Where the item the State infrastructure provider requires to be constructed does not provide at least the same standard of service as the item the local government plans to provide to meet local traffic needs, these provisions do not apply. This is because transferring funds for an item providing a lower standard of service will either reduce the standard of service for the funds collected, or leave the local government to fund the planned item when required from other sources.

Requirements for conditions about safety or efficiency

Clause 654 details the matters a condition about safety and efficiency must state. The State infrastructure provider can require the applicant to either construct the infrastructure or works, or make a contribution towards the cost of the infrastructure or works. A condition under this clause must state

the infrastructure to be constructed or contribution to be made, and when the infrastructure must be constructed or the payment made.

Safety and efficiency of the provider's infrastructure network is defined in clause 653(6). The State infrastructure provider is able to impose a condition about safety and efficiency in respect of any referred application for which it is a concurrence agency. Safety and efficiency in effect constitutes the State infrastructure provider's 'common' conditioning power. By comparison, additional infrastructure cost conditions are only applicable in circumstances where the referred application is also inconsistent with the assumptions about future development stated in the priority infrastructure plan, or located wholly or partly outside the priority infrastructure area identified in the priority infrastructure plan.

Subclause (3) requires State infrastructure providers to repay contributions for works to maintain the safety and efficiency of State infrastructure if the approval in respect of which the contribution was required lapses and the development does not proceed.

Requirements for conditions about additional infrastructure costs

Clause 655 outlines requirements for conditions imposed by a State infrastructure provider for additional infrastructure costs. Additional infrastructure costs are not defined, but are essentially the extra costs to the State infrastructure provider for servicing unanticipated or unplanned development. As is the case for local government, the trigger, under subclause (1), for assessing whether a proposal imposes additional infrastructure costs on the State infrastructure provider is the proposal being inconsistent with the assumptions about future development stated in the priority infrastructure plan or being located wholly or partly outside the priority infrastructure area. However, for a State infrastructure provider the additional infrastructure cost conditioning power only operates in respect of applications for which the State infrastructure provider is a concurrence agency.

The balance of this clause is similar to the provisions for additional trunk infrastructure cost conditions for local government under clause 650 and similar comments apply.

Subclause (5) makes it clear that a State infrastructure provider only has to repay the proportion of any additional infrastructure cost payment that remains unspent at the time the provider is informed the development approval for which the payment was made has lapsed. This amendment has also been incorporated into the equivalent provisions under clause 654.

State infrastructure provider additional infrastructure costs in priority infrastructure areas

Clause 656 closely follows the provisions for additional trunk infrastructure cost conditions for local government under clause 651 and similar comments again apply. The main difference is that there is no ability for State infrastructure providers to impose conditions for additional infrastructure costs for development of a lesser scale or intensity than anticipated, as this is less likely to have adverse implications for State infrastructure providers.

Subclause (1)(a) defines the additional infrastructure cost for infrastructure to be supplied earlier than anticipated as the difference between the present value of the establishment cost of the infrastructure made necessary by the development and the present value of the establishment cost of the infrastructure if the approval had not been given. The intent is that the applicant be responsible for paying the infrastructure provider's costs in 'bringing forward' the construction of planned infrastructure. If no infrastructure was planned, these costs would be the establishment cost of the infrastructure. The infrastructure provider has the discretion to decide whether or not to bring forward construction of the infrastructure and recover the cost of doing so.

Example - If an infrastructure item is to be supplied by a State agency in the future, the present value of that item will be less than the establishment cost of the item if built today. If an application makes that item of infrastructure necessary now to support the proposed development, the State infrastructure provider can condition that the applicant pay the difference between these two values (the current establishment cost and the present value of the item if constructed in the future). In this way the applicant has paid the financing costs associated with the early construction of the item and as far as the State infrastructure provider is concerned, there should be no financial difference between borrowing to construct the item now or in the future. If however, no item is planned or to be supplied by the State agency there would be, at this time, no plans for how the item is to be funded in the future. In this case the financial difference for the State agency is the whole establishment cost of the item and so that value can be conditioned to be paid. For development of a different type, scale or intensity, the State infrastructure provider is, under subclause (1)(b), able to require payment for the establishment cost of the additional infrastructure made necessary by the development.

Subclause (2) provides an entitlement for the applicant to enter into an agreement with the State infrastructure provider and the local government to obtain a refund from other users of the infrastructure for their share of use of the infrastructure. This will only be applicable if the infrastructure was infrastructure the local government planned to provide on the State-controlled road to meet local traffic needs and for which charges were being collected under an infrastructure charges schedule. If this is not the case, the applicant cannot obtain a refund of charges collected from other users because on State-controlled roads the local government can only charge for planned items necessary to meet local traffic needs.

State infrastructure provider additional infrastructure costs outside priority infrastructure areas

Clause 657 again closely follows the provisions for additional trunk infrastructure cost conditions for local government under clause 652 and similar comments again apply.

Division 9 Miscellaneous

Agreements for infrastructure partnerships

Clause 658 provides for infrastructure partnerships. An infrastructure partnership is an agreement whereby a developer agrees to fund or supply infrastructure (which serves an area larger than the premises), or be reimbursed as further development that utilizes infrastructure occurs.

In most cases the local government would collect charges from the other users of the infrastructure for their share of the infrastructure under an infrastructure charges schedule and pass this money onto the original developer.

This clause provides a broad head of power for such agreements to be entered into and is not limited to trunk development infrastructure.

Sale of particular land held on trust by local governments

Clause 659 establishes parameters for the disposal of land for parks and recreation purposes obtained under this chapter and held in trust. Under clause 637(5) any land taken for parks and recreation purposes under an agreement entered into as an alternative to paying infrastructure charges must be held in trust.

The clause requires any proposed sale of such land to be preceded by a public notification and consultation process.

Under legislation preceding the current IPA, all land taken for these purposes was required to be reserved under the *Land Act 1994*. The current IPA allows for local governments to accept and hold such land in fee simple. However to ensure local communities were aware of any future dealings with such land, requirements were included in the legislation to hold the land in trust and publicly consult about any proposals for disposing of the land.

Subclause (1)(d) is intended to ensure that land is not disposed of if the disposal would be contrary to a current infrastructure agreement under which the local government acquired the land. If however the development the subject of the agreement and any related infrastructure were completed, the agreement should be of no further effect and disposal of land acquired under the agreement would not be inconsistent with the agreement unless the land was specifically dedicated for parkland in perpetuity. If the agreement was still in force, the local government could seek to amend the agreement, with the consent of the other parties to the agreement, to allow disposal of the land.

Part 2 Infrastructure agreements

It is important to provide the flexibility for as wide a range of infrastructure arrangements as possible within the objectives of the Bill. This part allows for infrastructure agreements as an alternative to other infrastructure funding mechanisms in the Bill, but also establishes accountability mechanisms for all agreements about infrastructure entered into under the Bill.

Definition for pt 2

Clause 660 establishes that all agreements about infrastructure entered into under chapters 6 and 8, as well as the alternative agreements established in this part, are collectively termed "infrastructure agreements". The references to the other clauses of the Act which allow agreements about infrastructure to be entered into, have been included.

Content of infrastructure agreements

Clause 661 requires that an agreement explain, if relevant, how the obligations formed under the agreement would be fulfilled if ownership of the land, the subject of the agreement, changed. For example, a developer might subdivide a large parcel of land and sell parts of it to other developers.

The clause also requires an agreement to state if relevant what action would be taken if a planning instrument outside the control of the person required to fulfil the obligations of the agreement, was changed. For example, if a State planning regulatory provision was implemented, it may affect the fulfilment of obligations under an agreement.

This clause also clarifies that an agreement may include the cost of the making of a structure plan or master plan. However, any amount included must take account of any amount payable under chapter 4, part 2, division 3, relating to special charges for making structure plans.

Copy of infrastructure agreements to be given to local government

Clause 662 requires a copy of an infrastructure agreement to be given to a local government if the local government is not a party to the agreement. To ensure efficient local coordination and provision of infrastructure a local government needs to be aware of any infrastructure arrangements within the area of its jurisdiction.

When infrastructure agreements bind successors in title

Clause 663 ensures that development obligations will be fulfilled despite subsequent changes to the ownership of the land.

Subclause (3) allows for the agreement to release the owner and successors in title from the obligations of the infrastructure agreement when the land is subdivided. This will enable the individual subdivided parcels to be disposed of free of the obligations of the agreement. If a development proponent were to take advantage of this provision, and release the owner and successors in title, the public sector entity requiring or providing the infrastructure, as a party to the agreement, could ensure the agreement protected their interests.

Exercise of discretion unaffected by infrastructure agreements

Clause 664 determines that an agreement cannot fetter the discretion of a public sector entity about a development application, structure plan, master plan or a request for compliance assessment. An agreement may purport to

depend on the exercising of certain discretions about an application, but it will not affect or be invalidated by whatever decision the entity makes.

This is intended to address concerns that an infrastructure agreement that relies for its fulfilment on a development approval, compliance permit, master plan or structure plan can only be entered into after a development application, request for compliance assessment, or application for approval of a master plan has been made and before it is decided. This interpretation was not intended, and the clause makes it clear that the application or request may already have been made, or it may be made in the future.

Infrastructure agreements prevail if inconsistent with particular instruments

Clause 665 establishes the relationship between infrastructure agreements and development approvals, master plans and compliance permits.

Subclause (2) ensures the rights and obligations established under an infrastructure agreement prevail over the requirement to pay a charge as stated in a notice of charge.

Example - An applicant would not be required to pay the charge stated in an infrastructure charges notice if the applicant had entered into an agreement with the local government to construct the infrastructure instead of paying the charge.

Part 3 Funding of State infrastructure in master planned areas

Part 3 deals with funding State infrastructure in master planned areas.

Purpose of pt 3

Clause 666 sets out the purpose of the part to ensure that funding for State infrastructure is a transparent and equitable process.

Power to make regulated State infrastructure charges schedule for master planned area

Clause 667 introduces one of the possible mechanisms for funding infrastructure - a State infrastructure charges schedule included in a structure plan or provided for under a State planning regulatory provision -

and outlines that the Minister may seek advice from the Queensland Competition Authority on the methodology of an infrastructure charges schedule.

Content of regulated State infrastructure charges schedule

Clause 668 sets out what a regulated State infrastructure charges schedule for a master planned area must include.

Regulated State infrastructure charges notice

Clause 669 outlines the mandatory content of a regulated State infrastructure charges notice.

Subclause (4) ensures there is no duplication of charging.

When regulated State infrastructure charge is payable

Clause 670 states when the charge is payable. This is dependent on the type of development to which the charge relates, or if the charge does not relate to particular development set out in this clause, the regulated infrastructure charges or negotiated regulated infrastructure charges notice will itself state a day for payment of the charge.

Application of regulated State infrastructure charges

Clause 671 provides that the charge levied must be used to provide the infrastructure identified in the State infrastructure charges schedule. For the purposes of this clause, all defined State infrastructure is regarded as a network (e.g. schools are regarded as part of a network).

Accounting for regulated State infrastructure charges

Clause 672 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.

Infrastructure agreements about, and alternatives to paying regulated State infrastructure charges

Clause 673 provides an option to allow a person (to whom a regulated State infrastructure charges notice or negotiated regulated State infrastructure charges notice has been given) to enter into an infrastructure agreement as an alternative to paying a regulated State infrastructure charge. While clause 658 provides for the State and other parties to enter into voluntary infrastructure agreements, this clause removes ambiguity as to whether a person can do so.

Recovery of regulated State infrastructure charges

Clause 674 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.*

Part 4 Changing notices

Part 4 provides for a process for recipients of notices under this chapter to seek variations of the notice through negotiation with the entity that gave the notice. These arrangements are analogous to a negotiated decision notice for a development approval under chapter 6.

Definition for pt 4

Clause 675 defines ***relevant appeal period*** for this part, as the period under which a person given certain charge notices under this part may appeal against the notice under clause 478 or 535.

Application of pt 4

Clause 676 establishes this part applies only to a person given certain charges notices only during the relevant appeal period. The intent is to afford persons who disagree with a charges notice an opportunity to negotiate a different outcome with the entity that gave the notice, without having to resort to an appeal.

Representations about notice

Clause 677 provides that the person may make representations to the entity that gave the notice.

Consideration of representations

Clause 678 requires the entity that gave the notice to consider the representations under clause 677.

Decision about representations

Clause 679 requires that, if the entity agrees with the representations, the entity must give a new notice to the person. Subclause (1) identifies three types of "negotiated" notice the entity may give according to the type of original notice.

Subclause (2) provides that only one negotiated notice may be given. If there is further disagreement, the intent is that the normal appeal mechanisms should then be utilised.

Subclause (3) establishes requirements for the giving and content of a negotiated notice.

Subclause (4) provides that if the entity does not agree with the representations, it must advise the person who made the representations within 5 days of its decision to that effect.

Suspension of relevant appeal period

Clause 680 provides for a person who has made representations under this part to suspend the person's appeal period to allow more time for the representations to be considered. The suspension and re-commencement of the person's appeal period occurs in the same way as for an applicant who seeks a negotiated decision notice under chapter 6, part 8.

Chapter 9 Miscellaneous

Part 1 Existing uses and rights protected

This part was previously located in chapter 1, part 4 of the current IPA.

It is a fundamental requirement of this Bill, which deals with the development and use of land, to state how existing, lawfully established uses, buildings and works are dealt with under the Bill. It is also essential that the Bill state how lawfully acquired rights to develop land or commence uses are dealt with.

This part applies to rights—rights to commence or continue using premises, and the rights associated with lawfully constructed buildings or works—that have been acquired either before or after the commencement of the Bill as an Act.

This part states the situations in which certain rights are protected from the requirements of a new planning instrument or an amendment of a planning instrument. These rights may have been acquired through approvals or because approval for a particular development was not needed. This part deals with existing rights acquired after the commencement of this Bill as an Act, and also with rights acquired before its commencement. These rights need to be dealt with separately because the nature of approvals differs in the circumstances, and the rights arising from each type of approval need to be specifically covered.

Lawful uses of premises on commencement

Clause 681 ensures that if an existing use of premises was lawful prior to the commencement of this Bill as an Act, then the use will remain lawful.

Subclause (2) clarifies the application of this clause to existing uses for which an approval may be required under other legislation. This subclause makes it clear that this clause was never intended to operate to make something a lawful use in respect of an activity that did not have a necessary approval under another Act. This clause does not provide for the lawfulness of an activity that requires an approval under another Act and operated unlawfully for the purposes of that Act.

Lawful uses of premises protected

Clause 682 protects a lawful use of premises from anything in a planning instrument or an amendment of a planning instrument which may stop, change or further regulate the use if it was a lawful use immediately before the commencement of the planning instrument or the amendment of the planning instrument.

Example - If an industry was established with a development permit, and operates in accordance with that permit, a subsequent amendment of the relevant planning scheme which imposes additional or varying requirements for that industry (perhaps a higher standard of landscaping or different car parking requirements), is not applicable to that existing industry and does not affect it. Equally, nothing in the planning scheme could require the use to cease.

Lawfully constructed buildings and works protected

Clause 683 protects buildings or works that have been lawfully constructed and completed after the commencement of this clause. Neither a planning instrument nor an amendment of a planning instrument can require the building or works to be altered or removed.

New planning instruments can not affect existing development approvals or compliance permits

Clause 684 protects rights acquired under existing (and current) development permits and compliance permits which have not been acted upon from anything in a new planning instrument or an amendment of a planning instrument which may stop or further regulate the development.

Example - If an amended planning scheme is introduced before the use authorised under a development permit starts, any provisions in the planning instrument which impose further restrictions on that type of use (perhaps reduced opening hours or increased car parking requirements) have no impact. If the use starts lawfully before this clause commences, it is protected by clause 682.

Similarly, if a development permit for building work exists but has not yet been acted upon, new provisions in a planning scheme or a code in the scheme dealing with the height or setback of buildings cannot impact on the development permit. The development authorised under the permit may be carried out subject to the conditions of the permit. Also, if a condition of the permit references a code in the planning scheme, the code that is required to be satisfied is the code in place when the permit was given, not any subsequently amended form of the code.

This approach is consistent with the current IPA. Planning instruments are not retrospective in their effect.

Implied and uncommenced right to use premises protected

Clause 685 protects existing implied rights to use premises where the use has not started immediately before the commencement of a new planning instrument or an amendment of a planning instrument, if:

- the development required to be completed before the use starts has been completed within the time stated in the permit or this Bill; and
- the use of the premises starts within five years of development being completed.

A right would be implied if:

- a development permit or compliance permit has been granted for certain premises; and
- those premises can be used for a particular purpose when the development is completed in accordance with the permit, because the change to the intended use is not a material change of use requiring a

development permit or compliance permit (i.e. at the time the permit was given the change of use of the premises was exempt or self-assessable development).

Example - A development permit has been given to build a small factory building in a light industrial area within a two year period. The permit is limited to authorising the carrying out of building, plumbing and drainage work. (This is because these aspects of development were the only aspects requiring assessment at the time the application was made. The change of use of the premises from vacant land to light industry could occur without approval as it was either exempt or self-assessable development at that time). A subsequent amendment of the planning scheme makes the change of use for this type of light industry an assessable development. This clause makes it clear that the amendment does not affect the implied right to use the premises for light industry purposes that was acquired when the development permit was given.

However, this right is not unlimited. The clause requires the authorised development to start within the stated time (2 years) and for the use to start within 5 years of the development being completed.

Similarly, if a development permit is given to subdivide land in an industrial zone, and the change of use to allow the land to be used for industrial purposes is exempt, a subsequent amendment to the planning scheme making that change of use assessable, does not affect the implied and uncommenced right to use the land (subject to meeting of applicable commencement and completion times).

State forests

Clause 686 states that certain activities are taken to be existing lawful uses of a State forest for the Bill. The effect of this provision is that, to the extent State forests are used for those activities, no approval is required under this Bill. This provision was included in the current IPA to respond to difficulties the State experienced compared to private forestry interests in establishing the lawfulness of existing uses in the State's extensive forestry estate.

This clause confirms that the basic use of State forests for forestry, conservation, grazing and recreation, consistent with the duties imposed by the *Forestry Act 1959,* are taken to be existing lawful uses under the Bill.

This provision is not intended to be a list of the only uses that are existing lawful uses in a State forest, and does not for example affect the operation

of clauses 682 or 683 in relation to other existing uses conducted in State forests.

Particular development may still be assessable or self-assessable development, or development requiring compliance assessment

Clause 687 states the effect of a regulation made under clause 232 on uncommenced development protected from regulation by planning schemes as an existing lawful use, either in its own right or as part of an existing lawful use. While the planning scheme does not apply to the existing lawful use or development in relation to a lawful use, the development is still subject to the regulation from the date of commencement of any applicable provision of the regulation.

Part 2 Environmental impact statements

Division 1 Preliminary

When EIS process applies

Clause 688 provides for part 2 to apply to development the subject of a development application or a master plan application, or development for community infrastructure on land to be designated, where the development is prescribed under a regulation.

Purpose of EIS process

Clause 689 states the various aspects of the purpose of undertaking the EIS process for a proposal.

Division 2 EIS process

Applying for terms of reference

Clause 690 states the process for a person (a "proponent") to apply to the chief executive for terms of reference for an EIS.

Subclause (1) provides for the action that must be taken by a person proposing development or proposing designation of land for community infrastructure if part 2 applies.

Subclause (2) provides for the form of an application for terms of reference for an EIS under part 2, and for a fee to accompany the application.

Subclause (3) provides for when an EIS that is necessary under part 2 must be prepared if an applicant proposes to make an application for preliminary approval.

Subclause (4) provides for when an EIS that is necessary under part 2 must be prepared if an applicant proposes to make a master plan application.

Subclause (5) enables the chief executive to a state a different time to that set out in subclauses (3) and (4).

Draft terms of reference for EIS

Clause 691 is concerned with the process for the chief executive to prepare and consult about draft terms of reference for the EIS.

Subclauses (1) and (2) require the chief executive to prepare draft terms of reference for an EIS for a proposal where:

- an application has been made for terms of reference;
- the chief executive has decided that draft terms of reference should be publicly notified, and
- the chief executive has consulted with any assessment manager or referral agency for a development application made or required to be made for the proposal, the designator for proposed community infrastructure, or the local government and any coordinating agency for a master plan application.

Subclause (3) provides the detail required to be included in a notice advertising the draft terms of reference.

Subclause (4) provides for how and when the notice must be published.

Subclause (5) provides for a minimum 15 business days period in which comments may be made about the draft terms of reference.

Subclause (6) limits the amount that may be charged for a copy of the draft terms of reference, to the actual cost of producing the copy.

Subclause (7) provides that the chief executive must keep a copy of the draft terms of reference available for inspection and purchase. Further,

details about the draft terms of reference must be kept available on the department's website.

Subclause (8) provides that any person can make comments about the draft terms of reference, in writing to the chief executive during the 15 business days period provided for.

Subclause (9) requires the chief executive to give copies of the advertised notice and the draft terms of reference to certain local governments, to any referral agencies for a proposal that will require development approval and to any coordinating agency for a master plan application.

Subclause (10) requires any local government that receives copies of the advertised notice and the draft terms of reference to keep them available for public inspection and purchase during the 15 business days period when comments may be made about the draft terms of reference.

Terms of reference for EIS

Clause 692 establishes the process for the chief executive to finalise the terms of reference for the EIS.

Subclause (1) requires the chief executive to either prepare terms of reference or finalise the draft terms of reference, within a specified time.

Subclause (2) requires the chief executive to consider comments received during the comment period about any draft terms of reference, if applicable.

Subclauses (3) and (4) allow for the period for preparing or finalising the terms of reference to be extended by the chief executive for a specified time.

Subclause (5) requires the chief executive to give the terms of reference to the assessment manager and any referral agencies for a proposal for which development approval has been sought or will be required, to the designator for a proposal for which designation is proposed, and to the local government and any coordinating agency for a proposal for which a master plan application has been or will be made.

Preparation of draft EIS

Clause 693 provides for the proponent to prepare a draft EIS, and give it to the chief executive, together with the relevant fee for administering the EIS process. It also provides for the chief executive, if the chief executive is satisfied that the draft EIS addresses the terms of reference, to give the proponent a notice to that effect.

Public notification of draft EIS

Clause 694 provides for the public notification of the draft EIS.

Subclause (1) provides the detail required for a notice advertising the draft EIS and the entities to whom a copy of the draft EIS must be given.

Subclause (2) provides for the way the notice must be published.

Subclause (3) provides for a minimum 30 business days period in which comments may be made about the draft EIS.

Subclause (4) limits the amount that may be charged for a copy of the draft EIS, to the actual cost of producing the copy.

Subclause (5) provides for a copy of the draft EIS to be kept available for public inspection. The chief executive may decide that associated documents are also required to be kept available.

Subclause (6) requires the chief executive to give copies of the advertised notice and the draft EIS to specified local governments.

Subclause (7) requires any local government that receives a copy of the draft EIS to keep the document available for public inspection and purchase during the period for making submissions.

Making submissions on draft EIS

Clause 695 provides for the making of submissions about the draft EIS.

Subclauses (1) and (2) provide for when submissions about the draft EIS may be made and when the chief executive must, or may, accept a submission.

Subclause (3) provides for when a submission that has been accepted by the chief executive may be amended or withdrawn.

Chief executive evaluates draft EIS, submissions and other relevant material

Clause 696 provides for the evaluation of the draft EIS and related material by the chief executive.

Subclause (1) provides for the chief executive to consult, where relevant, with the assessment manager and any referral agency for a development application for the proposal, and to consider the draft EIS, submissions accepted, and any other relevant material.

Subclause (2) provides only two options for the chief executive. The chief executive must either ask the proponent to change the draft EIS, or advise that the draft EIS has been accepted as the EIS for the proposed development.

Subclause (3) is intended to remove any doubt that the action the chief executive takes under subclause (2) will be the result of the chief executive's considerations under subclause (1).

Subclause (4) allows the chief executive to consider changes the proponent makes to the draft EIS as requested under subclause (2), and requires the chief executive, if satisfied with the changes, to accept the changed draft EIS as the EIS for the proposed development.

EIS assessment report

Clause 697 requires the chief executive to prepare an EIS assessment report within 30 business days of giving the proponent notice that the EIS is accepted for the development.

Criteria for preparing report

Clause 698 provides that the chief executive, in preparing the EIS assessment report, must consider the terms of reference for the EIS, the EIS, submissions accepted, and any other relevant material.

Required content of report

Clause 699 provides for the matters that must be addressed by the chief executive in the EIS assessment report.

Who the chief executive must give EIS and other material to

Clause 700 links to the completion of the EIS assessment report, the time within which the chief executive must give the report, the EIS and other documents to the assessment manager and all referral agencies for the development application related to the development the subject of the EIS. If a development application has not yet been made the chief executive must give the documentation to the entities that would be assessment manager and referral agencies. For development on land designated or proposed to be designated for community infrastructure, the chief executive must give the documentation to the designator or proposed designator.

Division 3 How EIS process affects IDAS

How IDAS applies for development the subject of an EIS

Clause 701 establishes how an EIS affects the IDAS process. For development that is the subject of a development application, subclauses (1) and (2) modify the IDAS process only to replace the information period and notification stage with the processes used to prepare the EIS. The assessment manager and all referral agencies retain their jurisdictions over the application, and the application is decided in the normal way.

The effect of subclause (3) is that where an EIS has been prepared for development but no development application has yet been made, the IDAS process is modified only for a limited time, and only if the development applied for, to the extent it has been the subject of an EIS, is substantially the same as the development the subject of the EIS.

Division 4 How EIS process affects designation

Matters a designator must consider

Clause 702 establishes how an EIS affects the IDAS process. For development that is community infrastructure, the subject of a designation or proposed designation, the designator must have regard to the EIS and the EIS assessment report in order to fulfil their duty of advancing the Act's purpose imposed on decision makers under clauses 4 and 5 of the Bill.

Part 3 Compensation

Definitions for pt 3

Clause 703 defines the terms "change" and "owner" for this part.

Change**,** for an interest in land, is defined as a change to the planning scheme or any planning scheme policy affecting the land. However clause 104 makes it clear that a temporary local planning instrument does not constitute a change for this part.

Owner is defined as an owner of an interest in land at the time a change is made. The effect of the definition of owner is that the only person entitled to claim compensation under this part is the owner of land at the time a change is made giving rise to a claim for compensation.

Compensation for reduced value of interest in land

Clause 704 establishes that reasonable compensation may be claimed for a reduction in the value of an interest in land if a change to a planning scheme or planning scheme policy reduces the value of an owner's interest in the land.

This provision relates to chapter 3, part 2, division 5 about requests to apply a superseded planning scheme to the carrying out of development requiring compliance assessment, assessable development or prohibited development, or to assess and decide a development application or request for compliance assessment under a superseded planning scheme.

Subclause (1) relates to the situation where a request is made to a local government:

- to apply a superseded planning scheme to the carrying out of assessable development, (because the development was exempt development or self-assessable development under the superseded planning scheme); or
- to assess and decide a proposed development application under a superseded planning scheme;
- to accept, assess and decide a request for compliance assessment under a superseded planning scheme (see clause 95(1)(e)) (because the development required compliance assessment under the superseded planning scheme, but is now assessable development).

If the local government refuses the request, and the applicant then makes a development application for a development permit under the new or amended planning scheme or planning scheme policy and that application is refused, approved in part, or approved subject to conditions, the owner of an interest in land is entitled to be paid reasonable compensation by the local government, provided the change reduced the value of the interest. To clarify, the right to compensation also applies in the situation where a subsequent application is deemed to be approved.

Example - The value of an interest in land may be reduced if a planning scheme which previously identified land for commercial purposes is amended to identify the land for low density residential purposes. To be

paid compensation the owner must have made a request under chapter 3, part 2, division 5 which was refused, and then made a development application under the new planning scheme or planning scheme policy which has been refused, or approved in part only, whether or not the refusal or approval in part was subject to conditions.

Subclause (2) relates to the situation where a request is made to a local government to assess and decide a request for compliance assessment under a superseded planning scheme (see clause 95(1)(d)) or to apply a superseded planning scheme to the carrying out of development requiring compliance assessment (because the development was exempt development or self-assessable development under the superseded planning scheme). If the local government decides to refuse the request, and the person then makes a request for compliance assessment under the new or amended planning scheme or planning scheme policy, and that request is approved subject to conditions, the owner of an interest in land is entitled to be paid reasonable compensation by the local government, provided the change reduced the value of the interest.

Subclause (3) relates to changes to a planning scheme to introduce a prohibition. An owner of an interest in land is entitled to be paid reasonable compensation if the change reduces the value of the interest, and the person makes a request to the local government under chapter 3, part 2, division 5 and that request is refused.

Compensation for interest in land being changed to public purpose

Clause 705 establishes that reasonable compensation may be claimed for a reduction in the value of an interest in land if, due to a change to a planning scheme or planning scheme policy, the land could only be used in future for a public purpose. It is not necessary to have first made a development application before claiming compensation under this clause.

Example - A planning scheme indicates premises in private ownership are appropriate for residential purposes. If the planning scheme is subsequently amended to include a designation over the premises for public parkland, compensation is not payable under this part (although limitations apply to the duration of the designation, and the owner is also entitled to early acquisition on hardship grounds). However, if instead of, or in addition to a designation described above, the "underlying" residential zoning of the premises in the planning scheme is changed to public parkland, compensation would be payable.

Limitations on compensation under ss 704 and 705

Clause 706 identifies exceptions to the circumstances in which compensation may be paid. These exceptions are:

- If the change to a planning scheme or planning scheme policy has the same effect as another statutory instrument for which compensation is not payable.

  Example - If an environmental protection policy made by the State under the Environmental Protection Act 1994 established standards for the conduct of a particular use or development, and a planning scheme was amended to include those standards, compensation would not be payable, because there is no provision to compensate for the making of the environmental protection policy.

  This subclause also makes it clear that introducing a temporary local planning instrument prior to amending a local planning scheme, does not negate a person's right to compensation under this part in respect of the change to the planning scheme.

- A new paragraph has been inserted which limits the compensation for implementing the proposed standard planning scheme provisions in two situations, as follows:

  — Where the effect of the standard planning scheme provisions and the replaced provisions of the planning scheme are substantially similar, and the reduction in value of the interest in land arises only through differences caused by the adoption of the standard planning scheme provisions. Implementing the standard planning scheme provisions may create differences between current provisions and new provisions caused only by the expression of the new standard planning scheme provisions. Local governments should not be exposed to compensation through being required to adopt the standard planning scheme provisions, if no substantive policy change is intended.

  Example - The standard planning scheme provisions might provide for 6 zones. Local governments may choose to include in their planning scheme 1 or all 6 of the zones, however they must choose from the 6 zones available. The suite of 6 zones in the standard planning scheme provisions may include a medium-residential zone. When preparing a

new planning scheme, a local government may choose to apply the medium-residential zone to a part of its local government area that is, under the planning scheme being replaced, included in a zone that is substantially similar to the medium-residential zone. In this situation, as the local government is simply choosing the zone that is the "best fit", it would not be required to pay compensation, even though there may be some slight differences between the zones.

— Where the standard planning scheme provisions require a local government to include a mandatory provision in its planning scheme, and does not give the local government any choice or discretion about including the provision, or enable the local government to choose an alternative provision.

Example - The standard planning scheme provisions might include a standard code about car parking and state that the code is a mandatory component of planning schemes, such that all local government planning schemes must include the code. If a local government includes the code in its planning scheme, compensation would not be payable, because the local government had no option but to include the car parking code, and was not able to even choose from the standard planning scheme provisions, an alternative standard code about car parking.

- If the change is about the relationships between, location of, or physical characteristics of buildings, works or lots but the "yield" achievable is substantially the same. Subclause (2), clarifies what "substantially the same" means, and "yield" is defined in subclause (5).

- If the change is about a designation made under chapter 5. Compensation for designation of private land takes the form of acquisition under the *Acquisition of Land Act 1967*, or as a result of a claim for acquisition on hardship grounds under clause 222. However, if in addition to or instead of designating land, the planning scheme was changed to reflect the proposed exclusive use of a site for public purposes, then compensation would be payable under clause 705.

- If the change is about the matters comprising a priority infrastructure plan.
- Subclause (g) states that compensation is not payable if the change relates to the matters dealt with in a planning scheme policy prepared under section 6.1.20 of the current IPA. This means a change to a policy that results in a change in the infrastructure contributions payable under the policy (such as an increase in the contributions or contributions being levied for additional infrastructure networks), would not give rise to compensation.
- If the change removes or changes an item of infrastructure shown in the planning scheme. Clause 78 indicates that an intention to provide infrastructure shown in a planning instrument does not create an obligation on the State or a local government to provide the infrastructure. Similarly, this clause provides that the removal of an item of infrastructure shown on a planning scheme does not incur compensation. However, this does not affect other statutory or contractual obligations a local government may have under chapter 8, parts 1 to 3.
- If the change is aimed at ensuring that the wider community is not required to pay the costs of allowing development in locations where there is risk to persons or property from natural processes (such as flooding, land slippage and erosion), or where development would cause serious environmental harm. "Serious environmental harm" is defined in the *Environmental Protection Act 1994.*
- If the change is about any of the matters comprising a structure plan for a declared master planned area.

Subclause (3) notes that compensation is also not payable:

- if compensation has already been paid to a previous owner of the land;
- for anything done in contravention of this Bill; or
- if infrastructure shown in a planning scheme is delayed, not supplied, or supplied to a different standard than that stated in the planning scheme.

Subclause (4) provides that if compensation is payable for a matter under both this Bill and another Act, then the claim for compensation must be made under the other Act.

Compensation for erroneous planning and development certificates

Clause 707 establishes that reasonable compensation may be claimed if a person suffers financial loss because of an error or omission in a planning and development certificate. This person need not be the owner of the subject land as is required for claims for compensation under clauses 704 and 705.

Time limits for claiming compensation

Clause 708 establishes time limits within which claims for compensation must be made in each of the circumstances identified in:

- clause 704(1) - 6 months after a decision on the development application mentioned in clause 704(1)(d) is made;
- clause 704(2) – 6 months after a decision on the request for compliance assessment mentioned in clause 704(2)(d) is made;
- clause 704(3) – 6 months after the request mentioned in clause 704(3)(b) is refused; or
- clause 705 - 2 years from the change taking effect;
- clause 707 - any time after certificate is given.

Time limits for deciding and advising on claims

Clause 709 establishes a time limit of 60 business days for a local government to decide a compensation claim. It also states that the claimant must be advised of this decision within 10 business days after the decision is made.

Deciding claims for compensation

Clause 710 indicates ways in which a claim for compensation may be decided by a local government. A local government must grant all of the claim, grant part of the claim and reject the rest of the claim, or refuse all of the claim.

Examples - A local government may grant part of a claim by agreeing to pay an amount of compensation less than that claimed. Also, if the claim for compensation covers several premises, a local government may grant part of the claim by agreeing to pay compensation for some of the premises only.

If a claim for compensation arose because a planning scheme indicated privately owned premises as being proposed for public purposes (other than

through a designation under chapter 5), a local government may also decide a claim for compensation by giving a notice of intention to resume the land under the *Acquisition of Land Act 1967*, or deciding to amend the scheme so that the land can be used for a purpose other than public purposes.

Calculating reasonable compensation involving changes

Clause 711 establishes criteria for determining the reasonable amount of compensation payable. Compensation is determined by taking as a "starting point" the difference between the market value of the interest in land immediately before the change came into effect and the market value of the interest immediately after the change came into effect. This value is then adjusted having regard to the following criteria:

- Reasonable limitations or conditions that may have applied if the land had been developed under the superseded planning scheme.

  Example - If development of the land in accordance with the superseded planning scheme would have resulted in a visually intrusive building, or a use that generated excessive noise, and a development approval would have been required for the "highest and best use" of the land under the superseded planning scheme, the "before" value of the land should be ascertained taking into account the effect of any reasonable or relevant conditions of development approval.

- The effect on the value of the land of any wider benefits (including improved amenity) resulting from the change to the planning scheme.

  Example - If a site identified in a planning scheme for industrial purposes is changed to conform with surrounding residential development, the value of all properties in the locality may be expected to be positively affected, and this effect should be taken into account when determining the difference in value on the land subject to the claim.

- The positive effect of the change to the planning scheme on any interest in land the claimant owns adjacent to the land subject to the claim.

- The effect of any other changes made to the planning scheme since the change, but before the request was made under chapter 3, part 2, division 5. Changes made to the planning scheme after the development application or request for compliance assessment is

made are not intended to be a consideration, as it is not intended that the local government should be able to address a claim for compensation (other than one arising from the indication of land as being required for a public purpose) by restoring previous entitlements.

Example - The height limit applicable to premises is changed to a degree that significantly reduces the value of the premises. Twelve months later, other changes are made to "good neighbour" provisions of the planning scheme in the vicinity of the premises that afford greater protection to views obtained from the site, or reduce other adverse impacts on amenity. The effect of these later changes must be taken into account in deciding the difference in market value of the land, and may reduce the difference. Conversely, if the adverse effect of the height limit on the value of the premises was later worsened by other changes to the planning scheme in the vicinity of the premises the difference may be increased.

- The effect of any part approval of a development application or request for compliance assessment made and assessed under the new planning scheme and on which the claim for compensation is based.

Subclause (2) makes it clear that if the premises (for which a compensation claim is made) has become separate from other land, or ceased to be separate from other land, the amount of compensation payable must not be increased simply because the land has become, or ceased to be, separate from the land.

Subclause (3) clarifies that the effect of any temporary local planning instrument should be disregarded in calculating the "before" value for compensation purposes. This is because a temporary local planning instrument establishes a "holding pattern" prior to any substantive change to a planning scheme and is not in itself a change to a planning scheme.

When compensation is payable

Clause 712 requires that if a local government decides to pay compensation, the compensation must be paid within 30 business days after the last day an appeal could have been made, or if an appeal is made, within 30 business days after the day the appeal is decided or withdrawn.

Payment of compensation to be recorded on title

Clause 713 requires notice of payment of compensation to be recorded on title.

Part 4 Power to purchase, take or enter land for planning purposes

Local government may take or purchase land

Clause 714 makes it clear that, in certain circumstances, a local government (with the approval of the Governor in Council) may take or purchase land.

Subclause (1)(a) has been changed to delete the reference to "desired environmental outcomes" and replaced with a reference to "strategic outcomes". Under the standard planning scheme provisions, local government planning schemes will be required to include strategic outcomes rather than desired environmental outcomes.

Subclause (1)(b)(i) is intended to facilitate the purchase or taking of land for downstream drainage purposes by a local government if an applicant for a development approval or master plan approval, or a person requesting compliance assessment has been unsuccessful in negotiating appropriate drainage arrangements with downstream owners. It is not the intention that only land which is the subject of the application or request can be so acquired, since this would be too limiting; rather it is the intention that this provision applies to land generally.

Power of assessment manager or other entity to enter land in particular circumstances

Clause 715 provides for the assessment manager (or its agent), or a relevant entity for a request for compliance assessment (or its agent) to enter land to undertake works if the entity is satisfied that the applicant or person who requested compliance assessment has tried to obtain the agreement of the owner, but has been unsuccessful, and that this is necessary to implement the development approval or compliance permit.

Compensation for loss or damage

Clause 716 provides that any person who suffers a loss as a result of the assessment manager exercising powers under clause 715, is entitled to be paid reasonable compensation. This clause sets out the time limits applicable to this compensation.

Part 5 Public housing

Application of pt 5

Clause 717 states that this part applies to development for public housing. The term "public housing" is defined in the dictionary.

Definition for pt 5

Clause 718 defines the term ***chief executive*** for this part.

How IDAS applies to development under pt 5

Clause 719 states that development under this part is, to the extent the development is self-assessable development, development requiring compliance assessment or assessable development under a planning scheme or a temporary local planning instrument, exempt development. This exemption is justified on the basis of the benefits to the community of providing public housing as efficiently and cost-effectively as possible. However, despite the fact that it is exempt under the planning scheme or a temporary local planning instrument, if development is assessable development, development requiring compliance assessment or self-assessable under a regulation under clause 232, the provisions of the regulation still apply.

How charges for infrastructure apply for development under pt 5

Clause 720 is designed to create consistency between development under this part for public housing, and community infrastructure under chapter 5, with respect to payment of charges for infrastructure. This clause makes it clear that the State is not required to pay any charge for infrastructure for public housing development.

Chief executive must publicly notify particular proposed development

Clause 721 requires the chief executive to publicly notify a proposed development if it is substantially inconsistent with the planning scheme. The chief executive must give the local government information about the proposal, and must also publicly notify the proposed development. The public notification requirements are varied so that the form of the notice to be used for the public notification is the form approved by the chief executive.

The clause also states that the chief executive must have regard to any submissions received following the notification, before deciding whether or not to proceed with the proposed development.

Chief executive must advise local government about all development

Clause 722 provides for the chief executive to give the local government information about proposed development to which clause 721 does not apply. This information, including the plans or specifications, must be given before starting the development. This ensures local governments have prior knowledge of all of the development.

Part 6 Public access to planning and development information

The Bill includes arrangements to transition a full range of documents and approvals to the new system. Chapter 9, part 6 and chapter 10, part 2 (Transitional provisions) reflect the need to have available not only documents under the Bill, but relevant documents under the current IPA, and any relevant documents or approvals under preceding legislation (such as the *Local Government (Planning and Environment) Act 1990* and the *Local Government Act 1936*).

Division 1 Preliminary

Meaning of *available for inspection and purchase*

Clause 723 gives the meaning of the term "available for inspection and purchase". A document is available for inspection and purchase if:

- whoever holds the document (a local government, an assessment manager, a referral agency, a compliance assessor or the chief executive), holds it in their respective office and any other place each has determined;
- the document is available for inspection free of charge during business hours; and

- the document is available for purchase in whole or in part. A fee may be charged to cover the costs of making it available and, if relevant, the costs of postage.

It is noted in this clause that the Commonwealth *Copyright Act 1968* overrides this Bill and may limit the copying of material subject to copyright.

Division 2 Documents available for inspection and purchase or inspection only

Subdivision 1 Requirements for local governments

Documents local government must keep available for inspection and purchase - general

Clause 724 requires local governments to keep available for inspection and purchase certain documents in their original forms or as certified copies. Such documents then are deemed to be public documents available for public scrutiny at all times. ***Certified copy*** is defined in the dictionary in schedule 3.

Subclause (1) lists the documents the local government must keep available for inspection and purchase.

Subclause (2) permits local governments to keep documents mentioned in subclause (1) in hardcopy or electronic form in one or more registers kept for the purpose.

Subclause (3) details the matters an infrastructure charges register or regulated infrastructure charges register must state. This includes details of charges paid, charges outstanding and, if infrastructure was supplied instead of paying all or part of a charge, any infrastructure still to be supplied. This is to ensure details of any outstanding charges for premises are publicly available.

Subclause (4) sets out additional requirements for the infrastructure charges register, namely that it must include:

- the current charge rate for each charge levied, i.e. the charge rate stated in the infrastructure charges schedule;

- if the charge rate has been adjusted for inflation, details of how it was adjusted and the adjusted charge rate.

Subclause (5) provides that a local government does not have to make the documents available under certain circumstances. The circumstances include matters about the security of information in the documentation and if there are any issues of privacy contained within them. A local government only has to be reasonably satisfied that either of these circumstances is present for it to choose to not make the documents available.

Subclause (8) clarifies the type of copy of a document that a local government must keep available for inspection or purchase. The term "designated type of copy" specifies that a copy of a document for specific matters must be certified or it may otherwise be an ordinary copy.

Documents local government must keep available for inspection and purchase – master plan applications

Clause 725 provides that, in relation to a master plan application, the local government must keep various documents available for inspection and purchase. It sets out the period that these documents must be kept. However this clause exempts those documents which, in the local government's opinion, contain sensitive security information.

Documents local government must keep available for inspection and purchase – compliance assessment

Clause 726 provides for the documents related to compliance assessment that a local government must keep available for inspection and purchase. As for other forms of document, subclause (3) provides for a local government to withhold information it considers contains sensitive security information.

Documents local government must keep available for inspection only

Clause 727 states that a local government must keep available for inspection only an official copy of this Act, the *Building Act 1975* and every current regulation made under these Acts, the Building Code of Australia, and a register of master plan applications.

Subdivision 2 Requirements for assessment managers

Documents assessment manager must keep available for inspection and purchase – development application

Clause 728 reflects the substance of section 3.2.8 of the current IPA and establishes requirements for keeping material related to "live" development applications open for inspection and purchase.

Documents assessment manager must keep available for inspection and purchase - general

Clause 729 lists the documents an assessment manager must keep available for inspection and purchase in their original forms or as certified copies. They include documents concerned with how development applications have been dealt with, including the role of the Minister; copies of all deemed approval notices; each agreement about a condition of approval to which the assessment manager or a concurrence agency is a party, and other documents concerned with enforcement by the assessment manager as an assessing authority.

Subclause (3) provides that if the assessment manager maintains a web site, the assessment manager must publish all decision notices, negotiated decision notices, and all deemed approval notices on the website.

Subclause (4) provides that subclause (3) does not apply for decisions given by private certifiers.

Documents assessment manager must keep available for inspection only

Clause 730 states that an assessment manager must keep available for inspection only an official copy of this Act and every current regulation. This clause also requires that the assessment manager keep available, for inspection only, a register of all concluded development applications. However, subclause (2) makes it clear that the assessment manager need only keep copies of development applications once the decision notice for the application has been given, or was required to be given, or the application lapses or is withdrawn. This ensures that deemed approvals are also included in the assessment manager's register, even though a decision notice is not given. The information required to be recorded for each application is specified, however further information may be specified in a

regulation. This relates to where it applies (the property description of the premises), what it is about (the type of development applied for), what other parties were involved (referral agencies), how the application was concluded (withdrawn, lapsed or decided), details about the decision (when it was made, what it was, whether it was a deemed approval, whether there were concurrence agency conditions), and any changes to the decision by way of representations (negotiated decision notice under clause 363), permissible change, or appeal.

Subclause (4) makes it clear that the register can be in a hard copy or in an electronic form.

Subclause (5) gives the chief executive the ability to request that the assessment manager give to the chief executive a copy of the information contained in the register. Subclause (6) requires the assessment manager to comply with the request.

Subdivision 3 Requirements for referral agencies

Documents referral agency must keep available for inspection only

Clause 731 states that a referral agency must keep available for inspection only a register of all development applications referred to the referral agency. The register must include some basic information about the application, and whether the referral agency gave a referral agency's response about the application. Further requirements may be specified in a regulation.

Subclause (5) gives the chief executive the ability to request that the referral agency give to the chief executive a copy of the information contained in the register. Subclause (6) requires the referral agency to comply with the request.

Subdivision 4 Requirements for chief executive

Documents chief executive must keep available for inspection and purchase

Clause 732 lists the documents the chief executive must keep available for inspection and purchase in their original forms or as certified copies. These

include State planning instruments, Ministerial directions and development application call-ins. This clause also lists a number of other documents.

Subclause (2) confirms documents kept by the chief executive may be kept in either electronic or hard copy form.

Subclause (3) clarifies that the chief executive must not charge a fee for a copy of the Queensland development code.

Documents chief executive must keep available for inspection only

Clause 733 states that the chief executive must keep available for inspection only - an official copy of this Act and every current regulation, and all current local planning instruments.

Subdivision 5 Requirements for compliance assessors

Documents compliance assessor must keep available for inspection and purchase

Clause 734 establishes the documents compliance assessors are required to keep available for inspection and purchase.

Subclause (2) provides for the documents to be kept in electronic or hard copy form.

Subclause (3) provides for the compliance assessor to withhold certain information such as information of a sensitive security nature.

Subclause (4) establishes time limits for keeping the information identified in subclause (1).

Documents compliance assessor must keep available for inspection only

Clause 735 requires compliance assessors to keep available for inspection a register of all requests for compliance assessment, including information about how these requests were resolved.

Subclause (2) provides that information is not required to be entered onto the register until the relevant request for compliance assessment has been finalised.

Subclause (3) provides for the information to be recorded in the register in respect of each request for compliance assessment.

Subclause (4) provides for the register to be in electronic or hard copy form.

Division 3 Local governments to publish particular information about development applications

Publishing particular information about development application

Clause 736 requires local governments to publish a list of all current development applications received by the local government as assessment manager on the local government's website. The list should contain the following details:

- the date the application was made;
- name and address of the applicant;
- the land to which the application relates;
- a description of the proposed development;
- the level of assessment; and
- whether public notification of the application is required.

An application must remain on the list from the time the local government, as assessment manager, receives the application until:

- the application is withdrawn or lapses; or
- otherwise - the end of the last period during which an appeal may be made against a decision on the application.

Information does not have to be included on the list if it involves sensitive security information.

Division 4 Planning and development certificates

Application for planning and development certificate

Clause 737 states that a person may apply to a local government for one of three types of planning and development certificate (limited, standard or full). What each contains is prescribed by the clauses that follow. An application must be accompanied by the fee set by resolution of the local government. The purpose of the certificate is to provide information applicable to specific premises on planning scheme provisions, infrastructure charges or agreements, and development approvals.

Limited planning and development certificates

Clause 738 states the information that must be contained in a limited planning and development certificate. Its purpose is to identify what general planning information applies to a specific site. This is in terms of the planning scheme provisions, designations for community infrastructure, any infrastructure charges schedule or regulated infrastructure charges schedule, or any State planning regulatory provisions that apply. In some circumstances, the description of relevant planning scheme provisions may be quite detailed depending on how localised planning policy is over the subject area.

Standard planning and development certificates

Clause 739 states what must be contained in, or accompany a standard planning and development certificate in addition to that contained in the limited certificate. This additional information covers:

- current development approvals (every decision notice or negotiated decision notice given under the Bill or the current IPA, details of any changes to the approval, any judgement or order of the court or a building and development committee about the approval, any agreement to which the local government or a concurrence agency is a party about a condition of the approval);
- all deemed approval notices which have not lapsed;
- continuing approvals mentioned in section 6.1.23(1)(a) to (d) of the current IPA;

- current compliance permits or compliance certificates, including details of any changes to the permit or certificate and any judgement or order of the court or a building and development committee about a compliance permit or compliance certificate;
- each master plan applying to the premises, including copies of decision notices or negotiated decision notices about a master plan application, and a copy of any judgement or order of the court or a building and development committee about a master plan;
- any information recorded for the premises in the infrastructure charges register or a regulated infrastructure charges register;
- infrastructure agreements to which the local government is a party;
- proposed planning scheme amendments which are proceeding.

Full planning and development certificates

Clause 740 states what must be contained in or accompany a full planning and development certificate in addition to that contained in a limited and standard certificate. This additional information covers (if applicable to the premises in question) the current status of matters concerning:

- fulfilment or non-fulfilment of conditions of a development approval or compliance permit;
- fulfilment or non-fulfilment of conditions in a master plan;
- fulfilment of obligations under an infrastructure agreement;
- giving of or required payment of security under an infrastructure agreement;
- advice of any prosecution for a development offence;
- advice of any proceedings for a development offence.

The clause also states that the applicant may request that the full certificate only contain this additional information.

Time within which planning and development certificate must be given

Clause 741 states the time within which each type of planning and development certificate must be given after the day it was applied for.

Effect of planning and development certificate

Clause 742 states that in a proceeding, a planning and development certificate is evidence of the information contained in the certificate. This

statement clarifies the status of planning and development certificates and recognises a potential function as the basis of private planning and development decisions which may later be a matter in a proceeding.

Part 7 Notification stage for particular aquaculture development

This part includes a modified notification process for certain aquaculture development in the Great Barrier Reef marine park (special GBRMP aquaculture development) replacing the notification stage of IDAS.

The statutory notification process for GBRMP development involves public notification requirements and extended appeal rights equivalent to the sum of the requirements previously imposed under State and Commonwealth law. These provisions reflect an agreement between the State and Commonwealth governments and stakeholders necessary to enable accreditation of the assessment process under Queensland law pursuant to regulation 5 of the *Great Barrier Reef Marine Park (Aquaculture) Regulation 2000 (Cth)* (GBRMP regulation).

Division 1 Preliminary

Purpose of notification stage under pt 7

Clause 743 explains that the purpose of the part is to provide expanded community involvement in the assessment of aspects of special GBRMP aquaculture development relating to water quality discharge by conferring:

- A right to make submissions regarding aspects of the approval that must be taken into account by assessors with the appropriate jurisdiction.
- A right to appeal the outcome of assessment relating to that jurisdiction to the planning and environment court. Under IDAS, public notification and third party appeal rights are only available for impact assessable development. This clause ensures that certain aquaculture development decisions relating to waste water quality

made by the State are both notifiable and subject to appeal rights regardless of the level of assessment.

When notification stage under pt 7 applies

Clause 744 provides for the scope of the development that will fall within the ambit of the modified notification requirements. The provision is intended to apply to special GBRMP development for which the chief executive (fisheries) is the assessment manager or a concurrence agency, and the chief executive (environment) is a concurrence agency and that is:

- proposed within a specified zone area adjacent to the land side boundary of the Great Barrier Reef Marine Park; and
- a larvae hatchery or is for another aquaculture purpose in ponds with a total surface area of more than 5 hectares.

As the purpose of this part is to facilitate and encourage the community's involvement in the assessment of special GBRMP developments that would otherwise not occur, if an environmental impact statement (EIS) has been prepared for the development under part 2, this objective will have already been met. For this reason, a special GBRMP aquaculture development that has already been subject to the EIS process does not require notification under part 7. Similarly, if a preliminary approval for the development was issued under IDAS that included the modified notification process before the decision stage, the subsequent development permit does not have to be re-notified before consideration or decision.

When can notification stage start

Clause 745 provides that the applicant may commence public notification after the completion of the information stage under IDAS.

Division 2 Public notification

Public notice of proposed development

Clause 746 sets out how the applicant or the assessment manager on the applicant's behalf must notify the public of the proposed special GBRMP aquaculture development. The provision adopts the same requirements as are applicable to the notification stage for impact assessable development under clause 297 in chapter 6, part 4.

Notification period for development applications

Clause 747 provides that, under the modified notification stage, the period for which applications for special GBRMP aquaculture development must be notified is different to general rules for IDAS. The purpose of requiring a notification period of at least 30 business days, as opposed to 15 business days, is to reflect existing Commonwealth requirements under the GBRMP Regulation.

Requirements for particular notices

Clause 748 provides that the requirements for the notice that must remain on land under the modified notification process for special GBRMP aquaculture development are consistent with those under the notification stage generally.

Notice of compliance to be given to assessment manager and concurrence agency

Clause 749 provides that the post-notification requirements for an applicant correspond with the equivalent in chapter 6. However, the provision additionally requires:

- Notice that the applicant has complied with the notification obligations to be given to the chief executive administering the *Fisheries Act 1994* and the chief executive administering the *Environmental Protection Act 1994*, as well as the assessment manager.
- If it is the assessment manager contracted by the applicant to discharge notification requirements, that the assessment manager must give the notices in the way required by the clause. This ensures the chief executives can confirm compliance with the modified notification stage as soon as possible.

Assessment manager may assess and decide application if some requirements not complied with

Clause 750 corresponds with the equivalent clause (clause 304) in chapter 6, in so far as it allows an assessment manager to continue to assess and decide an application for special GBRMP aquaculture development despite non-compliance with the requirements of the notification stage. However, the assessment manager must be satisfied that this non-compliance has not adversely affected the public's awareness of the application or restricted the public's opportunity to make properly made submissions. Further, the assessment manager must have the written agreement of the chief executive

(fisheries) and the chief executive (environment) if the assessment manager proposes to continue to assess and decide an application despite non-compliance with the requirements of the notification stage.

Making submissions

Clause 751 is an important provision as it establishes the requirements for persons interested in making a submission about an application for special GBRMP aquaculture development. It differs from its counterpart in chapter 6 in that:

- it does not apply to submissions that are not properly made (which under clause 304 could nevertheless be accepted); and
- it expressly obliges the assessment manager to forward submissions, within 5 days after the time for notification ends, to the chief executive (fisheries) and the chief executive (environment), who will then undertake concurrence assessment.

Submissions made during notification period effective for later notification period

Clause 752 plays the same role for the modified notification stage as clause 306 for the notification stage of IDAS under chapter 6. It ensures that, if the notification stage is repeated for any reason, valid submissions made under the first notification round must be taken into account during the later notification.

Division 3 End of notification stage

When does notification stage end

Clause 753 provides for the modified notification stage to end at the same time as clause 307 under IDAS generally – that is, when either the applicant notifies the assessment manager and concurrence agencies in writing that the stage's requirements have been met or, if the assessment manager carries out notification on the applicant's behalf, when the assessment manager provides the notice to the concurrence agencies.

Division 4 Changed referral agency provisions for applications to which this part applies

Referral agency must not respond before notification stage ends

Clause 754 ensures that the chief executive (fisheries) and the chief executive (environment) do not send the assessment manager a concurrence agency's response for special GBRMP aquaculture development until after the modified notification stage for these applications has concluded. This ensures that all properly made submissions are taken into account by the chief executives when discharging their roles as concurrence agencies.

Adjusted referral agency's assessment period

Clause 755 modifies the general rule for when the concurrence agency's referral period starts in the IDAS decision stage under chapter 6.

Part 8 General

Giving electronic submissions

Clause 756 enables a submitter in respect of public notification given under this Bill to make an electronic submission if the notice calling for submissions states that submissions may be made electronically. For example, if the gazette and newspaper notice for a State planning instrument states that written submissions may be given by email to a particular email address, the submission may be made by email. The purpose of this provision is to make it clear that local governments and the Minister can accept submissions made via email, if this is acceptable to the local government or the Minister.

Application of Judicial Review Act 1991

Clause 757 provides that the *Judicial Review Act 1991* does not apply to decision making under the Bill, and in particular, that the supreme court does not have jurisdiction to hear and determine applications made to it under part 3 or 5 of the *Judicial Review Act 1991* (dealing with statutory orders of review, and prerogative orders and injunctions respectively).

However, subclause (2) makes it clear that a person may apply under part 4 of the *Judicial Review Act 1991* for a statement of reasons in relation to a decision made under the Bill.

The Bill provides broad appeal rights for administrative decision making under IDAS, and comprehensive declaratory powers in respect of other administrative decisions under the Bill. Both appeals and declaratory proceedings are brought in the planning and environment court. There are also rights to appeal to and seek declarations in the building and development committee.

These comprehensive appeal, declarations and orders powers are, for the matters they cover, intended to provide a complete alternative to judicial review under the *Judicial Review Act 1991*. The planning and environment court is a specialist jurisdiction with expertise in planning and development assessment matters, and can consequently deal with declaratory proceedings concerning these matters more efficiently than the supreme court could deal with them under the *Judicial Review Act 1991*, without sacrificing the quality of decision making.

Section 12 of the *Judicial Review Act 1991* provides that the supreme court may dismiss an application for judicial review if another law makes adequate provision for a review of the matter. This clause effectively confirms that this Bill does provide an appropriate alternative avenue of review, thereby removing confusion, and preventing applicants making costly, time consuming and unsuccessful applications under the *Judicial Review Act 1991*. This clause does not curtail the rights of persons to have administrative decisions reviewed judicially. In fact, by expanding the declaratory jurisdiction of the planning and environment court, persons seeking a review of administrative decisions under the Bill have been given greater access to a cost effective, specialist jurisdiction.

References to Planning and Environment Court and judge of the court in other Act

Clause 758 states that references in another Act to the planning and environment court or a judge of that court are references to such entities, as the case may be, if the context permits.

Minister may make guidelines

Clause 759 is a new provision enabling the Minister to make guidelines about a range of matters.

Subclause (2) requires the Minister to consult appropriate persons or entities.

Subclause (3) requires the Minister to notify the making of the guideline in the gazette.

Subclause (4) provides this clause does not limit other clauses in the Bill concerned with making guidelines.

Chief executive may make guidelines

Clause 760 provides for the chief executive to make guidelines about specified matters.

Subclause (2) requires the chief executive to consult about the making of the guideline.

Subclause (3) requires the chief executive to notify the making of the guideline in the gazette.

Delegation by Ministers

Clause 761 allows the Minister, the regional planning Minister, an eligible Minister acting under chapter 2, and the Minister administering the *State Development and Public Works Organisation Act 1971* the discretion to delegate any power or function (including the forming of an opinion), which each Minister has under the Bill, to an appropriately qualified officer of the public service.

Approved forms

Clause 762 allows for the chief executive to approve forms for use under this Bill.

Regulation-making power

Clause 763 states that the Governor in Council may make regulations under this Bill.

Chapter 10 Repeal and transitional provisions

This chapter repeals the *Integrated Planning Act 1997* and contains transitional arrangements in relation to this Bill.

Part 1 Repeal provision

Act repealed

Clause 764 repeals the *Integrated Planning Act 1997*.

Part 2 Transitional provisions

Division 1 Preliminary

Definitions for part 2

Clause 765 contains definitions for the transitional provisions.

Division 2 Provisions for State planning instruments

Continuing effect of State planning regulatory provisions

Clause 766 provides that State planning regulatory provisions in effect under the *Integrated Planning Act 1997* immediately before the commencement continue to have effect and are taken to be State planning regulatory provisions under this Bill.

Making or amending State planning regulatory provisions under repealed IPA

Clause 767 provides the Minister may continue to make or amend a State planning regulatory provision as if this Bill had not commenced, if the Minister had started but not completed the making or amendment process before the commencement. Any resulting State planning regulatory provision or amendment is taken to be a State planning regulatory provision or amendment made under this Bill.

Continuing effect of regional plans

Clause 768 provides that regional plans in effect under the *Integrated Planning Act 1997* immediately before the commencement continue to have effect and are taken to be regional plans under this Bill.

Making or amending regional plans under repealed IPA

Clause 769 provides the regional planning Minister for a designated region may continue to make or amend a regional plan as if this Bill had not commenced, if the regional planning Minister had started but not completed the making or amendment process before the commencement. Any resulting regional plan or amendment is taken to be a regional plan or amendment made under this Bill.

Continuing effect of particular directions and notices

Clause 770 preserves the effect of notices given to local governments by a regional planning Minister for a designated region, concerning the amendment of planning schemes to reflect regional plans. These notices continue to have effect and are taken to be a written extension under the equivalent provisions of the Bill.

The requirement under the *Integrated Planning Act 1997* for a local government to amend its planning scheme to reflect a regional plan applies to a regional plan made before the commencement of the Bill. However the process used will be the process specified in the Bill.

Continuation of regional planning advisory committees

Clause 771 states existing regional planning advisory committees under the *Integrated Planning Act 1997* become regional planning committees under this Bill. Subclause (2) preserves the membership, name and terms of reference of an existing regional planning advisory committee. The transitioned regional planning committee will be taken to be established for

the same area for which the regional planning advisory committee was established.

Continuation of regional coordination committees

Clause 772 states existing regional coordination committees under the *Integrated Planning Act 1997* become regional planning committees under this Bill.

Continuing effect of particular State planning policies

Clause 773 applies to a State planning policy in effect under the *Integrated Planning Act 1997* immediately before the commencement, other than a State planning policy having effect for less than one year. Subclause (2) provides that the State planning policy continues to have effect and is taken to be State planning policy under this Bill.

Subclause (3) states a State planning policy preserved under this clause is taken to have had effect on the day it took effect under the *Integrated Planning Act 1997*. This is to facilitate determination of the time the State planning policy expires under clause 45 of this Bill.

Subclause (4) provides that a State planning policy in effect for more than 10 years before the commencement has effect for a further 3 years after the commencement.

Continuing effect of State planning policy having effect for less than 1 year

Clause 774 provides that a State planning policy with effect for less than 1 year made under the *Integrated Planning Act 1997* and in effect immediately before the commencement continues to have effect as a temporary State planning policy under this Bill.

Subclause (3) provides that, for determining the expiry of the transitioned temporary State planning policy under this clause, the policy is taken to have been made on the day it had effect under the *Integrated Planning Act 1997*.

Clause 49 of the Bill applies to a transitioned temporary State planning policy as if that clause applied when the policy was made under the *Integrated Planning Act 1997* (i.e. the transitioned temporary State planning policy will expire 12 months from the day it was made under the *Integrated Planning Act 1997*, or the lesser period stated in the policy).

Making or amending State planning policies under repealed IPA

Clause 775 provides the Minister may continue to make or amend a State planning policy as if this Bill had not commenced, if the Minister had started but not completed the making or amendment process before the commencement. Any resulting State planning policy is taken to be a State planning policy or amendment made under this Bill. If the resulting State planning policy was to have effect for less than 1 year, then it is taken to be a temporary State planning policy made under this Bill.

Notification requirements do not apply for making particular State planning instruments

Clause 776 provides that clauses 60 and 63(1) do not apply to the making of a State planning instrument made within a specified timeframe if the Minister is satisfied that the State planning instrument substantially reflects an existing code, law or policy and adequate public consultation was carried out in relation to the making of the code, law or policy (unless the existing code, law or policy is an Act or a regulation made under an Act).

It is intended that in future, all State interests will be expressed in a State planning instrument, rather than in other "codes, laws and policies". Therefore, the purpose of this clause is to provide a more streamlined process for achieving this.

Where the proposed State planning instrument is simply a re-make (without change) of an existing code, law or policy, public consultation is not required in relation to the proposed State planning instrument, provided the existing code, law or policy was either in an Act or a regulation, or adequate public consultation was carried out in relation to it, such that it is not necessary for public consultation to be repeated.

This clause allows for this streamlined process to be used for a period of two years after the commencement. However, the Minister can, by gazette notice, nominate a later day, up to a maximum of 4 years.

Division 3 Provisions for local planning instruments

Relationship between standard planning scheme provisions and particular instruments

Clause 777 sets out the relationship between the standard planning scheme provisions, local planning instruments, structure plans and master plans.

Subclause (2) provides that clauses 53 and 55 do not apply to local planning instruments in effect or in the process of being made immediately before the commencement. That is, the standard planning scheme provisions do not prevail over these local planning instruments and the local planning instruments do not have to be amended to reflect the standard planning scheme provisions.

Subclause (3) provides that the requirements in clauses 88(1)(a) and 141(1)(c) do not apply to a planning scheme or an amendment of a planning scheme (including an amendment to include a structure plan) in effect or in the process of being made immediately before the commencement.

Subclause (4) provides that an existing planning scheme or a planning scheme in the process of being made immediately before the commencement, can only be amended to include prohibited development if the standard planning scheme provisions state the development may be prohibited development.

Subclause (5) provides that the requirement in clause 155(1)(b) does not apply to a master plan made under a structure plan that is included in a planning scheme in effect or in the process of being made immediately before the commencement.

Subclause (6) provides that a structure plan included in an existing planning scheme or a planning scheme in the process of being made immediately before the commencement, can only state that development is prohibited development if the standard planning scheme provisions state the development may be prohibited development.

Subclause (7) provides that the requirement in clause 105(d) does not apply to a temporary local planning instrument made in respect of a planning scheme in effect or in the process of being made immediately before the commencement.

Subclause (8) provides that a temporary local planning instrument mentioned in subsection (7) may state that development is prohibited development only if the standard planning scheme provisions state the development may be prohibited development.

These subclauses have the effect that:

- the standard planning scheme provisions do not prevail over a transitioned local planning instrument, despite any inconsistency;
- local governments are not required to ensure that the transitioned local planning instrument or any future amendment of the transitioned local planning instrument (including an amendment to include a structure plan), is consistent with the standard planning scheme provisions;
- a master plan made under a structure plan that is included in a planning scheme in effect or in the process of being made immediately before the commencement, is not required to reflect the standard planning scheme provisions;
- the fact that a transitioned local planning instrument does not reflect the standard planning scheme provisions does not affect the validity of the instrument.

In summary, the purpose of all of these provisions is to ensure that any requirements in relation to reflecting the standard planning scheme provisions do not take effect until a local government prepares a planning scheme under the Bill.

For particular provisions about the relationship between the standard planning scheme provisions and a structure plan being made immediately before the commencement, see clause 792.

Continuing effect of planning schemes

Clause 778 provides that planning schemes in effect immediately before the commencement continue to have effect and are taken to be planning schemes under this Bill.

Subclause (2) confirms that if a local government had more than one planning scheme in effect before the commencement, each planning scheme continues to have effect in the way provided for under this clause.

Subclause (3) clarifies that the transitioned planning scheme is taken to have effect on the day it had effect under the *Integrated Planning Act 1997*.

Subclauses (4) and (5) provide for desired environmental outcomes under an existing planning scheme to be taken to be strategic outcomes under this Bill.

Making or amending planning schemes under repealed IPA

Clause 779 provides for a planning scheme or amendment under preparation at the time of commencement to continue to be prepared and

made as if this Bill had not commenced, and for the resulting planning scheme or amendment to be taken to be a planning scheme or amendment under this Bill. Any mention in the planning scheme of desired environmental outcomes is taken to be the strategic outcomes for the planning scheme area.

Continuing superseded planning schemes

Clause 780 provides that a superseded planning scheme under the *Integrated Planning Act 1997* immediately before the commencement continues to be a superseded planning scheme under this Bill.

Reviewing planning schemes and priority infrastructure plans

Clause 781 provides for a review of a planning scheme or priority infrastructure plan underway at the commencement to be completed as if this Bill had not commenced, but for any resulting amendment or making of a new planning scheme to be carried out under this Bill.

Continuing effect of temporary local planning instruments

Clause 782 provides that temporary local planning instruments in effect immediately before the commencement continue to have effect and are taken to be temporary local planning instruments under this Bill. The expiry of a temporary local planning instrument to which this clause applies is to be determined with reference to the date it took effect under the *Integrated Planning Act 1997*.

Making temporary local planning instruments under repealed IPA

Clause 783 provides for a temporary local planning instrument under preparation at the time of commencement to continue to be prepared and made as if this Bill had not commenced, and for the resulting instrument to be taken to be a temporary local planning instrument under this Bill.

Subclause (2) provides clause 105(d), which states matters the Minister must be satisfied that the temporary local planning instrument reflects the standard planning scheme provisions, does not apply to a temporary local planning instrument under this clause. However, section 2.1.13 of the *Integrated Planning Act 1997* continues to apply.

Repealing particular temporary local planning instruments

Clause 784 provides for a repeal of a temporary local planning instrument commenced under the *Integrated Planning Act 1997* to be completed as if this Bill had not commenced, but for the repeal to have effect as if it were made under this Bill.

Subclauses (3) and (4) apply to an existing temporary local planning instrument or a temporary local planning instrument in the process of being made prior to the commencement. If the Minister directed the making of the temporary local planning instrument, or actually made the temporary local planning instrument, the temporary local planning instrument cannot be repealed under the Bill without the Minister's approval. This transitional provision preserves the effect of section 2.1.15(2) of the *Integrated Planning Act 1997.*

Continuing effect of planning scheme policies

Clause 785 provides that planning scheme policies in effect immediately before the commencement continue to have effect and are taken to be planning scheme policies under this Bill. This clause also makes it clear that a planning scheme policy about infrastructure made under section 6.1.20 of the *Integrated Planning Act 1997* cannot be amended, once the Bill commences.

Making or amending planning scheme policies under repealed IPA

Clause 786 provides for a planning scheme policy or amendment being made at the time of commencement to continue to be made as if this Bill had not commenced, and for the resulting planning scheme policy or amendment to be taken to be a planning scheme policy or amendment under this Bill.

The only exception to this is planning scheme policies for infrastructure under section 6.1.20 of the *Integrated Planning Act 1997*. If a planning scheme policy or amendment under section 6.1.20 of the *Integrated Planning Act 1997* is proposed but has not been made by the time the Bill commences, it will lapse once the Bill commences.

Repealing particular planning scheme policies

Clause 787 provides for the repeal of a planning scheme policy underway at the time of commencement to continue as if this Bill had not commenced, and for the resulting repeal to be taken to have occurred under this Bill.

Particular notices and directions under repealed IPA

Clause 788 provides for actions under the Ministerial directions powers for local planning instruments under chapter 2, part 3 of the *Integrated Planning Act 1997* to be completed as actions under this Bill.

Division 4 Provisions for planning partnerships

Master planned areas

Clause 789: Subclause (1) provides that an area identified as or taken to be a master planned area under the *Integrated Planning Act 1997* is taken to be a master planned area under the Bill.

Subclause (2) provides that a master planned area declaration made under the *Integrated Planning Act 1997* is taken to be a master planned area declaration under the Bill.

Subclauses (3) and (4) provide for the continuation of the structure planning processes for existing declared master planned areas to be continued under this Bill, using steps equivalent to the process under schedule 1A of the *Integrated Planning Act 1997*, if the process had not been started prior to the commencement.

Structure plans

Clause 790 provides that structure plans in effect immediately before the commencement continue to have effect and are taken to be a structure plans under this Bill.

Subclause (2) states desired environmental outcomes for structure plans under the *Integrated Planning Act 1997* are taken to be strategic outcomes for this Bill.

Making structure plan under repealed IPA

Clause 791 provides that the process for making a structure plan underway at the commencement may continue as if this Bill had not commenced. Any resulting structure plan is taken to be a structure plan under this Bill.

A structure plan under this clause need not reflect the standard planning scheme provisions. However, the structure plan may only state that development is prohibited development if the standard planning scheme provisions state the development may be prohibited development.

Any desired environmental outcomes for the structure plan are taken to be strategic outcomes for the master planned area.

Application of s 149 to particular structure plans

Clause 792: Clause 149 of the Bill enables the Minister to approve the inclusion of a structure plan made in accordance with the relevant statutory

guideline in a new planning scheme if the existing planning scheme ceases to have effect. This clause ensures that a structure plan made in accordance with schedule 1A of the *Integrated Planning Act 1997*, either before the commencement or under these transitional provisions, can also be included in a new planning scheme, as per existing section 2.5B.11 of the *Integrated Planning Act 1997*.

Master plans

Clause 793 provides that master plans in effect under the *Integrated Planning Act 1997* immediately before the commencement continue to have effect and are taken to be master plans under this Bill.

Applications for approval or amendment of master plans under repealed IPA

Clause 794 provides that an undecided application for approval of a master plan or to amend a master plan may continue to be decided as if this Bill had not commenced, and that once approved, the master plan is taken to have been made under this Bill.

The master plan or amendment is not required to reflect the standard planning scheme provisions.

Subclauses (5) and (6) confirm that coordinating agencies, participating agencies and local governments may continue to consider the instruments stated in the *Integrated Planning Act 1997* in deciding whether to approve a master plan, even if those instruments are made or taken to have been made under this Bill.

Continuation of particular agreements

Clause 795 provides for certain agreements made under the *Integrated Planning Act 1997* in relation to structure plans and master plans to be taken to be agreements made under the equivalent provisions of this Bill.

Continuation of particular local government resolutions

Clause 796 provides for a resolution by a local government under the *Integrated Planning Act 1997* to levy a charge in relation to a structure plan to be taken to be an equivalent resolution under this Bill.

Master plans prevail over conditions of rezoning approvals under the repealed LGP&E Act

Clause 797 provides for a master plan to prevail over any inconsistent condition in a rezoning approval given under the repealed *Local Government (Planning and Environment) Act 1990*.

Division 5 Provisions for designations for community infrastructure

Designation of community infrastructure

Clause 798 provides for community infrastructure designations made, and notices about designations given, under the *Integrated Planning Act 1997* to be taken to be designations or notices made or given under this Bill.

Designation of land under repealed IPA

Clause 799 provides for designation processes commenced under the *Integrated Planning Act 1997* to be completed as if this Bill had not commenced, and for any resulting designation to be taken to have been made under this Bill.

Continuing request to acquire designated land under repealed IPA

Clause 800 provides for a request for designated land to be acquired under hardship made before the commencement to continue to be determined as if this Bill had not commenced.

Division 6 Provisions for integrated development assessment system

Continuing effect of development approvals

Clause 801 provides that a development approval under the *Integrated Planning Act 1997* and still in force immediately before the commencement, continues as a development approval under this Act. For the purposes of determining when a development approval lapses, the development approval is taken to have had effect on the day it had effect under the *Integrated Planning Act 1997*.

Development applications under repealed IPA

Clause 802 provides for development applications made, but not determined, before the commencement to be determined as if this Bill had not commenced. This provision is subject to the limited exceptions listed in subclause (6). Without being exhaustive, it is intended that the following incidental processes/ provisions in the *Integrated Planning Act 1997* would continue to apply to the development application:

- requests for third party advice or comment (section 3.2.7);
- changing or withdrawing the application (sections 3.2.9, 3.2.10 and 3.2.11);
- public scrutiny of applications and related material (section 3.2.8);
- changing a concurrence agency response (section 3.3.17);
- giving a decision notice (section 3.5.15);
- representations about conditions and other matters (chapter 3, part 5, division 4);
- requirements for conditions (chapter 3, part 5, division 6);
- provisions about applying IDAS to mobile and temporary environmentally relevant activities (chapter 3, part 8);
- making and determining any appeals, or seeking declarations about the application and approval;
- for a reconfiguration approval – submitting plans of subdivision under current chapter 3, part 7;
- noting an approval on a planning instrument (section 3.5.27).

Any development approval given in relation to a development application to which this clause applies, is taken to be a development approval given under this Bill.

Subclauses (3) and (4) provide for referral agencies and assessment managers to consider the instruments identified in sections 3.3.15 and 3.5.6 respectively, even if those instruments are made or taken to be made under this Bill.

Subclause (5)(a) confirms any requirement or restriction on making or deciding the application under the *Integrated Planning Act 1997* or another Act as in force before the commencement, continues to apply for deciding the application. For example, section 76D of the *Fisheries Act 1994*, as in

force before the commencement, would continue to apply to the application.

Subclause (5)(b) confirms that chapter 3, part 7 of the *Integrated Planning Act 1997* continues to apply in relation to a development permit given for an application made, but not determined, before the commencement. Therefore, any requirement for an approval of a plan of subdivision under the development permit must comply with chapter 3, part 7 of the *Integrated Planning Act 1997.*

Subclause (6) confirms that:

- the requirements in section 3.2.4 of the *Integrated Planning Act 1997* do not apply;
- the Ministerial powers of direction and call in under this Bill apply for a development application under this clause.

Dealing with existing applications under other Acts

Clause 803 provides that if another Act refers to this Bill, the other Act as in force before the commencement continues to apply to an existing development application.

Continuing application of repealed IPA s 5.1.25(1)

Clause 804 makes provision in relation to certain acknowledgement notices for unanticipated or out of sequence development given under section 3.2.4 of the *Integrated Planning Act 1997.* Section 5.1.25(1) of the *Integrated Planning Act 1997* continues to apply in relation to a development approval given for an application for which an acknowledgment notice was given under section 3.2.4.

Request about application of superseded planning schemes

Clause 805 provides for clause 95, dealing with requests in relation to superseded planning schemes, to apply in relation to planning schemes or amendments that took effect under the *Integrated Planning Act 1997* before the commencement, however the time within which a request may be made is 2 years, consistent with rights existing before the commencement, rather than 1 year.

This clause therefore has the effect that, for a planning scheme or amendment that takes effect before the Bill commences, the time period for making a request under clause 95 of the Bill is 2 years from the day the planning scheme or amendment took effect rather than 1 year.

The 1 year time limit will only apply for any planning scheme or amendment that takes effect after the Bill commences.

However, for a request under clause 95 made in relation to a planning scheme or amendment that took effect before the Bill commenced, the time limit for then making the development application (superseded planning scheme) after the request is approved, is 20 business days rather than 6 months.

Particular acknowledgement notices

Clause 806 provides for a person given an acknowledgement notice under section 3.2.5(1)(a) of the *Integrated Planning Act 1997* either before or after the commencement to seek to extend the period within which the development may start. For making such a request, clause 98(2) to (5) of this Bill applies. The purpose of this clause is to extend the right under this Bill to seek an extension for carrying out the development for development applications (superseded planning scheme) made prior to the commencement.

Application of repealed IPA, ch 3, pt 5, div 4

Clause 807 provides that the *Integrated Planning Act 1997* continues to apply for actions in relation to a negotiated decision notice if the representations were made before the commencement or the applicant had suspended the appeal period in order to make representations.

Preliminary approvals under repealed IPA

Clause 808 provides that a preliminary approval to which section 3.1.6 of the *Integrated Planning Act 1997* applies is taken to be a preliminary approval to which clause 242 applies. This relates to preliminary approvals given under the *Integrated Planning Act 1997* prior to the commencement, or after the commencement, as a result of these transitional provisions. This clause ensures that, for example, development will continue to be assessable development, if the preliminary approval provides that the development is assessable development (provided the approval still has effect). It also ensures that these types of approvals are relevant in assessing and deciding development applications.

Subclause (3) makes it clear that preliminary approvals given under section 3.1.6 of the *Integrated Planning Act 1997*, either before or after the commencement, are not subject to clause 343 of this Bill, which imposes time limits on the completion of development under such approvals. Instead, the lapsing provisions in clause 342 will apply (subclause (2)).

The purpose of this clause is to "transition" preliminary approvals under section 3.1.6 of the *Integrated Planning Act 1997*, but not to retrospectively impose the default lapsing period in clause 343.

Requests to extend period under repealed IPA, s 3.5.21

Clause 809 provides that any request made before the commencement to extend the period of a development approval under section 3.5.21 of the *Integrated Planning Act 1997* but not decided before the commencement must be decided as if this Bill had not commenced. However, any consequent decision is taken to have been made under the equivalent provisions of this Bill.

Changing development approvals under repealed IPA

Clause 810 provides that requests to change development approvals made but not decided before the commencement must continue as if this Bill had not commenced, and that the decision is taken to be a decision made under this Bill.

Subclauses (5) and (6) provides that a notice given to a person by a State agency under section 3.5.33A(7) of the *Integrated Planning Act 1997* before the commencement becomes a notice under clause 378(7) of this Bill, and continues to be dealt with under that clause.

Request to cancel development approval

Clause 811 provides for a request to cancel a development approval made, but not yet decided under the *Integrated Planning Act 1997* to be completed as if this Bill had not commenced, and for any resulting cancellation to be taken to have been made under this Bill.

Particular condition of development approvals

Clause 812 provides that if a development approval given under the *Integrated Planning Act 1997* contains a condition requiring a document or work to be assessed for compliance with a condition, the assessment process in section 3.5.31A of the *Integrated Planning Act 1997* continues to apply.

If a development approval is given as a result of an application that was made but not decided prior to the commencement of the new legislation, and the development approval contains a condition requiring compliance under section 3.5.31A of the *Integrated Planning Act 1997*, the assessment process in section 3.5.31A of the *Integrated Planning Act 1997* continues to apply.

Continuation of agreements under repealed IPA, s 3.5.34

Clause 813 provides for the continuation of agreements made under section 3.5.34 of the *Integrated Planning Act 1997* as if they were agreements under clause 348 of this Bill.

Directions and call in powers under repealed IPA

Clause 814 provides for the continuation of directions and call ins made under the *Integrated Planning Act 1997* before the commencement. The process for call ins in chapter 3, part 6, division 2 of the *Integrated Planning Act 1997* continues to apply.

Continuing effect of repealed IPA, ch 3, pt 7

Clause 815 provides that chapter 3, part 7 of the *Integrated Planning Act 1997* continues to apply in relation to a development permit given before the commencement.

Division 7 Provisions for appeals and enforcement

Subdivision 1 Planning and Environment Court

Appointments of judges continue

Clause 816 provides for the continuation of the appointment of judges of the Planning and Environment Court.

Rules of court and directions continue

Clause 817 provides for the continuation of rules of court and directions given under the *Integrated Planning Act 1997* before the commencement as if they had been made or given under this Bill.

Proceedings for declarations

Clause 818 provides for proceedings for declarations started but not completed under the *Integrated Planning Act 1997* to continue and be finalised as if this Bill had not commenced.

Subclause (2) preserves the right to bring declaration proceedings after the commencement in relation to a matter done or that should have been done

in relation to the *Integrated Planning Act 1997* or the construction of the *Integrated Planning Act 1997*.

If a person brings a proceeding mentioned in subclause (2), sections 4.1.5A and 4.1.23(2)(a) of the *Integrated Planning Act 1997* do not apply. Instead, clause 821(1) applies in place of section 4.1.5A. Clause 457(2)(a) applies in the place of section 4.1.23(2)(a) (see clause 821(2)). The intention of subclause (3) is that, despite the general principle that the *Integrated Planning Act 1997* should continue to apply in respect of the right to seek declarations about the *Integrated Planning Act 1997,* new reforms allowing the Court to apply its excusatory powers in a wider range of proceedings and to have a wider discretion in imposing costs, should apply in any new proceeding from the commencement of the Bill.

Any decision made by the Court is taken to be a decision made under this Bill for the purposes of an appeal to the Court of Appeal.

Appeals to court – generally

Clause 819 provides transitional arrangements in relation to appeals to the Planning and Environment Court started before the commencement. Subclauses (1) and (2) provide for appeals made but not decided under the *Integrated Planning Act 1997* to continue as if this Bill had not commenced.

This clause also preserves appeal rights which arose under the *Integrated Planning Act 1997*, but had not been exercised at the time of the commencement. Subclauses (3) and (4) ensure that, if immediately before the commencement, a person could have appealed to the Planning and Environment Court, the appeal may be started and must be heard and decided under the *Integrated Planning Act 1997.*

Subclauses (5) and (6) preserve appeal rights in relation to particular matters dealt with under the transitional arrangements under this Bill, and provides that any appeals in relation to these matters are dealt with under the *Integrated Planning Act 1997*. In particular, for appeals about the following matters, the *Integrated Planning Act 1997* continues to apply:

- an appeal about a development application or master plan application made prior to the commencement, but decided after the commencement;
- an appeal about a request to acquire designated land under hardship under section 2.6.19 of the *Integrated Planning Act 1997*, including a deemed refusal of the request, where the request is made before the

commencement, but decided (or the deemed refusal occurs) after the commencement;

- an appeal about a request to extend a period mentioned in section 3.5.21 of the *Integrated Planning Act 1997*, including a deemed refusal of the request, where the request is made before the commencement, but decided (or the deemed refusal occurs) after the commencement;
- an appeal about a request to make a minor change to a development approval, or to change or cancel a condition of a development approval, including a deemed refusal of the request, where the request is made before the commencement, but decided (or the deemed refusal occurs) after the commencement;
- an appeal about a notice given under section 6.1.44 of the *Integrated Planning Act 1997* where the notice is given after the commencement;
- an appeal about an application to change the conditions attached to a rezoning approval, where the request is made before the commencement, but decided after the commencement;
- an appeal about a decision made on a request for assessment of a document or work under section 3.5.31A, where the condition requiring the assessment was imposed on a development approval given before the commencement, or after the commencement as a result of these transitional provisions;
- a decision about a claim for compensation made under section 5.4.8 or 5.5.3 of the *Integrated Planning Act 1997*, where the claim is decided after the commencement.

If a person brings a proceeding mentioned in subclauses (4) and (6), sections 4.1.5A and 4.1.23(2)(a) of the *Integrated Planning Act 1997* do not apply. Instead, clause 821(1) applies in place of section 4.1.5A and clause 457(2)(a) applies in the place of section 4.1.23(2)(a) (see clause 821(2)). The intention of subclause (7) is that, despite the general principle that the *Integrated Planning Act 1997* should continue to apply in respect of these appeal rights as if the Bill had not commenced, new reforms allowing the Court to apply its excusatory powers in a wider range of proceedings and to have a wider discretion in imposing costs should apply in any new proceeding started after the commencement of the Bill.

Any decision made by the Court is taken to be a decision made under this Bill for the purposes of an appeal to the Court of Appeal.

Proceedings for particular declarations and appeals

Clause 820: Subclauses (1) and (3) are intended to give the Planning and Environment Court the same broad excusatory power, in relation to transitional issues, as clause 440.

Subclause (2) ensures that the broader power to impose costs under clause 457(2)(a) applies in relation to declaratory proceedings and appeals for transitional issues.

Application of repealed IPA, s 4.1.52

Clause 821 provides for the Court, in hearing an appeal under the *Integrated Planning Act 1997* under these transitional provisions, to nevertheless take into account instruments coming into effect after the commencement, and to apply the definition of "minor change" in this Bill.

Appeals to Court of Appeal

Clause 822 provides transitional arrangements in relation to appeals to the Court of Appeal. Subclauses (1) and (2) provide for appeals made but not decided under the *Integrated Planning Act 1997* prior to the commencement to continue as if this Bill had not commenced.

Subclauses (3) and (4) preserve appeal rights which arose under the *Integrated Planning Act 1997*, but had not been exercised at the time of the commencement. Subclauses (3) and (4) ensure that, if immediately before the commencement, a person could have appealed to the Planning and Environment Court, the appeal may be started and must be heard and decided under the *Integrated Planning Act 1997.*

Subdivision 2 Building and development tribunals

Establishment of tribunal under repealed IPA

Clause 823 provides that if a building and development tribunal was established for a matter before the commencement of this Bill, then that tribunal will continue in existence for hearing and deciding the matter. A tribunal continued in existence may hear and decide under the *Integrated Planning Act 1997*, a matter that it had not started hearing before the commencement.

Continuation of appointment as general or aesthetics referee

Clause 824 provides for the continuation of the appointments of general or aesthetics referees appointed under the *Integrated Planning Act 1997*, as if they had been appointed under this Bill.

Continuation of appointment as registrar or other officer

Clause 825 provides for the continuation of the appointment of the registrar or other officers of building and development tribunals, as if they had been appointed to a building and development committee under this Bill.

Application of ch 7, pt 2, div 3

Clause 826 provides that new declaratory powers of the building and development committee in chapter 7, part 2, division 3 do not apply in relation to development applications made under the *Integrated Planning Act 1997* before the commencement.

Appeals to tribunals

Clause 827 provides transitional arrangements in relation to appeals to the building and development tribunal.

Subclauses (1) and (2) provide for appeals made but not decided under the *Integrated Planning Act 1997* to continue as if this Bill had not commenced.

This clause also preserves appeal rights which arose under the *Integrated Planning Act 1997*, but had not been exercised at the time of the commencement. Subclauses (3) and (4) ensure that, if immediately before the commencement, a person could have appealed to the tribunal, the appeal may be started and must be heard and under the *Integrated Planning Act 1997.*

Subclauses (5) and (6) preserve appeal rights in relation to particular matters dealt with under the transitional arrangements under this Bill, and provides that any appeals in relation to these matters are dealt with under the *Integrated Planning Act 1997*. In particular, for appeals about the following matters, the *Integrated Planning Act 1997* continues to apply:

- an appeal about a development application made prior to the commencement, but decided after the commencement;

- an appeal about a request to extend a period mentioned in section 3.5.21 of the *Integrated Planning Act 1997*, where the request is made before the commencement, but decided after the commencement;
- an appeal about a request to make a minor change to a development approval, or to change or cancel a condition of a development approval, where the request is made before the commencement, but decided after the commencement;
- an appeal about a notice given under section 6.1.44 of the *Integrated Planning Act 1997* where the notice is given after the commencement.

Any decision made by the tribunal is taken to be a decision made by a building and development committee under this Bill for the purposes of an appeal to the Planning and Environment Court.

Application of repealed IPA, s 4.2.33

Clause 828 provides for the tribunal, in hearing an appeal under the *Integrated Planning Act 1997* to nevertheless take into account instruments coming into effect after the commencement.

Subdivision 3 Show cause notices and enforcement notices

Show cause notices

Clause 829 provides for the continuation of the effect of show cause notices given under the *Integrated Planning Act 1997*, and states that it is taken to have been given under this Bill.

Enforcement notices

Clause 830 provides for the continuation of an enforcement notice given under the *Integrated Planning Act 1997* before the commencement, and states that it is taken to have been given under this Bill.

Subdivision 4 Legal proceedings

Proceedings for offences, and orders

Clause 831 provides for the continuation of proceedings for offences started, but not completed before the commencement, as if this Bill had not commenced.

Subclause (2) provides for proceedings for offences under the *Integrated Planning Act 1997* to be started under this Act.

Subclause (3) preserves the effect of orders made in relation to offences under the *Integrated Planning Act 1997*.

Enforcement orders of the court

Clause 832 provides that proceedings for an enforcement order of the Court started before the commencement may continue as if this Bill had not commenced.

Subclause (2) provides for proceedings that could have been started under the *Integrated Planning Act 1997* before the commencement to be started under this Bill.

Subclause (3) provides for an enforcement order or interim enforcement order given under the *Integrated Planning Act 1997* to continue to have effect as if it were made under this Bill.

Division 8 Provisions about infrastructure

Subdivision 1 Preliminary

Charges for infrastructure

Clause 833 applies in respect of several types of infrastructure charge payable under notices given under the *Integrated Planning Act 1997*, and states that the notices are taken to have been given under this Bill.

Subdivision 2 Infrastructure planning and funding

Priority infrastructure plans for existing planning schemes

Clause 834 states an existing planning scheme need not contain a priority infrastructure plan until 30 June 2010 or a later day nominated by the Minister by gazette notice.

Continuing effect of priority infrastructure plans

Clause 835 provides for a priority infrastructure plan under the *Integrated Planning Act 1997* to be taken to be a priority infrastructure plan under this Bill.

Subclauses (2) and (3) provide that a priority infrastructure plan being prepared before commencement may continue to be prepared as if this Bill had not commenced, and for the resulting priority infrastructure plan to be taken to have been made under this Bill.

Infrastructure charges schedules

Clause 836 provides for an infrastructure charges schedule under the *Integrated Planning Act 1997* to be taken to be an infrastructure charges schedule under this Bill.

Subclauses (2) and (3) provide that infrastructure charges schedule being prepared before commencement may continue to be prepared as if this Bill had not commenced, and for the resulting infrastructure charges schedule to be taken to have been made under this Bill.

Regulated infrastructure charges schedules

Clause 837 provides for a regulated infrastructure charges schedule under the *Integrated Planning Act 1997* to be taken to be a regulated infrastructure charges schedule under this Bill.

Subclauses (2) and (3) provide that a regulated infrastructure charges schedule being prepared for adoption before commencement may continue to be prepared and adopted as if this Bill had not commenced, and for the resulting regulated infrastructure charges schedule to be taken to have been adopted under this Bill.

Continued application of particular provisions about charges

Clause 838 provides that arrangements under the *Integrated Planning Act 1997* for applying and accounting for infrastructure charges or regulated infrastructure charges continue to apply to charges levied before the commencement.

Application of ch 8, pt 4

Clause 839 provides for persons given particular charges notices under the *Integrated Planning Act 1997* to seek negotiated notices under chapter 8, part 4 of this Bill

Subdivision 3 Infrastructure agreements

Infrastructure agreements

Clause 840 provides for the continuation of infrastructure agreements in effect under the *Integrated Planning Act 1997* immediately before the commencement.

Subdivision 4 Funding State infrastructure in master planned areas

Regulated State infrastructure charges schedules and agreements

Clause 841 provides for a regulated State infrastructure charges schedule under the *Integrated Planning Act 1997* to be taken to be a regulated State infrastructure charges schedule under this Bill.

Subclause (2) provides that an agreement about an alternative to paying a regulated State infrastructure charge in effect immediately before the commencement continues to have effect and is binding upon the parties as if it were an agreement under clause 673 of this Bill.

Division 9 Provisions about matters under repealed IPA, chapter 5

Claims for compensation

Clause 842 provides that claims for compensation under the *Integrated Planning Act 1997* made but not decided before the commencement may continue as if this Bill had not commenced.

Subclauses (3) and (4) preserve a right to claim compensation existing immediately before the commencement as if this Bill had not commenced.

Subclauses (5) and (6) allow for a person to continue to claim compensation as if this Bill had not commenced if before or after the commencement (under these transitional provisions) the person had been given an acknowledgement notice under section 3.2.5(1)(b) or (3)(b) of the *Integrated Planning Act 1997*.

Keeping particular documents

Clause 843 requires documents to be kept available for inspection and purchase or for inspection under this Bill if they were required to be so kept under the *Integrated Planning Act 1997*, chapter 5, part 7 or section 6.1.48.

Planning and development certificates

Clause 844 provides for applications for planning and development certificates made, but not decided, under the *Integrated Planning Act 1997* before the commencement to be dealt with as if this Bill had not commenced. A planning and development certificate given under the *Integrated Planning Act 1997* is taken to be a planning and development certificate under this Bill.

Delegations

Clause 845 provides for the continuation of particular delegations necessary to give effect to these transitional provisions.

Guidelines

Clause 846 provides for the continuation of guidelines issued by the chief executive under section 5.9.9(1)(a) or (b) of the *Integrated Planning Act 1997*, as a guideline under clause 760 of this Bill.

Division 10 Provisions about matters under repealed IPA, chapter 6

Planning scheme policies for infrastructure

Clause 847 reproduces key aspects of section 6.1.20 of the *Integrated Planning Act 1997* concerning planning scheme policies for infrastructure, and states such policies cease to have effect on 30 June 2010 or another

date specified by the Minister by gazette notice, consistent with an intention to replace such policies with charging arrangements by that date.

Importantly, new planning scheme policies for infrastructure cannot be made under the Bill.

This new provision also makes it clear that despite the planning scheme policy ceasing to have effect on 30 June 2010, or another date specified by the Minister, a requirement about an infrastructure contribution required under the policy continues to apply after this date.

Conditions about infrastructure for particular applications

Clause 848 reproduces key aspects of section 6.1.31 of the *Integrated Planning Act 1997* authorising the imposition of conditions for infrastructure contributions under a planning scheme policy for infrastructure.

Importantly, this clause also limits the amount by which contributions required under a planning scheme policy made under section 6.1.20 of the *Integrated Planning Act 1997* can be adjusted. Despite anything stated in the policy, the contribution can only be adjusted using the consumer price index.

Appeals about infrastructure contributions

Clause 849 provides an appeal right to the building and development committee for a person dissatisfied with the calculation of an infrastructure contribution under clause 848 of this Bill or section 6.1.20 of the *Integrated Planning Act 1997*.

Conditions attaching to land

Clause 850 provides for a condition attached to land under section 6.1.24(2) of the *Integrated Planning Act 1997* (in relation to a continuing approval under that section, or a rezoning approval under the repealed *Local Government (Planning and Environment) Act 1990*) to remain attached to the land.

Applications in progress under transitional planning schemes

Clause 851 provides for development applications being assessed under the *Integrated Planning Act 1997* under arrangements in that Act for assessment under transitional planning schemes, to continue to be assessed under those arrangements. The transitional arrangements in the *Integrated Planning Act 1997* will also continue to apply for a development

application (superseded planning scheme) where the superseded planning scheme is a transitional planning scheme.

Applications to change conditions of rezoning approvals under repealed LGP&E Act

Clause 852 provides for the continuation of particular transitional arrangements for changing conditions of rezoning approvals contained in section 6.1.35A of the *Integrated Planning Act 1997*. The ability to change such conditions through a development application is retained, but the ability to change a condition using the repealed *Local Government (Planning and Environment) Act 1990* is removed.

Development approvals prevail over conditions of rezoning approvals under repealed LGP&E Act

Clause 853 provides that a development approval given under this Bill or the *Integrated Planning Act 1997* prevails to the extent of any conflict with conditions of particular rezoning approvals given under the repealed *Local Government (Planning and Environment) Act 1990.*

Notice under repealed IPA, s 6.1.44

Clause 854 provides that if an entity gave a person a notice under the *Integrated Planning Act 1997*, section 6.1.44(4) about changing a condition of a development approval but has not given a notice under section 6.1.44(6) before the commencement, section 6.1.44 continues to apply for the development approval.

Infrastructure agreements

Clause 855 provides for the continuation of infrastructure agreements made under the repealed *Local Government (Planning and Environment) Act 1990*, part 6, division 2, and for permission criteria under such an agreement to prevail over particular regulations under this Bill.

Rezoning agreements under previous Acts

Clause 856 provides for the continuation of rezoning agreements that do not attach to land to the extent they are not inconsistent with conditions of development approvals or master plans. Subclause (3) provides any amount of contribution for infrastructure paid under such an agreement must be credited against infrastructure charges or conditions levied under this Bill.

Development control plans under repealed LGP&E Act

Clause 857 provides for the continuation of particular development control plans originally made under the repealed *Local Government (Planning and Environment) Act 1990*, and validated under section 6.1.45A of the *Integrated Planning Act 1997*.

This clause is intended to ensure that a former development control plan incorporated in a planning scheme under section 6.1.45A of the *Integrated Planning Act 1997* is still valid.

Subclause (2) provides that the repealed *Local Government (Planning and Environment) Act 1990*, the transitional planning scheme and any transitional planning scheme policies (as defined in the *Integrated Planning Act 1997*) continue to apply to the extent necessary to administer the development control plan.

Subclauses (3) and (4) provide that sections 6.1.28 to 6.1.30 of the *Integrated Planning Act 1997* continue to apply for assessing development applications in the development control plan area, however the development control plan may continue to refer to codes or other measures in the planning scheme apart from the development control plan.

Subclause (5) states that the development control plan continues to be valid to the extent it provides for plan making and approval processes and provides for appeals. Development under the development control plan must comply with the plans in the way stated in the development control plan and, if the development control plan states that an appeal may be made and an appeal is made, the appeal is validly made.

Subclauses (6) and (7) provide that compensation may continue to be claimed for a change to the development control plan as if the compensation were being claimed under the repealed *Local Government (Planning and Environment) Act 1990.*

Subclauses (8) and (9) ensure that a development control plan or a transitional planning scheme that includes a development control plan may continue to be amended either by a process for amending the planning scheme under the Bill, or a process stated in the development control plan itself.

Subclause (10) ensures that transitional planning scheme policies necessary to administer a development control plan, can also be amended.

Subclause (11) clarifies that amendment of the development control plan does not affect the validity of plan making or appeal processes validated under these provisions.

Transition of validated planning documents to master planning documents

Clause 858 provides that a State planning regulatory provision may be made to convert a development control plan mentioned in clause 857 into a structure plan, or a structure plan and master plan or master plans.

This clause basically replicates section 6.8.12 of the *Integrated Planning Act 1997*.

Local Government (Robina Central Planning Agreement) Act 1992

Clause 859 provides for the *Local Government (Robina Central Planning Agreement) Act 1992* to apply as if the *Local Government (Planning and Environment) Act 1990* had not been repealed.

Town planning certificates may be used as evidence

Clause 860 provides that a town planning certificate issued under the repealed *Local Government (Planning and Environment) Act 1990* may continue to be used in evidence despite the repeal of that Act.

Orders in council about particular land

Clause 861 provides for the continuation of orders in council authorising particular development, and made under the repealed *Local Government Act 1936*, *City of Brisbane Town Planning Act 1964* or *Local Government (Planning and Environment) Act 1990.* Subclauses (3) and (4) confirm any development lawfully undertaken on premises to which such an order in council applies continues to be lawful, even if the premises is no longer owned by the State.

Application of repealed IPA, s 6.1.54

Clause 862 confirms the continuing application of special referral arrangements for State-controlled roads under section 6.1.54 of the *Integrated Planning Act 1997* for development applications made, but not decided before the commencement.

Provision for infrastructure charges plans

Clause 863: Under section 6.2.5 of the *Integrated Planning Act 1997*, infrastructure charges plans are taken to be infrastructure charges schedules. As such, they will be taken to be infrastructure charges

schedules under the Bill. This clause is necessary to assist in the interpretation of the infrastructure charges plan and to validate the inclusion of public parks infrastructure in the plan.

Division 11 Provisions for SEQ regional plan

Definitions for div 11

Clause 864 contains definitions for this division.

References in SEQ regional plan and regulatory provisions

Clause 865 continues the effect of arrangements contained in chapter 6, part 8 of the *Integrated Planning Act 1997*, for recognising structure plans mentioned in the SEQ regional plan or the regulatory provisions as "SEQ regional plan structure plans".

Structure plan

Clause 866 continues the effect of section 6.8.7 of the *Integrated Planning Act 1997* for making SEQ regional plan structure plans. If, on the commencement of this clause, the local government has not started the process under the *Integrated Planning Act 1997* to amend its planning scheme to include the SEQ regional plan structure plan, the process that will apply for amending the planning scheme is the process set out in a statutory guideline under clause 117(1). Despite any provision of this guideline, the Minister cannot advise the local government that it may not proceed further with the amendment.

For the purposes of clause 706(1)(j), the SEQ regional plan structure plan applies as if it were a structure plan for a declared master planned area.

Division 12 Miscellaneous

Provision for particular development applications – local heritage places

Clause 867 continues the effect of section 6.9.1 of the *Integrated Planning Act 1997* (first mention) for applications made but not decided before the commencement of this clause.

Particular activities not a material change of use

Clause 868 continues the effect of section 6.9.1 of the *Integrated Planning Act 1997* (second mention), which provides that certain activities in connection with the North-South bypass tunnel project are not a material change of use.

Deferment of application of s 578 to particular material changes of use

Clause 869 continues the effect of section 6.9.2, which defers the effect of certain amendments contained in the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008* relating to particular environmentally relevant activities.

References to repealed IPA

Clause 870 provides that a reference in another Act to the *Integrated Planning Act 1997*, or a provision of the *Integrated Planning Act 1997* may, if the context permits, be taken to be a reference to this Bill, or any provision of this Bill respectively. As some provisions of the *Integrated Planning Act 1997* have been moved from the Act to a regulation, a reference to the *Integrated Planning Act 1997* may also be taken to be a reference to the regulation made under this Bill, if applicable.

Transitional regulation making power

Clause 871 provides for a transitional regulation making power for this Bill. This clause expires 5 years after it commences. This expiry period is longer than the usual expiry period for typical similar provisions in other legislation. This recognises that:

- the subject matter of the Bill is complex, including dealing with rights and obligations that have accrued over a considerable period of time under numerous previous Acts and other statutory instruments;
- many of the transitional impacts of this Bill, in particular those relating to the making, continuing effect and validity of instruments, the assessment of development applications and the continuing effect and validity of development approvals, will have effect over a considerable period of time;
- transitional issues that arise may also have a significant adverse effect on the property and development rights of individuals and the community generally, requiring a quick response to clarify or protect such rights.

Chapter 11 Amendments of Acts

Acts amended in sch 2

Clause 872 states that schedule 2 contains consequential amendments to the Acts mentioned in schedule 2.

Schedule 1 Prohibited development

The reform agenda proposes that all other legislation which contains variations to the IDAS process should be consolidated into the planning legislation or a planning instrument under the Bill. This Bill does not include all of the variations to IDAS currently contained in other legislation as this task is being carried out in stages. The first stage of this task is the incorporation into schedule 1 of those provisions of other legislation which currently contain "prohibitions", that is, those provisions of other legislation which provide that:

- for certain types of development or in certain areas, a development application cannot be made or accepted by the assessment manager; or
- certain types of applications must be refused.

Such provisions are effectively a prohibition. As part of simplifying the IDAS process, these existing provisions of other legislation have been included in schedule 1 as "prohibited development".

Item 1 For agricultural or animal husbandry activities in a wild river area

Item 1 relates to wild river areas. Currently, section 42 of the *Wild Rivers Act 2005* (WRA) provides that a development application for a material change of use of premises for agricultural or animal husbandry activities mentioned in schedule 8, part 1, table 2, item 11 of the current IPA, or operational work for agricultural or animal husbandry activities mentioned in schedule 8, part 1, table 4, item 10 of the current IPA, is taken not to be a properly made application if any part of the application relates to:

- development in the high preservation area in a wild river area; or

- development in the preservation area of a wild river area in relation to the production of a high risk species.

An assessment manager cannot receive these applications, and therefore section 42 of the WRA is effectively a prohibition. Section 42 will therefore be omitted from the WRA and incorporated into schedule 1 of the Bill as a type of prohibited development.

Item 2 For development on land to which a property development plan applies

Item 2 also relates to wild river areas. Currently, section 43A of the WRA provides that a development application will be taken to be not properly made and cannot be received by an assessment manager if it is in respect of development which:

- relates to land to which a property development plan applies;
- is for certain development currently specified in schedule 8 of the current IPA as assessable development; and
- the development is inconsistent with the property development plan.

Section 43A of the WRA is effectively a prohibition. Section 43A will therefore be omitted from the WRA and incorporated into schedule 1 of the Bill as a type of prohibited development.

Item 3 For clearing native vegetation

Item 3 relates to operational works for the clearing of native vegetation. Currently, section 22A of the *Vegetation Management Act 1999* (VMA) provides that if a vegetation clearing application (as defined in the VMA) is not for a relevant purpose, the application is taken not to be a properly made application and the assessment manager must refuse to receive the application. This is effectively a prohibition. Section 22A(1) of the VMA will therefore be omitted from the VMA and incorporated into schedule 1 of the Bill as a prohibition. The relevant purposes will continue to be set out in section 22A of the VMA.

Item 4 For tidal work or work within a coastal management district in a wild river area

Item 4 relates to tidal work or work within a coastal management district. Section 104A(1), (2) and (3) of the *Coastal Protection and Management*

Act 1995 (CPMA) currently provides that a development application for operational work mentioned in schedule 8, part 1, table 4, item 5 of the current IPA which relates to operational work in a wild river area (other than operational work for specified works) is taken not to be a properly made application and the assessment manager must refuse to receive the application. This is effectively a prohibition. Section 104A(1), (2) and (3) of the CPMA has therefore been incorporated into schedule 1 of the Bill as a prohibition.

Item 5 For a brothel

Item 5 relates to material changes of use for a brothel. Currently, section 64 of the *Prostitution Act 1999* provides that an assessment manager must refuse a development application for a brothel on certain land and other specified circumstances. Section 64 of the *Prostitution Act 1999* has therefore been incorporated into schedule 1 of the Bill as a prohibition.

Item 6 Aquaculture, or constructing or raising waterway barrier works, in a wild river high preservation area

Item 6 relates to aquaculture and waterway barrier works in wild river high preservation areas. Section 76DA(1), (2) and (3) of the *Fisheries Act 1994* provides that a development application for a material change of use of premises mentioned in schedule 8, part 1, table 2, item 8 of the current IPA or operational work mentioned in schedule 8, part 1, table 4, item 6 of the current IPA is taken not to be a properly made application and the assessment manager must refuse to receive the application, if any part of the application relates to development in a wild river high preservation area. This is effectively a prohibition. Section 76DA(1), (2) and (3) of the *Fisheries Act 1994* has therefore been incorporated into schedule 1 of the Bill as a prohibition.

Item 7 For removal, destruction or damage of marine plants in a wild river area

Item 7 relates to operational work that is the removal, destruction or damage of a marine plant. Section 76DB(1), (2) and (3) of the *Fisheries Act 1994* currently provides that a development application for operational work mentioned in schedule 8, part 1, table 4, item 8 of the current IPA is taken not to be a properly made application and the assessment manager

must refuse to receive the application if the application relates to operational work in a wild river area other than operational work:

- for specified works in the area; or
- that is a necessary and unavoidable part of installing or maintaining works or infrastructure required to support other development for which a development permit is not required or, if a development permit is required, the permit is held or has been applied for.

This is effectively a prohibition. Section 76DB(1), (2) and (3) of the *Fisheries Act 1994* has therefore been incorporated into schedule 1 of the Bill as a prohibition.

Item 8 For a declared fish habitat area in a wild river high preservation area

Item 8 relates to building work and operational works within a declared fish habitat area. Section 76DC(1), (2) and (3) of the *Fisheries Act 1994* currently provides that a development application for building work mentioned in schedule 8, part 1, table 1, item 2 of the current IPA or operational work mentioned in schedule 8, part 1, table 4, item 7 of the current IPA is taken not to be a properly made application and the assessment manager must refuse to receive the application if any part of the application relates to development in a wild river high preservation area other than development for specified works. This is effectively a prohibition. Section 76DC(1), (2) and (3) of the *Fisheries Act 1994* has therefore been incorporated into schedule 1 of the Bill as a prohibition.

Items 9 and 10 For an environmentally relevant activity in a wild river area

Items 9 and 10 relate to environmentally relevant activities. Section 73AA of the *Environmental Protection Act 1994* currently provides that a development application for a material change of use for an environmentally relevant activity mentioned in schedule 8, part 1, table 2, item 1 of the current IPA or for development mentioned in schedule 8, part 1, table 5, item 4 of the current IPA is taken not to be a properly made application and the assessment manager must refuse to receive the application if the application relates to particular types of environmentally relevant activities carried out in particular areas (e.g. the waters of a wild river area). This is effectively a prohibition. Parts of section 73AA of the

Environmental Protection Act 1994 has therefore been incorporated into schedule 1 of the Bill as a prohibition.

Item 11 For an environmentally relevant activity in a floodplain management area

Item 11 also relates to environmentally relevant activities. Section 73AA of the *Environmental Protection Act 1994* currently provides that a development application for a material change of use for an environmentally relevant activity mentioned in schedule 8, part 1, table 2, item 1 of the current IPA or for development mentioned in schedule 8, part 1, table 5, item 4 of the current IPA is taken not to be a properly made application and the assessment manager must refuse to receive the application if the application relates to an extraction ERA in a floodplain management area. This is effectively a prohibition. Section 73AA(1)-(4) of the *Environmental Protection Act 1994* has therefore been incorporated into schedule 1 of the Bill as a prohibition. Parts of section 73AA of the *Environmental Protection Act 1994* have therefore been incorporated into schedule 1 of the Bill as a prohibition.

Item 12 For taking, or interfering with, water

Item 12 relates to operational works for taking or interfering with water. Section 966A(1), (2) and (3) of the *Water Act 2000* currently provides that a development application for operational work mentioned in schedule 8, part 1, table 4, item 3 (other than paragraph (d)) of the current IPA is taken not to be a properly made application and the assessment manager must refuse to receive the application if the application relates to:

- operational work in a wild river high preservation area that interferes with the flow of water in a watercourse, lake or spring in the wild river high preservation area; or
- operational work in a wild river preservation area that interferes with the flow of water in a nominated waterway and is not a dam or weir; or
- operational work in a high preservation area that takes overland flow water, other than works stated in a wild river declaration for the area to be assessable development under the current IPA for which a development application under that Act may be made.

This is effectively a prohibition. Section 966A(1), (2) and (3) of the *Water Act 2000* has therefore been incorporated into schedule 1 of the Bill as a prohibition.

Section 966B(1), (2) and (3) of the *Water Act 2000* currently provides that a development application for operational work mentioned in schedule 8, part 1, table 4, item 3(d) of the current IPA is taken not to be a properly made application for that Act and the assessment manager must refuse to receive the application if any part of the application relates to operational work in a wild river floodplain management area, other than operational work:

- for specified works in the area; or
- stated in the wild river declaration for the area to be assessable development for which an application may be lodged.

This is effectively a prohibition. Section 966B(1), (2) and (3) of the *Water Act 2000* has therefore been incorporated into schedule 1 of the Bill as a prohibition.

Schedule 2 Consequential and minor amendments of Acts

This schedule sets out consequential amendments to other Acts affected by this Act. In many cases, the consequential amendments merely reflect changes in numbering or changed terminology between the current IPA and this Bill. However in some cases the reforms in this legislation require substantive changes to other legislation.

Aboriginal Cultural Heritage Act 2003

Section 89, heading, 'IPA' –

Clause 1 replaces the reference to IPA with a reference to the Planning Act. Planning Act is in turn defined to mean the *Sustainable Planning Act 2009*.

Section 89(1) and (2), 'IPA' –

Clause 2 replaces the reference to IPA with a reference to the Planning Act.

Section 89 –

Clause 3 includes a definition of "Planning Act" as meaning the *Sustainable Planning Act 2009*.

Schedule 2, definition of *IPA* –

Clause 4 omits the definition of ***IPA*** from the dictionary.

Airport Assets (Restructuring and Disposal) Act 2008

Section 48 –

Clause 1 replaces section 48. This new section provides that airport land is not subject to a local planning instrument, despite chapter 3 of the Bill.

Section 49(1), 'or assessable development' –

Clause 2 includes a reference to development requiring compliance assessment.

Section 49(2)(b) –

Clause 3 replaces a reference to the *Integrated Planning Act 1997*, schedule 8, with a reference to development prescribed as self-assessable development under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 49(3), from 'schedule 9' –

Clause 4 replaces a reference to the *Integrated Planning Act 1997*, schedule 9, with a reference to "prescribed development". "Prescribed development" is then defined in subsection (6), as development prescribed under clause 232(2) of the Bill as development that is exempt from assessment against a planning scheme. This change is consistent with the relocation of provisions identifying exempt development for certain instruments to a regulation under this Bill.

Section 49(4), 'Schedule 9' –

Clause 5 replaces a reference to the *Integrated Planning Act 1997*, schedule 9, with a reference to "prescribed development." "Prescribed development" is then defined in subsection (6), as development prescribed under clause 232(2) of the Bill as development that is exempt from assessment against a planning scheme. This change is consistent with the relocation of provisions identifying exempt development for certain instruments to a regulation under this Bill.

Section 49(5) and (6) –

Clause 6 replaces subsections (5) and (6). Subsection (5) currently refers to self-assessable development under the *Integrated Planning Act 1997*, schedule 8, part 2. This has been replaced with a reference to development prescribed as self-assessable development under clause 232(1) of the Bill.

Subsection (6) currently defines "schedule 9 development" for the purposes of subsections (3) and (4). This has been replaced with a definition of "prescribed development" which means development prescribed under clause 232(2) of the Bill as development that is exempt from assessment against a planning scheme.

Section 51(2), 'the reconfiguration of a lot' –

Clause 7 amends an expression for consistency with this Bill.

Section 52(1), 'section 5.5.1' –

Clause 8 replaces a section reference for consistency with this Bill.

Section 52(2), 'chapter 5, part 4' –

Clause 9 replaces a chapter and part reference for consistency with this Bill.

Section 53, heading 'ch 5, pt 7, div 3' –

Clause 10 replaces a chapter, part and division reference for consistency with this Bill.

Section 53(1), 'chapter 5, part 7, division 3' –

Clause 11 replaces a chapter, part and division reference for consistency with this Bill.

Section 53(3), 'sections 5.7.9 to 5.7.13' –

Clause 12 replaces section references for consistency with this Bill.

Section 53(3)(b) and (c), 'section 5.7.9(a)' –

Clause 13 replaces a section reference for consistency with this Bill.

Section 53(3)(d), 'section 5.7.10(1)(d)' –

Clause 14 replaces a section reference for consistency with this Bill.

Section 53(3)(e), 'section 5.7.10(1)(e)' –

Clause 15 replaces a section reference for consistency with this Bill.

Section 53(3)(f), 'section 5.7.10(1)(j)' –

Clause 16 replaces a section reference for consistency with this Bill.

Section 53(3)(g), 'section 5.7.10(1)(i)' –

Clause 17 replaces a section reference for consistency with this Bill.

Section 54(1), 'schedule 8' –

Clause 18 replaces a reference to the *Integrated Planning Act 1997*, schedule 8 consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 54(2) –

Clause 19 omits a redundant reference to *Integrated Planning Act 1997,* schedule 8, part 1, table 5.

Section 55(1) and (2), 'chapter 2, part 6' –

Clause 20 replaces a chapter and part reference for consistency with this Bill.

Section 55(3), 'section 2.6.5' –

Clause 21 replaces a section reference for consistency with this Bill.

Section 55(4) –

Clause 22 replaces the definition of community infrastructure for consistency with the location of the definition in schedule 3 of this Bill.

Section 61, heading, 'Minor amendment' –

Clause 23 amends the heading of this section to remove the reference to a "minor" amendment, since this term is not used in this Bill.

Section 61(3) –

Clause 24 replaces section 61(3) with a new subsection to ensure consistency with changes to the process for making or amending planning schemes under this Bill, in particular the fact that the process will now be specified in a statutory guideline under clause 117(1) of the Bill, rather than in the Bill itself.

After chapter 6, part 2, heading –

Clause 25 inserts a new division name for this part.

Section 108, heading, 'pt 2' –

Clause 26 replaces a reference to part 2, with a reference to division 1, and inserts a definition of "commencement".

Section 108, 'part' –

Clause 27 replaces a reference to "part" with a reference to "division".

Section 114(10) –

Clause 28 inserts a definition of "development application" which refers to the *Integrated Planning Act 1997.* This clause also inserts a definition of "Planning Act" to refer to the repealed *Integrated Planning Act 1997*. Section 114 is a transitional provision requiring the chief executive administering the Bill to take over incomplete development applications at the time leases are issued for Cairns and Mackay airports. The effect of this section is to ensure such applications continue to be assessed under IDAS as it is under the *Integrated Planning Act 1997*. This is consistent with the treatment of development applications generally under the transitional arrangements in chapter 10.

After section 114 –

Clause 29 inserts a new division for this part, containing four new clauses.

Clause 116 provides that the *Airport Assets (Restructuring and Disposal) Act 2008* as it is currently in force will continue to apply to development applications made, but not decided, under the *Integrated Planning Act 1997* prior to the commencement.

Clause 117 clarifies that an amendment of a planning scheme that is a minor amendment under the existing section 61(3) will continue to be a minor amendment for the purposes of schedule 1 of the *Integrated Planning Act 1997* after the commencement of this provision, provided that the process for making the amendment began prior to the commencement.

Clause 118 provides that section 3.5.13 of the *Integrated Planning Act 1997* applies to all code assessable development applications made after the commencement in respect of airport land to which a first land use plan applies, instead of clause 326 of the Bill. The purpose of this provision is to preserve the existing decision rules for these code assessable applications, until such time as a new or amended land use plan is made for the airport land.

Schedule 2, paragraph (c)(x), '*Integrated Planning Act 1997*' –

Clause 30 replaces a reference to the *Integrated Planning Act 1997* with a defined term "Planning Act", referring to this Bill.

Schedule 3, definition *Planning Act*, '*Integrated Planning Act 1997*' –

Clause 31 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Schedule 3, definition *planning Minister*, '*Integrated Planning Act 1997*' –

Clause 32 replaces a reference to the *Integrated Planning Act 1997* with a defined term "Planning Act", referring to this Bill.

Schedule 3, definition *State interest*, 'schedule 10' –

Clause 33 replaces a reference to schedule 10 of the *Integrated Planning Act 1997* for consistency with this Bill.

Body Corporate and Community Management Act 1997

Sections 60(4)(a), (4)(b)(i), and (7)(a) and 313(1), '*Integrated Planning Act 1997*' –

Clause 1 replaces several references to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 60(8)(b), '*Integrated Planning Act 1997*, chapter 4, part 1, divisions 10 to 12' –

Clause 2 replaces a chapter, part and division reference for consistency with this Bill.

Section 60(9), definition *planning instrument*, paragraph (a)(i), '*Integrated Planning Act 1997*' –

Clause 3 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Schedule 6, definition *development approval*, paragraph (a) '*Integrated Planning Act 1997*' –

Clause 4 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Brisbane Forest Park Act 1977

Section 86 –

Clause 1 omits section 86. This section is redundant because planning schemes are no longer approved by the Governor in Council.

Building Act 1975

Sections 3(1) and (2), 6, 25(2)(c)(i), 31(1), 32(2), 46(1), 48(1)(c) and (6)(a), 54(b), 62(1), 69(3), 83(1)(a), (b) and (d), 84(2)(a), 85, 90(2), 127(2)(b) and (d), 136(2)(b) and (d), 250(1) and schedule 2, definitions *advice agency*, *another relevant Act*, *concurrence agency*, *information notice*, *properly made application* and *referral agency*, 'IPA'—

Clause 1 replaces references to IPA with references to the Planning Act. This term is in turn defined to refer to this Bill.

Section 11(1), 'as defined under IPA, section 3.1.7' –

Clause 2 replaces the reference to IPA with a reference to Planning Act and also replaces a section reference for consistency with this Bill.

Sections 18, 20, 21 and 22, heading, 'IPA' –

Clause 3 replaces references to IPA with references to the Planning Act. This term is in turn defined to refer to this Bill.

Section 18(b), 'IPA, schedule 8A' –

Clause 4 replaces the reference to IPA with a reference to the Planning Act and omits a reference to schedule 8A of the *Integrated Planning Act 1997*, consistent with the relocation of provisions identifying assessment managers for development applications to a regulation under this Bill.

Chapter 2, heading, note 1, 'IPA, sections 3.1.4 and 4.3.1'–

Clause 5 replaces the reference to IPA with a reference to the Planning Act and replaces two section references for consistency with this Bill.

Chapter 2, heading, note 2 –

Clause 6 omits note 2 which is redundant as assessable development is defined in the Building Act (by reference to the definition in the Bill) and schedule 8 of the *Integrated Planning Act 1997* will be relocated to a regulation under this Bill.

Chapter 2, heading, note 3, ' IPA, chapter 3' –

Clause 7 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Chapter 2, heading, note 3 as amended, and note 4 –

Clause 8 renumbers these notes for consistency with the above amendments.

Section 20(c) –

Clause 9 omits section 20(c). This section refers to section 3.2.2B of the *Integrated Planning Act 1997*, which has not been included in this Bill as approvals for reconfiguring a lot are usually obtained long before works approvals are sought and the impacts of retaining walls are better considered at the works stage. Consequently this section is redundant.

Section 21(1) and (2) –

Clause 10 renumbers these sections to take account of the new subsection (1) inserted into section 21 by the consequential amendment below.

Section 21(2) as renumbered, 'IPA, schedule 8, part 2, table 1' –

Clause 11 replaces the reference to IPA with a reference to the Planning Act and omits a reference to schedule 8 of the *Integrated Planning Act 1997*, to refer generally to self-assessable building work for the Bill as schedule 8 is being moved to a regulation made under the Bill.

Section 21(3) as renumbered, 'Subsection (1)' –

Clause 12 renumbers this subsection to take account of the insertion into section 21 of a new subsection (1).

Section 21 –

Clause 13 inserts a new subsection (1), to refer to a regulation made under this Bill which prescribes that the *Building Act 1975* may declare building work to be self-assessable development. The reference to "regulation" in subsection (2), as renumbered, is to the *Building Regulation 2006* which prescribes what is self-assessable building work.

Section 22, 'IPA, schedule 8, part 1, table 1, item 1 and part 2, table 1, item1' –

Clause 14 replaces the reference to IPA with a reference to the Planning Act and also omits a reference to schedule 8 of the *Integrated Planning Act 1997*, as this schedule will be contained in a regulation made under the

Bill. The effect remains the same and provides that building work which is prescribed under a regulation is exempt development under the Bill for the *Building Act 1975*.

Chapter 3, heading, note, 'IPA, section 3.2.1' –

Clause 15 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 23, 'IPA, section 3.2.1(2)(b) –

Clause 16 replaces the reference to IPA with a reference to the Planning Act and omits a section reference to refer generally to the requirements for documents to be given under the Bill for a building development application. Despite the removal of the reference to this section, the documents prescribed in chapter 3 of the *Building Act 1975* must still accompany a building development application for the purposes of IDAS.

Section 31(3), 'IPA, section 3.1.3(4)' –

Clause 17 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

After section 34 –

Clause 18 inserts a provision which states that if an assessment manager is satisfied that an application complies with the building assessment provisions, then the assessment manager must approve the application. This is subject to the normal considerations of performance and alternative solutions under the Building Code of Australia and Queensland Development Code and to the requirement that all other necessary approvals be obtained in accordance with section 83 of the *Building Act 1975*. It is also subject to the assessment and decision rules in IDAS, such as the requirement for an assessment manager to refuse an application if directed by a concurrence agency.

Section 43, note, 'IPA, section 4.2.12A' –

Clause 19 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 46(5), note 1, 'see IPA regulation, schedule 2, table 1' –

Clause 20 replaces a reference to the *Integrated Planning Regulation 1998* with a reference generally to a regulation made under clauses 250 and 254 of the Bill.

Section 46(5), note 2, 'IPA, see IPA, sections 3.1.8, 3.2.15 to 3.3.18 and 3.5.11' –

Clause 21 replaces the reference to IPA with a reference to the Planning Act and replaces section references for consistency with this Bill.

Section 48(1)(b), 'IPA, section 3.1.7' –

Clause 22 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 48(2) and (5), 'IPA, chapter 4' –

Clause 23 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Section 51(5), definition *nominated owner*, 'IPA, section 3.2.1(2)' –

Clause 25 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 59(2), 'desired environmental' –

Clause 25 replaces the expression "desired environmental outcomes" with the expression "strategic outcomes". This Bill no longer refers to "desired environmental outcomes". This term has now been replaced with the term "strategic outcomes".

Section 59(2), 'scheme.' and footnote –

Clause 26 omits footnote 24 which is redundant.

Section 62(2), 'IPA, section 3.5.4(2)(b) or 3.5.5(2)(a)' –

Clause 27 replaces the reference to IPA with a reference to the Planning Act and replaces section references for consistency with this Bill.

Section 62(2), note 1, 'see IPA regulation, schedule 2, table 1' –

Clause 28 amends note 1 to remove the reference to the *Integrated Planning Regulation 1998* and replaces it with a reference generally to a regulation made under clauses 250 and 254 of the Bill.

Section 62(2), note 2, 'IPA, see IPA, sections 3.1.8, 3.3.15 to 3.3.1 and 3.5.11' –

Clause 29 replaces the reference to IPA with a reference to the Planning Act and replaces section references for consistency with this Bill.

Chapter 4, part 5, heading, note, 'IPA, chapter 3' –

Clause 30 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Section 69(4)(b), 'IPA, section 3.5.30' –

Clause 31 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 69(5), 'IPA, sections 3.5.33 and 3.5.33A' –

Clause 32 replaces the reference to IPA with a reference to the Planning Act and replaces section references for consistency with this Bill.

Section 83(1)(a), after 'permits' –

Clause 33 inserts a reference to compliance permits under this Bill as compliance assessment may be required for matters that previously required a development approval.

Section 83(1)(a), example, after 'permits' –

Clause 34 inserts a reference to compliance permits under this Bill as compliance assessment may be required for matters that previously required a development approval.

Section 84(1)(a), after 'government' –

Clause 35 inserts a reference to a compliance permit under this Bill as compliance assessment may be required for matters that previously required a development approval.

Section 84(1)(b) and (c), after 'approval' –

Clause 36 inserts a reference to a compliance permit as compliance assessment under the Bill may be required for matters that previously required a development approval.

Section 86(2), note, 'IPA, section 5.7.4, the local government' –

Clause 37 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill. This clause also replaces a reference to "local government" with a reference to "assessment manager".

Sections 90, 96, and 97, headings, 'IPA, s 3.5.21' –

Clause 38 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 90(1), 'For IPA' –

Clause 39 replaces the reference to IPA with a reference to the Planning Act.

Sections 90(1) and 91(1), 'IPA, section 3.5.21' –

Clause 40 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 94(2), note, 'IPA, chapter 3, part 5, divisions 5 and 6' –

Clause 41 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter, part and division reference for consistency with this Bill.

Section 95(1), 'IPA, chapter 3' –

Clause 42 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Sections 95(3)(b)(iv) and 97(1), 'under IPA, the relevant period under IPA, section 3.5.21' –

Clause 43 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 96(1)(b), 'under IPA to extend the relevant period under IPA, section 3.5.21'—

Clause 44 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 97(3), 'IPA chapter 3'—

Clause 45 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Section 99(1), note, 'tribunal'—

Clause 46 replaces the reference to the building and development tribunal with a reference to the building and development dispute resolution committee under the Bill.

Section 99(1), note, 'IPA, section 4.2.12A'—

Clause 47 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 102(3), note 1, 'IPA, section 4.2.12A' –

Clause 49 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 107(2)(b), 'IPA, section 3.5.15(5)' –

Clause 50 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 122, note, 'IPA, chapter 3' –

Clause 51 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Sections 131, 243(b) and 259, 'IPA, chapter 5, part 7' –

Clause 52 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter and part reference for consistency with this Bill.

Section 204(4)(e) –

Clause 53 inserts a reference to a compliance permit or compliance certificate as compliance assessment under the Bill may be required for matters that previously required a development approval.

Section 204(9), definition *assessable development,* 'IPA, schedule 10' –

Clause 54 replaces the reference to IPA with a reference to the Planning Act and replaces a schedule reference for consistency with this Bill.

Section 221(5), note, 'tribunal' –

Clause 55 replaces a reference to the building and development tribunal with a reference to the building and development dispute resolution committee under the Bill.

Section 221(5), note, 'IPA, section 4.2.12A' –

Clause 56 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 223(a), 'tribunal'—

Clause 57 replaces a reference to the building and development tribunal with a reference to the building and development dispute resolution committee under the Bill.

Chapter 8, heading, note, 'IPA, section 4.2.12A' –

Clause 58 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 241(4), note, 'tribunal' –

Clause 59 replaces a reference to the building and development tribunal with a reference to the building and development dispute resolution committee under the Bill.

Section 241(4), note, 'IPA, section 4.2.12A' –

Clause 60 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Chapter 9, heading, note, 'IPA, chapter 4' –

Clause 61 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Section 248(5), 'IPA, section 4.3.11' –

Clause 62 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Section 250(1), 'tribunal' –

Clause 63 replaces a reference to the building and development tribunal with a reference to the building and development dispute resolution committee under the Bill.

Section 255 –

Clause 64 replaces a reference to schedule 8, part 2 of the *Integrated Planning Act 1997* with a reference to a regulation under the Bill, consistent with the relocation of self–assessable development triggers to a regulation under this Bill.

Sections 264 and 265, 'IPA' –

Clause 65 amends sections 264 and 265 to retain a reference to the *Integrated Planning Act 1997*. These sections are transitional arrangements preserving the appointments of referees and the registrar of the Building and Development Tribunal under the *Integrated Planning Act 1997*. Consequently it is necessary for these sections to continue to refer to that Act, despite the introduction of this Bill.

After section 284 –

Clause 66 inserts a transitional provision to ensure that the *Building Act 1975*, as in force prior to the commencement of the Bill, continues to apply to a development application made, but not decided under the *Integrated Planning Act 1997* prior to the commencement.

Schedule 2, definition *building and development tribunal*, *IPA* and *IPA regulation* –

Clause 67 omits these definitions since these terms are no longer used in the Act.

Schedule 2 –

Clause 68 inserts definitions "building and development dispute resolution committee", "SPA compliance certificate" and "SPA compliance permit".

Schedule 2, definitions *assessable development*, *development application*, *development approval* and *local planning instrument,* 'IPA, schedule 10' –

Clause 69 replaces a schedule reference for consistency with this Bill.

Schedule 2, definition *decision notice,* 'IPA, section 3.5.15' –

Clause 70 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Schedule 2, definition *development permit,* 'IPA, section 3.1.5(3)' –

Clause 71 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Schedule 2, definition *enforcement action*, 'IPA, chapter 4' –

Clause 72 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Schedule 2, definition *IDAS*, 'IPA, chapter 3' –

Clause 73 replaces the reference to IPA with a reference to the Planning Act and replaces a chapter reference for consistency with this Bill.

Schedule 2, definition *negotiated decision notice*, 'IPA, section 3.5.17(2)' –

Clause 74 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Schedule 2, definition *planning scheme*, 'IPA, section 2.1.1' –

Clause 75 replaces the reference to IPA with a reference to the Planning Act and replaces a section reference for consistency with this Bill.

Schedule 2, definition *self-assessable building work,* 'section 21(1)' –

Clause 76 amends a reference to the definition of "self-assessable building work" to take account of the renumbering to section 21.

Building and Construction Industry (Portable Long Service Leave) Act 1991

Section 67(2)(a), from 'development permit' to '*1997*' –

Clause 1 includes a reference to a compliance permit, and amends a reference to the former *Integrated Planning Act 1997* to refer instead to this Bill.

Sections 74(c), 75(1)(a)(ii) and 77(1), '*Integrated Planning Act 1997*' –

Clause 2 amends a reference to the former *Integrated Planning Act 1997* to refer instead to this Bill.

Section 74 –

Clause 3 inserts a reference to the circumstance where a person requests a compliance assessment under this Bill.

Section 74(d), 'and (c)' –

Clause 4 inserts a reference to the circumstance where a person requests compliance assessment under this Bill.

Section 75(1)(a)(i), from 'development permit' to '*1997*' –

Clause 5 includes a reference to a compliance permit, and amends a reference to the former *Integrated Planning Act 1997* to refer instead to this Bill.

Section 75(1)(b), 'permit or' –

Clause 6 includes a reference to a compliance permit.

Section 77, heading, 'of assessment manager' –

Clause 7 omits a reference to "assessment manager".

Section 77 –

Clause 8 inserts a provision relating to a request being made to a compliance assessor for a compliance permit.

Section 77(2), from 'assessment manager' to 'approval' –

Clause 9 includes a reference to a compliance assessor and a compliance permit.

Section 77(4) –

Clause 10 omits this subsection. This subsection requires private certifiers to comply with a requirement to site an approved form as if they were assessment managers. Under amendments to the *Building Act 1975* carried out in 2006, private certifiers are characterised as assessment managers. Consequently subsection (4) is redundant.

Section 77(5), 'Subsections (2) and (4) do' –

Clause 11 omits a reference to section 77(4) since this section has been deleted.

Section 77(5), as amended –

Clause 12 renumbers this section.

Section 77 –

Clause 13 inserts a new subsection (5) which defines an "assessment manager".

Schedule, definition *private certifier* –

Clause 14 omits the definition of "private certifier" as this term is no longer used in this Act.

Schedule –

Clause 15 inserts a definition of "private certifier (class A)".

Schedule, definition, *assessment manager*, '*Integrated Planning Act 1997*' –

Clause 16 amends a reference to the *Integrated Planning Act 1997* to refer instead to this Bill.

Cape York Peninsular Heritage Act 2007

Schedule, definition *vegetation clearing application*, from '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to schedule 8 of the *Integrated Planning Act 1997* with a reference to a regulation made under this Bill, consistent with the relocation of assessable development triggers to a regulation under this Bill.

Century Zinc Project Act 1997

After section 21 –

Clause 1 inserts a transitional provision to ensure that part 4 as in force before the commencement of this clause continues to apply to a development application made before the commencement of this clause.

Schedule 6, definition, *development application*, paragraph (a), '*Integrated Planning Act 1997*' –

Clause 2 amends a reference to the *Integrated Planning Act 1997* to refer instead to this Bill.

Child Care Act 2002

Section 11(1), '*Integrated Planning Act1997*' –

Clause 1 amends references to the former *Integrated Planning Act 1997* to refer instead to this Bill.

Coastal Protection and Management Act 1995

Section 50, heading, 'Integrated Planning Act 1997' –

Clause 1 replaces the reference to the *Integrated Planning Act 1997* with a reference generally to "Planning Act", which is in turn defined in the dictionary of the *Coastal Protection and Management Act 1995* as meaning this Bill.

Sections 50(1), 66(1), 111(3), 124(1)(a), 126(b), 167(3) and 187(2), '*Integrated Planning Act 1997*' –

Clause 2 replaces references in these sections to the *Integrated Planning Act 1997* with a reference to "Planning Act" for consistency with this Bill.

Section 50(2) –

Clause 3 replaces a reference to the *Integrated Planning Act 1997* with a reference to the "Planning Act", and replaces section references with references to the relevant provisions in the Bill, for consistency with this Bill. As the process for making or amending a planning scheme is no longer included in a schedule to the Bill, the reference to schedule 1 of the *Integrated Planning Act 1997* has been replaced with a reference generally to the process of making or amending a planning scheme under the Planning Act.

Section 53 –

Clause 4 omits this provision because, at the time of commencement of the new legislation, all transitional planning schemes (as defined under the *Integrated Planning Act 1997*) will have been replaced by planning schemes made under the *Integrated Planning Act 1997* and continued in effect under the Bill.

Sections 55(1), 73(1), 77(1), 89(a), 93(1)(e), 100A(3), 101(1) and 124(2)(a)(i) and schedule definitions foreshore and tidal works, 'high water mark' –

Clause 5 corrects a grammatical anomaly in these sections.

Section 100A(3)(a) –

Clause 6 replaces references to schedule 8 of the *Integrated Planning Act 1997* with references to development that is prescribed as assessable development under clause 232(1) of this Bill, consistent with the relocation of assessable development triggers to a regulation under this Bill.

Section 100A –

Clause 7 inserts a definition of "mobile and temporary environmentally relevant activity" for section 100A, consistent with changes necessitated by the relocation of assessable development triggers to a regulation under this Bill.

Section 100B, heading 'Integrated Planning Act 1997' –

Clause 8 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act" for consistency with this Bill.

Section 100B(1), from 'dealing' –

Clause 9 replaces references to schedule 8 of the *Integrated Planning Act 1997* with references to development that is prescribed as assessable

development under clause 232(1) of this Bill, consistent with the relocation of assessable development triggers to a regulation under this Bill.

Section 100B(2), '*Integrated Planning Act 1997,* section 3.1.4' –

Clause 10 replaces a section reference for consistency with this Bill.

Section 100B(3), '*Integrated Planning Act 1997*, section 3.3.3' –

Clause 11 replaces a section reference for consistency with this Bill.

Section 103, note –

Clause 12 replaces several chapter, part and section references in these notes for consistency with this Bill.

Section 104(5), first mention, from 'section' –

Clause 13 replaces chapter, part and section references in this section for consistency with this Bill.

Section 104(5), second mention –

Clause 14 corrects a numbering anomaly.

Section 104A –

Clause 15 replaces the current section 104A, to reflect the inclusion of various prohibitions currently contained in other legislation under schedule 1 of this Bill, and to replace various chapter, part, division and section references consistent with this Bill.

Section 105, heading 'Integrated Planning Act 1997, ss 3.3.15, 3.5.4, and 3.5.5' –

Clause 16 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces several section references, for consistency with this Bill.

Section 105, '*Integrated Planning Act 1997*, sections 3.3.15(1)(a), 3.5.4(3) and 3.5.5(2)(e) and 3(e)' –

Clause 17 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces several section references, for consistency with this Bill.

Section 115(2), '*Integrated Planning Act 1997*, section 4.1.27(1)(b)' –

Clause 18 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a section reference, for consistency with this Bill.

Section 115(3), '*Integrated Planning Act 1997*, section 3.5.30' –

Clause 19 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a section reference, for consistency with this Bill.

Section 177, heading 'Integrated Planning Act 1997, ch 3, pt 5, div 5' –

Clause 20 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a reference to chapter 3, part 5, division 5 of the *Integrated Planning Act 1997* with a reference to 'particular Planning Act provisions'.

Section 177(2) –

Clause 21 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a chapter, part and division reference, for consistency with this Bill.

Section 187, heading 'Integrated Planning Act 1997' –

Clause 22 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act".

Section 189(2), '*Integrated Planning Act 1997*, section 3.5.21(1)' –

Clause 23 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a section reference, for consistency with this Bill.

Section 190 –

Clause 24 inserts a new subsection (7) to ensure that this section does not apply to a deemed approval mentioned in section 177 of the *Coastal Protection and Management Act 1995* on or after the day the new section 193 commences. Section 190 is a transitional provision, which states changes to the process under the *Integrated Planning Act 1997* for making a minor change to a deemed approval mentioned in section 177 of the *Coastal Protection and Management Act 1995*. The Bill includes a new process for changing approvals. Therefore, it is necessary that any future changes to deemed approvals mentioned in section 177 of the *Coastal*

Protection and Management Act 1995 are carried out in accordance with the process in the Bill for changing approvals.

After section 191 –

Clause 25 inserts three transitional provisions.

The new section 192 relates to section 53 of the *Coastal Protection and Management Act 1995*, which is to be omitted. The new section 192 ensures that section 53 as in force prior to the commencement of this clause continues to apply in relation to a transitional planning scheme amended under the *Integrated Planning Act 1997* prior to the commencement of this clause.

The new section 193 relates to a deemed approval mentioned in section 177 of the *Coastal Protection and Management Act 1995*. If the holder of the approval wishes to make a permissible change to the approval, section 193 will apply and specifies changes to the process for making the permissible change under the Bill.

The new section 194 ensures that particular provisions of the *Coastal Protection and Management Act 1995* as in force prior to the commencement of this clause will continue to apply to a development application made but not decided before the commencement of this clause.

Schedule, definitions *high water mark* and *transitional planning scheme* –

Clause 26 omits the definitions of "high water mark" and "transitional planning scheme". The definition of "high-water mark" is re-included with a hyphen in the following clause. The definition of "transitional planning scheme" is redundant because at the time of commencement of the new legislation, all transitional planning schemes (as defined under the *Integrated Planning Act 1997*) will have been replaced by planning schemes made under the *Integrated Planning Act 1997* and continued in effect under the Bill.

Schedule –

Clause 27 inserts a definition of "high-water mark" to replace the current definition to correct a grammatical anomaly. This clause also inserts a definition of "Planning Act" to refer to this Bill.

Schedule, definitions *applicable code*, *preliminary approval* and *referral agency*, '*Integrated Planning Act 1997*, schedule 10' –

Clause 28 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a schedule reference, for consistency with this Bill.

Schedule, definitions *assessable development* and *development permit*, '*Integrated Planning Act 1997*, schedule 10' –

Clause 29 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a schedule reference, for consistency with this Bill.

Schedule, definition *assessment manager*, '*Integrated Planning Act 1997*, section 3.1.7' and footnote –

Clause 30 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a section reference, for consistency with this Bill.

Schedule, definition *concurrence agency*, '*Integrated Planning Act 1997*, schedule 10.' and footnote –

Clause 31 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a schedule reference, for consistency with this Bill.

Schedule, definition *currency period*, '*Integrated Planning Act 1997*, section 3.5.21' –

Clause 32 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a section reference, for consistency with this Bill.

Schedule, definition *development*, '*Integrated Planning Act 1997*, section 1.3.2.' and footnote –

Clause 33 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a section reference, for consistency with this Bill.

Schedule, definition *development approval*, '*Integrated Planning Act 1997*, schedule 10.' and footnote –

Clause 34 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a schedule reference, for consistency with this Bill.

Schedule, definition *operational work*, '*Integrated Planning Act 1997*, section 1.3.5' –

Clause 35 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a section reference, for consistency with this Bill.

Schedule, definition *planning scheme*, '*Integrated Planning Act 1997*, section 2.1.1' –

Clause 36 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", and replaces a section reference, for consistency with this Bill.

Schedule, definition *tidal works*, *item 4(c)* –

Clause 37 replaces a reference to particular assessable development under schedule 8 of the *Integrated Planning Act 1997* with a reference to work that is within a coastal management district that is assessable development under section 232(1) of this Bill, consistent with the relocation of assessable development triggers to a regulation under this Bill.

Dangerous Goods Safety Management Act 2001

Section 180, heading, '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Sections 180(1) and (8) and 187(2)(e), '*Integrated Planning Act 1997*' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Domestic Building Contracts Act 2000

Schedule 2, definition *development approval*, '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Electricity Act 1994

Section 112A(1), '*Integrated Planning Act 1997*, schedule 8, part 1' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and omits a schedule and part reference, for consistency with this Bill.

Section 112A(2) and (3), '*Integrated Planning Act 1997*' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Environmental Protection Act 1994

Sections 37(2), 73T(5), 417, 538(1)(b), 580(4) and schedule 4, definitions *advice agency*, *assessable development*, *concurrence agency*, *development approval* and *self-assessable development*, 'Integrated Planning Act'—

Clause 1 replaces references to the *Integrated Planning Act 1997* with references to this Bill.

Section 73A(2), 'Integrated Planning Act, section 3.3.15 or chapter 3' –

Clause 2 replaces a reference to the Integrated Planning Act with a reference to Planning Act and replaces a section and chapter reference for consistency with this Bill.

Section 73AA –

Clause 3 replaces the current section 73AA, to reflect the inclusion of various prohibitions currently contained in other legislation under schedule 1 of this Bill. This section has also been amended to replace various chapter, part, division and section references consistent with this Bill, and to reflect the relocation of assessable development triggers to a regulation under this Bill.

Section 73B(1), 'Integrated Planning Act, section 3.5.30' –

Clause 4 replaces a reference to the Integrated Planning Act with a reference to Planning Act and replaces a section reference for consistency with this Bill.

Section 73C(4), 'Integrated Planning Act, section 3.5.33A' –

Clause 5 replaces a reference to the Integrated Planning Act with a reference to Planning Act and replaces a section reference for consistency with this Bill.

Section 73C(6), 'Integrated Planning Act, section 4.1.31(1)(b)' –

Clause 6 replaces a reference to the Integrated Planning Act with a reference to Planning Act and replaces a section reference for consistency with this Bill.

Section 73T –

Clause 7 inserts a new subsection to clarify that subsection (6), which relates to the lapsing of an application, applies despite the provisions in this Bill relating to the revival of an application.

Sections 616Z(1)(c) and 619(2)(c), 'Integrated Planning Act' –

Clause 8 replaces the defined term "Integrated Planning Act" with a reference to the *Integrated Planning Act 1997*. Sections 615Z and 619 are transitional provisions which have had effect, therefore it is appropriate that they refer to the *Integrated Planning Act 1997*.

Section 616ZB(b), 'Integrated Planning Act, section 1.3.5' –

Clause 9 replaces a reference to the Integrated Planning Act with a reference to Planning Act and replaces a section reference for consistency with this Bill.

Section 624(2)(b)(ii), 'Integrated Planning Act, section 1.3.5' –

Clause 10 replaces a reference to the Integrated Planning Act with a reference to Planning Act and replaces a section reference for consistency with this Bill.

After section 655 –

Clause 11 inserts a transitional provision to ensure that chapter 4, part 1 of the *Environmental Protection Act 1994* as in force prior to the commencement of this clause continues to apply to a development application made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this clause.

Schedule 1, part 1, heading, 'ss 440' –

Clause 12 relates to a drafting style issue.

Schedule 1, part 1, section 3(f), '*Integrated Planning Act 1997*' –

Clause 13 replaces a reference to the Integrated Planning Act with a reference to Planning Act and replaces a reference to the *Integrated Planning Act 1997* with a reference to the Bill.

Schedule 4, definitions *assessment manager*, *development, Integrated Planning Act* and *residential complex* –

Clause 14 omits these definitions. The definitions of "assessment manager" and "development" are replaced in the following clause. The definition of "residential complex" is redundant since it does not appear in the Act as a result of changes to section 73AA.

Schedule 4 –

Clause 15 inserts new definitions of "assessment manager", "development" and "Planning Act", including new section references, consistent with this Bill.

Schedule 4, definition *applicable code*, 'Integrated Planning Act, schedule 10' –

Clause 16 replaces a reference to the Integrated Planning Act with a reference to Planning Act and replaces a schedule reference consistent with this Bill.

Fire and Rescue Service Act 1990

Section 104A, definition *IPA* –

Clause 1 omits this definition.

Section 104FA(1), 'IPA' –

Clause 2 inserts a reference to the *Integrated Planning Act 1997*.

Section 137(1), 'may –' –

Clause 3 clarifies that an authorised officer may do all of the listed actions.

Section 137(1)(b)(ii) –

Clause 4 inserts a reference to this Bill.

Fisheries Act 1994

Section 52(4)(b), 'Planning Act.' and footnote –

Clause 1 omits a footnote number and footnote, and includes in its place a note containing a changed section reference, consistent with this Bill.

Section 76A(a) and (b) –

Clause 2 replaces references to particular development made assessable under schedule 8 of the *Integrated Planning Act 1997*, with a reference to development prescribed as assessable under a regulation under the Bill, consistent with the relocation of assessable development triggers to a regulation under this Bill.

Section 76C(3), 'the section 3.5.28' –

Clause 3 replaces a section reference for consistency with this Bill.

Section 76D(3), 'application.' and footnote –

Clause 4 omits a footnote number and footnote, and includes in its place a note containing changed chapter, part, division and section references, consistent with this Bill.

Sections 76DA to 76DC –

Clause 5 replaces the current sections 76DA to 76DC, to reflect the inclusion of various prohibitions currently contained in other legislation under schedule 1 of this Bill, and to replace particular chapter, part, division and section references consistent with this Bill.

Section 76G(2)(b), 'applies.' and footnote –

Clause 6 omits a footnote number and footnote, and includes in its place a note containing changed section references, consistent with this Bill.

Section 76H, 'chapter 3' –

Clause 7 replaces a chapter reference for consistency with this Bill.

Section 76I(1), 'Act.' and footnote –

Clause 8 omits a footnote number and footnote, and includes in its place a note containing changed section references, consistent with this Bill.

Section 76Q(2)(b), 'section 4.1.39' –

Clause 9 replaces a section reference for consistency with this Bill.

Section 76Q(5), 'chapter 4, part 1, division 11' –

Clause 10 replaces a chapter, part and division reference for consistency with this Bill.

Section 76Q(5), 'chapter 4, part 1' –

Clause 11 replaces a chapter and part reference for consistency with this Bill.

Section 76R(1), from 'chapter 4' to 'apply' –

Clause 12 replaces chapter, part, division and section references for consistency with this Bill.

Section 76S(b), 'emergency.' and footnote –

Clause 13 omits a footnote number and footnote, and includes in its place a note containing changed chapter, part and section references, consistent with this Bill.

Section 76T(2), 'section 4.3.1(1)' –

Clause 14 replaces a section reference for consistency with this Bill.

Section 76T(2)(a), from 'for' to 'item 7 or 8' –

Clause 15 replaces references to particular development made assessable under schedule 8 of the *Integrated Planning Act 1997*, with a reference to development prescribed as assessable under a regulation under the Bill, consistent with the relocation of assessable development triggers to a regulation under this Bill.

Section 76T(2)(b), from 'for' to 'item 8' –

Clause 16 replaces a reference to particular development made assessable under schedule 8 of the *Integrated Planning Act 1997*, with a reference to development prescribed as assessable under a regulation under the Bill, consistent with the relocation of assessable development triggers to a regulation under this Bill.

Section 76T(2)(c), from 'for' to 'item 6' –

Clause 17 replaces a reference to particular development made assessable under schedule 8 of the *Integrated Planning Act 1997*, with a reference to development prescribed as assessable under a regulation under the Bill, consistent with the relocation of assessable development triggers to a regulation under this Bill.

Section 76U(2), 'section 4.3.3(1)' –

Clause 18 replaces a section reference for consistency with this Bill.

Section 76V(1), 'section 4.3.6' –

Clause 19 replaces a section reference for consistency with this Bill.

Section 76V(2), 'section 4.3.6(1)(b)' –

Clause 20 replaces a section reference for consistency with this Bill.

Section 88B(1) –

Clause 21 replaces references to particular development made assessable or self-assessable under schedule 8 of the *Integrated Planning Act 1997*, with references to development prescribed as assessable or self-assessable under a regulation under the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 88B(2), penalty, paragraph (a), 'paragraph (a), (c) or (d)' –

Clause 22 replaces several paragraph references for consistency with the preceding consequential amendment.

Section 88B(2), penalty, paragraph (b), 'paragraph (b)' –

Clause 23 replaces a paragraph reference for consistency with the consequential amendment to section 88B(1) above.

Section 88B(4) –

Clause 24 inserts a definition of "dead marine wood" for this section.

Section 242(2)(c), 'given.' and footnote –

Clause 25 omits a footnote number and footnote, and includes in its place a note containing a changed section reference consistent with this Bill.

Section 244(3)(a)(iv)(A), 'starts;' and footnote –

Clause 26 omits a footnote.

Section 244(3)(a)(iv)(B), 'of the development application starts;' and footnote –

Clause 27 corrects a grammatical anomaly and omits a footnote.

Section 244(3)(b)(i), 'starts' –

Clause 28 provides a clarification of timeframes.

Section 244(3)(b)(ii), 'of the development application starts' –

Clause 29 corrects a grammatical anomaly.

After section 256 –

Clause 30 inserts a transitional provision to ensure that part 5, division 3A, subdivisions 1 to 4 of the *Fisheries Act 1994* as in force prior to the commencement of this clause continues to apply to a development application made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this clause.

Schedule –

Clause 31 inserts definitions of "building work", "material change of use", "operational work" and "prohibited development" consistent with amendments to other provisions of the *Fisheries Act 1994* in these consequential amendments.

Schedule, definitions *applicable code*, *assessable development*, *development application* and *self-assessable development*, 'schedule 10' –

Clause 32 replaces a schedule reference for consistency with this Bill.

Schedule, definition *assessment manager*, 'section 3.1.7.' and footnote –

Clause 33 omits a footnote, and replaces a section reference for consistency with this Bill.

Schedule, definition *concurrence agency*, 'schedule 10.' and footnote –

Clause 34 omits a footnote, and replaces a schedule reference for consistency with this Bill.

Schedule, definition *currency period*, 'section 3.5.21' –

Clause 35 replaces a section reference for consistency with this Bill.

Schedule, definition *development approval*, 'schedule 10.' and footnote –

Clause 36 omits a footnote, and replaces a schedule reference for consistency with this Bill.

Schedule, definition *development permit*, 'section 3.1.5(3)' –

Clause 37 replaces a section reference for consistency with this Bill.

Schedule, definition *Planning Act*, '*Integrated Planning Act 1997*' –

Clause 38 amends a reference to the *Integrated Planning Act 1997* consistent with this Bill.

Greenhouse Gas Storage Act 2009

Section 31(2), note –

Clause 1 omits a redundant note which refers to "development generally" under the *Integrated Planning Act 1997.*

Section 112(2), editor's note –

Clause 2 omits a redundant editor's note which refers to "development generally" under the *Integrated Planning Act 1997.*

Iconic Queensland Places Act 2008

Section 3(2), 'Integrated Planning Act, schedule 10' –

Clause 1 replaces a reference to Integrated Planning Act with Planning Act and replaces a schedule reference for consistency with this Bill.

Section 11 –

Clause 2 replaces section 11 with a new provision which replaces references to particular provisions of the *Integrated Planning Act 1997* with references to this Bill. Importantly, the processes for making and amending planning schemes and planning scheme policies, making temporary local planning instruments, and for amending a planning scheme to include a structure plan, will now be included in statutory guidelines made under the Bill, rather than in the Bill itself (i.e. schedules 1, 1A, 2 and 3 of the *Integrated Planning Act 1997* are not included in the Bill). Therefore, reference to schedules 1, 1A, 2 and 3 have been replaced with references to the relevant statutory guidelines.

This new provision also inserts a definition of TLPI, which was not previously defined in the *Iconic Queensland Places Act 2008*.

Section 12(a), 20(a) and 53(3) and (4), 'Integrated Planning Act' –

Clause 3 replaces references to Integrated Planning Act with Planning Act.

Section 13(2), from 'under' to 'it gives' –

Clause 4 replaces references to specific provisions of the *Integrated Planning Act 1997* with references to the general scheme process or the structure plan process. The phrase "it first gives" is intended to clarify that the local government is only required to prepare one impact report, and that the report must only be provided once to the Minister, namely the first time the local government gives the Minister a copy of the scheme proposal.

Section 14 –

Clause 5 replaces section 14 with a new section. Section 14 currently refers to the Minister's powers under section 10(2) of schedule 1 of the *Integrated Planning Act 1997*. As stated above, the process in schedule 1 of the *Integrated Planning Act 1997* for making or amending a planning scheme will now be set out in a statutory guideline. Section 14 has therefore been changed to refer generally to any power the Minister may have under the statutory guideline that is equivalent to the powers in section 10(2) of schedule 1 of the *Integrated Planning Act 1997*.

Sections 15(1) and 16(2), from 'under' to 'structure plan process' –

Clause 6 replaces references to specific provisions of the *Integrated Planning Act 1997* with references to the general scheme process or the structure plan process. Despite this change, section 15 will continue to apply to any step, prior to public notification, in the general scheme process or the structure plan process that involves the Minister considering whether State interests have been affected.

Section 16(3), 'under section 11(3)(b) of the general scheme process or section 7 of the structure plan process' –

Clause 7 replaces references to specific provisions of the *Integrated Planning Act 1997* with references to the general scheme process or the structure plan process.

Section 16(3)(b), 'under the provision' –

Clause 8 inserts a reference to the relevant process.

Section 17, from 'A notice' to 'structure plan process' –

Clause 9 replaces references to specific provisions of the *Integrated Planning Act 1997* with references to the general scheme process or the structure plan process.

Section 18(1), from 'under' –

Clause 10 replaces references to specific provisions of the *Integrated Planning Act 1997* with references to the general scheme process or the structure plan process.

Section 18(2), from 'When' to 'structure plan process' –

Clause 11 replaces references to specific provisions of the *Integrated Planning Act 1997* with references to the general scheme process or the

structure plan process. Despite these changes, this requirement continues to only apply after public notification has been carried out.

Section 18(3), from 'under' to 'structure plan process' –

Clause 12 replaces references to specific provisions of the *Integrated Planning Act 1997* with references to the general scheme process or the structure plan process. Despite these changes, this requirement continues to only apply after public notification has been carried out.

Section 19(2) from 'under' to 'structure plan process' –

Clause 13 replaces references to specific provisions of the *Integrated Planning Act 1997* with references to the general scheme process or the structure plan process.

Section 19(3) and note –

Clause 14 replaces a reference to a specific provision of the *Integrated Planning Act 1997* with a reference to the general scheme process or the structure plan process.

Section 21(2), 'section 2(1) of' –

Clause 15 omits a reference to a specific provision of the *Integrated Planning Act 1997.*

Section 22(1), 'section 2 of' –

Clause 16 omits a reference to a specific provision of the *Integrated Planning Act 1997.*

Section 23(2) –

Clause 17 omits references to specific provisions of the *Integrated Planning Act 1997.*

Section 24(a), 'section 1 of' –

Clause 18 omits a reference to a specific provision of the *Integrated Planning Act 1997.*

Section 25, heading, 'stage' –

Clause 19 omits the reference to a consultation stage, consistent with the omission of the scheme policy process from the Bill.

Section 25(1), 'The consultation stage under part 2 of' –

Clause 20 omits a reference to a specific provision of the *Integrated Planning Act 1997.*

Sections 30 and 38(1), 'Integrated Planning Act, chapter 3' –

Clause 21 replaces a chapter reference for consistency with this Bill.

Section 44, note, 'Integrated Planning Act, section 3.3.6(3) and (4)' –

Clause 22 replaces section references for consistency with this Bill.

Section 52(2), 'Integrated Planning Act, section 3.5.7(1)' –

Clause 23 replaces a section reference for consistency with this Bill.

Section 52(3), 'period that' –

Clause 24 corrects a typographical error.

Section 53, heading, 'become' –

Clause 25 corrects a typographical error.

Section 53(1), 'Integrated Planning Act, section 3.5.15' –

Clause 26 replaces a section reference with a reference to the relevant chapter, part and division for consistency with this Bill.

Section 54(1), 'Integrated Planning Act, sections 4.1.27 to 4.1.29' –

Clause 27 replaces section references for consistency with this Bill.

Section 54(2), 'Integrated Planning Act, section 4.1.43' –

Clause 28 replaces a section reference for consistency with this Bill.

Section 54 –

Clause 29 inserts a provision which provides that the building and development committee does not have jurisdiction to hear a matter relating to the decision of a panel.

Section 59(2) and (3) –

Clause 30 replaces a section reference with a reference to the relevant chapter, part and division for consistency with this Bill. It also provides when the panel is taken to be the responsible entity. This change is consistent with the new process in the Bill for changing approvals.

Section 69(4), 'Integrated Planning Act, section 2.5B.34' –

Clause 31 replaces a section reference for consistency with this Bill.

Section 69(5), 'Integrated Planning Act, section 2.5B.36' –

Clause 32 replaces a section reference for consistency with this Bill.

Part 7, before section 73 –

Clause 33 inserts a new division for this part.

After section 75 –

Clause 34 inserts transitional provisions in relation to processes for making local planning instruments or structure plans which have started but not finished under the *Integrated Planning Act 1997* prior to the commencement of this clause. The transitional provisions also ensure that part 4 as in force prior to the commencement of this clause continues to apply to a development application made but not decided prior to the commencement of this clause.

Schedule 2, definition *Integrated Planning Act* -

Clause 35 omits this definition.

Schedule 2 –

Clause 36 inserts a reference to the definition of TLPI. It also inserts definitions of IDAS and Planning Act by reference to this Bill.

Inala Shopping Centre Freeholding Act 2006

Section 27(1), from 'assessable development' –

Clause 1 includes a reference to prohibited development and development requiring compliance assessment.

Section 27(2), 'IP Act' –

Clause 2 replaces a reference to IP Act with a reference to Planning Act.

Section 27(3), definition *development,* 'IP Act, section 1.3.2' –

Clause 3 replaces a section reference for consistency with this Bill.

Section 27(3), definition *IP Act*' –

Clause 4 replaces the term IP Act with Planning Act, which is in turn defined to mean this Bill.

Integrated Resort Development Act 1987

Schedule 1, part A, item 11, 'or the *Integrated Planning Act 1997*' –

Clause 1 retains a reference to the *Integrated Planning Act 1997*, and includes a reference to this Bill.

Land Act 1994

Section 55D(4), 109A(4), 109B(5), 'Integrated Planning Act 1997, about' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 294B(7), definition *building development approval,* from 'approval, under' to '*1997*' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and also includes a reference to a compliance permit.

Section 373A(7)(a), from 'approval' to '1997; or' –

Clause 3 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and also includes a reference to compliance permits. This clause also omits a footnote number and footnote, and includes in its place a note containing changed section references, consistent with this Bill.

Section 431N(a), '*Integrated Planning Act 1997*' –

Clause 4 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Land Protection (Pest and Stock Route Management) Act 2002

Section 60(2)(a)(iii)(B), from 'approval' to '*1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and includes a reference to compliance permits.

Section 65(c), from 'approval' to '*1997*' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and includes a reference to compliance permits.

Land Sales Act 1984

Section 2(d), '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act", which is in turn defined as referring to this Bill.

Section 6 –

Clause 2 inserts a definition of "compliance permit".

Section 6, definition *development permit, 'Integrated Planning Act 1997,* schedule 10' –

Clause 3 replaces a schedule reference to the *Integrated Planning Act 1997* with a section reference in this Bill.

Section 6, definitions *operational work* and *reconfiguring a lot, 'Integrated Planning Act 1997,* section 1.3.5' –

Clause 4 replaces section references for consistency with this Bill.

Section 6, definition *Planning Act 'Integrated Planning Act 1997*' –

Clause 5 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Sections 8(1), 9(2)(a) and (3)(d), 'development permit' –

Clause 6 includes a reference to compliance permits.

Sections 9(1)(b), 10(1)(b)(i) and 10A(2), 'Planning Act, chapter 3, part 7' –

Clause 7 replaces a reference to chapter 3, part 7 of the *Integrated Planning Act 1997* with a reference to the "Planning Act", because chapter 3, part 7 has not been carried across into the Bill. Instead, it is intended that plans of subdivision will require compliance assessment under the new regulation.

Land Tax Act 1915

Section 13(4B)(a), from 'permit' to '1997' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and includes a reference to compliance permits.

Section 13(4B)(b), '*Integrated Planning Act 1997*' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Land Title Act 1994

Section 50(3) –

Clause 1 renumbers this subsection to take account of the new subsections inserted into this section.

Section 50 –

Clause 2 inserts new subsections (3) and (4) to clarify the consequences when a plan of subdivision does not require compliance assessment under this Bill. This clause also clarifies the timeframe for lodging a plan of subdivision for registration if the approval of the plan of subdivision is in the form of a compliance certificate.

These changes relate to the fact that chapter 3, part 7 of the *Integrated Planning Act 1997* is not being carried across into the Bill. Instead, it is intended that plans of subdivision will require compliance assessment under the new regulation. The requirements for approving plans of subdivision will therefore be set out in the regulation.

Section 3.7.6 of the *Integrated Planning Act 1997* relates to when the approved plan must be lodged for registration, and therefore is more appropriately located in the *Land Title Act 1994*. Section 3.7.6 of the *Integrated Planning Act 1997* has therefore been included as the new section 50(4).

Section 3.7.8(3) of the *Integrated Planning Act 1997* relates to the application of sections 50(1)(h) and (i) of the *Land Title Act 1994* and is therefore again more appropriately located in the *Land Title Act 1994*. Section 3.7.8(3) of the *Integrated Planning Act 1997* has therefore been included as the new section 50(3).

Section 53, 'the time specified in the *Integrated Planning Act 1997*, section 3.7.6' –

Clause 3 replaces the reference to section 3.7.6 of the *Integrated Planning Act 1997* with a reference to the Bill, and clarifies the lodgement time for a plan of subdivision that has been withdrawn and re-lodged.

Section 54A(6), definition *building development approval,* 'approval, under the *Integrated Planning Act 1997*' –

Clause 4 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and also makes reference to a compliance permit.

Sections 65(3A) and 83(2), '*Integrated Planning Act 1997*' –

Clause 5 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 83 –

Clause 6 inserts a reference to a plan of survey which does not require compliance assessment under a regulation under this Bill. Section 3.7.8(3) of the *Integrated Planning Act 1997* relates to the application of section 83(2) of the *Land Title Act 1994*. It is considered that this provision is therefore more appropriately located in section 83.

Section 97A(6)(a), from 'approval' to '*1997;* or' –

Clause 7 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and omits a footnote number and footnote, and includes in its place a note containing changed section references, consistent with this Bill. This amendment also inserts a reference to a compliance permit.

Section 115I(1), from 'for which' –

Clause 8 retains a reference to the *Integrated Planning Act 1997,* and inserts a reference to this Bill. This clause also includes a reference to a compliance permit.

Section 191D(2)(b)(ii) and 191E(2)(b), '*Integrated Planning Act 1997*' –

Clause 9 replaces references to the *Integrated Planning Act 1997* with references to this Bill.

Liquor Act 1992

Section 4, definition *development approval,* '*Integrated Planning Act 1997*, schedule 10' -

Clause 1 replaces a schedule reference for consistency with this Bill.

Section 4, definition *relevant period,* paragraph (a), '*Integrated Planning Act 1997*, section 3.5.21' –

Clause 2 replaces a section reference for consistency with this Bill.

Section 123(1)(b), '*Integrated Planning Act 1997*' –

Clause 3 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Local Government Act 1993

Section 165(6), definition *local law,* 'and interim development control provisions'

Clause 1 omits a reference in this definition to the term "interim development control provisions".

Sections 463(1)(g), 807(2), definition *statutory building functions,* 854(1), 919A(1)(b)(ii), 956G(2)(b), 957(5) and 1071E(3)(b)(iv), '*Integrated Planning Act 1997*' –

Clause 2 replaces references to the *Integrated Planning Act 1997* with references to this Bill.

Section 854(1), ', on or after 30 March 1998,' –

Clause 3 omits a reference to a redundant date.

Section 854(1), 'chapter 3' –

Clause 4 replaces a chapter reference for consistency with this Bill.

Section 854(1A), from 'makes' to 'scheme' –

Clause 5 replaces a reference to "second IPA planning scheme" with a reference to a planning scheme under the Bill. This provision has the effect that a local government may make a local law of a type mentioned in subsection (1A) that establishes a process similar to the process under chapter 6 of the Bill until the local government makes a decision to prepare a planning scheme under the Bill.

Section 854(3) and (3A) –

Clause 6 replaces these subsections with a new subsection.

Subsection (3)(a) is now redundant, as all local governments will, at the time of the commencement of the Bill, have a planning scheme made under the *Integrated Planning Act 1997.*

Subsection (3)(b) has been included in a transitional provision, because it relates to local laws in existence prior to 30 March 1998 or made under existing subsection (1A) prior to the commencement of the Bill.

The new subsection provides that any local laws of a type mentioned in subsection (1A) and including a process similar to the process under chapter 6 of the Bill may be repealed, but not amended, up until the time the local government makes a decision to prepare a new planning scheme under the Bill.

Section 854(5) –

Clause 7 omits a redundant definition of "development". This section has had its effect.

Sections 854(6) and (7) –

Clause 8 renumbers these sections as a consequence of the omission of section 854(5).

Section 854(6), as renumbered, 'subsection (6)' –

Clause 9 amends a reference to the renumbered section.

Section 919A(1)(b) –

Clause 10 replaces a reference to *Integrated Planning Act 1997* with a reference to this Bill, and includes a reference to compliance assessment.

Section 934A(3), definition *owner*, paragraph (a), from 'permit' –

Clause 11 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and includes a reference to a compliance permit.

After section 1298 –

Clause 12 inserts transitional provisions in relation to local laws and subordinate local laws about development. This transitional provision relates to the changes to section 854, and ensures the application of section 854, as in force before the commencement, to local laws and subordinate local laws in force before the commencement of this clause which include a process that duplicates the process in chapter 3 of the *Integrated Planning Act 1997.*

Schedule 2, definition *implementation issues* paragraph (b) –

Clause 13 omits a reference to an "interim development control provision" as the term is no longer relevant, since these provisions have now been superseded by planning schemes.

Schedule 2, definition *interim development control provision* –

Clause 14 omits the definition of "interim development control provision", as the term is no longer relevant. All interim development control provisions under the repealed IPA have now been superseded by planning schemes.

Schedule 2, definition *local government Act,* paragraph (b), *'Integrated Planning Act 1997'* –

Clause 15 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Schedule 2, definition *local government Act,* paragraphs (f) to (h) –

Clause 16 omits a reference to an "interim development control provision" as this term is no longer relevant, since these provisions have now been superseded by planning schemes.

Schedule 2, definition *planning scheme* –

Clause 17 replaces a section reference for consistency with this Bill.

Local Government Act 2009

Section 37(2), 'chapter 3' –

Clause 1 **replaces a chapter reference for consistency with this Bill.**

Section 37(4) –

Clause 2 omits this section because there are no longer any transitional planning schemes, as defined under the *Integrated Planning Act 1997*, in effect. Therefore, there is no need to define planning scheme as excluding a transitional planning scheme.

Section 37(5), from 'decides' –

Clause 3 omits the reference to schedule 1 of the *Integrated Planning Act 1997*, and replaces it generally with a reference to deciding to make a planning scheme under this Bill. This clause also omits the reference to 'IPA planning scheme'.

Section 37(5) as amended and (6) –

Clause 4 renumbers these subsections to account for the omission of subsection 37(4) above.

Section 72(1)(c)(ii) –

Clause 5 inserts a reference to compliance assessment as compliance assessment may be required for matters that previously required a development approval.

Section 93(4)(a), after 'permit' –

Clause 6 inserts a reference to compliance permits as compliance assessment may be required for matters that previously required a development approval.

Section 121(2)(e) –

Clause 7 omits the reference to interim development control provisions, because there are no longer any interim development control provisions in effect.

Section 121(2)(f), 'paragraphs (a) to (e)' –

Clause 8 amends the reference to these paragraphs to take account of the omission of paragraph (e) above.

Section 121(2)(f), as amended –

Clause 9 renumbers this section to account for the omission of paragraph (e) above.

Schedule 3, definition *interim development control provision* –

Clause 10 omits this definition because, as a result of these consequential amendments, this term will no longer appear in the *Local Government Act 2009*.

Schedule 3, definition *Local Government Act*, paragraph (d) –

Clause 11 omits the reference to interim development control provisions, because there are no longer any interim development control provisions in effect.

Schedule 3, definition *Planning Act*, '*Integrated Planning Act 1997*' –

Clause 12 replaces a reference to the Integrated Planning Act 1997 with a reference to this Bill.

Schedule 3, definition *planning scheme*, 'section 2.1.1' –

Clause 13 replaces a section reference for consistency with this Bill.

Major Sports Facilities Act 2001

Section 30A(2), from '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and includes a reference to compliance permits.

Schedule 2, definition *use*, '*Integrated Planning Act 1997*' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Marine Parks Act 2004

Schedule, definition *environment conservation legislation*, examples, '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Mineral Resources Act 1989

Part 8, heading, 'Integrated Planning Act 1997' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 319(2) and 319A(4)(b) 'IDAS under' –

Clause 2 clarifies that IDAS is not administered under the *Queensland Heritage Act 1992*, but is administered for the *Queensland Heritage Act 1992*.

Section 319(3), note, 'section 4.3.2' –

Clause 3 replaces a section reference for consistency with this Bill.

Schedule, definitions *chief executive (planning)*, *development* and *planning scheme* –

Clause 4 omits these definitions. The term "chief executive (planning)" is only used once in section 319A(2)(b), and is defined for that section in subsection (5). The terms "development" and "planning scheme" are redefined in the following clause.

Schedule –

Clause 5 inserts new definitions with references to this Bill.

Schedule, definition *IDAS*, 'section 3.1.1' –

Clause 6 replaces a section reference for consistency with this Bill.

Schedule, definition *Planning Act, 'Integrated Planning Act 1997'* –

Clause 7 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Motor Racing Events Act 1990

Sections 5G(2) and 12(4), '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

National Trust of Queensland Act 1963

Section 6(3), '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Nature Conservation Act 1992

Schedule, definition *planning scheme, 'Integrated Planning Act 1997*, section 2.1.1' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997,* and also replaces a section reference for consistency with this Bill.

Nuclear Facilities Prohibition Act 2007

Section 8(4), definition *development approval*, 'approval under the *Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and includes a reference to a compliance permit.

Petroleum Act 1923

Section 75IB(1)(b), '*Integrated Planning Act 1997*' –

Clause 1 retains a reference to the *Integrated Planning Act 1997* and includes a reference to this Bill.

Petroleum and Gas (Production and Safety) Act 2004

Section 33(2), 'activity.' and footnote –

Clause 1 omits a footnote number and footnote, and includes in its place a note containing a changed chapter reference consistent with this Bill.

Section 112(2), 'activity.' and footnote –

Clause 2 omits a footnote number and footnote, and includes in its place a note containing a changed chapter reference consistent with this Bill.

Section 245(1)(b), '*Integrated Planning Act 1997*' –

Clause 3 retains a reference to the *Integrated Planning Act 1997* and includes a reference to this Bill.

Section 403(3), 'activity.' and footnote –

Clause 4 omits a footnote number and footnote, and includes in its place a note containing a changed chapter reference consistent with this Bill.

Section 442(3), 'activity.' and footnote –

Clause 5 omits a footnote number and footnote, and includes in its place a note containing a changed chapter reference consistent with this Bill.

Planning (Urban Encroachment – Milton Brewery) Act 2009

Section 5(1), 'development application for' –

Clause 1 retains a reference to the *Integrated Planning Act 1997,* and includes a reference to this Bill.

Section 6(2), '*Integrated Planning Act 1997*' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Schedule 2, definition *owner,* 'schedule 3' –

Clause 3 replaces a schedule reference for consistency with this Bill.

Schedule 2, definition *premises*, '*Integrated Planning Act 1997*, schedule 10' –

Clause 4 replaces a schedule reference for consistency with this Bill.

Plumbing and Drainage Act 2002

Sections 85(10), 86(12), 86A(8), and 95, 'decision.' and footnote –

Clause 1 omits footnote numbers and footnotes, and includes in their place notes containing a changed chapter, part and division reference consistent with this Bill.

Section 114(1)(b), '*Integrated Planning Act 1997*' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 118, heading, 'Integrated Planning Act 1997' –

Clause 3 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 118(1), '*Integrated Planning Act 1997*'. and footnote –

Clause 4 omits a footnote number and footnote, and includes in its place a note containing a changed section reference consistent with this Bill.

Section 118(3), '*Integrated Planning Act 1997*, section 4.2.13(2).' and footnote –

Clause 5 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and replaces a section reference for consistency with this Bill, and omits a footnote.

Section 169(2), 'tribunal' –

Clause 6 replaces a reference to a building development tribunal with a reference to the building and development dispute resolution committee.

Schedule, definition *building and development tribunal* –

Clause 7 omits this definition and inserts a new definition of building and development dispute resolution committee.

Schedule, definition *information notice*, paragraph (b)(iii), 'tribunal' –

Clause 8 replaces a reference to a building development tribunal with a reference to the building and development dispute resolution committee.

Private Health Facilities Act 1999

Section 62(2), *'permit under the Integrated Planning Act 1997'* –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill. Further, this clause includes a reference to a compliance permit.

Property Agents and Motor Dealers Act 2000

Section 17(4), definition *development, 'Integrated Planning Act 1997,* section 1.3.2' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997,* and replaces a section reference for consistency with this Bill.

Section 17(4), definition *planning scheme, 'Integrated Planning Act 1997,* section 2.1.1' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997,* and replaces a section reference for consistency with this Bill.

Section 44(1)(b) and (3)(b), and 327(1)(b) and (3)(b), *'Integrated Planning Act 1997'* –

Clause 3 replaces references to the *Integrated Planning Act 1997* with references to this Bill.

Prostitution Act 1999

Sections 19(1), 63A(1) and (2), 63B(b), 64K(1)(a) and (2), 64U(3) and (5), 66(1)(b) and (2)(b), 66A(1)(b) and schedule 4, definition *development permit*, 'Integrated Planning Act'—

Clause 1 replaces references to Integrated Planning Act with Planning Act.

Section 62 –

Clause 2 omits the definition of application land since it is only used in section 64, and as a result of the omission of section 64 (see notes below), this term will no longer appear in the *Prostitution Act 1999*. The term "application land" is now defined in schedule 3 (Dictionary) of the Bill. This clause also amends the definition of "development application" to reflect the fact that the Bill contains a single process for changing approvals.

Section 63A, heading, 'Integrated' –

Clause 3 omits this word.

Sections 63A(3) and 64 –

Clause 4 omits section 63A(3). The term "industrial area" is only used in the definition of "residential building" in section 64, and section 64 is now to be omitted from the *Prostitution Act 1999*. The term "industrial area" is now defined in schedule 3 (Dictionary) of the Bill.

This clause also omits section 64 since this provision is now included as prohibited development in schedule 1 of the Bill.

Section 64K(1), 'Integrated Planning Act may appeal' –

Clause 5 replaces the reference to Integrated Planning Act with Planning Act.

Section 64K(1)(c) –

Clause 6 amends this subsection to clarify that an applicant can appeal to the independent assessor about a condition of the development approval and any other matter stated in the approval. This change has been made to account for deemed approvals to which standard conditions apply because in this case, the conditions are not "stated in the approval".

Section 64K(1)(e), 'Integrated Planning Act, section 3.5.21' –

Clause 7 replaces a section reference for consistency with this Bill.

Section 64K(3), from 'either' –

Clause 8 clarifies when an appeal must be started. This timeframe is measured by reference to the giving of a decision notice or a negotiated decision notice, and takes into account the circumstance where a decision notice is not issued for a deemed approval.

Section 64K(5), 'Integrated Planning Act, section 4.1.21' –

Clause 9 replaces a section reference for consistency with this Bill.

Section 64N, 'any matter' –

Clause 10 clarifies that a development approval is suspended until the end of any period for appealing against a condition of the approval or any other matter in the approval, and any proceeding started because of the appeal. This change has been made to account for deemed approvals to which

standard conditions apply because in this case, the conditions are not "stated in the approval".

Section 142, 'Integrated Planning Act' –

Clause 11 amends this section to retain a reference to the *Integrated Planning Act 1997*. This section is a transitional provision and has therefore had its effect.

After section 151 –

Clause 12 inserts a transitional provision to ensure that part 4 of the *Prostitution Act 1999* as in force before the commencement of this clause continues to apply to a development application, or a request to change a development approval or its conditions, made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this clause.

Schedule 4, definitions *application land, Integrated Planning Act* and *minor change* –

Clause 13 omits the definition of "minor change" as a consequence of changes to section 62 and the fact that the expression "minor change" is no longer used in the Bill in relation to changes to development approvals.

This clause also omits the term Integrated Planning Act.

This clause also omits the definition of "application land" as it appears only in section 64 which has been included as prohibited development in schedule 1 of this Bill.

Schedule 4 –

Clause 14 inserts a definition of Planning Act to mean this Bill.

Schedule 4, definition *assessment manager* –

Clause 15 replaces a section reference for consistency with this Bill.

Schedule 4, definition *IDAS* 'Integrated Planning Act, section 3.1.1' –

Clause 16 replaces a section reference for consistency with this Bill.

Queensland Building Services Authority Act 1991

Section 68(2), after 'assessment manager' –

Clause 1 inserts a reference to a compliance assessor.

Section 68(2), '*Integrated Planning Act 1997*, issue a development approval' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill. Further, it amends this section to provide for the issuing of a development approval or a compliance permit.

Section 108(2), definition *assessment manager* '*Integrated Planning Act 1997*' –

Clause 3 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Schedule 2, definition *assessment manager* and editor's note –

Clause 4 refers to this Bill for a definition of this term.

Queensland Heritage Act 1992

Section 77, from 'particular' –

Clause 1 clarifies that the purpose of this division is to provide for matters about liturgical development that is not assessable development under clause 232(1) of the Bill.

Sections 111(5) and 164, 'chapter 4, part 1, division 12' –

Clause 2 replaces references to a chapter, part and division for consistency with this Bill.

Section 121(2), definition *IDAS*, 'chapter 3' –

Clause 3 replaces a chapter reference for consistency with this Bill.

Section 123(2), 'section 2.1.18' –

Clause 4 replaces a section reference for consistency with this Bill.

Section 124(2) and (4)(c), 'chapter 5, part 4' –

Clause 5 replaces chapter and part references for consistency with this Bill.

Section 124(3), 'section 5.4.2' –

Clause 6 replaces a section reference for consistency with this Bill.

Section 169(4) and 170(6), definition *offence*, paragraph (b), 'section 4.3.1(1) or 4.3.3' –

Clause 7 replaces section references for consistency with this Bill.

Section 190, 'Planning Act' –

Clause 8 amends section 190 to retain a reference to the *Integrated Planning Act 1997.*

Section 194(6), definition *local planning instrument,* 'Planning Act' –

Clause 9 amends section 194(6) to retain a reference to the *Integrated Planning Act 1997.*

Schedule, definitions *Planning Act* and *planning scheme* –

Clause 10 omits these definitions so that they can be redefined below.

Schedule –

Clause 11 inserts definitions of "Planning Act" by reference to this Bill, and "planning scheme" by replacing a section reference for consistency with this Bill.

Residential Services (Accreditation) Act 2002

Section 29(4)(b) and 30(2), 'tribunal under the *Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the building and development tribunal with a reference to the building and development dispute resolution committee.

Section 31(1), 'tribunal' –

Clause 2 replaces a reference to the building and development tribunal with a reference to the building and development dispute resolution committee.

Section 31(2), 'tribunal's' –

Clause 3 replaces a reference to the building and development tribunal with a reference to the building and development dispute resolution committee.

Section 33(2), 'a copy of the decision notice' –

Clause 4 replaces a reference to a decision notice with a reference to a development approval, to ensure that this section picks up development approvals given under the Bill, as well as development approvals given under the *Integrated Planning Act 1997.*

Section 33(2)(d), from 'a decision' to 'conditions),' –

Clause 5 replaces a reference to a decision notice with a reference to a development approval.

Section 33 –

Clause 6 inserts a new provision to cover the situation where a request for compliance assessment is made and a compliance permit has been given.

Section 33(3), 'subsection (2)' –

Clause 7 includes a reference to the new provision which covers the situation where a request for compliance assessment is made.

Schedule 2, definition *decision notice* –

Clause 8 replaces this definition with a reference to the definition of "development approval" in this Bill.

Schedule 2, definition *development application*, '*Integrated Planning Act* 1997, schedule 10' –

Clause 9 replaces a schedule reference for consistency with this Bill.

South Bank Corporation Act 1989

Section 3, definition *Integrated Planning Act* –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 3, definition *operational work*, 'Integrated Planning Act, section 1.3.5' –

Clause 2 replaces an Act and section reference for consistency with this Bill.

Section 3, definition *planning scheme*, 'Integrated Planning Act, section 2.1.1' –

Clause 3 replaces an Act and section reference for consistency with this Bill.

Section 3, definition *work* –

Clause 4 omits this definition as this term is not defined in either the *Integrated Planning Act 1997* or the Bill.

Section 4(b) –

Clause 5 replaces a reference to schedule 8 of the *Integrated Planning Act 1997* with a reference to a regulation under section 232(1) of the Bill,

consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Part 7, divisions 5 and 6, headings, 'Integrated'

Clause 6 replaces a reference to the integrated Planning Act 1997 with a reference to this Bill.

Section 78(a), 'Integrated Planning Act' –

Clause 7 replaces a section reference for consistency with this Bill.

Section 78(a), 'Integrated Planning Act, section 3.3.15' –

Clause 8 replaces an Act and section reference for consistency with this Bill.

Section 78(c), 'Integrated Planning Act, section 3.5.32' –

Clause 9 replaces an Act and section reference for consistency with this Bill.

Section 78(d), 'Integrated Planning Act, section 4.1.21' –

Clause 10 replaces an Act and section reference for consistency with this Bill.

Section 79, 'Integrated Planning Act, section 3.1.5(3) –

Clause 11 replaces an Act and section reference for consistency with this Bill.

Insertion of new pt 11, div 5

Clause 12 inserts a transitional provision to ensure that section 78 as in force before the commencement of this clause continues to apply to a development application made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this clause.

Schedule 4, section 7(1), definition *building approvals authority*, '*Integrated Planning Act 1997*' –

Clause 13 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

South East Queensland Water (Restructuring) Act 2007

Section 80, heading 'Integrated Planning Act *1997*' –

Clause 1 retains a reference to the *Integrated Planning Act 1997,* and inserts a reference to this Bill.

Section 80(2)(a), (b) and (c) –

Clause 2 retains section references to the *Integrated Planning Act 1997*, and inserts section references to this Bill.

Section 80(6), definition *development infrastructure,* 'schedule 10' –

Clause 3 replaces an Act and schedule reference for consistency with this Bill.

Section 80(6), definition *IPA* –

Clause 4 replaces a definition for the *Integrated Planning Act 1997* with a definition for this Bill, and inserts a definition of "repealed IPA".

Section 80A(3)(a) –

Clause 5 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 80A(5), definition *reconfiguring a lot,* 'Integrated Planning Act *1997*, section 1.3.5' –

Clause 6 replaces an Act and section reference for consistency with this Bill.

Section 80A(5), definition *State planning regulatory provision,* 'Integrated Planning Act *1997*, schedule 10' –

Clause 7 replaces an Act and schedule reference for consistency with this Bill.

Southern Moreton Bay Islands Development Entitlements Protection Act 2004

Sections 3, 4 and 7, 'a SMBI' –

Clause 1 corrects a grammatical anomaly in these sections.

Section 3, after 'application' –

Clause 2 inserts a reference to an SMBI request, to account for the new process in the Bill for requesting that development be carried out or a development application made be assessed and decided under the superseded planning scheme. Under the *Integrated Planning Act 1997*, a person must make a development application (superseded planning

scheme). Under the Bill, a person must now simply make a request to the local government.

Section 4, 'A SMBI' –

Clause 3 corrects a grammatical anomaly in these sections.

Section 4(a), ', as defined by the *Building Act 1975*' –

Clause 4 omits a reference to the *Building Act 1975*. Instead, a definition of "class 1 building" has been included in the dictionary.

After section 4 –

Clause 5 inserts a definition of an SMBI request by reference to this Bill, to account for the new process in the Bill for requesting that development be carried out or a development application made be assessed and decided under the superseded planning scheme.

Section 5(a), 'has effect:' and footnote –

Clause 6 corrects a grammatical anomaly.

Section 5 –

Clause 7 inserts an editor's note to clarify when the Redland's IPA planning scheme took effect.

Section 7, heading, '1997' –

Clause 8 replaces an Act and section reference for consistency with this Bill.

Section 7(2) and (3) –

Clause 9 renumbers these subsections to account for the insertion of new subsections.

Section 7(1) –

Clause 10 replaces the existing subsection (1) with three new subsections to account for the new process in the Bill for requesting that development be carried out or a development application be assessed and decided under the superseded planning scheme. These changes have the effect that:

- A person must make a request under clause 95 of the Bill, asking the local government to apply the superseded planning scheme to the carrying out of development that is assessable development but was exempt or self-assessable under the superseded planning scheme. However, the local government cannot refuse the request.

- In order to have a development application (superseded planning scheme) assessed and decided under the superseded planning scheme, the applicant is not required to first make a request under clause 95 of the Bill. Instead, the person can proceed straight to the step of making the development application (superseded planning scheme) and the local government must assess and decide it under the superseded planning scheme.

Section 7(4) as renumbered, 'Integrated Planning Act *1997*, section 3.5.28' –

Clause 11 replaces an Act and section reference for consistency with this Bill.

Section 7(5) as renumbered, 'Integrated Planning Act *1997*, section 5.5.1' –

Clause 12 replaces an Act and section reference for consistency with this Bill.

Section 8, heading, 'IPA' –

Clause 13 omits a reference to IPA

Section 8, 'Integrated Planning Act *1997*, section 5.4.3, if a SMBI application' –

Clause 14 replaces an Act and section reference for consistency with this Bill and also includes a reference to an SMBI request.

After section 10 –

Clause 15 inserts transitional provisions to ensure that this Act as in force before the commencement of this clause continues to apply to a development application (superseded planning scheme) made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this clause.

Schedule, definitions *consultation period*, *development application (superseded planning scheme)*, *IPA planning scheme* and *Redland's IPA planning scheme* –

Clause 16 omits these definitions so that they can be replaced below.

Schedule –

Clause 17 inserts definitions of "class 1 building", "consultation period", "development application (superseded planning scheme)", "Redland's IPA planning scheme" and "SMBI request".

Schedule, definition *assessment manager* 'Integrated Planning Act *1997*, section 3.1.7'

Clause 18 replaces an Act and section reference for consistency with this Bill.

Schedule, definition *development, development application, development approval, development permit* and *superseded planning scheme,* 'Integrated Planning Act *1997*, schedule 10' –

Clause 19 replaces an Act and schedule reference for consistency with this Bill.

State Development and Public Works Organisation Act 1971

Section 24, definition *assessment manager*, 'Integrated Planning Act' –

Clause 1 replaces an Act reference with a reference to this Bill.

Section 26(3)(a), from 'mentioned' –

Clause 2 replaces a reference to schedule 8 of the *Integrated Planning Act 1997* with a reference to development prescribed as assessable development under clause 232(1) of the Bill.

Part 4, division 4, heading, 'Integrated' –

Clause 3 replaces an Act reference with a reference to this Bill.

Sections 37(1) and (2), 37A(2)(b), 39(3), (3B) and 6(b), 42(5)(b) and 6, 50, 54A(a), 140(1)(b) and schedule 2, definitions *advice agency*, *concurrence agency*, *development approval* and *Planning and Environment Court,* 'Integrated Planning Act' –

Clause 4 replaces Act references for consistency with this Bill.

Section 38, 'Integrated Planning Act, section 3.5.1' –

Clause 5 replaces an Act and section reference for consistency with this Bill.

Section 39(6)(a), 'Integrated Planning Act, section 3.5.19' –

Clause 6 replaces an Act and section reference for consistency with this Bill.

Section 42(2), from 'Integrated Planning Act' –

Clause 7 replaces an Act and section reference for consistency with this Bill, and makes a clarification with regard to who the entity is in relation to a request to change a development approval.

Section 42A(2), 'Integrated Planning Act, section 3.3.17(1)' –

Clause 8 replaces an Act and section reference for consistency with this Bill.

Section 42A(4), 'Integrated Planning Act, section 3.5.8' –

Clause 9 replaces an Act and section reference for consistency with this Bill.

Section 43(1), 'Integrated Planning Act, section 2.6.8' –

Clause 10 replaces an Act and section reference for consistency with this Bill.

Section 43(2), 'Integrated Planning Act, section 2.6.4(a)' –

Clause 11 replaces an Act and section reference for consistency with this Bill.

Section 54C, 'Integrated Planning Act, 3.5.30(1) and 3.5.31(1)' –

Clause 12 replaces an Act reference and section references for consistency with this Bill.

Section 54D(2), 'Integrated Planning Act, section 4.3.3' –

Clause 13 replaces an Act and section reference for consistency with this Bill.

Section 54D(5)(a), from 'Integrated Planning Act to 'section 4.3.3' –

Clause 14 replaces an Act and section reference for consistency with this Bill.

Section 54F, heading 'Integrated' –

Clause 15 replaces an Act reference for consistency with this Bill.

Section 54F(1)(a)(i), 'Integrated Planning Act, chapter 4, part 3, division 5' –

Clause 16 replaces an Act, chapter, part and division reference for consistency with this Bill.

Section 54G(1), 'Integrated Planning Act, section 4.1.21' –

Clause 17 replaces an Act and section reference for consistency with this Bill.

Section 54G(4) –

Clause 18 replaces an Act and section references for consistency with this Bill.

Section 76D, definition *decision maker*, paragraph (a), example, 'Integrated Planning Act' –

Clause 19 replaces an Act reference for consistency with this Bill.

Section 76D, definition *decision maker,* paragraph (b), examples, 'Integrated Planning Act, section 3.2.1(5) -

Section 20 replaces an Act and section reference for consistency with this Bill.

Section 76D, definition *prescribed decision,* examples, 'Integrated Planning Act' -

Section 21 replaces an Act reference for consistency with this Bill.

Section 76M(3), 'Integrated Planning Act, chapter 5' –

Clause 22 replaces an Act and chapter reference for consistency with this Bill.

Section 76O(4B), 'Integrated Planning Act, section 5.1.8(2)(b)' –

Clause 23 replaces an Act and section reference for consistency with this Bill.

Section 87(2), definition *authorised use* –

Clause 24 amends this section to include a reference to compliance permits.

Section 157A(1)(b), 'Integrated Planning Act, section 2.6.8' –

Clause 25 replaces an Act and section reference for consistency with this Bill.

Section 157D(2), note, 'Integrated Planning Act, chapter 4, part 1, divisions 10 to 12' –

Clause 26 replaces an Act, chapter, part and division references for consistency with this Bill.

Section 157M(4), note, 'Integrated Planning Act, section 4.1.23' –

Clause 27 replaces an Act and section reference for consistency with this Bill.

Section 157N, note, 'Integrated Planning Act, section 4.1.5' –

Clause 28 replaces an Act and section reference for consistency with this Bill.

Section 176(1)(a)(iii) and (4), 'Integrated Planning Act' –

Clause 29 amends section 176 to retain a reference to the *Integrated Planning Act 1997*. This section is part of a transitional provision. Consequently it is necessary for this section to continue to refer to the *Integrated Planning Act 1997*.

Schedule 2, definitions *Integrated Planning Act*, *material change of use* and *referral coordination* –

Clause 30 omits these definitions. The definition of "referral coordination" is redundant since it only appears in schedule 2 and, in any case, is not a term that is used either the *Integrated Planning Act 1997* or the Bill. The terms "Integrated Planning Act" and "material change of use" are redefined below.

Schedule 2 –

Clause 31 inserts new definitions of "Sustainable Planning Act" and "material change of use"

Schedule 2, definition *applicable code*, '*Integrated Planning Act 1997*, schedule 10' –

Clause 32 replaces an Act and schedule reference for consistency with this Bill.

Schedule 2, definition *IDAS*, 'schedule 10' –

Clause 33 replaces an Act and schedule reference for consistency with this Bill.

Torres Strait Islander Cultural Heritage Act 2003

Section 89, heading, 'IPA'

Clause 1 replaces an Act reference for consistency with this Bill.

Section 89(1) and (2), 'IPA'

Clause 2 replaces Act references for consistency with this Bill.

Section 89 –

Clause 3 includes a definition of "Planning Act" referring to this bill.

Schedule 2, definition of *IPA* –

Clause 4 omits the definition of "IPA" from the dictionary. The definition has been moved to section 89, as it only appears in that section.

Townsville City Council (Douglas Land Development) Act 1993

Section 4, definition *Townsville IPA planning scheme*, 'City of Townsville' –

Clause 1 amends the definition to refer to the planning scheme made under the *Integrated Planning Act 1997* and continued in force under this Bill.

Section 30A(1), from 'scheme' –

Clause 2 replaces the reference to schedule 1 of the *Integrated Planning Act 1997* to the process for amending a planning scheme stated in the guideline under clause 117(1) of the Bill, to reflect the fact that this process will be prescribed in a statutory guideline, rather than in the Bill.

Section 35(3), '*Integrated Planning Act 1997*' –

Clause 3 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Transport Infrastructure Act 1994

Sections 42(2), 49(1)(b)(ii), 75(a), 246(1), 247, 258(1), 258B(1)(a), 304(2), 356(2), 426(2)(a), 476 and 477(1) '*Integrated Planning Act 1997*'-

Clause 1 replaces references to the *Integrated Planning Act 1997* with references to this Bill.

Section 70(1)(b), from 'issued' –

Clause 2 replaces Act references and a section reference for consistency with this Bill.

Section 70(1)(c)(i), from 'issued' –

Clause 3 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 74(6) –

Clause 4 replaces definitions of terms including new Act and section references for consistency with this Bill.

Section 75, heading 'Integrated Planning Act 1997' –

Clause 5 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Sections 85B(3) and 93A(3), definition *development, 'Integrated Planning Act 1997,* section 1.3.2' –

Clause 6 replaces an Act and section reference for consistency with this Bill.

Section 105Y(3)(c) –

Clause 7 inserts a reference to any regional plan under this Bill.

Section 247, heading, 'Integrated Planning Act ' –

Clause 8 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 258(4), *'Integrated Planning Act 1997,* section 3.3.15 and chapter 3, part 5, division 2' –

Clause 9 replaces an Act, chapter, part and division reference for consistency with this Bill.

Section 258A(6) definition *IDAS*, *'Integrated Planning Act 1997,* section 3.1.1' –

Clause 10 replaces an Act and section reference for consistency with this Bill.

Section 284 definition *valuable features, 'Integrated Planning Act 1997,* section 2.1.3A(4)' –

Clause 11 replaces an Act and section reference for consistency with this Bill.

Section 287 –

Clause 12 clarifies that strategic port land is not subject to a local planning instrument under this Bill, despite the provisions of chapter 3 of this Bill.

Section 477A(2) definition *community infrastructure* –

Clause 13 replaces an Act and schedule reference for consistency with this Bill.

Section 513(1)(b), '*Integrated Planning Act 1997*' –

Clause 14 retains a reference to the *Integrated Planning Act 1997*, and inserts a reference to this Bill.

Chapter 18 –

Clause 15 inserts a transitional provision in relation to the application of section 247.

Transport Operations (Marine Safety) Act 1994

Section 10A(2)(b), '*1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Transport Planning and Coordination Act 1994

Section 3, definition *IDAS*, '*Integrated Planning Act 1997,* section 3.1.1' –

Clause 1 replaces an Act and section reference for consistency with this Bill.

Sections 8B(1) and 8E(3)(a), '*Integrated Planning Act 1997*' –

Clause 2 replaces references to the *Integrated Planning Act 1997* with references to this Bill.

Section 8B(3), '*Integrated Planning Act 1997*, section 3.3.15 and chapter 3, part 5, division 2' –

Clause 3 replaces an Act, chapter, part, division and section reference for consistency with this Bill.

Transport (Southbank Corporation Area Land) Act 1999

Section 12(3), from 'the *Integrated*' –

Clause 1 replaces a reference to chapter 3, part 7 of the *Integrated Planning Act 1997,* with a new provision which excludes a plan that is required to give effect to this part, from compliance assessment under this Bill. This change reflects the fact that chapter 3, part 7 of the *Integrated*

Planning Act 1997 has not been carried across into the Bill. Instead, it is intended that plans of subdivision will require compliance assessment under a regulation.

Section 12(4), from 'the *Integrated*' –

Clause 2 makes provision for a plan which is not subject to compliance assessment under this Bill.

Urban Land Development Authority Act 2007

Section 6(1), 'Integrated Planning Act, section 1.3.2' –

Clause 1 replaces an Act and section reference for consistency with this Bill.

Sections 11(3), 13(2), 18(5), 19, 23(5)(b), 40(b), 56(b), 57(1)(d), 73(1)(b) and (c), 97(2)(a) and schedule, definitions *lawful use, Planning and Environment Court,* and *planning instrument*, 'Integrated Planning Act' –

Clause 2 replaces Act references for consistency with this Bill.

Section 11(4), from 'Integrated Planning Act' to 'do not' –

Clause 3 replaces an Act and section reference for consistency with this Bill.

Part 2, division 2, heading, 'Integrated' –

Clause 4 replaces an Act reference for consistency with this Bill.

Sections 13, 14, 16, 18, 46 and 49, headings, 'IPA' –

Clause 5 replaces Act references for consistency with this Bill.

Sections 13(1)(a), 14, 16(2), 17(3), 18(1), (2), (3), (5) and (6), 46(1)(a), 49(1)(a), 73(1) and schedule, definitions *relevant development* and *relevant land,* 'IPA' –

Clause 6 replaces Act references for consistency with this Bill.

Section 15(3), 'Integrated Planning Act, chapter 2, part 6' –

Clause 7 replaces an Act, chapter and part reference for consistency with this Bill.

Section 18(3), 'Integrated Planning Act, section 4.1.27' -

Clause 8 replaces an Act and section reference for consistency with this Bill.

Section 18(6), 'Integrated Planning Act section 4.1.21' –

Clause 9 replaces a section reference for consistency with this Bill.

Section 61(4), 'Integrated Planning Act, chapter 4, part 1, divisions 10 to 12' –

Clause 10 replaces an Act, chapter, part and division reference, and section references for consistency with this Bill.

Section 61(5)(a), 'Integrated Planning Act, chapter 4, part 1, division 10' –

Clause 11 replaces an Act, chapter, part and division reference for consistency with this Bill.

Section 73(1), 'Integrated Planning Act, chapter 4' –

Clause 12 replaces an Act and chapter reference for consistency with this Bill.

Section 80(2) –

Clause 13 refers to a requirement for compliance assessment of a plan under the Bill. This change reflects the fact that chapter 3, part 7 of the *Integrated Planning Act 1997* has not been carried across into the Bill. Instead, it is intended that plans of subdivision will require compliance assessment under a regulation.

Section 85(4), note, 'Integrated Planning Act, section 4.1.23' –

Clause 14 replaces an Act and section reference for consistency with this Bill.

Section 85(5), definition *environment*, 'Integrated Planning Act, schedule 10' –

Clause 15 replaces an Act and schedule reference for consistency with this Bill.

Section 86, note, 'Integrated Planning Act, section 4.1.5' –

Clause 16 replaces an Act and section reference for consistency with this Bill.

Section 137(5), 'Integrated Planning Act, section 5.1.34' –

Clause 17 replaces an Act and section reference for consistency with this Bill.

After section 146 –

Clause 18 inserts a transitional provision to ensure that section 13 as in force before the commencement of this clause continues to apply to a development application that has been made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this clause.

Schedule, definitions *IPA development application, IPA development approval, integrated Planning Act* and *planning scheme* –

Clause 19 omits these definitions. The terms are redefined below.

Schedule –

Clause 20 inserts new definitions of "planning scheme" "SPA development application", SPA development approval" and "Sustainable Planning Act" which refer to this Bill.

Schedule, definitions *building work, lot, material change of use, operational work* and *reconfiguring a lot,* 'Integrated Planning Act, section 1.3.5' –

Clause 21 replaces an Act and section reference for consistency with this Bill.

Schedule, definition *community infrastructure designation,* 'Integrated Planning Act, section 2.6.1' –

Clause 22 replaces an Act and section reference for consistency with this Bill.

Schedule, definition *infrastructure,* 'Integrated Planning Act, schedule 10' –

Clause 23 replaces an Act and schedule reference for consistency with this Bill.

Valuation of Land Act 1944

Section 2, definitions *development approval* and *local planning instrument,* 'Integrated Planning Act, *1997,* schedule 10' –

Clause 1 replaces an Act and schedule reference for consistency with this Bill.

Vegetation Management Act 1999

Section 7(6) and (7), 'section 3.1.3' –

Clause 1 replaces a section reference for consistency with this Bill.

Section 21(2), 'section 3.2.1(3)(a)' –

Clause 2 replaces a section reference for consistency with this Bill.

Section 21(3), 'section 3.3.3(1)' –

Clause 3 replaces a section reference for consistency with this Bill.

Section 21(4)(a), 'section 3.5.13' –

Clause 4 replaces a section reference for consistency with this Bill.

Section 22(1), 'section 1.3.4' –

Clause 5 replaces a section reference for consistency with this Bill.

Section 22(5), 'section 3.3.15' –

Clause 6 replaces a section reference for consistency with this Bill.

Section 22A(1) –

Clause 7 omits this subsection and replaces it with a reference to prohibited development in schedule 1 of this Bill.

Section 22A(2)(e), from 'approval' –

Clause 8 omits a reference to "Planning Act" and replaces it with a reference to the *Integrated Planning Act 1997*.

Section 22B(1), 'sections 4.2.36(1) and 5.8.1A' –

Clause 9 replaces section references for consistency with this Bill.

Section 22B(2), 'chapter 4' –

Clause 10 replaces a chapter reference for consistency with this Bill.

Section 22C(2), 'section 4.1.27' –

Clause 11 replaces a section reference for consistency with this Bill.

Section 22C(3), editor's note –

Clause 12 replaces a chapter, part and division reference for consistency with this Bill.

Section 22C(5), 'section 3.5.17' –

Clause 13 replaces a section reference for consistency with this Bill.

Section 22D(2), 'section 3.5.9' –

Clause 14 replaces a section reference for consistency with this Bill.

Section 22G(4), 'section 3.5.13' –

Clause 15 replaces a section reference for consistency with this Bill.

Section 22H(a), 'section 3.2.9(1)' –

Clause 16 replaces a section reference for consistency with this Bill.

Section 22I(a), 'section 3.3.6(4)' –

Clause 17 replaces a section reference for consistency with this Bill.

Section 22I(b), 'section 3.3.8' –

Clause 18 replaces a section reference for consistency with this Bill.

Section 22I(b), 'section 3.3.8(1)(c)' –

Clause 19 replaces a section reference for consistency with this Bill.

Section 22I(c), 'section 3.5.7(1)' –

Clause 20 replaces a section reference for consistency with this Bill.

Section 22I(d), 'section 3.5.18(3) and (4)' –

Clause 21 replaces a section reference for consistency with this Bill.

Section 22I(e), 'section 4.2.9(2)' –

Clause 22 replaces a section reference for consistency with this Bill.

Section 22K(1), 'tribunal under the Planning Act, section 4.2.9' –

Clause 23 replaces an Act and section reference for consistency with this Bill and replaces a reference to the building and development tribunal.

Section 22K(2), editor's note –

Clause 24 replaces a section reference with a chapter, part and division reference for consistency with this Bill.

Section 22K(4), 'section 3.5.17' –

Clause 25 replaces a section reference for consistency with this Bill.

Section 22L(d) and editor's note –

Clause 26 replaces an Act and section reference for consistency with this Bill and replaces a reference to the building and development tribunal.

Section 70A(3) and (4), from 'falls' to 'items 1A to 1G' –

Clause 27 replaces a reference to schedule 8 of the *Integrated Planning Act 1997*, with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 70B(5), 'section 3.5.26' –

Clause 28 replaces a section reference for consistency with this Bill.

Sections 73, 74(1), 76(4) and (5), 80, 82 and 84(1)(a), 'Planning Act' –

Clause 29 inserts a reference to the *Integrated Planning Act 1997*.

Section 74(2)(b)(ii), 'Planning Act section 3.2.5(1)' –

Clause 30 inserts a reference to the *Integrated Planning Act 1997* and this Bill.

Section 76(1), 'Planning Act' –

Clause 31 inserts a reference to the *Integrated Planning Act 1997* and this Bill.

Section 81(2), from 'operational work' –

Clause 32 replaces a reference to schedule 8 of the *Integrated Planning Act 1997*, with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

After section 86 –

Clause 33 inserts a transitional provision to ensure that a vegetation clearing application includes development application made but not decided under the *Integrated Planning Act 1997* before the commencement of this clause.

Schedule, definition *currency period,* 'section 3.5.21' –

Clause 34 replaces a section reference for consistency with this Bill.

Schedule, definition *IDAS,* 'chapter 3' –

Clause 35 replaces a chapter reference for consistency with this Bill.

Schedule, definition *Planning Act,* 'Integrated Planning Act, *1997*' –

Clause 36 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Schedule, definition *vegetation clearing application,* from 'assessable' –

Clause 37 replaces a reference to schedule 8 of the *Integrated Planning Act 1997*, with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Schedule, definition *vegetation clearing provision,* 'section 4.3.1(1), 4.3.3(1), 4.3.4(1), 4.3.5 or 4.3.15(1)' –

Clause 38 replaces section references for consistency with this Bill.

Vegetation Management (Regrowth Clearing Moratorium) Act 2009

Part 8, before section 38

Clause 1 inserts a new division name.

After section 39

Clause 2 inserts a transitional provision maintaining the effect of the vegetation regrowth clearing moratorium after the commencement of this Bill.

Water Act 2000

Section 46(2)(c), 259(2) and (3), 740(1)(b)(ii), 746(4), 752(1)(a)(ii), 757A(2)(a)(ii), (4)(a)(ii) and (5)(b), 757G(1)(b), 757I(1)(b)(ii), 966(1) and (3), 967(1)(b), 968(1)(b)(ii), (2) and (4), 968A(1) and (3), 1014(2)(h) and (i), 1046(2)(b), 'Integrated Planning Act *1997*' –

Clause 1 replaces references to the *Integrated Planning Act 1997* with references to this Bill.

Section 360N, heading, 'Integrated Planning Act 1997' –

Clause 2 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 360N(2) and (4), '*Integrated Planning Act 1997*' –

Clause 3 replaces references to the *Integrated Planning Act 1997* with references to this Bill.

Section 360N(3), '*Integrated Planning Act 1997,* section 3.1.3(4)' –

Clause 4 replaces an Act and section reference for consistency with this Bill.

Section 814(2)(a)(i)(B), from 'assessable development' –

Clause 5 omits the term "assessable development" and replaces it with the term "prescribed assessable development", which is defined in the new subclause (5) (see below).

Section 814 –

Clause 6 inserts a definition of the term "prescribed assessable development" with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Chapter 8, part 2, heading, 'Integrated Planning Act 1997' –

Clause 7 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Section 966(1)(c), after 'area' –

Clause 8 includes a reference to a wild river floodplain management area as a complementary provision to clause 19, which omits section 1013C. These changes complement changes in the Bill and proposed changes to the regulation, establishing wild river floodplain management areas as a declared area in their own right, rather than characterising them as drainage and embankment areas.

Section 966(5), from 'section –

Clause 9 replaces a section reference for consistency with this Bill. It also replaces a chapter, part and division reference for consistency with this Bill.

Sections 966A and 966B –

Clause 10 omits reference to prohibited development which is included in schedule 1 of this Bill. This clause also replaces references to sections, chapter, part and division for consistency with this Bill.

Section 966C(1) –

Clause 11 replaces a reference to schedule 8 of the *Integrated Planning Act 1997* with a reference to a regulation made under clause 232(1) of the Bill,

consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 967, heading, 'IPA approval for development' –

Clause 12 replaces an Act reference for consistency with this Bill.

Section 967(6), from 'operational' to 'item 1(a)' –

Clause 13 replaces a reference to schedule 8 of the *Integrated Planning Act 1997* with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 967(7), from 'mentioned' to 'item 1(b)(i)' –

Clause 14 replaces a reference to schedule 8 of the *Integrated Planning Act 1997* with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 970, heading, IPA approval –

Clause 15 replaces an Act reference for consistency with this Bill.

Section 972(1)(a), from 'assessable' –

Clause 16 replaces a reference to "assessable development" with a reference to "prescribed assessable development", which is defined in the new subclause (3) (below).

Section 972(2), 'Integrated Planning Act 1997, chapter 4' –

Clause 17 replaces an Act and chapter reference for consistency with this Bill.

Section 972 –

Clause 18 inserts a definition of the term "prescribed assessable development" with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 1013C –

Clause 19 omits this provision from the *Water Act 2000*, as wild river floodplain management areas will no longer be deemed to be drainage and embankment areas. (See also clause 8 above)

Section 1014(2)(j), from 'self-assessable' –

Clause 20 replaces a reference to schedule 8 of the *Integrated Planning Act 1997* with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 1048A(13), '*Integrated Planning Act 1997*, section 3.5.21' –

Clause 21 replaces an Act and section reference for consistency with this Bill.

Section 1166, heading, 'Integrated Planning Act 1997' –

Clause 22 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

After section 1169 –

Clause 23 inserts transitional provisions to ensure that chapter 8, part 2 of this Act as in force before the commencement of this clause continues to apply to a development application made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this clause.

Schedule 4, definitions *assessment manager, drainage and embankment area* and *Integrated Planning Act 1997 offence* –

Clause 24 omits these definitions. They are redefined below.

Schedule 4 –

Clause 25 inserts definitions of "assessment manager", "drainage and embankment area", "operational work", "prohibited development", "referable dam" and "Sustainable Planning Act 2009 offence"

Schedule 4, definition, *applicable code* '*Integrated Planning Act 1997*, schedule 10' –

Clause 26 replaces an Act and schedule reference for consistency with this Bill.

Schedule 4, definitions *concurrence agency*, and *development approval*, 'Integrated Planning Act *1997,'* and footnote –

Clause 27 replaces an Act and schedule reference for consistency with this Bill, and omits a footnote.

Schedule 4, definitions *development permit* and *referral agency* '*Integrated Planning Act 1997*' –

Clause 28 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill.

Schedule 4, definition *development,* '*Integrated Planning Act 1997,* section 1.3.2.' and footnote –

Clause 29 replaces an Act and section reference for consistency with this Bill. This clause also omits a reference to a footnote.

Schedule 4, definition *premises,* paragraph (a), *'Integrated Planning Act 1997,* section 1.3.5' –

Clause 30 replaces a an Act and section reference for consistency with this Bill.

Water Supply (Safety and Reliability) Act 2008

Section 167(2), note –

Clause 1 replaces a note to refer to development as defined under this Bill.

Section 561(4), paragraphs (a) and (b) –

Clause 2 replaces a section reference for consistency with this Bill, and a chapter, part and division reference for consistency with this Bill.

Section 562(1)(a) –

Clause 3 inserts a reference to a development application for operational work that is the construction of a referable dam, or that will increase the storage capacity of a referable dam by more than 10%, to reflect the relocation of assessable development triggers under schedule 8 of the repealed IPA to a regulation under this Bill.

Section 562(2), 'chapter 4' –

Clause 4 replaces a chapter reference for consistency with this Bill.

Chapter 9, heading, after 'provisions' –

Clause 5 inserts a reference to Act No. 34 of 2008, to distinguish the transitional provisions under that Act from the transitional provisions in a new chapter 10 under this Bill (see explanatory note immediately below).

After chapter 9 –

Clause 6 inserts a new chapter 10 containing a transitional provision in relation to section 562. This provision provides for continuation of appeal rights to the Land Court in respect of a development application of a type

mentioned in section 562 made, but not determined, before the commencement of this Bill.

Schedule 3, definitions *assessment manager, concurrence agency, development, Planning Act, Planning Act offence* and *referral agency* –

Clause 7 omits these definitions. They are redefined below.

Schedule 3 –

Clause 8 inserts definitions of "assessment manager", "concurrence agency", "development", "Planning Act", "Planning Act offence", and "referral agency". This clause replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and replaces section references for consistency with this Bill

Schedule 3, definition *premises,* paragraph (a), 'section 1.3.5' –

Clause 9 replaces a section reference for consistency with this Bill.

Wet Tropics World Heritage Protection and Management Act 1993

Schedule 3, definition *planning scheme, 'Integrated Planning Act 1997,* section 2.1.1' –

Clause 1 replaces an Act and section reference for consistency with this Bill.

Schedule 3, definition *reconfiguring a lot, 'Integrated Planning Act 1997,* section 1.3.5(1)' –

Clause 2 replaces an Act and section reference for consistency with this Bill.

Wild Rivers Act 2005

Sections 12(1)(m), (n), and (o), 14(1)(l), (m), and (n), 31B, note, and 31D(1)(j), note '*Integrated Planning Act 1997*' –

Clause 1 replaces a reference to the *Integrated Planning Act 1997* with a reference to "Planning Act" for consistency with this Bill.

Section 14(2), note, '*Integrated Planning Act 1997,* schedule 10' –

Clause 2 inserts a reference to "Planning Act" and replaces a schedule reference for consistency with this Bill.

Section 31B, note, 'sections 43A and 43B' –

Clause 3 omits a reference in the note to section 43A.

Section 31G, 'sections 43A and 43B' –

Clause 4 omits a reference to section 43A, and inserts a schedule reference for consistency with this Bill.

Section 31G, note –

Clause 5 omits a reference to section 43A in the note, and inserts a schedule reference for consistency with this Bill.

Section 42 –

Clause 6 omits reference to prohibited development which is included in schedule 1 of this Bill. This clause also replaces references to sections, chapter, part and division for consistency with this Bill.

Section 43(1)(b)(iii) –

Clause 7 replaces a reference to schedule 8 of the *Integrated Planning Act 1997*, with a reference to a regulation made under clause 232(1) of the Bill, consistent with the relocation of assessable and self–assessable development triggers to a regulation under this Bill.

Section 43(1)(c) –

Clause 8 replaces section references for consistency with this Bill.

Section 43 –

Clause 9 inserts a definition of "planning scheme".

Section 43A –

Clause 10 omits this section since it is included as prohibited development in schedule 1 of this Bill.

After section 54 –

Clause 11 inserts transitional provisions to ensure that:

- a code under a wild river declaration continues as a code for IDAS under the Bill;
- sections 42, 43 and 43A as in force before the commencement of this clause continue to apply to a development application made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this clause.

Schedule, definitions *applicable code* and *development application, 'Integrated Planning Act 1997,* schedule 10' –

Clause 12 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and replaces a schedule reference for consistency with this Bill.

Schedule, definition *assessment manager, 'Integrated Planning Act 1997,* section 3.1.7' –

Clause 13 replaces a section reference for consistency with this Bill.

Schedule, definition *IDAS, 'Integrated Planning Act 1997, section 3.1.1'* –

Clause 14 replaces a reference to the *Integrated Planning Act 1997* with a reference to this Bill, and replaces a section reference for consistency with this Bill.

Schedule –

Clause 15 inserts a definition of "Planning Act" with a reference to this Bill.

Schedule 3 Dictionary

acknowledgement notice

This definition defines the term "acknowledgement notice" and refers to clause 267(2). This is the assessment manager's initial response to a properly made development application.

acknowledgement period

This definition defines the term "acknowledgement period" and refers to clause 267(3). This is the time within which the assessment manager must give the applicant an acknowledgement notice.

Acquisition Act

This is an abbreviation of the *Acquisition of Land Act 1967*.

acquisition land

This definition refers to land:

- proposed to be taken or acquired under the *State Development and Public Works Organisation Act 1971* or *Acquisition of Land Act 1967*; and
- in relation to which a notice of intention to resume under the *Acquisition of Land Act 1967* has been served, and the proposed taking or acquisition has not been discontinued; and
- that has not been taken or acquired.

The term is defined in order to identify certain land in respect of which owners' consent is not required for the making of a development application or a request to change an approval, under chapter 6. Acquisition land is also relevant to when a development approval takes effect.

action notice

This definition refers to clause 405(5). Action notices are given in response to requests for compliance assessment in cases where further action is required before a compliance permit or compliance certificate can be given.

administering authority

This definition draws directly on the definition in the *Environmental Protection Act 1994.*

administrative amendment

This definition explains the scope of an administrative amendment that can be made to a State planning instrument under clause 68. An administrative amendment merely corrects minor factual, grammatical or formatting aspects of a State planning instrument.

advice agency

This definition defines the term "advice agency" and refers to clause 250. This is one type of entity involved in assessment of development applications. See also the definitions of "concurrence agency", "assessment manager", and the generic term "referral agency".

advice agency's response

This definition refers to clause 291(2). Advice agency responses are given in response to a referral.

agency's referral day

This definition defines the term "agency's referral day" and refers to clause 272, in relation to when a referral agency receives the referral agency material for assessment of an application. The definition deals with the situation where an assessment manager may be both a referral agency and an assessment manager.

agricultural activities

This definition defines the term "agricultural activities" in relation to schedule 1 (Prohibited development) and draws on the definition in the *Wild Rivers Act 2005*.

allocation notice

This definition defines the term "allocation notice" in relation to schedule 1 (Prohibited development) and refers to an allocation notice given under the *Water Act 2000* or the *Coastal Protection and Management Act 1995*.

animal husbandry activities

This definition defines the term "animal husbandry activities" in relation to schedule 1 (Prohibited development) and draws on the definition in the *Wild Rivers Act 2005*.

appellant

An appellant is a person who appeals to the court or a building and development committee under chapter 7.

applicable code

Applicable code is defined as meaning a code, including a concurrence agency code, that can reasonably be identified as applying to the development.

applicant

This definition defines "applicant" for the purposes of applications for master plan approvals (paragraph (a)) and applications for development approvals (paragraph (b)). Paragraph (c) specifies that, for chapter 7, the term also includes a person in whom the benefit of the application vests. This accommodates the possibility that premises may change ownership in the course of dispute resolution.

applicant's appeal period

This definition defines the term "applicant's appeal period", as it concerns an appeal to either a court or a building and development committee by an applicant, and refers to clauses 461, 471, 519, 522 and 527.

application

This definition refers to a development application under chapter 6.

appropriately qualified

For the exercise of a power or performance of a function under this Bill, this term includes having the qualifications, experience or standing appropriate to exercise the power or perform the function.

approved form

This definition defines the term "approved form" and refers to clause 762. Under clause 762, the chief executive may approve forms for use under this Bill. Examples of approved forms under the Bill are:

- a request under clause 95 to apply a superseded planning scheme or to assess and decide a development application under a superseded planning scheme;
- an application for a development approval under clause 260(1)(b);
- a notice for public notification of an application under clause 299.

aquacultural ERA

This definition refers to an environmentally relevant activity prescribed under a regulation.

aquaculture

This definition refers to the *Fisheries Act 1994*.

assessable development

This definition explains the scope of assessable development. Paragraph 1 refers to development prescribed under clause 232(1) to be assessable development. The term also identifies a State planning regulatory provision, planning scheme, temporary local planning instrument, master plan and preliminary approval under clause 242 as instruments that may make development assessable.

assessing authority

The definition of "assessing authority" provides that the following entities are assessing authorities and may, within their jurisdiction, issue enforcement notices with respect to the following development:

- for development carried out under a development permit - either the assessment manager giving a development permit, or a concurrence agency for the application;
- for assessable development carried out without a development permit - either the entity that would have been assessment manager for a development application or an entity that would have been a concurrence agency for the application;
- for assessable development assessed by a private certifier – either the private certifier or the relevant local government;
- for self-assessable development (other than building or plumbing work) - the local government or the entity administering the code for the development;
- for building or plumbing work carried out by or on behalf of a public sector entity - the chief executive of that entity;
- for development to which a State planning regulatory provision applies - the chief executive;
- for development under a compliance permit – the compliance assessor, if the compliance assessor is a local government or a public sector entity, or if the compliance assessor is a nominated entity of a local government, the local government;
- for development requiring compliance assessment, and where there is no compliance permit – the local government or a public sector entity, if the entity that would have been the compliance assessor is the local government or a public sector entity, or the local government, if the entity that would have been the compliance assessor is a nominated entity of the local government;
- for a document or work to which a compliance certificate applies – the compliance assessor, if the compliance assessor giving the certificate is a local government or a public sector entity, or the local government, if the compliance assessor giving the certificate is a nominated entity of the local government;
- for a document or work which requires a compliance assessment, and where there is no compliance certificate – the local government or

public sector entity, if the entity that would have been the compliance assessor is a local government or a public sector entity, or the local government, if the entity that would have been the compliance assessor is a nominated entity of the local government;

- for any other matter - the local government.

assessment and decision provisions

The definition defines the term "assessment and decision provisions" for chapter 6, part 11, division 2 and refers to clause 423.

assessment manager

This definition defines the term "assessment manager" and refers to clause 246(1). This is the entity which administers applications for development. See also definitions of "concurrence agency", "advice agency", and the generic term "referral agency".

available for inspection and purchase

This definition defines the term "available for inspection and purchase" and refers to clause 723(1).

BCA

This is an abbreviation of the phrase: "Building Code of Australia". This phrase is defined in more detail under the entry for "Building Code of Australia".

brothel

This definition defines "brothel" and refers to the *Prostitution Act 1999*, schedule 4.

building

This definition defines the term "building" as it is used in the term "building work" in the definition of "development".

Building Act

This is an abbreviation for the *Building Act 1975*.

building and development committee

This definition defines "building and development committee" as a building and development dispute resolution committee established under clause 502.

building assessment provisions

This definition refers to the *Building Act 1975*, which states that building assessment work and self-assessable building work must be carried out under the following laws and documents, collectively called the building assessment provisions:

- IDAS;
- chapters 3 and 4 of *Building Act 1975*;
- the fire safety standard;
- regulations made under the *Building Act 1975* relating to building assessment work or self-assessable building work;
- any relevant local laws, planning scheme provisions or resolutions made under the *Building Act 1975,* section 32 (Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions) or section 33 (Alternative planning scheme provisions to QDC boundary clearances and site cover provisions for particular buildings);
- the Building Code of Australia; and
- subject to section 33, the Queensland Development Code.

building certifier

Means an individual who is licensed as a building certifier under the *Building Act 1975*. The term includes a reference to a private certifier.

Building Code of Australia

Means the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board. It includes the edition as amended from time to time by amendments published by the board.

building development application

Means a development application to the extent it is for building work.

building work

This definition defines the term "building work" which is a component of the definition of "development". Building work is defined in clause 10.

business day

This definition clarifies that business days, for the purpose of implementing the Bill, do not include those days between (and not including) 26 December and 1 January of the following year. There is no need to exclude 26 December and 1 January from the definition as these days are always public holidays and would therefore never count as business days.

certificate of classification

This definition refers to the *Building Act 1975*.

certified copy

This definition defines the term "certified copy" for a range of different entities.

charge rate

In relation to trunk infrastructure, means the dollar amount for each unit of demand for the infrastructure.

chief executive (environment)

Means the chief executive of the department in which the *Environmental Protection Act 1994* is administered.

chief executive (fisheries)

Means the chief executive of the department in which the *Fisheries Act 1994* is administered.

clear

This definition refers to the clearing of vegetation for a range of purposes under the Bill, including in relation to the VMA.

coastal management district

Means a coastal management district under the *Coastal Protection and Management Act 1995*, other than an area declared under section 54(2) of that Act.

code

This definition establishes the documents that may identify a code. The definition of code is intentionally broad to ensure the potential for unproductive challenges to codes on the basis of aspects of their structure or content is minimised.

code assessment

The definition of code assessment under the current IPA provided for assessment only against the common material and applicable codes. This definition is no longer relevant, since code assessment must also be carried out against other matters. The new definition consequently merely references the matters under clause 313.

commencement

The definition of "commencement" for chapter 10, part 2, is defined and refers to clause 765.

common material

This definition differs from the equivalent under the current IPA through the inclusion of a specific reference to information received under clause 256.

Commonwealth Environment Act

This is an abbreviation for the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth). This term is used in the environment impact statement provisions under chapter 9, part 2.

community infrastructure

The equivalent definition under the current IPA refers to schedule 5 of that Act. This has been replaced with a reference to a regulation as these matters will now be prescribed under a regulation for clause 200.

compliance assessment

Compliance assessment is defined as the assessment of development, documents or works for compliance with standards and criteria in accordance with the new compliance assessment provisions. The compliance assessment process is more extensive compared to that in the current IPA. Compliance assessment is a category of development, as well as an assessment which can be carried out post-approval.

compliance assessor

This definition refers to clause 397(3)(b) and 398(2)(b). A compliance assessor is responsible for assessing requests for compliance assessment.

compliance certificate

This definition refers to clause 395. A compliance certificate is necessary for documents and works requiring compliance assessment.

compliance permit

This definition refers to clause 394. A compliance permit is necessary for development requiring compliance assessment.

concurrence agency

This definition refers to the definition of a concurrence agency under clause 251. A development application must be referred to a concurrence agency. The concurrence agency is responsible for assessing the application, to the extent of its jurisdiction.

concurrence agency code

This definition refers to a code or part of a code a concurrence agency is required under this Bill or another Act to assess a development application against.

concurrence agency condition

A "concurrence agency condition" is a condition imposed by a concurrence agency on a development approval.

concurrence agency's response

This definition defines the term concurrence agency's response, and refers to clauses 285(2) and 290(1)(a).

consolidated planning scheme

A consolidated planning scheme is a planning scheme combining all amendments to a local government's planning scheme with the original document. Consolidated planning schemes may be made without normal public notification requirements (see clause 122).

consultation period

Paragraphs (a) and (b) define the consultation period for making or amending a State planning instrument.

Paragraph (c) defines the consultation period for making or amending a local planning instrument, other than an amendment to a planning scheme to include a structure plan, by reference to clause 118(1)(b).

Paragraph (d) defines the consultation period for making a structure plan for a declared master planned area, by reference to clause 146(b).

Paragraph (e) defines the consultation period for a master plan application by reference to clause 167(1)(f).

Paragraph (f) defines the consultation period for making a ministerial designation of land as the period for making submissions stated in any notice given under clause 207(4).

This definition differs from the equivalent definition in the current IPA in the following ways:

- it reflects the fact that the processes for making and amending local planning instruments (including amending a planning scheme to include a structure plan) will now be contained in a statutory guideline, rather than in the Bill;
- it reflects the fact that under the Bill, there is a single, consolidated process for making all State planning instruments.

convicted

This definition defines the term "convicted" for chapter 7, part 4.

coordinating agency

A coordinating agency is the State agency nominated under a master planned area declaration that coordinates the input of nominated participating agencies (also State agencies) into structure plans. For a master plan application, the coordinating entity is the State agency identified in the structure plan or an entity otherwise identified by the Minister.

coordinating agency assessment period

This definition defines the term "coordinating agency assessment period" and refers to clause 176.

coordinating agency conditions

This definition defines the term "coordinating agency conditions" and refers to clause 178(2)(b).

core matters

This definition defines the term "core matters" in relation to the content of a planning scheme. It refers to those matters to be addressed in the preparation of planning schemes.

court

Means the Planning and Environment Court.

crude oil or petroleum product storage ERA

This definition refers to an environmentally relevant activity prescribed under a regulation.

decision-making period

This definition defines the term "decision making period" and refers to clause 318(1).

decision notice

This definition defines the term "decision notice" and refers to clause 334(1).

declared fish habitat area

This definition refers to the definition of declared fish habitat area in the *Fisheries Act 1994*.

declared master planned area

This definition defines the term "declared master planned area" and refers to clause 132(4).

deemed approval

A deemed approval is an approval that is taken to have been given under clause 331. This term relates to the situation where an assessment manager fails to decide an application within the decision-making period, including any extension to that period, and the applicant gives the assessment manager a deemed approval notice.

deemed approval notice

A deemed approval notice is a notice given by an applicant under clause 331(1).

deemed refusal

This definition defines the term "deemed refusal" for the purposes of chapter 7, parts 1 or 2. The definition relates to matters that may be the subject of an appeal to the Planning and Environment Court or to a building and development committee.

designate

This term refers to the identification of community infrastructure for the purposes of chapter 5.

designated land

This definition defines the term "designated land" and refers to the designation of land for community infrastructure under chapter 5.

designated region

This definition defines the term "designated region" and refers to clause 22(1). The concept of a designated region was introduced through amendments to the current IPA contained in the *Urban Land Development Authority Act 2007*, and extended the scope of regional planning throughout Queensland. Before this amendment, statutory regional planning was confined to the SEQ region.

designated urban area

This term refers to the definition in the *Wild Rivers Act 2005.*

designation cessation day

This is the day on which a designation for community infrastructure ceases to have effect. The definition refers to clause 214(1). Cessation arrangements are included for designations to ensure privately held land is not indefinitely designated for community infrastructure.

designator

This term refers to the Minister or local government who designates land for community infrastructure under chapter 5.

desired standard of service

This definition defines the term "desired standard of service" in relation to a standard of performance for a development infrastructure item. A desired standard of service must be stated in a local government's priority infrastructure plan.

destroy

For vegetation, includes destroy it by burning, flooding or draining.

development

This definition defines the term "development" by reference to clause 7. This is a key concept. The definition specifies the activities which are "development" for the purposes of the Bill. Detailed definitions related to development are contained in clause 10.

development application

This definition defines the term "development application" as an application for development approval under chapter 6.

development application (superseded planning scheme)

This is a development application assessed under a superseded planning scheme. Under the current IPA, this type of development application sought both a local government's agreement to apply a superseded planning scheme to assess development, and approval of the development itself. Under this Bill there is a separate process, contained in chapter 3 part 2, division 5, for requesting that a local government assess and decide an application under a superseded planning scheme. Consequently this definition differs from that under the current IPA to reflect this changed approach.

For the purposes of applying the decision rules, this allows a distinction to be made between an application which is assessed against the current planning scheme, and one that is assessed against the superseded planning scheme.

development approval

This definition defines the term "development approval". This is a generic term which may refer to either or both of a "development permit" and a "preliminary approval". It is used to avoid repeating terms. See definitions of "development permit" and "preliminary approval".

This term also includes a deemed approval, and any conditions that apply to the deemed approval.

development infrastructure

This definition defines the term "development infrastructure" for reference in chapter 8 in relation to land and capital works for certain types of infrastructure. The definition clarifies that all local government supplied public parks can be planned and charged for including neighbourhood, district and City or Shire wide facilities.

development offence

This definition refers to the clauses in chapter 7, part 3 which establish a range of offences. The offences identified include several new offences compared to the current IPA. For example, offences are now included in relation to compliance permits and certificates.

development permit

This definition defines the term "development permit" by reference to clause 243. A development permit is a type of development approval. Compare definition of "preliminary approval".

draft EIS

This definition relates to the environmental impact statement arrangements under chapter 9, part 2.

draft terms of reference

This definition relates to the environmental impact statement arrangements under chapter 9, part 2.

drainage work

This definition refers directly to the definition in the *Plumbing and Drainage Act 2002*.

dredging ERA

This definition refers to an environmentally relevant activity prescribed under a regulation.

ecological sustainability

This definition defines the term "ecological sustainability" and refers to clause 8. This term is relevant to the purpose of the Bill.

e-IDAS

This term is used to describe the electronic development assessment system approved by the chief executive under clause 262.

EIS

This definition defines an EIS for chapter 9, part 2.

EIS assessment report

This definition is for the purposes of chapter 9, part 2.

EIS process

This definition refers to the process for preparing environmental impact statements under chapter 9, part 2.

eligible Minister

This definition provides a definition of Minister specifically for chapter 2 in relation to the making of certain State planning instruments. It extends

the definition of Minister to mean a Minister other than the Minister responsible for administering chapter 2 or the regional planning Minister, and relates to the situation where a State planning policy or a State planning regulatory provision can be jointly made by an eligible Minister and the Minister responsible for administering chapter 2.

enforcement notice

This definition defines the term "enforcement notice" in relation to an alleged development offence, and refers to clause 590.

enforcement order

This definition defines the term "enforcement order" in relation to a proceeding for an alleged development offence, and refers to clause 601(1)(a).

entity

This definition defines the term "entity" and extends the definition in the *Acts Interpretation Act 1954* to include a department.

environment

This definition defines the term "environment" in relation to its use throughout the Bill. The definition is expressed inclusively (i.e. does not establish an exhaustive definition). This is a broad definition which is not limited to the natural environment. The definition is the same as that in the current IPA.

environmentally relevant activity

This definition draws on the definition in the *Environmental Protection Act 1994*, section 18.

environmental management plan

This definition defines "environmental management plan" in relation to its use for EIS's under chapter 9, part 2.

environmental nuisance

This definition draws on the definition in the *Environmental Protection Act 1994*, section 15.

Environmental Protection Act

This is an abbreviation of the *Environmental Protection Act 1994.*

establishment cost

This definition defines the term "establishment cost" to include the cost of preparing an infrastructure charges schedule and the on-going administration costs. The definition includes, and distinguishes between, the costs for future infrastructure and existing infrastructure.

executive officer

This definition defines the term "executive officer" of a corporation as any person who is concerned with, or takes part in, the management of the corporation.

exempt development

This definition differs from that in the current IPA in that it provides that exempt development is development other than self-assessable development, development requiring compliance assessment, assessable development, or prohibited development. This change takes account of the new categories of development under this Bill.

existing

This definition defines the term "existing" in relation to a regional planning advisory committee or regional coordination committee under the current IPA and refers to clause 765.

existing planning scheme

This definition defines the term "existing planning scheme" for chapter 10, part 2 and refers to clause 765.

existing planning scheme policy

This definition defines the term "existing planning scheme policy" for chapter 10, part 2 and refers to clause 765.

existing structure plan

This definition defines the term "existing structure plan" for chapter 10, part 2 and refers to clause 765.

existing temporary local planning instrument

This definition defines the term "existing temporary local planning instrument" for chapter 10, part 2 and refers to clause 765.

extraction ERA

This definition refers to an environmentally relevant activity prescribed under a regulation.

Fisheries Act

This definition defines the term "Fisheries Act" to mean the *Fisheries Act 1994*.

forest practice

This definition relates to the definition of "operational work" (clauses 7 and 10).

former

This definition relates to the transitional provisions.

freehold land

This definition includes land in a freeholding lease under the *Land Act 1994*.

grounds

This definition defines "grounds" in relation to its use in clauses 326(1)(b) and 329(1)(b) to identify the bases upon which a decision about a development application may depart from the instruments against which it is assessed.

high risk species

This definition relates to schedule 1 (Prohibited development), and refers to the definition in the *Wild Rivers Act 2005.*

high-water mark

Means the ordinary high water mark at spring tides

IDAS

This is the abbreviation for the Integrated Development Assessment System under chapter 6.

impact assessment

This refers to impact assessment of a development application under clause 314.

indigenous land

This definition relates to the regulation of clearing under the *Vegetation Management Act 1999* through IDAS, and refers to tenures of land under several listed Acts.

industrial area

This definition relates to the definition of "residential building" for the purposes of schedule 1 (Prohibited development).

information request

This definition defines the term "information request" and refers to clause 276(1) in relation to a request by the assessment manager or a concurrence agency for further information from the applicant regarding a development application.

information request period

This definition defines the term "information request period" and refers to clause 276(4) and (5) in relation to the period within which the assessment manager or a concurrence agency may request further information from the applicant about a development application.

infrastructure

This definition defines the term "infrastructure". The definition is inclusive and intended to give broad guidance as to the scope of the term.

infrastructure agreement

This definition defines the term "infrastructure agreement" and refers to clause 660. This is part of the infrastructure charging framework.

infrastructure charge

This definition defines the term "infrastructure charge" and refers to clause 631(1)(b). This is part of the infrastructure charging framework.

infrastructure charges notice

This definition defines the term "infrastructure charges notice" and refers to clause 633(1). This is part of the infrastructure charging framework.

infrastructure charges plan

This definition refers to an infrastructure charges plan under the current IPA. Infrastructure charges plans have been replaced by infrastructure charges schedules. Consequently this term is defined for transitional purposes under chapter 10.

infrastructure charges register.

This definition defines the term "infrastructure charges register" and refers to clause 724(1)(s). A local government must keep this document available for inspection and purchase.

infrastructure charges schedule

This definition defines the term "infrastructure charges schedule" and refers to chapter 8, part 1, division 4. This is part of the infrastructure charging framework.

infrastructure provider

This definition identifies an "infrastructure provider" for certain purposes under chapter 8, as a local government that either directly supplies trunk infrastructure, or has an agreement with another entity to do so.

interim enforcement order

This definition defines the term "interim enforcement order" and refers to clause 601(1)(b) in relation to a proceeding for an alleged development offence.

IPA planning scheme

This definition refers to a planning scheme under the current IPA.

land

This is an inclusive definition that establishes the areas considered to be part of "land", including airspace and subsurface areas.

last day for making comments

The definition defines "last day for making comments" and refers to clause 691(3)(e).

last day for making submissions

The definition defines "last day for making submissions" and refers to clause 694(1)(a)(iv).

lawful use

This definition references clause 9.

local government

This definition is specific to master planned areas.

Local Government Act

This is an abbreviation for the *Local Government Act 1993*.

local government area

This definition defines the term "local government area" as a local government area under the *Local Government Act 1993.*

local government road

This definition refers to the definition in the *Transport Planning and Coordination Act 1994*.

local heritage place

This definition refers to a local heritage place under the *Queensland Heritage Act 1992.*

local infrastructure agreement

This definition refers to an infrastructure agreement under chapter 8, part 2 that is entered into by a local government.

local planning instrument

This definition identifies several types of instruments under chapter 3 as local planning instruments, namely planning schemes, temporary local planning instruments and planning scheme policies.

lopping

This definition relates to the defined term "clear".

lot

This definition defines the term "lot" as it is used in the term "reconfiguring a lot" in the definition of "development".

making

This is an inclusive definition relating to structure plans and master plans.

marine plant

This definition refers to the *Fisheries Act 1994*, section 8.

master plan

This definition refers to a master plan under clause 151.

master plan application

This definition refers to an application for approval of a master plan under clause 159.

master planned area

This definition refers to an area identified under clause 132.

master planned area declaration

This definition refers to a declaration made under clause 132(2)(c) or (3)(b).

master planning unit

This definition refers to the declared master planned area, or part thereof, to which a master plan or proposed master plan applies.

material change of use

This term is a component of the defined term "development" under clause 7. "Material change of use" is defined in clause 10(1).

mining activity

This definition refers to the *Environmental Protection Act 1994*, section 147.

Minister

This definition identifies the relevant Minister for administering various parts of the legislation. For most of the Bill, this means the Minister administering the relevant provision under the administrative arrangements (paragraph (e)). However there are several important exceptions for particular parts of the Bill that reflect:

- The possibility the administrative arrangements may specify a particular Minister to administer that part or those parts. This is the case for certain functions related to regional planning, for which a separate entity, the "regional planning Minister" is defined, and referred to in paragraph (b).

  These functions are the power to convene a regional coordination committee and prepare a regional plan for a designated region under chapter 2, part 3; prepare State planning regulatory provisions to support regional planning under chapter 2, part 2; declaring master planned areas under chapter 4, and special arrangements for calling in development applications related to the implementation of regional plans under chapter 6, part 11.

  The definition (paragraph (a)(ii)) specifies that the term "Minister" used in the Bill also means the regional planning Minister for a matter

"related to" State planning regulatory provisions, regional plans and structure planning. While the term regional planning Minister is used throughout chapter 2, part 3, chapter 4 and chapter 6, part 11, this definition extends the functions of the regional planning Minister to other parts of the Bill "related to" those parts

- Some parts of the Bill have broad application across government and require that more than one Minister be able to exercise those powers and functions. This is the case with designation for community infrastructure under chapter 5 (paragraph (c) of the definition), which allows for any Minister to designate land for purposes related to that Minister's portfolio responsibilities.
- Finally, a particular Minister may be empowered to exercise particular powers and functions under the Bill. This is the case for the Minister administering the *State Development and Public Works Organisation Act 1971*, who may exercise powers and functions under chapter 6, part 11, division 2 (Ministerial call in powers).

Refer also to the definition of "eligible Minister" which facilitates the joint preparation of State planning regulatory provisions or State planning policies by the Minister administering the Bill and another Minister.

minor amendment

This definition relates to particular amendments to State planning instruments which do not require public notification. See also the definition of "administrative amendment". The purpose of this definition is to ensure that amendments to a State planning instrument which merely reflect another State planning instrument can be made using a more streamlined process (i.e. without repeating public notification) where adequate public consultation was already carried out in relation to the State planning instrument being reflected. See also the explanatory notes in relation to clause 68.

minor change

This definition refers to clause 350.

missed referral agency

This definition refers to clause 357(1) and relates to the process for dealing with missed referrals (i.e. situations where an application has not been provided to a referral agency as required under clause 272).

mobile and temporary environmentally relevant activity.

This definition refers to the definition in the *Environmental Protection Act 1994*, schedule 4.

native forest practice

This definition is included to be consistent with the *Vegetation Management Act 1999.*

native vegetation

The definition of "native vegetation" is consistent with the meaning of "vegetation" under the *Vegetation Management Act 1999*.

negotiated decision notice

This definition defines the term "negotiated decision notice" and refers to clause 363(1) in relation to negotiated changes made to the conditions of a development approval decided by the assessment manager.

negotiated infrastructure charges notice

This term is defined in clause 679(1)(a).

negotiated notice

This definition defines the term "negotiated notice" and refers to clause 185(3) in relation to negotiated changes made to a master plan approval decided by a local government.

negotiated regulated infrastructure charges notice

This term is defined in clause 679(1)(b).

negotiated regulated State infrastructure charges notice

This term is defined in clause 679(1)(c).

network

This is an inclusive definition which confirms that a reference in the Bill to a network includes part of a network.

non-trunk infrastructure

This definition refers to non-trunk infrastructure as development infrastructure that is not trunk infrastructure. Trunk infrastructure is identified in a local government's priority infrastructure plan. Consequently for a priority infrastructure plan, non-trunk infrastructure is all development infrastructure not identified as trunk infrastructure in the priority infrastructure plan.

notification period

This definition defines the term "notification period" and refers to clauses 298 and 747, as this period varies for particular aquaculture development.

operational work

This definition defines the term "operational work" which is a component of the definition of "development" under clause 7.

original application

This definition refers to clause 372(1)(a) and relates to the process for making a permissible change to an approval under chapter 6, part 8, division 2.

original assessment manager

This definition is used in relation to the Minister's call in powers in chapter 6, part 11, division 2 and refers to clause 428. The original assessment manager is the entity that was the assessment manager before the application was called in by the Minister.

overland flow water

This definition refers to the *Water Act 2000* and is relevant to schedule 1 (Prohibited development).

owner

This definition defines the term "owner" as the person who is entitled to receive rent for the land, or would be entitled to receive rent if the land were let to a tenant.

participating agency

This definition defines the term participating agency for master planning purposes.

party

This definition defines the term "party" in relation to an appeal to the court or building and development committee under chapter 7. The term includes the Minister if the Minister is represented in the appeal.

permissible change

This definition refers to clause 367(1), which identifies the parameters for a development approval that can be changed by the applicant or person with the benefit of the approval.

person

This definition defines the term "person" for the purposes of the Bill to clarify that a "person" can refer to a body of persons, whether incorporated or unincorporated.

petroleum activities

This definition refers to the definition in the *Environmental Protection Act 1994*, schedule 4.

planning instrument

This definition incorporates a State planning regulatory provision, a designated region's regional plan, a State planning policy, a standard planning scheme provision, a planning scheme, a temporary local planning instrument or a planning scheme policy. This new definition re-orders each of the planning instruments to reflect the hierarchy. Unlike the current IPA, it also includes a reference to standard planning scheme provisions.

planning scheme

This definition defines the term "planning scheme" by reference to clause 79. See also definition of the generic term "planning instrument".

planning scheme area

This definition defines the term "planning scheme area" by reference to clause 82(1). See also definition of the generic term "planning instrument".

planning scheme policy

This definition defines the term "planning scheme policy" by reference to clause 108. See also definition of the generic term "planning instrument".

plans for trunk infrastructure

This definition clarifies that these are the plans for each infrastructure network (including existing and planned infrastructure) necessary to service existing development and anticipated growth at the local government's desired standards of service.

plumbing work

This definition defines the term "plumbing work" which is a component of the definition of "development". This definition of "plumbing work" refers directly to the *Plumbing and Drainage Act 2002*.

preliminary approval

This definition defines the term "preliminary approval" by reference to clause 241(1). Compare definition of "development permit". See also definition of the generic term "development approval"

premises

This definition defines the term "premises" as meaning a building or other structure, or land.

pre-request response notice

This definition refers to clause 368(3).

prescribed building

This is defined as a building classified under the BCA as a class 1 building. It also includes a class 10 building, other than a class 10 building that is incidental to or subordinate to the use or proposed use of a building classified under the BCA as a class 2, 3, 4, 5, 6, 7, 8 or 9 building. This definition relates to the jurisdiction of the building and development committee. It is intended to ensure that the committee can hear matters about the use of land for a class 10 building that is associated with the use of land for a class 1 building (e.g. a shed associated with a detached house), or is on vacant land. Where the use of the class 10 building is associated with the use of another class of building, the committee will not have jurisdiction to hear the matter (e.g. a garage associated with a multi-unit development complex).

prescribed concurrence agency

This definition refers to particular concurrence agencies prescribed for the purposes of applying additional notification and consultation requirements for certain fisheries activities under chapter 9, part 7.

prescribed tidal work

This definition refers to work prescribed under a regulation for this definition under this Bill or another Act.

principal submitter

This definition defines the term "principal submitter" for the purposes of the Bill in relation to submissions on development applications and proposed planning instruments. The principal submitter is the person who made the submission or, if the submission is made by more than 1 person,

the person either identified as the principal submitter or the first name on the submission. See also definition of "submitter".

priority infrastructure area

This definition refers to the area identified by a local government under its planning scheme for the priority supply of infrastructure.

priority infrastructure plan

This definition lists the elements of a priority infrastructure plan, which is intended to be the primary mechanism for integrating land use and infrastructure planning. Most of the elements of the priority infrastructure plan are separately defined. Item (d) requires that a priority infrastructure plan state the assumptions about future growth on which the plans for infrastructure are based. These assumptions may include the type, scale, location or timing of future growth in each of the categories covered by the priority infrastructure area. Whilst it is desirable to build State infrastructure intentions into the priority infrastructure plans they are primarily about local government supplied development infrastructure. For prescribed local governments, priority infrastructure plans will be required to be reviewed a minimum of every 4 years.

The definition clarifies that priority infrastructure plans only need to deal with networks the local government intends to supply or charge for and do not have to undertake planning for infrastructure networks they have no intention of providing.

private certifier

This definition defines the term "private certifier". The definition makes it clear that there are restrictions on private certifiers issuing development approvals, depending on the type of endorsement on a certifier's licence. To avoid confusion two separate classes of certifier have been created, indicating the corresponding endorsements. A private certifier is a building certifier whose licence includes a private certification endorsement under the *Building Act 1975*.

private certifier (class A)

Means a private certifier whose licence under the *Building Act 1975* contains a development approval endorsement. A private certifier (class A) can issue development approvals for building work.

prohibited development

The definition of prohibited development incorporates the following elements:

- Development specified as prohibited development in schedule 1 (Prohibited development).
- Development declared under a State planning regulatory provision to be prohibited development.
- For a planning scheme area, the term also includes other development not stated in schedule 1, but declared to be prohibited development under any of the following —

  (a) the planning scheme for the area, including a structure plan;

  (b) a temporary local planning instrument.

It should be noted that a planning scheme, structure and temporary local planning instrument can only state that development is prohibited development to the extent that the standard planning scheme provisions state that they may prohibit the development (see clauses 88(2)(d), 106(1)(c) and 142).

properly made application

This definition refers to clause 261.

properly made submission

This definition defines the term "properly made submission" with respect to a variety of functions and instruments throughout the Bill. The definition standardises the concept to avoid the need for it to be redefined in the various contexts in which it appears. This definition should be read with clause 756, which provides for the giving of electronic submissions.

proponent

This definition relates to the environmental impact statement process under chapter 9, part 2.

public housing

Means housing provided by the State (or for the State or by a statutory body representing the State) for short or long term residential use that is subsidised by the State or a statutory body representing the State. This term also includes services provided for residents of the housing, if subsidised by the State or a statutory body representing the State.

public office

Means the public office of a local government kept under the *Local Government Act 1993*.

public sector entity

This definition clarifies that the term includes a government owned corporation. This clarity is particularly relevant for the purposes of designation, in particular the powers of the Minister to delegate certain administrative functions.

public utility easement

This term is defined by reference to the definition of this term in the *Land Title Act 1994*, section 81A.

quarry material

This definition refers to the definition of quarry material in the *Coastal Protection and Management Act 1995*.

Queensland Competition Authority

This definition defines the term "Queensland Competition Authority" as being the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*.

Queensland Development Code

This definition defines the term "Queensland Development Code" as being the version, which is current at the relevant time, of the Queensland Development Code. This document is published by the department in which the *Building Act 1975* is administered.

Queensland heritage place

This definition defines the term "Queensland heritage place" as a registered place under the *Queensland Heritage Act 1992*.

reconfiguring a lot

This definition defines the term "reconfiguring a lot" which is a component of the definition of "development" under clause 7.

referral agency

This definition defines the term "referral agency" and refers to clause 252. This is a generic term which may refer to either or both of a "concurrence

agency" and an "advice agency". It is used to avoid repeating terms. See definitions of "concurrence agency" and "advice agency".

referral agency material

This definition refers to clause 272(1).

referral agency's assessment period

This definition defines the term "referral agency's assessment period" and refers to clause 283 in relation to the time a referral agency may take to assess a development application and communicate its response to the assessment manager.

referral agency's response

This definition defines the term "referral agency's response" in relation to the agency's assessment of a development application. It is a generic term which includes either an advice agency's response or a concurrence agency's response

regional plan

This definition refers to clause 23 and relates to a regional plan for a designated region.

regional planning committee

This definition refers to a committee established under clause 31.

regional planning Minister

This definition defines the regional planning Minister as the Minister administering chapter 2, part 2 (State planning regulatory provisions) or part 3 (regional plans), or chapter 4 (planning partnerships) for the region.

registered professional engineer

This definition clarifies that a registered professional engineer is a professional engineer under the *Professional Engineers Act 2002* or a person registered as a professional engineer under an Act of another State.

regulated infrastructure charge

This definition refers to clause 642(1).

regulated infrastructure charges notice

This definition refers to clause 643(1).

regulated infrastructure charges register

This definition refers to clause 724(1)(t).

regulated infrastructure charges schedule

This definition refers to clause 641(1).

regulated State infrastructure charge

This definition refers to clause 668(1)(b).

regulated State infrastructure charges notice

This definition refers to clause 669(1).

regulated State infrastructure charges schedule

This definition refers to clauses 667 and 668.

relevant appeal period

This definition refers to clause 675.

relevant area

This definition refers to a part of the State for which a State planning regulatory provision is made.

relevant instrument

This definition refers to clause 397(5) and relates to chapter 6, part 10.

repealed IPA

This term refers to the repealed *Integrated Planning Act 1997.*

repealed LGP&E Act

This term refers to the repealed *Local Government (Planning and Environment) Act 1990*.

request for information

This definition refers to clause 162(1) which defines a "request for information" as a written request by the participating agencies, the coordinating agency and the local government to the applicant for further information, which is required to assess the master plan application.

requesting authority

Means an assessment manager or concurrence agency seeking further information from an applicant through an information request.

residential building

This term relates to schedule 1 (Prohibited development) and is defined as a building used primarily for private residential use. The definition excludes a building used only for a caretaker's residence in an industrial area.

residential complex

This definition defines the term "residential complex" for land in a wild river area.

responsible entity

This definition refers to clause 369, and describes an entity to which a request must be made for a permissible change to a development approval.

road

This definition defines the term "road" for the purposes of the Bill consistent with the definition of road in the *Transport Infrastructure Act 1994*.

road works

This definition defines the term "road works" for the purposes of the Bill consistent with the *Transport Infrastructure Act 1994*.

screening ERA

This definition refers to an environmentally relevant activity prescribed under a regulation.

self-assessable development

The definition of self-assessable development incorporates the following elements:

- Development prescribed as self-assessable development in a regulation.
- Development declared under a State planning regulatory provision to be self-assessable development.
- For a planning scheme area, the term also includes other development not prescribed under a regulation, but declared to be self-assessable development under any of the following:
    - — the planning scheme for the area, including a structure plan;

— a temporary local planning instrument;

— a master plan for a declared master planned area;

— a preliminary approval to which clause 242 applies.

SEQ region

This definition refers to the transitional arrangements for the SEQ region under chapter 10. The SEQ regional plan became a regional plan for a designated region under reforms contained in the *Urban Land Development Authority Act 2007*.

SEQ regional plan structure plan

This definition refers to the transitional arrangements for the SEQ regional plan under chapter 10.

serious environmental harm

This definition refers to the definition in the *Environmental Protection Act 1994*, section 17.

show cause notice

This definition refers to clause 588(2).

specified works

This definition relates to schedule 1 (Prohibited development) and refers to the definition in the *Wild Rivers Act 2005*, section 48(2).

stage

This definition specifically relates to a stage in the IDAS process, and refers to clause 257(1).

standard conditions

Standard conditions are the conditions which will apply automatically to a deemed approval, if the assessment manager does not otherwise impose conditions by giving a decision notice for the deemed approval.

standard planning scheme provisions

This definition refers to clause 50.

State-controlled road

This definition defines the term "State-controlled road" for the purposes of the Bill consistent with the *Transport Infrastructure Act 1994*.

State infrastructure

This definition defines "State infrastructure" for the purposes of identifying the range of infrastructure for which a regulated State infrastructure charge may be levied.

State infrastructure agreement

This definition refers to an infrastructure agreement entered into by a public sector entity other than a local government.

State infrastructure provider

This definition refers to a concurrence agency that is the provider of State infrastructure or administers a regional plan for a designated region.

State interest

This definition defines the term "State interest" as an interest that, in the Minister's opinion, affects an economic or environmental interest of the State or part of the State, or affects the interest of ensuring there is an efficient, effective and accountable planning and development assessment system.

statement of intent

This definition links the statement of intent a State infrastructure provider may require to be referenced in the priority infrastructure plan to the *Transport Infrastructure Act 1994.*

State planning instrument

This definition refers to a State planning regulatory provision, a designated region's regional plan, a State planning policy or the standard planning scheme provisions.

State planning policy

This definition defines the term "State planning policy" by reference to clause 40. See also the definition of "temporary State planning policy" and the generic term "planning instrument".

State planning regulatory provision

This definition refers to clause 16.

strategic port land

This definition draws directly on the definition of strategic port land contained in the *Transport Infrastructure Act 1994*, section 286(5).

structure plan

This definition defines the term "structure plan" and refers to clause 137.

submitter

This definition defines "submitter" in relation to a development application as the person who makes a properly made submission about an application. See also definition of "principal submitter".

submitter's appeal period

This definition defines the term "submitter's appeal period" in relation to the appeal rights of people who have made submissions during the public notification stage of IDAS.

superseded planning scheme

Means a planning scheme or planning scheme policy in force immediately before a new planning scheme or planning scheme policy is made or the planning scheme or planning scheme policy is amended.

temporary local planning instrument

This definition defines the term "temporary local planning instrument" by reference to clause 101. See also definitions of "planning scheme" and the generic term "planning instrument".

temporary State planning policy

This definition refers to clause 46(1) and (2).

terms of reference

This definition refers to terms of reference for the purposes of an environmental impact statement prepared by the chief executive under clause 692.

tidal area, for a local government

This term defines the extent of the land under tidal water that comes under the jurisdiction of a local government for the purposes of assessing tidal works. Most works will be located within 50 metres of the high-water mark.

tidal area, for strategic port land

This term defines the extent of the land under tidal water that will come under the jurisdiction of a port authority for the purposes of assessing tidal works.

tidal works

This definition refers to the *Coastal Protection and Management Act 1995*.

Transport Infrastructure Act

This is an abbreviation of the *Transport Infrastructure Act 1994*.

trunk infrastructure

This definition refers to higher order development infrastructure. The definition requires that planning schemes, through the priority infrastructure plan, define the infrastructure that is considered to be trunk infrastructure. Trunk infrastructure is generally that which has, as its key function, network distribution or collection rather than providing direct user connections. In defining trunk infrastructure local governments need to consider what level of infrastructure they can plan for with adequate certainty.

use

This definition defines the term "use" to include any use incidental to and necessarily associated with the use of premises.

vehicle

This definition relates to schedule 1 (Prohibited development), item 5, and defines the term vehicle as including any type of transport that moves on wheels, other than a train or tram.

Vegetation Management Act

This is an abbreviation of the *Vegetation Management Act 1999*.

water infrastructure facility

This definition clarifies that a water infrastructure facility means a measure, outcome, works or anything else that Queensland Water Infrastructure Pty Ltd is directed to carry out or achieve under the *State Development and Public Works Organisation Act 1971* or the *Water Act 2000*.

waterway barrier works

This definition draws directly on the definition in the *Fisheries Act 1994*, schedule.

wild river area

This definition draws directly on the *Wild Rivers Act 2005*, schedule.

wild river declaration

This definition refers to a declaration under the *Wild Rivers Act 2005.*

wild river floodplain management area

This definition refers to a floodplain management area under the *Wild Rivers Act 2005.*

wild river high preservation area

This definition refers to a high preservation area under the *Wild Rivers Act 2005.*

wild river preservation area

This definition refers to a preservation area under the *Wild Rivers Act 2005.*