Sustainable Planning and Other Legislation Amendment Bill 2011

Explanatory Notes

Short Title

The short title of the Bill is the *Sustainable Planning and Other Legislation Amendment Bill 2011*.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

1. Amend the *Animal Management (Cats and Dogs) Act 2008* (AMCDA) to enable authorised local government officers to access the Queensland Motor Vehicle Registry (QMVR) where the information may be used in an investigation to identify the owner of/responsible person for a dog that is the subject of a serious dog attack complaint where an alleged attack causes death, grievous bodily harm or bodily harm to a person or animal under the AMCDA.

   The QMVR is a register of vehicles registered in Queensland and is administered by the Department of Transport and Main Roads under the *Transport Operations (Road Use Management) Act 1995*.

   When undertaking investigations into complaints about serious dog attacks, there are occasions when the only detail provided to an authorised local government officer may be a vehicle registration number of the person/s that had charge of the alleged offending dog. Under current arrangements, local government officers do not have access to the QMVR to assist in identifying the owner of/responsible person for the alleged dog in such complaints.

2. Amend the *Building Act 1975* (Building Act) to align the terminology used in the Building Act more closely with the National Accreditation Framework for Building Surveyors while maintaining three levels of building certifiers in Queensland, and make other minor amendments to the Building Act.

3. Amend the *Coastal Protection and Management Act 1995* (CPMA) to address an inequity for applicants in an Urban Development Area (UDA) under the *Urban Land Development Authority Act 2007* (ULDA Act) with regard to obtaining the right to use and occupy land where a development permit for operational works that is tidal works has been obtained. The amendment ensures that the CPMA recognises a UDA development permit for the works. The Bill also corrects an unintended conflict in the operation of the CPMA, resulting from recent amendments to the CPMA under the *Environmental and Other Legislation Amendment Act 2011*.

4. Amend the *Local Government Act 2009* (LGA) to enable superannuation contributions for LG Super scheme members to be reduced from those prescribed in the *Local Government (Operations) Regulation 2010* (LGOR) in certain circumstances.

   Firstly, the Bill enables the LG Super trust deed to provide, where there is agreement between the local government employer and employee, for superannuation contributions for Brisbane City Council (BCC) accumulation benefit members to be reduced in instances of financial hardship. Before the merger of City Super and LG Super on 1 July 2011, a BCC accumulation benefit member was able to apply, under the then City Super trust deed, for a reduction in employee superannuation contributions on the grounds of financial hardship. Since the merger, BCC accumulation benefit members have not been able to seek a reduction in contributions on these grounds because the compulsory yearly superannuation contribution rates are now prescribed under the LGOR, not the trust deed. The amendment continues the arrangements that existed for BCC accumulation benefit members prior to the merger of City Super with LG Super.

   Secondly, the Bill enables the LG Super trust deed to provide, where there is agreement between the local government employer and employee, for superannuation contributions for an LG Super member to be reduced if additional tax would be incurred by the member under the Commonwealth Government's Concessional Contributions Cap (CGCCC). In addition, where an employee's superannuation contributions are reduced in these circumstances, provision has been made for the employer's contribution in lieu of superannuation to be directed to the employee's salary.

   Under the *Income Tax Assessment Act 1997* (Cwlth), the concessional contributions cap imposes a cap to limit the amount of superannuation

contributions that can receive concessional taxation treatment during a financial year. The concessional tax rate is 15 per cent. Where the cap is exceeded, an additional tax is imposed on the excess contributions, equal to a total rate of 46.5 per cent. From 1 July 2009, the Commonwealth Government reduced the annual contribution cap from $100 000 to $50 000 for employees aged 50 years and over, and from $50 000 to $25 000 for employees aged less than 50 years old.

Commonwealth superannuation guarantee legislation requires that an employer contribute a minimum of nine per cent of an employee's ordinary time earnings to the employee's superannuation. This requirement is limited to the maximum contributions base, which for the 2011/2012 year, and based on a nine per cent contribution rate, is $15 775 per annum. For local government employers contributing to the LG Super scheme, the LGOR prescribes higher contribution requirements whereby an employee's salary defines the level of employer contribution, with no limitation. This has created a potential for certain employees to exceed the CGCCC, depending on their annual salary. The amendment will enable superannuation contributions for an LG Super member to be reduced if additional tax would be incurred by the member under the CGCCC. A similar arrangement exists at the State level under the *Superannuation (State Public Sector) Deed 1990*.

5. Amend the *Plumbing and Drainage Act 2002* (PDA) to:

- ease the administrative, regulatory and compliance burden placed on plumbers, plumbing businesses and the plumbing industry more generally
- streamline the attainment of a plumbing approval which will promote industry efficiency and lower compliance costs for businesses and consumers
- improve compliance rates, safety standards and public confidence in the industry and its regulators
- ease the administrative burden on local government while providing a source of funding for their audit programs.

The plumbing industry has consistently expressed concern about the red tape surrounding plumbing approvals. At present, much routine plumbing and drainage work requires a compliance permit and up to four inspections from the relevant local government. The requirement

for inspections can add up to eight working days to each application and the cost of the process can vary from $300 to $1 600.

The current plumbing laws do not provide for a comprehensive system of inspections for the category of work defined as Notifiable Minor Work, and rather only require the licensee to notify the relevant local government after the work has been completed. The local government may then inspect the work, but is not obliged to.

The current schedule of 'Notifiable Minor Work' is outdated and does not currently reflect the breadth of work that can be considered minor for assessment purposes. As a result, much plumbing work is subject to an unnecessarily onerous approval and inspection process. There is a significant amount of routine plumbing work, which competent practitioners should be able to undertake, that is not included in the Notifiable Minor Work Schedule. The Bill proposes to rename the Notifiable Minor Work category 'Notifiable Work' and update the schedule of work to increase the scope of work captured as 'Notifiable Work'.

The proposal also allows plumbers and drainers to start work immediately without first having to apply to local government for a permit, and not to have to wait for local government to inspect the work after it has been completed. It is proposed these amendments will take effect upon proclamation.

Importantly the proposal will reduce the risks of regulatory failure by providing adequate funding for local government audits. Currently, very little Notifiable Minor Work is audited by local governments. The proposed amendments will also facilitate Plumbing Industry Council industry oversight through the provision of timely information on industry activity and Plumbing Industry Council auditing of plumbers.

The proposed amendments are also expected to improve consumer confidence in the industry by ensuring that both industry and local government auditing programs are monitored by the Plumbing Industry Council. This will provide a one-stop-shop to the plumbing industry.

The proposed amendments include a comprehensive audit strategy for plumbing work performed in all existing buildings. The new category of Notifiable Work will cover repairs, replacement and some new

work (for instance, installing fixtures (i.e. tap ware, toilet cistern) in a new extension to an existing building.

6. Amend the *Sustainable Planning Act 2009* (SPA) as a result of the first regular review since the Act commenced in December 2009. The review has resulted in amendments under this Bill that clarify, simplify or improve operational arrangements for the planning and development framework.

The Bill ensures the planning and development framework under the SPA remains contemporary and relevant to delivering sustainable outcomes.

The Bill modifies the process that the Minister must follow in calling in a development application, to ensure natural justice is afforded to all parties.

The Bill also clarifies the policy intent of amendments under the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011,* including that indexing of infrastructure charges by local governments and distributor-retailers after the issue of an adopted infrastructure charges notice.

Amendments to the SPA transition the current urban encroachment policy under the *Planning (Urban Encroachment – Milton Brewery) Act 2009* (Milton Brewery Act), and extends the application of the policy State-wide. This continues the rollout of the planning reform agenda which seeks to consolidate matters impacting on planning and development within the SPA itself.

Urban encroachment

Queensland, particularly South East Queensland, is experiencing significant population and economic growth, placing significant pressure on housing supply, infrastructure and industry. In response to these pressures, the Queensland Government has adopted policies of actively encouraging increased dwelling density, sustainable infill development and transit oriented development to maximise land use efficiencies and benefit the management of urban sprawl. However, in some cases encouraging infill and intensified development and the greater utilisation of existing space may result in increased levels of conflict between lawfully operating existing uses and encroaching urban development. Urban encroachment could increase the risk of litigation from landowners and tenants who may be detrimentally

affected by the lawful emission of aerosols, fumes, light, noise, odour, particles or smoke of the existing activity at particular premises. The Queensland Government recognises it is required to balance the impacts of urban encroachment by new and intensified development with the needs of existing industries and landowners.

The Milton Brewery Act provides for the protection of the Milton Brewery from amenity nuisance actions issuing from encroaching urban intensification. The Bill proposes to transfer the existing protection for Milton Brewery to the SPA, and deliver a State-wide expansion of the urban encroachment policy based on the model under the Milton Brewery Act.

Legislation is required to develop a viable model that addresses urban encroachment with sufficient flexibility to meet State and local government, industry and community needs. The certainty provided through legislative protection will allow for the continued lawful use of particular premises and the carrying out of relevant activity within the determined acceptable levels of aerosols, fumes, light, noise, odour, particles or smoke emissions. The purpose of the provisions proposed in this Bill is to ensure clarity and certainty in an environment of increasing infill development and intensification, by protecting the existing lawful use of particular premises from encroachment, therefore creating an enabling environment for development.

The urban encroachment provisions of the Bill address the potential impacts of encroaching development on the existing lawful use of particular premises by providing that civil nuisance or criminal actions relating to local law cannot be brought against the premises by occupiers of a development which has encroached upon the particular premises. Specifically, the provisions protect the existing lawful use of particular premises by conferring statutory immunity from particular civil proceedings for nuisance and criminal proceedings relating to a local law in connection with aerosols, fumes, light, noise, odour, particles or smoke emissions-based nuisance complaints where the existing premises is operating within its licence conditions and any conditions of development approval. The provisions therefore, help to create an enabling environment for increasing density and sustainable infill development within existing urban areas.

Relationship between local planning instruments and the Building Act

The proposed amendments to the SPA and the Building Act are intended to:

- simplify the legislative burden by clarifying the relationship between the Building Assessment Provisions (BAPs) and local planning instruments, local laws and local government resolutions
- provide clear guidance for stakeholders, as well as savings in costs and time for building development applications.

The SPA provides that a 'planning scheme' must not deal with building work to the extent the work is regulated under the BAPs, which are set out in the Building Act. Subsection 86(2) provides that a planning scheme has no effect to the extent it does not comply with this restriction.

The BAPs outline a range of requirements with respect to building work. All building development applications submitted in Queensland must be assessed against the BAPs.

Section 86 does not apply to the range of other local planning instruments provided for under the SPA, which include a local government planning scheme policy and a temporary local planning instrument (TLPI), nor does it refer to local laws or local government resolutions. Because of the narrow scope of section 86, there is some uncertainty about the extent to which other local planning instruments, local laws and local government resolutions are able to include matters relating to building work.

If building requirements are included in a local planning instrument local law or local government resolution, other than where they are permitted under the Building Act, there is potential for conflict with the BAPs and building certifiers may be unsure as to whether to assess provisions against the BAPs or against the provisions of a planning instrument, local law or local government resolution. This can also lead to duplication in process, and additional costs and delays for the applicant, as the matter may be assessed at both the planning and building approval stage. It is also possible that the matter will need to be referred back to the local government and a new planning approval may need to be obtained in situations where the building development application complies with the BAPs but does not meet a conflicting

building requirement contained within or referred to in a planning instrument, local law or local government resolution.

7. Amendments to the *Urban Land Development Authority Act 2007* (ULDA Act) are designed to address several anomalies and inflexibilities in the legislation, and to streamline particular planning and development assessment processes to facilitate the ULDA's mandate to bring housing and land supply to the market quickly, and to assist in improving housing affordability for Queenslanders.

   The role of the Urban Land Development Authority (ULDA) is to deliver a diverse mix of housing for current and future communities within the State's major growth areas. The ULDA Act provides for urban development areas (UDAs) to be declared and establishes the ULDA to plan, carry out, promote, coordinate and control the development of land in those areas.

   The amendments to the ULDA Act address a number of operational and administrative irregularities identified through the operation and implementation of the ULDA Act, that are proving to be impediments to the ULDA in meeting the purpose of the ULDA Act.

Achievement of policy objectives

1. The amendments to the AMCDA will permit QMVR vehicle registration information to be accessed by authorised local government officers under the AMCDA when investigating a prescribed dog attack offence under s194 or s195 of the AMCDA if identifying the person responsible for the alleged offending dog is reliant on a vehicle registration number.

   The amendments provide the necessary checks and balances so as to avoid inappropriate access to the QMVR. A high burden of proof is required whereby the authorised local government officer and the chief executive (transport) must be reasonably satisfied that the QMVR information may be used to identify the relevant owner of/responsible person for the alleged dog. In addition, the amendments will be supported by an administrative agreement between local governments and the Department of Transport and Main Roads which will prescribe the conditions of access to the information contained in the QMVR.

2. The amendments to the Building Act alter the naming system for the licensing of building certifiers to better align the terminology nationally.

3. The amendments to the CPMA were identified by the Department of Environment and Resource Management to recognise a UDA development permit, and correct an unintended conflict in the operation of the CPMA as a result of recent amendments to the CPMA under the *Environmental Protection and Other Legislation Amendment Act 2011*. The Bill ensures that an applicant within a UDA has the same benefits as an applicant outside the UDA in regard to obtaining right to use and occupy land where a development permit for operational works that is tidal works has been obtained.

4. The amendments to the LGA enable, where there is agreement between the local government employer and employee, the LG Super trust deed to provide for:

   a. BCC accumulation benefit members' superannuation contributions to be reduced from those prescribed by the LGOR in instances of financial hardship on a case by case basis; and

   b. superannuation contributions for LG Super members to be reduced from those prescribed in the LGOR if additional tax would be incurred by a member under the CGCCC and for the local government employer's contribution, in lieu of superannuation, to be directed to the employee's salary.

   In both instances, the agreement between the local government employer and the local government employee must be in writing and a copy given to the LG Super board within 2 months after the agreement is made.

   The Bill retains the status quo as it existed for BCC accumulation benefit members before the merger of City Super with LG Super on 1 July 2011 by providing an opportunity for such members to reduce their contributions on grounds of financial hardship.

   The ability afforded to local government employees in the Bill for superannuation contributions to be reduced so as not to exceed the CGCCC is consistent with a similar arrangement under the *Superannuation (State Public Sector) Deed 1990* which provides for QSuper members who would otherwise exceed the CGCCC to agree with their employer on a lower salary for superannuation purposes,

resulting in employer superannuation contributions that are not in excess of the cap. To provide transparency and certainty the Bill prescribes that when superannuation contributions are reduced so an employee does not exceed the CGCCC, the employer's contribution in lieu of superannuation be directed to the employee's salary.

5. To achieve the objectives, the Bill will make amendments to the PDA and the *Standard Plumbing and Drainage Regulation 2003* to introduce a new category of Notifiable Work. The relevant authorities must still be notified, however, the period for notification will be reduced to within 10 working days after completion. The Plumbing Industry Council will expand its regulatory role and keep a central online database of all notifications. Also, to maintain rigour in the system and ensure high quality work outcomes, the local government's option of auditing Notifiable Work will remain (to replace the system of inspections currently in place). A prescribed cost-recovery fee will be imposed for each lodgement.

6. In amending the SPA, the Bill seeks to clarify or improve operational arrangements by providing certainty for key stakeholders including applicants, State agencies, the Minister and the Court.

   Ministerial consultation on call-ins

   The Bill achieves the objective in relation to natural justice, by requiring the Minister to consult with affected parties prior to deciding to call-in a development application. Affected parties are provided with an opportunity to make representations to the Minister about the call-in, for consideration by the Minister in deciding whether to call-in the application. If called in, the Minister will determine the point in the Integrated Development Assessment System (IDAS) process where the assessment of the application will restart from.

   Infrastructure charges

   The Bill clarifies the policy intent of certain amendments under the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011*. These include clarifying that an adopted infrastructure charge may be recovered as a rate for the purposes of the *City of Brisbane Act 2010*, removing a legislative oversight that prevented a local government charging an amount "equal" to the maximum adopted charge, and amendments to clarify the definition of *pre-SPRP amount*.

The Bill also clarifies that indexing of infrastructure charges by local governments and distributor-retailers is permitted after the issue of an adopted infrastructure charges notice. Indexing beyond the maximum cap as established through the *State planning regulatory provision (adopted charges)* ('SPRP – adopted charges') is not permitted.

Urban encroachment

The urban encroachment provisions of the Bill achieve their objectives by conferring statutory immunity from particular civil nuisance or criminal proceedings relating to a local law in connection with complaints based on aerosols, fumes, noise, light, odour, particles or smoke emissions, where the existing registered premises is operating within its licence conditions, or the emission levels as certified in the technical report provided as being compliant in the application for registration.

The urban encroachment provisions of the Bill apply to:

- relevant acts carried out as part of the existing lawful use of the registered premises where the registration of premises is determined by the Minister
- new development which results in intensification as defined in the Bill, that is located in the affected area for which the premises is registered.

The protection proposed by this Bill only applies to relevant acts carried out as part of the existing lawful use of the registered premises, and to new development which results in intensification, that is located in the affected area for which the premises is registered. Specifically, affected new development is an application for a material change of use of premises or reconfiguring a lot (except for class 1a, 1b or 10 buildings or structures). Affected development applications are applications made after the commencement of the Bill, or made but not decided before commencement of the Bill. The Bill does not override the common law rights of residents of existing development or prescribe levels for releasing contaminants into the atmosphere and noise and light emissions.

Where an existing lawful use of premises involves emissions of aerosols, fumes, light, noise, odour, particles or smoke, the premises may seek registration for protection of the premises. The registration of premises is made by way of application to the Minister, who may or

may not impose conditions. The conditions may not over-ride a development approval or code of environmental compliance. The registration of premises is for a period of ten years, after which the owner of the premises may seek a renewal of the registration.

The chief executive maintains a register of the registered premises and the affected area for which the premises is registered. Residents and prospective residents of the affected area within which the premises are located are made aware of the conferred immunity through notation on land titles. In addition, the provisions require that where there is an agreement for the leasing or renting of residential or commercial premises in an affected area, the owner or owner's agent of premises is required to inform intending lessees that their civil nuisance complaint or criminal action rights may be limited by the provisions.

The Bill repeals the Milton Brewery Act. Protection for the Milton Brewery is transitioned to the SPA. Under the SPA the Milton Brewery will be taken to be registered premises and the Milton Rail Precinct will be taken to be the affected area for the registered premises. Milton Brewery is not required to take any further action. Particular obligations to be placed on applicants and owners in the Milton Brewery affected area under the SPA mirror their current obligations under the Milton Brewery Act.

Relationship between local planning instruments and the Building Act

To achieve its objectives, the Bill will:

- insert a new section 78A into the SPA to reflect that, in a similar manner to the previous section 86, the following instruments must not include provisions about building work, to the extent the work is regulated under the BAPs:
    - a local planning instrument, which means:
        - — standard planning scheme provisions
        - — temporary local planning instrument (TLPIs)
        - — planning scheme policies.
    - a local government resolution
    - a local law

- amend section 30 of the Building Act to better reflect the terminology used in sections 32 and 33 of the Building Act
- amend section 31 of the Building Act to provide that the prohibition on changing the BAPs extends to all instruments outlined above
- omit subsection 32(2) of the Building Act to remove a redundant provision and to maintain consistency with the other changes to the SPA.

7. Administrative amendments to the ULDA Act provide for clarification of provisions under the ULDA Act, and alignment with equivalent local government local laws and penalty regimes.

The Bill also includes new provisions in keeping with the policy objectives of the ULDA Act, and reflects similar provisions available under the SPA. These include:

- a process for a shortened development scheme amendment where certain conditions have been met
- a provision to allow for preliminary approvals that approves development but does not authorise assessable development to take place
- the ability to extend statutory timeframes in certain circumstances.

Alternative ways of achieving the policy objectives

The Bill provides the necessary frameworks to achieve the above objectives. There are no other viable alternatives that would achieve the Government's policy objectives.

Clarifying the interaction of the SPA and the Building Act in relation to the BAPs requires amendment of the specific legislative provisions.

The current regulatory framework provides sufficient scope to effect the necessary changes. Legislative amendment is the simplest and most cost effective method of implementing these reforms.

Estimated cost for Government implementation

The Bill has no administrative cost impacts for Government in relation to the AMCDA or LGA amendments.

Costs to the Government resulting from the implementation of the proposed urban encroachment policy under the SPA will be absorbed into the operational budget.

The Government will not experience any costs for implementation associated with the Building Act.

The amendments being made to the SPA and the Building Act are merely to clarify the existing provisions. They will result in the strengthening of the building framework and will not create an additional compliance burden. It is not anticipated that the Government will experience any costs of implementation.

Under the PDA amendments, Government will incur additional costs in implementation of the new inspection regime for plumbing work. However offsetting fees to be charged for lodgement of notices will make achieving the objectives cost neutral.

Local governments' approved inspection regime for new buildings is expected to continue under the proposal and additional local government auditing of Notifiable Work will be funded from a portion of the prescribed fees. Plumbing inspectors will, through the approval process for new buildings and the minimum audit requirements for Notifiable Work, continue their important role of assessing work performed by plumbers and drainers across the State.

Local governments will benefit from a specific funding regime that will provide designated resources for audit and compliance work. The Plumbing Industry Council will maintain a central repository of Notifiable Work notices, reducing local government's administrative burden and making compliance monitoring easier and more efficient. The proposed central records repository will be modelled on the regulated pools register.

The Plumbing Industry Council will assume a more significant regulatory role under the proposal. A central online database of Notifiable Work will be administered by the Plumbing Industry Council to ensure that adequate and comprehensive records are maintained to facilitate accurate and comprehensive compliance monitoring activities.

A cost-recovery scheme has also been developed to assist both the Plumbing Industry Council and local government in their regulatory and enforcement roles. These fees will be quarantined so that they may only be used for investigation and audit activity, maintenance of the central database and consumer and industry education in relation to compliance

with plumbing laws. This will ensure that the Plumbing Industry Council and local government are adequately resourced for their additional and continuing roles.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992*.

AMCDA amendments

The amendments which permit the release of information contained in the QMVR to assist authorised Council officers in investigating complaints about serious dog attacks may raise FLP issues in relation to the rights and liberties of individuals. For this reason, access to information in the QMVR has been restricted and will only be available to identify the owner or/responsible person for a dog that is the subject of a serious dog attack where an alleged attack causes death, grievous bodily harm or bodily harm in accordance with prescribed dog attack offences under ss194(1) and 195(1) of the AMCDA. This ensures an appropriate balance between privacy concerns of the vehicle owner and public safety in relation to aggressive dogs.

In addition, the amendments provide the necessary checks and balances so as to avoid inappropriate access to the QMVR. A high burden of proof is required whereby the authorised local government officer and the chief executive (transport) must be reasonably satisfied that the QMVR information may be used to identify the relevant owner of/responsible person for the alleged dog. Also, the amendments will be supported by an administrative agreement between local governments and the Department of Transport and Main Roads which will prescribe the conditions of access to the information contained in the QMVR.

Building Act amendments

The amendments to the Building Act are generally consistent with FLPs.

LGA amendments

The amendment to the LGA to enable the LG Super trust deed to provide for BCC accumulation benefit members' superannuation contributions to be reduced in instances of financial hardship may raise FLP issues in relation to the employee's rights and liberties. For instance, the issue of an employer being aware of an employee's private financial affairs may raise questions in terms of employee privacy.

However, the amendment is designed largely to the benefit of such employees because it allows monies that would normally be unavailable until retirement to be accessed in circumstances of financial hardship. In addition, the amendment is consistent with the arrangements that existed for BCC accumulation benefit members prior to the merger of City Super with LG Super. Also, the amendment is not intended to affect any existing obligations of confidentiality that employers ordinarily owe their employees. Furthermore, it is considered prudent for an employer to perform a check and balance on an employee's application to ensure that the exemption sought is fair when considered against the employee's colleagues who will still be subject to employee superannuation contribution rates as prescribed in the LGOR.

PDA amendments

The Bill provides the Plumbing Industry Council with new audit powers. Maintaining plumbing standards plays a significant role in the protection of public health and safety. The new audit powers balance the expansion of plumbing and drainage work that does not require a plumbing approval, with an expanded power by the Plumbing Industry Council to monitor licensee conduct, ensure public health and safety is protected and maintain public confidence in the plumbing regulatory system.

The audit powers in the Bill include a power to require licensees to provide documents and information. This new power is balanced by a 'derivative use immunity' which will protect licensees from any self-incrimination that might arise from complying with an audit notice.

The Bill increases the penalty for a licensee who fails to lodge a Notifiable Work notice with the Plumbing Industry Council, from 10 penalty units to 60 penalty units. This is commensurate with the position of trust afforded to licensees by the expanded scope of works that do not require plumbing approval, and recognises the gravity of the potential consequences of a failure to maintain the central repository of plumbing works that have been performed outside the plumbing approval process.

In these circumstances, the Bill is generally consistent with FLPs.

SPA amendments

<u>Validation provisions</u>

Proposed validation provisions in the SPA have been raised as a potential FLP issue as they retrospectively validate certain development applications (superseded planning scheme) (DA(SPS)) and subsequent approvals given.

The retrospective provisions as proposed will not adversely affect the rights or liberties of persons, and will benefit only the relevant applicants by retrospectively ensuring the validity of any development approval given, providing certainty to the validity of any subsequent development undertaken in accordance with the approval. The validation only applies to the extent that the DA(SPS) was made out of time, but within two years of the new planning scheme or planning scheme amendment taking effect.

Ministerial consultation

Proposed amendments to the SPA clarifying that the Minister is not required to consult with anyone in relation to certain Ministerial decisions under the repealed *Integrated Planning Act 1997* (IPA), or in relation to certain Ministerial directions made under the SPA, may raise a potential FLP issue about the rights and liberties of individuals and the exercise of administrative power. Both the IPA and the SPA specify when consultation was or is required to be undertaken by the Minister, however the legislation does not expressly state that consultation is not required in those circumstances where consultation was not intended. The amendments will clarify this situation by identifying where consultation is required and where it was not or is not required. It is considered that the amendments do not change the intent of the provisions where consultation was not intended under either the IPA or the SPA.

Infrastructure charges

The amendment to the definition of *pre-SPRP amount* in section 648A is proposed to be taken to have had effect from the commencement of the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Act 2011*. Although this means the provision will have retrospective effect, this is to ensure that any charges levied by local governments based on the originally intended scope of this clause are valid.

Urban encroachment

The restriction on person's rights to take nuisance action or seek remedy for particular nuisances, and limitation on rights to use and enjoy land have been raised as potential FLP issues in relation to the proposed urban encroachment policies under the SPA. The proposed urban encroachment provisions in the SPA duplicate the provisions in the Milton Brewery Act regarding the limitation on a person's rights to take action or seek remedy for particular nuisances. However, the common law rights of residents of existing development will not be overridden as the limitation on rights will

apply only to new, intensifying and encroaching development after the date of enactment and therefore no FLP is contravened.

Under the proposed urban encroachment provisions, no criminal proceedings under local laws or civil nuisance proceedings may be taken against the registered premises with respect to emission of aerosols, fumes, noise, light, odour, particles or smoke, provided the premises is operating within its licence conditions, development approval, or code of environmental compliance. The protection is provided for a period of ten years, after which the registered premises is required to renew the registration if continued protection is required.

The proposed urban encroachment provisions require an owner or owner's agent of premises to inform intending lessees of new intensified development about the limitation of their rights. This requirement will apply to any agreement for the leasing or renting of new residential or commercial premises in an affected area. Where this requirement is not met, a penalty may be applied to the owner or owner's agent of premises. The application of a penalty is justified because the occupier's civil nuisance and criminal complaint rights will be affected by the provisions, and this may be seen as impacting on FLPs.

However, these provisions are justified as the owner will initially be made aware of the provisions through the notification on all titles within the affected area by the registered premises. Existing owners will be informed of the legislation, can read the Act and those with letting agreements will be aware of the obligation to inform new tenants. A new owner will see the notice on title, refer to the legislation and be informed of their obligation if they are intending to enter into a letting agreement. In addition, there will be an urban encroachment page on the Department's web site with a fact sheet to ensure information about these provisions is widely available.

The intent of the urban encroachment provisions of the Bill is to ensure existing lawfully operating uses (registered premises) subject to encroaching development, and the encroaching development, are able to coexist. These provisions are subject to three-yearly reviews.

ULDA Act amendments

The ULDA Act amendments propose an increase to the penalty units payable for certain offences, which may potentially impose an additional burden on affected persons which is not in accordance with FLPs. Where a ULDA by-law replaces a local law prepared by a local government, the proposed amendments allow for the application of the same value of

penalty units for a contravention under the ULDA by-law as a contravention under the local law it replaces. This brings into line the ULDA Act penalty value with those that would be applied by a local government for the same offence. Those outside the UDA and those inside the UDA will be treated equally in regard to a particular penalty offence. This is considered appropriate given that the ULDA effectively performs many of the functions of a local government within the UDA once declared. Consequently, the Bill seeks parity between penalty units charged by the ULDA for offences within the UDA compared to those charged by the local government outside the UDA.

Consultation

Consultation has occurred with key Government departments that have an interest in the operation of the Bill.

AMCDA amendments

The Brisbane City Council (BCC) and the Local Government Association of Queensland (LGAQ), on behalf of other local governments, support the amendments.

LGA amendments

The Australian Workers Union, the Australian Services Union – Queensland Branch, LG Super, BCC, and LGAQ support the amendments.

PDA amendments

Feedback was sought from a broad range of stakeholders including local governments, the LGAQ, the Plumbing Industry Council and numerous State Government agencies.

The Plumbing Industry Consultative Group (PICG) was consulted. The PICG is made up of representatives from the Master Plumbers Association of Queensland (MPAQ), the Plumbers Union, the Association of Hydraulics Services Consultants, the Housing Industry Association of Australia, the Master Builders Association of Queensland, the Institute of Plumbing Inspectors (IPIQ), the LGAQ, BCC and the Gold Coast City Council. Feedback was highly positive. All members of the PICG support the proposal, subject to qualified support of the LGAQ, which supports all amendments except the proposal not to place a limit on the number of fixtures categorised as notifiable works. In this regard it is significant that the first connection of a new building and all the plumbing and drainage work associated with the new building will continue to be subject to the

current regulatory requirements. This will be achieved by related proposed regulatory amendments to tailor the scope of Notifiable Work to ensure that all plumbing or drainage work on the plan of a new building is subject to compliance assessment.

SPA amendments

Consultation on the amendments occurred with the LGAQ, and key industry stakeholders including the Urban Development Institute of Australia, Property Council of Australia, and the Planning Institute of Australia.

Urban encroachment

Lion Nathan (Milton Brewery) has been consulted to discuss its concerns regarding the new requirement to seek renewal of registration after ten years.

Relationship between local planning instruments and the Building Act

Key industry bodies have previously raised concerns about delays and uncertainty which can result for building development applications due to the inclusion of building matters in local planning instruments.

Consultation has been undertaken with the planning divisions of the Department of Local Government and Planning. These divisions are supportive of the proposed changes.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another State. However, the amendments to the SPA are consistent with the overall National planning framework agenda and relevant governance structures and principles.

The amendments to the LGA to enable superannuation contributions for an LG Super member to be reduced if additional tax would be incurred by the member under the CGCCC and for the employer's contribution, in lieu of superannuation to be directed to the employee's salary, are not inconsistent with the Commonwealth's *Superannuation Guarantee (Administration) Act 1992* provided that the employer meets the requisite superannuation contribution.

The amendments to the Building Act are generally consistent with the National Accreditation Framework for Building Surveyors while allowing Queensland to maintain existing variations to licensing levels.

Queensland's plumbing industry is considered to be the most heavily regulated in Australia. A move towards a system that relies more heavily on notification of work will align Queensland more closely with other jurisdictions such as New South Wales and Victoria.

Relationship between local planning instruments and the Building Act

Anecdotally, Victoria has indicated that planning and building matters are under separate jurisdiction and there is no ability for planning instruments to include matters relating to building work, other than certain overlays, e.g. heritage buildings and bushfire prone areas. Building certifiers are not required to assess planning matters.

The proposed Queensland amendments are generally consistent with the Victorian model.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides that the following provisions of the Bill commence by proclamation:

- part 3, other than sections 5, 16, 17, 19(2) and (3)
- part 6.

Other provisions commence on assent.

Part 2 Amendment of Animal Management (Cats and Dogs) Act 2008

Act amended

Clause 3 provides that this part amends the *Animal Management (Cats and Dogs) Act 2008*.

Insertion of new s 207A (Chief executive (transport) must disclose information)

Clause 4 inserts new section 207A which permits the release of vehicle registry information by the chief executive (transport) to an authorised person under the Act when investigating a prescribed dog attack offence under section 194 or 195 which causes death, grievous bodily harm or bodily harm to a person or animal. Under the section, if the relevant person for the alleged dog cannot be readily identified, but the vehicle connected to the dog can be identified, the details of the registered owner of the vehicle may be given to the authorised person. The relevant person for a dog is the owner of the dog or any responsible person for the dog.

Subsection 207A(1) clarifies that new section 207A only applies if the authorised person is reasonably satisfied that the vehicle registry information may be used to identify the relevant person for an alleged dog, and the authorised person asks the chief executive (transport), as the chief executive of the department responsible for the register of registered vehicles under the *Transport Operations (Road Use Management) Act 1995*, for the information.

Under subsection 207A(2) the chief executive (transport) must disclose the vehicle registry information to the authorised person if he/she also reasonably considers that the information may be used to identify the relevant person for an alleged dog. Alternatively, the chief executive (transport) must disclose the information to the authorised person if its release is authorised by the person to whom the vehicle registry information relates.

Subsection (3) provides definitions of *chief executive (transport)*, *prescribed offence*, *relevant person* and *vehicle registry information* to support new section 207A.

Part 3 Amendment of Building Act 1975

Act amended

Clause 5 provides that this part amends the *Building Act 1975* (Building Act).

Amendment of s 30 (Relevant laws and other documents for assessment of building work)

Clause 6 inserts the words 'local planning instrument or resolution made under section 32 or any relevant provision under section 33' after 'local law,' in subsection 30(1)(f) of the Building Act.

This clause expands the scope of the laws and documents that are building assessment provisions under subsection 30(1)(f) to ensure that all local planning instruments (e.g. temporary local planning instruments, planning schemes and planning scheme policies) that designate matters for the Building Code of Australia or Queensland Development Code, are building assessment provisions.

Clause 6 also clarifies that section 33 provides specifically for alternative provisions which can be provided under a planning scheme made under the *Sustainable Planning Act 2009* (SPA), or an interim land use plan or development scheme made under the *Urban Land Development Authority Act 2007* (ULDA Act).

Amendment of s 31 (Building assessment provisions form a code for IDAS)

Clause 7 omits subsection 31(3) of the Building Act and inserts new subsections 31(3) to 31(5). Previous subsection 31(4) is renumbered as 31(6).

New subsection 31(3) clarifies that certain building assessment provisions that are codes under subsection 31(1), including but not limited to, the Queensland Development Code (subject to section 33 of the Building Act), the Building Code of Australia and the fire safety standard, are codes that cannot be changed by a local law, local planning instrument or local government resolution.

Subsection 31(3) excludes reference to subsection 30(1)(f) to effectively allow those provisions to be changed by a local law, planning scheme

provision or local government resolution made under section 32 or 33 of the Building Act.

Subsections 31(4) and (5) also clarify that a local law, local planning instrument or local government resolution must not include provisions about building work to the extent the building work is regulated under a code in subsection 31(3) and that where they do, they have no effect. These provisions complement section 78A of the SPA but also include local laws and local government resolutions.

Subsection 31(6) as renumbered clarifies that subsection 31(4) and (5) are subject to the permissive provisions of sections 32 and 33 of the Building Act.

Amendment of s 32 (Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions)

Clause 8 provides changes to section 32 of the Building Act to better reflect the content of that section in the heading and remove a redundant subsection.

Subclause (1) replaces the reference to 'planning scheme' in the heading of section 32 with the broader term 'local planning instrument'. This is to reflect the reference to 'local planning instrument' in subsection 32(1)(a).

Subclause (2) removes subsection 32(2) from the Building Act. The changes to section 31 of the Building Act and the new section 78A of the SPA outline the relationship between local planning instruments, including a planning scheme, and the Building Act. Consequently subsection 32(2) of the Building Act is now redundant. The SPA clearly outlines the scope of what a local government may include in a local planning instrument.

Amendment of s 33 (Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings)

Clause 9 amends section 33 to recognise that alternative provisions to Queensland Development Code boundary clearance and site cover provisions may also be contained in a ULDA instrument (development scheme or and interim land use plan) made under the ULDA Act.

Amendment of s 151 (Levels)

Clause 10 amends section 151 to change the names of the levels of licences that the Building Services Authority may issue to a building certifier, being:

- building certifier-level 1
- building certifier-level 2
- building certifier-level 3.

The term 'building certifier-level 1' replaces the previous licence level referred to as 'building surveyor'. Similarly, 'building certifier-level 2' replaces 'assistant building surveyor' and 'building certifier-level 3' replaces 'building surveying technician'.

Amendment of s 152 (Role of building surveyor)

Clause 11 makes amendments to the heading of section 152 and to the section itself that are consequential on the amendment of subsection 151(a) to replace the term 'building surveyor' with the term 'building certifier-level 1'.

Amendment of s 153 (Role of assistant building surveyor)

Clause 12 makes amendments to section 153 that are consequential on the replacement of the term 'building surveyor' with 'building certifier-level 1' in subsection 151(a) and the replacement of 'assistant building surveyor' with 'building certifier-level 2' in subsection 151(b).

Replacement of s 154 (Role of building surveying technician)

Clause 13 replaces section 154 of the Building Act with a new section 154 to outline the role of a building certifier-level 3. The amendment provides that a building certifier-level 3 may only perform building certifying functions for class 1 buildings and class 10 buildings or structures.

To remove circularity with section 155, the previous requirement regarding a minimum of 1 year's experience is not included in the new section.

Amendment of s 155 (Who may apply)

Clause 14 amends subsection 155(a), consequential on the amendment of section 151.

Subsection 155(b) has been replaced to ensure that, to apply for a building certifier-level 3 licence, a person must hold a current accreditation and have at least 1 year's experience carrying out level 3 work while under supervision of a building certifier of a higher licence level (i.e. building certifier-level 1 or building certifier-level 2). The section also clarifies that the completion of the 1 year's experience that is required to apply for a licence must have occurred within the previous 2 years of making the application for a building certifier-level 3 licence.

New subsection (2) defines 'level 3 work' for section 155. Level 3 work is any work that would typically be carried out by a building certifier-level 3 if the person was licensed as a building certifier-level 3. To clarify, this provision does not permit a person who is unlicensed to perform building certifying functions, however an unlicensed person may perform building certifying functions if otherwise authorised under the Building Act. An example of an unlicensed person who may perform building certifying functions under the Building Act is a cadet building certifier (see Part 5A Cadet building certifiers, under the *Building Regulation 2006*).

Amendment of s 163 (Restrictions on making endorsement)

Clause 15 removes subsection 163(2), which has become redundant as a result of other changes.

Amendment of s 246CY (Decision after investigation or audit completed)

Clause 16 amends subsection 245CY(4)(f). It requires the Pool Safety Council (PSC), should it decide a ground for disciplinary action against a pool safety inspector is established, and decide to require the pool safety inspector to pay a stated amount, to nominate a reasonable stated period within which the amount must to be paid to the PSC.

Amendment of s 291 (When s 232 applies to particular regulated pools)

Clause 17 amends subsection 291(3)(a) to remove circularity between subsection 291(1) and 291(3) and clarify that subsection 291(3) excludes from the operation of subsection 291(4), pools situated on land or in a building at which only short-term accommodation is provided.

Insertion of new ch 11, pt 15

Part 15 Transitional provisions for Sustainable Planning and Other Legislation Amendment Act 2011

Clause 18 inserts new transitional provisions to ensure that persons with a current accreditation and/or licence as a building certifier under the previous arrangements are not adversely affected by the amendments. It also provides transitional provisions regarding accreditation standards bodies that have existing accreditation standards and/or an existing professional development scheme that were approved by the chief executive prior to the changes to the names of building certifier licence levels in section 151.

Section 311 (Definitions for pt 15) includes definitions that are to be used within the new part 14. In particular, the definitions include references to licence level names that were used immediately before the names changed on commencement of the relevant clauses in this Bill. For example, a reference to building surveyor in part 15 means the licence level of building surveyor that was used prior to commencement of the new section 151.

Section 312 (Existing accreditations) ensures that an individual with a recognised accreditation (e.g. an accreditation that was issued by an accreditation standards body and was valid prior to commencement) that entitled the individual to a particular licence level under section 151 prior to the commencement of the new terminology, will hold an accreditation that is equivalent to the corresponding licence level under amended section 151.

Section 313 (Existing building surveyors, assistant building surveyors and building surveying technicians) provides transitional arrangements to ensure a licence issued under the previous terminology (e.g. building surveyor, assistant building surveyor or building surveying technician) will continue as if the licence were issued under the equivalent licence level under the new terminology (e.g. building certifier-level 1, building certifier-level 2 or building certifier-level 3).

Section 314 (References in existing accreditation standards and professional development schemes) provides for approved accreditation standards and approved professional development schemes that were current before the commencement of the amendments in this Bill to continue as if they had been approved under the new terminology. To remove any confusion that may arise between the previous terminology that may be included in these existing accreditation standards or professional development schemes, it has been clarified that a reference to the previous terminology becomes a reference to the new terminology. This new section also allows the accreditation standards body to amend their accreditation standard and/or professional development scheme to reflect the new terminology, without requiring a new approval. Any amendments to an accreditation standard or professional development scheme, without requiring a new approval, are limited to reflecting the new terminology only.

Section 315 (Existing applications for a licence) provides clarification that an application for a licence under the previous terminology will continue as if the application were for a licence under the new terminology. Subsection 311(6) ensures that there is continuity with wording under section 155 that was used before the commencement of the amendments in this Bill. This will ensure that an application for a licence as a building certifier-level 3 who was employed by a local government to perform level 3 work, but was not under supervision of a building certifier of a different licence level, continues to be able to apply for a licence as if they were eligible under the version of section 155 that existed before the commencement of the amendments in this Bill.

Amendment of sch 2 (Dictionary)

Clause 19 provides for consequential amendments required to remove from the dictionary definitions that are no longer required, and to insert new definitions required as a result of proposed amendments of the Act.

Part 4 Amendment of Coastal Protection and Management Act 1995

Act Amended

Clause 20 provides that this part amends the *Coastal Protection and Management Act 1995*.

Amendment of s 100A (Removal of quarry material is subject to other approvals)

Clause 21 removes the reference to tidal works under subsection (3)(ii) to remove an unintended conflict between the operation of section 100A(4) and section 104B.

Amendment of s 123 (Right to occupy and use land on which particular tidal works were, or are to be, carried out)

Clause 22 inserts new subsection (5) to clarify that a 'development permit' includes an Urban Development Area development permit under the *Urban Development Land Authority Act 2007'*.

Part 5 Amendment of Local Government Act 2009

Act amended

Clause 23 provides that this part amends the *Local Government Act 2009* (LGA).

Amendment of s 8 (Local government's responsibility for local government areas)

Clause 24 inserts a note under subsection (2) clarifying the status of the Brisbane City Council (BCC) as a local government under the *City of Brisbane Act 2010,* and its local government area.

Amendment of s 132 (Entering under an application, permit or notice)

Clause 25 amends section 132 to clarify that an authorised person under the LGA can enter a property to inspect work that is the subject of, or was carried out under, a permit or notice issued under the *Plumbing and Drainage Act 2002*.

Amendment of s 217 (LG super scheme)

Clause 26 amends section 217 by renumbering subsection 217(4) to subsection 217(5) and inserting a new subsection 217(4). New subsection 217(4) enables the LG Super trust deed to provide for the matters set out in new sections 220B and 220C relating to the circumstances in which compulsory yearly superannuation contributions may be reduced.

Amendment of s 220 (Amount of yearly contributions–particular employers)

Clause 27 inserts new subsection 220(10) which provides that existing subsections 220(3) and (5) are subject to new section 220B. Currently under 220(3) and (5) the yearly contribution that an employer must make to the LG Super scheme for an employee who is an accumulation benefit member is the amount prescribed under a regulation. The amount prescribed under a regulation is the minimum contribution amount that the employer must make. The inclusion of subsection 220(10) allows the minimum contribution amount that the employer must make to the LG Super scheme under a regulation to be reduced under new section 220B via the trust deed. *Accumulation benefit member* is defined in section 216A and means a person who is a member of the LG Super scheme in a category, other than the defined benefit category, under the trust deed.

Amendment of s 220A (Amount of yearly contributions–permanent employees and prescribed employees)

Clause 28 inserts new subsections 220A(7) and 220A(8) which provide that existing subsection 220A(3) is subject to new sections 220B and 220C and existing subsection 220A(4) is subject to new section 220B, respectively.

Currently under 220A(3) the yearly contribution that an employee must make to the LG Super scheme is the amount prescribed under a regulation and is the minimum contribution amount that the employee must make. New subsection 220A(7) allows the minimum contribution amount that the employee must make to the LG Super scheme under a regulation to be reduced under new sections 220B and 220C, via the trust deed.

New subsection 220A(8) allows the yearly contribution to the LG Super scheme, if any, made under existing subsection 220A(4) by an employer for the employee, to be reduced under new section 220B, via the trust deed.

Insertion of new ss 220B and 220C

Clause 29 inserts new sections 220B and 220C providing for the circumstances in which compulsory yearly superannuation contributions may be reduced via the trust deed.

Section 220B (Reduction in contributions to prevent them exceeding concessional contributions cap)

Under new section 220B the yearly superannuation contributions for a local government employee to be made to the LG Super scheme may be reduced to prevent the employee from exceeding the concessional contributions cap and incurring additional tax. Provided the total of the prescribed contribution amounts made by the employer under section 220(3) or section 220(5) and the contribution amounts (if any) made by the employer for the employee under section 220A(4) would be more than the employee's concessional contributions cap for a financial year, then an agreement between the local government employer and employee may be made to reduce such contributions to the amount equal to the employee's concessional contributions cap for the financial year.

Any agreement is to be in writing and a copy provided to the super board within 2 months after the agreement is made. The LG Super trust deed will provide for any agreement to a reduction in the minimum superannuation contribution amounts under this section.

The provision also provides that if there is a reduction in the yearly superannuation contributions then the amount of the reduction must be paid by the employer to the employee as salary. This requirement provides transparency and certainty for relevant local government employers and employees.

The following definition is provided for section 220B:

concessional contributions cap, for an employee, means the employee's concessional contributions cap within the meaning of the *Income Tax Assessment Act 1997* (Cwlth), section 292-20(2), subject to the *Income Tax (Transitional Provisions) Act 1997* (Cwlth) section 292-20(2).

Section 220C (Exemption from payment of yearly contributions on grounds of financial hardship)

Under new section 220C the yearly superannuation contributions payable under section 220A(3) to the LG Super scheme by a BCC employee who is an accumulation benefit member may be reduced on grounds of financial hardship.

An agreement between the BCC employee and his/her employer may be made to exempt the employee on grounds of financial hardship from paying all of, or a stated part of, the employee's minimum superannuation contribution amount for a period of not more than 1 year. However, there is no limit on the number of times the employer and employee can make an agreement under this section.

Any agreement is to be in writing and a copy provided to the super board within 2 months after the agreement is made. The LG Super trust deed will provide for any agreement to a reduction in the minimum superannuation contribution amounts under this section.

Part 6 Amendment of Plumbing and Drainage Act 2002

Act amended

Clause 30 provides that this part amends the *Plumbing and Drainage Act 2002*.

Amendment of s 6 (Functions of council)

Clause 31 amends section 6 by adding new functions to the existing functions of the Plumbing Industry Council so that it can audit the operations of licensees as well as enforce compliance with new part 4 of

the Act, ensuring the Plumbing Industry Council is notified of the completed work and has the opportunity to audit it, to assist in protecting public health and safety. This will significantly reduce the administrative burden on local government in this area.

Amended of s 9 (Membership of council)

Clause 32 amends section 9 to update the references to the *Training and Employment Act 2000* and the Local Government Association of Queensland. These will be referred to as the *Vocational Education, Training and Employment Act 2000* and the Local Government Association of Queensland Ltd ACN 142 783 917 respectively.

Amendment of s 32 (Revenue from fees)

Clause 33 amends section 32 to provide that revenue generated from the fees collected for the lodgement of notifiable work notice will also be used for the purposes of administration of the Act including monitoring and enforcing the Act. This will provide resources for both the Plumbing Industry Council's and local governments' notifiable work auditing programs. The resources will also be used to maintain and administer the electronic system used for the lodgement of notifiable work forms. In addition, the resources will provide training and communication to industry and consumers about compliance matters.

Insertion of new pt 2, div 8, sdiv 3A

Subdivision 3A Council audit programs and auditing licensees

Clause 34 inserts a new subdivision 3A into part 2, division 8 of the Act to provide for the Plumbing Industry Council's new audit function.

Subdivision 3A provides for the Plumbing Industry Council to prepare and approve by resolution an audit program, which is to be conducted by its investigators. The audit program may target a particular group of licensees — or persons who conduct a business for carrying out plumbing or drainage work who employ a licensee — such as those located in a particular region within Queensland. The purpose of the audit program

will be to check documents that relate to notifiable work conducted in a given period, to ensure that notifiable work has been notified to the Plumbing Industry Council in the approved manner.

The chief executive must publish notice of the approved audit program on the Department's website before it starts. The notice must state details regarding the audit program including its purpose, when it will start, the period over which it will be carried out, the criteria for selecting who is to be audited and how the licensees will be advised that they have been selected. The chief executive must ensure the approved audit programme is available on the Department's website during the life of the audit program.

The Plumbing Industry Council or an investigator may give written notice to a licensee selected under the audit programme, or a licensee about whom there are reasonable grounds for concern about compliance with part 4, or to the employer of either licensee, requiring copies of or access to or information about documents described in the notice. Unless the person has a reasonable excuse, they must comply with the notice within 10 business days after receiving it, and a maximum penalty of 100 penalty units applies. Only documents reasonably required to decide whether the relevant licensee has been complying with part 4 may be required. Examples of documents that may be required are invoices, receipts, bookkeeping records and statements from financial institutions.

The written notice must state that the notice must be complied with even though complying might tend to incriminate the person, and that there is a limited immunity against future use of the information or document as evidence, referring to new section 33TF which provides the immunity. The immunity does not extend to a proceeding about the false or misleading nature of the information or anything in the document. It also does not extend to proceedings against a person under part 4 or disciplinary proceedings against a person under the Act.

Insertion of new s 33W

Clause 35 inserts a new section 33W which sets out the obligations applying to the Plumbing Industry Council for keeping records received for notifiable work. These obligations will lessen the administrative burden on local government by ensuring that the Plumbing Industry Council provides access to a record of the notice to local government. The section will also enable local government to copy the record. The clause also provides how long records must be kept by the Plumbing Industry Council.

Amendment of s 64 (Grounds for discipline)

Clause 36 amends section 64 which sets out the grounds upon which disciplinary action may be taken by the Plumbing Industry Council. The section will now include specific reference to not giving the local government or the council a notice or a document as required under the Act. This clarifies that in addition to failing to seek appropriate local government approvals and failing to provide a notice of notifiable work, the grounds include failing to provide documents requested by the Plumbing Industry Council, such as documents requested under an approved audit program. The section ensures that licensees comply with the Act in seeking approvals and in reporting notifiable work to facilitate local government audits.

Amendment of s 65 (Disciplinary action that may be taken by council)

Clause 37 amends section 65. That section will now provide that if a licensee does not pay a stated penalty amount as ordered by the Plumbing Industry Council through a disciplinary process, within a reasonable period as may be specified by the Plumbing Industry Council in its decision notice, the unpaid part of the amount may be recovered by the Plumbing Industry Council as a debt. This will assist in deterring licensees who fail to respond to disciplinary action ordered by the Plumbing Industry Council from committing continuous or numerous similar breaches of the Act.

Any monies recovered under this amendment are intended to be used for administration of the Act as outlined under section 32.

Amendment of s 78 (Compliance permit)

Clause 38 amends section 78 by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work.

Amendment of s 79 (Compliance certificate)

Clause 39 amends section 79 by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 80 (Purpose of compliance assessment)

Clause 40 amends section 80 by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 81 (Regulated work and on-site sewerage work must be assessed for compliance)

Clause 41 amends section 81 by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 83 (Compliance permit required for certain regulated work or any on-site sewerage work)

Clause 42 amends section 83 by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 84 (Regulated work or on-site sewerage work by a public sector entity)

Clause 43 amends section 84 by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 85 (Process for assessing plans)

Clause 44 amends section 85 by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 85A (Participating local government to give documents or information to distributor-retailer)

Clause 45 amends section 85A by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 85B (Restrictions on giving compliance permit for greywater use facility in a sewered area)

Clause 46 amends section 85B by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 85C (Restrictions on giving compliance permit for greywater use facility not in a sewered area)

Clause 47 amends section 85C by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 86 (General process for assessing regulated work and on-site sewerage work)

Clause 48 amends section 86 by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 86AA (Participating local government to give documents or information to distributor-retailer)

Clause 49 amends section 86AA by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 86A (Process for assessing certain regulated work or on-site sewerage work in remote areas)

Clause 50 amends section 86A by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 86C (Conditions of compliance certificate)

Clause 51 amends section 86C by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of pt 4, div 4B, hdg (Minor and unregulated work)

Clause 52 amends the heading of division 4B by replacing the word 'Minor' with the word 'Notifiable'.

Amendment of s 87 (Minor work)

Clause 53 amends section 87 by renaming notifiable minor work as notifiable work. This is to enable work, that may not be of a minor nature, but that is not compliance assessable work, to be performed in accordance with the notification process described in division 4B of part 4 of the Act. This also removes the potential for confusion between the current terms 'minor work' and 'other minor work'.

This clause requires notifiable work to be properly described and reported to the Plumbing Industry Council using the approved form. Local government will be provided with access to the Plumbing Industry Council's central repository of notifications lodged in accordance with section 87 of the Act so that local government may perform auditing and compliance activities as provided for in the Act.

The penalty for a licensee who fails to notify the Plumbing Industry Council of notifiable work is increased from 10 penalty units to 60 penalty units to deter licensees from failing to comply with the mandatory reporting requirements to protect the public from the potential consequences of that failure.

The amended section 87 provides licensees with the option of notifying the Plumbing Industry Council about completed notifiable work either by lodging the notification online into the Plumbing Industry Council's electronic system, or by manual lodgement in the approved form.

The period for notification of the completed notifiable work has been decreased from 40 to 10 business days. This is to ensure that work may be audited by a local government more promptly after completion and, if necessary, that any defects may be rectified sooner.

A fee will be charged for the lodgement of notifiable work notices with the Plumbing Industry Council and this will be prescribed in a Regulation. The explanatory note for the amendment to section 32 of the Act sets out the purpose for the fee structure.

Section 87 will continue to provide that a local government may, but need not, assess the work. This provides autonomy for local governments in deciding categories of work that should be audited. The Plumbing Industry

Council may provide resources through its notifiable work fee structure to facilitate local government audit programs. The resources will be provided on the basis that local government audits around five per cent of all notifiable work performed in its region.

Section 87 as amended will require licensees who complete notifiable work to give a copy of the notifiable work notice that is lodged with the Plumbing Industry Council to the owner of the premises or, if another person asked the relevant entity or person to carry out the work, that other person. It is proposed that notifiable work notices will be printed in triplicate with a unique identification number printed on each notice, so that a copy is lodged with the Plumbing Industry Council, a copy is provided to the consumer and the licensee keeps a copy for the licensee's records. Alternatively, a licensee may decide to lodge the notice directly into the Plumbing Industry Council's online electronic system. With this option it is proposed that details of the online lodgement will be provided by the licensee to the consumer, so that the consumer will have the ability to check online the details of the notifiable work notice lodged with the Plumbing Industry Council.

Where emergency work is undertaken in south-east Queensland region, which involves connecting to, disconnecting from or changing a connection to a water service provider's water infrastructure, the relevant entity or licensee is required to provide a copy of the notice to the water service provider as well as the Plumbing Industry Council. Because local government will be provided with access to notifiable work notices through the Plumbing Industry Council's online electronic system, local government will also be able to obtain a copy of such emergency work notices.

Insertion of new s 87A

Section 87A (Special provision about electronic notices)

Clause 54 inserts a new section 87A which enables the chief executive to approve an electronic system for the Plumbing Industry Council to use for online lodgement of notifiable work notices. It is proposed that an online service will facilitate the performance by licensees and other entities of their responsibilities under the Act such as lodgement, referral, deciding and many other functions necessary to the processing of plumbing notices.

Amendment of s 128B (Owner's obligation to ensure compliance with conditions of compliance certificate)

Clause 55 amends section 128B by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Amendment of s 128F (Restrictions on operating greywater use facility)

Clause 56 amends section 128F by replacing the word 'regulated' with the words 'compliance assessable' This is to give effect to the change in terminology from 'regulated work' to 'compliance assessable work'.

Insertion of new s 128RA

Section 128RA (False or misleading statements)

Clause 57 inserts a new section 128RA providing that a person must not state anything to an investigator, inspector, local government or the Plumbing Industry Council that the person knows is false, misleading or incomplete in a material particular.

This provision will apply for example where a local government representative requests information from a person as part of the local government's auditing of notifiable work. For instance, a local government may ask a licensee whether a plumbing or drainage product that the licensee has installed is a certified product. The licensee must not provide a false or misleading statement claiming that the installed product does hold the correct certification when, in fact, it does not.

Amendment of s 128S (False or misleading documents)

Clause 58 amends section 128S so that it provides that a person must not give to an investigator, inspector, local government or the Plumbing Industry Council a document containing information the person knows is false or misleading in a material particular.

Insertion of new pt 10, div 9

Division 9 Transitional provision for Sustainable Planning and Other Legislation Amendment Act 2011

Clause 59 inserts a new division 9 of part 10 comprising new section 189. This section sets out the transitional arrangements for the Bill including for compliance certificates and permits.

Work commenced as compliance assessment work where an application for a permit has been lodged with, and accepted in that form by, local government prior to the commencement of the provisions of this Bill, will continue to be treated as compliance assessment work, even though the work may, after the commencement of the new provisions as set out in this Bill, be defined as notifiable work.

Amendment of schedule (Dictionary)

Clause 60 provides definitions for *approved audit program*, *compliance assessable work*, *employed licensee*, *notifiable work*, *relevant person* and updates the definitions of *plumbing code authorisation and certification* and *SEQ water work*.

Compliance assessable work is defined as plumbing or drainage work that is not notifiable work, minor work or unregulated work. Previously, compliance assessable work was titled 'regulated work'.

Notifiable work is defined as plumbing or drainage work prescribed under the *Standard Plumbing and Drainage Regulation 2003* (SPDR) as notifiable work.

The practical application of these definitions will ensure that the first connection of a new building will be captured as compliance assessable work requiring assessment by local government. Therefore this work is subject to an approval via a compliance permit or a compliance certificate, depending on the requirements of the local government. It is proposed that amendments to the SPDR will be made to set out that any other plumbing or drainage work on the plan for a new building at the time of the first connection to a relevant service will also be categorised as compliance assessable work.

It is important that the first connection, and associated plumbing or drainage work, of a new building be captured as compliance assessable work as this level of scrutiny will help maintain the integrity of the relevant infrastructure. For example, a compliance assessment will assist in ensuring that any connection will not allow stormwater to enter into the water distribution system and that all the plumbing and drainage work associated with the first connection is approved and inspected as is currently the case.

Further amendments to the relevant regulations, are intended to be passed at a later date and prior to the commencement of the provisions in this Bill, outlining the specific definitions for each category of work, for example, the specific number of fixtures able to be installed in each category of building, as notifiable work.

An *approved audit program* is defined in section 33TA.

The clause also updates the definition of plumbing code authorisation and certification to reflect that the *Plumbing Code of Australia* is now entitled the *National Construction Code Volume Three* and is administered by the Australian Building Codes Board instead of the National Plumbing Regulators Forum.

Part 7 Amendment of Sustainable Planning Act 2009

Act Amended

Clause 61 provides that this part amends the *Sustainable Planning Act 2009* (SPA).

Insertion of new s 78A

Section 78A (Relationship between local planning instruments and Building Act)

Clause 62 inserts a new section 78A which provides that a local planning instrument must not purport to regulate 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 makes reference to sections 31, 32 and 33 of the Building Act for matters about the relationship between local planning instruments and the Building Act for particular building work.

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 certain building assessment provisions under subsection 30(1) are codes for the purposes of IDAS for the carrying out of building assessment work and self-assessable building work. Section 31 also provides that certain building assessment provisions are codes that cannot be changed under a local law, local planning instrument or local government resolution.

The intent of section 31, as expressed in the explanatory notes of the *Building and Other Legislation Amendment Bill 2006*, is to ensure that '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 and designating bushfire prone areas for the Building Code of Australia.

However, sections 32 and 33 of the Building Act are not intended to permit a local government to include matters already addressed by building regulations and codes such as the Queensland Development Code and the Building Code of Australia, in its local laws, planning scheme or local government resolutions, unless this is specifically permitted by the Building Act, for example by a regulation or certain provisions of the Queensland Development Code. Building matters covered by the building regulations and codes include, but are not limited to, structural, safety, sustainability and amenity standards; requirements for buildings in bushfire prone and cyclone areas; water and energy efficiency standards for all building types; and access for people with a disability.

The purpose of section 78A is to make it clear that a local planning instrument 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 local planning instrument purports to deal with building work regulated under the building assessment provisions, it is of no force or effect. This clause will apply to existing and new local planning instruments where there is any inconsistency with the building assessment provisions.

Omission of s 86 (Relationship between planning schemes and Building Act)

Clause 63 removes section 86 from the SPA. The new section 78A under the SPA adopts the restriction on planning schemes contained in previous section 86, and extends the restriction to all local planning instruments.

Amendment of s 126 (Power of Minister to direct local government to take particular action about local planning instrument)

Clause 64 amends the section to clarify that the power of the Minister to direct local government to take particular action about a local planning instrument to protect or give effect to a State interest or to ensure that the standard planning scheme provisions (the Queensland Planning Provisions) are appropriately reflected in the local planning instrument, applies to a proposed amendment of a local planning instrument as well as a current or proposed local planning instrument.

Subclause (2) also inserts a note under subsection (2) to clarify that a proposed amendment of a local planning instrument includes an amendment to include a structure plan for a declared master planned area.

Amendment of s 129 (Power of Minister to take action about local planning instrument without direction to local government)

The Minister's power under section 129 is used to take urgent action to protect or give effect to a State interest. *Clause 65* amends the section to clarify that the Minister is not required to consult with anyone before taking an action under section 129 to make or amend a local planning instrument.

Amendment of s 144 (Special charge for making a structure plan)

Clause 66 adds references to the *City of Brisbane Act 2010* (COBA) and Brisbane City Council to existing charging arrangements for local governments under section 144, to establish that those arrangements are intended to apply to all local governments, including Brisbane City Council.

Amendment of s 189 (Ministerial directions to local government)

Under section 189, the Minister may direct a local government, if it has not done so within the required period, to take action in relation to a master plan application, or make a decision on representations about conditions or other matters of a master plan decision. *Clause 67* amends the section to clarify that the Minister is not required to consult with anybody before giving the direction to take the action or make the decision, within a reasonable period.

Amendment of s 190 (Ministerial directions to applicant)

Under section 190, the Minister may direct an applicant for approval of a master plan to take an action if the applicant has not completed the action within required timeframes. *Clause 68* amends the section to clarify that the Minister is not required to consult with anybody before giving the direction to take the action.

Amendment of s 248 (Jurisdiction of local government as assessment manager for particular development)

Clause 69 adds references to the COBA to an existing reference to the *Local Government Act 2009* (LGA), to establish that jurisdictional arrangements under section 248 are intended to apply to all local governments, including Brisbane City Council.

This clause also removes an editor's note.

Amendment of s 322 (Decision-making period suspended until approval of master plan)

Clause 70 amends the section to clarify that master plans are made for an area of land, rather than for particular development.

Amendment of s 372 (Copy of request to be given to particular entities)

Clause 71 amends the section so that a person requesting a responsible entity to change a development approval is required to give a copy of the request to any concurrence agencies and the assessment manager for the original application.

Amendment of s 376 (Notice of decision)

Clause 72 amends section 376(2)(b) so that the concurrence agency that is the responsible entity approving a change to a development approval is required to provide a copy of its original concurrence agency response showing the approved changes to the person making the request for change, the assessment manager, and any other referral agencies for the original application. Section 376(2)(c) applies when the responsible entity is other than a concurrence agency, and requires the responsible entity to provide a copy of the decision notice for the original application showing the approved changes, to the person making the request for change, and any referral agencies for the original application.

Previously, section 376 required concurrence agencies that are responsible entities to give a copy of the entire original decision notice, showing the changes agreed to by the concurrence agency. Decision notices are often very substantial documents, of which a particular concurrence agency's response may be only a small part.

Referral agencies are not required under chapter 9 part 6 to keep available complete copies of original decision notices for applications in which they were involved. Consequently section 376 implies a substantial additional administrative burden for referral agencies, and increases potential for errors to arise in decision notices, if for example for reasons beyond the referral agency's control, the copy of the decision notice (as amended) that it holds is not up to date.

The amended subsection 2(b) is intended to infer that the amended concurrence agency's response supersedes the original response given by

that concurrence agency, and is an amendment to the development approval effective from the date of the notice.

Amendment of s 378 (When condition may be changed or cancelled by assessment manager or concurrence agency)

Clause 73 Subclause (1) amends section 378(8)(a)(iii) and removes inconsistent terminology.

Subclause (2) clarifies that if the entity changing or cancelling conditions of a development approval is a concurrence agency, the notice must include a copy of the concurrency agency response for the original application showing the changes. If the entity is other than a concurrence agency, the entity must provide a copy of the decision notice for the original application, showing the changes. This amendment has been made for the same reasons as the amendment to section 376.

Insertion of new s 422A

Section 422A (No requirement to consult on directions)

Clause 74 inserts new section 422A which clarifies that the Minister is not required to consult with anyone before giving a direction to an assessment manager, concurrence agency or applicant in relation to a development application.

Amendment of s 423 (Definitions for div 2)

Clause 75 inserts definitions of *proposed call in notice* and *representation period* to support the amendments to the Ministerial call in process.

Replacement of s 424 (When a development application may be called in)

Clause 76 replaces the previous section 424 with the following new sections:

Section 424 (Application may be called in only for State interest) clarifies that a development application can be called in by the Minister only if it involves a State interest. The previous timeframes in which an application may be called in now apply to the timeframe in which the Minister may give a proposed call in notice under new section 424A.

Section 424A (Notice of proposed call in) requires the Minister to give notice (the *proposed call in notice*) to affected parties for a development application (the assessment manager, applicant, concurrence agencies, and submitters if known), that he is proposing to call in the application within the timeframes specified in subsection (2). These timeframes reflect the previous timeframes in which an application may be called in by the Minister.

Subsection (3) establishes the information that must be included in the proposed call in notice, and includes advice that the Minister is proposing to call in the application, the reason for the proposed call in, and the stage in the IDAS process at which the assessment of the application is proposed to restart if called in. The notice must also advise affected parties that representations may be made to the Minister about the proposed call in within the *representation period* to be nominated by the Minister in the notice, which must be at least 5 business days.

Subsection (4) enables the Minister to extend, or further extend the representation period at any time before the expiry of the representation period. This is intended to enable the Minister to seek additional representations from the affected parties if necessary to address natural justice matters.

Section 424B (Effect of proposed call in notice on IDAS process) clarifies that for an application that has not yet been decided by the assessment manager, the IDAS process stops for the application when the proposed call in notice is given. Subsection (2) clarifies that if the application is subsequently not called in, the IDAS process for the application restarts at the same point in the IDAS process at which it was previously stopped by the giving of the proposed call in notice.

Section 424C (Minister to consider representations about proposed call in) requires the Minister to consider the representations received from the affected parties about the proposed call in, prior to making a decision to call in the application.

Subsection (2) applies if the Minister decides not to call in the application. If this applies, the Minister must give a notice to this effect to the affected parties within 20 business days of the end of the representation period (which may have been extended or further extended under section 424A(4)). The notice must also state, for applications that have not yet been decided by the assessment manager, that the IDAS process for the

application restarts at the same point in the IDAS process at which it was previously stopped by the giving of the proposed call in notice.

Section 424D (Effect of proposed call in on appeal period) applies to applications that were decided by the assessment manager when the proposed call in notice was given, and the Minister has decided not to call in the application and has given notice to that effect under section 424C(2)(a). The provision clarifies that any appeal period relating to the application starts again the day after the notice is given.

The effect of this provision is that the appeal period, including any appeal period that may have already expired, is given back to the relevant party in its entirety. The intention is to ensure that the right of any party to appeal the decision is not adversely affected by the giving of the proposed call in notice and the subsequent time delay for the nominated representation period, during which representations may be made about the application and the proposed call in, by any of the affected parties.

Section 424E (Effect of proposed call in notice on development approval) applies to any development permit or deemed approval for the application proposed to be called in which has already taken effect before the giving of the proposed call in notice, or that will take effect after the proposed call in notice is given and before the call in notice is given. The permit or approval is taken not to have taken effect from the day the proposed call in notice is given, or the day the permit or approval would have taken effect if not for the proposed call in notice, and therefore cannot be acted upon.

The intent of subsection (2)(b)(i) is to clarify that the permit or approval remains of no effect until the day the applicant receives notice that the Minister is not going to call in the application.

Subsection (2)(b)(ii) applies if the Minister decides to call in the application. The provision clarifies that the permit or approval remains of no effect until the day the applicant receives the Minister's notice of call in. The amendment to section 427(3) clarifies that if an application is called in, any decision made by the assessment manager before the application is called in is of no effect, and together with this subsection this has the effect of ensuring that any decision, permit or approval already given for the application is of no effect once the application is called in.

Amendment of s 425 (Notice of call in)

Clause 77 amends section 425 to prescribe the timeframe in which the Minister must give the notice of call in. New subsection (2) requires the notice of call in to be given before 20 business days after the representation period for the application ends.

Amended renumbered subsection (3)(d), previously subsection (2)(d), requires the Minister to state in the notice of call in, the point in the IDAS process from which the process must restart for the application.

New subsection (4) clarifies that the Minister may state in the notice of call in, a different restarting point in the IDAS process for the application, to that which was stated in the proposed call in notice under section 424(3). This applies regardless of whether the application was called in before or after a decision is made by the assessment manager on the application. This is a change to the previous requirement for applications called in before a decision was made by the assessment manager, for which the IDAS process restarted from the point in the process at which the application was called in.

New subsection (5) encompasses the matters the Minister may have regard to in deciding at which point in the IDAS process the process restarts. This ensures that any relevant matters may be taken into account in deciding the restarting point, which may contribute to the Minister deciding a different restarting point to the point as stated in the proposed call in notice.

Former subsection (2) is renumbered to (3) and former subsections (3) - (5) are renumbered to (6) - (8) by *subclauses (5)* and *(6).*

Amendment of s 427 (Effect of call in)

Clause 78 amends section 427(2) to reflect the change under renumbered section 425(3)(d) that requires the Minister to determine the point in the IDAS process from which the process must restart for any called in application.

Subclause (2) amends section 427(3) to clarify that if an application is called in after the assessment manager makes a decision on the application, the assessment manager's decision is taken to be of no effect and the IDAS process for the application restarts from the point stated in the notice of call in.

Insertion of new s 475A

Section 475A (Appeals against decisions under ch 8A)

Clause 79 inserts new section 475A, which provides that where the Minister issues an information notice under chapter 8A, part 3 (Registration of premises) the recipient of the information notice has a period of 20 business days from when the information notice is issued, to appeal the Minister's decision to the Planning and Environment Court. Where the Minister decides, under chapter 8A, part 3 to register or renew the registration of premises, a relevant person as defined in subsection (5) being the owner or occupier of land in the affected area, has a period of 20 business days from the day the registration is notified (under section 680ZD) to appeal the Minister's decision.

Amendment of s 484 (Notice of appeal to other parties–other matters)

Clause 80 inserts further paragraphs in section 484 relating to the giving of notices in relation to appeals under new section 475A.

Amendment of s 493 (Who must prove case)

Clause 81 inserts arrangements relating to the onus of proof in proceedings under new section 475A.

Amendment of s 495 (Appeal by way of hearing anew)

Clause 82 limits the requirement for the Court to consider a superseded planning scheme to the aspect of the application relating to the assessment manager's jurisdiction.

This provides the Court with additional flexibility in considering superseded planning schemes in the context of referral agency responses, and provides greater consistency between the matters considered by referral agencies and the Court for development applications involving superseded planning schemes.

Amendment of s 596 (Assessing authority may take action)

Clause 83 adds a reference to the COBA to an existing note, to remove doubt that section 596 is intended to apply to all local governments,

including Brisbane City Council and to ensure consistency with how this operates in the SPA.

Amendment of s 629 (Funding trunk infrastructure for local governments)

Clause 84 adds a reference to the COBA to an existing note, to remove doubt that section 629 is intended to apply to all local governments, including Brisbane City Council and to ensure consistency with how this operates in the SPA.

Amendment of s 639 (Infrastructure charges taken to be rates)

Clause 85 removes a reference to the LGA, consistent with the inclusion of a definition of *rates* in schedule 3. *Rates* is defined in the LGA and the COBA, therefore removing the reference to the LGA removes any doubt that it was intended to apply to all local governments, including Brisbane City Council.

Amendment of s 648 (Regulated infrastructure charges taken to be rates)

Clause 86 removes a reference to the LGA, consistent with the inclusion of a definition of *rates* in schedule 3. *Rates* is defined in the LGA and the COBA, therefore removing the reference to the LGA removes any doubt that it was intended to apply to all local governments, including Brisbane City Council.

Amendment of s 648A (Meaning of *adopted infrastructure charge*)

Clause 87 amends the definition of *pre-SPRP amount* in section 648A to address the calculation of this amount in circumstances where the relevant local government is a *participating local government* for chapter 9, part 7A. In such circumstances, the *pre-SPRP* amount is intended to be the aggregate amount that the local government and the relevant distributor-retailer could have obtained under their respective infrastructure charging frameworks immediately before the commencement of the "SPRP – adopted charges". The previous definition provided only for the amount that could have been obtained by the local government. It is intended for this clause to be taken to have had effect from the commencement of the

Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Act 2011 to ensure that any charges levied by local governments based on the originally intended scope of this clause are valid.

Amendment of s 648D (Local government may decide matters about charges for infrastructure under State planning regulatory provision)

Clause 88 substitutes the term "not more" for "less" in section 648D. This addresses an unintended outcome in the current wording which prevents a local government adopting a charge equal to the maximum charge stated in the "SPRP – adopted charges".

Subclause (2) inserts a new paragraph (f) into subsection (1) allowing for a local government's adopted infrastructure charges resolution to provide for the indexation of an adopted infrastructure charge during the period between the levying and the payment of the charge. Although the amendments characterise the increase as part of the charge, they treat it as a discrete amount of money to be added to the charge at the time it is paid. This is because the Act, section 648F effectively "sets" a particular charge at the time the adopted infrastructure charges notice is given.

Subclause (3) inserts a new subsection (10) providing that, if a local government's adopted infrastructure charges resolution provides for the indexation of the charge under the new section 648D(1)(f), the resolution must also state how the increase is worked out.

The new subsection (10) also establishes limitations on the amount by which an adopted infrastructure charge may be indexed under the new section 648D(1)(f). The charge may be increased by no more than an amount reflecting the increase in the consumer price index between the time it is levied and when it is paid. However, if at the time the charge is paid, the indexed amount would exceed the maximum adopted infrastructure charge under the "SPRP – adopted charges", the amount of the charge is the maximum amount at that time. This prevents an adopted infrastructure charge exceeding the maximum amount, considering that, between the date a particular charge is levied and when it is paid, the Minister also may escalate the maximum charge under section 648C.

However, the indexation of an adopted infrastructure charge by a local government must not result in a charge that is more than the local government's proportional split of the maximum adopted charge.

The requirement for the adopted infrastructure charges resolution to state how the increase is worked out is intended to ensure that a consistent, transparent and accountable process is retained by demonstrating how the increase is calculated.

New subsection (11) provides a definition for *consumer price index*, being the consumer price index for Brisbane published by the Australian Statistician.

Amendment of s 648F (Adopted infrastructure charges notices)

Clause 89 inserts a new subsection (1)(e) requiring that, if a local government has, under its adopted infrastructure charges resolution, provided for the escalation of an adopted infrastructure charge, an adopted infrastructure charges notices must state that an additional amount is payable on the day the charge is paid.

Insertion of new s 648HA

Section 648HA (Special provision about increase in adopted infrastructure charge by local government)

Clause 90 inserts a new section 648HA stating that if an adopted infrastructure charge is increased in accordance with the escalation arrangements under section 648D(10)(b), then the total amount payable on the day the charge is due is the increased charge (i.e. the charge as levied plus the additional amount of the increase).

Amendment of s 648K (Agreements about, and alternatives to, paying adopted infrastructure charge)

Clause 91 amends section 648K to clarify arrangements under that section in instances when an adopted infrastructure charge is indexed under section 648D(1).

Subclause (1) inserts a new subsection (1A) requiring that, if the local government and person to whom an adopted infrastructure charges notice has been given agree to paying the charge at a different time or in instalments, the agreement must state how any additional amount provided for under section 648D(1)(f) is to be calculated, i.e. indexing of the charge from the day levied to the day paid.

The new subsection (2) clarifies that a notice requiring contribution of land in lieu of a charge is given instead of an adopted infrastructure charges notice, whereas a notice requiring a part contribution in the form of land is given in addition to a normal adopted infrastructure charges notice under section 648F.

Subclause (3) inserts, after existing subsection 648K(3), new subsection (3A) to provide that where a person is required to give a combination of land and an adopted infrastructure charge, a part of the adopted infrastructure charge payable in combination with land may be increased in compliance with new subsection 648D(10)(b).

Subclause (4) renumbers subsections 648K(1A)-(5) as subsections 648K(2)-(7).

Subclauses (5) to *(7)* update the cross-referencing of subsections in section 648K.

Amendment of s 648L (Adopted infrastructure charge taken to be rates)

Clause 92 removes a reference to the LGA, consistent with the inclusion of a definition of *rates* in schedule 3. *Rates* is defined in the LGA and the COBA, therefore removing the reference to the LGA removes any doubt that it was intended to apply to all local governments, including Brisbane City Council.

Amendment of s 674 (Recovery of regulated State infrastructure charges)

Clause 93 adds references to the COBA and the Brisbane City Council to establish the effect of this section within the local government area of Brisbane City Council.

Paragraph (2) also removes a reference to the LGA, consistent with the inclusion of a definition of *rates* in schedule 3. *Rates* is defined in the LGA and the COBA, therefore removing the reference to the LGA removes any doubt that it was intended to apply to all local governments, including Brisbane City Council.

Paragraph (5) removes an editor's note consistent with the changes made to other subsections that that remove specific references to the LGA.

Insertion of new ch 8A

Chapter 8A Provisions about urban encroachment

Clause 94 inserts the following provisions under new chapter 8A.

Part 1 Preliminary

Section 680A (Definitions for ch 8A) provides a list of definitions for particular terms used within this chapter of the Bill.

Section 680B (What is a *relevant development application*) provides a definition for a *relevant development application* to which the provisions apply. Subsection (a) provides that a relevant development application on developed land is a material change of use or reconfiguration of a lot application within the affected area for which premises are registered, except for development in relation to a class 1a or 1b building or a class 10 building or structure.

Subsection (b) provides that a relevant development application on undeveloped land is a material change of use or reconfiguration of a lot within the affected area for which premises are registered, except for development in relation to a class 10 building or structure.

Section 680C (Purpose of ch 8A and its achievement) provides that the main purpose of this chapter of the Bill is to protect the existing lawful use of registered premises from encroachment by new development. It does this by limiting particular civil proceedings for nuisance and criminal proceedings relating to a local law in connection with aerosols, fumes, light, noise, odour, particles or smoke emissions-based nuisance complaints, against registered premises, where the registered premises is operating within its approved conditions.

Part 2 Restrictions on legal proceedings

Section 680D (Application of pt 2) provides that part 2 applies to a relevant development application:

- made after the commencement of the section
- made but not decided before commencement
- for which a development approval has been given before commencement however a certificate of classification has not been given before commencement.

Section 680E (Restrictions on legal proceedings) provides that limitations apply to an *affected person*, as defined in subsection (6), claiming that a relevant act (as defined in subsection (1)(a)) undertaken at registered premises is an unreasonable or likely interference with an environmental value, where the relevant act was or caused the emission of aerosols, fumes, light, noise, odour, particles or smoke.

The affected person cannot take civil proceedings for nuisance or criminal proceedings relating to a local law in relation to the claim against registered premises, where the relevant act complies with the development approval for the registered premises or any code of environmental compliance. This section does not limit the right to take action for other contraventions under the *Environmental Protection Act 1994* (EPA) or other Act.

However, the limitation and the immunity for the registered premises against proceedings being taken by the affected person are removed where:

- the development approval, or registration certificate, for the registered premises is amended
- a new development approval or registration certificate is given that allows for the carrying out of an environmentally relevant activity at the premises,
- a code of environmental compliance is amended or a new code is approved, and
- the new or amended approval, code, or environmental compliance authorises:
    - an increase in the emission levels, or

- an intensification of the activity at the premises that results in an increase in emission levels.

Part 3 Registration of premises

Division 1 Application for registration

Section 680F (Who may apply) provides that where an existing use of premises includes an activity where the emission of aerosols, fumes, light, noise, odour, particles or smoke is in accordance with a development approval for the premises or any applicable code of environmental compliance, the owner of the premises may apply to the Minister for the registration of the premises.

Section 680G (Requirements for application) provides that certain information, including a technical report about the level of emissions from the carrying out of the activity, must be provided by an applicant applying to the Minister for the registration of the premises. In addition this section requires that if the activity being carried out is a chapter 4 activity under the EPA, the registration certificate for the environmentally relevant activity must also be attached to the application. An application fee may be prescribed under a regulation.

Section 680H (Consideration of, and decision on, application) provides that after consideration of an application for the registration of premises, the Minister may approve the registration with or without conditions, or refuse to register the premises.

Section 680I (Criteria for registration) provides that the Minister must be satisfied that an application for registration demonstrates that an activity carried out at premises meets certain listed criteria, before registering premises. The criteria include:

- the activity being carried out is significant to the economy, heritage or infrastructure of the State, region or locality
- the activity is consistent with the planning scheme and any regional plan for the area

- the owner has carried out public consultation and has identified the level of support for the registration resulting from the consultation.

Division 2 Renewal of registration

Section 680J (Application for renewal) provides that the owner of the registered premises may apply to the Minister to renew the registration of the premises within 12 months before the current registration ends, providing the information and the prescribed application fee as required for a new application to register the premises under section 680G.

Section 680K (Consideration of, and decision on, application) provides that after consideration of an application for the renewal of registration of premises, the Minister may approve the renewal of registration of premises with or without conditions, or refuse to renew the registration of premises.

Section 680L (Criteria for renewal of registration) provides that the Minister may decide to renew the registration, if the Minister is satisfied that the application meets the criteria for registration as listed in section 680I, including information about the level of public support for the renewal of the registration.

Section 680M (Registration taken to be in effect while application for renewal is considered) provides that where an application to renew the registration of premises has been made in accordance with section 680I, the registration continues in effect from the day that it would have ended until the Minister has made a decision or the application is considered to have been withdrawn, either by the applicant or under section 680N(2).

Division 3 Inquiries about applications and notice of decisions

Section 680N (Inquiry about application) provides that the Minister may request additional information from an applicant where there is insufficient information to decide the application for either the registration of premises or the renewal of registration of premises. Where additional information is required, the Minister must, within 30 business days of receiving the

application, give a notice to the applicant requesting the information. The notice must state a reasonable period in which the applicant must respond to the request for the information, of at least 30 business days. Where the applicant does not provide the information requested within the stated period, the application is taken to have been withdrawn by the applicant.

Section 680O (Notice of decision on application) provides that the Minister give notice of the decision to the applicant, after making a decision for either the registration of premises or the renewal of registration of premises. Where the Minister decided to register the premises or renew the registration of premises, the notice must include information identifying the affected area for which the premises is registered. Where the Minister decides to impose conditions or refuse the application, notice of the decision to the applicant must be in the form of an *information notice*.

Division 4 Cancellation, and amendment of conditions, of registration

Subdivision 1 Cancellation

Section 680P (Grounds for cancellation) provides that the grounds for the cancellation of a registration of premises are where the level of emissions of aerosols, fumes, light, noise , odour, particles or smoke at the registered premises is not in compliance with:

- the development approval for the premises
- code of environmental compliance applying to the activities carried out at the registered premises.

A further ground for cancellation is if any condition of the registration is contravened.

Section 680Q (Show cause notice) provides that where the Minister proposes to cancel the registration of premises based on the grounds listed in section 680P, the Minister must give a *show cause notice* to the owner of the premises, detailing the grounds for the proposed cancellation. The owner of the premises may make written representations to the Minister, to demonstrate why the registration should not be cancelled, during the *show cause period* stated in the notice. The show cause period cannot extend

more than 20 business days from when the owner is issued the show cause notice.

Section 680R (Representations about show cause notice) provides that the owner of the registered premises may make written representations to the Minister during the show cause period. Written representations (the *accepted representations*) made during the show cause period must be considered by the Minister prior to making a decision to cancel the registration of premises.

Section 680S (Ending show cause notice without further action) provides that the Minister, after consideration of accepted representations for a show cause notice, may decide that no grounds exist to cancel the registration of premises. If the Minister believes no grounds exist to cancel the registration of premises, the Minister must notify the owner of the premises that no further action about the show cause notice is to be taken.

Section 680T (Cancellation) provides that the Minister may cancel the registration where no accepted representations for a show cause notice are made, or where, after consideration of accepted representations for a show cause notice, grounds still exist to cancel the registration of premises and that cancellation is warranted. Where the Minister decides to cancel the registration of premises, the Minister must give the owner an information notice about the cancellation of the registration of premises. The date the cancellation takes effect is either the day the information notice is given or where a later day is stated in the information notice, the later date.

Subdivision 2 Amending conditions of registration

Section 680U (Amendment of conditions) provides that the Minister may amend the conditions of the registration of premises. Where the Minister proposes to amend the conditions of the registration of premises, the Minister must issue a notice to the owner of the premises, detailing the grounds for the proposed amendments. The owner may make written representations to the Minister within the timeframe stated in the notice, demonstrating why the registration should not be amended. The stated timeframe in which the written representation may be made must be less than 14 days from when the Minister gives the notice.

The Minister must consider any written representation received from the owner, in deciding whether to amend the conditions of the registration. Where the Minister decides to amend the conditions of the registration, the Minister must issue an information notice to the owner of the registered

premises, and the amended registration takes effect from when the owner receives the information notice. Where a later date is stated on the information notice, the amendment to the registration takes effect on the later day.

Division 5 Other matters about registration

Section 680V (Owner of premises may end registration) provides that the owner may give notice to the Minister to end the registration of the premises. If the owner of the registered premises takes this action, the registration ends from the day the Minister receives the notification, or later day nominated by the owner in the notice.

Section 680W (Term of registration) provides that the initial registration of premises lasts for a term of 10 years commencing on the day the owner of the premises receives notice of the Minister's decision, or later day as stated in the notice. For the renewal of registration of premises, a further term of 10 years commences from the day immediately after the day the term of the initial registration is due to end, ensuring continuity of registration.

Part 4 Particular obligations

Section 680X (Record of registration of premises in appropriate register) provides that the owner of the registered premises (under part 3) is required to give the registrar notice, within 20 business days of the premises being registered, of the effect of the registration of the premises on the affected area. This will enable the registrar to record the area affected by the registration in a register (an affected area notation). Where the owner of the registered premises fails to provide the registrar notification of the affected area notation, a penalty may be applied.

After receiving notification, the registrar is required to keep a record of the affected area notation in the register. If the registration of premises ends the owner of the registered premises is required to notify the registrar to remove the affected area notation from the register. If the owner of the registered premises fails to notify the registrar, a penalty may be applied.

After receiving notification and if satisfied that the registration of premises has ended, the registrar is required to remove the affected area notation from the register.

Section 680Y (Public notice of registration, or renewal of registration, of premises) provides that the owner of the registered premises is required to publish a notification of the registration in a newspaper which circulates in the affected area for which the premises is registered within a period of 20 business days after the registration or renewal of the registration of the premises.

The notification is required to include details of the registered premises, a map detailing the affected area for which the premises is the registered, any conditions of the registration, details of the approved types and levels of emissions for the registered activity, and details of where the public can obtain further information about the registration.

While the premises are registered, the owner of the registered premises is required to keep freely available for inspection by the public a map of the affected area for the premises and details about the registration of the premises including any conditions or details about the level of emissions permitted by activities undertaken at the premises.

The owner of the registered premises is required to provide the Minister a notice of compliance after publishing the notification of the registration in the newspaper. Where the owner of the registered premises fails to publish notification of the registration or fails to provide the Minister with a notice of compliance, a penalty may be applied.

Section 680Z (Record of relevant development application in appropriate register) provides that the applicant for a relevant development application (as defined in section 680B) is required, within 20 business days of making the application, to notify the registrar of the application being made for the premises or lot affected by the registration. This will enable the registrar to record the premises or lots affected by the registration in a register (an affected area notation). If the applicant for a relevant development application fails to notify the registrar of the application, a penalty may be applied.

After receiving notification of the application, the registrar is required to keep a record of the affected area notation for the premises or lot, in the register. If the registrar is notified by the applicant that the application is refused, lapses or is withdrawn before the application is decided, the applicant is required to notify the registrar to remove the affected area

notation from the register. Where the applicant for a relevant development application fails to notify the registrar of the refusal, lapse or withdrawal of the application, a penalty may be applied.

After receiving notification and where satisfied that the application has been refused, lapsed or withdrawn, the registrar is required to remove the affected area notation from the register.

Section 680ZA (Publication of information on website) provides that if the owner of registered premises uses a website to provide public access to information about the premises, the owner is required to publish on the website a map of the affected area for which the premises is registered and details of the approved types and levels of emissions for the registered activity carried out at the premises. If the owner of the registered premises fails to publish details of the registration on the website for the premises, the protection of the premises as provided for under section 680E remains unaffected.

Section 680ZB (Notice to lessee about application of ch 8A) provides that a relevant person, being the owner or the owner's agent, before entering into a letting agreement for premises within an affected area, is required to notify the intending lessee that the premises to be leased is located in an affected area, and that the lessee's rights in relation to civil proceedings for nuisance or criminal proceedings relating to a local law, taken against the registered premises, may be limited. Where the relevant person fails to notify the lessee, a penalty may apply.

Section 680ZC (Additional consequence of failure to give notice asking for affected area notation for Milton rail precinct) provides that if the applicant for a relevant development application in the *Milton rail precinct* enters into a contract with someone else to buy the premises (or part of the premises) the subject of the application, and the affected area notation in relation to the development application is not recorded in the appropriate register at the time of entering into the contract, the buyer may end the contract at anytime before the contract is completed. The buyer must provide written notification to the applicant of the ending of the contract, signed, dated and stating that the contract is ended under this section of the Bill. If the buyer ends the contract in this way, the applicant is required to, within 14 days of receiving the written notification, refund to the buyer any deposit paid to the seller under the contract. If the applicant fails to refund to the buyer any deposit paid to the seller under the contract, a penalty may apply. This section applies despite anything to the contrary stipulated in the contract.

Subsection (6) defines the area of the *Milton rail precinct*.

Section 680ZD (Minister to advise local government about registration) requires the Minister, after registering premises, to notify the applicable local government of the affected area for which the premises is registered.

Section 680ZE (Local government to include registration in planning scheme) provides that where a local government is notified by the Minister of the registration of premises, the local government must note the registration of premises on its planning scheme and on any new planning schemes made during the life of the registration. The section also clarifies that the note is not an amendment of the planning scheme.

Part 5 Register of premises

Section 680ZF (Keeping register of registered premises) requires the chief executive to keep a register of all registered premises in Queensland, and publish the register on the department's website.

Section 680ZG (Content of register) requires the register of registered premises to include a description of the registered premises, details of the activities of the registered premises for which there is immunity, a map detailing the affected area for which the premises is the registered, any conditions of the registration, and the day on which the registration ends.

Section 680ZH (Availability of register) requires the chief executive to keep the register of all registered premises in Queensland available for inspection free of charge to the public.

Part 6 Review of chapter 8A

Section 680ZI (Review of ch 8A) requires the Minister to review this chapter of the Act, in particular its operation and effectiveness, within 3 years of commencement. After undertaking the review, the Minister must provide a report on the outcomes of the review to the Legislative Assembly.

Amendment of s 729 (Documents assessment manager must keep available for inspection and purchase–general)

Clause 95 Subclause (1) renumbers former subsections (1)(d) to (j) as (1)(g) to (m).

Subclause (2) inserts new subsections (1)(d) to (f) requiring an assessment manager to keep a copy of a changed decision notice or changed concurrence agency's response available for inspection and purchase. This reflects the assessment manager's responsibility for keeping a record of development approvals and making these documents available for inspection and purchase by the public.

Subclause (3) inserts new subsections 3(c) to (e) requiring an assessment manager to publish on its website, the changed decision notice or changed concurrence agency's response. This requirement will ensure that development approvals are readily available for viewing by the public, and as the online publication of the documentation is specifically authorised by the Act, publication of this material on the assessment manager's website will not be in breach of the privacy principles under the *Information Privacy Act 2009*.

Both *subclauses (2)* and *(3)* are related to changes to existing sections 376 and 378, concerning the obligations on assessment managers and concurrence agencies with respect to changing aspects of development approvals.

Subclauses (4) to *(6)* change existing references as a result of the new subsections inserted by *subclauses (2)* and *(3).*

Amendment of section 755KA (Distributor-retailer may decide matters about adopted infrastructure charge)

Clause 96 inserts arrangements for the indexation of a distributor-retailer's water and waste water charge, similar to those under a local government's adopted infrastructure charges resolution under section 648D. The amended section gives the distributor-retailer the same ability to index charges from the time of levying to the time of payment of the charge.

However, the indexation of an adopted infrastructure charge by a distributor-retailer must not result in a charge that is more than the distributor-retailers proportional split of the maximum adopted charge.

Amendment of section 755KB (Funding trunk infrastructure–levying charge on and from standard charge day)

Clause 97 inserts requirements in relation to notices requiring payment of a water and waste water charge in instances where the distributor-retailer has decided to index the charge under section 755KA, similar to requirements for adopted infrastructure charges notices under section 648F. That is, that an additional amount worked out in compliance with section 755KA(3) is payable on the day the charge is paid.

Amendment of section 755MA (Agreements about, and alternatives to, paying adopted infrastructure charge)

Clause 98 amends the arrangements in relation to agreements and notices for consistency with similar changes for local governments under section 648K as contained in the Bill. The amended section provides that if the distributor-retailer has decided to increase the charge under section 755KA, then the agreement must state how it is payable under the agreement.

The amended section also clarifies that a notice requiring the contribution of land in lieu of a charge is given "instead" of an adopted infrastructure charges notice, whereas a notice requiring a part contribution in the form of land is given "in addition" to a normal adopted infrastructure charges notice.

Insertion of new s 758A

Section 758A (No requirement to consult for particular decisions under repealed IPA)

Clause 99 inserts new section 758A which applies to a decision by the Minister under the repealed *Integrated Planning Act 1997* (IPA) to give a direction to a local government or to an applicant in relation to a master plan application, or to an assessment manager, concurrence agency or applicant in relation to a development application.

The amendment clarifies that the Minister was not required to consult with anyone before making the decision.

The repealed IPA prescribed circumstances when the Minister must consult. For example under the IPA section 2.3.1, before exercising the Minister's powers to direct a local government to take action about a local

planning instrument, the Minister was required to consult with the local government, giving reasons and providing the local government an opportunity to make submissions about the proposed direction.

However, where the intention was that the Minister was not required to consult with affected entities in relation to a proposed call in or in giving a direction in relation to a development application or master plan application, there was no express statement to this effect.

This amendment puts beyond doubt the intention was that the Minister was not required to consult before making a decision to call in a development application, or give a direction under the repealed IPA, chapter 3, part 6.

As this section concerns the repealed IPA, it applies retrospectively to any decisions made under that Act.

Amendment of ch 10, hdg (Repeal and transitional provisions)

Clause 100 amends the heading to include a reference to validation provisions.

Amendment of s 868 (Particular activities not a material change of use)

Clause 101 clarifies the application of section 868. Section 868 was originally inserted to exclude the North-South Bypass Tunnel (now known as Clem Jones Tunnel) and the Airport Link Tunnel projects from the definition of a material change of use, to provide an exemption for these projects from the requirement to apply for a development approval for a material change due to the introduction of a new environmentally relevant activity for road tunnel ventilation stack operation under the *Environmental Protection Regulation 2008* (Schedule 2, Part 11, Item 51). The exemption was given because the approvals for these projects under the *State Development and Public Works Organisation Act 1971* (SDPWOA) already conditioned these projects for road tunnel ventilation stack operation. Also, as these projects were approved under the SDPWOA, the proponents do not 'hold' a development approval as defined under the *Sustainable Planning Act 2009*. The amendment does not change the policy intent, which is to provide the projects with the exemption, and clarifies the projects which are exempted.

Insertion of new ch 10, pt 5

Part 5 Validation and transitional provisions for Sustainable Planning and Other Legislation Amendment Act 2011

Clause 102 inserts the following provisions under new chapter 10 part 5.

Division 1 Validation provision

Section 882 (Validation provision for applications and development approvals under repealed IPA) applies to development applications and subsequent development approvals given for development applications (superseded planning scheme) made under the repealed IPA prior to 30 March 2006.

Subsection (2) provides that if a development application (superseded planning scheme) was made within 2 years after the planning scheme, planning scheme policy or amendment creating the superseded planning scheme took effect, but was made more than 2 years after the superseded planning scheme was adopted, the application is not invalid because the development application was made more than 2 years after the superseded planning scheme was adopted. Similarly, subsection (3) provides that the development approval is not invalid because the development application was made more than 2 years after the superseded planning scheme was adopted.

The timeframe in which a development application (superseded planning scheme) could be made changed on 30 March 2006. Prior to then, a development application (superseded planning scheme) was required to be made within 2 years of the superseded planning scheme being adopted. However from the commencement of amendments to the Act on 30 March 2006, a development application (superseded planning scheme) had to be made within 2 years of the superseded planning scheme taking effect.

Prior to 30 March 2006, some local governments had misinterpreted the intent of the provisions, and accepted and processed development applications (superseded planning scheme) made out of time, i.e. after the timeframe within which such a development application was required to be made (within 2 years of the superseded planning scheme being adopted), but within 2 years of the superseded planning scheme taking effect.

The amendment validates such development applications and any development approval issued for the application, notwithstanding that the applications were made out of time.

Division 2 Provisions for chapter 8A

Section 883 (Definitions for div 2) provides a definition of the *Milton Brewery* and the *Milton rail precinct* for the transitional provisions for Milton Brewery in the Bill. The Milton rail precinct encompasses the area in which a restriction on certain legal proceedings is in place due to the registration of the Milton Brewery under the repealed *Planning (Urban Encroachment-Milton Brewery) Act 2009* (Milton Brewery Act).

Section 884 (Registration of Milton Brewery for ch 8A, pt 3) provides that the Milton Brewery is registered premises and the Milton rail precinct is the affected area for which it is registered, and the term of the registration is ten years starting on 27 April 2009. Section 475A (appeals about matters relating to urban encroachment) does not apply in relation to the registration of Milton Brewery.

Section 885 (Restriction on legal proceedings for Milton Brewery) provides that limitations apply to a claim in relation to a relevant activity, made under 680E subsection (1) and subsection (2), taken against Milton Brewery. Where the relevant act (as defined in section 680E subsection (2) was or caused the emission of light, the limitation on legal proceedings applies only if the intensity of light does not exceed the intensity of light before 27 April 2009.

Section 886 (Non-application of s 680X(1)) provides that the owner of Milton Brewery is not required to provide the registrar an affected area notation for which the premises are registered.

Section 887 (Application of s 680Y) requires the owner of Milton Brewery to publicly notify the renewal of the registration of the premises made under chapter 8A, part 3.

Section 888 (Notifying prospective buyers) provides that before entering into a selling agreement of property (as defined in subsection (1)) subject to a relevant development application (as defined under the repealed Milton Brewery Act, section 5) that was made before 27 April 2009 and is current, the seller must give the prospective buyer an affected area notice. The seller is required to give the prospective buyer an affected area notice,

about the restriction on the rights in relation to civil proceeding for nuisance or criminal proceeding relating to a local law taken against registered premises, and the keeping of a record of the affected area notation in the appropriate register.

If the seller fails to give the prospective buyer an affected area notice for the property, and a contract to purchase the property is entered into, the prospective buyer may end the contract with the seller at anytime before the contract is completed. The buyer is required to provide written notification to the seller of the ending of the contract, signed, dated and stating that the contract is ended under this section of the Bill. Where the buyer ends the contract, the seller is required to, within 14 days of receiving the written notification, refund to the buyer any deposit paid under the contract. If the seller fails to refund to the buyer any deposit paid to the seller under the contract, a penalty may apply.

This section applies despite anything to the contrary stipulated in the contract of sale, and regardless of whether the seller is the applicant for the relevant development application, or how many times the property has been sold since the development application was made.

Section 889 (Development applications made before commencement) applies if a decision notice has not been given for a relevant development application made before the commencement of this section, and requires the applicant to notify the registrar, within 20 business days of the commencement of this section, of the application made for the premises or lot affected by the registration.

Similarly, if a development approval has been given for a relevant development application before the commencement of this section and a certificate of classification has not been given before commencement, the applicant must also notify the registrar within 20 business days of the commencement of this section, of the application made for the premises or lot affected by the registration.

Division 3 Other provisions

Section 890 (Transitional provision about call in of application) is inserted to deal with development applications that have been called in by the Minister before commencement, and have not been finally dealt with by commencement. The amended process to be followed by the Minister

under sections 424A to 425 for calling in and dealing with a development application, and the amendments to section 427, do not apply to these called in development applications and the provisions in place prior to commencement continue to apply.

Section 891 (**Transitional provision for s 648A)** provides the amended section applies from the date of assent of the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011*. This ensures that any charges levied by local governments based on the originally intended scope of this clause are valid.

Section 892 (**Proceedings for particular appeals under repealed IPA**) enables the Court to apply similar excusory powers to proceedings commenced under the repealed IPA before the commencement of the SPA, to those powers available to proceedings commenced after the commencement of the SPA.

Amendment of sch 3 (Dictionary)

Clause 103 inserts new defined terms, including:

- the transition of terms under the repealed Milton Brewery Act
- the *assessing authority* for:
    a. development to which a State planning regulatory provision applies to ensure that if the State planning regulatory provision was jointly made by the Minister and an eligible Minister, the chief executive of the eligible Minister's Department is the assessing authority
    b. for development in a declared master planned area to ensure that the coordinating agency or participating agency is the assessing authority for matters within their jurisdiction
- definitions to support amendments to infrastructure charges provisions to recognise the COBA and Brisbane City Council
- the definition of *priority infrastructure* plan to include a note clarifying that a priority infrastructure plan includes plans for trunk infrastructure for water and waste water infrastructure provided by the relevant local government's water distributor-retailer for the local government's area.

Part 8 Amendment of Urban Land Development Authority Act 2007

Act amended

Clause 104 provides that this part amends the *Urban Land Development Authority Act 2007* (ULDA Act).

Amendment of s 6 (Development and its types)

Clause 105 inserts new subsection (1) to more directly identify the respective aspects of development under the *Sustainable Planning Act 2009* (SPA) that also apply under the ULDA Act. This amendment supports other amendments that introduce revised definitions for two aspects of development (making a *material change of use*, and carrying out *building work*) for the purposes of the ULDA Act. (See amendments to the schedule).

The definitions for making a material change of use and carrying out building work have been amended in the ULDA Act to account for references in the SPA definitions to an aspect of the SPA that does not apply under the ULDA Act (i.e. IDAS), and an aspect of the ULDA Act not covered by the SPA (i.e. UDA development approvals).

For building work, IDAS is mentioned in relation to a Queensland Heritage Place, and for a material change of use it is mentioned in relation to an environmentally relevant activity. The effect of these current definitions under the SPA is that these aspects of development are not included in the ULDA definition of development.

Development approvals are mentioned in the SPA definition of a material change of use in relation to an environmentally relevant activity. The amended definition of a material change of use under the ULDA Act establishes that the reference to a development approval also includes a reference to a UDA development approval.

Amendment of s 8 (Interim land use plan required)

Clause 106 inserts new subsection (4) to remove any doubt that a reference to a land use plan in sections 23 and 35 does not relate to an interim land use plan. Subsection (3) states that the interim land use plan has effect as if it were the land use plan in the development scheme. This amendment

clarifies that this statement does not apply with respect to the content of a development scheme (section 23) or the power of the Minister to amend a development scheme at the request of the Urban Land Development Authority (ULDA) (section 35). In association with this amendment, the definition of *land use plan* has been amended to delete the statement that the term does not include an interim land use plan. (See the amendment to the schedule). Section 54 has also been amended.

Amendment of s 9 (Expiry of interim land use plan)

Clause 107 renumbers existing subsections (2) and (3) as subsections (3) and (4). The new subsection (2) allows for additional time before an interim land use plan expires if a caretaker period occurs during the usual 12 month period. The period is extended by the caretaker period plus 20 business days. A new definition of caretaker period has been included in the dictionary (schedule).

Amendment of s 22 (Development scheme required)

Clause 108 deletes reference in subsection (2) to 'the force of law', as it is not necessary.

Replacement of s 31 (Ministerial power to amend submitted scheme at affected owner's request)

Clause 109 replaces existing section 31 with a new section 31.

Section 31 (Ministerial power to amend submitted scheme) provides a new provision (31(1) for the Minister to amend the submitted development scheme, within 45 business days after receiving it, in a way the Minister considers appropriate. The provision of 45 business days allows at least 20 clear business days for the Minister to consider affected owner submissions once received.

Without limiting this power in section 31(1), a new provisions (new section 31(2)) also provides for the Minister to amend the submitted development scheme to:

- protect an affected owner's request or
- ensure the implementation of the scheme complies with the Act; or
- correct a minor administrative amendment.

New section 31(3) clarifies that 31(4) provides additional time for the Minister to consider amending the submitted development scheme to protect an affected owner's interest where requested by the owner of not more than 20 business days.

New section 31(4) provides for additional time for the Minister to consider and amend the submitted scheme if a caretaker period occurs during the 45 day period. The time is therefore extended for the caretaker period plus 20 business days to amend the submitted development scheme.

Section 31(5) provides, as currently in section 31, for the Minister to amend the development scheme to protect an affected owner's interest but only, within 20 business days after being given notice of the submitted scheme under section 30, asking the Minister to amend the scheme to protect the owner's interest. This provision is despite new sections 31(1) to (4).

Amendment of s 35 (Power to amend at authority's request)

Clause 110 deletes subsection (1)(b)(iii) and inserts new subsections 351(c). This section provides for the Minister to amend a development scheme at the request of the ULDA. The circumstances for changing the land use plan are limited and as considered by the Minster. The usual process for amending a development scheme is by the ULDA under subsection 38.

The deletion removes the current provision for an amendment that corrects an error, and the new subsection introduces a 'minor administrative amendment'. The term, included in the dictionary (schedule), includes corrections or changes relating to spelling, factual errors and the like, and amendments the Minister is satisfied merely reflect a part of a planning instrument about which there was adequate public consultation. The term also provides for a regulation to prescribe another amendment of a minor nature.

Amendment of s 38 (Division 1 process applies)

Clause 111 replaces subsection (2) and introduces a shortened process for amending a development scheme. This new provision provides for the periods in Division 1 for making a development scheme to be shortened as follows:

- the period relating to public notification (section 25(2)) - reduced from 30 to 15 business days;
- the period relating to the affected owner's submission to the Minister (sections 30(c) and section 31(2)(a)) - reduced from 20 to 10 business days;
- the period relating to the Minister's period to amend the submitted development scheme (section 31(2)(b)) - reduced from 40 to 20 business days.

Amendment of s 42 (Carrying out UDA assessable development without UDA development approval)

Clause 112 amends subsection (1) by replacing the reference to a UDA development approval with a UDA development permit. Consistent with the approach for development approvals under the SPA, the term UDA development approval has been amended (see amendment to section 70) to embrace two types of approval, a UDA preliminary approval and a UDA development permit. In section 42 the intention is to refer to a UDA development permit.

Amendment of s 51 (How to make application)

Clause 113 introduces a new requirement for a UDA development application to include evidence in relation to a State resource if this evidence is required under another provision (new section 51A). Current subsection (1)(c) is renumbered to subsection (1)(d). A new note also clarifies that with the introduction (through amendment to section 70) of two types of UDA development approval – a UDA preliminary approval and a UDA development permit – a single application may be made for both types of approval.

Insertion of new subsection (2) clarifies that if the owner of the relevant land is the State and the development involves a prescribed State resource (i.e. new section 51A(1) applies to the application), the consent of the owner of the relevant land is not required. This amendment is consistent with similar provisions under the SPA, section 263.

Current subsection (2) is renumbered to subsection (3).

Insertion of new s 51A

Clause 114 inserts new section 51A.

Section 51A (Development involving a State resource) states the circumstances when evidence of allocation of, or an entitlement to, a State resource prescribed by a regulation of the SPA must support a development application, and the nature of that evidence. The document containing the evidence may state a time limit of at least 6 months after which a development application may not be made using the evidence.

This amendment is consistent with similar provisions in the SPA, section 264.

Amendment of s54 (Notice of application)

Clause 115 removes the reference to an interim land use plan as it is not required. Under section 8, the interim land use plan is 'the land use plan in the development scheme' until a development scheme takes effect. This has been clarified by the amendment to the definition of 'land use plan' which deletes the statement that the term does not include an interim land use plan. (See the amendment to the schedule).

Amendment of s 55 (Deciding application generally)

Clause 116 inserts subsection (5) providing for the ULDA to give a UDA preliminary approval even though the application sought a UDA development permit, and also clarifies that if the ULDA only approves part of an application, the balance of the application is refused. These changes recognise the introduction of a UDA preliminary approval as an additional type of UDA development approval (see amendment to section 70). The changes are also consistent with the approach taken for deciding a development application under the SPA.

Amendment of s 56 (Restrictions on granting approval)

Clause 117 introduces two additional circumstances when a UDA development approval may be granted even though the relevant development would be inconsistent with the land use plan. These additional circumstances are:

- if a UDA preliminary approval is in force for the relevant land and the relevant development would be consistent with the preliminary approval; or
- if there is a proposed development scheme and the relevant development would be consistent with the proposed scheme.

The first circumstance recognises the introduction of a UDA preliminary approval as an additional type of UDA development approval (see amendment to section 70), and the second recognises the consideration given to the proposed development scheme in making a decision on a development application.

New subsection (3) provides a definition of *proposed development scheme* and clarifies that it is the proposed development scheme, or proposed amendment of a development scheme, that has been publicly notified but not taken effect.

Amendment of s 57 (Matters to be considered in making decision)

Clause 118 amends paragraph (c)(ii) in subsection (1) to provide for the interim land use plan, as well as the proposed development scheme, to be considered in deciding an application if a development scheme has not yet taken effect for a urban development area (UDA). Currently, only the proposed development scheme is mentioned even though the interim land use applies to the UDA.

As a consequence of including a UDA preliminary approval as an additional type of UDA development approval (see the amendment to section 70), section 57 has also been amended to include consideration of any UDA preliminary approval in force for the relevant land in making a decision on a development application. The existing subsection (1)(d) is renumbered as (1)(e).

Amendments to subsection (2)(a) add a reference to interim land use plans in recognition of the two circumstances when a proposed development scheme may exist – when the first development scheme is being prepared (and an interim land use plan is in effect) and when an existing development scheme is in the process of being amended.

Amendment of s 59 (Decision notice)

Clause 119 replaces existing subsection (4) to simplify the references to a UDA development approval. The amendment is supported by an amended definition of *UDA development approval* which includes the words 'means a decision notice' (see the amendment to the schedule).

The omission of subsection (5) removes a reference to 'approval' which is no longer required with the amendment to subsection (4).

Amendment of s 67 (Approved material change of use required for particular developments)

Clause 120 replaces references to a UDA development approval with a UDA development permit as a consequence of including a UDA preliminary approval as a second type of UDA development approval (see the amendment to section 70).

Replacement of s 70 (What approval authorises)

Clause 121 replaces section 70 with a new section 70.

Section 70 (Types of UDA development approvals) is similar to the SPA, section 241, by introducing a UDA preliminary approval as a second type of development approval, with a UDA development permit replacing the current 'UDA development approval'.

New subsection (1) describes the UDA preliminary approval, which approves development subject to conditions of the approval but does not authorise UDA assessable development to take place.

The purpose of a UDA preliminary approval is to approve development, not only assessable development, as is the case for a UDA development permit. This distinction provides for development to be approved that may be conceptual in nature and not identified as UDA assessable. The provisions stating that a preliminary approval approves development to the extent stated in the approval also provides for the development to be conceptual in nature. A subsequent UDA development permit is required to authorise UDA assessable development to take place, which is subject not only to the conditions of the permit but also any related UDA preliminary approval (including any conditions of the approval).

This two step process, as indicated in the new note for the section, assists in the staging of approvals for proposed development.

However, as clarified by subsection (3), there is no requirement to get a UDA preliminary approval for development. This is matter to be determined by the applicant.

Amendment of s 75 (Application to change UDA development approval)

Clause 122 introduces new subsection (6) which requires that if the application to change a UDA development approval involves State-owned land and the original application needed to be accompanied by certain evidence regarding a prescribed State resource, then the written agreement of the relevant chief executive is required instead of the owner's consent.

This amendment is related to the amendment of section 51 and insertion of new section 51A, and is consistent with similar provisions in the SPA, sections 370 and 371.

Amendment of s 76 (When approval lapses generally)

Clause 123 includes a new subsection (7) to clarify that a UDA development approval for development other than a material change of use or reconfiguration of a lot referred to in subsection (3), will not lapse because a related UDA development approval for a material change of use or a reconfiguration of a lot has lapsed.

New subsection (6) provides that despite subsections (4) or (5) which specify respective currency periods for approvals of a material change of use or reconfiguring a lot, if there are one or more related approvals of that type, the currency period is taken to have started on the day the latest related approval takes effect.

New subsection (8) provides a definition of a *private certifier* and *related approval*.

This amendment is consistent with similar provisions in the SPA, section 341.

Amendment of s 80 (Plans of subdivision)

Clause 124 replaces the term 'UDA development approval' with 'UDA development permit' in subsections (3)(c) and (d) as a consequence of including a UDA preliminary approval as a second type of UDA development approval (see the amendment to section 70).

The purpose of this section is to apply the compliance assessment process under the SPA to plans of subdivision under the ULDA Act. Subsection (3) clarifies how the terminology under the ULDA Act relates to equivalent terminology under the SPA. New paragraphs (e) and (f) in subsection (3) recognise the new term of a UDA preliminary approval.

Amendment of s 97 (General powers)

Clause 125 removes reference to the SPA in regard to infrastructure agreements. Infrastructure agreements are defined in the dictionary as referring to infrastructure agreements under the SPA.

Amendment of s 104 (By-laws)

Clause 126 amends the parameters for maximum penalties that can be fixed under a by-law to allow a by-law that replaces a local law to fix the same maximum penalty as that applying to a contravention of the local law it replaces. In other circumstances, the current maximum 20 penalty units for an offence against the by-law will apply.

This aligns the ULDA penalty values with those that would be applied by a local government for the same offence. This is considered appropriate given that the ULDA effectively performs many of the functions of a local government within a UDA. Further, it ensures parity between penalty units charged by the ULDA for offences within a UDA compared with those charged by the local government outside the UDA.

This clause also modifies existing subsection (3) (renumbered as subsection (4)) to provide greater flexibility in how a by-law may replace or modify the application of a local law within a UDA. This recognises that a local law intended to be replaced by a by-law may cover one or more matters not intended to be covered by the by-law, such that it is desirable for the local law to continue to apply for the other matters.

New subsection (3) enables a by-law applying to a matter in a UDA to replace a local law applying to that matter by giving effect to the statements in the by-law that the local law does not apply or applies with stated changes.

Insertion of new s 105A

Clause 127 inserts new section 105A.

Section 105A (Chairperson and deputy chairperson) sets out procedures and requirements for the appointment of a chairperson and deputy chairperson of the ULDA. Section 105 currently states that the authority consists of 9 members, including a chairperson, appointed by the Governor in Council. This new section clarifies that the appointment of the chairperson is by the Governor in Council, and further provides for another member to be appointed, by the Minister, as a deputy chairperson. It also outlines procedures for resignation of the office of chairperson or deputy chairperson and specifies that if the chairperson is absent, unable to perform the functions of the office or if the position of chairperson is vacant, the deputy chairperson can act as chairperson. This acting role of the deputy chairperson assists in ensuring the efficient and effective operation of the ULDA.

Amendment of s 136 (Delegations)

Clause 128 inserts new subsections (5) to (8) and renumbers existing subsection (5) to subsection (9). The new subsections (5) and (6) introduce the option for subdelegating a function that has been delegated to the chief executive of the ULDA or the chief executive of a local government. This provides greater flexibility if the names of positions and position holders within the ULDA or local government change over time.

New subsection (7) provides that the ULDA can direct that delegated functions not be subdelegated, and subsection (8) provides that a subdelegation ends if written direction is given by the ULDA to the chief executive officer of a local government or if the ULDA ends the delegation to the chief executive officer.

Insertion of new pt 6A

Clause 129 inserts a new part 6A.

Part 6A Infrastructure agreements

Part 6A sets out the requirements for infrastructure agreements referred to in section 97(2)(a) of the Act whereby the ULDA can enter into infrastructure agreements as referred to under the SPA.

Section 136A (Application of pt 6A) clarifies that this new section applies to infrastructure agreements to which the ULDA is a party.

Section 136B (Exercise of discretion unaffected by infrastructure agreements) states that an infrastructure agreement is not invalid merely because its fulfilment depends on the exercise of a discretion by the ULDA about an interim land use plan; or a development scheme; or an existing or future UDA development application.

This is consistent with the SPA but refers to the relevant ULDA instruments.

Section 136C (Infrastructure agreements prevail if inconsistent with UDA development approval) clarifies that to the extent the infrastructure agreement is inconsistent with a UDA development approval, the agreement prevails.

Section 136D (Infrastructure agreement continues beyond cessation of urban development area) deals with the transitioning of the infrastructure agreement once a UDA ceases when revoked or reduced under section 11 of the Act.

Section 136D(1) states that an infrastructure agreement continues beyond a cessation of an UDA where an infrastructure agreement for the land was in force before the UDA ceased.

Section 136D(2) clarifies that at the time the UDA is ceased, a superseding public sector entity with responsibility for the infrastructure on the land will be taken to be party to the agreement in place of the ULDA. Further, the rights and responsibilities of the ULDA under the agreement will become those of the superseding public sector entity.

The new provisions define both the *public sector entity* (with reference to the SPA) and the *superseding public sector entity.*

Amendment of schedule (Dictionary)

Clause 130 includes new definitions and amends existing definitions to clarify some provisions of the Act, assist with interpretation or as a result of the other amendments proposed to the Act.

In particular, a new definition of the term *affected owner* is included (mentioned in sections 30 and 31). An affected owner is a person who has made a submission on a proposed development scheme and then has a further opportunity to ask the Minister to amend a development scheme

prior to its finalisation to protect their interest. Currently, the term 'means a person who owns land in, or that adjoins' a UDA. The meaning of 'adjoins' is not defined. The new definition deletes that word and instead provides a list of the circumstances when a land owner is an affected owner. Such circumstances include if the land is in or shares a common boundary with the area, the land is on the opposite side of the road, or if the Minister considers the land may be negatively affected by development in the area.

The new definition of *caretaker period* relates to amendments to section 9 (Expiry of interim land use plan) and section 31 (Ministerial power to amend submitted scheme at affected owner's request) which allows an extension of time if the period includes the election period for a general election under the *Electoral Act 1992*.

The definition of *land use plan* has been amended to delete the statement that the term does not include any interim land use plan. This statement is no longer required due to the amendment to section 8 to clarify this matter.

Other terms for which definitions have been amended include:

- building work (see amendment to section 6)
- deputy chairperson (see amendment inserting section 105A)
- drainage work
- infrastructure agreements means an infrastructure agreement under the Sustainable Planning Act , schedule 3 (see amendment to section 97 and inserting part 6A)
- material change of use (see amendment to section 6)
- minor administrative amendment (see amendment to section 31 and 35)
- plumbing work
- SPA development permit
- SPA preliminary approval
- UDA development approval (see amendment to section 70)
- UDA development permit (see amendment to section 70)
- UDA preliminary approval (see amendment to section 70).

Part 9 Repeal of Act

Repeal

Clause 131 provides for the repeal of the *Planning (Urban Encroachment – Milton Brewery) Act 2009*.

Part 10 Minor and consequential amendments

Acts amended

Clause 132 provides for the schedule of minor and consequential amendments.

© State of Queensland 2011