Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023 (the Bill)

Policy objectives and the reasons for them

The objective of the Bill is to amend the *Planning Act 2016* (Planning Act) to optimise the planning framework's response to current housing challenges through a suite of new tools, and to improve the operational and process aspects of the Planning Act, and to the *Economic Development Act 2012* (ED Act), the *Integrated Resort Development Act 1987* (IRDA), and the *Sanctuary Cove Resort Act 1985* (SCRA) to ensure operational efficiencies in the Planning Act also apply to other planning legislation and to the *Planning and Environment Court Act 2016* (P&E Court Act)to clarify provisions.

Amendments are required to the P&E Court Act, the *Environmental Offsets Act 2014* (EO Act), the ED Act and the *Acquisition of Land Act 1967* (Acquisition of Land Act) to give effect to the changes in the Planning Act.

Growth area tools

In 2021, the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) commenced work on a structure plan process in Caboolture West (Waraba) as a trial of State-led planning through the planning framework in areas identified for growth. During 2022 and early 2023, Planning Group worked with Moreton Bay Regional Council (MBRC) and key stakeholders to draft the Caboolture West Interim Structure Plan (CWISP). The CWISP was intended to be the first part of a structure plan for Caboolture West. In March 2023, the CWISP commenced with an amendment to the Planning Regulation 2017 (Planning Regulation) to give the structure plan effect.

The parts of the Bill to optimise the planning framework's response to current housing challenges have been informed by learnings from the trial structure planning process in Caboolture West. In addition, the Bill has been informed by DSDILGP's review of 75 underutilised urban footprint sites in South East Queensland (sites which are intended for residential development but which are not realising their development potential) and barriers identified on these sites which are slowing down the delivery of housing. Consultation with key stakeholders also shaped the Bill provisions.

The Bill seeks to:

- allow the State to take land or create easements for development infrastructure for planning purposes;
- introduce a state facilitated application process to provide for streamlined assessment of development applications for matters of priority to the state, for example affordable housing;
- support the use of a new zone, the Urban Investigation Zone by providing for the use of this zone to not be an adverse change requiring compensation where a process in the Minister's Guidelines and Rules has been followed.

Operational amendments

Since the Planning Act came into effect in July 2017, few amendments have been required to facilitate its operation. As government, industry and the community have used the provisions there are now practical examples of provisions related to planning, development assessment and case law that have necessitated the need for legislative adjustments.

The Bill seeks to clarify provisions and address operational issues and inefficiencies around the Planning Minister's powers and processes, temporary accepted development, removing duplicate assessment relating to a Queensland Heritage Place that is also a local heritage place (dual listed heritage place), changing development approvals, changing infrastructure charges notices, public notice requirements, making submissions, applicable event provisions, temporary use licences, accessing documents and notices, and owner's consent requirements.

Development Control Plans

Development Control Plans (DCPs) were created in 1990 to manage larger scale development and have been maintained in effect through a series of transitional provisions in successive Queensland planning legislation. The Planning and Environment Court judgement in *JH Northlakes Pty Ltd v Moreton Bay Regional Council* [2022] QPEC 18 (the Northlakes judgement) found that development assessment in DCP areas must be under repealed planning legislation, the *Integrated Planning Act 1997* (IPA), which presents risks to previous approvals and applies an outmoded assessment and decision process that is unfamiliar, complicated and does not function as intended.

The Bill seeks to validate past approvals and modernise the development assessment system applying to DCPs.

Urban Encroachment

Urban encroachment provisions for hard to locate impact generating uses (such as noise, dust, aerosols, fumes, light or smoke) have existed as part of Queensland's planning framework since 2009. The provisions were introduced to enable changes to be made through local planning schemes to increase densities within existing urban areas, while balancing the needs of existing key employment generating or hard to locate uses.

The provisions seek to protect a registered, lawfully operating business from potential court proceedings for nuisance matters, brought by property owners/occupiers in the affected area. The affected area identifies the geographic area the registration relates to, where a change to densities or development potential may encroach on the registered premises and increase the potential for civil and/or criminal proceedings.

Statutory immunity is provided for a period of 10 years, after which the registered premises is required to renew the registration if continued protection is required. The protection also ceases once any new or changed development approval or environmental authority is issued to the premises. In these cases, a re-registration process is required to be undertaken by the proponent of the premises for protections to reapply. However, the planning and environmental frameworks have already considered the potential impacts and issued approvals. Feedback from industry is that the re-registration process creates unnecessary burden, outweighing the benefit the provisions provide.

The Bill seeks proposed amendments to urban encroachment provisions in the Planning Act to reduce the regulatory burden associated with an existing registration being modified or expanded, a registration being renewed, and the registration procedure where a new or amended environmental authority and/or development approval is obtained.

Achievement of policy objectives

Growth area tools

The Bill will achieve the policy objective of optimising the planning framework's response to current housing challenges by:

- Creating a reserve power for the State in the Planning Act to take or purchase land or create easements for planning purposes, to facilitate the delivery of development infrastructure to unlock development. An amendment is made to the Acquisition of Land Act to facilitate the use of processes under the Acquisition of Land Act for the taking of land and process for calculating compensation payable.

  This approach is reasonable and appropriate given the need for State intervention to deliver critical development infrastructure. The review of 75 underutilised urban footprint sites in SEQ identified that a lack of development infrastructure was a critical barrier for development occurring on these sites. Government action is considered to be effective and proportional as local governments currently have the powers under section 263 of the Planning Act to take or purchase land for a planning purpose and the Bill provides the Planning Minister with equivalent powers, provides an additional tool where these powers are not utilised.

- Creating a reserve power for the Planning Minister in the Planning Act to determine a development application is a state facilitated application when it is delivering development that is a priority for the State, is for an urban purpose and meets certain criteria in the Planning Regulation, for example providing affordable housing. If determined to be a state facilitated application, it can be assessed by the State through a streamlined assessment process.

An amendment is made to the P&E Court Act to provide for the development approval not to be appealed in the Planning and Environment Court, apart from by the assessment manager. An amendment is made to the ED Act to reflect who the responsible entity is for state facilitated development approvals in a Priority Development Area Development Approval converts to a planning approval. An amendment is also made to the EO Act to provide for an administering agency for state facilitated applications which include an offset condition.

This approach is reasonable and appropriate because there is no streamlined assessment process for the government priority of increasing housing supply where matters such as resolving state interests, or outdated planning scheme settings are barriers to the development proceeding. Government action is considered to be effective and proportional as the streamlined process still maintains key parts of the development assessment process such as consultation but provides for certainty as the development approval cannot be appealed by a third party.

- Facilitating a new type of zone called an Urban Investigation Zone, to assist local government to better plan for growth areas by the zone prohibiting most types of development. The use of this zone is not an adverse change under the Planning Act where a process in the Minister's Guidelines and Rules has been followed.

  This approach is reasonable and appropriate because consultation with local governments identified that they typically have multiple growth areas to concurrently plan for and service. This may be as a legacy from local government amalgamations or high growth pressures and result in local governments not being able to undertake planning for all of the areas and service infrastructure to them. The limitation on adverse planning change provisions is appropriate to encourage the use of this provision, noting the use of the zone is required to be reviewed every five years. Government action is considered to be effective and proportional, as local governments do not have the ability in their planning schemes to prohibit development, and the provisions can only be used after following a process in the Minister's Guidelines and Rules to ensure all other options were considered.

Operational amendments

The Bill will achieve the policy objectives to create operational efficiencies and improvements in the planning framework by:

- Establishing a head of power for the Planning Regulation to declare that a material change of use of a premises is temporary accepted development for a stated period and does not require development approval. At the end of the stated period, the use rights afforded under the declaration will cease. At that time the use rights will revert to what was in place prior to the declaration. Alternatively, if required under the relevant planning scheme, a person may apply for a development approval for the material change of use while the declaration is in place.

  This approach is reasonable and appropriate as the amendment will reduce regulatory burden and the need for consultation for development that will help to address an emergent need. Government action is effective and proportional as having the power to declare temporary accepted development under the Planning Regulation ensures there is a mechanism through which the government can respond to urgent and emerging issues to achieve positive community outcomes in a timely manner.

- Allowing the Planning Minister to direct a local government to amend a local planning scheme to reflect a state interest that has been subject to adequate public consultation, or a matter in the Planning Regulation in which it must be consistent (and therefore public consultation isn't necessary), without first giving notice to the local government.

  The amendment is reasonable and appropriate as exercising this power will ensure consistency between a local planning scheme and state policy and legislative requirements, thereby providing certainty about what planning controls apply to land. Government action is effective and proportional as the Minister's powers may be used in circumstances where a local government has not amended its local planning instrument in a timely way.

- Modernising requirements for publishing public notices by removing the requirement that they be in a hard copy newspaper; clarifying that submissions can be made electronically without requiring the submission to be signed by each person making the submission; and ensuring documents are publicly accessible during a public health emergency or disaster situation (declared emergency). Modernising public notice requirements under SCRA and IRDA ensure this improvement applies across planning legislation.

  The amendments are reasonable and appropriate as they modernise processes relating to making submissions and accessing documents and notices under planning legislation. Government action is effective and proportional as the changes benefit state and local governments and the community by ensuring public notification can be carried out reliably across the State, particularly in locations where a hard copy newspaper is not available, clarifying when and how an electronic submission is properly made, and ensuring documents are accessible to the public during a declared emergency.

- Improving the functionality of applicable event declarations and temporary use licences, which are used to ensure the planning framework can respond to events or disasters, such as floods, cyclones, bushfires or a public health emergency. The amendments enable the Planning Minister to declare uses and classes of uses independently of the start or end of an applicable event, to extend or suspend relevant periods during an applicable events enabling statutory timeframes, such as those related to development assessment or plan making to be suspended, and to end the effect of temporary use licences (TULs). They also provide for consultation in relation to TUL applications and allow for TULs to be amended, extended, suspended or cancelled. Similar amendments are made to the ED Act to ensure these process improvements apply across planning legislation.

  The amendments are reasonable and appropriate as they provide greater flexibility to respond to an applicable event as it evolves, improve the operation of TULs, and allow the Chief Executive to respond to issues or concerns with TULs once they are approved. Government action is effective and proportional as the applicable event and TUL framework was introduced in response to the COVID-19 pandemic, and the amendments address issues that arose during with this framework during this period allowing for improved efficiency for future events.

- Simplify public notice requirements when the Planning Minister has made or amended the Minister's Guidelines and Rules, the designation process rules (which are included under the Minister's Guidelines and Rules), and the Development Assessment Rules so that these instruments take effect from the date prescribed in the Planning Regulation.

The process for making State planning instruments apply to making and amending the Minister's Guidelines and Rules, designation process rules and Development Assessment Rules, in which the Planning Minister is required to publish a notice about the decision. However, the making of and any amendments made to these instruments, take effect when they are prescribed under the Planning Regulation. This is resulting in two notification processes. The amendment is reasonable and appropriate as it removes duplicative process requirements. Government action is effective and proportional as it reduces regulatory burden.

- Allow a minimum period of 20 business days (extendable by mutual agreement) for an assessment manager or responsible entity to assess representations to change a development approval in circumstances where an applicant does not give notice to suspend the appeal period. This amendment is reasonable and appropriate, and government action effective and proportional as it provides sufficient time for an assessment manager or responsible entity to evaluate the representations and respond without necessarily exposing the recipient to additional delays.
- Allow the appeal period for an infrastructure charges notice (ICN) to be suspended from the day representations were made without giving a notice to the local government if the representations are withdrawn. The balance of the appeal period restarts the day after the local government receives the notice of withdrawal. This allows sufficient time for a recipient to appeal during the appeal period if the recipient does not suspend the appeal period. This amendment is reasonable and appropriate, and government action effective and proportional. Local government does not have a specified length of time to assess the representations under the current framework and a specified timeframe is not required where representations are made during the appeal period. Also, the period for the infrastructure charges notice starts again when the local government gives the decision notice to the recipient.
- Amend the definition of owner to clarify owner's consent requirements for development on State reserves where there is no trustee lease. The amendment is reasonable and appropriate as it removes confusion where two entities are viewed as the owner for the purposes of owner's consent. Government action is effective and proportional as it reduces administrative burden for applicants.
- Remove retaining walls as an example of building work. The amendment is reasonable and appropriate, and government action effective and proportional as it removes confusion that all retaining walls are considered to be building work.
- Prescribe that a local categorising instrument may not include assessment benchmarks about the impact of development on the cultural heritage significance of a local heritage place that is also a Queensland heritage place (dual listed heritage place). The amendment resolves a long-standing agreed state policy position and is reasonable and appropriate, as duplication in state and local government development assessment can result in increased costs to applicants, inconsistent decision making, and potentially subsequent court action and associated costs. Government action is effective and proportional as it removes duplicate assessment while ensuring the impact of a proposed development on the cultural heritage significance of a dual listed heritage place continues to be assessed by the state.

- Insert a validation provision for referral agencies, similar to the existing provision for assessment managers, refining arrangements around considering statutory instruments coming into effect after a development application is made but before it is determined. The amendment is reasonable and appropriate, and government action effective and proportional as it aligns with the validation provision made for assessment managers under the *Economic Development and Other Legislation Act 2018.*
- Clarifies in the P&E Court Act that the applicant bears the onus of proof in a submitter appeal for change applications and that the appellant bears the onus of proof for an appeal related to urban encroachment registration. This approach is reasonable and appropriate and government action is effective and proportional as the change ensures the dispute resolution system can operate effectively for the affected parties, and costs by those parties is not wasted in incorrect judicial proceedings.

Development Control Plans

The Bill will achieve the policy objectives of validating past approvals in DCP areas and modernising the assessment framework that applies to development in DCP areas by:

- validating development approvals given in DCP areas since the repeal of the IPA;
- applying the development assessment process under the Planning Act to development in a DCP area; and
- retaining the role of a DCP in categorising development and assessment, and setting assessment benchmarks.

The provisions will commence by proclamation to enable supporting amendments to the Planning Regulation to be drafted. The amendments to the Planning Regulation will set out matters for applying or interpreting DCPs, and the relationship between the regulation, local government planning schemes and DCPs so that it is clear how the assessment process operates in these areas. For example, the Planning Regulation will prescribe when state referral is required, to avoid duplication with matters that have already been integrated into a DCP and subsequent plans; but ensure other state interests are considered at the development assessment stage.

This approach is reasonable and appropriate as is addresses matters arising out of the P&E Court decision in relation to the Northlakes judgement which found the development assessment process under the repealed IPA applied in DCP areas, calling into question the validity of previous development approvals made since the repeal of that Act. Government action is considered to be effective and proportional as it applies the contemporary development assessment process under the Planning Act to DCP areas, while ensuring the DCPs remain in effect, continue to categorise development and set assessment benchmarks.

Urban Encroachment

The Bill will amend the Planning Act to ensure the policy objectives of improving the urban encroachment provisions are achieved by:

- Create a new change registration application process where an existing affected area is modified or expanded, in which consultation occurs only with persons in the expanded area.
- A simplified renewal process which does not require public consultation when there is an impending lapse in registration and there is no change to the affected area.
- Remove the requirement to re-register where a premises obtains a new or amended approved environmental authority and/or development approval (which has undergone the necessary approvals process under planning and environment legislation), where the affected area is not expanded, and where the owner gives notice to the affected area and the Planning Minister. Previously, persons in the affected area were provided an opportunity to make a submission about a re-registration.

This approach is reasonable and appropriate as the process for new registrations is unchanged, and the changes do not affect processes that assess new impacts under the planning framework or *Environmental Protection Act 1994*. Government action is considered to be effective and proportional as the changes reduce regulatory burden and increase business certainty once an initial registration application has been assessed and granted.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

Growth area tools

The provisions related to the State facilitated application process will incur an additional cost in the training, implementation and assessment of these development applications. In addition, the taking or purchase of land for development infrastructure by the Planning Minister may incur resources.

The additional support costs associated with these elements will be funded through the realignment of existing resources however, additional government funding may be sought depending on the volume of requests received through the state facilitated application process. Local governments may require additional resourcing should they wish to use the process for the Urban Investigation Zone but this is counterbalanced by the zone providing a holding pattern, allowing local governments to better allocate resources to priority areas requiring urgent planning.

Operational amendments, DCPs and Urban encroachment

The operational amendments, amendments to the development assessment process in DCP areas and amendments to the urban encroachment provisions are not expected to incur additional costs or require additional resources.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs). Potential issues that may arise are addressed below.

Growth area tools – Powers to acquire land

The possible FLP inconsistency arises from the amendment to create a new chapter 7, part 2, division 2 of the Planning Act which confers power to the Minister to acquire land and create easements for development infrastructure. However, this is justified as the use of the power compulsory acquisition power and easements provision is a reserve power, only used where the Minister is satisfied that the development infrastructure is essential to facilitate development and all reasonable steps have been taken to obtain the agreement of the owner to take actions for the provision of the infrastructure and the owner has not agreed. Further, the process under the Acquisition of Land Act including, compensation will continue to apply and where the public sector entity intends to dispose of the land within seven years from the date of acquisition, the public sector entity is obliged to offer the land to the former owner.

Growth Areas tools – Adverse Planning Change

The possible FLP inconsistency arises from the amendment of section 30 which limits the rights and liberties of individual. This section provides that a planning change to an urban investigation zone is not an adverse planning change which has the effect of excluding the right to compensation. This is justified as establishing an urban investigation zone does not arbitrarily deprive landowners from the right to compensation as it can only be established after the process in the Minister's Guidelines and Rules has been followed. This process includes the ability for the landowner to be notified of and make a submission about the amendment to rezone land to urban investigation zone. It also requires a local government to consider all feasible alternative before deciding to establish an urban investigation zone and review its use of the urban investigation zone every five years.

Growth Areas tools – State Facilitated Applications

The following possible FLP inconsistencies arise in relation to state facilitated applications within the Bill:

- limits on appeal rights including submitter appeals; and
- broad discretionary criteria for declaring a state facilitated application and assessing and deciding a state facilitated application which has the effect of many of the usual provisions which apply to development assessment do not apply, broad regulation – making power which allows the regulation to suspend appeal periods, state an approval to be suspended and allow the regulation to modify the relevant time periods for assessing an application under section 106P of the Planning Act.

These powers are limited to where the Minister is satisfied that the development meets the criteria prescribed by the regulation and where application assists in delivering development that is a priority to the State. These powers are intended to deal with occasions that may arise where a State priority (such as affordable housing to ease housing challenges) could be severely affected by the implementation of a development approval.

In these circumstances, these reserve powers allow the Minister to declare a state facilitated application and the chief executive to assess these applications. This power is necessary to ensure that the State has the ability to intervene where the standard development approval processes may have an adverse impact on the delivery of State priorities (for example, increased supply of housing). To ensure that the decisions are still subject to scrutiny by Parliament, the chief executive is required to prepare a report for each decision on a state facilitated application explaining the nature of the decision and the matters considered in making the decision. The Minister is also required to table a report in Legislative Assembly each financial year which states the number of decisions and includes the reports prepared by the chief executive.

Growth areas tools – Amendment of P&E Court Act

The possible FLP inconsistency arises from the amendment to the P&E Court which limits the ability to seek a declaration about something done under chapter 3, part 6A of the Bill. It is a fundamental legislative principle that the powers conferred by the Bill is sufficiently defined and subject to appropriate review. Under the Bill, it is not possible to bring declaratory proceedings in the P&E Court against the Minister's decision to declare a state facilitated application or the chief executive's decision on a state facilitated application, except by the assessment manager in limited circumstances. If there was an ability to appeal or bring declaratory proceedings with regards to a declaration of a state facilitated application, this would be inconsistent with the intent of the Bill. This is because, decisions of both the Minister and the chief executive for a state facilitated application under the Bill are effectively policy decisions of executive government, made to protect or give effect to a State priority. In making these decisions, the Minister is directly accountable to Parliament and must prepare a report outlining the number of decisions made and the report prepared by the chief executive regarding the decision of the state facilitated application. Through this process, the chief executive's decisions are also able to be scrutinized by Parliament.

Growth areas tools – Prohibitions

The possible FLP inconsistency arises from the amendment to prohibit particular development in an urban investigation zone. This prohibition also removes the right to make an application for this type of development and associated appeal rights. The prohibitions in the Bill about particular development in a UIZ is necessary as it prevents inconsistent development from occurring prior the land use and infrastructure planning being completed. This ensures that piecemeal development is not delivered, incurring additional costs for infrastructure provision for local governments and state agencies.

This prohibition allows local governments to put land in a holding pattern until it is ready to support growth. However, the use of this zone can only be established after the process in the Minister's Guidelines and Rules has been followed. This process includes the ability for the landowner to be notified of and make a submission about the amendment to rezone land to urban investigation zone. It also requires a local government to consider all feasible alternatives before deciding to establish an urban investigation zone and review its use of the urban investigation zone every five years.

Further, a number of exemptions have been included in the regulation including, accepted development and development carried out under development approvals that are in effect. The Bill also expressly provides that prohibition for particular development in an urban investigation zone does not apply to state facilitated applications, providing applicants with an alternate pathway to undertake development for urban purposes, where meeting the requirements for that pathway.

Growth areas tools – Transitional regulation - making power

The Bill provides transitional regulation – making power which enables the making of a regulation that is necessary to enable or facilitate the transition from the old purpose statement of the emerging community zone to the Bill's purpose statement. The Bill inserts a transitional regulation and it has a retrospective operation to a time that is no earlier than when the old purpose statement was still in effect.

The Bill provides that the transitional section 355 expires two years after the section commences. This period of two years is established to recognise that the implementation of the new purpose statement in plan-making usually takes time to flow through to instruments and assessments. The absence of this period would expose local council to deciding applications that do not reflect contemporary requirements or going through expensive and lengthy processes to update their schemes to align with the new purpose statement.

The Bill also provides for the section in the regulation to operate retrospectively because the changes to planning schemes occur over a longer period of time and the delegation of this legislative power is appropriate and provides the necessary level of detail to ensure that the provisions within the Bill are workable.

Power of Minister to direct particular amendment of planning schemes

New section 26A(3) allows the Minister to direct a local government to amend its planning scheme as provided for in section 20 of the Planning Act without consulting with any person and may raise FLP issues in relation to natural justice. The ministerial power under section 26A only applies in limited circumstances. Exercising this power will ensure consistency between a local planning scheme and state policy and legislative requirements, thereby providing certainty about what planning controls apply to land.

Essentially the effect of the planning scheme amendment under a section 26A direction merely reflects the way the planning scheme already has effect under the Planning Act that already override provisions in the planning scheme. such as regulated requirements or regulations made under the Planning Act. Similarly, the Minister may direct a local government to amend its planning scheme to protect, or give effect to, a State interest where adequate public consultation was carried out in relation to the subject of the amendment. Further, the Minister must state a reasonable period for the local government to make the amendment.

Urban Encroachment – registration renewal

Limiting the public's ability to participate in public consultation for an urban encroachment registration renewal may be considered a possible inconsistency with the FLPs relating to the rights and liberties of individuals. Arguably this is not inconsistent with FLPs because there is no change to the development approval, environmental authority or affected area, and public consultation occurred as part of the initial registration process. Furthermore, as part of the renewal application process, under section 59 of the Planning Regulation the owner of the premises must provide certain information, including (but not limited to) a technical report detailing the levels of emissions during operating hours, details of any complaints made in the previous 12 months about emissions from the premises and details about any action taken to mitigate emissions.

Urban Encroachment - penalties

The possible FLP inconsistency arises from the amendments to urban encroachment provisions which create several new offences within the Planning Act. The penalties relate to the new processes which allow additional land or removal of land from the affected area for registered premises and changes to registered premises where a new or amended authorities starts applying. Penalty units are imposed for not complying with requirements about publishing a notice, notifying the Minister that this has been undertaken and amending the title record in relation to the removal of the land from the affected area.

These penalties are necessary as many relate to the owner's responsibility to publish any changes to the registration to include or remove land from the affected area of a registered premises or amend the relevant title record. Failure to undertake the actions and processes that are prescribed within the Planning Act for adding or removing affected land from the registration for a registered premises or where a new or amended authority starts applying to the registered premises may interact with the rights and liberties of individuals within the affected area.

The penalties proposed by the Bill are justified as the obligations on owners are important and appropriately the subject of a penalty where there is non-compliance and proportionate and relevant to the actions for which these consequences are applied. Further, the penalties proposed are consistent with existing offences and their penalty amounts under chapter 7, part 4 of the Planning Act.

Urban Encroachment – criteria for registration of premises

The possible FLP inconsistency arises from the amendment to the urban encroachment provisions which allows the Minister to approve an amendment of a registration to include additional land in the affected area and changes to matters the Minister requires and must consider when approving a registration. This may raise issues with the rights and liberties of individuals to which a registration may relate to if the criteria for making the decision is not sufficiently defined.

The Minister's decision is to be guided, in part, by criteria that are prescribed by regulation (rather than being set out in the Act). The Planning Act currently allows a regulation to prescribe matters the Minister must assess against, or have regard to. The regulation sets out an extensive list of requirements of a technical or administrative nature. However, the most significant elements of the criterion are reflected in the Planning Act. For example, the Minister cannot approve the amendment of a registration to include additional land unless public consultation requirements have been met, and emissions from the registered premises comply with a development approval and an environmental authority. The current criterion about public consultation for a proposed registration under section 64 of the Planning Regulation has also been elevated to the Planning Act.

Applicable Events - Revoking applicable event notices

The possible FLP inconsistency arises as the Bill allows the Minister to revoke the applicable event notice which would stop the effect of temporary use licences given for applicable event, including licences under the ED Act. This may potentially have an impact on the rights and liberties of individuals. However, this is justified as an applicable event is only declared in response to emerging circumstances and are subject to change as a result of these circumstances evolving, such as there no longer being a need for the applicable event to continue. As a result of the nature of the applicable event being subject to change, the licence holder is not precluded from seeking approvals to make the temporary arrangement for the premises more permanent during or after the applicable event to limit any adverse effects of the Minister revoking the applicable event. Further, a licence holder is not prevented from reverting to the use rights and development conditions that were in place prior to the licence being granted.

Applicable Events - Extending the period for which temporary use licences have effect

The possible FLP inconsistency arises as the chief executive, the Minister and the Minister of Economic Development Queensland (MEDQ) under the ED Act, have the ability to extend the period for which a temporary use licence has effect, which may impact the rights and liberties of individuals that are impacted by the effect of the licence. Notably the powers of the different entities arise in different circumstances.

Temporary use licences are granted following the declaration of an applicable event, which are usually in response to an emerging circumstance that affect a state interest. A temporary use license allows a change to an existing development approval conditions or other operating constraints which may prevent them from operating during the applicable event. The extension of a temporary use licence is required in circumstances, in which it is necessary for the use to continue, having regard to the nature of the applicable event, and that there are reasonable grounds to give an extension during an applicable event. These temporary use licences do not create lawful use rights and are intended to operate temporarily until the emerging circumstance has been resolved.

Applicable Events - Ability to amend, cancel and suspend a Temporary Use Licence

The possible FLP inconsistency arises from the amendment which allows the chief executive to amend, suspend or cancel a temporary use licence, including in instances where an impact is 'likely to occur'. Similar provisions are provided for under the ED Act giving the MEDQ power to amend, suspend or cancel a temporary use license. This may raise issues with the rights and liberties of individuals who hold these licences.

A temporary use licence is usually granted in response to emerging events that affect a state interest. There may be a need for the chief executive to amend, suspend or cancel a temporary use license if the chief executive has grounds to, such as if there is no longer a need for the continuation of the license, a non-compliance is occurring or there has been an adverse amenity impact on the locality as a result of the change the subject of the license.

The process allows for a show cause process which provides the impacted holder of the license with natural justice by providing them with the opportunity to make a submission to the chief executive to show why the proposed action to amend, cancel or suspend the temporary use licence should not be taken. The chief executive must consider any submission made and decide what action to take and provide a notice of the chief executive's decision to the license holder.

Applicable events – Ability to delegate powers to extend, amend, cancel or suspend a Temporary Use Licence

The Bill amends the Planning Act, chapter 7, part 4B, division 3 to give the chief executive new powers to extend, amend, suspend and cancel temporary use licences. Under the Planning Act, section 275M the chief executive is able to delegate their powers under that division.

The potential FLP inconsistency arises about whether the delegation of power is appropriate and whether the persons to whom it is delegated to, is appropriate. The Bill also makes similar amendments to the ED Act, chapter 5, part 3B, division 2 and allows MEDQ to delegate these powers. However, this is justified as the chief executive is only able to delegate these powers to an appropriately qualified public service officer. The delegation will enable the timely and efficient extension, amendment, cancellation or suspension of the temporary use licences to respond to changing circumstances.

Applicable events – Revocation of Declarations

The Planning Act, new section 275PB allows the Minister to revoke declarations. This may have impacts on the rights and liberties of individuals, including a person's business rights, as it may impact on the hours of operation of a use or restrictions on the movement of goods in relation to the use. New section 275PB also allows the Minister to revoke a declaration without consulting with anyone. This possible FLP inconsistency arises as it raises concerns about natural justice. However, this is justified as there may instances having regard to the nature of the applicable event, where it is no longer necessary that certain uses be not subject to particular conditions (for example hours of operation, traffic movements) and therefore, it is appropriate that the effect of the declaration ceases. The period of 10 business days is also considered to be sufficient as it provides a business operator or landowner with time to adjust their business practices to meet the original conditions. Noting that the declaration of the applicable event also affects the rights and liberties of individuals impacted by the use subject to particular conditions, this time period requires that the use is converted back to its original state in a timely manner.

Applicable events – Extension of a declaration

The Planning Act, new section 275PA allows the Minister to extend the period of a declaration made under section 275O. The possible FLP inconsistency arises as it may impact the rights and liberties of individuals, particularly those persons who are affected by the removal of the limit of hours of operation or restrictions on the movement of goods. However, this is justified as declarations are usually in response to an emerging circumstance that affect a state interest. These emerging circumstances may necessitate the Planning Minister to extend the period for which the declaration applies, having regard to the nature of the applicable event. Further, a declaration can only be extended until the end of the applicable event period for the applicable event notice which ensures that the uses or classes of use under new section 275O are temporary.

Consultation

Consultation occurred with State Government agencies and there is broad support for the amendments.

Growth area tools

Targeted stakeholder consultation including all local governments, local government peak bodies, utility providers, and legal, community and industry peak bodies occurred on the policy intent of the growth areas component of the Bill from 31 March to 14 April 2022 and through stakeholder meetings throughout 2022 and 2023.

Operational amendments, DCPs and Urban encroachment

Public consultation was undertaken about the policy intent for the proposed amendments to the Planning Act relating to DCPs, urban encroachment and the operational amendments for 20 business days from 4 April to 5 May 2023.

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.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 states that, if enacted, the Act may be cited as the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023*.

Clause 2 Commencement

Clause 2 lists the provisions of the Bill that do not commence on assent. The listed provisions commence on a day (or on days) fixed by proclamation.

Part 2 Amendment of Acquisition of Land Act 1967

Clause 3 Act amended

Clause 3 provides that Part 2 amends the *Acquisition of Land Act 1967* (Acquisition of Land Act).

The Acquisition of Land Act provides a comprehensive framework for the acquisition of land for public works and other public purposes.

Clause 4 Amendment of sch 2 (Dictionary)

Clause 4 amends Schedule 2 of the Acquisition Act to include the Minister administering chapter 7, part 2 of Planning Act, as a relevant Minister. This means that the Minister administering the Planning Act is relevant Minister for the purposes of compulsory land acquisitions under the Planning Act and under the Acquisition of Land Act.

Part 2 Amendment of Economic Development Act 2012

Clause 5 Act amended

Clause 5 provides that Part 3 amends the ED Act.

Clause 6 Amendment of s 51AO (Change applications under the Planning Act for Planning Act approvals

Clause 6 amends section 51AO relating to change applications under the Planning Act for Planning Act approvals to include, change applications under section 78A(4) of the Planning Act, change applications under section 81(2)(e) and (f) and to insert the new Part 6A of the Planning Act. The purpose of this amendment is to clarify the corresponding relationship that exists between the Planning Act and ED Act, particularly in instance where land ceases to be a priority development area.

Clause 7 Amendment of s 171D (Definitions for part)

Clause 7 inserts a new definition for this part, licensed premises, and refers to section 171H(2)(a)(ii) for the definition.

The term 'licensed premises' is used to describe the premises to which the temporary use licence relates throughout chapter 5, part 3B Applicable events.

Clause 8 Insertion of new chapter 5, part 3B, division 2, subdivision 1 heading

Clause 8 creates a new heading 'Subdivision 1 Preliminary' after the Division 2 (Temporary use licences) heading and before section 171E (Application of division heading).

New headings are inserted into part 5 to assist readability.

Clause 9 Insertion of new chapter 5, part 3B, division 2, subdivision 2 heading

Clause 9 creates a new heading 'Subdivision 2 Applications for temporary use licences' after section 171E (Application of division heading) and before section 171F (Applications for temporary use licences).

Clause 10 Insertion of new s 171FA (MEDQ may consult about applications)

Clause 10 introduces new section 171FA which establishes that the Minister for Economic Development Queensland (MEDQ) may consult with any entity MEDQ considers appropriate when considering an application for a temporary use licence.

Clause 11 Amendment of s 171H (Notices of decisions)

Clause 11 amends section 171H to insert 'the licenced premises' as a term to define the premises to which the temporary use licence relates.

This clause also requires a notice of a decision (to give the temporary use licence) to state the end date for the applicable event period to which the licence relates. This is because a temporary use licence no longer automatically extends when the applicable event is extended.

The remaining provisions in section 171H are renumbered accordingly.

Clause 12 Replacement of s 171I (Period of temporary use licences)

Clause 12 replaces section 171I and establishes that a temporary use licence has effect from the day the decision notice is given to the applicant, termed the licence starting day. The last day of the licence is the end date of the applicable event period for the notice in effect at the licence starting day; or when a cancellation takes effect; or if the licence has been extended, the end of the extended period. The clause also establishes that a temporary use licence ends if the applicable event notice is revoked.

Clause 13 Insertion of new chapter 5, part 3B, division 2, subdivisions 3–6 and subdivision 7, heading

Clause 13 inserts new subdivisions which deal with temporary use licence extensions by application; Ministerial power to extend all temporary use licences; amendment or cancellation of temporary use licences by application; and amendment, suspension or cancellation by the MEDQ.

New Subdivision 3 'Extension of temporary use licences by application' introduces new sections 171JA to 171JE which creates a new application process to extend a temporary use licence if the applicable event period is extended under section 275F of the Planning Act.

New section 171A (Application of subdivision) provides that subdivision 3 applies to temporary use licences that given for an applicable event and that are extended under section 275F.

New section 171JB (Applications to extend temporary use licences) provides that before the licence ends, the holder of a temporary use licence can apply to MEDQ to extend the period for which the temporary use licence has effect under section 171JI. The application must be in the approved form, including matters prescribed in the Planning Regulation. In instances where a temporary use licence ends before the application is decided, the licence does not end until a decision has been made by MEDQ or the application is withdrawn. However, a temporary use licence can be suspended or cancelled during this period.

New section 171JC (MEDQ may consult about applications) enables MEDQ to consult with any entity it considers appropriate about the application to extend a temporary use licence.

New section 171JD (Decisions on applications) provides for the MEDQ to consider and decide an application for extending a temporary use licence. This decision can be to give or refuse the application, or to extend the licence for different period. The MEDQ may decide to extend the licence only if satisfied there are reasonable grounds, and the period must not extend beyond the end of the extended applicable event period.

New section 171JE (Notice of decisions) provides for the MEDQ to give the applicant a notice of decision. If the decision is to extend the period, the notice must include certain information including the day the notice was given, the licenced premises, the extended period and the reasons for the decision. A copy of the notice must be given to the relevant local government in which the licenced premises is located. If the decision is to refuse, the notice must state the reasons for the decision.

New subdivision 4 'Power of MEDQ to extend all temporary use licences' introduces new section 171JF (MEDQ may make declaration extending period of all temporary use licences). If the applicable event period is extended under the Planning Act and the MEDQ is satisfied that it is appropriate for temporary use licences to be extended (each termed a relevant temporary use licence), the MEDQ can declare by notice on the department's website that the period of each relevant temporary use licence in effect is extended until the end of the extended applicable event period. Before making the declaration, the MEDQ must give notice of the declaration to relevant licence holders and relevant local governments. The declaration is considered a statutory instrument.

New subdivision 5 'Amendment or cancellation of temporary licences by application' prescribes the process in which a temporary use licence holder may apply to amend or cancel a licence and how decisions are made.

New section 171JG (Applications to amend temporary use licences) provides for a licence holder to apply to the MEDQ to amend the licence, including a licence condition. The application must be in the approved form, including matters prescribed in the Planning Regulation.

New section 171JH (MEDQ may consult about applications) provides that the MEDQ may consult with any entity they deem appropriate when considering the application under section 171JG.

New section 171JI (Decisions on applications) provides the MEDQ must consider the application and decide whether to make all or part of the requested amendment, or to refuse to make the requested amendment. The MEDQ can decide to amend a temporary use licence only if satisfied that, having regard to the nature of the applicable event, and if there are reasonable grounds to do so.

New section 171JJ (Notices of decisions) provides for the MEDQ must give the applicant a notice of the decision. If the decision is to make all or part of the requested amendment, the notice must include certain information including the details of the amendment and, if the decision is to make part of the requested amendment, the reasons for the decision. The MEDQ must give a copy of the notice must be given to the relevant local government in which the licenced premises is located and the licence is taken to be amended as per the notice from the day the notice is given. If the decision is to refuse, the notice must state the reasons for the decision.

New section 171JK (Requests to cancel temporary use licences) provides that a licence holder may ask, in writing, the MEDQ to cancel the licence. On receiving the request, the MEDQ must cancel the temporary use licence by giving notice to the licence holder and a copy of the notice to the relevant local government. The cancellation takes effect on the day the MEDQ gives the notice or a later day as stated on the notice of cancellation.

New subdivision 6 ‘Amendment, suspensions or cancellation of temporary use licences by MEDQ’ prescribes when and how the MEDQ can amend, suspend or cancel temporary use licences.

New section 171JL (Grounds for MEDQ to amend, suspend or cancel temporary use licences) provides that is the MEDQ has grounds to amend, suspend or cancel a licence when:

- MEDQ reasonably believes the licence holder has failed to comply with a condition of the licence; the licence was obtained because of false or misleading information; or public safety has been, or is likely to be, endangered because of the licence.
- MEDQ becomes aware of an environmental or amenity impact that is occurring or is likely to occur as a result of the licence; and considers the application for the licence would have been refused if the MEDQ had been aware of the impact.
- MEDQ is satisfied that, having regard to the nature of the applicable event, there are no longer reasonable grounds for the licence to apply.

New section 171JM (MEDQ may amend, suspend or cancel temporary use licences) provides the MEDQ to amend, suspend or cancel temporary use licences (termed proposed action) when a ground to do so exists. The MEDQ must give the licence holder given notice including the proposed action; the grounds for the proposed action; an outline of the facts and circumstances forming the basis for the grounds; if relevant, the proposed suspension period; and the period in which the licence holder may make a submission to show why the proposed action should not be taken.

This section requires the MEDQ to consider any submissions made within the stated period and decide to take the proposed action; not to take any action; amend the licence (if the action is to suspend the licence); or suspend or amend the licence (if the action is to cancel the licence). The MEDQ must give the licence holder notice of the decision, including a date the decision takes effect (if not on the day of the notice). MEDQ must give a copy of the notice to the relevant local government.

This section clarifies that if the licence is amended, section 171J 'the effect of temporary use licences' applies from the day the amendment takes effect. If the licence suspended, the licence does not have effect for the period of the suspension.

New subdivision 7 Delegations is inserted before section 171K (Delegations) for readability.

Clause 14 Amendment of s 171K (Delegations)

Clause 14 amends section to 171K restricts the MEDQ's ability to delegate the power to extend all temporary use licences.

Clause 15 Amendment of s 171N (Extension of periods for doing things under Act)

Clause 15 amends section 171N to provide for the content of an extension notice. This includes stating it applies when the relevant period starts during the period the notice is in effect and/or when the relevant period has started by not ended before the notice took effect. This clause inserts a new subsection 4A for circumstances in which the Minister further extends a relevant period and provides content that may be included in the 'further extension notice'. Subsection (6) is omitted, and the clause provides for renumbering.

Clause 16 Amendment of s 171O (Suspension of periods for doing things under Act)

Clause 16 amends section 171O to provide for the content of a suspension notice. This includes stating it applies when the relevant period starts during the period the notice is in effect and/or when the relevant period has started by not ended before the notice took effect. This clause inserts a new subsection 4A for circumstances in which the Minister further suspend a relevant period and provides content that may be included in the 'further suspension notice'. Subsection (6) is omitted, and the clause provides for renumbering.

Clause 17 Amendment of s 172 (Registers)

Clause 17 amends section 172 to provide that MEDQ also keeps a register of temporary use licences given by MEDQ under section 171H and inserts new section 172(1A) to establish the documents and information that should be included on the register, including information about licences that are extended, amended, cancelled and suspended.

Clause 18 Amendment of sch 1 (Dictionary)

Clause 18 inserts 'licenced premises' as a definition that applies to chapter 5, part 3B and refers to section 171H(2)(a)(ii) for the definition.

Part 4 Amendment of Environmental Offsets Act 2014

Clause 19 Act amended

Clause 19 provides that Part 4 amends the *Environmental Offsets Act 2014* (EO Act).

Clause 20 Amendment of sch 2 (Dictionary)

Clause 20 amends Schedule 2 which provides a definition of terms used in the EO Act. The amendments to Schedule 2 are as follows:

New definition

- The new definition for 'development approval' provides that a development approval means a development approval under the Planning Act.

Amended definitions

- The existing definition for 'administering agency' is amended to include approvals that are not an approval mentioned in subparagraph (ii) which refers to an authority under another Act for a prescribed activity. The definition is also amended to provide that an administering agency for state facilitated applications with an offset condition is the person nominated by the chief executive for enforcement or otherwise the planning chief executive.

Part 5 Amendment of Planning Act 2016

Division 1 Preliminary

Clause 21 Act amended

Clause 21 provides that Part 5 of the Bill amends the Planning Act.

Division 2 Amendments commencing on assent

Clause 22 Amendment of s 17 (Minister's guidelines and rules)

Clause 22 amends section 17 to remove duplicate notice requirements. It provides that only section 10 'Making or amending State planning instruments' applies to making and amending the Minister's Guidelines and Rules and prescribes the relevant public notice requirements.

New subsection (2D) provides the process and public notice requirements if the Minister makes a minor amendment to the Minister's Guidelines and Rules. These include publishing a notice with the day when the amendment took effect, where a copy of the amended Minister's Guidelines and Rules may be inspected or purchased.

The Minister must also give a copy of the public notice and amended Minister's Guidelines and Rules to the affected local government. A new definition for minor amendment is provided to assist with interpretation of the section.

Section 17(3) allows for the amended guidelines and rules to take affect when a regulation prescribes them.

Clause 23 Amendment of s 18 (Making or amending planning schemes)

Clause 23 amends section 18(5)(b)(i) and (ii) to remove the requirement for public notices to be published in a newspaper circulating in the local government area.

Clause 24 Amendment of s 36 (Criteria for making and amending designations)

Clause 24 removes duplicate notice requirements by removing section 36(6) which prescribes the current process for making or amending the guidelines; and inserts a note to reference new section 42B which prescribes the new process.

Clause 25 Amendment of s 37 (Process for making or amending designation)

Clause 25 removes duplicate notice requirements by removing section 37(7) which prescribes the current process for making or amending the rules; and inserts a note to reference new section 42B which prescribes the new process.

Clause 26 Insertion of new s 42B

Clause 26 inserts new section 42B 'Process for making or amending guidelines under section 36 or the designation process rules'. This section provides that section 10 applies to the making or amendment of the guidelines under section 36(3) or the designation process rules under section 37, and establishes the related public notice requirements. The new section also provides for the public notice requirements if the Minister makes a minor amendment to these instruments. Section 42B(6) provides that the guidelines, designation process rules or amended guidelines or rules take effect from the day they are prescribed in the Planning Regulation. The section also clarifies the definition of minor amendment for assist with the interpretation of the section.

Clause 27 Insertion of new chapter 3, part 1, division 1, heading

Clause 27 creates a new heading Division 1 (Instruments and categories) after the existing Part 1 (Types of development and assessment) heading and before section 43 (Categorising instruments).

Clause 28 Insertion of new chapter 3, part 1, division 2

Clause 28 inserts a new framework for Temporary Accepted Development. Subdivision 1 'Declarations' includes new section 46A which provides for the regulation to declare a particular material change of use of a premises to be temporary accepted development for a stated period.

Under new Subdivision 2 'Effect of declarations', new section 46B (Application of the subdivision) provides this subdivision applies if the regulation declares that a particular material change of use is temporary accepted development for a stated period.

New section 46C (Effect of declaration and carrying out material change of use) prescribes that for the stated period, the material change of use is categorised as accepted development by a regulation made under sections 43(1) and 44(5) of the Act. New section 46C(2) and (3) prescribe that any use of the premises that was a lawful uses of premises immediately before the use carried out on the premises under the declaration does not stop being a lawful use merely because the material change of use is carried out.

New section 46D (Development applications made during the stated period) provides that:

- If the material change of use would be assessable development if the declaration had not been made, a person may apply for a development approval for the material change of use; and that, if approved, the development may start during the stated period. This ensures that, if the material change of use would ordinarily be assessable development, then the category of assessment under the relevant categorising instrument applies.
- When the development approval is given during the stated period and the development may start (under section 72), the declaration stops having effect for that premises that is the subject of the approval.
- When the declaration stops having effect, the material change of use under the declaration is no longer a lawful use of the premises. This includes when the material change of use involved the start of a new use or re-establishment of a use, or an increase in the intensity or scale of an existing use.

New section 46E (Use of premises after stated period ends) provides for the use of premises after the stated period ends when there has been no development approval for the material change of use before the end of the stated period, or if immediately before the end of the stated period, development under a development approval given for the material change of use is not permitted to start under section 72:

- When the stated period ends, the material change of use under the declaration is not a lawful use. This includes when the material change of use involved the start of a new use or re-establishment of a use, or an increase in the intensity or scale of an existing use.
- Section 46E(2)(b) clarifies that where the temporary accepted development material change of use has been carried out and a development approval has not been given, a change to a planning instrument that starts applying to the premises at the end of the stated period can stop the use from continuing, further regulate the use or require the use to be changed, despite section 260(1) of the Planning Act.
- Section 46E(2)(b) also includes a note to refer to section 260(3). Section 260(3) prescribes that if a planning instrument change happens after a development approval is given, the change does not stop or further regulate the development or otherwise affect the approval to any extent to which the approval remains in effect.
- If a development approval is not given for the material change of use before the end of the stated period, carrying out the use after the end of the stated period is taken to be a material change of use.

- If immediately before the end of the stated period, development under a development approval for the material change of use is not permitted to start under section 72, the carrying out of the use after the end of the stated period is taken to be a material change of use premises, however, it does not have the effect that a planning instrument may stop or further regulate the carrying out of the material change of use under the development approval or affect the development approval.

Clause 29 Amendment of s 68 (Development assessment rules)

Clause 29 provides the public notice requirements for making the Development Assessment Rules, relevant to section 10(6) and including that the notice must be given immediately after the rules are prescribed in the Planning Regulation.

Clause 30 Amendment of s 69 (Amending the development assessment rules)

Clause 30 amends section 69 to remove duplicate notice requirements by providing that only section 10 'Making and amending State planning instruments' applies to making and amending the Development Assessment Rules. Public notice requirements for an amendment made under section 10 are also prescribed. The amendment also provides that section 10 does not apply to minor amendments prescribes the public notice requirements if the Minister makes a minor amendment to the Development Assessment Rules. A new definition for minor amendment is provided to assist with interpretation.

Clause 31 Amendment of s 75 (Making change representations)

Clause 33 amends section 75 to omit subsection (4)(b)(ii) and inserts that the appeal period is suspended if the change representations are made within 20 business days after the notice is given to the assessment manager, until the assessment manager gives the applicant the decision notice for the change representations.

The amendment also introduces new section 75(4A) to provide that when an applicant makes change representations during an appeal period without giving notice, the appeal period is suspended until the applicant withdraws the change representations; the assessment manager gives a decision notice; or the end of 20 business days or a longer period with written agreement between the applicant and the assessment manager. The section also clarifies that if the decision notice mentioned in subsection (4)(b)(ii) is a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

Clause 32 Amendment of chapter 4, part 2, division 2, subdivision 5, heading (Changing charges during relevant appeal period)

Clause 32 removes the word 'relevant' from this heading.

Clause 33 Amendment of s 125 (Representations about infrastructure charges notice)

Clause 33 amends section 125 to clarify that the local government must consider any representations made by the recipient. The clause also inserts new subsection (8) which allows the appeal period to be suspended if the recipient withdraws the representations. If the recipient gives the local government a notice withdrawing the representations, the appeal period is taken to have been suspended from the day the representations were made and the balance of the period restarts the day after the local government receives the notice of withdrawal. The section is also amended to insert a notice to see section 126 in relation to suspending an appeal by notice.

Clause 34 Amendment of s 126 (Suspending relevant appeal period)

Clause 34 amends the section's heading to 'Suspending appeal period by notice' and removes other references to 'relevant'. This clause also inserts a note referring to section 125(7) and (9) in relation to the appeal period in other circumstances. The clause also clarifies that the balance of the appeal period restarts on the day after the day local government receives the notice of withdrawal.

Clause 35 Amendment of s 264 (Public access to documents)

Clause 35 amends section 264 to insert subsection 8, which provides that for a document prescribed by regulation, a person is taken to comply with subsection 5(a)(i) or (b), if –

- a declared emergency applies to a place where that document is held;
- the person is satisfied that it is appropriate to give a copy of the document to another person asking to insect the document to either, protect the health, safety or welfare of anyone affected by the declared emergency or to facilitate the continuance of the public administration which has been disrupted by the declared emergency; and
- the person gives a copy to the other person, other than allow them to inspect the document.

The clause also inserts a definition of 'declared emergency' to assist with the interpretation of the section.

Clause 36 Amendment of s 343 (Validation provision for particular development approvals)

Clause 36 amends section 343 to amend the notice to refer to section 356.

Clause 37 Insertion of new chapter 8, part 9

Clause 37 creates transitional provisions for appeal periods started but not ended when this Bill commences. This is necessary as the provisions relating to appeal periods for development decisions and infrastructure charges notices have been amended. It also inserts a new heading Part 9 (Transitional and validation provisions for the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023.*

New division heading 'Division 1 Provisions commencing on assent' is inserted. New section 355 (Transitional regulation-making power) provides that a transitional regulation may make a provision about a matter not provided or sufficiently provided for, which are necessary to make a provision to allow or facilitate anything to achieve the transition from the operation of the Planning Act in force before commencement, to the operation of the Planning Act as in force after commencement.

New section 355 also provides that the transitional regulation may have retrospective operation to a day not earlier than the day the relevant amendment commences; it must declare it is transitional; and this new section 355 and any transitional regulation expire two years after this section commences.

This clause also inserts a definition for 'relevant amendment' to assist in interpretation of the section.

New section 356 (Extension of validation under section 343 to referral agencies) provides that section 343 applies and is taken to have always applied to development approvals mentioned that section as if:

- a reference to assessment manager included a reference to the referral agency;
- a reference to sections 45(3) or (5), in section 343(1) included a reference to section 55(2); and
- a reference to the former section 45(7) in section 343(1)(d) included a reference to the former section 55(4).

The section also defines former section 55(4) and section 55(2).

New section 357 (Existing public notices continue) is relevant to the new definition of public notice. It applies to a former public notice for a provision, if the public notice was published before commencement, and immediately before commencement, a consultation period for the public notice had not ended. Subsection 2 provides that the former provision continues to apply in relation to the public notice as if the POLA Act had not been enacted. To assist with interpretation of the section, the clause also inserts new definitions for 'former public notice' and 'former'.

Clause 38 Amendment of schedule 2 (Dictionary)

Clause 38 amends Schedule 2 which provides a definition of terms used in the Act. The amendments to Schedule 2 are as follows:

Omitted definitions

- The existing definition for 'owner' (both occurrences) is omitted as they are now redundant with the new definition for owner.
- The existing definition for 'public notice' has been omitted and replaced with the new definition.

New definition – owner

- The new definition for 'owner' retains that the owner of the land, premises or place is a person that is entitled to receive rent for the land, premises or place, or that would be entities to receive rent for the land, premises or place if the land, premises or place were rented to a tenant. The note to section 247 of the *Transport Infrastructure Act 1994* is retained.
- Under this new definition, the owner of the land, premises or place may also mean, for giving consent to an application made under chapter 3 in relation to the premises that are or are on, a reserve within the meaning of the *Land Act 1994* (Land Act), is the trustee for the reserve, if the State, local government or statutory body is the trustee and the Minister has not granted a lease over all or part of the reserve to which the application relates or otherwise the Minister of the department in which the Land Act is administered.
- The new definition retains that the owner of a thing that has been seized includes the person who is entitled to the possession of thing has the thing not been seized.

New definition – public notice

- The new definition for 'public notice' means a notice published:
  - in the gazette or on the department's website for a public notice mentioned in Chapter 2, part 2, or section 17, 42B or 69,
  - in a way that the local government considers would bring the notice to the attention of the persons interested in or affected by the information stated in the notice or in the gazette (unless relating to the proposed local planning instrument or an amendment to that instrument) for a public notice mentioned in chapter 2, part 3, other than section 17.

Amended definitions

- The definition of 'building work' is amended to omit paragraph (a)(i) example.
- The definition of 'properly made submission' is amended to replace paragraph (a) and provides that a properly made submission is signed in hard copy or electronically in a way stated in the notice by each submission-maker.

Division 3 Amendments commencing by proclamation

Subdivision 1 Amendments relating to acquisition of land

Clause 39 Amendment of s 71 (When development approval has effect)

Clause 39 amends section 71 to include the Planning Act. This means that if land that is a subject of an acquisition approval is taken or acquired under the Planning Act, after the development approval would ordinarily take effect, the approval will take effect after the land is taken or acquired.

Clause 40 Amendment of s 150 (Infrastructure agreement)

Clause 40 amends section 150 to provide that an infrastructure agreement is an agreement, that amended from time to time and stated in the new section 263D.

Clause 41 Insertion of new chapter 7, part 2, division 1, heading

Clause 41 inserts a new heading before section 263 to clarify that division 1 relates to the taking and purchasing of land by a local government.

Clause 42 Amendment s 263 (Taking or purchasing or land for planning purposes)

Clause 42 amends the heading of section 263 to clarify that this section relates to when local governments may take or purchase land.

Clause 43 Insertion of chapter 7, part 2, division 2

Clause 43 inserts new division 2 to chapter 7, part 2, which relates to the taking of land by the State.

New section 263A (When the State may take land) provides for circumstances in which the State government may take land. The State can take land for development infrastructure if –

- the Minister considers the infrastructure is necessary to facilitate development;
- the Minister is satisfied that reasonable steps are taken to obtain the agreement of the owner of the land for actions on the land to facilitate the provision of infrastructure, but the owner has not agreed to the actions;
- the infrastructure agreement has been entered into providing or paying for the infrastructure under Chapter 4 of the Planning Act;
- a person has entered into an infrastructure agreement with the department about the costs of taking the land under the new section 263D;
- the taking of the land complies with the criteria under the Planning Regulation; and
- the Governor-in-Council approves the taking of the land by regulation.

This section also outlines that the State's power to take land will continue to apply despite the taking of the land is for conferring the rights and interests to the land, to another entity, and where a person may gain a benefit from the actions associated with taking the land. The State can also take land for another purpose which is incidental to the provision of infrastructure.

This section also provides that the process for the acquisition and the payment of compensation for taking the land under the Acquisition of Land Act, will apply as if the land was being taken under the Acquisition of Land Act. However, to clarify, the taking of land under this section is not the taking of land under the Acquisition of Land Act and does not limit the State's power of take land as a constructing authority, under the Acquisition of Land Act.

New section 263B (Power to take easements) provides that the State's power to take land under section 263A also includes the power to create an easement over land by registration under the Land Act (chapter 6, part 4, division 8) or the *Land Title Act 1994* (chapter 6, part 6, division 8). However, an easement may only be created if, the entity in whom the easement will vest has agreed to the terms of the easement and the relevant local government has agreed to the terms of the easement. The process under the Acquisition of Land Act, for the taking of land and the payment of compensation will apply to the easement as if the easement were land. The

section also clarifies that an easement created under this section is a public utility easement under the Land Act or the Land Title Act.

New section 263C (Vesting of land taken under s 263A) provides that land taken under section 263A will vest in the entity stated in the gazette resumption notice for the taking land, on the day the notice is published in the gazette. However, the entity stated in the gazette resumption notice must be the public sector entity. This section also clarifies that the gazette resumption notice has the same meaning as 'gazette resumption notice' under the Acquisition of Land Act, schedule 2.

New section 263D (Costs of taking land under s 263A) provides that before the land is taken, a person may enter into an agreement with the department about the costs of the land. The agreement may require the person to give a guarantee or provide security to the department for the costs, and if the person does not pay to the department the costs of taking the land in accordance with the agreement, the department may recover the costs from the person as debt owed to the State. To clarify, costs of taking the land includes, operational, administrative, and legal costs and any compensation payable for the taking of the land.

New section 263E (Application of Acquisition Act, sections 36 and 37) clarifies the application of sections 36 and 37 of the Acquisition of Land Act. Sections 36 and 37 will apply for exercising the State's power to take land under section 263A as if the State were exercising its power to take land as a constructing authority under that Act.

New section 263F (Notice of intention to dispose land that is not required) applies if, within seven years after the land is taken, the land is no longer required by the public sector entity and the public sector entity intends to dispose of the land. In this circumstance, the public sector entity must, by notice, advise the previous owner of the land that the entity intends to offer the land back to that owner. This notice must state –

- within 28 days of the notice being given, the previous owner must give notice to the public sector entity (response notice) stating whether or not the previous owner is interested in buying the land;
- the public sector entity may dispose of the land if the public sector entity does not receive a response to the response notice or the response notice states that the previous owner is not interested in buying the land; and
- if the public sector entity has taken an easement, the nature and terms of the easement.

This section also provides that before giving the response notice, the public sector entity may take an easement over all or part of the land to ensure the structural and operational integrity of any development infrastructure on the land. Section 263F also clarifies that this section applies despite section 41 of the Acquisition of Land Act.

New section 263G (Power to dispose of land that is not required) provides the State with the power to dispose of land. If the previous owner of the land taken gives the public sector entity a response notice which states that the previous owner is interested in buying the land, the public sector entity must by notice, offer the land, subject to any easement over the land, for sale to the previous owner at a price decided by the public sector entity.

However, if the previous owner of the land taken does not provide a response notice, gives a response notice stating that the previous owner is not interested in buying the land or does not accept an offer for the sale of the land, the public sector entity may dispose of the land.

Section 263G provides that in deciding the price of the for which the land may be sold, the public sector entity may consider –

- valuation by the valuer that is registered under the *Valuers Registration Act 1992*;
- the policies and systems for the management of entity's assets; and
- the existence of any easement over the land.

This section also clarifies that a person contracting or otherwise dealing with a public sector entity in relation to land does not have to ask whether section 263F or this section has been complied with. The section also provides that the title of any person for land acquired from the public sector entity is not affected by failure to not comply with section 263F or this section. The section also clarifies that this section applies despite section 41 of the Acquisition of Land Act.

Clause 44 Amendment of sch 2 (Dictionary)

Clause 44 amends Schedule 2 which provides a definition of terms used in the Act. The amendments to Schedule 2 are as follows:

Omitted Definitions

- The existing definition for 'land' has been omitted as it is now redundant with the introduction of the new definition for 'land'.

New Definitions

- The new definition of 'land' includes a reference to the definition of land under Chapter 7, part 2 of the Acquisition of Land Act, schedule 2 or otherwise includes an estate in, on, over or under land; the airspace above the land and any estate in the airspace; and the subsoil of land and any estate in the subsoil.

- The new definition for 'previous owner' applies for land taken under section 263A.

Amended Definitions

- The definition of 'acquisition land' is amended to include the Planning Act.

Subdivision 2 Amendments relating to applicable events

Clause 45 Amendment of s 275D (Definitions for part)

Clause 45 inserts a new definition for this part, 'licensed premises' and refers to section 275J(2)(a)(ii). The term 'licensed premises' is used to describe the premises to which the temporary use licence relates.

Clause 46 Insertion of new s 275FA

Clause 46 inserts new section 275FA (Minister may revoke declarations of applicable events) which provides that the Minister by notice published on the department's website may revoke an applicable event if satisfied that the declaration of the event as an applicable event is no longer necessary having regard to the nature of the event and the effect of the event on a State interest, without consultation with any person. The notice must state the day the revocation takes effect and this day must be at least 10 business days after the day the notice is published. The section clarifies that the revocation is a statutory instrument.

Clause 47 Insertion of new chapter 7, part 4B, division 3, subdivision 1, heading (Subdivision 1 Preliminary)

Clause 47 creates a new heading Subdivision 1 (Preliminary) before section 275G (Application of division).

Clause 48 Insertion of new chapter 7, part 4B, division 3, subdivision 2, heading (Subdivision 2 Applications for temporary use licences)

Clause 48 creates a new heading Subdivision 2 (Applications for temporary use licences) before section 275H (Applications for temporary use licences).

Clause 49 Insertion of new s 275HA

Clause 49 inserts a new section 275HA which clarifies that the chief executive has the ability to consult with any entity that the chief executive considers appropriate when considering an application for a temporary use licence.

Clause 50 Amendment of s 275J (Notices of decisions)

Clause 50 amends section 275J to requires a notice of a decision for giving a temporary use licence to include the end date for the applicable event period, noting a temporary use licence no longer automatically extends when the applicable event is extended.

Clause 51 Replacement of s 275K (Period of temporary use licences)

Clause 51 replaces the existing section 275K with a new provision which provides that the temporary use licence has effect from the day on the notice mentioned in section 275(1) and the licence starting day is until –

- the end of the applicable event period for the applicable event notice in effect;
- if the licence is cancelled under sections 275LK or 275LM, the day the cancellation takes effect; or
- if the licence period is extended under sections 275LE or 275LF, the end of the extended period.

The section also inserts a note which refers to section 275LM if the temporary use licence is suspended. The section clarifies that if the applicable event notice, the temporary use licence stops having effect.

Clause 52 Insertion of new chapter 7, part 4B, division 3, subdivision 3–6 and subdivision 7, heading

Clause 52 inserts new subdivisions which deal with temporary use licences that have been extended by application, the ministerial power to extend all temporary use licences and the amendment or cancellation of temporary use licences by application.

New subdivision 3 'Extension of temporary use licences by application' introduces new sections 275LA to 275LE which create a new application process to extend a temporary use licence if the applicable event period is extended under section 275F of the Planning Act.

New section 275LA (Application of subdivision) provides that subdivision 3 applies to temporary use licences that given for an applicable event and that are extended under section 275F.

New section 275LB (Applications to extend temporary use licences) provides that before the licence ends, the holder of a temporary use licence can apply to chief executive to extend the period for which the temporary use licence has effect under section 275K. The application must be in the approved form, including matters prescribed in the Planning Regulation. In instances where a temporary use licence ends before the application is decided, the licence does not end until a decision has been made by chief executive or the application is withdrawn. However, nothing prevents the temporary use licence from being suspended or cancelled during this period.

New section 275LC (Chief executive may consult about applications) enables chief executive to consult with any entity it considers appropriate about the application to extend a temporary use licence.

New section 275LD (Decisions on applications) provides for the chief executive to consider and decide an application for extending a temporary use licence. This decision can be to give or refuse the application, or to extend the licence for different period. The chief executive may decide to extend the licence only if satisfied there are reasonable grounds, and the period must not extend beyond the end of the extended applicable event period.

New section 275LE (Notices of decisions) provides for the chief executive to give the applicant a notice of chief executive's decision. If the decision is to extend the period, the notice must include certain information including the day the notice was given, the licenced premises, the extended period and the reasons for the decision. A copy of the notice must be given to the relevant local government in which the licensed premises is located. If the decision is to refuse, the notice must state the reasons for the decision.

New subdivision 4 'Power of Minister to extend all temporary use licences' introduces new section 275LF (Minister may make declaration extending period of all temporary use licences). If the applicable event period is extended under the section 275F and the Minister is satisfied that it is appropriate for temporary use licences to be extended (each termed a relevant temporary use licence), the Minister can declare by notice on the department's website that the period of each relevant temporary use licence in effect is extended until the end of the extended applicable event period. Before making the declaration, the Minister must give notice of the declaration to relevant licence holders and relevant local governments. The section clarifies that the declaration is considered a statutory instrument.

New subdivision 5 ‘Amendment or cancellation of temporary licences by application’ prescribes the process in which a temporary use licence holder may apply to amend or cancel a licence and how decisions are made. The subdivision introduces new sections 275LG to 275LK.

New section 275LG (Applications to amend temporary use licences) provides for a licence holder to apply to the chief executive to amend the licence, including a licence condition. The application must be in the approved form, including matters prescribed in the Planning Regulation.

New section 275LH (Chief executive may consult about applications) provides that the chief executive may consult with any entity they deem appropriate when considering the application under section 275LG.

New section 275LI (Decisions on applications) provides the chief executive must consider the application and decide whether to make all or part of the requested amendment, or to refuse to make the requested amendment. The chief executive can decide to amend a temporary use licence only if satisfied that, having regard to the nature of the applicable event, and if there are reasonable grounds to do so.

New section 275LJ (Notices of decisions) provides for the chief executive must give the applicant a notice of the decision. If the decision is to make all or part of the requested amendment, the notice must include certain information including the details of the amendment and, if the decision is to make part of the requested amendment, the reasons for the decision. The chief executive must give a copy of the notice must be given to the relevant local government in which the licenced premises is located and the licence is taken to be amended as per the notice from the day the notice is given. If the decision is to refuse, the notice must state the reasons for the decision.

New section 275LK (Requests to cancel temporary use licences) provides that a licence holder may ask, in writing, the chief executive to cancel the licence. On receiving the request, the chief executive must cancel the temporary use licence by giving notice to the licence holder and a copy of the notice to the relevant local government. The cancellation takes effect on the day the chief executive gives the notice or a later day as stated on the notice of cancellation.

New subdivision 6 ‘Amendment, suspensions or cancellation of temporary use licences by chief executive’ prescribes when and how the chief executive can amend, suspend or cancel temporary use licences.

New section 275LL (Grounds for chief executive to amend, suspend or cancel temporary use licences) provides that is the chief executive has grounds to amend, suspend or cancel a licence when:

- Chief executive reasonably believes the licence holder has failed to comply with a condition of the licence; the licence was obtained because of false or misleading information; or public safety has been, or is likely to be, endangered because of the licence.
- Chief executive becomes aware of an environmental or amenity impact that is occurring or is likely to occur as a result of the licence; and considers the application for the licence would have been refused if the chief executive had been aware of the impact.

- Chief executive is satisfied that, having regard to the nature of the applicable event, there are no longer reasonable grounds for the licence to apply.

New section 275LM (Chief executive may amend, suspend or cancel temporary use licences) provides the chief executive to amend, suspend or cancel temporary use licences (termed proposed action) when a ground to do so exists. The chief executive must give the licence holder given notice including the proposed action; the grounds for the proposed action; an outline of the facts and circumstances forming the basis for the grounds; if relevant, the proposed suspension period; and the period in which the licence holder may make a submission to show why the proposed action should not be taken.

This section requires the chief executive to consider any submissions made within the stated period and decide to take the proposed action; not to take any action; amend the licence (if the action is to suspend the licence); or suspend or amend the licence (if the action is to cancel the licence). The chief executive must give the licence holder notice of the decision, including a date the decision takes effect (if not on the day of the notice). The chief executive must give a copy of the notice to the relevant local government. The section clarifies that if the temporary use licence is amended, on the day the amendment takes effect, section 275L 'Effect of temporary use licences' applies to the licence. The section also provides that if the licence suspended, the licence does not have effect for the period of the suspension.

New subdivision 7 Delegations is inserted for readability.

Clause 53 Amendment of s 275O (Declarations of uses and classes of uses)

Clause 53 clarifies provisions that relate to the declarations of uses and classes of uses. This includes identifying that the declaration is undertaken by way of a 'declaration notice' and clarifying the period that the declaration has effect, which is for the period stated in the declaration notice. The clause also clarifies that the period must not start before the day the declaration notice is published and must not end after the end of the applicable event period for the applicable event notice.

Clause 54 Insertion of new ss 275PA and 275PB

Clause 54 inserts new provision sections 275PA and 275PB.

New section 275PA (Minister may extend period of declaration under s 275O) provides that the Minister by notice published on the department's website may extend the period for which the declaration is made. However, the Minister may extend the period only if, the Minister is satisfied that the extension is necessary having regard to the nature of the applicable event, and the extended period does not end after the end of the applicable event period for the applicable event notice. The declaration extension notice must be published before the end of the period of declaration and is a statutory instrument.

New section 275PB (Minister may revoke declarations under section 275O) creates provisions that allow the Minister to revoke declarations under section 275O by way of a notice (a statutory instrument) that is published on the department's website 10 days prior to the declaration being revoked. The section clarifies that the revocation takes effect on the stated day and is a statutory instrument.

Clause 55 Amendment of s 275R (Extension of periods for doing things under Act)

Clause 55 amends section 275R to provide for the content of an extension notice. This includes stating it applies when the relevant period starts during the period the notice is in effect and/or when the relevant period has started by not ended before the notice took effect. This clause inserts a new subsection 4A for circumstances in which the Minister further extends a relevant period and provides content that may be included in the 'further extension notice'.

Subsection (6) is omitted and the clause provides for renumbering.

Clause 56 Amendment of s 275S (Suspension of periods for doing things under Act)

Clause 56 amends section 275S to provide for the content of a suspension notice. This includes stating it applies when the relevant period starts during the period the notice is in effect and/or when the relevant period has started by not ended before the notice took effect.
This clause inserts a new subsection 4A for circumstances in which the Minister further suspend a relevant period and provides content that may be included in the 'further suspension notice'.

Subsection (6) is omitted and the clause provides for renumbering.

Clause 57 Amendment of sch 2 (Dictionary)

Clause 57 inserts a definition for 'licensed premises' and refers to chapter 7, part 4B and section 275J(2)(a)(ii).

Subdivision 3 Amendments relating to development control plans

Clause 58 Amendment of s 275U (Relationship between this part and particular provisions)

Clause 58 amends section 275U(a) to include new section 360 'Validation of particular development approvals' as a matter that Part 4C 'Provisions for Springfield structure plan' section 275U overrides to the extent of inconsistency. This is to preserve amendments made to the Planning Act about the operation of the Springfield Structure Plan through the *Forest Windfarm Development Act* in 2020.

Clause 59 Amendment of s 316 (Development control plans)

Clause 59 amends section 316(4) to fix an administrative error in the referencing of the Minister's powers to 'call in' a plan or amendment to a plan made under a DCP. The amendment now refers to Chapter 3, Part 6 – Minister's powers rather than Chapter 3, Part 7 – Miscellaneous.

Clause 60 Insertion of new chapter 8, part 9, division 2 'Provisions for amendments relating to development control plans'

Clause 60 inserts a new Part 9, Division 2 into Chapter 8 of the Planning Act 'Repeal, transitional and validation provisions'.

New section 358 (Definitions for the division) defines development control plan to mean a plan mentioned in section 316(1) to which the old Act (being the repealed *Sustainable Planning Act 2009)*, section 857 applies under section 361(2). It also includes definitions for a 'development control plan' and 'IDAS', the system for the integration of development assessment under the *Integrated Planning Act 1997*, to assist in interpreting the section.

New section 359 (Validation of particular approvals) applies to approvals for development on a premises within a development control plan area that is in effect immediately before commencement of the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023. . The approvals subject to section 359 (1) and (2) are only approvals for development, as defined under the Planning Act, and section 359 does not validate previous approvals given under a DCP or other instrument in DCP areas.

Section 359(2) provides that an approval, or anything done in relation to the approval, is not invalid merely because the application was, or was purportedly, made under the Planning Act or the Old Act (SPA) instead of the Integrated Development Assessment System (IDAS); or was, or was purportedly, assessed, decided or otherwise dealt with under the Planning Act or the Old Act instead of IDAS. This section responds to the Northlakes judgement, which called into question the validity of these approvals on the basis of the process by which development applications were assessed and decided not being via the IDAS.

New section 360 (New applications for development approval in development control plan area) provides for the development assessment process under the Planning Act to apply to development applications made after commencement (subsection 1 to 3). Section 360(4) provides that for applying subsection (3):

- If the development control plan states the development is a particular category of development or category of assessment, the development is categorised in the way stated; and
- If the development is categorised as assessable development under the development control plan, and the development control plan states a particular category of assessment for the development—the category of assessment applies for the development; and
- If the development control plan states the development is to be assessed against particular matters, the development is to be assessed against these matters.

Section 360 ensures that the DCPs prevail when categorising development, determining assessment level and requiring assessment against particular benchmarks.

Section 360(5) provides a head of power for the Planning Regulation to prescribe anything necessary or convenient for interpreting or applying section 360 or a development control plans, including (but not limited to):

- Transitioning a category of development or category of assessment stated in a development control plan to the Planning Act;
- Stating how an assessment matter in a development control plan applies to a development application; and

- Providing for the relationship between the development control plan and a regulation, including how an assessment matter relates to other matters prescribed by the Planning Regulation; and the relationship between the development control plan and a local planning instrument.

This section defines an 'assessment matter' in a development control plan to be a category of development, category of assessment, assessment benchmark or any other matter relating to the assessment of development, stated in the development control plan.

This section is intended to allow the Regulation to maintain the DCPs' current function of categorising development and assessment and setting assessment benchmarks, while further clarifying the ways in which the Regulation, DCPs and planning schemes interact. For example the Planning Regulation may address differences in terminology between the Planning Act and development control plans and may provide detail about when and how Schedule 10 'Development assessment' applies to development control plans.

Subdivision 4 Amendments relating to State facilitated applications and compensation

Clause 61 Amendment of s 17 (Minister's guidelines and rules)

Clause 61 amends section 17 to provide that the Minister may make rules about the carrying out a review under section 25(3), which relates to a review of a Local Government Infrastructure Plan (LGIP) or a review of the zoning of land in the urban investigation zone. Section 17 is also amended to provide that the Minister may make rules about making a planning change for an urban investigation zone as mentioned under section 30(4)I.

Clause 62 Amendment of s 25 (Reviewing planning schemes)

Clause 62 amends section 25 to provide that a local government, despite the requirement to review its planning scheme every 10 years, must review its LGIP within five years after it was included in the planning scheme or if the LGIP was previously reviewed under this section, five years after the LGIP was last reviewed. Section 25 is also amended to include that, if a local government includes land in an urban investigation zone in its planning scheme, it must review the zoning of the land within five years after, the land was included in the urban investigation zone, or if the zoning was previously reviewed, five years after the zoning was reviewed. The section also provides that in carrying out the review, the local government must follow the process for review stated in the Minister's Guidelines and Rules. The clause also clarifies that a review for the zoning of land in an urban investigation zone is not a review of the local government's planning scheme.

Clause 63 Amendment of s 30 (When this division applies)

Clause 63 amends section 30 to provide that an adverse planning change does not apply to a planning change to include land in an urban investigation zone and where the planning change is in accordance with the Minister's rules that apply specifically to including land in an urban investigation zone. The amendment is to facilitate local government applying the urban investigation zone where a process in the Minister's Guidelines and Rules has been followed.

Section 30 is also amended to provide, for a planning change to include land in an urban investigation zone, the Minister's rules must require a local government to prepare a report that assess the impacts of the planning change and any alternatives to making that change.

Clause 64 Amendment of s 78A (Responsible entity for change applications)

Clause 64 amends section 78A to provide that the chief executive is the responsible entity for change applications for a state facilitated development approval instead of the assessment manager or the referral agency. The chief executive can also nominate another assessing authority, where the subsequent change application would not result in a substantially different development to the original state facilitated development approval that was given or changed by the chief executive. This clause also clarifies that if the chief executive refers a change application to the assessment manager, the assessment manager is the responsible entity for the application instead of the chief executive.

Clause 65 Amendment of s 80 (Notifying affected entities of change applications for minor changes)

Clause 65 amends section 80 to provide that if a person proposes to make a minor change to a development approval, the person must give notice of the proposed change and the details of the change to the assessment manager, if the chief executive is the responsible entity for change application.

Clause 66 Amendment of s 81 (Assessing change applications for minor changes)

Clause 66 amends section 81 to provide that in assessing a change application, if the chief executive is the assessing authority, the responsible entity must consider all the matters the chief executive would or may assess against, or have regard to, as if the change application is a state facilitated development application under Chapter 3, Part 6A. If the matters the chief executive would or may assess against or have regard to, does not apply, the responsible entity must consider, all matters the responsible entity would or may assess against or have regard to, if the change application were a development application.

Clause 67 Amendment of s 82 (Assessing and deciding change applications for other changes)

Clause 67 amends section 82 to provide that the relevant provisions for assessing and deciding a change application, that is not a minor change, only apply if and to the extent that those provisions would apply to a state facilitated development by the chief executive. The amendment also clarifies that section 106J(4) and (5) apply for assessing and deciding a change application.

Clause 68 Amendment of s 83 (Notice of decision)

Clause 68 amends section 83 to provide that the responsible entity for change application must give a decision notice about the entity's decision, to the chief executive within five business days after deciding the application, if the change application relates to a state facilitated development approval given or changed by the chief executive.

Clause 69 Amendment of s 84 (Cancellation applications)

Clause 69 also inserts a new provision that the assessment manager, on receiving a cancellation application, must give notice of the cancellation to the chief executive, for an approval that was given or changed by the chief executive under part 6A. There are also minor amendments to clarify wording.

Clause 70 Amendment of s 87 (Assessing and deciding extension applications)

Clause 70 amends section 87 to insert a new provision to provide that the assessment manager must, within 5 business days, give a decision notice about the extension application, to the chief executive if the development application relates to a state facilitated development approval that was given or changed under Part 6A by the chief executive. Clause 6 also makes minor changes to wording for a development application that was given or changed under a call-in provision.

Clause 71 Amendment s 103 (Call in notice)

Clause 71 amends section 103 to clarify that a Minister may call in an application under this section even if the application was decided by the original decision-maker.

Clause 72 Amendment s 104 (Effect of call in notice)

Clause 72 makes a minor amendment to section 104 to clarify the effect of a call in notice and provide that any decision including a deemed approval stops having effect and any decision notice given by the decision-maker for the application stops having effect.

Clause 73 Amendment of s 105 (Deciding called in application)

Clause 73 makes a minor amendment to replace ‘assessment manager’ with ‘decision-maker’.

Clause 74 Insertion of new chapter 3, part 6A

Clause 74 inserts new provisions for state facilitated applications. The purpose of these new provisions is to introduce a more streamlined development assessment pathway, for development that is a priority to the State, which is identified and declared by the Minister, and subsequently assessed and decided by the chief executive. The new mechanism is intended to complement existing Ministerial powers under the call in and the designation provisions.

Key elements of the new provisions include:

- provide a process for the Minister identify and declare development that is a priority to the State as a state facilitated application;
- allow a declaration to limit the effect of decision made for the application before it was declared a state facilitated application;
- allow the chief executive to assess or decide, or re-assess and re-decide a state facilitated application; and
- allow applications that are prohibited development in an urban investigation zone to be made as a state facilitated application.

New section 106A (Application of part) clarifies that this part applies to development applications, proposed development applications, change applications or proposed change applications for a material change of use or reconfiguring a lot, where the decision-maker for the application is a person that is not the Minister or chief executive. This part may also apply to applications that relate to development that is not a material change of use or reconfiguration. For example, this part may apply to development proposal that involves a material change of use of premises and also building work. Section 106A clarifies that the new chapter 3, part 6A also applies to an application that is a development application or a change application that has already been decided by the decision maker.

New section 106B (Definitions for part) provides for new definitions for this part, relating to state facilitated development. These include definitions for, application period, decision-maker, declaration notice, relevant application, representation period, and restarting point.

New section 106C (Notice of proposed declaration) provides the process if the Minister proposes to declare an application to be a state facilitated application. In proposing to declare an application as a state facilitated application, the Minister must give notice to the applicant, decision-maker for the relevant application, the local government (if not the decision-maker), submitters of the application and any other entity prescribed by regulation. This notice must state that the Minister is proposing to make a declaration, the day the notice is given, the details of the application, the reasons for making the declaration, the effect of the declaration, the person to whom the notice is given may make representations to the Minister within 20 business days of the notice being given, and any other matter prescribed by regulation.

The Minister must consider any representations made during the representation period, when proposing to declare an application as state facilitated development. This approach is consistent with the approach undertaken by the Minister under the call in provisions.

New section 106D (Declaring State facilitated applications) allows the Minister to declare an application as a state facilitated application. The Minister has to declare the application within 20 business days after the day the representation period ends. However, the Minister is only able to make a declaration for an application that will assist in delivering development that is for an urban purpose and is an identified priority to the State; where an application complies with the criteria under the regulation and the Minister is satisfied that the chief executive should assess and decide the application instead of the original decision-maker.

In considering if the application is appropriate to be assessed and decided by the chief executive, the Minister may have regard to any matter that the Minister considers relevant. The section clarifies that an urban purpose means a purpose for which land is used in cities and towns including residential, industrial, sporting, recreational and commercial purposes, but not included rural residential, environmental, conservation, rural, natural or wilderness purposes.

New section 106E (Notice of declaration) requires the Minister to give a notice of declaration to the affected parties and parties that were given the proposed declaration notice. These include, the applicant, the owner (if not the applicant), the decision-maker, the local government (if not the decision-maker), each referral agency for the application other than chief executive (if the notice was given after the application was made to the original decision-maker), any submitters for the application that the Minister is aware of when the notice was given and the Planning and Environment Court (if there are proceedings relating to the application in the court). The Minister is also required to publish the notice on the department's website.

New section 106F (Content of declaration notice) outlines the required content for the declaration notice. The declaration notice must state the Minister has made a declaration for a state facilitated application; the day the declaration notice is given, the details of the application; the reasons for making the declaration, the effect of the declaration; if the declaration was given after the application was made to the decision maker, division 3 applies for assessing and deciding the application and the point in the process from which the process must restart for administering the application; if the application was not already made to the decision maker, that the application must be made to the chief executive within the stated period, and division 3 will apply for assessing and deciding the application; and any other matter prescribed by regulation.

The notice may also state the process for notifying and consulting with the public and direct the original decision-maker to assess the application or a part of the application. In restarting the administration of the application, the Minister may have regard to any matter the Minister considers relevant. Section 106F clarifies that division 3 will apply for assessing and deciding a state facilitated application.

New section 106G (Period of declaration) states the period of declaration. The declaration takes effect on the day the declaration notice is given and stops having effect at the end of the application period. The declaration may also stop having effect if the declaration notice states that an application that is not substantially different from the original application made to the Minister, must be made to the chief executive within a specified period of time, and the applicant does not comply with this requirement. The purpose of this subsection is to ensure that any state facilitated applications that are received to be assessed and decided by the chief executive are consistent with the declaration. Upon the chief executive giving a decision notice on the state facilitated application or if the application lapses or is withdrawn, the declaration will stop having effect.

New section 106H (Effect of declaration) outlines the effect of the declaration. When a declaration takes effect, any decision made by the decision-maker (including a deemed approval) stops having effect, any decision notice given by the decision-maker stops having effect, any appeal against the decision made on the application is discontinued and if the declaration notice states a restarting point, the process for administering the application will restart from that restarting point. This section also clarifies that a local government will still have the ability to impose an infrastructure charges notice for a state facilitated development approval given or changed by the chief executive under division 3

New section 106I (Application of division) outlines the application of division 3 which relates to the assessing and deciding applications that have been declared as a State facilitated application; that are not substantially different from the original application and are made to the chief executive within the application period.

New section 106J (Assessing and deciding application) provides for the process that the chief executive must follow in assessing and deciding or re-assessing and re-deciding a State facilitated application. Under this section, if a declaration notice directs the decision-maker to assess all of the application or a stated part of the application, the chief executive's decision may be based on the decision-maker's assessment. Section 106J also provides the provisions within the Act which do not apply to state facilitated application. Where a development application these include, sections 45(3) to (8), part 3, division 1, sections 60 to 62 and section 64. Where a change application, this includes sections 81, 81A and 82.

In assessing the state facilitated application, the chief executive may consider any state interests relating to the development, the relevant planning instruments applying to the application, any information or advice given to the chief executive about the application including any information or advice in a submission or representation and any other matter the chief executive considers relevant. The chief executive is not required to consider any responses provided by a referral agency before the declaration was made, however may ask that referral agency for advice about the state facilitated application.

New section 106K (Obligations of decision-maker) outlines the obligations of the original decision maker which include, providing all reasonable help, that the chief executive may require in assessing and deciding the application, and if the declaration notice requires the decision-maker to assess the application or part of the application, to assess that application or part.

New section 106L (Notice of decision) provides for the issuing of a notice of decision for a state facilitated application. This section only applies to applies if the chief executive decides an application or part of an application. The section provides that the decision notice must be given to each person that the declaration notice was given. The section also provides for the sections of the Act which are not intended to apply for the decision or the decision notice.

Under this section, this decision notice must include, the matters the chief executive considered in the making of the decision and if the chief executive has only decided part of the application, the decision notice must direct the decision-maker to assess, decide, or re-assess and re-decide the other part, state the point in the process for the other part from which the point in the process restarts and the day process restarts.

New section 106M (Publication of notice of decision) requires the chief executive to publish a notice about the decision of a state facilitated application on the department's website and states the requirements for the notice.

New section 106N (Reports about declarations and applications) provides if the chief executive decides an application or part of an application, the chief executive must prepare a report that explains the nature of the decision and matters the chief executive considered and includes a copy of the decision notice. As soon as practicable after the end of the financial year, but no later than 31 October, the Minister must table a report in the Legislative Assembly, a report that states the number of declarations made during that financial year and for each decision noted in the report, include a copy of the report prepared by the chief executive.

New section 106O (When an application for prohibited development in urban investigation zone may be made) provides this section applies to a proposed development application or proposed change application is declared to be a State facilitated application under section 106D, the premises or lot that is the subject of the application is included in the urban investigation zone under a local categorising instrument which applies to that premises or lot, the application is for prohibited development as categorised the regulation and the development is prescribed by regulation. Despite section 50(2) which provides that a development application may not be made for prohibited development, an application that is not substantially different to the application made to the Minister to be declared as a state facilitated application, may be made to the chief executive within the application period. This section clarifies that for the purpose of assessing and deciding the application, the categorisation of the development as prohibited development by the regulation has no effect.

New section 106P (Matters for regulations) provides for the matters which will be addressed by the Planning Regulation including, when and to whom the notice of a proposed declaration may be given to, the effect of giving the proposed declaration notice on the process for assessing and deciding an application and any appeal period and the procedures for notifying persons of the Minister's decision to not make a declaration. The regulation may also state that an approval or deemed approval of an application has no effect if a proposed declaration notice is given and may modify the assessment and decision period for a state facilitated development application.

New section 106Q (Delegations) allows the chief executive to delegate the chief executive's functions under the division to an appropriately qualified public service officer.

Clause 75 Amendment of s 157 (Infrastructure agreement applies instead of approval and charges notice)

Clause 75 amends section 157 to insert a new provision to apply to a development approval is given or changed by the chief executive under chapter 3, part 6A, and the chief executive is not a party to the infrastructure agreement that is associated with the approval. In this circumstance, the infrastructure agreement may only apply to the extent of any inconsistencies over the development approval, where the chief executive has approved the agreement either before or after the approval or the decision notice is given. This approval may be given either before or after the agreement is entered into and must be given by notice to each party to the agreement.

Clause 76 Amendment of schedule 2 (Dictionary)

Clause 76 amends Schedule 2 which provides a definition of terms used in the Act. The amendments to Schedule 2 are as follows:

Omitted definitions

- The existing definition for 'decision-maker' has been omitted as it is now redundant with the introduction of the new definition for 'decision-maker' which refers to Chapter 3, part 6 (section 90) or chapter 3, part 6A relating to state facilitated development.
- The existing definition for 'excluded application' has been omitted as it is now redundant with the new definition.
- The existing definition for 'representation period' has been omitted as it now redundant following the introduction of the new definition for 'representation period' which refers to chapter 3, part 6, division 3 (section 102) or chapter 3, part 6A relating to state facilitated development.

New definitions

- The new definition for 'application period' refers to the new section 106(1)(g) for a definition.
- The new definition for 'decision-maker' means for chapter 3, part 6, refer to section 90(2) and for a relevant application, for chapter 3, part 6A, refer to section 106B.
- The new definition for 'declaration notice' refers to new section 106E(a) for a definition.
- The new definition of 'excluded application' refers to a change application or a development application that is
    - decided or taken to be decided, under a call in provision, or by the chief executive under chapter 3, part 6A or by the P&E Court,
    - to change a development approval given or changed under a call in provision and that is made to the Minister as the responsible entity under section 78A, and
    - to change a development approval given or changed by the chief executive under chapter 3, part 6A that is made to the chief executive as the responsible entity under section 78A(4).

      This means that there are no appeal rights that available for these approvals.
- The new definition for 'relevant application' refers to section 106A for a new definition.
- The new definition for 'representation period' refers to section 102(3)(d) or section 106C(3)(f) for definitions.
- The new definition for 'restarting point' refers to section 103(3)(b)(ii) and new section 106F(1)(f)(ii) for definitions.
- The new definition for 'urban investigation zone' relates to clause 42 and the adverse planning change. An urban investigation zone means a zone stated in the Planning Regulation as part of the regulated requirements for the contents of a local planning instrument.

Amended definitions

- The definition of 'enforcement authority' is amended to expand the provisions for state facilitated development and call ins.

Subdivision 5 Amendments relating to urban encroachment

Clause 77 Amendment of s 229 (Appeals to tribunal or P&E Court)

Clause 77 amends subsection (3) to provide that the appeal period for the decision of the Minister under Chapter 7, part 4, to amend the registration of the premises to include additional land in the affected area of the premises is 20 business days after the notice is published under section 269A(2)(a).

Clause 78 Amendment of s 267 (Making or renewing registrations)

Clause 78 amends subsection (2) to insert a note with a reference to section 268C. The clause also amends subsection (7)(b) to require the Minister to be satisfied the applicant has complied with section 268C where for an application for the registration of premises.

Clause 79 Amendment of s 268 (Amending or cancelling registrations)

Clause 79 amends the heading of section 268 to 'Amending conditions of, or cancelling registrations'. The clause also amends subsection (3) to clarify that the amendment relates to the Minister deciding to amend the conditions of or cancel a registration.

Clause 80 Insertion of new ss 268A–268C

Clause 80 inserts new provisions sections 268A to 268C.

New section 268A (Application to amend registration to include additional land in affected area) provides that the owner of a registered premises may apply to the Minister to amend the registration to include additional land in the affected area for the premises, with a reference to section 268C. The section provides that the Minister must consider the application and decide if it should be approved with or without conditions or refuse the amendment.

The Minister may approve the amendment if the Minister is satisfied that the emissions level of the registered premises complies with a development approval and environmental authority applying to an activity carried out on the premises, the applicant has complied with section 268C and any matters prescribed by regulation.

A condition imposed by the Minister under this section may relate only to the amendment of the registration and is taken to be a condition of the registration.

The Minister is required to provide a decision notice and if approved, the decision notice must identify the affected area for the registered premises, as changed to include the additional land.

The amendment to the registration starts to have effect on either, the day the decision notice is given or the day stated in the decision notice. The new section also required that the Minister give notice of the inclusion of the additional land to the relevant local government and requires that the local government, upon receiving the notice, notes the inclusion of the additional land in the local government planning scheme and any planning scheme the local government makes before the registration expires. The section also refers to section 269A about the responsibilities of owners for registered premises if an application under this section is approved.

New section 268B (Removal of land from affected area for registered premises) provides for the removal of land from the affected area for registered premises. However, before the land can be removed from the affected area for registered premises, the owner of the registered premises must publish a notice about the proposed removal in a relevant online newspaper and publish details of the proposed removal on their website. Non-compliance with this requirement for publication has a maximum penalty of 50 penalty units. Section 268B(3) requires that within 10 business days, the owner of the registered premises must give the Minister a notice of compliance and a map of the affected area as changed. Non-compliance with this requirement has a maximum penalty of 20 penalty units.

Section 268B(4) clarifies that the removal of land from the affected area for the registered premises takes effect when the owner gives the Minister the notice of the compliance. Section 268B(5) requires that as soon as practicable after giving the Minister the notice of the compliance and a map of the changed affected area for the registered premises, the owner must ask the registrar of titles by notice, to amend the record kept in a way that a search of the appropriate register will show the record relating to the affected area. Non-compliance with this requirement has a maximum penalty of 20 penalty units.

New section 268C (Requirements for public consultation) provides that this section applies to an owner of premises who proposes to make an application for the registration of the premises or an application to amend the registration to include additional land in the affected area for the premises. Prior to making the application, the owner must give notice of the proposed application to:

- the owners and occupiers of all premises in the area to which the registration is proposed to relate to, for applications to register premises; or
- the owners and occupiers of all premises within the additional land that is proposed to be included in the affected area for the registered premises for applications to amend the registration to include additional land in the affected area for the premises.

The owner must also publish a copy of the notice at least once in the relevant online newspaper for the premises. The section also requires that the notice state a period of at least 15 days for a person to make a submission to the owner about the proposed application and comply with the requirements prescribed by regulation.

Clause 81 Amendment of s 269 (Responsibilities of owners of registered premises)

Clause 81 amends the heading of section 269 to 'Responsibilities of owners of registered premises relating to registration generally'. The clause also amends the timeframes from 20 business days to ten business days for publishing a notice after the premises are registered or after the registration of premises is renewed. A note is also provided about particular notices required to be given to registrar of titles under section 271A. The section is amended to allow publication of the notice in a relevant online newspaper. The section has omitted the requirement to give a notice to the registrar of titles as this has now been inserted into new section 271A.

Clause 82 Insertion of new s 269A

Clause 82 inserts new section 269A (Responsibilities of owners of registered premises relating to amendments under section 268A). This section applies if the Minister approves an

application under section 268A to amend a registration to includes additional land in the affected area for the registered premises.

Within 10 business days after the day the amendment takes effect, the owner of the registered premises must publish a notice about the inclusion of the additional land in a relevant online newspaper and on the owner's website for the premises if they have one.

Within 10 business days after publishing the notice, the owner of the registered premises must give notice of the compliance to the Minister.

The owner of the registered premises must ask the registrar of titles, by notice, to keep a record that this part applies to all lots within the additional land, within 20 business days of the Minister approving the application.

Penalties apply to non compliance with these requirements from 20 to 200 penalty units, depending upon offence.

Clause 83 Amendment of s 271 (Responsibilities on development applicants)

Clause 83 amends section 271 to delete the requirement for development applicants to give notice to the register of titles. A note is also provided about the new replacement provision under section 271A.

Clause 84 Insertion of new s 271A

Clause 84 inserts a new section 271A creates a requirement to give a notice to the registrar of titles in accordance with the requirements of the Land Title Act.

Clause 85 Amendment of s 273 (Responsibilities of registrar of titles)

Clause 85 amends section 273 to clarify that responsibilities of the register, particularly the requirement to update the relevant record when land has been removed from the register.

Clause 86 Amendment of s 274 (Restriction on legal proceedings)

Clause 86 amends subsection (3) to clarify that there is now a restriction on legal proceedings by an affected person where a new or amended authority starts to apply for the registered premises and authorises greater emissions than the original authority of the same type for the premises. A new subsection has been inserted to clarify that the limit to civil proceedings under section 274(2) only applies in relation to an act or omission that happens after the new or amended authority starts applying if the owner of registered premises subject to a new or amended authority has not followed the requirements under the new section 274A(2) and (3), specifically, notification requirements and advising the Minister that notification has occurred.

Clause 87 Insertion of new s 274A (Provisions relating to new or amended authority for registered premises)

Clause 87 inserts new section 274A to create provisions for when a new or amended authority for a registered premises starts applying and allows for greater emissions from the premises than the original authority. Within 20 business days of this new or amended authority applying,

the owner of the premises must publish a notice about it in a relevant online newspaper and on the owner's website for the premises if they have one. Within 10 business days after the notice is published, the owner of the registered business must give the Minister a notice of compliance, a copy of the new or amended authority and a copy of the public notice in the online newspaper. As soon as practicable after this, The Minister must give notice of the new or amended authority to the relevant local government.

Clause 88 Amendment of s 275 (Regulation may prescribe matters)

Clause 88 amends section 275 to allow for the regulation to prescribe requirements for an application under section 267 to register or renew the registration of premises in addition to requirements for an application to amend the registration of premises to include additional land in the affected area for the premises under section 268A.

Clause 89 Amendment of s 322 (Milton XXXX Brewery)

Clause 89 amends subsection (5) to insert a note that acknowledges the new section 361 Milton XXXX Brewery should be considered.

Clause 90 Insertion of new chapter 8, pt 9, div 4

Clause 90 inserts new section 361 which includes transitional provisions for the Milton XXXX Brewery that ensure schedule 1, table 2, item 5 continues to apply. This section also stops section 322(4) from applying when a new or amended authority starts applying to the brewery that authorises an emission of light at a greater intensity of light emitted from the brewery before 27 April 2009.

Clause 91 **Amendment of sch 1 (Appeals)**

Clause 91 amends schedule 1 to broaden the appeal rights for registered premises to include additional land when it is added to the affected area for the premises.

Clause 92 Amendment of sch 2 (Dictionary)

Clause 92 amends the definition of 'affected area development application' and inserts new definition 'relevant online newspaper'.

The amended definition 'affected area development application' provides for a development application for a material change of use or reconfiguring a lot if the premises or lot is completely or partly in an affect area when the application is made. The definition clarifies that this does not include an application prescribed by regulation.

A new definition for 'relevant online newspaper' is inserted to provide that for a premises or affected area, this definition refers to an online newspaper that primarily publishes news or public notices for relevant local government area or locality.

Subdivision 6 Amendments relating to other matters

Clause 93 Amendment of s 26 (Power of Minister to direct action be taken)

Clause 93 amends section 26 to insert the term 'generally' into the heading and amend section 26(2)(a) to clarify that the Minister may direct an action under this section if the Minister considers the local government should take action to ensure an instrument is consistent with this Act. The clause clarifies that this section does not apply to a local government's existing planning scheme to the extent section 26A(1) applies to the scheme. This clause also improves drafting and terminology.

Clause 94 Insertion of new s 26A Power of Minister to direct particular amendment of planning schemes

Clause 94 inserts new section 26A to prescribe a new process for the Minister to direct a local government to amend a local planning scheme without first giving notice, in limited circumstances. This section applies if the Minister considers a local government should amend its planning scheme so that it is consistent with:

- the regulated requirements; or
- a regulation made under the categorising instrument to the extent that the regulation categorises development as prohibited or accepted development; or
- a regulation providing that a local categorising instrument may not state that development is assessable development if a regulation prohibits the local categorising instrument from doing so, or that the local categorising instrument may not be inconsistent with the effect of an assessment benchmark, or a part of the assessment benchmark; or
- if both of the following apply:
    - a local government should amend their planning scheme to protect or give effect to a state interest; and
    - adequate consultation has been carried out in relation to the amendment.

In these circumstances, the Minister may direct the local government to amend its planning scheme as provided for in section 20 (i.e., the Minister's Guidelines and Rules) without consulting with any person. If the Minister decides to direct a local government to amend its planning scheme, there is a requirement to give the local government a notice which states the nature of the amendment; the reasons for making the amendment; and a reasonable period in which the local government must make the amendment. If the local government does not make the amendment as directed, the Minister may take action to make the amendment and recover any expenses. The action taken by the Minister has the same effect as if the local government has taken the action.

Clause 95 Amendment of s 27 (Power of the Minister to take urgent action)

Clause 95 amends section 27 to clarify that the section only applies if the Minister either, considers that the action should be taken under section 26(2)(b) to protect or give effect to a state interest or under section 26A(1)(b) which relates to taking action to amend a planning scheme to protect or give effect to a state interest. The clause also amends the section to insert references to the new section 26A.

Clause 96 Amendment of s 43 (Categorising instruments)

Clause 96 amends section 43 to insert new subsections which provide that the local categorising instrument may not include an assessment benchmark about the effect or impact of development on the cultural heritage significance of a local heritage place that is also a Queensland heritage place if the development:

- is carried out on the place; or
- is a material change of use of premises carried out on a lot that shares a common boundary with another lot that is or contains the place; or
- is a material change of use of the premises carried out on a lot that contains the place, but is not carried out on the place.

Clause 96 is intended to stop the duplicate assessment about the effect or impact of development on cultural heritage significance for heritage places that are both local and state places. The development's potential impacts to the cultural heritage significance of the place will be assessed against the relevant state benchmarks if the development triggers a referral.

Part 6 Amendment of the Planning and Environment Court Act 2016

Division 1 Preliminary

Clause 97 Act amended

Clause 97 amends the P&E Court Act.

Division 2 Amendments commencing on assent

Clause 98 Amendment of s 45 (Who must prove case)

Clause 98 amends section 45(1) to provide that for a Planning Act appeal, an appellant must establish the appeal should be upheld for a decision made by the Minister under chapter 7, part 4 of the Planning Act. This clarifies that an appellant must bear the onus of proof in an appeal relating to an urban encroachment registration.

This clause also amends section 45(2) to provide that this subsection includes change applications. This clarifies that the applicant bears the onus of proof in a submitter appeal for change applications.

Clause 99 Insertion of new part 10, division 3

Clause 99 creates a new Division 3 heading 'Transitional provisions for Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023'.
This clause also introduces new section 88 'Application of new s 45 to particular Planning Act appeals' to provide a transitional provision for section 45 to allow appeals made but not decided before the commencement of the Bill to continue unaffected. It also clarifies that new section 45 applies to a Planning Act appeal started after commencement, whether or not the matter to which the appeal relates arose before commencement.

Division 3 Amendments commencing by proclamation

Clause 100 Amendment s 11 (General declaratory jurisdiction)

Clause 100 amends section 11 to insert part 6A of the Act.

Clause 101 Amendment of s 12 (Declaratory jurisdiction for Minister's call in of development application)

Clause 101 amends the heading of section 12 to clarify that this section applies to particular matters under the Planning Act. This clause also amends section 12 to apply to the original assessment manager for an application that is declared as a state facilitated application and when the declaration took effect, the assessment manager had not decided or had refused the application. This means that the assessment manager may start a proceeding in the Planning and Environmental Court for matters done, to be done or that should have been done in relation to a declaration for a state facilitated application.

Clause 102 Amendment of schedule 1 (Dictionary)

Clause 102 amends Schedule 1 which provides a definition of terms used in the Act. The definition of 'declaratory jurisdiction' is amended to reflect the amendment to section 12 to include applications that are declared as a 'state facilitated application'.

Part 7 Amendment of the Planning Regulation 2017

Clause 103 Regulation amended

Clause 103 provides that this part amends the Planning Regulation.

Clause 104 Insertion of new pt 5A

Clause 104 inserts new section 51A (Prohibited development for which application may be made - Act, s 106O) provides that for section 106O of the Act, development that is prohibited under schedule 10, part 18A, section 28A (prohibited development – particular development in urban investigation zone) is prescribed.

Clause 105 Insertion of new pt 13

Clause 105 inserts new part 13 (Transitional provision for Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023) which relates to transitional provisions for the POLA Act. New section 76 relates to the purpose statement of the emerging community zone and applies to a local planning instrument that, immediately before the commencement of the POLA Act, included land in an emerging community zone. Section 76 provides that section 6(2)(a) which refers to, if a local planning instrument includes land in a zone stated in schedule 2, column 1, the instrument must include the purpose statement stated opposite the zone in column 2, as if the reference in that section to schedule 2, column 2, is a reference to the former schedule 2, column 2. However, the reference to the former schedule 2, column 2, stops having effect on the earlier of:

- the day the local planning instrument is amended to include the new purpose statement for the emerging community zone; or
- the day the local planning instruments is replaced by a new local planning instrument that includes the new purpose statement for the emerging community zone; or
- the day that is one year after the day that this section within the Bill commences or a later day that is agreed between the Minister and the local government.

The section clarifies that is the Minister and the local government agree to a later day, the local government must public a notice on its website and include a note in the local planning instrument to confirm when the former purpose statement stops applying to the local planning instrument. However, this note is not an amendment of the planning instrument. The section also confirms that this transitional section does not apply, if immediately before the commencement, the local planning instrument included a changed purpose statement for an emerging community zone under section 6(3). This means that in situations where the local planning instrument has changed their purpose statement because the Minister considered the change to be necessary or desirable having regard to the circumstances in the local government area that the instrument applies, this section would not apply. The section also clarifies the meaning of definitions to assist with interpretation.

Clause 106 Amendment of sch 2 (Zones for local planning instrument)

Clause 106 amends schedule 2 of the Regulation relating to the zones for local planning instruments to change the purpose of the emerging community zone. The amended purpose of the emerging community zone is to be identify land that is intended for an urban purpose in the future that has either within the priority infrastructure area or that is outside the priority infrastructure area, where detailed land use and infrastructure planning has been undertaken. It is also intended to protect the land from incompatible uses and enable the timely conversion into land for urban purposes.

Clause 106 also inserts the urban investigation zone, its purpose, and its Red Blue and Green (RGB) colour under the heading ‘Other zones’. The new urban investigation zone is intended to identify and protect land outside the priority infrastructure area, that may be suitable for urban purposes subject to further planning and investigation.

Clause 107 Amendment of sch 10 (Development Assessment)

Clause 107 amends Schedule 10 to insert a new part 18A relating to the Urban Investigation Zone. New section 28A prohibits development that is a material change of use of a premises or reconfiguring a lot for an urban purpose, on a premises or lot that is included in an urban investigation zone under a local categorising instrument. This prohibition does not apply to particular development including, accepted development under a categorising instrument; development that was accepted development immediately before the planning change to an urban investigation zone; development that is carried out under a state facilitated development permit under Chapter 3, Part 6A of the Act; development that is consistent with a state facilitated development approval that is in effect for the premises or lot, development carried out under a development permit for an application that properly made for the relevant day; development that is consistent with a development approval that is in effect and given before the relevant day; or particular development for certain reconfiguring a lot.

In this section, relevant day is either the day a public notice, about the proposal to make a planning scheme that first included the premises or lot in the urban investigation zone, was first published or the day a public notice, about the proposal to amend a planning scheme to include the premises or lot in the urban investigation zone, was first published.

Part 8 Other amendments

Clause 108 Legislation amended

Clause 108 provides that Schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

Integrated Resort Development Act 1987

Clause 1 Section 99(1)(a) and (b) (Temporary closure of thoroughfares)

Clause 1 amends section 99 to provide that the body corporate does not need to publish a notice in a hard copy newspaper circulating in the area. Instead, the body corporate is required to publish the notice on its website (if it has a website); and give written notice to each member of the body corporate who is the proprietor of a lot access which is likely to be affected by the closure.

Sanctuary Cove Resort Act 1985

Clause 1 Section 55(1)(a) and (b) (Temporary closure of thoroughfares)

Clause 1 amends section 55 to provide that the body corporate does not need to publish a notice in a hard copy newspaper circulating in the area. Instead, the body corporate is required to publish the notice on its website (if it has a website); and give written notice to each member of the body corporate who is the proprietor of a lot which is likely to be affected by the closure.