

# Sustainable Planning Bill 2009

## Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Stirling Hinchliffe MP

### Title of the Bill

*Sustainable Planning Bill 2009*

### Objectives of Amendments

Amendment is required to clarify and correct provisions to:

- ensure that changes to code assessable development applications can be made in response to information requests using the flexible processes in the Bill;
- ensure that compliance permits can require compliance assessment for documents and works;
- establish a principal registry for the Planning and Environment Court and clarify the structure of the registries;
- ensure that the Planning and Environment Court can make declarations about the interpretation of statutory guidelines made under the Bill;
- ensure that the processes for assessing costs in the Planning and Environment Court are consistent with the processes in the District Court; and
- ensure that the protections in place under the *Integrated Planning Act 1997* for certain development applications made in relation to local heritage places, continue to apply under the Bill.

Amendments are also required to ensure that the Sustainable Planning Bill 2009 is consistent with the *Local Government Act 2009*, which was assented to by Parliament on 12 June 2009.

It is also considered necessary to supplement the definition of State interest through illustration by an example of a type of development that could be considered of State interest.

### **How objectives are to be achieved**

The amendments will achieve the policy objectives of the Bill by clarifying and correcting provisions:

- ensuring the effective operation of compliance assessment;
- ensuring that changes to development applications can be made using the more efficient, flexible processes in the Bill;
- ensuring that the structure and operations of the Planning and Environment Court specified in the Bill are consistent with the structure and operations of the District Court as set out in the *District Court of Queensland Act 1967*; and
- ensuring that rights and interests under the *Integrated Planning Act 1997* are not affected by the new legislation.

### **Alternative method of achieving policy objectives**

There are no other viable alternatives that would achieve the Government's policy objectives.

## **Notes on Provisions**

### **Amendment 1 - Amendment at Clause 144**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 144(9) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 2 - Amendment at Clause 144**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 144(10) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 3 - Amendment at Clause 248**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 248(a) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 4 - Amendment at Clause 248**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

The editor's note to clause 248 has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 5 - Amendment at Clause 297**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 297(4), definition of **owner**, paragraph (e) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 6 - Amendment at Clause 354**

The Bill introduces a more flexible process for changing development applications in response to matters raised in a properly made submission or an information request.

The intention of this change was to allow these changes to applications to be made without stopping the IDAS clock or returning to an earlier stage of IDAS. However, if public notification is required for the application, it may have to be repeated (if already carried out) or re-started (if it was being carried out at the time the change was made).

As the Bill is currently drafted, the ability to change an application in response to an information request has been inadvertently limited to impact assessable applications (requiring public notification) and changes made during the public notification period.

This was not the intent of this provision. Rather, the ability to make changes in response to an information request was intended to also apply to code assessable applications. This provision has therefore been amended to ensure that code assessable development applications can be changed in response to an information request using the process set out in clause 354.

### **Amendment 7 - Amendment at Clause 393**

The Bill enables a condition of a development permit to require compliance assessment for a document or work. However, it does not enable a compliance permit to require compliance assessment for a document or work.

Developments which are currently assessable development requiring a development permit may in the future be prescribed as development requiring compliance assessment. Documents and works carried out under the compliance permit may require further compliance assessment (e.g. plans of subdivision). Clause 393(e) has therefore been amended to enable compliance permits to impose conditions requiring compliance assessment for documents and works. This change will ensure the effective operation of compliance assessment.

### **Amendment 8 - Amendment at Clause 398**

This change to the heading is a consequential change, to reflect the amendments made to clause 393.

### **Amendment 9 - Amendment at Clause 398**

This change to clause 398(1) is a consequential change, to reflect the amendments made to clause 393.

### **Amendment 10 - Amendment at Clause 399**

This change to clause 399(2) is a consequential change, to reflect the amendments made to clause 393.

### **Amendment 11 - Amendment at Clause 399**

This change inserts a definition for the term “local government condition” in subclause (3). This change is a consequential change, to reflect the amendments made to clause 393.

### **Amendment 12 - Amendment at Clause 452**

As there are a number of court officers who hold appointments as registrars of the District Court, it is incorrect to say that those registrars are all registrars of the Planning and Environment Court. It is intended that there will only be one principal registrar for the Planning and Environment Court, namely the principal registrar of the District Court.

These amendments have been made to reflect the governance structure of the Planning and Environment Court.

### **Amendment 13 - Amendment at Clause 453**

This clause has been amended to establish that the registries of the Planning and Environment Court and the officers of those registries will be under the control of the principal registrar.

### **Amendment 14 - Amendment at Clause 454**

Clause 454(1) has been changed to give the principal registrar responsibility for court records.

### **Amendment 15 - Amendment at Clause 454**

Clause 454(2) has been changed to give the principal registrar responsibility for court records.

### **Amendment 16 - Amendment at Clause 456**

Clause 456(1)(b) gives the Planning and Environment Court power to make declarations about the construction of the Act and planning instruments and master plans under this Act.

Under the Bill, a number of statutory processes have been moved to statutory guidelines (e.g. the process for making and amending planning schemes). It is important that the court also have the power to make

declarations about these guidelines . Clause 456(1)(b) has therefore been amended to include a reference to these guidelines.

### **Amendment 17 - Amendment at Clause 457**

In December 2007, the *Uniform Civil Procedure Rules* were amended to establish a new regime for assessing costs. Taxing officers no longer exist - instead, private costs assessors are appointed by the Court. Clause 457(8) has been amended to reflect this new process.

### **Amendment 18 - Amendment at Clause 457**

In December 2007, the *Uniform Civil Procedure Rules* were amended to establish a new regime for assessing costs. Taxing officers no longer exist - instead, private costs assessors are appointed by the Court. Clause 457(9) has been amended to reflect this new process.

### **Amendment 19 - Amendment at Clause 492**

Clause 492 provides that the procedure for hearing an appeal is to be under the rules of the Planning and Environment Court (i.e. the Planning and Environment Court Rules) or a direction of the Chief Judge if the rules do not deal with the matter.

Unlike the *Integrated Planning Act 1997*, the Bill enables the court and the Chief Judge to give directions that are different from the Planning and Environment Court Rules (see clause 446). To ensure that clause 446 can have effect, a consequential amendment has been made to clause 492 to make it clear that the procedure for hearing an appeal is either under the rules of the Court or a direction of the court or the Chief Judge.

### **Amendment 20 - Amendment at Clause 596**

The *Local Government Act 2009* was assented to on 12 June 2009 . This Act will replace the *Local Government Act 1993*.

The note to subclause ( 1) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 21 - Amendment at Clause 629**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

The note to clause 629 has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 22 - Amendment at Clause 639**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

The heading to clause 639 has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 23 - Amendment at Clause 639**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 639(1) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 24 - Amendment at Clause 648**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

The heading to clause 648 has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 25 - Amendment at Clause 648**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 648(1) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 26 - Amendment at Clause 674**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Subclause (2) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 27 - Amendment at Clause 674**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 674(2)(a) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 28 - Amendment at Clause 674**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 674(2)(b) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 29 - Amendment at Clause 674**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 674(2)(c) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 30 - Amendment at Clause 674**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

Clause 674(2)(d) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 31- Amendment at Clause 674**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

The editor's note to clause 674(2) has therefore been amended to ensure consistency with the new *Local Government Act 2009*.

### **Amendment 32 - Amendment at Clause 867**

On 31 March 2008, the *Queensland Heritage Act 1999* and the *Integrated Planning Act 1997* (IPA) were amended to make development on a local heritage place assessable development requiring a development permit.



A transitional provision was included in the IPA (section 6.9.1) to ensure that certain development applications were not affected by this amendment. This transitional provision was carried across into the Bill (clause 867). During this process, the term “existing application” was inserted into this clause. This term is defined in the Bill to mean a development application made under the IPA, but not decided, before the commencement of the *Sustainable Planning Act 2009*. By using the term “existing application”, any application made before the dates specified in section 6.9.1 of the IPA but decided prior to the commencement of the *Sustainable Planning Act 2009*, will lose the protection give under section 6.9.1 of the IPA.

Clause 867(1) has now been amended to ensure that this provision has the same effect as section 6.9.1 of the IPA.

### **Amendment 33 - Amendment at Clause 867**

On 31 March 2008, the *Queensland Heritage Act 1999* and the *Integrated Planning Act 1997* (IPA) were amended to make development on a local heritage place assessable development requiring a development permit.

A transitional provision was included in the IPA (section 6.9.1) to ensure that certain development applications were not affected by this amendment. This transitional provision was carried across into the Bill (clause 867). During this process, the term “existing application” was inserted into this clause. This term is defined in the Bill to mean a development application made under the IPA, but not decided, before the commencement of the *Sustainable Planning Act 2009*. By using the term “existing application”, any application made before the dates specified in section 6.9.1 of the IPA but decided prior to the commencement of the *Sustainable Planning Act 2009*, will lose the protection give under section 6.9.1 of the IPA.

Clause 867(3) has now been amended to ensure that this provision has the same effect as section 6.9.1 of the IPA.

### **Amendment 34 - Amendment at schedule 3, dictionary, definition of Local Government Act**

The *Local Government Act 2009* was assented to on 12 June 2009. This Act will replace the *Local Government Act 1993*.

The definition of Local Government Act in schedule 3 has therefore been amended to refer to the *Local Government Act 2009*, rather than the *Local Government Act 1993*.

**Amendment 35 - Amendment at schedule 3, dictionary ,  
definition of State interest**

The definition of State interest has been supplemented through illustration by an example of a type of development that could be considered of State interest.

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