INTEGRATED PLANNING BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The objective of this Bill is to seek to achieve ecological sustainability through coordinated planning, and the management of development and its effects on the environment.

The objective recognises that ecological sustainability can be achieved by planning for, and managing, the process of human initiated change in the natural and built environment (development).

Other important ways in which legislation can seek to achieve ecological sustainability are by regulating the environmental impacts of established uses or works, or by managing the ownership and allocation of natural resources. These activities are beyond the intended scope of this Bill. However, the Bill recognises and reflects the important relationships between legislation concerning planning and development assessment, natural resource management, and environmental protection.

Reasons for the Bill

The origins of Queensland's current planning and development assessment legislation can be traced back to the 1930s. While the legislation has been amended over many years, the basic structure and approach to development that underpins the current system has changed little in that time.

However, in recent decades, community consciousness of a broader range of environmental and social considerations has increased. This has been coupled with greater demands for public accountability and public involvement in the decision making process. Corresponding pressure on governments to respond has resulted in more and more layers of State and local government regulation being added to deal with each new issue, with little thought being given to the impact on, and objectives of, the system as a whole. The result is a proliferation of ad hoc regulation that often impedes, rather than promotes, the fulfilment of community expectations.

The complexity of the development assessment system is highlighted by the difficulties encountered by applicants in obtaining approval for sometimes quite routine development and the ease with which even relatively straight forward development can become derailed in a myriad of overlapping and duplicate procedures. Local government, business and the community alike have continued to express concern about the complexity and proliferation of development regulation in Queensland and are calling for urgent reforms to the system.

In 1989 a review of existing development approval processes, called the Systems Review Project, identified over 400 separate environmental impact assessment and approval processes related to development in 60 different Acts and regulations. The Systems Review Project concluded that the current system contained too many separate and inefficient procedures which caused serious delays and costs to business.

Public consultation in the course of the Systems Review Project indicated a clear preference for streamlined and integrated development approvals.

A discussion paper released in November 1993 identified the legislative basis needed for an integrated development assessment system (IDAS). Consultation on this discussion paper gave rise to the former Government's Planning, Environment and Development Assessment (PEDA) Bill, released as an exposure draft in May 1995.

The draft PEDA Bill attracted 237 submissions from business, local government and the community. The submissions strongly supported the need for new planning legislation, in particular IDAS, and agreed with many of the principles on which the PEDA Bill was based. However, they also identified a number of practical deficiencies.

On coming to Government the current Minister for Local Government and Planning established a taskforce to review public submissions and assess the need for new planning legislation. The taskforce included representatives from the development industry, the environment sector, professional organisations, rural industry and local government.

The taskforce strongly supported the concept of an integrated and streamlined development assessment system and an integrated whole of government approach to land use and infrastructure planning. The taskforce agreed new legislation was necessary to reflect Coalition policy, to take account of submissions received and to simplify many of the procedures proposed in the earlier draft PEDA Bill. Following the taskforce review, the

Government decided to prepare new planning legislation to be known as the Integrated Planning Act (IPA).

Ways in which the objectives are to be achieved

The objectives of the legislation are to be achieved primarily through integration of three key areas:

- **Integrated Development Assessment (IDAS).** IDAS will improve the speed and quality of decision-making on development proposals by streamlining decision-making processes; creating a single integrated development assessment system for State and local government approval processes; and establishing a central role for the impact assessment process.
- As IDAS is implemented, other State legislation containing development assessment processes will be repealed or progressively amended to remove those processes, and incorporate the matters dealt with by that legislation into the IDAS framework. The *Local Government (Planning and Environment) Act 1990* will be repealed by the new legislation. Priority is intended to be given to consequential amendments to remove the development assessment processes from the following Acts and incorporate them into IDAS: *Building Act 1975,* the *Sewerage and Water Supply Act 1949,* the *Coastal Protection and Management Act 1995*, the *Harbours Act 1955*, the *Beach Protection Act 1968,* the *Canals Act 1958*, the *Queensland Heritage Act 1992*, the *Transport Infrastructure Act 1994*, the *Environmental Protection Act 1994*, Sections 27 and 58 of the *Water Resources Act 1989,* and the *Wet Tropics World Heritage Protection and Management Act 1993*.
- **Integrated planning.** The capacity of IDAS to deliver measurable improvements in development assessment would be impaired if the policy framework within which decisions are made continued to be uncoordinated. Consequently, the Bill provides a basis for coordinating and integrating local, regional and State level planning into local government planning schemes, and makes planning schemes a key consideration of all parties in development assessment, so that development opportunities and standards are more readily identifiable.
- **Integrated dispute resolution**. Current development assessment systems are characterised by inconsistent, and sometimes even non-existent avenues of redress for disputes. By delivering a single

integrated response to development proposals, IDAS provides a basis for all disputes about decisions made in relation to a development proposal to be resolved at one time. Accordingly, the Bill provides consistent mechanisms for resolving all development related disputes.

These three key areas of reform are also supported by a number of other initiatives. These are:

- introducing private certification for development applications that require assessment against the Standard Building Law only;
- increasing opportunities for public input into planning and development decisions;
- reducing the cost of providing basic infrastructure and services to new communities by ensuring State and local government capital works spending is coordinated with land use planning decisions reflected in local government planning schemes; and
- providing clear principles for funding basic and essential infrastructure in new communities through infrastructure charges.

Alternatives to the Bill

Retaining or amending the current legislation is not tenable in view of broad demands for changes to the system, and the inability of the existing system to achieve Government policy. This is particularly in relation to achieving environmentally responsible development, streamlining approvals, cutting red tape and coordinating infrastructure provision.

Administrative cost to government

While there will be short-term costs to government arising from the implementation of new administrative systems, these will be negligible when compared to the broader savings arising from improved coordination between State and local government, and the removal of red tape and duplication from the system.

For example, the new planning legislation will deliver substantial economic benefits to the State, local government, business and the community. These are estimated at:

- $4m to $10m per year to the State Government arising from improved coordination between the provision of infrastructure and development;
- $25m per year to business through streamlining the development assessment system by cutting delays and red tape; and
- $8m per year to business from private certification for building by enabling competitive forces to provide cost savings in the development assessment process.

Consistency with fundamental legislative principles

The only significant issue arising in the Bill concerning fundamental legislative principles is the retention of the current arrangements concerning onus of proof in appeals initiated by third parties (submitters) against development applications. It is proposed that the onus of proof in these appeals remains with the applicant. This has been strongly supported by environmental and community sector interests, and is not opposed by development and local government sectors. This is on the basis that it does not represent a significant disadvantage in most appeals, and allows the applicant to outline their proposal first in any hearing. This can assist the court as it defines the context for proceedings.

Otherwise, the Bill is a significant improvement in some areas over the legislation it replaces with regard to fundamental legislative principles. In particular, the Bill:

- maintains a comprehensive protection of existing exercised and unexercised use rights and prevents the Act or instruments made under it from retrospectively affecting these rights;
- includes new appeal and review mechanisms, including the right to initiate a third party scheme review, alternative dispute resolution procedures, a broader declaratory jurisdiction for the Planning and Environment Court, and retention of third party appeal rights and open standing for enforcement actions;
- includes limited and highly qualified power of entry provisions, that do not allow for the seizure of documents or other property. The powers are in fact intended to avoid the taking of private property unless absolutely necessary, by giving local governments a limited power to enter land to undertake works to facilitate downstream drainage;

- includes equitable compensation arrangements in respect of changes to planning instruments that ensure that compensation is available to those whose genuine intentions to develop land within a reasonable time have been compromised; and for loss or damage resulting from the limited powers of entry identified above;
- ensures procedures for designating land for public purposes cannot blight land indefinitely, provides statutory rights to request early acquisition of designated land on hardship grounds, and requires land to be taken under the *Acquisition of Land Act 1967* within a reasonable time of its designation;
- requires planning schemes to pay particular attention to identifying and protecting the social and cultural interests of indigenous people; and
- is unambiguous and drafted in plain English.

Consultation

Since 1989 there has been extensive and thorough consultation with all stakeholder groups. Key concepts and issues have been thoroughly discussed with local government, the business community, environmental groups and professional organisations. Several public discussion papers and numerous stakeholder seminars and meetings have been held throughout the State.

More recently the Minister's taskforce, which includes representatives from key stakeholder groups, provided specific advice on the drafting of the Bill.

NOTES ON CLAUSES

CHAPTER 1—PRELIMINARY[1]

This chapter:

- introduces the Bill
- defines the Bill's purpose and how its achievement may be advanced
- defines the meaning of the key terms of development and ecological sustainability
- states continuing rights with respect to the use of premises

PART 1—INTRODUCTION

Short title

Clause 1.1.1 sets out the short title of the Bill.

Commencement

Clause 1.1.2 states that the commencement date for provisions in the Bill is to be proclaimed.

PART 2—PURPOSE AND ADVANCING THE PURPOSE

Purpose of Act

Clause 1.2.1 states that the purpose of the Bill when it commences as an Act is to seek to achieve ecological sustainability in three ways:

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1 A reference to the 'current Act' is a reference to the *Local government (Planning and Environment) Act 1990* which will be repealed when this Bill commences as an Act.

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

Ecological sustainability is defined in clause 1.3.3.

Planning is not specifically defined in the Bill. However, in the context of other terms used in the Bill it may be described as the formulated method by which 'desired environmental outcomes' are sought to be achieved. The purpose of the Bill emphasises the integration of the three broad levels at which planning needs to occur within the State. The local and State levels are directly associated with the respective levels of government. The regional level is the responsibility of State government by way of the definition of 'State interest' which includes the interest of a region (see dictionary in schedule 10). However, in addition to its implementation by the State, the Bill provides for regional planning through the role of regional planning advisory councils and the cooperation of local governments (see chapter 2, part 5).

Managing the process by which development occurs is a key component of the Bill. Chapter 3 establishes the Integrated Development Approval System (IDAS). It is a single integrated system for development assessment and development approval involving both local and State levels of government. Its purpose is to achieve decision-making which is efficient, accountable and coordinated, and which provides opportunities for community involvement.

The reason for a development assessment process is to manage the effects of development on the environment. These effects include the subsequent use of premises following development, the provision of infrastructure, the use of natural resources, and effects on ecosystems, health, safety, amenity and energy conservation.

Advancing Act's Purpose

Clause 1.2.2 states that an entity must advance the Act's purpose in performing a function or exercising a power under the Bill when it commences as an Act. Such functions or powers would include the making of local planning instruments and State planning policies, and the designation of land for community infrastructure.

However, there is an exception for certain assessment managers and referral agencies with respect to assessing and deciding a matter under this Bill when it commences as an Act—they must have regard to the Act's purpose. This exception applies to an assessment manager other than a local government, and to a referral agency other than a local government, unless the local government is acting as referral agency under devolved or delegated powers. This acknowledges that these entities have jurisdictions under other Acts and so may be required to operate under this Act and other Acts at the one time. In this situation, this clause makes it clear that this Act would not override these other Acts.

For example, in the case where a development was proposed offshore and a State agency was the assessment manager and the local government a referral agency, the State agency would need to have regard to this Act's purpose in assessing and deciding the application, and the local government would be required to advance this Act's purpose in performing the functions or exercising the powers of a referral agency.

In another case, where a State agency had devolved its powers to a local government (say the Department of Environment as the administering authority for environmentally relevant activities under the *Environmental Protection Act 1994*), the local government would act as if it were the State agency, and in respect of performing or exercising its referral agency functions and powers, have regard to this Act's purpose.

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

What advancing this Act's purpose includes

Clause 1.2.3 lists six ways that the purpose of the Bill, when it commences as an Act, may be advanced. Although not an exhaustive list, it indicates the breadth of relevant matters and serves as an illustrative guide to entities performing a function or exercising a power under the Act.

In advancing the Act's purpose the matters specified in this clause are to be taken into account during the making of planning instruments and the assessment of development applications. It is necessary to deal with these

matters in the making of planning instruments to provide a comprehensive framework for managing the effects of development. This is the most efficient and effective means to deal with the short and long-term cumulative effects of development, and provides an appropriate context within which development assessment can occur.

PART 3—INTERPRETATION

Division 1—Standard definitions

Definitions—the dictionary

Clause 1.3.1 states that the dictionary in schedule 10 defines particular words used in the Bill.

Division 2—Key definitions

Meaning of "development"

Clause 1.3.2 defines "development" by reference to five distinct actions. It is a broad concept covering a wide range of actions affecting the physical environment, including carrying out building work and making a material change in the use of land. The concept is deliberately broad to ensure IDAS is able to integrate the many different development-related assessment systems currently in place. A narrower meaning would necessarily limit the application of the system.

An important point to note about the way the term "development" is used in the Bill that assists in its understanding, is that development is defined to be an action rather than the result of an action. For example, development is the carrying out of building work and the making of a material change of use rather than the results of those actions, which are a building and a use of premises.

Meaning of "ecological sustainability"

Clause 1.3.3 defines "ecological sustainability" as a balance that integrates three separate elements. This term has been defined for the

purposes of this Bill, that is, with relevance to its planning and development assessment functions. It draws on the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development endorsed by the Council of Australian Governments on 7 December 1992. Additionally, because this is planning legislation, the meaning of the term has been expanded to include planning concepts about amenity, including the social and physical wellbeing of people and communities.

Meaning of "lawful use"

Clause 1.3.4 defines "lawful use" and establishes its relationship to development and to development in accordance with the Act. This is an important issue to clarify as the Bill deals with the process of "development" (as defined), and also, as referred to in the purpose statement, the effects of development which includes the use of premises. Accordingly, the Bill establishes a framework for regulating use(e.g. through the imposition of conditions on development approvals (for assessable development), and through the need to comply with codes dealing with use (for self-assessable development).

However, in many situations there will be no need to regulate the consequent use, whether or not the development (including a material change of use) requires a development permit. For example, it is likely once the building of a house is completed in accordance with a development permit, the consequent use of the house will not be further regulated by way of conditions on the development permit or a code.

It should be noted that consequences of use which in themselves constitute "development", such as operational works for a forestry use, are regulated as development.

Division 3—Supporting definitions and explanations for key definitions

Definitions for terms used in "development"

Clause 1.3.5 defines the five aspects of "development" and other terms used in the definition.

The Bill adopts a broad definition of "development" to ensure that activities regulated under other legislation can be integrated into the integrated development assessment system (IDAS) under chapter 3 of the Bill.

Building work is development involving the building, repairing, altering, underpinning, moving or demolishing of buildings, and associated incidental earthworks. For example, building or altering a house is building work.

Plumbing and drainage work is development involving installing, repairing, altering or removing on-site systems for water supply, sewage and water disposal and fire services. For example, the installation of internal plumbing in a house and connection to a sewer is plumbing and drainage work.

Operational work is development, other than building, drainage or plumbing work, that materially affects premises or their use. This is a broad category of work which covers a range of development activities. Examples of operational work include draining wetland, extracting sand and gravel, earthworks for drainage purposes and constructing free-standing advertising signs.

Reconfiguring a lot is development that involves the subdivision, amalgamation or rearrangement of a lot, dividing land by agreement and the creation of an access easement. For example, the subdivision of an 800m^2 lot into two 400m^2 lots is reconfiguring a lot.

Material change of use is development that involves the start of a new use of premises, re-establishment of a use that has been abandoned, or a material change in the character, intensity or scale of the use of the premises. For example, the change from a rural use to a residential use is a material change of use. It should be noted that whether a change in the character, intensity or scale of a use is "material" must be considered in the context of the use. Some uses involve regular or irregular change which are considered to be a normal feature of the use. For example, the use of holiday accommodation may vary considerably according to seasons and holiday periods. Such variations which are normal and expected would not constitute a material change of use.

Explanation of terms used in "ecological sustainability"

Clause 1.3.6 explains each of the three elements used in the definition of "ecological sustainability". Ecological sustainability is defined in clause 1.3.3 and is a balance that integrates the protection of ecological processes, economic development, and the maintenance of the wellbeing of people and communities. The protection of natural systems is achieved by protecting biological diversity and the life supporting capacities of ecosystems. Economic development is achieved by creating diverse, efficient, resilient and strong economies to enable communities to meet their needs. The cultural, economic, physical and social wellbeing of communities is achieved by creating well serviced communities and conserving or enhancing areas and places of built and cultural heritage.

An important principle integrated into these elements is intergenerational equity. The need to consider and provide for future generations is explicitly addressed. Intergenerational equity is also implicitly addressed by the need to protect, conserve or enhance over time the qualities which constitute ecological sustainability. These requirements are consistent with the National Strategy for Ecologically Sustainable Development.

Division 4—General Matters of Interpretation

Words in this Act prevail over words in planning instruments

Clause 1.3.7 establishes the precedence of the meaning of a word in the Act over the meaning of the same word in a planning instrument where there is an inconsistency.

References in Act to applicants, assessment managers, agencies etc.

Clause 1.3.8 states how terms used in the Bill are to be interpreted. This clarifies their meaning in particular contexts and enables the use of less complex wording throughout the main text of the Bill.

PART 4—USES AND RIGHTS

It is a fundamental requirement of this Bill, which deals with the development and use of land, to state how existing, lawfully established

uses, buildings and works are dealt with under the Bill. It is also essential that the Bill state how lawfully acquired rights to develop land or commence uses are dealt with.

This part applies to rights—rights to commence or continue using premises, and the rights associated with lawfully constructed buildings or works—that have been acquired either before or after the commencement of the Bill as an Act. The current Act only deals with rights acquired after commencement of that Act such that it is necessary to refer to the Act which it replaced to determine how rights acquired before that Act commenced are treated.

This part states the situations in which certain rights are protected from the requirements of a new planning instrument or an amendment of a planning instrument. These rights may have been acquired through approvals or because approval for a particular development was not needed.

Division 1 of this part deals with existing rights acquired after the commencement of this Bill as an Act, and division 2 with rights acquired before its commencement. These rights need to be dealt with separately because the nature of approvals differs in the circumstances, and the rights arising from each type of approval need to be specifically covered.

Division 1—Uses and rights acquired after the commencement of this Act continue

Lawful uses of premises protected

Clause 1.4.1 protects a lawful use of premises from anything in a planning instrument or an amendment of a planning instrument which may stop, change or further regulate the use if:

- it was a lawful use immediately before the commencement of the planning instrument or an amendment of the planning instrument; and
- there has been no material change of use since the commencement of the instrument or amendment.

For example, if an industry has established with a development permit and operates in accordance with that permit, a subsequent amendment of the relevant planning scheme which imposes additional or varying requirements for that industry (perhaps a higher standard of landscaping or

different car parking requirements), is not applicable to that existing industry and does not affect it. Equally, nothing in the planning scheme could require the use to cease.

The Bill also protects lawful uses if there has been a material change of use of the premises after the commencement of a new or amended planning instrument. For example, a car saleyard has established with a development permit, and later, after a new planning scheme has commenced, a car repair workshop is approved on the site. This clause makes it clear that the car saleyard is still a lawful use and may continue in accordance with its permit and the subsequent approval cannot stop, change or further regulate that use.

New planning instruments cannot affect existing development permits

Clause 1.4.2 protects rights acquired under existing (and current) development permits which have not been acted upon from anything in a new planning instrument or an amendment of a planning instrument which may stop or further regulate the development.

For example, if an amended planning scheme is introduced before the use authorised under a permit starts, any provisions in the planning instrument which impose further restrictions on that type of use (perhaps reduced opening hours or increased car parking requirements) have no impact. If the use starts lawfully before this section commences, it is protected by clause 1.4.1.

Similarly, if a development permit for building work exists but has not yet been acted upon, new provisions in a planning scheme or a code in the scheme dealing with the height or setback of building cannot impact on the development permit. The development authorised under the permit may be carried out subject to the conditions of the permit. Also, if a condition of the permit references a code in the planning scheme, the code that is required to be satisfied is the code in place when the permit was given, not any subsequently amended form of the code.

This approach is consistent with the current Act. Planning instruments are not retrospective in their effect.

Implied and uncommenced right to use premises protected

Clause 1.4.3 protects existing implied rights to use premises where the use has not started immediately before the commencement of a new planning instrument or an amendment of a planning instrument, if:

- the development required to be completed before the use starts has been completed within the time stated in the permit or this Bill; and
- the use of the premises starts within five years of development being completed.

A right would be implied if:

- a development permit has been granted for certain premises; and
- those premises can be used for a particular purpose when the development is completed in accordance with the permit, because the change to the intended use is not a material change of use requiring a development permit (i.e. at the time the permit was given the change of use of the premises was exempt or self-assessable development).

For example, a development permit has been given to build a small factory building in a light industrial area within a two year period. The permit is limited to authorising the carrying out of building, plumbing and drainage work. (This is because these aspects of development were the only aspects requiring assessment at the time the application was made. The change of use of the premises from vacant land to light industry could occur without approval as it was either exempt or self-assessable development at that time). A subsequent amendment of the planning scheme makes the change of use for this type of light industry an assessable development. However, this clause makes it clear that the amendment does not affect the implied right to use the premises for light industry purposes that was acquired when the development permit was given. However, this right is not unlimited. The clause requires the authorised development to start within the stated time (2 years) and for the use to start within 5 years of the development being completed.

Similarly, if a development permit is given to subdivide land in an industrial zone, and the change of use to allow the land to be used for industrial purposes is exempt, a subsequent amendment to the planning scheme making that change of use assessable, does not affect the implied and uncommenced right to use the land (subject to meeting of applicable commencement and completion times).

Lawfully constructed buildings and works protected

Clause 1.4.4 protects buildings or works that have been lawfully constructed and completed after the commencement of this clause. Neither a

planning instrument nor an amendment of a planning instrument can require the building or works to be altered or removed.

Rights under a preliminary approval protected

Clause 1.4.5 prevents existing rights under a preliminary approval being affected by a planning instrument or an amendment of a planning instrument. Generally this protection lasts until the approval lapses—four years unless a longer period is stated in the approval (clause 3.5.21). In the situation where the approval relates to an aspect of development (other than a material change of use which is covered by the former situation) protection lasts until the time for completion of that aspect of development stated in the approval.

For example, as a step towards the establishment of a major residential area and associated retail, community and recreational facilities, an applicant seeks preliminary approval for a material change of use from agriculture and unused forest to the proposed residential and associated uses. An overall plan is submitted with the application outlining the broad allocation of land uses and indicating the scale of the proposal. Preliminary approval is given for development in accordance with the overall plan with development to be completed within a stated time. If the local government amended its planning scheme two years later in a way that affected part of the subject area covered by the approval, the preliminary approval would be unaffected and could still be acted upon (i.e. applications could continue to be made for development permits for the development given preliminary approval) until the preliminary approval lapsed. Should the approval lapse without further permits having been given for development, the amendment of the planning scheme would then affect any future development of the land.

Division 2—Uses and rights acquired before the commencement of this Act continue

This division applies to uses, and the rights associated with lawfully constructed buildings or works, that existed before the commencement of this Bill as an Act. It states the situations in which certain uses and rights are protected from the requirements of a new planning instrument or an amendment of a planning instrument.

Lawful uses of premises protected

Clause 1.4.6 protects lawful uses of premises from anything in a planning instrument or an amendment of a planning instrument, which may stop, change or further regulate the use if:

- it was a lawful use immediately before the commencement of this clause; and
- there has been no material change of use since the commencement of this clause.

This clause is equivalent to clause 1.4.1. The difference is when the rights were acquired—in this case before this clause commences.

See notes on clause 1.4.1 for examples.

Lawfully constructed buildings and works protected

Clause 1.4.7 protects buildings or works lawfully constructed before the commencement of this clause from requirements to be altered or removed arising from a planning instrument or an amendment of a planning instrument.

This clause is equivalent to clause 1.4.4. The distinction is whether construction was completed before or after commencement of this clause.

PART 5—APPLICATION OF ACT

Act binds all persons

Clause 1.4.8 states that to the extent that it is able, this Bill binds all persons in Queensland and Australia.

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

CHAPTER 2—PLANNING[2]

This chapter establishes a framework for coordinated and integrated local, regional and State level planning. The participants are the State, regional planning advisory committees, local governments and the public. Planning schemes are the primary instruments for integrating State, regional and local planning and development assessment.

Local governments have the responsibility for making planning schemes and other local planning instruments for local government areas (see part 2). They must also respond to input from the other participants (such as the State) in the making of the instruments.

The State may make policies and establish assessment criteria, including State planning policies (see part 4) and codes. The State also has certain reserve powers in relation to local planning instruments (see part 3). In addition, the State may designate land for community infrastructure (see part 6) and may establish regional planning advisory committees (see part 5).

Regional planning advisory committees (RPACs), when established, have the responsibility to report on ways of dealing with the regional dimension of planning matters (see clause 2.5.6). Participation is voluntary and the reports are non-statutory. Where appropriate, RPAC reports may be given effect through planning schemes.

The public may make submissions about local planning instruments and State planning policies. The public may also initiate reviews of local planning instruments (see part 2)[3].

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2 A reference to the "current Act" is a reference to the *Local Government (Planning and Environment) Act 1990* which will be repealed when this Bill commences as an Act.

3 The public's role in development assessment is covered in chapter 3 dealing with IDAS.

PART 1—LOCAL PLANNING INSTRUMENTS

Division 1—General provisions about planning schemes

Meaning of "planning scheme"

Clause 2.1.1 states that a planning scheme is an instrument made by a local government under division 3, which specifies the process in schedule 1 to be followed.

Clause 2.1.23 states that a local planning instrument is a statutory instrument under the *Statutory Instruments Act 1992* (SIA) and has the force of law.

Under the current Act, planning schemes also are statutory instruments. They are prepared by local governments and adopted by order in council. That is, they are made by the Governor in Council and notified in the government gazette. However, section 1.5 of the current Act states specifically that planning schemes made under the Act are not subordinate legislation.

Similarly, under this Bill, planning schemes will not be subordinate legislation. Section 9(2) of the *Statutory Instruments Act 1992* (SIA) expressly excludes statutory instruments made by a local government (e.g. local laws) from being subordinate legislation. Planning schemes are local government instruments as local laws are and the approach adopted in the Bill is consistent with the SIA.

The Minister may also make a planning scheme if a local government fails to comply with a direction under clause 2.3.2 (Power of Minister to direct local governments to take action about local planning instruments). This power of the Minister may be invoked to protect or give effect to a State interest.

Area to which planning schemes apply

Clause 2.1.2 requires that a planning scheme cover the whole of a local government area (the "planning scheme area"). This differs from equivalent provisions in the current Act (section 2.10) which allow planning schemes to cover only part of a local government area.

The requirement for all of a local government area to be covered reflects two differences in planning schemes proposed under the Bill. The first is that because the structure of planning schemes will not be prescribed they can be tailored more readily to suit areas of low development activity. The second is that planning schemes will have regional and State dimensions as well as a local dimension. Although local issues in a particular part of a local government area may not be significant, the option needs to be provided for State and regional issues to be incorporated in a planning scheme, including the designation of community infrastructure.

Division 2—Key concepts for planning schemes

Key elements of planning schemes

Clause 2.1.3 states five key elements which a local government and the Minister must be satisfied that a planning scheme does or includes.

The first relates to an overall approach which arises directly from the object of the Act: a planning scheme must coordinate and integrate all the matters it deals with. These matters include the core matters (see schedule 1) and may have local, regional or State dimensions as described in clause 2.1.4.

The second relates to a fundamental function of planning schemes and also to the object of the Act and how it may be advanced: to identify the desired environmental outcomes for the planning scheme area. Achievement of desired environmental outcomes is a significant issue in the review of planning schemes (clause 2.2.1), a decision on an impact assessment (clause 3.5.14), and land acquisition for the construction of infrastructure (5.5.1).

The three remaining relate to elements that must be included:

- measures that facilitate the desired environmental outcomes to be achieved;
- performance indicators to assess the achievement of the desired environmental outcomes; and
- a benchmark development sequence if the local government is prescribed under a regulation.

The intention behind these provisions is to promote a certain function for planning schemes rather than a formal structure, and to identify the fundamental elements of a planning scheme and promote their linkage through the scheme. This differs from the current Act which specifies certain regulatory and administrative provisions and types of instruments which a planning scheme must contain (strategic plans, development control plans, zoning and regulatory maps). Rather than determine a common structure or stipulate a certain set of components, the Bill aims to ensure that planning schemes are flexible tools which have a major role in achieving the Bill's purpose.

Consistent with its coordinating and integrating role, nothing prevents a planning scheme also being used to illustrate relevant planning and development matters which do not formally form part of the scheme, as footnotes in an Act are not part of an Act. For example, a local government may consider it useful and helpful to users of its planning scheme to indicate on the scheme maps the location of registered places under the *Queensland Heritage Act 1992*. If a planning scheme included such notations and stated in the scheme that this additional information did not form part of the scheme, then it would not be part of the scheme. The updating and amendment of this overlay information could then occur without having to formally amend the planning scheme using the process in schedule 1. For information such as that mentioned which is updated periodically this would mean the information could be easily kept up to date for users.

A benchmark development sequence is a preferred sequence for residential development. It is defined in the dictionary in schedule 10. It is a detailed and comprehensive sequence covering a 15 year period divided into successive five-year periods (or other periods agreed by the Minister). A regulation under the Bill prescribes the matters to be covered and the local governments which must prepare a benchmark sequence for development. These are key growth areas in the State where sequencing is essential for the efficient provision of infrastructure and there is a high cost of providing infrastructure out of sequence. Clause 2.2.5 requires a benchmark development sequence to be reviewed annually.

A benchmark development sequence is also linked with clause 3.5.35. This clause provides for identified State agencies to impose conditions requiring payments to mitigate the cost impacts of bringing forward specified infrastructure (State schools, public transport etc.) when "out of

sequence" development is proposed (i.e. development which is outside an area planned to accommodate new growth within the next five years).

The clause also states that the measures referred to include the identification of relevant self-assessable development, and assessable

development requiring code or impact assessment—the first step in managing development and its effects.

There is a final statement in the clause to clarify two points:

- desired environmental outcomes can be identified for particular localities within the planning scheme area;
- a local government not prescribed under a regulation may include a benchmark development sequence in its planning scheme.

State, regional and local dimensions of planning scheme matters

Clause 2.1.4 states that a matter in a planning scheme may have local, regional or State dimensions. The dimensions are broadly described and provide a basis for distinguishing between them when considering a specific matter. How these dimensions relate to a specific matter will vary depending on such factors as the nature of the matter itself, current State government policy, protocols and administrative arrangements that have developed between State and local government, the interests of any regional planning advisory committees, and the geographical area in question.

The distinguishing elements of each dimension are:

- local—within the jurisdiction of local government but not a regional or State dimension;
- regional—the subject of a regional planning advisory committee recommendation or can best be dealt with by 2 or more local governments; and
- State—of State interest.

The following table provides an example of how the different dimensions may possibly be identified with respect to the core matter of valuable features. Core matters for the preparation of a planning scheme are described in schedule 1, clause 4.

Core matter-valuable features	Local dimension	Regional dimension	State dimension
(a) Resources and areas that are of ecological significance e.g. an area of ecological significance within a coastal precinct.	A local creek system containing an area of scenic value in a coastal area.	A wildlife corridor identified through a regional planning process as being of value in a region's natural environment.	Protected Areas included in a National Park or covered by a Regional Coastal Management Plan.
(b) Areas contributing significantly to amenity e.g. an area of open space.	A hillside or backdrop of high scenic value in a local community.	An area of significance identified in a comprehensive regional open space strategy.	An area of natural features protected by a national park.
(c) Areas and places of social, cultural or heritage significance e.g. an area of heritage significance.	A local building of historical interest identified by a local heritage study.	An area of heritage significance forming part of a regional tourist route.	A Registered Place on the Heritage Register.
(d) Resources and areas of economic value e.g. water resources.	An area providing a catchment for a local water supply.	A water supply catchment shared by 2 or more local governments.	A water supply catchment for a storage dam or weir controlled by the State.

Division 3—Making, amending and consolidating planning schemes

Process for making or amending planning schemes

Clause 2.1.5 states there are 3 stages, prescribed in schedule 1, that must be followed in making or amending a planning scheme—preliminary consultation and preparation, consideration of State interests and consultation, and adoption.

An approach has been adopted throughout the Bill to clearly distinguish between what are conceptual matters and those that are procedural. This approach recognises the separate function of both elements and avoids their mixing and potential confusion. Grouping of the procedural matters also allows a single appearance in the Bill and the use of references in the main text to those parts which apply. This avoids their complete or partial repetition throughout the body of the Bill.

Details on schedule 1 are provided in the notes on the schedules.

Compliance with sch 1

Clause 2.1.6 states the requirements for validity of a planning scheme or amendment—substantial compliance with the process stated in schedule 1. The scheme or amendment is still valid so long as non-compliance has not:

- adversely affected the public's awareness of the existence and nature of the proposed planning scheme; or
- restricted the opportunity of the public under schedule 1 to make submissions; or
- restricted the opportunity of the Minister to exercise powers under schedule 1 (clauses 10, 11, 18).

This clause carries forward the provisions of section 2.15(7) of the current Act.

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

The clause also protects the role of the Minister in the making and amending of planning schemes, but makes allowance for minor mistakes, for example in following the stipulated procedure.

Effects of planning schemes and amendments

Clause 2.1.7 states what the effect is of a planning scheme for a planning scheme area—it becomes the planning scheme for the area and replaces any

existing planning scheme. The clause also specifies the day on and from which a planning scheme or an amendment has effect (either the day notified in the gazette or a later day if stated in the scheme or amendment). Such statements are necessary to settle any query as to which scheme is effective at a particular time.

Consolidating planning schemes

Clause 2.1.8 states that a planning scheme may be consolidated by a local government. Under clause 2.3.2(3), the Minister may also direct a local government to prepare a consolidated planning scheme. A definition of a consolidated scheme is provided in the dictionary (schedule 10). Essentially this is a combination of all scheme amendments without changing a person's existing rights and obligations. As there is no change to the substance of the current scheme, the clause also states that schedule 1, which prescribes the process for making a scheme, does not apply.

There is also a statement clarifying when the consolidated scheme takes effect—at the day of adoption, by resolution, of the local government.

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

Division 4—Temporary local planning instruments

This is a new type of instrument. It is an instrument which can be introduced quickly to deal with an urgent situation. It can do this by suspending or otherwise affecting the operation of a planning scheme for a limited time. For example, it may add a provision, or replace, modify or suspend an existing provision which may have a general or specific effect. The scheme reverts to its previous operation on expiry of the instrument. A temporary local planning instrument is also not a complete planning scheme but a short-term, partial scheme.

Because it is able to be introduced quickly and without public consultation, provisions have been included to limit the potential use of these instruments (see clause 2.1.10). These limitations are included to

ensure the instruments are only used to deal with emerging issues of a serious nature that require immediate action. It is not intended that the instrument be used to circumvent normal scheme amendment processes or to frustrate reasonable and legitimate development expectations of land owners.

Meaning of "temporary local planning instrument"

Clause 2.1.9 states that a temporary local planning instrument is an instrument made by a local government under this division.

The Minister may also make a temporary local planning instrument if a local government fails to comply with a direction under clause 2.3.2 (Power of Minister to direct local governments to take action about local planning instrument). This power of the Minister may be invoked to protect or give effect to a State interest.

Extent of effect of temporary local planning instrument

Clause 2.1.10 states the period over which a temporary local planning instrument is effective—for a year or a lesser period specified in the instrument; and how it operates—may suspend or otherwise affect the operation of the whole or part of a scheme but not amend it.

This means that a temporary local planning instrument is a separate statutory instrument—it is not part of a planning scheme or an amendment of a planning scheme. It stands separately, outside an existing planning scheme, and affects how that planning scheme operates. It is important to note that this instrument is not like interim development control provisions under the current Act, which operate in the absence of a planning scheme.

If the factors which created the need for the instrument are expected to continue, the planning scheme will need to be altered permanently. The one year period during which the temporary instrument is effective provides time to complete the amendment process.

The clause also specifies the conditions which must exist for a temporary local planning instrument to be made. These are:

- a significant risk of serious environmental harm (definition from section 17 of the *Environmental Protection Act 1994* included as footnote to the clause), or serious adverse cultural, economic or social conditions occurring in the planning scheme area; and

- an increase in the risk if the process under schedule 1 were used to amend the planning scheme due to the delay involved.

It is the Minister who must be satisfied these conditions exist when considering a proposal from a local government to make the instrument (schedule 2, clause 2).

Area to which temporary local planning instrument applies

Clause 2.1.11 states that unlike a planning scheme, a temporary local planning instrument may apply to either all or part of the planning scheme area. This reflects the different role of the temporary local planning instrument which is to address a specific issue rather than to be a comprehensive planning instrument.

Process for making temporary local planning instruments

Clause 2.1.12 states that there are 2 stages involved in making a temporary local planning instrument which are prescribed in schedule 2—proposal and adoption. This process is faster and less involved than the planning scheme making process, particularly due to the absence of public consultation. This reflects the special role of the instrument to deal quickly with matters where delay would increase the risk of significant harm or adverse conditions occurring (refer to the notes on clause 2.1.10 above).

A significant aspect of the proposal stage is the need for the Minister's agreement which may involve the imposition of conditions on the local government.

Further details on schedule 2 are provided in the notes on schedules.

Compliance with sch 2

Clause 2.1.13 states the requirements for validity of a temporary local planning instrument—substantial compliance with the process stated in schedule 2.

When temporary local planning instruments have effect

Clause 2.1.14 states the day on and from which the temporary local planning instrument has effect (either the day adoption is notified in the

gazette or a later day stated in the instrument) until it expires (see clause 2.1.10) or it is repealed (see clause 2.1.15).

Repealing local temporary local planning instruments

Clause 2.1.15 states that there are two ways in which temporary local planning instruments may be repealed. The first way provides for the local government to repeal it by resolution, followed by publication of a notice in a local newspaper and in the gazette, with a copy of the notice going to the chief executive. If the instrument was made by the local government following a direction of the Minister under clause 2.3.2 (1)(c), or by the Minister because the local government failed to comply with such a direction, the Minister's written approval is required to make a resolution to repeal.

The second way to repeal a temporary local planning instrument is by adoption of a planning scheme, which in accordance with schedule 1 also requires notification in the gazette. This last course provides a permanent way of dealing with the matters originally dealt with by the temporary local planning instrument.

The repeal takes effect from the day of notification in the gazette—either of the resolution to repeal or the resolution to adopt the planning scheme.

Division 5—Planning scheme policies

Meaning of "planning scheme policy"

Clause 2.1.16 states that a planning scheme policy is an instrument that:

- supports the local dimension of a planning scheme;
- is made by a local government under this division, which specifies the process in schedule 3 is to be followed; and
- to the extent of an inconsistency, is overruled by the relevant planning scheme.

As it is for a planning scheme, a planning scheme policy is a statutory instrument (see clause 2.1.23). Where relevant, it is given the same level of consideration as a planning scheme during impact assessment (clause 3.5.5).

The Bill imposes few limits on the substance or application of a planning scheme policy. A planning scheme policy may only be created if there is a planning scheme in existence, the policy must support the local dimension of the planning scheme, and under clause 2.1.23 may not regulate or prohibit development or the use of premises. It is a flexible instrument which local governments may use together with planning schemes to deal with local planning matters. While the Bill will allow material presently dealt with in planning schemes to be included in planning scheme policies instead, policies are intended to merely support the scheme. Substantive planning policies are intended to be contained within the planning scheme itself. It is expected that administrative protocols will evolve over time which suggest a suitable balance between the nature of material contained in planning schemes and in planning scheme policies.

The process for making a planning scheme policy involves the preparation of an explanatory statement, a 20-business day public consultation period, reporting to submitters, and lodgment of the policy with the chief executive (DLGP) (see clause 2.1.19 below and schedule 3).

They are similar to "local planning policies" under the current Act. However, they differ in that local planning policies are required to apply throughout the planning scheme area and are made by resolution of a local government. This is followed rather than preceded by public notification in a newspaper of the title and nature of the policy.

Area to which planning scheme policy applies

Clause 2.1.17 states that a planning scheme policy may apply to all or only part of a planning scheme area. This reflects the flexible nature of planning scheme policies and their role in reflecting only the local dimensions of matters dealt with by schemes, which may or may not apply across the entire scheme area. Under the current Act, the equivalent "local planning policies" must apply to the whole of the local scheme area.

Adopting planning scheme policies in planning schemes

Clause 2.1.18 refers to section 23 of the *Statutory Instruments Act 1992* which allows a statutory instrument to apply, adopt or incorporate the provisions of an Act, statutory instrument, other law, or another document. Section 23 currently allows a local government to choose whether or not to

"call up" a local planning policy or other document into its planning scheme. "Calling up" a policy or other document effectively makes it part of the planning scheme.

This clause limits the generality of section 23 by stating that the only document made by a local government which can be applied, adopted or incorporated into a planning scheme, is a planning scheme policy. The purpose of this clause is to ensure that a planning scheme can only "call up" local documents that have gone through an appropriate public consultation process.

There are no similar constraints placed on the nature of national or State policies, codes, standards or the like. This is on the basis that the making of such policies or documents usually involves public consultation.

Process for making or amending planning scheme policies

Clause 2.1.19 states that there are 3 stages involved in making or amending a planning scheme policy which are prescribed in schedule 3—proposal, consultation, and adoption. The consultation period is for a minimum period of 20 business days. As the instrument has only a local dimension there is no requirement for State interests to be considered. However, to ensure that the department has a complete collection of local planning instruments a copy of the notice in the newspaper about the planning scheme policy and copies of the policy are required to be given to the chief executive.

Further details on schedule 3 are provided in the notes on schedules.

Compliance with sch 3

Clause 2.1.20 states the requirements for validity of a planning scheme policy or amendment—substantial compliance with the process stated in schedule 3. The policy or amendment is still valid so long as non-compliance has not:

- adversely affected the awareness of the public of the existence and nature of the proposed planning scheme policy or amendment; or
- restricted the opportunity of the public under schedule 3 to make submissions.

This clause carries forward the provisions of section 2.15(7) of the current Act and is similar to clause 2.1.6. (see notes for this clause).

Effects of planning scheme policies

Clause 2.1.21 states what it means for a planning scheme policy to be made for the planning scheme area—it becomes a policy for the area and replaces any existing policy, if that is the intention. It also specifies the day on and from which the policy or an amendment of a policy takes effect (either the day the adoption is first notified in a local newspaper or a later day if stated in the policy or amendment). Such statements are necessary to settle any query as to the applicability of a policy at a particular time.

Repealing planning scheme policies

Clause 2.1.22 states that a local government may repeal a planning scheme policy (other than one replaced by another) by resolution. This must be followed by providing the Minister with a copy of the resolution, and placing a public notice in a local newspaper.

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

Division 6—Local planning instruments generally

Local planning instruments have force of law

Clause 2.1.23 states that a local planning instrument (i.e. a planning scheme, temporary local planning instrument or planning scheme policy) is a statutory instrument and has the force of law.

Under the *Statutory Instruments Act 1992* a statutory instrument may both regulate and prohibit. However, subclause (2) makes it clear that a local planning instrument, while still a statutory instrument, may not prohibit development on premises or the use of premises.

This approach is consistent with the scheme of the Bill which does not envisage absolute or partial prohibition of development or use. It is also

consistent with the framework of the current Act which while allowing schemes to prohibit development, also provides for privately initiated rezonings to be made. The rezoning mechanism allows a prohibition in a planning scheme to be overturned by changing the zoning of the land. Planning schemes are meant to be dynamic documents that are responsive to changing circumstances, rather than absolute pronouncements of policy enshrined in regulation. This approach to development has allowed Queensland to maintain a market responsive land development system.

Subclause (3) deals with the regulation of use under the Bill. It is important to note that IDAS deals with development (i.e. the making of a change of use, the carrying out of building work, etc) rather than use. If development is assessable, the Bill provides for conditions to be imposed governing the subsequent use of the land resulting from the development (e.g. conditions about hours of operation and other operating and management requirements). However, if development is not assessable, IDAS does not address use. Accordingly, it is necessary to provide for planning schemes and temporary local planning instruments to be able to regulate use other than by way of conditions imposed on assessable development in some situations.

Under the Bill self-assessable development must comply with applicable codes even though an application for approval is not necessary. Subclause (3) provides for use to be similarly regulated. If a use is a natural consequence of a material change of use that was a self-assessable development, a code in the planning scheme may apply to the use. This provision is subject to the limitation that the code must be in place before the change of use occurred. This is to ensure the Bill does not operate retrospectively to allow a planning scheme to apply use codes to existing uses. The clause needs to be read together with clause 1.4.1 (Lawful use of premises protected).

Subclause (4) makes it clear that a planning scheme policy can neither regulate not prohibit the development or use of premises. Planning scheme policies are policies that support the local dimension of a planning scheme. it is not appropriate that they be a further regulatory instrument. This could potentially lead to conflict with the planning scheme.

Infrastructure intentions in local planning instruments not binding

Clause 2.1.24 establishes that a local government or the State is not obligated to provide infrastructure in accordance with the intentions shown on a local planning instrument. These instruments are intended to express intentions for some time in the future. They do not prescribe the future but identify desired environmental outcomes and the measures for achieving those outcomes. In this context, indications of intentions for the provision of infrastructure both inform and respond to development decisions that are made. Accordingly, it is not appropriate to bind such intentions but allow them the necessary flexibility to respond to changing circumstances. The requirement for regular reviews of planning schemes should prevent infrastructure intentions shown on schemes becoming significantly outdated (clause 2.2.1).

PART 2—REVIEWING LOCAL PLANNING INSTRUMENTS

This part deals with three types of review of local planning instruments—by local government for the purpose of monitoring the performance of a planning scheme, by local government to review a planning scheme's benchmark development sequence, and by an independent reviewer to review a planning scheme or planning scheme policy following a request.

The independent review mechanism in division 2 is a new feature that is not available under the current Act. The mechanism allows a person to seek a review of part of a planning scheme (such as the zoning of a parcel of land or a planning policy or code), or all or part of a planning scheme policy. An independent person is appointed by the chief executive (DLGP) to conduct the review and prepare a report. While it is up to the local government to decide whether to act on the reviewer's recommendations, the reviewer's report is a public document. It also must be considered by the Minister from a State interest viewpoint.

The cost of a review must be met by the person requesting the review. It provides an opportunity for persons concerned about an aspect of a planning scheme or planning scheme policy to challenge the scheme or policy and subject it to an independent and external review.

Division 1—Review of planning schemes by local government

Local government must review planning scheme every 6 years

Clause 2.2.1 requires each local government to review its planning scheme and decide a course of action within 6 years after the scheme was originally adopted, or within six years after the last review.

A rolling six-year review cycle is therefore established. This differs from the situation under the current Act. If it is resolved to continue with the existing scheme, a local government is required to prepare a new scheme after a further three years, i.e. within 10 years of the original scheme's approval (section 2.16). The local government is required to notify the chief executive (DLGP) if the scheme is to continue. The 10-year period may be extended by resolution of the local government subject to any written direction from the Minister which may extend, shorten or overrule the extension. Notification of this resolution to the Department is not specified. Under these existing provisions there is the potential, subject to the Minister stepping in, for a scheme continuing indefinitely without further review. This is considered to be unsatisfactory.

This clause also requires that during a review a planning scheme is assessed for its achievement of desired environmental outcomes having regard to the scheme's performance indicators. Such performance indicators are required to be included in planning schemes under clause 2.1.3. The Bill also introduces greater accountability with respect to reporting on the findings of it review. This is covered by clause 2.2.3 below.

Under section 2.16 of the current Act a planning scheme must be reviewed within seven years. The period of 6 years specified for this Bill is consistent with two periods for a local government's corporate plan. (Under section 419.(2) of the *Local Government Act* the specified period for a corporate plan must be at least three years).

Courses of action local government may take

Clause 2.2.2 clarifies the three possible outcomes following review of its planning scheme. Local government must by resolution propose to prepare a new scheme or amend the existing one, or decide that the planning scheme is suitable as it is and to take no further action.

The clause also makes reference to a decision or resolution under schedule 1 not to proceed further with the making of a planning scheme to be taken to be a decision to that effect under subclause (1)(c) of this clause. There are three points in the schedule where a local government can decide not to proceed—following preliminary public consultation on the proposals for preparing the scheme (clause 9); following public consultation on the proposed planning scheme (clause 16); and following reconsideration of State interests by the Minister and preparation of a plan for adoption (clause 19).

Report to be prepared about review if decision is to take no action

Clause 2.2.3 specifies requirements for a report if the local government decides to take no further action following review of its planning scheme. It must:

- prepare a report about the review, stating the reasons for the decision; and
- give a copy of the review report to the chief executive.

Notice about report to be published

Clause 2.2.4 states that after preparing a report about the review, the local government must:

- publish and display a notice about the review; and
- make the report available for inspection and purchase for not less than 40 business days.

The clause also specifies what the notice must state.

The purpose of this clause is to provide for accountability, not to another level of government but to the community, if a local government decides to retain its existing scheme after one or more 6-yearly reviews. It is one of a wide range of checks and balances built into the Bill to ensure appropriate levels of public accountability are achieved.

Local government must review benchmark development sequence annually

Clause 2.2.5 requires that a local government annually review a benchmark development sequence each year if there is a sequence included

in its planning scheme. This review must be conducted in consultation with State agencies that participated in the preparation of the review of the sequence. Before a local government consults it must assess the factors affecting the sequence, such as rates for building and release of new lots, and prepare proposed amendments for consideration of the State agencies. It is expected that these proposals would be based on the most efficient means of providing local government infrastructure (most importantly water supply and sewerage), which would then be reconsidered in the light of the most efficient means of providing State infrastructure such as schools and hospitals.

An annual review of the sequence arises from the need to keep a rolling stock of "in sequence" land available for new development. It is important that the 5-year forward supply of in sequence land is maintained to avoid adverse impacts on land supply and housing affordability. It also allows the area identified as being in sequence to be modified in response to changes in the expected rate of growth. For example, the area may be extended if new development within the last 12 months has taken up land faster than expected, or contracted if growth has suddenly slowed markedly.

Division 2—Review by independent reviewer

Independent reviews of local planning instruments have the following features:

- initiated by any person who must pay the costs of the review;
- conducted by a person independent of local government, the State or the Court. This is in a manner determined by the reviewer subject only to general requirements. This allows the review to focus on planning and development matters rather than political or legal technicalities, and to be tailored to the particular needs of the participants;
- the reviewer is protected from liability to pay in an action brought in relation to the performance of a reviewer's functions;
- established by the chief executive (DLGP) specifically in each case according to the nature of the matter being reviewed. Variables include whether the review is conducted by a hearing and written submissions or by written submissions only, the scope of the review, the maximum cost of the review, and the appointment of an appropriately qualified or

experienced reviewer. Separate requests for reviews may also be conducted together;

- preceded by consultation by the reviewer with the person requesting the review and the local government to try and resolve the matter without going to a review;
- assistance provided to the reviewer by the local government and other local governments and State entities involved;
- contained in terms of scope and cost which are established at the outset through agreed conditions. The cost is based on assessment fees prescribed under a regulation. The conditions may be negotiated between the executive officer and the person requesting the review;
- open to the involvement of any person or entity by written submission, and if there is a hearing, by appearance at that hearing;
- concluded by way of a report to the executive officer, containing a recommendation about whether the matter the subject of the review should be amended, repealed or remain unchanged. On receiving a copy of the report from the executive officer, the local government must decide on a course of action. The Minister must also consider the report and the local government's decision and decide if the Minister needs to take action to protect or give effect to a State interest;
- not relevant as a consideration in the assessment of a development application. This provision prevents reviews being used inappropriately, for example, as a means of holding up a competitor's application or as a reason for an application not being finalised; and
- promote efficiency through the specification of time periods for the acceptance of conditions, and for consultation prior to commencement of the review (both 20 business days). There are also specified means of concluding otherwise open ended situations—if there is no response to the executive officer's conditions for the review, if there is insufficient time for all to be heard or fully heard at a hearing, and if a person fails to attend a hearing.

Request for independent review

Clause 2.2.6 states that a person may make a written request to the chief executive seeking an independent review of part of a planning scheme or all

or part of a planning scheme policy. The dictionary in schedule 10 defines a "person" as including a body of persons, whether incorporated or not. The request must be in the approved form and accompanied by the necessary fee. The approved form will be established administratively by the chief executive (DLGP) and the request fee specified in a regulation. The fee is to cover the Department's administrative costs of assessing the request and setting up the review. The cost of the review itself will be determined as a condition of conducting the review in accordance with clauses 2.2.7 and 2.2.8.

Chief executive to inform local government, assess request and set conditions

Clause 2.2.7 requires that the chief executive (DLGP) give a copy of the request to the local government and consider the request to decide if sufficient information has been given to allow conditions to be set for conducting the review.

However, before deciding whether there is sufficient information to set conditions, the chief executive must consult with the person requesting the review and the local government to see if the matter referred to in the request is able to be resolved without a review. It is only after the chief executive is satisfied that the matter cannot be resolved without a review that consideration is given to the adequacy of the information supplied to allow conditions to be set.

If the information is sufficient the chief executive must set conditions, including:

- whether the review is to be conducted by hearing and written submission, or by written submission only;
- the scope of the matters to be considered;
- any other local government and any State entities the chief executive is satisfied may be affected by the review to be notified about the review;
- the maximum cost of conducting the review;
- the apportionment of the maximum cost between the person conducting the review and the local governments and State entities to be notified.

If there is insufficient information, the chief executive must request the information that will allow the conditions to be set.

The cost will be based on assessment fees prescribed under a regulation.

It should be noted that more than one local government may be affected by a review due to the nature of the subject of review, and that some reviews may also affect State interests, or concern only State interests which have been implemented through planning schemes.

Notice and acceptance of conditions for review

Clause 2.2.8 requires the chief executive (DLGP) to give the person requesting the review a copy of the conditions for conducting the review. This person is then able to decide whether to proceed with the review on the conditions set by the chief executive. To proceed the person must give the chief executive written notice within 20 business days. This is referred to as the acceptance period.

The clause also:

- provides the person requesting the review with the opportunity to make representations about the conditions set by the chief executive before the end of the acceptance period;
- requires the chief executive to decide whether to change the conditions and if so, to advise the person requesting the review of the decision;
- provides the person requesting the review with a second, and final, opportunity to make representations on conditions decided by the chief executive. There is also the opportunity before the end of the acceptance period for the chief executive to extend the period. This allows, amongst other things, for negotiations on the conditions to continue if they have not been finalised before the end of the period; and
- states that if the person requesting the review does not give written notice accepting the conditions before the end of the acceptance period the review lapses. This ensures that all requests for a review are finalised, even if they do not proceed from this point.

Reviews may be conducted together

Clause 2.2.9 allows the chief executive, with the agreement of the persons requesting the reviews, to arrange for reviews to be conducted together.

Appointment of reviewer

Clause 2.2.10 requires the chief executive to appoint an appropriately qualified reviewer to carry out the review if the person requesting the review has given written notice accepting the conditions and has paid the maximum cost specifies in the conditions. It is anticipated that the chief executive will maintain a register of appropriately qualified people who will be considered for appointment as each review arises.

It should be noted that the chief executive may appoint more than one reviewer to conduct a review. This may be appropriate where the subject of the review is complex or far reaching, such that a number of areas of expertise need to be covered and the workload shared to achieve a reasonable completion time.

Person with conflict of interest not to be appointed reviewer

Clause 2.2.11 requires a person proposed to be appointed as a reviewer to advise the chief executive of any direct or indirect personal interest in a matter to be considered by the review which could conflict with the performance of the person's duties as a reviewer. Accordingly, the chief executive must not appoint the person as a reviewer.

Notice of review

Clause 2.2.12 specifies the actions of the chief executive to notify all parties about the review. These actions are to:

- publish a notice about the review in a local newspaper;
- give the reviewer a copy of the accepted review conditions and the published notice;
- give the person requesting the review the name of the reviewer and a copy of the notice; and
- give the local government, any other local government affected by the review, and State entities to be notified, the name of the reviewer, the review conditions and a copy of the notice.

The clause also specifies what details must be provided in the notice:

- the name of the reviewer;

- the scope of matters to be considered;
- whether the review will be conducted by hearing and written submissions, or written submissions only;
- if there is to be a hearing and written submissions—that any person wishing to appear may give written notice within the 20 business day consultation period and must include a written submission stating the matters to be raised and the outcomes sought;
- if only written submissions are to be considered—that written submissions about any aspect of the matters to be considered by the review may be made during the consultation period; and
- who will receive the notice and submissions (either the chief executive or the reviewer, as determined by the chief executive).

Conduct of review generally

Clause 2.2.13 states what a reviewer must do in the conduct of reviews:

- carry out the review promptly and efficiently;
- consider all submissions made during the consultation period; and
- comply with the accepted conditions.

The clause also makes it clear that the Bill does not impose limitations on how the reviewer may be informed.

Further rules for conducting a hearing are stated in clauses 2.2.16.

State and local governments to provide assistance

Clause 2.2.14 requires any State entity and any local government notified about the review (under clause 2.2.12) to provide the reviewer with all reasonable assistance required by the reviewer to carry out the review. Such assistance may possibly include administrative and secretarial support, provision of documents requested by the reviewer, and provision of meeting rooms to conduct hearings.

Directions about hearings by reviewers

Clause 2.2.15 allows the reviewer, subject to the accepted review conditions, to give directions about:

- the times and places of hearings;
- matters preliminary to hearings; and
- the conduct of hearings.

These directions are at the discretion of the reviewer and may possibly arise in the course of meetings, consideration of submissions or other communications.

With regard to the times and places of hearings, it may be that some hearings require more than a single session and require on-site discussions. Accordingly, a schedule of times and places for a hearing may be necessary.

Examples of preliminary matters on which a reviewer may wish to give directions include:

- the extent and degree of detail of information to be provided;
- the order in which information will be presented;
- matters which are outside the scope of the hearing; and
- requirements for any site inspections.

Directions on the conduct of hearings may be about the matters referred to in clause 2.2.16, such as the manner and degree of formality, questioning, and the combining of submissions.

The clause also states that a reviewer may refuse to hear a person who fails to comply with a reasonable direction of the reviewer. This provides the reviewer with the authority to ensure that hearings can be conducted in a fair, orderly and efficient way.

Conduct of hearings

Clause 2.2.16 establishes a reference for the conduct of hearings which facilitates:

- flexibility in setting the degree of formality appropriate to the complexity and magnitude of the matter being reviewed; and
- the hearing and examination of submissions in a manner which is fair to all participants.

A number of mandatory and discretionary matters relevant to the conduct of hearings are identified:

- a hearing need not proceed in a formal way;
- the person requesting the review and the local government must be given the opportunity to be heard;
- having regard to the time available for conducting the review, a reasonable opportunity to be heard must be given to any person who, during the consultation period, registered an interest in being heard, and to the other local governments and State entities notified by the chief executive; otherwise, they may make a written submission;
- the rules of evidence are not binding;
- questioning may be prohibited or regulated;
- 2 or more submissions may be heard together if they concern the same or a related matter; and
- a person appearing at a hearing may be represented by another person if that person is not a lawyer.

All matters of discretion are determined by the reviewer.

With respect to representation by lawyers, the purpose of the independent review mechanism is to provide an opportunity for a person to seek a review of technical and policy-related matters in planning schemes and planning scheme policies. It is not a court and it is not intended that hearings be conducted in an adversarial way or that reviews be used as a forum for reviewing technical points of law. Accordingly, in this context it is appropriate that people other than lawyers (perhaps people with relevant technical or policy skills) represent persons at hearings.

The clause also allows a reviewer to conclude a hearing and report on a review even if a person was not present or represented at the time and place appointed for the hearing. The onus therefore rests with any person who wishes to be heard to be available to attend or to send a representative. There is no obligation for the reviewer to make other arrangements for the person to be heard or to receive a written submission. However, if a reviewer considered it reasonable in the circumstances to make other arrangements this clause would not prevent this.

Report of reviewer

Clause 2.2.17 states that the reviewer must prepare a report at the end of the review and give it to the chief executive. The report concludes the role of

the reviewer.

The report must include recommendations specific to the matter for which the review was sought. In particular, the reviewer must recommend whether the planning scheme or planning scheme policy should be amended or repealed, or whether it should remain unchanged. If the recommendation is for amendment, the report must also state how it should be effected.

The clause also specifies that the chief executive (DLGP) must send copies of the report to the person who requested the review; each person who during the consultation period registered an interest in being heard or made a submission; and the local governments and State entities notified about the review. The chief executive also must send the person who requested the review a statement of the actual cost of the review.

The chief executive's final task is to give the local government the names and addresses of each person and government entity given a copy of the report. This is to enable the local governments to inform each person and entity of what action they will take on the report.

Local government's actions after receiving reviewer's report

Clause 2.2.18 requires the local government to consider the reviewer's report and make a decision—to amend (scheme or policy), repeal or make anew (policy only), or do nothing.

Following a decision, the local government must give copies of the decision and the reasons for the decision to the Minister and each person or entity given a copy of the reviewer's report.

The local government must commence whatever action it takes immediately. If the local government resolves to adopt a reviewer's recommendation to amend the scheme, the Bill provides a streamlined process for amendment. This is justified in view of the public consultation and opportunities for public involvement incorporated into the review process.

Minister's actions after receiving reviewer's report

Clause 2.2.19 requires the Minister to consider, in relation to State interests, the reviewer's report and the local governments response to it.

Consideration by the Minister is necessary as it may be that the matter dealt with by the review has been incorporated in the planning scheme on behalf of a State agency and is therefore beyond the jurisdiction of the local government to change at its own discretion. Another possibility is that the Minister may consider that the response of the local government will adversely affect a State interest.

The Minister must decide to do nothing, or to exercise State powers under part 3(that is, to direct a local government to take action about its planning scheme or a planning scheme policy to protect or give effect to State interests. If the direction is not followed, the Minister may take the action directed.

Withdrawing request for review

Clause 2.2.20 allows the person requesting a review to withdraw the request at any time up to the completion of the reviewer's report. If the request is withdrawn the person is liable for the costs of conducting the review up to the time the request is withdrawn. These costs may not exceed the maximum cost of conducting the review stated in the accepted conditions.

Paying reviewer and others and refunding any overpaid costs

Clause 2.2.21 states that upon receiving the reviewer's report, The chief executive must then pay the reviewer and the affected government entities having regard to the apportionment stated in the accepted conditions and the work actually undertaken.

If the actual cost of the review has not exceeded the maximum cost specified in the conditions, the person must be refunded the difference.

Reviewers not liable for performing functions under review

Clause 2.2.22 protects reviewers from being liable to pay out in an action brought against them in the course of performing their functions. However, this clause provides no protection from declaratory actions. This clause is included to make it clear, for example, that a reviewer cannot be sued for a perceived loss in value of a property due to the recommendations contained in a report. Making recommendations on planning schemes is the purpose

of the independent review process, but local governments or the Minister will decide what action will be taken on such recommendations. Where appropriate, compensation claims may be brought at a later stage after the recommendations have been implemented through the planning scheme.

Reviews not to affect development applications

Clause 2.2.23 states that a review in progress or pending is not a relevant consideration in the assessment of a development application. Neither are the recommendations of a completed review. This ensures that reviews are not used inappropriately, for example, as a means of holding up a competitor's application or as a reason for an application not being finalised. It also reinforces the independence of the review.

PART 3—STATE POWERS

This part defines what reserve powers the State, through the Minister and Governor in Council, has in relation to local planning instruments in terms of their making, amending and overruling. Also relevant is chapter 3, part 6 which deals with Ministerial IDAS powers with respect to development applications.

Under the current Act the Minister has the power to direct a local government to prepare or consolidate a planning scheme (section 2.12). Under this Bill, planning schemes take on a new role as a vehicle for the integration of both local and State government interests, in terms of policy, development assessment and the provision of infrastructure. This means that the powers of the State need to change to reflect this new dimension of planning schemes. The role of the State will be most significant during the preparation of planning schemes when the State will have two opportunities to consider whether any State interests will be adversely affected. In addition, there will be reserve powers allowing the State to step in should it be necessary to protect or give effect to a State interest. These powers are:

- to stop the effect of a planning instrument or a provision of a local planning instrument;
- to direct a local government to make or amend a local planning instrument; and

- for the Minister to make or amend a local planning instrument if a local government does not comply with a direction to do so.

It should be emphasised that the State's powers extend only to protecting or giving effect to State interests, and due to the opportunity for involvement in the formative stages of planning instruments are likely to be used only rarely. The definition of "State interests" is included in the dictionary in schedule 10.

Division 1—Preliminary

Procedures before exercising powers

Clause 2.3.1 states the procedures to be followed before a power is exercised by the Minister. They are drawn from section 109 of the *Local Government Act 1993* and require written notification to the local government and consideration of any submission made by the local government.

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

A notice is not needed if the local government has requested the power of the Minister to be exercised.

Division 2—Exercising State powers

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

Clause 2.3.2 states that if the Minister is satisfied that it is necessary to protect or give effect to a State interest, a local government may be directed to take action about its local planning instruments. This action varies according to the type of instrument and may be as general or specific as the Minister considers appropriate—planning scheme (review, make anew or amend), temporary local planning instrument (make anew or repeal),

planning scheme policy (make anew, amend or repeal). The direction must also state the reasonable time by which the local government must comply with the direction.

The clause also states that the Minister has the power to direct a local government to prepare a consolidated scheme.

Power of Minister if local government fails to comply with direction

Clause 2.3.3 states that the Minister may take the action a local government was directed to take if the local government does not comply within the reasonable time stated in the direction. If the Minister takes the action it has the same effect as if it were done by the local government. The Minister may also recover the cost of taking the action from the local government. This clause, together with equivalent clauses elsewhere, ensures that there are sanctions for non-compliance with the Bill or with directions arising from application of the Bill.

Process if Minister takes directed action

Clause 2.3.4 states that the process for the Minister to take the action under clause 2.3.2 is the same as for a local government, except those steps relating to the State's role in what is normally a local government process do not apply. In the case of planning schemes the omitted step is the consideration of State interests, and for temporary local planning instruments, seeking the approval of the Minister. The public accountability aspects of the scheme making process—the requirements for public consultation, consideration of and reporting back on submissions, are retained.

References in schedules to local government etc.

Clause 2.3.5 lists specific changes to the interpretation of references in part 1 or 2 or schedule 1, 2 or 3 if the Minister takes the action. These are references to the local government's public office, a decision by resolution of the local government, and the local government's chief executive officer. This clause avoids the need to include separate schedules for local planning instruments made or amended by the Minister when the process is essentially the same as for local government.

PART 4—STATE PLANNING POLICIES

The purpose of a State planning policy is to provide a means by which the State can make policies about matters of State interest. The Bill creates a particular instrument for this purpose and carries forward similar provisions under the current Act. However, there is a number of differences. One difference is in the nature of the legislation. Under the current Act, State planning policies are subordinate legislation and exempt instruments for the purposes of the *Statutory Instruments Act 1992*. Under the Bill, State planning policies are statutory instruments but not subordinate legislation. This approach ensures State planning policies are consistent with local planning instruments. This is important as planning schemes under the Bill are intended to be shared documents reflecting both local and State policies. However, a number of features have been included in the State planning policy process to ensure policies are made and applied in an accountable way.

The key feature is the inclusion of statutory requirements for public consultation. A minimum consultation period of 40 business days is specified (the same as for planning schemes), and consideration includes the availability of an explanatory statement prepared by the Minister.

A further feature concerns consideration of State planning policies during development assessment. It is anticipated under the Bill that State planning policies will be appropriately reflected in each planning scheme. This is consistent with the approach adopted in the Bill for local government planning schemes to be the principal instrument for consolidating and expressing planning policies relating to an area. During impact assessment, having regard to the planning scheme will therefore also include having regard to reflected State planning policies. If any State planning policy has not been reflected in a planning scheme, the State planning policy must be considered directly (clause 3.5.5). Under the current Act, regard must be given to relevant State planning policies regardless of whether they have been reflected in a scheme.

One more feature is that under the Bill there is provision for a State planning policy to be temporary (up to 1 year), and introduced quickly to deal with urgent situations. The normal consultation phase does not apply to its preparation.

Of course it must be emphasised that it is not necessary for all State interest matters to be incorporated in State planning policies. Matters of State policy and criteria for assessment may also be incorporated directly within individual planning schemes, and State criteria for assessment may be incorporated within State or local codes. It is not intended that the State dimension of a planning scheme only deal with matters included in State planning policies. However, as noted above, having such instruments ensures that the policy matters dealt with will be taken into consideration during the assessment of a development application involving impact assessment, even if the policy has not yet been incorporated within a planning scheme (clause 3.5.5).

Meaning of "State planning policy"

Clause 2.4.1 states that a State planning policy is:

- a statutory instrument and has the force of law;
- made by the Minister under this part;
- about matters of State interest.

The dictionary in schedule 10 of the Bill states that:

' "State interest" means—

(a) an interest that, in the Minister's opinion, affects an economic, social or environmental interest of the State or region; or

(b) an interest in ensuring there is an efficient, effective and accountable planning and development assessment system.'

The second part of the definition is probably unlikely to be the subject of a State planning policy. Its application is more likely in terms of considering State interests during the scheme making and development assessment processes.

Area to which State planning policies apply

Clause 2.4.2 states that a State planning policy has effect throughout the State unless the policy states otherwise. This allows a State planning policy to be made about a matter of State interest which has a more localised application. This is the case under the current Act, and the State planning policy, *Conservation of Koalas in the Koala Coast*, is a current example.

Process for making or amending State planning policies

Clause 2.4.3 states that there are 3 stages stated in schedule 4 which must be followed in making or amending a State planning policy—preparation, consultation and adoption. The consultation period is for a minimum period of 40 days, although consultation does not apply in the case of a minor amendment or if the policy is to have effect for less than 1 year (clause 5). Under the current Act there is no process specified for the making of State planning policies.

Compliance with sch 4

Clause 2.4.4 states the requirements for validity of a State planning policy or amendment—substantial compliance with the process stated in schedule 4. The policy or amendment is still valid so long as non-compliance has not:

- adversely affected the awareness of the public of the existence and nature of the proposed policy or amendment; or
- restricted the opportunity of the public under schedule 4 to make submissions.

This clause emphasises the importance of public involvement in the process for making and amending State planning policies. However, it is recognised that in following detailed processes there is potential for procedural mistakes to be made. If these mistakes are minor and do not affect the public's awareness of the process or opportunities to participate, they should not threaten the validity of the policies or provide grounds for unproductive and expensive litigation. Therefore State planning policies or amendments are not invalidated for minor non-compliances.

Effects of State planning policies

Clause 2.4.5 states that a State planning policy replaces any existing policy, if that is the intention. It also specifies the day on and from which the policy or an amendment of a policy takes effect (either the day the adoption is first notified in the gazette or a later day if stated in the policy or amendment). Such statements are necessary to settle any query as to the applicability of a policy at a particular time

Repealing State planning policies

Clause 2.4.6 states the process the Minister must follow to repeal a State planning policy. It is based on the publication of a notice—in the gazette, and in a newspaper circulating generally in the State. The repeal takes effect on and from the day the notice is published in the gazette.

The clause specifies that the notice must state:

- the name of the policy being repealed;
- the area it applies to if not the whole State; and
- that the policy is repealed.

A copy of the notice must be sent to each local government.

PART 5—REGIONAL PLANNING ADVISORY COMMITTEES

Division 1—General provisions about regional planning advisory committees

The Bill proposes that regional planning advisory committees provide a framework for promoting coordination of planning activities carried out by the local, State and Commonwealth governments in dealing with planning issues of a regional nature. Accordingly, this part gives statutory recognition to regional planning. Regional planning occurs administratively under the current planning system but it is not given an explicit role in the legislation. Recognition in the Bill is aimed at maximising the benefits of regional planning by ensuring that it responds to the needs of local, State and Commonwealth governments in their respective planning roles, and to the needs of relevant interest groups. This is achieved basically through the establishment of the terms of reference for a committee.

The regional planning advisory committees will report to the Minister, affected local governments and the public. They will report on appropriate ways of coordinating the planning for regional issues and the approaches to deal with them.

The advisory role of regional committees should be noted—they have no regulatory powers. However, clause 2.5.6 states that a committee must

report its findings under its terms of reference to the Minister and the relevant local governments. It is also required that planning schemes coordinate and integrate all matters dealt with by a planning scheme (clause 2.1.3), while a matter may have a local, regional or State dimension (clause 2.1.4). A regional dimension includes a dimension about which a regional advisory committee report makes a recommendation (clause 2.1.4(3)).

The Minister has the responsibility for considering State interests during the scheme preparation process (schedule 1, clauses 10 and 18). A State interest, by definition, includes an interest of a region. The Minister also has reserve powers to require a planning scheme to be amended to protect or give effect to a State interest (clause 2.3.2).

It is therefore anticipated that the agreed outcomes of regional planning will be reflected in local government planning schemes and informal or formal State policies (such as State planning policies). Being State legislation, the Bill does not propose any requirements with regard to the Commonwealth government, but rather provides the opportunity for all levels of government to participate.

Regional coordination of planning activities is desirable because:

- issues affecting the quality of planning and development often extend beyond a single local government area;
- a coordinated approach to issues will improve the quality of planning and development in each of the local government areas affected by the issues; and
- participation by all levels of government and relevant interest groups in framing a coordinated approach will achieve better planning and development outcomes.

What are regions

Clause 2.5.1 states that there are no fixed geographical areas of the State constituting regions. Regions will vary according to the issues to be dealt with and the area required to coordinate planning for that issue. A region may be the combined area of all or parts of two or more local government areas and may also include an area not in a local government area.

For example, one committee may be established to deal with a comprehensive range of planning issues relevant to a broad geographical

base, and cover all the local government areas in south-east Queensland; another may deal with a single issue, such as river catchment management, which extends over parts of just two local government areas. It may eventuate that a particular local government is represented on a number of regional planning advisory committees with each covering a different area relevant to the regional issue in question.

Division 2—Regional planning advisory committees

Establishment of committees

Clause 2.5.2 states that the Minister may create as many regional planning advisory committees as the Minister considers appropriate. These committees may be established by creating a new group or recognising an existing group. Accordingly, there is considerable flexibility in allowing committees to be "purpose-built" to meet the requirements of specific regional issues, or for advantage to be taken, where appropriate, of any existing regional structures.

The clause also specifies what the Minister must do before establishing a committee:

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

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

Particulars about committee

Clause 2.5.3 requires the Minister to state:

- the committee's name;
- the membership of the committee;
- the area covered by the region; and
- the term's of reference.

This clause also indicates that membership of a regional planning advisory committee is flexible, and may be identified in general or specific terms. For example, the Minister may refer to an individual or to an organisation, or to the relative proportions of representation rather than specific numbers. However, it is stated that membership must include representatives from local governments and relevant interest groups.

This last point affirms the importance of local government in regional planning. This is also evident in clause 2.5.2 which requires the Minister to consult with affected local governments before a committee is established.

Changing committee

Clause 2.5.4 states that after consulting with the committee and any other entities the Minister considers appropriate, the Minister may change any aspect of a committee. Its name, the region, the terms of reference and membership are given as examples.

This clause is consistent with the flexibility sought for the regional planning provisions to ensure that committees can be tailored to meet the particular requirements of specific regional issues. It may be that over time these requirements change and aspects of the committee will need to change accordingly. The clause also recognises the importance of consultation before making any such significant changes to a committee.

Operation of committee

Clause 2.5.5 states that a regional advisory committee may gather information and opinions in the way it considers appropriate, but should operate in an open and participatory way. In this clause the legislation sets the tone for the operation of these committees without dictating specific rules. Again, the Bill aims to provide for flexibility in the way regional

planning is to be achieved. An open and participatory way of operation is important for encouraging the involvement of a diverse range of government agencies and interest groups in a region, and for recognising their respective approaches to planning, development and development assessment so that they may be practically coordinated.

For example, a regional planning advisory committee gathering information and opinions on an issue may target particular interest groups in addition to calling for public submissions.

Reports of committee

Clause 2.5.6 states that a regional planning advisory committee must report its findings under its terms of reference to the Minister and the local governments of its region. This ensures that the committee's findings may be considered as part of the planning framework applicable to an area. It allows local governments to incorporate recommendations in their planning schemes and policies so that they may influence development assessment in the local government's area. It also allows the State to incorporate any recommendations into its own policy framework.

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

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

PART 6—DESIGNATION OF LAND FOR COMMUNITY INFRASTRUCTURE

Designation is a new initiative and a key mechanism for achieving integration of land use planning and infrastructure provision[4]. Designation involves the identification of land on local government planning schemes that is, or is intended to be, developed for community infrastructure. It is effectively an overlay on planning schemes. What constitutes community infrastructure is listed in schedule 5.

The purpose of designation is the forward identification of land for community infrastructure to:

- achieve the integration of infrastructure planning and land use planning; and
- provide such infrastructure more efficiently and cost-effectively.

Land may be designated by the State (any Minister may designate land for community infrastructure) or by local government. Designated land may be for both public and private community infrastructure. The continuing trend towards corporatisation and privatisation of infrastructure services means that it is not appropriate to limit the mechanism to public sector infrastructure.

For land to be designated it must pass a public benefit test. This is to ensure designation is justified in each case.

When land is designated the planning scheme provisions applying to the land cease to have effect. However, for land to be designated it must go through a public consultation process, and section 29 of the *State Development and Public Works Organization Act 1971* dealing with the consideration of major environmental effects applies.

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4 The other principle means of achieving integration of land use planning and infrastructure provision are: the reforms promoting the role of planning schemes as instruments for integration, a new mechanism for the State to seek compensation for the cost of bringing forward the provision of certain proposed infrastructure by imposing a condition on development, and the rationalisation of charging for basic infrastructure such as water, sewerage and roads.

While planning scheme provisions do not apply to designated land, schedule 8 does apply. This means that development on designated land proposed to be carried out in accordance with a designation must still comply with the requirements of that schedule. In other words, if a particular development is listed as assessable or self-assessable development under schedule 8, it remains assessable or self-assessable even though the land is designated. For example, building work is still assessable on land designated for private sector community infrastructure.

Privately owned land may be designated. This is appropriate as one of the main purposes of the mechanism is to identify future intentions for all community infrastructure. However, if privately owned land is designated, there is a clear intention that the land be acquired. Statutory hardship provisions are included for persons who are directly and adversely affected by a designation. Also, designations over privately owned land must be renewed after 6 years or they fall away.

Significant features of designation are that it:

- may be applied to a broad range of community infrastructure (specified in schedule 5) either existing or intended to be supplied;
- may be done by any Minister or by a local government ("designators") for their own infrastructure purposes or for another entity;
- must pass a public benefit test;
- must be indicated on relevant planning schemes;
- has a limited life of 6 years (unless redesignated), if the land is in private ownership and
- has not been acted upon by the relevant private sector entity; or
- a notice has not been given by the relevant public sector entity for resumption of the land; or
- an agreement has not been signed for purchase of the land;
- when applied to a parcel of land, is for a specific type of community infrastructure. Should circumstances change and it is determined that another purpose is more appropriate, perhaps a hospital rather than a school, then the land will need to be redesignated;

- operates like an overlay on planning schemes—the other provisions of a planning scheme remain effective if the designation is repealed or ceases to have effect;
- may include details on the design and operation of the proposed community infrastructure;
- development under a designation is exempt development under a planning scheme, but schedule 8 still applies (i.e. assessable or self-assessable development under that schedule remains assessable or self-assessable);
- development by a public sector entity is not subject to infrastructure charges;
- is not essential before it can be developed for infrastructure, but a preferred approach;
- allows an owner of an interest in land that has been designated to request the relevant Minister or local government to purchase the interest.

Division 1—Preliminary

Who may designate land

Clause 2.6.1 states that a Minister (that is any Minister of the State) or a local government may be a "designator", i.e. they may designate land for community infrastructure. What constitutes "community infrastructure" is listed in schedule 5 and includes such things as hospitals, educational facilities, railway facilities, parks and recreational facilities, government administrative offices and works depots. Land may be designated if the infrastructure exists or is intended to be supplied. The Minister may designate land for community infrastructure that exists or that the State or another entity intends supplying. Similarly, local governments also may designate land for infrastructure that exists or that the local government or another entity intends supplying.

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

Matters to be considered when designating land

Clause 2.6.2 lists four public benefit criteria, one of which must be satisfied in order for land to be designated for community infrastructure. These criteria are concerned with:

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

Designator must consider major environmental effects

Clause 2.6.3 applies to community infrastructure proposed to be provided by a private sector entity (e.g. a private hospital or private telecommunications provider) that the designating Minister or local government considers is likely to have major environmental effects within the meaning of the *State Development and Public Works Organization Act 1971*. The clause requires the designator to consider the proposal as if it were an application mentioned in section 29(2) of that Act.

Designation means that otherwise self-assessable or assessable development under a planning scheme is exempt development (clause 2.6.5). This clause ensures that any major environmental effects of community infrastructure are assessed prior to a designation being made.

What designations may include

Clause 2.6.4 gives guidance on the requirements, plans, programs or the like, that may be incorporated into a designation of land for community infrastructure. For example, if land were designated for a hospital, plans may accompany the designation showing what the building would look like and the proposed site layout including vehicular access and circulation, the size and location of car parks, landscaping, and the location of emergency service areas. Another designation, perhaps for a community centre, may include written details describing the floor area of the building and the nature of activities for which the building will be used. In another case, perhaps for a sewage treatment plant, a specific environmental management

plan may be included in the designation to ensure that impacts of the infrastructure are lessened.

Such details on the design and operation of proposed community infrastructure may be necessary for determining the suitability of a site for the intended use and ensuring that the infrastructure when finally built is compatible with its surroundings. The need to impose design requirements, an operational program or similar, may arise in response to consideration by a designator about whether a designation should proceed in accordance with clause 2.6.3.

How IDAS applies to designated land

Clause 2.6.5 states that development under a designation is, to the extent the development is self-assessable development or assessable development under a planning scheme, exempt development. This means the planning scheme does not apply to designated land. This is because the designation of land involves a public consultation process and also requires major environmental effects to be taken into account. However, despite that, if development is made assessable or self-assessable under schedule 8, these provisions still apply. For example, building work is dealt with under schedule 8. If carried out by a public sector entity, building work is declared to be self-assessable development. Similarly, making a material change of use in carrying out an environmentally relevant activity under the *Environmental Protection Act 1994* is assessable development. These are both Statewide controls implemented through schedule 8 and apply whether or not land is designated.

How infrastructure charges apply to designated land

Clause 2.6.6 states that infrastructure charges do not apply to public sector designated development. This is consistent with current government policy which does not subject public entity proposals to Council charges. Presently, government policy is for the costs of infrastructure to be shared equally between local and State governments.

Division 2—Ministerial designation processes

This division deals with the two ways that land may be designated by a Minister. A Minister may designate land either by following the process set out in schedule 6 involving a 20-business day period of public consultation, or alternatively, using schedule 7, proceed straight to designation if public consultation and consideration of environmental impacts have already been completed—either under section 29 of the *State Development and Public Works Organization Act 1971* or under IDAS.

Process for Minister to designate land

Clause 2.6.7 states that there are 2 stages stated in schedule 6 which must be followed by a Minister to designate land (unless designated under clause 2.6.8**)—**consultation and designation. The consultation period is for a minimum period of 20 days.

Minister may proceed straight to designation in certain circumstances

Clause 2.6.8 states a process for designation by a Minister which does not involve consultation because an equivalent process of assessment of environmental impacts and public consultation have already been completed, either:

- under section 29 of the *State Development and Public Works Organization Act* (or as if the proposal were an application mentioned in that section and considered under clause 2.6.3 of this Bill); or
- chapter 3 (IDAS).

Compliance with schs 6 or 7

Clause 2.6.9 states the requirements for validity of a designation by a Minister—substantial compliance with the process stated in either schedule 6 or schedule 7. With respect to the requirements of schedule 6, the policy or amendment is still valid so long as non-compliance has not:

- adversely affected the awareness of the public of the existence and nature of the proposed designation; or

- restricted the opportunity of the public under schedule 6 to make submissions.

This clause emphasises the importance of public involvement in the designation process specified in schedule 6. However, it is recognised that in following detailed processes there is potential for procedural mistakes to be made. If these mistakes are minor and do not affect the public's awareness of the process or opportunities to participate, they should not threaten the validity of the designation or provide grounds for unproductive and expensive litigation. Therefore designations are not invalidated for minor non-compliances.

Effects of ministerial designations

Clause 2.6.10 states that a designation replaces any existing designation, if that is the intention. It also specifies the day on and from which the designation takes effect (either the day the designation is first notified in the gazette or a later day if stated in the designation). Such statements are necessary to settle any query as to the applicability of a designation at a particular time.

When local government must include designation in planning scheme

Clause 2.6.11 requires a local government to note a designation by a Minister on its planning scheme (whether the designation is in or near the planning scheme area), and on any new scheme it makes before the designation ceases to have effect. The Minister gives a notice to each local government affected by a designation as part of the designation stage in schedules 6 and 7.

Division 3—Local government designation process

Designation of land by local governments

Clause 2.6.12 states that a local government may only designate land by including the designation as a substantive provision of its planning scheme, i.e. by either making or amending the planning scheme. This ensures a means of introduction which is accountable and consistent with how a local government incorporates other significant provisions affecting planning and development in its local area.

The same process applies whether or not the land is owned by the local government.

Designating land the local government does not own

Clause 2.6.13 requires a local government to give written notice of its intentions to designate land if it is not the owner of the land. As the designation is achieved through the scheme making or amending process, the clause specifies that the notice be given before the start of the consultation period. This ensures that the owner is aware of the proposed designation, and of the opportunity to make a submission during the consultation period.

The clause specifies what the notice must state:

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

Division 4—Other matters about designation

Duration of designations

Clause 2.6.14 states that a designation ceases to have effect after six years. The last day is referred to as the "designation cessation day". If a new planning scheme is made, a current designation included in the new scheme continues to have effect until its designation cessation day. As the designation already exists and requirements to notify the owner have previously been completed, clause 2.6.13 does not apply again when the new scheme is being made.

When designations do not cease

Clause 2.6.15 identifies five circumstances when a designation does not cease to have effect on the designation cessation day:

- the land is not owned by the State or local government and construction of the community infrastructure has started; or

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

Also, should proceedings to resume the designated land discontinue, then the designation ceases to have effect.

The purpose of this clause is to ensure that if the designation of privately owned land has not been acted upon after a reasonable period (equivalent to the period for review of a planning scheme) then it does not continue to influence the use of the land for other purposes.

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

Reconfirming designation

Clause 2.6.16 specifies the procedure for reconfirming a designation so that a designation does not cease after 6 years. It relates to clause 2.6.15(1)(e).

Reconfirming a designation:

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

- is subject to the duration and cessation provisions for a designation under clauses 2.6.14 and 2.6.15.

How designations must be shown in planning schemes

Clause 2.6.17 specifies how a designation by the local government or a Minister must be shown in a planning scheme. The following must be shown:

- the land affected;
- the type of community infrastructure;
- the day the designation was made;
- a reference to any matters included in the designation about the design and operation of the community infrastructure (under clause 2.6.4);
- that the planning scheme provisions which apply to the land remain effective if the designation is repealed or ceases to have effect.

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

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

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

Repealing designations

Clause 2.6.18 states that a Minister or a local government may repeal a designation that they themselves make by publishing a notice of repeal of the designation. The clause specifies where the notice will be published (gazette and local newspaper), what the notice must state, and that copies must be given to each relevant local government (if the repeal is by the Minister), and to the owner (if not the entity repealing).

The clause also states that the designation ceases to have effect on the day the notice is published in the gazette, and the repeal must be noted on the planning scheme.

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

Request to acquire designated land under hardship

Clause 2.6.19 states that an owner of an interest in designated land may request the designator to buy the interest. This clause makes it clear that a land owner affected by a designation is entitled to seek action from the relevant government authority to clear themselves of property which has limited potential for new private development.

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

- grant the request; or
- take other action under clause 2.6.21 (exchange the interest for property held by the designator, remove the designation or investigate removal of the designation); or
- refuse the request.

If designator grants request

Clause 2.6.20 applies if the designator decides to grant the request, that is to buy the interest. It requires the designator to give the owner a notice of its intention within 5 business days of making the decision.

Alternative action designator may take

Clause 2.6.21 specifies alternative decisions to either granting or refusing the request to buy the interest:

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

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

If designator refuses request

Clause 2.6.22 applies if the designator decides to refuse the request (i.e. to buy the interest). It requires the designator to give the owner a notice, within 5 business days of making the decision, advising that the request has been refused and that the owner may appeal against the decision.

Clause 4.1.35 allows a person to appeal to the court against a decision to refuse a request. A failure to decide the request within the specified time is also appealable on the basis of a deemed refusal. Because the request to purchase the interest arises out of hardship on the part of the owner, it is appropriate that court costs associated with any appeal be treated sympathetically. Accordingly, clause 4.1.23 states that costs must be paid by the relevant Minister or local government if the appeal is against a deemed refusal or an appeal against a decision is upheld.

If the designator does not act under the notice

Clause 2.6.23 requires the designator to give a notice of intention to resume an interest in designated land under the *Acquisition of Land Act 1967*, section 7, if within 25 business days the designator has not:

- signed an agreement with the owner to buy or exchange the interest; or
- repealed the designation or removed the designation from the interest;
- as stipulated in the notice given under clause 2.6.20 or 2.6.21.

How value of interest is decided

Clause 2.6.24 deals with the value of an interest in designated land if the land is taken under the *Acquisition of Land Act 1967*. The clause states that the effect of designation must be disregarded in deciding the value.

Ministers may delegate certain administrative powers about designations

Clause 2.6.25 declares that some powers of a Minister with respect to designation may be delegated to the chief executive or a senior executive of any Department for which the Minister has responsibility. These powers are under:

- clause 2.6.20 (If designator grants request**)**;
- clause 2.6.22 (If designator refuses request);
- schedule 6 (Process for Ministerial designations), clauses 1, 4 and 5); and
- schedule 7 (Process for Ministerial designation if consultation has previously been carried out), clause 2.

CHAPTER 3—INTEGRATED DEVELOPMENT ASSESSMENT SYSTEM (IDAS)

PART 1—PRELIMINARY

What is IDAS

Clause 3.1.1. explains what IDAS is. Traditionally, development has been regulated through a multitude of systems, each dealing with an aspect of development. For example, the building control system under the *Building Act 1975* is concerned with ensuring building work is designed and constructed in accordance with the structural and other standards under the *Standard Building Law*. The environmental authority system under the *Environmental Protection Act 1994* is concerned with ensuring environmentally relevant activities under that Act are established and operated in a way that minimises the risk of environmental harm occurring. The planning approval system under the *Local Government (Planning and Environment) Act 1990* among other things is concerned with ensuring development satisfies environmental and amenity considerations.

Each system operates independently. There are no common rules or framework for making an application, or appealing an adverse decision. Also, the demarcations between what is, say, a building control matter, a planning matter or an environmental authority matter are not always clear. There is considerable potential for duplication and overlap to occur.

To overcome these shortcomings, IDAS is designed to provide a single legal administrative framework for the assessment and approval of all development.

However, while the clause states that IDAS is the system for integrating all State and local government assessment and approval processes for development, it must be pointed out that the Bill simply establishes the framework for integration. Integration of the environmental authority process, the building control process and the many other development processes can only occur when the affected statutes and local laws are consequentially amended to integrate with IDAS. The introduction of the legislation will trigger a series of consequential amendments to a range of statutes to achieve an integrated development assessment system in Queensland.

Statutes with processes to be integrated include the *Building Act 1975*, *Environmental Protection Act 1994, Queensland Heritage Act 1991* and *Coastal Protection and Management Act 1995*.

Also, it is worth noting that IDAS has implications for local laws as well. Some local laws currently regulate development. Examples include local laws about advertising signs. To avoid any potential for there to be duplicated development approval processes at the local government level, consequential amendments are being made to the *Local Government Act 1993* (see schedule 9). These will prevent local governments from establishing any process related to development in local laws made after the commencement of this chapter, that is similar to or duplicates IDAS. Existing local laws that currently have development approval provisions continue but the consequential amendment of the *Local Government Act 1993* (section 464A) states that a provision of a local law that deals with development, may not be amended. This means that in order to introduce new or different controls it would need to be done through the planning scheme.

Resource allocation and development assessment

Resource allocation decisions are concerned with establishing rights of access to resources owned or managed by another party, be they a private resource holder or the State Government. Such resources include land, water, forest products and extractive materials.

Resource allocation should not be confused with IDAS which is about managing the effects of development on the environment. While the development may include the need to access resources, the development approval is separate from a resource allocation.

The owner of a resource must give their consent before development can proceed. This will include the consent of the land owner and may include State approval to use resources over which it has rights under legislation. For example, the right to use and control water in a watercourse is vested in the State under the *Water Resources Act 1989*; the control and disposal of forest products and quarry materials on State land are vested in the State under the *Forestry Act 1959*; and State lands are vested in the State under the *Land Act 1994.*

Environmental impact assessment under IDAS

IDAS establishes a comprehensive system for assessing and deciding

development applications that integrates all existing development assessment systems (planning, environmental management, coastal management etc). There are two types of assessment under IDAS—code assessment and impact assessment. Impact assessment means the assessment of the environmental effects of development and the ways of dealing with the effects.

If an application requires impact assessment the application process is more rigorous than it is for code assessment. Public notification must be carried out and submissions may be made.

The information placed on public exhibition during the notification stage must include the application and any additional information provided by the applicant in response to information requests made by the assessment manager and any concurrence agencies. Under the current planning approval processes, a complete information package is only available for public scrutiny for a limited number of applications—i.e. those triggering the EIS process under section 8.2 of the current Act. However, under IDAS all impact assessment applications will have the applicant's responses to the information request phase of IDAS (i.e. both assessment manager and concurrence agency information requests) available for scrutiny during the notification stage.

For complex applications information requests will equate to the setting of terms of reference for an EIA.

For applications prescribed as requiring referral coordination, the information request phase will be coordinated by the State and a single coordinated information request will be made.

Because IDAS is an integrated system, the assessment process involves all agencies that currently administer separate approval systems. For example, if a proposal is an environmentally relevant activity under the *Environmental Protection Act 1994* the application will also be assessed against that Act. Impact assessment under IDAS is more rigorous and comprehensive than current systems.

Transitional development applications

These provisions only apply to situations in which the local government is the assessment manager. If a local government introduces a new planning scheme or amends its existing scheme, the Bill allows a person making a development application to advise the local government (as the assessment

manager) that the applicant intends to carry out the development under the superseded planning scheme (i.e. the scheme that existed before the new scheme, or in the case of an amendment, the scheme as it existed before the amendment was adopted). This is known as a "transitional development application". The term is defined in the dictionary in schedule 10.

The local government has the discretion to decide whether to accept the applicants intention and assess and decide the application under the superseded scheme, or assess and decide the application under the new (or amended scheme).

If the application is decided under the superseded scheme and the local government refuses the application, the owner of the land is not entitled to claim compensation from the local government. However, if the application is decided under the new or amended planning scheme and the application is refused or approved in part, or approved subject to conditions, the owner may make a claim for compensation. Chapter 5, part 4 describes how and under what circumstances compensation is payable under the Bill.

IDAS under transitional planning schemes

As the comments above indicate, IDAS involves significant systemic change and requires amendments to be made to many other Acts, regulations and local laws dealing with development. Under IDAS, local government planning schemes perform a key role in the assessment system. However, because of the time and cost considerations involved in the preparation and introduction of a planning scheme, it is neither practical nor desirable for every existing planning scheme to be redone as an IPA planning scheme before the commencement of the Act.

A key objective of the legislation has been to ensure existing planning schemes (and interim development control provisions) prepared under the *Local Government (Planning and Environment) Act 1990* are able to operate under IDAS. However, because IDAS is different from the existing planning approval system under the current Act, it is necessary for transitional rules to be applied to allow existing schemes to be interpreted and operated under the Bill, until they are amended to become, or are replaced by, IPA planning schemes.

Existing schemes will become 'transitional planning schemes' and a transitional form of IDAS will operate. Development applications will be made under IDAS (instead of consent or other applications under the current Act), but the assessment and decision making criteria will generally

be carried forward from the current Act. This is necessary as the criteria specified in clauses 3.5.4, 3.5.5, 3.5.13 and 3.5.14 contemplate only planning schemes and codes made under the Bill.

Transitional planning schemes will have a life of 5 years (unless extended by the Minister) and may be amended during that period. They may also be amended and converted to an IPA planning scheme to become fully operational under the Bill. Local planning policies continue as transitional planning scheme policies. They may be replaced but not amended, and are cancelled when an IPA scheme becomes operational. All amendments commenced after the Bill commences as an Act, follow the process specified under the Bill.

Subject to schedule 8, if a local government has a "transitional planning scheme" (i.e. a planning scheme that was prepared and adopted under the current Act—see also the dictionary in schedule 10), the table below indicates how an application is to be processed, the relevant sections under the current Act for making and deciding the applications, and the relevant matters for assessment.

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Development requiring amendment of the planning scheme under section 4.3(1) before the development may be carried out. *Example—* *Proposed residential estate on rural zoned land*	assessable development requiring impact assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 4.4(3) of the current Act • any other matter to which regard would have been given under the current Act.	sections 4.4(5) and (5A)
Town planning consent under section 4.12(1).	assessable development requiring impact assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • any other matter to which regard would have been given under the current Act.	section 4.13(5) and (5A)

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Subdivision under section 5.1(1).	Assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.1(3) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.1(6) and (6A)
Subdivision engineering plans under section 5.2(1).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.2(2) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.2(4)

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Staged subdivision approval under section 5.9(1).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.9(3) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.9(6) and (6A)
Subdivision under section 5.1(1) where section 5.10(1) applies (i.e. subdivision incorporating a lake)	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.1(3) and 5.10(2) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.1(6) and (6A)

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Amalgamation of land under section 5.11(1).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.11(3) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.11(5)
Access easement under section 5.12(1).	Assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.12(4) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.12(4)

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Setting of conditions (permitted use) or the issue of a certificate of compliance or similarly endorsed certificate under section 4.1(5).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • any other matter to which regard would have been given under the current Act.	not applicable—decided under IDAS, except that despite clause 3.5.11(1)(c) an application may not be refused. Also, if not decided within the decision making period, the application is taken to have been approved without conditions, determined to comply or similarly endorsed, as the case may be.

Development under this Act

Clause 3.1.2 outlines some basic concepts about development and how IDAS operates. Fundamental to this is the meaning of development itself. Chapter 1, part 3, division 2 sets out the meaning of development. It is a broad concept covering a wide range of actions affecting the physical environment, including carrying out building work and making a material change of use of land. The concept is deliberately broad to ensure IDAS is able to integrate the many different development-related assessment systems currently in place. A narrower meaning would necessarily limit the application of the system.

An important point to note about the way the term "development" is used in the Bill that assists in its understanding, is that development is defined to be an action rather than the result of an action. For example, development is the carrying out of building work and the making of a material change of use rather than the results of those actions which are a building and a use of premises.

Subclause (1) states that development is assessable, self-assessable or exempt development. These terms are defined in the dictionary in schedule

10. However, the basic premise of the Bill is that development is exempt unless it is declared to be assessable or self-assessable in schedule 8 or a planning scheme. This means that while many development activities are captured within the concept of development, it does not mean that these activities are automatically regulated. Development is only regulated if it is made assessable or self-assessable under schedule 8 or a planning scheme.

This clause also establishes some rules about the declaration of assessable and self-assessable development in planning schemes. IDAS is a Statewide system established under the Act that relies on local government planning schemes and other local planning instruments for implementation. However, while planning schemes are integral to the operation of IDAS, they are not the only instruments that can establish the regime for assessable and self-assessable development. Certain development is currently regulated by the State. The building control system is an example. Accordingly, it is important that the Bill establish rules to ensure that any decisions made by the State under schedule 8 about the assessability of development can only be changed in a planning scheme in the way provided.

Code and impact assessment for assessable development

Clause 3.1.3 states that assessable development may be subject to code or impact assessment, or both code and impact assessment. Both terms are defined in the dictionary in schedule 10.

Code assessment is a "bounded" assessment—i.e. the application is assessed for its compliance with the applicable codes (see clause 3.5.4). An example of a code assessment under IDAS would be the assessment of building work for its compliance with the Standard Building Law (which will be recognised as a code for IDAS).

Impact assessment on the other hand is a wider assessment of the environmental effects of development having regard to a range of matters such as the planning scheme and relevant State planning policies (see clause 3.5.5). The terms code assessment and impact assessment are also defined in the dictionary in schedule 10.

Subclause (2) prevents a planning scheme being in conflict with the regulation mentioned in subclause (1). If the planning scheme attempted to deal with the same aspect of development and made the assessment of building work against the Standard Building Law an impact assessment instead of a code assessment, the scheme would be in conflict with the regulation and in this respect the scheme would be of no effect.

When is a development permit necessary

Clause 3.1.4 sets out further matters about the operation of IDAS. In particular the clause makes it clear that a development permit is only required for assessable development, although self-assessable development must comply with codes applying to the development.

Approvals under this Act

Clause 3.1.5 describes the two types of approval for assessable development under IDAS—preliminary approval and development permit. The reason there are two types of approvals is to ensure IDAS may operate with the flexibility needed to deal with the wide range of potential application scenarios that will be encountered. These will range from straight forward house extension applications to complex large scale mixed use proposals.

Some points to note about preliminary approvals and development permits include:

- both are legally binding approvals;
- a development permit authorises assessable development to occur;
- a preliminary approval approves assessable development but does not authorise the development to occur;
- the IDAS process is the same regardless of whether a preliminary approval or development permit is sought;
- if development is assessable, a development permit must be obtained;
- a preliminary approval is optional and can be described as a binding step along the way a development permit (and the authorisation for development to occur);
- both preliminary approvals and development permits can condition development.

For example, an applicant wishes to establish a new showroom for the display and sale of motor cars and also wishes to build the showroom using a new and innovative roof design that requires special consideration under the Standard Building Law. The applicant knows that the establishment of the showroom involves a range of assessable development. The material change of use of the land from its present use to the showroom use is an

assessable development under the planning scheme. Also, the erection of the building involves the carrying out of building work, and plumbing or drainage work, both of which are assessable development under schedule 8. Under clause 3.1.4, the applicant knows that before each of these assessable developments may be carried out a development permit for the development needs to be given. To achieve this the applicant decides to stage the approval of the project over two applications.

Application 1 deals with the change of use of the land and the building work issues relating to the new roof design. The change of use is assessed against the planning scheme and a development permit for the change of use is given. At the same time the roof design is assessed against the Standard Building Law. The design is accepted and a preliminary approval for building work is able to be issued subject to conditions. It is only a preliminary approval because only an aspect of the building work has been assessed (i.e. the roof design). Full compliance of the building design with the Standard Building Law has not been checked.

Application 2 deals with the remainder of the building, and plumbing and drainage work. The applicant knows with certainty that the change of use is acceptable as is the roof design. Detailed plans showing the remainder of the building, and plumbing and drainage work are submitted and the plans are assessed for compliance with the Standard Building Law, Standard Sewerage Law and the Standard Water Supply Law. A development permit for these works is able to be given. The conditions imposed on the preliminary approval also attach to the development permit.

All assessable development has now been assessed and development permits have been given for the three types of assessable development involved in the proposal—the material change of use of the premises, the building work, and the plumbing and drainage work.

Preliminary approval may override local planning instrument

Clause 3.1.6 allows a preliminary approval to override a planning scheme on land the subject of the approval, and substitute different provisions on that land for the life of the approval or until the approved development is completed. This is a power in addition to the basic provisions mentioned in clause 3.1.5.

The ability to use a preliminary approval in this way is limited to applications for material changes of uses that require impact assessment,

and accordingly public notification. This is because the mechanism will affect the way land may be used and provides for departures from the planning scheme. It is important that this be subject to public scrutiny.

Preliminary approvals have a number of potential applications under IDAS. In the notes on clause 3.1.5 an example was given of a preliminary approval being used to stage the design and approval of the building work for a proposed building with an unusual roof design. That is one possible application of the preliminary approval mechanism. This clause provides for another.

If a large master-planned housing estate is proposed on land currently zoned rural, this clause allows a preliminary approval to be given approving development to the extent stated in the approval. For example, it may identify different development precincts, broad land use intentions for each of the precincts and the major infrastructure networks for the estate. Also, under this clause, the approval may establish a different regime of assessable, self-assessable and exempt development on the land. For example, in the rural zone certain animal husbandry activities may be exempt development. If the land is to be used for residential purposes those activities would probably be unacceptable. By altering the nature of assessable, self-assessable and exempt development on the land, the preliminary approval can bring the development potential of the land into line with the nature of development intended. This clause overcomes the need to rezone the land as a first step in the development process. IDAS is therefore able to accommodate both large and small-scale development projects.

An advantage of this approach is that it allows proponents to put forward specific development intentions (albeit in a conceptual form) rather than broad zoning proposals as is the case under the current Act. The public benefits from being able to deal with something that is more tangible and specific than a zoning proposal, but that has equivalent third party submission and appeal rights.

The approach is also consistent with the general intent of the legislation for planning schemes and other planning instruments to express policy and guide decision making, and be the product of elected governments in consultation with the communities they represent.

Of course, nothing prevents the local government from amending its planning scheme to bring the scheme into line with a development approval

that is inconsistent in some way with the underlying planning scheme. However, any such amendment can follow the development approval. It does not have to precede it.

Also see:

- clause 3.5.27 which provides for approvals considered to be in conflict with the planning scheme to be recorded on the planning scheme; and
- schedule 1, clauses 8 and 11 which provides for the scheme amendment process to be streamlined in certain situations.

Assessment manager

Clause 3.1.7 describes the assessment manager. Under IDAS there are two types of entities that have both administrative and assessment responsibilities. These are the assessment manager (this clause) and referral agencies (see clause 3.1.8). Because IDAS is an integrated system designed to replace a number of existing development assessment and approval processes, it is not the case that the same entity will always be responsible for administering a development application. The basic presumption of the Bill is that the local government for the area in which development is proposed is the assessment manager. However, in some situations development is proposed outside a local government area (e.g. over water), or within a local government area but outside a local government's jurisdiction (e.g. inside a national park). In these situations the assessment manager is another entity and will be prescribed under a regulation.

Under IDAS, development applications are made to the assessment manager (see clause 3.2.1). The assessment manager has certain administrative functions such as deciding if the application is properly made (again see clause 3.2.1) and issuing the acknowledgment notice to the applicant (see clause 3.2.3). However, most significantly, the assessment manager plays a major role in assessing and deciding the application.

Referral agencies

Clause 3.1.8 deals with referral agencies. The term referral agency is a generic term that covers two different types of referral agency. Generic terminology is used as a form of drafting shorthand, as the procedural requirements under IDAS for both types of referral agency have much in common.

The first type of referral agency is a concurrence agency. This is an entity that has the power to request information, direct the imposition of conditions on any development approval given by the assessment manager and, under specified circumstances, direct the assessment manager to refuse an application.

The second type of referral agency is an advice agency. This is an entity that must be consulted for its advice before an application is decided but which may only offer advice. An advice agency may only recommend to the assessment manager that conditions be imposed or that an application be refused. An advice agency does not have powers to direct an outcome.

The role of the referral agency (particularly the concurrence agency) is fundamental to the operation of IDAS. Because IDAS creates a single system for assessing and deciding development applications, separate approval systems will be gradually repealed and the requirements of those systems will be integrated into IDAS. An entity that would have administered a separate development approval system (e.g. the environmental authority system under the *Environmental Protection Act 1994*) is expected to become a concurrence agency under IDAS. This means the entity would be able to impose conditions and direct refusal of an application. This is consistent with the powers it could have exercised before integration.

The clause refers to the jurisdiction of the referral agency. A referral agency must exercise its powers under IDAS within the limits of its jurisdiction. For example, if a concurrence agency has a jurisdiction relating to environmental management, it is not intended that in exercising its powers the agency impose conditions about traffic access details. This would be outside its jurisdiction.

Stages of IDAS

Clause 3.1.9 states that IDAS involves the following possible stages:

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

See attachments 1 and 2 for flowcharts of the IDAS process.

There are two important points to note about the IDAS process.

First, IDAS is a modular system. A wide range of development applications will use the IDAS process. Not all applications are the same or have the same input requirements or levels of complexity. IDAS is designed to deal with both simple and complex applications. This is why a modular design has been adopted. As subclause (2) points out, not all stages, or all parts of a stage, apply to all development applications.

Second, IDAS involves shared responsibilities. All of the players in the system (i.e. the applicant, assessment manager, referral agencies and submitters) have responsibilities. This is by no means a unique concept. All systems involve some degree of shared responsibility. For instance, the current planning system requires applicants to carry out public notification. It also requires objectors to lodge objections by a certain day in order for their objection to be treated as valid. This approach has proven to be both efficient and effective. IDAS takes the concept further by also requiring applicants to be responsible for carrying out referrals. As applicants have a vested interest in ensuring their applications are processed as quickly as possible, this approach should encourage efficiency.

Of course, it is recognised that not all applicants will be experienced in the operation of the system. Accordingly, nothing in the Bill prevents an assessment manager, as a service to applicants, from offering to carry out certain of the applicant's actions (such as carrying out notification on behalf of the applicant—see clause 3.4.4).

PART 2—APPLICATION STAGE

Parts 2 to 5 only apply to assessable development—i.e. to development requiring an application to be made for a development permit under IDAS.

Division 1—Application process

Applying for development approval

Clause 3.2.1 describes the process for applying for development approval.

Subclause (2) states that applications must be made in the approved form. Under clause 5.8.1, provision is made for the chief executive (DLGP) to approve forms for use under the Bill.

Subclause (3) states that the approved form may contain two parts. It must contain a mandatory requirements part. This is the minimum information that must be submitted with an application in order for it to be a "properly made application". If an application is properly made it must be accepted by the assessment manager. One of the basic features of IDAS is that applicants can get an application into the system if the specified minimum level of information is supplied. This is to overcome some of the difficulties existing in some current systems where applicants are only able to have an application received if all necessary information is supplied by them. This can sometimes lead to long delays for applicants as they go back and forth to the administering authority finding out the details of information to be submitted with their application.

The mandatory requirements part of the approved form would be expected to include:

- name and address of applicant;
- description of the land;
- specific technical requirements either set out on the form or referenced in a regulation (such as the requirements for making an application involving building work set out in the Standard Building Law);
- opportunity to specify a preferred period for currency of the approval, and (if necessary), a preferred completion date; and
- the written consent of copyright holders to allow material to be reproduced and sold.

Of course, while applications can get into the system with a specified minimum level of information, it is not to be interpreted as limiting the ability of the assessing authorities to ask for further information. The IDAS process makes specific provision for this. Also, it is recognised that it is good practice for assessment managers and referral agencies to encourage applicants to have pre-lodgement discussions with them in order to assist them to properly conceptualise and prepare their applications.

To assist in this preparation and to better ensure applicants know the type of information that should be submitted, provision is also made for the application form to contain a supporting information part as well. This is a

non-mandatory part of the application form. It allows assessment managers to specify information that should be submitted.

Subclause (5) refers to transitional development applications (see notes for clause 3.1.1—*Transitional development applications*). If an applicant makes a transitional development application, they must identify the "superseded planning scheme" (defined in the dictionary in schedule 10) under which assessment is sought.

Approved material change of use required for certain developments

Clause 3.2.2 only applies if a material change of use of the premises is an assessable development in a particular case. The clause establishes that development for a material change of use that is assessable must be dealt with in the same application as other development for the use proposed to be made of the premises, unless the change of use has already been approved.

If this requirement were not in the Bill, it could mean that work, say building work, could be approved and carried out without the use of the work having been approved. A person could therefore lawfully erect a building (and in doing so spend a considerable amount of money) and then find that they have no right to use the building. If use approval were not ever given, the building would remain empty. This is clearly unacceptable. It is considered that establishing a right to use premises is a fundamental prerequisite of the development assessment system. The environmental impacts and amenity considerations related to a proposed use are usually more fundamental and far reaching than those associated with other aspects of development associated with the use, such as the building work. It is important to ensure these use considerations are dealt with at the outset.

Acknowledgment notices generally *(clause 3.2.3)* and

Circumstances when immediate decision notice may be given *(clause 3.2.4)* and

Acknowledgment notices for applications under superseded planning schemes *(clause 3.2.5)* and

Acknowledgment notices if there are referral agencies or referral coordination is required *(clause 3.2.6)*

These clauses require the assessment manager to give the applicant an acknowledgment notice within 10 business days of receiving a properly

made application (30 business days if the application is a transitional development application (clause 3.2.5)).

The acknowledgment notice serves a number of purposes including:

- providing an applicant with a formal acknowledgment that their application has been received;
- providing the applicant with some basic information about the application, including confirmation of the development applied for, and whether the application will be assessed as a code assessment or impact assessment (or both);
- telling the applicant if there are referral agencies that must be consulted or whether referral coordination is required;
- providing useful information about the application for the consideration of any referral agencies (as a copy of the acknowledgment notice must be given to each referral agency by the applicant—see clause 3.3.3).

One item of information not included in the acknowledgment notice is whether the application is for preliminary approval or a development permit. This is because this basic information is to be provided by the applicant on the application form. It is for the applicant to choose whether they seek a preliminary approval or a development permit. However, under clause 3.5.11 an assessment manager may give a preliminary approval even though a development permit was applied for. (See notes on clause 3.5.11 for explanation.)

For a transitional development application the longer period for the giving of the acknowledgment notice (up to 30 business days) is to allow the assessment manager to decide whether to deal with the matter under the existing scheme or the superseded scheme.

While acknowledgment notices are expected to be an important and useful tool for many applications, IDAS also applies to very simple and straight forward development applications. Many simple applications that only involve code assessment (e.g. an extension to a dwelling house) can be assessed and decided in under 10 business days. For these applications there is unlikely to be any benefit for applicants in having the decision delayed while an acknowledgment notice is issued. Accordingly, provision has been made to allow IDAS to be further streamlined so that an assessment manager may give a decision notice to an applicant instead of an acknowledgment notice, provided the application is decided within the 10 day acknowledgment period.

Division 2—General matters about applications

Additional third party advice or comment

Clause 3.2.7 deals with an assessment manager or a concurrence agency being able to seek advice or comment about an application from any person, so long as it does not extend any stage. From a strictly legal viewpoint the clause is not necessary. It has been included to be user friendly and to put beyond doubt that an assessment manager or concurrence agency may seek advice or comment from any person as a means of assisting them in their assessments of an application. However, including this clause is not intended to imply that anything not explicitly provided for in the Act is prohibited.

It is normal practice now for assessing authorities to seek advice from persons who have particular knowledge about or interest in an application. For example, local governments will often seek advice from local officers in the Department of Primary Industries when dealing with applications for proposals that may impact on existing farming practices in an area. Also, local governments may seek input from neighbours. These are not formal statutory referrals. IDAS does not prevent assessing authorities from seeking advice from any person the authority believes can assist them in their assessment of the application.

Subclause (3) states that a request for advice or comment may be made by publicly notifying the application. Subclause (4) makes it clear that public notification under this section is not notification under part 4, division 2 which gives submitters rights of appeal.

Public scrutiny of applications

Clause 3.2.8 deals with the availability of information about an application during the life of an application. However, once an application is decided, chapter 5, part 4 (Public access to planning and development information) becomes relevant and requires certain information to be kept available for inspection by any person.

The underlying philosophy of the clause is to treat a development application as part of the public record. As such it is appropriate that an application be available for inspection during the life of the application—until the end of the last appeal period (unless it is withdrawn or lapses).

However, subclause (2) recognises that it is neither necessary nor necessarily in the public interest for all information to be available for inspection. For example it would not be in the public interest for sensitive security information (e.g. details of the electronic security system for a new bank) to be available. Also, details about the financial affairs of an applicant, or the estimated cost of proposed building work or the cost of fitting out a building, should not be necessary for a third party to be able to evaluate the effects of a development. The subclause makes it clear that the assessment manager has the discretion to decide these matters in each case.

Changing an application

Clause 3.2.9 deals with an applicant changing their application after it has been lodged, but before it has been decided. It is necessary to deal with this situation in the Bill to overcome possible uncertainty about whether, and in what circumstances, the IDAS process needs to be repeated after changes are made.

It needs to be emphasised that this clause does not apply to changes made in response to an information request (see subclause (5)).

Notification stage does not apply to some changed applications

Clause 3.2.10 states that the notification stage does not apply to the changed application in certain situations. Clause 3.2.9 requires the IDAS process to go back to an earlier stage in some situations if the applicant changes the application (either the acknowledgment period in the application stage or the information period in the information and referral stage). However, this clause provides some limited flexibility for the assessment manager to waive the requirement to repeat the notification stage.

Withdrawing an application

Clause 3.2.11 states that an applicant may withdraw their application at any time before the application is decided by the assessment manager.

Applications lapse in certain circumstances

Clause 3.2.12 deals with the lapsing of an application if an applicant fails to take a required action within specified periods:

- applicant to give material to a referral agency (clause 3.3.3)—3 months;
- applicant to respond to an information request (clause 3.3.8)—12 months;
- applicant to give public notification (clause 3.4.4)—10 business days.

The purpose of this clause is to ensure that incomplete applications do not stay valid for ever because an applicant has not taken an action. However, a generous period of time is provided for an applicant to respond to an information request before the application lapses. Under subclause (3) the period may also be extended with the agreement of the entity making the request. In the vast majority of situations it is expected that applicants will be intent on ensuring their applications are processed as quickly as possible and will not need the time provided under this clause.

Refunding fees

Clause 3.2.13 deals with fee refunds. The purpose of the clause is to put beyond doubt that an assessment manager or concurrence agency may refund all or part of a fee, either because an application has lapsed or is withdrawn or for another reason.

Service provider notice for reconfiguring a lot

Clause 3.2.14 requires an applicant for works associated with reconfiguring a lot to place a notice in a newspaper advising service providers of the proposed works (e.g. a new residential estate). The purpose of the clause is to make service providers such as Telstra, Optus, electricity authorities, gas companies and the like aware of proposed subdivisional works so that, if they wish, they may approach a developer with a view to coordinating their works with the developers works. It is not intended as a form of public notification seeking submissions from the public.

The deregulation of the telecommunications industry and the potential privatisation of other infrastructure services makes it difficult to establish a system of individual notices being sent to service providers. A single public notice in a newspaper ensures interested providers can keep abreast of subdivision proposals in an area. It also places the onus on the provider, who will derive the most direct benefit from coordination, rather than the assessment manager or developer to find out about the proposal.

Division 3—End of application stage

When does application stage end

Clause 3.2.15 sets out when the application stage ends. It is necessary to establish the end of this stage as other stages of IDAS, principally the decision stage, cannot start until this stage has ended.

A point to note is that paragraph (b) specifically provides for the situation where an assessment manager decides an application before the end of the acknowledgment period—if only code assessment is required and there is no input from referral agencies (see clauses 3.2.4 and 3.5.1).

PART 3—INFORMATION AND REFERRAL STAGE

Division 1—Preliminary

Purpose of information and referral stage

Clause 3.3.1 outlines the two purposes of the part. First, it provides for the assessment manager to ask the applicant for more information, and second, it provides for referral agencies (both concurrence and advice agencies) to be involved in the assessment of a development application.

The referral process is an important part of IDAS as it allows entities that otherwise would have administered a separate assessment and approval process to instead be part of the IDAS process.

Summary of referral process

The normal IDAS referral process requires the applicant to give a copy of the application and other specified material to each referral agency. Each agency then has a period of time (the "referral agency's assessment period") within which to respond to the assessment manager (and give a copy to the applicant). However, in the case of a concurrenceagency, before responding to the assessment manager, it may request further information from the applicant if this is needed to assess the application. An information request must be made within the first 10 days of the referral agency's assessment period (although provision exists for the information request period to be extended under clause 3.3.6). The assessment period stops

when the agency requests the information. It restarts when the applicant responds to the request.

The concurrence agency then must assess the application in the context of its jurisdiction and respond to the assessment manager (and give a copy to the applicant) within the time remaining in the referral agency's assessment period. For example, if the assessment period is the normal 30 business days and the information request was given after 8 business days had elapsed, the concurrence agency has 22 business days to respond to the assessment manager once it receives the applicant's response to the information request). Of course, as with the information request phase, provision is made under clause 3.3.14 for the referral agency's assessment period to be extended in certain situations.

Provision also is made for referral coordination. This only applies to applications involving referrals to 3 or more concurrence agencies. It is intended to deal with applications for which a coordinated information request phase is warranted. These are likely to be complex applications involving complex concurrence jurisdictions.

If an application requires referral coordination, the information request phase is modified by transferring the responsibility for making an information request to the chief executive (DLGP). However, before the chief executive gives any information request to the applicant in place of any information request that normally would have been made by the assessment manager or a concurrence agency, the normal referral process is modified by:

- requiring the applicant to also give a copy of the application to the chief executive; and
- transferring the power to make an information request from the assessment manager and concurrence agencies to the chief executive; and
- requiring the chief executive to consult with the assessment manager and each referral agency.

Referral triggers and jurisdictions

Referral agencies will be listed in a regulation. Also set out in the regulation will be the jurisdiction of each agency and the triggers for referral. It is important to note that a referral to a referral agency is only required if an application activates the referral trigger. For example, an

application to carry out building work to a building on the State heritage register under the *Queensland Heritage Act 1992* will activate a referral to the Queensland Heritage Council.

The assessment function of each referral agency will relate to its jurisdiction. In the case of the Queensland Heritage Council, for example, the jurisdiction will relate to the conservation of Queensland's cultural heritage.

Referral agency responses before application is made

Clause 3.3.2 states that nothing in this Bill stops a referral agency from giving a referral agency response on a matter within its jurisdiction about a development before an application for the development is made to the assessment manager.

This clause is included to be user friendly and to put beyond doubt that a person may approach a referral agency seeking its response to a proposal before a formal application is made. Clause 3.3.3.(3)(b)(i) provides for the situation where an agency has given its response and stated that it does not wish to see the application.

Division 2—Information requests

Applicant gives material to referral agency

Clause 3.3.3 requires the applicant to give specified information to each referral agency. If there are multiple referral agencies for an application, subclause (2) requires the information to be given to each agency about the same time. This is to ensure referral assessments occur concurrently.

One of the benefits of an integrated assessment system is comprehensive assessment. At present, each approval system is separate and assessments are sometimes made in a vacuum. While a referral agency must operate within the limits of its jurisdiction it will do so in the knowledge of the nature of the overall application and the extent of the assessment being carried out. In this context it is important that the respective referral assessments occur concurrently.

Applicant advises assessment manager

Clause 3.3.4 requires the applicant to notify the assessment manager of the day it gave each referral agency the material mentioned in clause 3.3.3(1), or if the application requires referral coordination, the day it gave the material mentioned in clause 3.3.5(2) to the chief executive (DLGP). Under IDAS, referral agencies must respond within the referral agency's assessment period and the "agency's referral day" is critical in deciding when the period starts (see clause 3.3.14). If an agency does not respond within this period:

- the information and referral stage ends (see clause 3.3.20); and
- the assessment manager may decide the application on the basis that the agency had no requirements or advice (see clause 3.3.16).

Referral coordination

Clause 3.3.5 relates to applications requiring referral coordination. Referral coordination was described in the notes on clause 3.3.1.

If an application involves 3 or more concurrence agencies, it requires referral coordination, and the applicant, in addition to giving specified information about the application to each referral agency, must also give a copy of the information to the chief executive (DLGP). This is because the chief executive has the responsibility for giving the applicant a whole-of-government request for any further information needed to assess the application (instead of the assessment manager and each referral agency giving information requests to the applicant independently). Under IDAS, this coordinated information request replaces the terms of reference/EIS process under the current Act.

Information requests to applicant (generally)

Clause 3.3.6 sets out requirements for the assessment manager or a concurrence agency to make an information request (provided the application is not subject to referral coordination which is covered by clause 3.3.7). For a concurrence agency, the 10 business day period within which an information request may be given is part of (not additional to) the overall time allocated to the agency to assess the application (i.e. the "referral agency's assessment period" defined in clause 3.3.14).

The information request period may be extended by another 10 days, and with the applicant's agreement, extended further.

Information requests to applicant (referral coordination)

Clause 3.3.7 only applies if an application requires referral coordination. As mentioned in the notes on clause 3.3.5, the chief executive (DLGP) gives the applicant any information request. The time for the chief executive to give a request is extended by 10 business days to 20 business days in recognition of the need for the chief executive to consult with the assessment manager and each referral agency about information requirements.

As for information requests generally, the information request period may also be extended.

Applicant responds to any information request

Clause 3.3.8 outlines the applicant's responsibilities if an information request is given. Under most existing development assessment systems (e.g. planning, building, etc), the onus is usually on the applicant to comply fully with any information requests, regardless of the relevance or reasonableness of the request. In the case of the current planning system, an applicant's only recourse in these situations is to not respond and wait for the opportunity to appeal to the court on the basis of a "deemed refusal". This legislative approach to resolving problems is clumsy, time consuming and costly. The approach proposed in the Bill is to provide the applicant with options to resolve what otherwise could be an assessment deadlock. The applicant may provide all information requested, or alternatively part or none of the information requested accompanied by a notice asking the assessing authority to proceed with the assessment. Additionally, an applicant may seek assistance from the chief executive in certain situations (see clauses 3.3.10 to 3.3.13).

If the information request was made by a concurrence agency, subclause (2) requires the applicant to give a copy of the applicant's response to the assessment manager. The reason for this is to ensure the assessment manager has a complete package of information available for inspection. (Under IDAS, the assessment manager is the keeper of all relevant information about an application. Clause 3.2.8 requires the assessment

manager to keep the application and any supporting material (including responses to information requests) available for inspection and purchase. For applications requiring impact assessment, the availability of this information is particularly important to ensure the public has access to the relevant information submitted to the assessing authorities).

Subclause (3) applies to applications subject to referral coordination. While any request for information is coordinated and issued by the chief executive (effectively on behalf of the assessment manager and concurrence agencies), the applicant must give a separate response to the assessment manager and each concurrence agency (but not the chief executive). In turn, each concurrence agency assesses the application and responds individually to the assessment manager and the applicant.

Referral agency advises assessment manager of response

Clause 3.3.9 requires each referral agency to advise the assessment manager of the day it received the response from the applicant. This is necessary to ensure the assessment manager knows when a referral agency's assessment period recommences (under clause 3.3.14(7) the agency's assessment period stops during the period the agency is waiting for a response to its information request), as it can affect when the assessment manager's decision period starts.

Division 3—Referral assistance

The division sets out a process for applicant's who are dissatisfied with an information request to seek assistance from the chief executive (DLGP) as a means of resolving the difficulty. The provisions in this division are part of a series of measures in this chapter specifically designed to provide mechanisms for applicants and assessing authorities to be able to resolve difficulties and disputes outside the court. (See clause 3.3.8).

When referral assistance may be requested

Clause 3.3.10 sets out the circumstances under which the chief executive may provide assistance to an applicant. The chief executive's powers are limited to the two situations where the chief executive is satisfied:

- the information request from a concurrence agency, or a request under referral coordination, is unreasonable or inappropriate in the context of the application; or
- a request is in conflict with another information request.

Chief executive acknowledges receipt of referral assistance request

Clause 3.3.11 requires the chief executive to send a notice advising receipt of a request to the affected entities.

Chief executive may change information request

Clause 3.3.12 gives the chief executive power to change an information request in response to a request under 3.3.10. However, subclause (2) limits the chief executives powers in relation to information requests given by local governments—the local government must agree to the change.

The reasons for this approach are:

- for requests given by assessment managers and concurrence agencies other than local governments (i.e. State entities)—the chief executive's role is to ensure that the State speaks with a consistent and reasonable voice. In the majority of situations full coordination of information requests (as per referral coordination) is not seen to be necessary or cost effective. However, it is to be expected that from time to time conflicts will arise over separate information requests where there has not been referral coordination. The chief executive's powers provide a means for those difficulties to be resolved cost effectively and efficiently; and
- for requests given by local governments—as local government is a responsible level of government, the ability of the chief executive to determine the content of local government information requests is generally limited to those applications requiring referral coordination under clause 3.3.5, where there is a State interest in ensuring specified applications are dealt with using a coordinated, whole-of-government approach to information gathering. For other applications it is appropriate that the chief executive, as the representative of the State, respect the competency of local government by seeking their agreement to any change.

Applicant may withdraw request for referral assistance

Clause 3.3.13 allows the applicant to withdraw a request for assistance at any time.

Division 4—Referral agency assessment

The key purpose of the information and referral stage is to seek requirements and advice from the concurrence and referral agencies prescribed for an application. This division deals with the assessment of applications by referral agencies.

Referral agency assessment period

Clause 3.3.14 sets out the period within which a referral agency must respond with its requirements and/or advice if a concurrence agency, or advice if an advice agency. This is the "referral agency's assessment period"—normally 30 business days. Subclause (1)(a) states that a different assessment period may be prescribed under a regulation. It is recognised that not all referrals are going to be identical. Some will deal with technical code assessment issues. Others will deal with broad impact assessment issues. For technical code assessment, 30 business days is likely to be overly generous and may well exceed the time provided under existing legislation (the building system referral to the Fire and Rescue Authority is a case in point). Accordingly, provision is made for shorter periods to be prescribed. Similarly, under subclause (3)(a), a shorter period from the normal 20 business days may be prescribed for extension of the assessment period without the applicant's agreement.

The referral agency's assessment period does not include the time the agency is waiting for a response from the applicant (subclause (7)(b)). However, the assessment period does include the information request period (subclause (2)). This means if a concurrence agency gives an information request and takes 8 business days to give the request, the agency has 22 business days left to assess the application once the applicant responds to the request (i.e. 30 days less 8 days). However, as is prescribed in subclause (7)(a), if an extension of time is given during the information request phase this does not impact on the number of days remaining in the assessment period. For example, if a concurrence agency has not given an

information request after the initial 10 business day request period has elapsed, but instead has given notice that it has extended the information request period by 10 business days (under clause 3.3.6), these extra 10 business days (and any further extensions agreed to by the applicant) do not affect the period remaining for the agency to assess the application once the applicant responds to the request.

If an application is subject to referralcoordination, the assessment period does not include the time between the agency's referral day and the day the applicant responds to any information request made by the chief executive. The effect of this is to give referral agencies the full 30 business day assessment period to assess the application and respond. This extra time is consistent with the extra complexity of the applications that will trigger referral coordination.

Referral agency assesses application

Clause 3.3.15 outlines the requirements for referral agencies when assessing applications. Subclause (1) refers to the relevant laws and policies administered by the referral agency. This is a generic way of describing the matters that the agency has responsibility for administering within its referral jurisdiction.

For example, when the *Queensland Heritage Act 1992* is integrated with IDAS the Heritage Council will be a concurrence agency for certain development affecting sites registered under the *Queensland Heritage Act 1992*. The jurisdiction of the Council will be limited to matters relating to the conservation of the State's cultural heritage, and its relevant laws and policies will be the *Queensland Heritage Act 1992*, relevant regulations under that Act and policies adopted in support of that Act and its regulations.

Subclause (1) also requires referral agencies to have regard to the planning scheme for the area. IDAS is concerned with achieving integrated assessment. The IPA planning scheme is an important component in achieving integrated assessment. Under the Bill, planning schemes are intended to reflect local and State planning intentions, and referral agencies will have contributed to its preparation. Accordingly, it is important that referral agencies have regard to this instrument when carrying out their own assessments. It is also specified in this clause that a referral agency have regard to relevant State planning policies which have not been reflected in

the relevant planning scheme, and if the subject land is designated for community infrastructure, its designation.

Subclause (2) deals with two matters. Paragraph (a) is included to ensure consistent assessment by assessment managers with respect to relevant instruments that come into effect after an application is made. Paragraph (b) exempts certain referral agencies from the need to have regard to the planning scheme. This exemption is limited to certain technical referrals (e.g. to the Fire and Rescue Authority) that do not impact on matters covered under a planning scheme.

Referral agency's response

Clause 3.3.16 deals with referral agency responses. If a concurrence agency wants its requirements to be followed and/or imposed by the assessment manager, the agency must give its response within the referral agency assessment period (see clause 3.3.14). Similarly, if an advice agency wants the assessment manager to consider its advice or recommendations it also must give its response within the assessment period. If a referral agency does not respond within time, subclause (3) states that the assessment manager may decide the application on the basis that the agency had assessed the application and had no concurrence agency requirements.

How a concurrence agency may change its response

Clause 3.3.17 says that a concurrence agency may give or amend its response after the end of the referral agency's assessment period, but before the application is decided, if the applicant agrees. IDAS is designed to be a flexible system able to respond to changing needs and circumstances. For example, clause 3.5.9 provides applicants with the ability to stop the assessment manager's decision period to make representations to a referral agency about its response. If the process under clause 3.5.9 is to be able to result in a meaningful outcome, say a change to a concurrence agency condition, then there needs to be a head of power for the agency to change its response. Because, the time for giving a response has expired, it is reasonable for any proposed change to be subject to the applicant's agreement. If the applicant's agreement was not needed, the time limits imposed on referral agencies would be meaningless and the efficiency of the assessment system would suffer accordingly.

Concurrence agency's response powers

Clause 3.3.18 sets out the response powers of a concurrence agency. A concurrence agency within the limits of its jurisdiction (see comments under clause 3.3.15 about jurisdiction) must tell the assessment manager (and send a copy to the applicant):

- its requirements for any approval, being one or more of the following (and the reasons why)(the conditions to be attached, that approval must be for part only of the development, that approval must be for a preliminary approval only; or
- it has no concurrence requirements; or
- to refuse the application.

Also, a concurrence agency may offer advice about the application.

While a concurrence agency has powers to impose requirements for any approval or refuse an application, it does not have the ability to direct approval. The decision to approve an application is a matter for the assessment manager alone.

Subclause (4) sets out the decision rules by which a concurrence agency may direct an assessment agency to refuse an application:

- non-compliance with the relevant laws and policies administered by the concurrence agency; and
- inability to achieve compliance by imposing conditions.

Subclause (6) deals with concurrence agencies of a particular type—i.e. agencies responsible for providing certain community infrastructure (see clause 3.5.35(1)(b) for list). Under the Bill, IPA planning schemes covering prescribed local government areas will be required to include a "benchmark development sequence" (see clause 2.1.3(e) and the dictionary in schedule 10) that identifies preferred urban development areas for a forward 15 year period. Under clause 3.5.35, if development is proposed "out of sequence" (i.e. outside the benchmark development sequence), provision is made for the listed infrastructure providers to impose conditions on a development approval to lessen any cost impacts of supplying the listed infrastructure ahead of the planned time for providing the infrastructure.

For the purposes of dealing with these cost impacts, IDAS treats these agencies as concurrence agencies. However, as subclause (6) states, these agencies do not have the same range of powers as other concurrence

agencies. They are only able to impose requirements on any approval relevant to cost impacts. They cannot direct the refusal of an application and they are not invited to offer advice about the application.

Advice agency's response powers

Clause 3.3.19 sets out the response powers of an advice agency. Consistent with the role of this type of agency, the powers of an advice agency are limited to offering advice and recommendations. An advice agency is unable to direct an outcome as a concurrence agency can.

Division 5—End of information and referral stage

When does information and referral stage end

Clause 3.3.20 outlines when the referral stage ends. It is necessary to establish the end of the stage as other stages of IDAS, principally the decision stage, cannot start until this stage has ended.

PART 4—NOTIFICATION STAGE

Division 1—Preliminary

Purpose of notification stage

Clause 3.4.1 describes the purpose of the stage. Public notification under this part gives a person the opportunity to make submissions about a development application, and also secures for that person the right of appeal to the court about the assessment manager's decision.

Public involvement in the planning and development assessment system is an essential component of the system. The Bill provides many opportunities for public involvement in the overall system. For example, the processes for making planning instruments (planning schemes, planning scheme policies and the like), described in the schedules to chapter 2, outline opportunities for public involvement in framing these policy and regulatory instruments. Also, the independent review process described in

chapter 2, part 2, division 2 is specifically included to provide additional opportunities for the public to be involved in the policy making process by allowing any person to seek an independent review of part of a planning scheme, or all or part of a local planning scheme policy.

This part sets out the requirements for formal public notification in relation to development applications. IDAS has been designed to reflect this high level of public involvement in planning and development assessment. Applications that are specified to require assessment of the environmental effects of the development (i.e. impact assessments) require public notification. Only assessment against known codes (i.e. code assessments) does not involve public notification under this part. Examples of code assessments include applications for building work that require assessment against the Standard Building Law only.

When does notification stage apply

Clause 3.4.2 describes when the notification stage applies. Public notification under this part only applies to applications requiring impact assessment.

Subclause (2) goes on to state that public notification is still required even if a concurrence agency has directed the assessment manager to refuse the application. For most applications involving concurrence agencies it is expected that the notification stage will have commenced before the concurrence agency response is received (see clause 3.4.3 below). This provision ensures that an application is subject to full scrutiny and assessment. For example, a concurrence agency may direct refusal based on a technical ground alone. Members of the public may have wider concerns that, in the event of any appeal by the applicant, should also be considered by the court.

Of course, an applicant is not compelled to continue with an application if a refusal is directed. The applicant, at any time, may withdraw the application and terminate the assessment process (see clause 3.2.11).

When can notification stage start

Clause 3.4.3 states when notification under this part may be carried out. It will be noted that the applicant has the obligation to carry out the public notification. This is consistent with the current planning system under the

current Act. It is also consistent with the "shared responsibilities" approach adopted for IDAS. However, as happens now, this service may be provided by local governments (see clause 3.4.4).

Public notification is carried out:

- immediately after the issuing of the acknowledgment notice (if there are no concurrence agencies and the assessment manager has stated that the assessment manager does not wish to make an information request); or
- after the last information request period if no information requests have been made; or
- after the applicant has responded to all information requests.

This is different from the current planning system which allows public notification to occur immediately after the application is lodged (i.e. before any requests for follow up information have been made and responded to). The reason for the changed approach is to ensure the public has access to all the information supplied by the applicant about the application. It is considered this will allow people to make more informed appraisals of applications, and potentially reduce the need for submissions to be made against proposals.

Division 2—Public notification

Public notice of applications to be given

Clause 3.4.4 describes the requirements for public notification. In the interests of consistency and certainty, the requirements are prescriptive.

Provision is made for the assessment manager to carry out the notification on behalf of the applicant.

For the purposes of subclause (1)(c) (giving notices to adjoining owners), the term "owner" is defined. It is a more specific definition that overcomes potential uncertainties regarding who is an adjoining owner in certain situations, particularly situations where there are complex titling and ownership arrangements in place.

Notification period for applications

Clause 3.4.5 specifies the "notification period". It must be not less than 15 business days and it does not include the period immediately before and after Christmas. The latter requirement has been included to overcome any reduced effectiveness which may result from notification over this significant holiday period.

Requirements for certain notices

Clause 3.4.6 has two purposes. First, it sets out requirements for the various components of the notification process.

Second, subclause (4) makes provision for a regulation to prescribe different notification requirements for applications on land outside a local government area (e.g. this could involve development over water), or within a local government area where compliance would be unduly onerous or would not give effective public notice. IDAS applies throughout the State (including over water out to the territorial limits of the State). The provisions in clause 3.4.4 only contemplate development in areas similar to those applying to the current planning system (which does not extend to include Crown land such as areas below high water mark).

Notice of compliance to be given to assessment manager

Clause 3.4.7 requires the applicant, if carrying out the notification, to give a notice to the assessment manager that the applicant has complied with the requirements of this division. This is to allow the process of assessment to proceed on the basis that this essential element, the responsibility of the applicant, has been properly completed.

Under clause 4.3.7, giving a false or misleading notice is an offence attracting a maximum penalty of 1 665 penalty units.

Circumstances when applications may be assessed and decided without certain requirements

Clause 3.4.8 provides a measure of discretion for an assessment manager to assess and decide a development application even if there has not been full compliance with the requirements of this division. The assessment manager may only exercise that discretion if the assessment manager considers the noncompliance has not:

- adversely affected the awareness of the public of the existence and nature of the application; or
- restricted the opportunity of the public to make a submission during the notification period.

The notification requirements are detailed and prescriptive. It is considered that unnecessary and costly litigation could result from technical noncompliances even though no one has been adversely affected by the noncompliance. An example of such a noncompliance might include a situation where the notices published in the newspaper and sent to adjoining owners correctly showed the property description of the land, but the notice placed on the land contained an error in the description. In this case, the assessment manager might consider exercising the given discretion because the sign was located on the correct land, all other notices were correct and the application clearly applied to the land on which the notice was erected.

Making submissions

Clause 3.4.9 outlines matters about making a submission. Subclause (2) states that a submission must be accepted if it is properly made. The term "properly made submission" is defined in the dictionary in schedule 10.

Subclause (3) allows an assessment manager to accept a submission even if not properly made. However, while the assessment manager may have regard to such a submission when assessing and deciding the application, the person making the submission has no right of appeal to the court—this right is only extended to properly made submissions.

Subclause (4) makes express provision for a person to withdraw their submission. For example, if an applicant is subsequently satisfied that a particular matter will be dealt with to their satisfaction they may wish to withdraw their submission. This may have such benefits as allowing an approved development to commence without waiting for the appeal period to pass.

Division 3—End of notification stage

When does notification stage end

Clause 3.4.10 outlines when the notification stage ends. This is necessary to establish as the decision stage cannot start until the notification stage has ended.

PART 5—DECISION STAGE

Division 1—Preliminary

The decision stage comprises two distinct components—the assessment process (division 2) and the decision (division 3). The Bill distinguishes between these actions for the purposes of clarity, although it is recognised that the decision follows logically from the assessment.

When does decision stage start

Clause 3.5.1 sets out matters relating to the start of the stage. Subclause (2) is significant in that it states that the assessment manager may start assessing an application before the stage has formerly started. It is important to ensure that the staged nature of the IDAS process is not used to imply a rigid and dead handed approach to assessment when the opposite is in fact the case.

Subclause (3) is necessary to ensure effect is given to clauses 3.2.3.(3) and 3.2.15. These clauses provide the assessment manager with the flexibility to assess and decide certain applications before the end of the application stage.

Assessment necessary even if concurrence agency refuses application

Clause 3.5.2 requires the assessment manager to assess and decide an application even if the outcome (i.e. refusal) has been directed by a concurrence agency. The reasons governing this provision are as described in the notes on clause 3.4.2.

Division 2—Assessment process

Assessment when transitional planning schemes in force

While not specifically mentioned in the clauses in this division, attention is also drawn to the transitional provisions dealing with assessment while transitional planning schemes are in force (see chapter 6, div 8 and the notes to clause 3.1.1). Under the transitional provisions, clauses 3.5.4 and 3.5.5 do not apply and in their place transitional provisions apply.

References in div 2 to codes, planning instruments, laws or policies

Clause 3.5.3 states that in this division a reference to a code, planning instrument, law or policy is a reference to a code, planning instrument, law or policy in effect at the time the application was made. It is a basic requirement of IDAS that assessment managers and referral agencies assess applications on the basis of the law in place when an application is made, but may give weight to codes, planning instruments, laws or policies that came into effect after the application was made, but before it was decided (clause 3.5.6). The current Act adopts a similar approach in respect of new planning schemes (see section 3.4 in that Act).

Code assessment

Clause 3.5.4 describes the way code assessment must be carried out. Code assessment is defined as the assessment of development by the assessment manager only against the common material and applicable codes. The parameters of assessment when the codes are prepared and adopted.

It is important to note that under IDAS, an application may be subject to both code and impact assessment. This is because different assessments may be integrated into the one application. For example, an applicant for a small townhouse proposal may opt to make a single application covering all aspects of assessable development. Under the planning scheme, the change of use may be treated as an impact assessment. Under a regulation mentioned in clause 3.1.3, the assessment of the building work against the Standard Building Law is a code assessment. Therefore the application would involve both code assessment and impact assessment, and sufficient information would need to be provided for each assessment. This clause applies to the part of the application requiring code assessment.

See also comments above about assessment when transitional planning schemes in force.

Impact assessment

Clause 3.5.5 describes the way impact assessment must be carried out.

Impact assessment under IDAS is an integral component of the assessment and decision making system. Impact assessment involves the assessment of the environmental effects of development and ways of dealing with the effects. See notes on clause 3.1.3. Also see clause 3.5.14 (Decision if application requires impact assessment).

See also comments above about assessment when transitional planning schemes in force.

Assessment manager may give weight to later codes, planning instruments, laws and polices

Clause 3.5.6—see notes on clause 3.5.3 above.

Division 3—Decision

Decision making period (generally)

Clause 3.5.7 requires the assessment manager to decide an application within 20 business days of the decision stage starting. It is to be noted that for consistency and ease of use, the process for extending the decision making period is the same process as used for extending other stages in IDAS (see clause 3.3.14).

Subclause (5) applies to applications involving concurrence agencies. It states that the decision must not be made before 10 business days after the day the information and referral stage ends, unless the applicant gives the assessment manager written notice that it does not intend to take an action under clause 3.5.9 or 3.5.10. This delay is introduced to allow an applicant to make representations to a concurrence agency about its response before the application is decided, or to the chief executive (DLGP) if the applicant considers 2 or more concurrence agency responses contain inconsistent conditions.

Decision making period (changed circumstances)

Clause 3.5.8 states that the decision making period starts again from the beginning in certain situations. IDAS is designed to be a flexible process and care has been taken to provide applicants with opportunities to resolve disputes about referral agency responses and assessment manager conditions without having to go to appeal. This clause deals with the situations involving the concurrence agency response. Paragraph (a) refers to the situation where, under clause 3.3.17, a concurrence agency gives a response or an amended response after the end of the referral agency assessment period. Paragraph (b) refers to the situation where the applicant stops the decision making period under clause 3.5.9 (to make representations to a referral agency), or clause 3.5.10 (to request the chief executive's assistance to resolve inconsistent concurrence agency responses).

The reason matters under clause 3.5.9 and clause 3.5.10 are dealt with before rather than after the assessment manager decides the application, is to ensure the assessment manager has the benefit of each concurrence agency's final response when assessing and deciding the application.

Applicant may stop decision making period to make representations

Clause 3.5.9 allows an applicant to stop the decision making period to make representations to a referral agency about its response. If the dispute is able to be resolved by the parties and a change to the response is agreed, a referral agency may use powers under clause 3.3.17 to change its response. The assessment manager's decision making period starts again the day after the changed response is received by the assessment manager (see clause 3.5.8(a)).

For example, for an application for approval of an extractive industry, a concurrence agency with an environmental management jurisdiction may impose a requirement that the proposed crushing plant be located a specified distance from the site boundary to minimise noise impacts on adjacent properties. The applicant may consider the specified location to be undesirable for operational reasons and may propose a location closer to the boundary with attenuation works to ensure noise levels at the boundary meet the necessary standards. If this alternative is acceptable, the concurrence agency may change its response using clause 3.3.17.

Applicant may stop decision making period to request chief executive's assistance

Clause 3.5.10 provides for an applicant to seek assistance from the chief executive (DLGP) to resolve 2 or more concurrence agency responses containing conditions the applicant considers to be inconsistent.

It is to be noted that the power of the chief executive to alter concurrence agency responses is limited to the situation where responses are inconsistent. For example, adapting the extractive industry/crushing plant example used in the previous clause, it may be that 2 concurrence agencies have imposed conditions about the location of the plant. One agency may have required it be located on a specified part of the site to minimise the potential for environmental harm. Another agency with a different jurisdiction may have required it to be located on another part of the site. The conditions are clearly inconsistent as both conditions cannot be complied with at the same time. If the chief executive did not have this power to resolve the difficulty and decide the matter from a whole-of-Government perspective, the matter would have to be decided by the court.

Decision generally

Clause 3.5.11 establishes basic rules for deciding development applications. A development application must either be approved in whole or in part or it must be refused. At the same time the assessment manager must include in the approval any conditions imposed by a concurrence agency, and may approve the application subject to conditions decided by itself.

Subclause (3) is included to remove doubt about certain matters.

In particular, paragraph (b) states that an assessment manager may give a preliminary approval even though a development permit was applied for. Preliminary approvals are one of the tools provided in IDAS. They can be used in a range of situations. One potential use is outlined in the example below. If the mechanism were not available, an applicant would need to provide, at the outset, the full scope of information needed to grant a permit for the particular development (which may be unduly onerous and unnecessary in some situations), or alternatively, the assessment manager would have to refuse the application. If a preliminary approval is given, it is a binding, tradeable approval. A further application is needed to deal with

the aspects of the development not finalised by the preliminary approval. (See also clause 3.1.5 which describes preliminary approvals and development permits).

For example, an application is made for a development permit for a reconfiguration of land to create lots for a large residential housing estate. The assessment manager after assessing the application may consider that there is sufficient information to approve the overall concept (e.g. lot size, maximum lot yield, etc) but the subdivision design submitted is not suitable to authorise reconfiguration (e.g. the detailed lot design and road layout may be considered to have deficiencies). While the assessment manager could ask for more detailed plans during the information request phase, another option would be for the assessment manager to a give a preliminary approval covering the aspects of the proposal considered suitable. (Under clause 3.1.5 a preliminary approval approves development "to the extent stated in the approval"). The preliminary approval is binding and tradeable. However, a follow up application covering the outstanding aspects of the original application (e.g. a detailed lot design in accordance with the yield and lot size measures approved in the preliminary approval) would be needed before a development permit could be given authorising the reconfiguration. Before the site works associated with the reconfiguration could begin, a further development permit for those works would be necessary.

Decision if concurrence agency requires refusal

Clause 3.5.12 makes it clear that an assessment manager must comply with the direction of a concurrence agency to refuse a development application. Concurrence agencies have specific statutory jurisdictions and responsibilities, and these must be acknowledged by the assessment manager.

Decision if application requires code assessment

Clause 3.5.13 sets out the decision rules for code assessment. Under clause 3.5.4 the assessment manager must assess the application against the applicable codes. Accordingly, the decision rules only allow the assessment manager to refuse an application if the assessment manager considers the development does not comply with applicable codes and compliance cannot be achieved by conditions. Equally, approval of an application in conflict

with an applicable code can only be given if there are sufficient grounds to justify the decision.

See notes at the beginning of the division about assessment when transitional planning schemes are in force.

Decision if application requires impact assessment

Clause 3.5.14 sets out the decision rules for impact assessment. This clause also needs to be read together with clause 1.2.2 (Advancing Act's purpose). The clause is structured to place strong emphasis on the planning scheme(achievement of the desired environmental outcomes must not be compromised and there must be no conflict with planning scheme unless there are sufficient justifiable planning grounds. This is consistent with the significant role of the planning scheme under the Bill. The desired environmental outcomes may be regarded as the essence or core of a planning scheme, and this clause makes it clear that an impact assessment decision must not threaten their achievement. Planning grounds that may be sufficient to justify a decision which conflicts with a planning scheme may, for example, be on the basis of new information available since the scheme was made, incorrect information being included in the scheme, or a factual error of the scheme itself.

Decision notice

Clause 3.5.15 requires the assessment manager to give written notice of the decision on the application to the applicant and each referral agency within 5 business days of the decision being made. If the application is approved, the decision notice is taken to be the development approval (clause 3.5.19). The assessment manager also must give a copy of the decision notice to each principal submitter. However, because provision is made under clauses 3.5.16 to 3.5.18 for the applicant to make representations to the assessment manager during the applicant's appeal period about conditions imposed by the assessment manager, the notices to submitters do not get sent until 5 business days after:

- the applicant gives a notice saying no representations will be made;
- the applicant appeals; or
- the applicant's appeal period ends.

Subclause (2) sets out information that must be included in the decision notice. The information required to be included is intended to be sufficient to allow the applicant, referral agencies and submitters to understand the effect of the decision.

Division 4—Representations about conditions

Application of div 4

Clause 3.5.16 states that the provisions in the division only apply during the applicant's appeal period. The purpose of the division is to provide the applicant with the opportunity to make representations about the conditions decided by the assessment manager (concurrence agency conditions are dealt with under clauses 3.5.9 or 3.5.10). The assessment manager has the ability to change the conditions and issue a new decision notice. This mechanism potentially avoids the need for disputes about conditions to be resolved through the formal appeal process.

Changing conditions during the applicant's appeal period

Clause 3.5.17 sets out the assessment manager's powers following the receipt of representations from the applicant. A new decision notice called a "negotiated decision notice" may be given. In addition to the applicant, the assessment manager must give the notice to each principle submitter and each referral agency.

Applicant may suspend applicant's appeal period

Clause 3.5.18 provides an ability for the applicant to suspend the applicant's appeal period to make representations. As mentioned above, the purpose of the division is to provide a mechanism for applicants and assessment managers to resolve disputes about conditions outside the formal appeal system. However, it is not intended that the making of representations under this division should deny an applicant the right to appeal the decision. Sufficient time needs to be provided to allow discussions to take place and for the assessment to consider any representations made. This is achieved by allowing the applicant to suspend the appeal period.

To ensure efficiency of process, a 20 business day time limit is included for the making of representations after the appeal period has been suspended. If representations are not made in this period, the appeal period restarts.

If representations are made within time, subclause (4) provides for the balance of the appeal period to restart when the representation process has been completed by:

- the applicant withdrawing the notice to make representations; or
- the assessment manager either giving a new negotiated decision notice or a notice stating that the conditions have not been changed.

Subclause (5) is included to ensure the assessment manager has regard to the matters originally considered when the original decision was made.

Division 5—Approvals

When approvals take effect

Clause 3.5.19 states when a development approval takes effect. As the clause describes, this varies depending on the circumstances. In summary the requirements are:

- if there is no submitter and the applicant does not appeal the decision—from the time the decision notice (or, if relevant, the negotiated decision notice) is given;
- if there is a submitter—when the submitter's appeal period expires;
- if an appeal is made—when the decision of the court is made (if an approval results).

When development may start

Clause 3.5.20 provides for development to start before the end of the applicant's appeal period in certain situations. The clause makes it clear that while development may start if the specified conditions are met, the applicant may not appeal the decision once development starts. For example, the applicant has 20 business days to lodge an appeal (clause 4.1.35). If there are no submitters and the applicant opts to start development after 10 days of the applicant's appeal period has expired, the right to appeal the decision (say a condition imposed) is taken to have ended the day development started.

When approval lapses

Clause 3.5.21 establishes default time limits for approvals. If development has not happened (in the case of a material change of use) or substantially started (in the case of other development) within the times specified, the approval lapses. The distinction between a material change of use "happening" and other development "substantially starting" simply acknowledges the differences between different types of development. For example, the carrying out of building work involves a construction phase and therefore it is possible to conceptualise making a substantial start on the work. A material change of use on the other hand does not, of itself, involve construction and it is more difficult to conceptualise a change of use having substantially started.

While the clause outlines the default time limits for approvals, provision is made for the development approval to vary those times. It is particularly important that the legislation provide flexibility for different times to be specified. For example, a large, complex residential project may have one or more preliminary approvals covering conceptual aspects about the use and reconfiguration of the land. It is important that these overarching approvals remain in place for the life of the construction phase of the project, which could be planned to occur over a 15 - 20 year period.

A different default time period is allowed for a material change of use (4 years) compared with other development (2 years). If a material change of use is assessable development, clause 3.2.2 requires the change of use to be dealt with in the same application as, or approved before, the other development is approved. Because the establishment of a new use in most cases will also involve the carrying out of works (e.g. erecting a building etc) it is necessary for the currency period of the change of use approval to be long enough to cover:

- the necessary works approvals being obtained after the change of use is approved; and
- the construction phase involved in the erection of a building or the carrying out of other works.

It is also to be noted that while this clause only deals with time limits for development starting, clause 3.5.31 allows conditions to be imposed on development approvals requiring development to be completed within a particular time.

Subclauses (4) and (5) deal with the particular circumstances of making transitional development applications. A currency period of at least five years is available for a material change of use to happen, or other development to substantially commence, following the coming into effect of a new planning scheme or planning scheme policy, or an amendment of a planning scheme.

Request to extend currency period

Clause 3.5.22 establishes a process for the extension of the currency period of an approval. Because the application will be made some years after the application was originally approved, the clause does not refer to the applicant, rather it refers to a person (who may or may not be the owner). If they are not the owner, they must obtain the consent of the owner. The person making the request must also give notice to any concurrence agency consulted over the original application. This ensures the views of the concurrence agency are considered in the assessment of the request.

Deciding request to extend currency period

Clause 3.5.23 establishes criteria for dealing with and deciding a request made under clause 3.5.22. A concurrence agency has 20 business days within which it may advise whether or not it objects to the currency period being extended. The assessment manger must take the concurrence agency advice into account when deciding the request.

If a request is undecided when the currency period expires, subclause (9) protects the approval during the period the request is being processed and decided. If a decision is not made within 30 business days, or a longer time agreed by the assessment manager and the person making the request, then the request is deemed to be refused.

Request to change development approval (other than a change of a condition)

Clause 3.5.24 provides for a person (if the person is not the owner, the owner must consent to the application) to apply to make a change to a development approval. However, the clause:

- does not apply to a change of a condition of the approval (changes to conditions are dealt with under clause 3.5.33); and

- only applies if the change is a minor change (this term is defined in the dictionary in schedule 10).

In approving development, the legislation gives assessment managers flexibility to deal with matters such as height, bulk, setback, design, ingress and egress as conditions on the approval, or alternatively to approve a schematic representation of the development identifying these matters. An example of a minor change to an approval may occur in the latter case where the original approval included a plan of layout of the development, and an applicant wished to make a small addition to the floorspace, or a small change to the location of buildings on the site.

Deciding request to change development approval (other than a change of a condition)

Clause 3.5.25 established criteria for dealing with and deciding a request under 3.5.24. These criteria are similar to those in 3.5.23 for deciding a request to extend the currency period. If a concurrence agency was involved in the original decision, the concurrence agency must be given an opportunity to respond to the request for a change. The assessment manager must have regard to any advice received from a concurrence agency within the specified 20 business day period.

Request to cancel development approval

Clause 3.5.26 provides for a development approval to be cancelled upon application being made to the assessment manager by the owner (or another person with the owner's consent).

Certain approvals to be recorded on planning scheme

Clause 3.5.27 provides for an approval to be recorded on the planning scheme if it is given by a local government as assessment manager, and the local government considers the approval to be inconsistent with the planning scheme. This ensures that the public is aware of approvals that are at variance with the planning scheme.

Approval attaches to land

Clause 3.5.28 states that a development approval attaches to the land and binds the owner, the owners successors in title and any occupier of the land. This approach makes it clear that changes of ownership do not affect the validity of a development approval. Also, by stating that the approval is binding both on the owner and the occupier it makes it clear that if someone other than the owner of the land is exercising the rights conferred by the approval, they are responsible for complying with the conditions of the approval.

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

Division 6—Conditions

Application of div 6

Clause 3.5.29 states that division 6 deals with the powers provided under IDAS to impose conditions on development approvals. The division covers conditions:

- decided by the assessment manager;
- imposed by the assessment manager under the direction of a concurrence agency;
- attached to an approval under the direction of the Minister.

Conditions must be relevant or reasonable

Clause 3.5.30 requires conditions to be relevant, and not an unreasonable imposition, or to be reasonably required.

Conditions generally

Clause 3.5.31 states that conditions may be imposed regarding the continuance of a use or works, and the starting time and completion dates for a development. Subclause (2) deals with conditions imposed to require that assessable development be completed within a particular time. The purpose of the subclause is to make clear that approval for assessable development, or an aspect of assessable development, lapses if the development is not completed within a particular time. This provision is particularly relevant for complex proposals comprising a range of different uses, each starting at different times.

For example, a development permit is granted covering the change of use of a large parcel of land to allow a number of assessable developments, say a resort hotel, residential estate and shopping centre (with each comprised of further assessable developments). If the development permit authorising the change of use for the purpose of the hotel has not been acted upon within the specified period (and no extension of the currency period is sought), that aspect of the permit lapses. However, the other aspects of the approval that have been completed within the time allowed, say for the shopping centre and estate, do not.

It should be noted that subclause (2) only refers to assessable development. This has been done to avoid unintended consequences.

For example, a development permit is granted for a change of use, building and other work for a shopping centre. A condition of the permit requires a planted earth mound to be created between the shopping centre and the neighbouring residential area to buffer that area from the noise and other effects of the shopping centre use. This condition requires the mound to be completed within a particular time (say before the use starts). If the erection of the mound is not assessable development in its own right (i.e. there is no requirement for specific development approval of the works), then the condition and the permit are not affected by subclause (2) if the condition is not complied with. This means that neither the approval for the shopping centre nor the condition about the earth mound lapse if the works are not completed within the stated time. Lapsing would be inappropriate in the circumstances, but a possible unintended consequence if the clause merely referred to development instead of assessable development. Of course, the fact that this clause does not apply, does not mean that no action can be taken against the noncompliance. This would be a development offence (see chapter 4, part 3 for details).

Conditions that cannot be imposed

Clause 3.5.32 deals with the converse of the previous clause—conditions that cannot be imposed.

Subclause (1)(a) prevents a condition being imposed that is inconsistent with a condition of an earlier approval. For example, a preliminary approval is given for a change of use from rural to residential and a condition is imposed that specifies the maximum dwelling density for the land. The preliminary approval dealt with the broad conceptual aspects of the change of use and contemplated a range of dwelling types and densities up to the maximum density specified. A subsequent application is required to allocate those different dwelling types and densities around the site. Any subsequent application could not be conditioned to set a different maximum dwelling density. That has already been set and any conditioning on a subsequent application purporting to set a new limit would be inconsistent with the earlier approval.

Subclause (1)(b) prevents conditions being imposed to require monetary contributions or works for community infrastructure (see schedule 5 for the list of community infrastructure) other than as provided under the clause. This is because community infrastructure is intended to be funded only in the ways provided for in the Bill (see subclause (2)(a), clause 3.5.35 and chapter 5, parts 1 and 2 for details). In short, this Bill significantly changes the way those items of infrastructure described as "community infrastructure" are to be treated. Under the current Act, conditions about water supply and sewerage headworks are imposed as conditions.

The reasonable and relevance test under clause 3.5.30 only constrains the imposition of conditions to the extent stated in this clause. Accordingly, nothing prevents a condition requiring works to be imposed to lessen the environmental impacts of a use resulting from an approved change of use (e.g. the planted earth mound mentioned in the notes on clause 3.5.31(2) above). Equally, nothing prevents a condition being imposed requiring works (e.g. fencing or landscaping) to lessen the environmental impacts of existing adjacent uses on the new use resulting from an approved change of use.

Request to change or cancel conditions

Clause 3.5.33 provides a power for the applicant to request an entity which imposed a condition on a development approval to change or cancel

the condition. The clause applies only if there were no submitters for the application, and is limited to changes and cancellations that would not, of themselves, result in assessable development.

This clause should be considered together with clause 3.5.24 (Request to change development approval (other than a change of a condition)).

Agreements

Clause 3.5.34 deals with agreements about conditions of development approvals. An applicant can enter into an agreement with an assessment manager, a concurrence agency or another entity (e.g. an adjoining local government).

Limitations on conditions lessening cost impacts for infrastructure

Clause 3.5.35 must be read in conjunction with clauses 3.5.30, 3.5.31 and 3.5.32 which establish requirements for conditions on development approvals.

This clause establishes limitations on the scope of conditions on a development approval when those conditions are imposed to offset the additional costs faced by infrastructure providers as a result of development that is:

- inconsistent with the planning scheme (e.g. it may be of a higher or lower density than anticipated by the scheme); or
- "out of sequence" (that is, proposed outside the area identified for the first five years of anticipated development in a benchmark development sequence).

Conditions for lessening cost impacts may also only be levied on:

- a specified range of social infrastructure items (State schools, public transport, State controlled roads and police or emergency services), the provision of which is sensitive to local growth patterns; and
- development infrastructure items (see clause 5.1.1).

The provisions do not allow for recovery of the actual cost of the infrastructure, only for the additional costs associated with providing it earlier than intended.

It is important to understand the meaning of "cost impacts". Cost impacts are the difference in present value terms between the cost of infrastructure required as a consequence of a development and the cost of the infrastructure if the development did not proceed. For example, a social infrastructure item such as a school may be planned for an area in 8 years time but a development proposal creates a need for the school 5 years earlier. The developer may be required to meet the cost impact of earlier provision. This would include the interest costs arising from a 5 year loan for constructing and equipping the school and the running costs over and above those which would have been required if development had occurred as anticipated.

In the case of a development infrastructure item, an example would be where a development proposal was located in an area not anticipated for development within the next 5 years. Provision of the works necessary to supply services such as water supply and sewerage to the area are not planned for another 9 years as this was when the local government expected development to occur. The applicant would be required to meet the borrowing costs associated with providing the additional infrastructure until a time when further development could be expected to take up additional capacity (development infrastructure provision is by nature "lumpy", e.g. trunk mains for water supply must be large enough to service all the expected development in an area. It is not practical to provide separate mains for each development).

It should be noted that, unlike cost impacts for social infrastructure, cost impacts for development infrastructure do not include running costs, as these, in the normal course of events, would be recouped from end users through rates or other charges.

Subclauses (2) and (3) confirm that, in imposing a condition to lessen the cost impacts of bringing forward an item of development infrastructure, it is a reasonable and relevant condition to obtain a contribution equal to the cost of bringing forward the whole item, even if the development only uses a portion of the item. This does not prevent the applicant and assessment manager entering into an infrastructure agreement to provide for bringing forward the item in another way.

Administrative costs associated with calculating charges and the cost of amending an infrastructure charges plan are regarded as cost impacts under this clause because they are an essential component of the infrastructure provision process.

Matters a condition lessening cost impacts for infrastructure must deal with

Clause 3.5.36 states that a condition under clause 3.5.35 must identify the amount of the monetary payment and state the entity to which the payment must be made. Another matter dealt with in an approval containing a condition under clause 3.5.35 is when the service or construction of the infrastructure is to start (in the case of social infrastructure and a development infrastructure item not necessary for the development to commence), or when the item will be available to service the land (in the case of an infrastructure necessary but not yet available).

Based on a similar distinction between different types of infrastructure, to avoid an unnecessary financial burden on developers, subclause (4) states that payments for lessening impacts under this clause are not required until:

- 60 business days before commencement of the construction or service of the infrastructure (in the case of social infrastructure and a development infrastructure item not necessary for the development to commence); or
- when the item is available (in the case of an infrastructure necessary but not yet available).

Subclause (5) allows the applicant and the provider to enter into an infrastructure agreement (see chapter 5, part 2) providing for another time or for payment in instalments.

Reimbursement provisions apply if the provider does not comply with the stated commencement or availability dates (subclause (6)).

PART 6—MINISTERIAL IDAS POWERS

IDAS will integrate a wide range of development assessment systems currently in place and administered by the State and local governments. It does not merely replace the planning approval system under the current Act, which is only one of a number of systems regulating development or some aspect of development. Other systems include the building control system under the *Building Act 1975* and the environmental management system under the *Environmental Protection Act 1994*).

Direct parallels cannot be drawn between any of the current systems and IDAS. IDAS is a comprehensive assessment system within which the State has an important role to play. While the current planning system is principally controlled and administered by local government (except for rezonings which require Governor in Council approval), IDAS, by its nature, will involve greater direct State input. This is because processes that are currently separately administered and controlled by the State will be integrated into IDAS.

In most situations under IDAS local government will be the assessment manager, and the State will input its requirements through relevant concurrence powers. The State has a valid and direct interest in IDAS. Accordingly, it is appropriate that the State has the necessary powers under the Bill to allow it to act on matters of genuine State interest. If those powers did not exist, the State would be forced to operate outside the Bill and the system created, and enact specific legislation to deal with matters of genuine State interest. This approach is potentially clumsy, confusing and costly for all parties. It also directly cuts across the intent of IDAS and the Bill as a whole.

This part establishes reserve powers for the State to influence the outcomes of development applications involving a State interest. These powers are in addition to other specific powers that the State has under the Bill (such as concurrence agency powers which are also limited in scope to a defined jurisdiction).

Division 1—Ministerial direction

This division provides a ministerial direction power allowing the Minister, in certain situations, to exercise powers similar to those of a concurrence agency. It is not intended that the State be a concurrence agency for all matters involving State interests. However, there will be occasions where an application affects a State interest in a way that could have adverse consequences for the State as a whole. Rather than attempt to identify all of these possible situations and create concurrence referrals for each situation on the chance that an adverse effect may result, the Bill creates a reserve power for the Minister to exercise a form of concurrence power in situations where a concurrence does not already exist.

When ministerial direction may be given

Clause 3.6.1 establishes the circumstances under which the Minister may give a direction under this division. The direction power is limited to undecided applications involving a State interest. Also, to avoid any potential for conflict with concurrence agencies, the direction power is limited to matters outside the jurisdiction of any concurrence agency involved in the application.

Notice of direction

Clause 3.6.2 sets out the requirements for the notice of direction. Because the direction power is similar to the concurrence power, the notice may direct the assessment manager to attach conditions or to refuse the application.

Effect of direction

Clause 3.6.3 states the effect of a direction. As with a concurrence response, the assessment manager must follow the direction. Any direction given by the Minister is appealable in the same way a concurrence agency's response is appealable.

Division 2—Ministerial call in powers

This division provides a power for the Minister to call-in a development application and decide (or if necessary redecide) the application in the place of the nominated assessment manager.

Definition for div 2

Clause 3.6.4 defines Minister for the purposes of the division. The effect is to allow the call-in powers to be exercised by the Minister administering the *State Development and Public Works Organization Act 1971* (i.e. the Premier), in addition to the Minister administering this Bill. This is in recognition of the wide coordinating role already available under the *State Development and Public Works Organization Act 1971.*

When development application may be called in

Clause 3.6.5 sets out the requirements for the call in power to be exercised. It is to be noted that the call in power may be exercised after an application has been decided by an assessment manager (although the application must be called in not later than 10 business days after the end of all appeal periods for the application).

It must be stressed this is a reserve power of the State. It is not intended to be used routinely or often. However, occasions may arise where a State interest (such as an important environmental value) could be severely affected by the implementation of a development approval. In these situations, exercising the reserve power to call the application in and reassess and redecide the application provides the Minister with an ability to redress what otherwise could become a serious problem for the community as a whole.

Notice of call in

Clause 3.6.6 sets out the requirements for the Minister to give written notice that an application has been called in, and:

- assess and decide the application if it has not already been decided by the assessment manager; or
- reassess and redecide the application if has already been decided by the assessment manager.

The notice must state the point in the process from which IDAS must restart, and the reasons for calling in the application. The notice must be given to the assessment manager and copies must be given to the applicant, any concurrence agency, and any submitter.

Effect of call in

Clause 3.6.7 establishes that the Minister is the assessment manager from the time an application is called in. This means the Minister must follow the IDAS process in assessing and deciding the application. This ensures called in applications are subject to the same process as normal development applications. However, as stated in subclause (1)(e), there is no right of appeal against the Minister's decision.

The IDAS process restarts from the point at which the application was called in if the application had not been decided, or at a point decided by the Minister (but before the decision stage) if the application was called in after a decision by the assessment manager.

The entity that was the original assessment manager must give the Minister all reasonable assistance including giving the Minister all available material about the application. The Minister must give the original assessment manager a copy of the decision notice given to the applicant, each referral agency and each submitter.

Process if call in decision does not deal with all aspects of the application

Clause 3.6.8 allows the Minister to refer aspects of an application that has been called in back to the assessment manager for decision. For example, an application that is called in may deal with 2 aspects of development (e.g. change of use and building work) as they relate to the requirements of the planning scheme. After deciding those aspects, the Minister may refer the remaining aspects back to the assessment manager, i.e. those aspects requiring assessment of the building work for its compliance with the Standard Building Law. The Minister must specify where in the IDAS process the undecided aspects of the application must restart from.

PART 7—PLANS OF SUBDIVISION

Application of pt 7

Clause 3.7.1 states the circumstances in which the part applies. A plan of subdivision is a prerequisite for the registration of a reconfiguration under the *Land Title Act 1994*. The approval of a plan of subdivision is not a development approval in its own right. Rather, it is the culmination of a development approval involving the reconfiguration of land.

A plan of subdivision may also be required as a condition of approval of other development (e.g. building work). For example, a building may be proposed to be built over two lots. A condition of approval of the building work could be a requirement that the land be amalgamated. In such a

situation, a plan of subdivision would need to be approved by the local government.

Plan for reconfiguring under development permit

Clause 3.7.2 states when a plan of subdivision must be submitted for approval. The times are consistent with those in the current Act.

Plan submitted under condition of development permit

Clause 3.7.3 specifies the time within which a plan of subdivision must be given to the local government if it is a condition of a development permit(2 years after the decision notice was given unless another period is specified in the conditions. The clause also states the actions to be taken by the local government.

Plan for reconfiguring that is not assessable development

Clause 3.7.4 states that if the reconfiguration proposed to be effected by the plan of subdivision is not assessable development, the plan may be given to the local government for its approval at any time. The clause also states that the plan must be consistent with any development permit and applicable code.

Endorsement of approval

Clause 3.7.5 requires the local government's approval to be endorsed on the approved plan. It is no longer a requirement that the approval be endorsed under the local government's seal. The plan must be approved within 20 business days after the applicant complies with clauses 3.7.2(3) or (4), clause 3.7.3(3) or (4) or clause 3.7.4(2). If a plan is not approved, provision is made under clause 4.1.27 for the applicant to appeal to the court on the basis of a deemed refusal.

When approved plan to be lodged for registration

Clause 3.7.6 states that the endorsed plan must be lodged for registration within 6 months.

Local government approval subject to other Act

Clause 3.7.7 states that a requirement under this part for the local government to approve the plan has effect subject to any requirements of the Act under which the plan is to be registered or otherwise recorded.

CHAPTER 4—APPEALS, OFFENCES AND ENFORCEMENT[5]

This chapter sets out provisions dealing with jurisdiction, procedures, and appeal matters of the Planning and Environment Court and building and development tribunals.

This chapter also contains provisions dealing with development offences, and the enforcement mechanisms available to address them.

PART 1—PLANNING AND ENVIRONMENT COURT

Division 1—Establishment and jurisdiction of court

Continuance of Planning and Environment Court

Clause 4.1.1 states the continuance of the existing Planning and Environment Court.

Jurisdiction of court

Clause 4.1.2 establishes the jurisdiction of the court. This clause allows for other acts as well as this Bill to confer jurisdiction on the Court.

The jurisdiction of the court under this Bill is exclusive. However, there are two exceptions.

One exception is set forth in division 13 of this part, and allows for an

5 A reference to the "current Act" is a reference to the *Local Government (Planning and Environment) Act 1990* which will be repealed when this Bill commences as an Act.

appeal to the Court of Appeal about an error of law, or the jurisdiction of the Planning and Environment Court in making a decision.

The second exception, set forth in clauses 4.2.7 and 4.2.9, establishes the jurisdiction of a building and development tribunal, and allows the tribunal to hear matters involving assessment against the Standard Building Law, or other matters prescribed by regulation. For these matters, both the Planning and Environment Court and a building and development tribunal will have jurisdiction. However an appellant, having made a choice of jurisdiction for an appeal, is unable to also appeal in the alternative jurisdiction, unless the appeal is about a matter of law or jurisdiction from a building and development tribunal to the Planning and Environment Court.[6]

Jurisdiction in chambers

Clause 4.1.3 requires that all matters be heard and decisions given in open court. However, the rules of court may provide for hearing and deciding certain matters in chambers.

Division 2—Powers of court

Subpoenas

Clause 4.1.4 describes the manner in which the court can obtain evidence. The court can gather evidence by ordering the production of documents or by examining witnesses. The court also has powers to punish for non compliance with a summons. The powers of a judge of the Planning and Environment Court are the same as those of the District Court Judge under the *District Courts Act 1967* for the purposes of this clause.

Contempt and contravention of orders

Clause 4.1.5 states that the judge of the court has the same powers to punish for contempt as in the District Court. The contempt powers in Section 129 of the *District Courts Act 1967* apply in the Planning and Environment Court the same way they apply to the District Court.

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6 See clauses 4.1.33 and 4.2.9(3).

This clause also establishes that a failure to comply with an order of the court is a contempt of the court.[7] This is intended to clarify that the court has the power to enforce its own orders. The penalties for a contempt of the court involving a failure to comply with an order are significantly greater than those stated in the *District Courts Act 1967* for other types of contempt.

Terms of orders etc.

Clause 4.1.6 states that, if the court is authorised to make an order, give leave or do anything else, it may do so on the terms and conditions it considers appropriate.

Taking and recording evidence etc.

Clause 4.1.7 establishes the ways in which the court must take evidence, and requires the court to record the evidence.

Division 3—Constituting court

Constituting court

Clause 4.1.8 describes the notification process and manner in which the Governor in Council commissions the court, with one or more District Court Judges. These methods of constituting the court are the same as under the current Act

Jurisdiction of judges not impaired

Clause 4.1.9 provides that the judge serving on the court is not prevented from continuing to hear matters in the District Court.

7 The powers of the court to make orders may be found in clauses 4.1.15 (What happens if a judge dies or is incapacitated), 4.1.22 (Court may make orders about declarations), 4.1.23 (Costs), 4.1.54 (Appeal decision), 4.3.24 (Making interim enforcement order), 4.3.25 (Making enforcement order), 4.4.5 (Order for compensation or remedial action), and 4.4.6 (Recovery of costs of investigation)

Division 4—Rules and directions

Rules of court

Clause 4.1.10 provides that matters relating to court procedure will be set forth in the Planning and Environment Court Rules. The rules are subordinate legislation made by the Governor in Council under this Bill, and with the concurrence of the Chief Justice of the Supreme Court and one or more other Supreme Court judges.

Directions

Clause 4.1.11 allows for those matters of court procedure, which are not addressed by the rules of court, to be dealt with by directions. If the matter is one involving general procedural matters, the Chief Judge of District Courts may issue a direction. This clause also provides that a judge presiding over a case may issue directions in reference to that particular case.

Division 5—Parties to proceedings and court sittings

This division draws from the *District Courts Act 1967* and the current *Local Government (Planning and Environment) Act 1990* .

Where court may sit

Clause 4.1.12 states that a court may convene at any place.

Appearance

Clause 4.1.13 provides that a party may appear personally before the court or be represented by a lawyer or agent. It will be presumed that the representative has the authority to bind the party. This provision carries over the effect of a similar provision under the current Act.[8]

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8 *Local Government (Planning and Environment) Act 1990,* section 7.5(4).

Adjournments

Clause 4.1.14 provides that the court may close or postpone proceedings to another time and venue.

What happens if judge dies or is incapacitated

Clause 4.1.15 describes what will occur if the presiding judge dies or becomes incapacitated during a proceeding. Another judge, in consultation with the parties, can postpone the proceedings until the original judge can continue, or order the matter be heard again. This provision also allows for the second judge, with the consent of the parties, to make an order about a decision, or about completing the hearing and the decision. A decision issued in this manner will be considered as a decision of the court.

Stating case for Court of Appeal's opinion

Clause 4.1.16 describes the manner in which a judge may submit an issue of law, which has arisen during a proceeding, to the Court of Appeal. The issue may only be stated during a proceeding, and the court must not make a decision about the matter while the question is pending, or proceed in a way, or make a decision inconsistent with the Court of Appeal's opinion on the question.

Division 6—Other court officials and registry

Registrars and other court officials

Clause 4.1.17 establishes that the registrars and officials of the District Court will be the registrars and officials for the Planning and Environment Court. This provision provides further clarification from the current Act that these positions can be shared between the two courts.

Registries

Clause 4.1.18 carries forth provisions of the *District Courts Act 1967* and the current Act, and states that the each District Court registry is the registry of this court. This clause also allows for the establishment of a principal registry which will be under the control of the senior deputy registrar.

Court records

Clause 4.1.19 requires the registrar to keep minutes of the proceedings and records of the decisions which must be kept in the custody of the registrar.

Judicial notice

Clause 4.1.20 requires that judicial notice be taken of the appointments and signatures of the registrars and court officials acting under this part.

Division 7—Other court matters

Court may make declarations

Clause 4.1.21 describes the power of the court to hear and decide declaratory matters under the Bill. The clause allows for any person to initiate a proceeding for a declaration. The court has jurisdiction to make declarations about the following matters:

- a matter done, or to be done, under this Bill. This expands the declaratory jurisdiction of the Court from that under the current Act. The court may now make declarations about matters already done;
- the construction of the Act and the planning instruments under the Act;
- the lawfulness of land use or development. This distinguishes development, being a change process, from the ongoing use of the land, and allows declarations to be made about both matters;
- an infrastructure charge. Chapter 5, clause 5.1.5 characterises an infrastructure charge as a general charge, set under the current Act, but in the way stated in this Bill. In this respect, the court would not, but for

this provision, have power to make a declaration about a charge, as it is not "a matter done" under this Bill.

The court's jurisdiction under this clause does not fetter the jurisdiction of other courts to make declarations on the same matters where matters have been brought in that jurisdiction.

A proceeding may be brought in a representative capacity with the consent of the person on whose behalf the proceeding is brought.

Court may make orders about declarations

Clause 4.1.22 allows the court to make orders about matters for which it has made a declaration. This is a further expansion of the court's powers about orders from the current Act. However the court is limited in its ability to make orders cancelling development approvals to instances where the approval was obtained by fraud on the part of the applicant. The court is also required to make an order about compensation if an owner of land has suffered loss because of fraud on the part of an applicant who is not the owner.

Costs

Clause 4.1.23 requires parties to an appeal or proceeding to bear their own costs. However the court may order costs against a party in specified circumstances. These include:

- if the court considers proceedings were merely instituted for delay or obstruction. This is a new ground for awarding that is not a feature of the current Act. It allows the court to consider the motivations behind the proceeding in determining whether costs should be awarded.

For example, in the case of an application for a commercial development, costs might be awarded against a submitter who owned a competing commercial interest, and who appealed, if the court considered the purpose of the appeal was to obstruct or delay the proposed development;

- if the court considers the proceeding to have been frivolous or vexatious. In contrast to the ground of obstruction or delay, this ground allows the court to consider the merits of the substance of the proceeding itself;
- if an assessment manager, referral agency or local government has a

responsibility to take an active part in a proceeding but does not do so. It should be noted that, under clause 4.1.43, the respondent for the appeal is always the assessment manager, but that if the appeal exclusively concerns a concurrence agency condition, the assessment manager may not have a responsibility to take an active part in the appeal;

- if an applicant, submitter, referral agency, assessment manager or local government fails to properly discharge their responsibilities in a proceeding. This ground applies to a wider variety of participants than the previous ground, and goes beyond the requirement to take an active part in proceedings.

For example, an assessment manager may take an active part in proceedings, but present evidence that is poorly researched or not relevant to the issue at appeal.

In addition to setting out circumstances in which the court has discretion to award costs, subclauses (4) to (6) detail certain situations in which the court must award costs. The Bill provides ways in which persons adversely affected by the decisions of government entities (or in some cases the lack of a decision) can seek relief from the court. In some situations it is considered unfair to require the costs of those action to be met by the aggrieved party. These clauses ensure that costs must be awarded in favour of the aggrieved party in stated situations (e.g. the failure of a designator under chapter 2, part 6 to decide a request for the acquisition of designated land on hardship grounds).

This clause also prevents the court awarding costs against an assessment manager that has successfully applied to the court to withdraw from the appeal because the appeal exclusively concerns a concurrence agency response.

It is also provided that an order of costs may be made an order of the District Court and therefore enforced in that court. The provisions in this clause concerning scope and calculation of costs are similar to those of the current Act.

Privileges, protection and immunity

Clause 4.1.24 is derived from the *District Courts Act 1967* and provides the judge, lawyer, agent or witness to a proceeding the same protection and immunity as granted by the District Court.

Payment of witnesses

Clause 4.1.25 is derived from the current Act, and provides for the payment of reasonable expenses to witnesses.

Evidence of planning schemes

Clause 4.1.26 allows for the evidentiary certification of a document purporting to be a true copy of a planning scheme or part of a planning scheme. Such a certified document is then admissible as if it were the original scheme or part. This provision is derived from the current Act.

Division 8—Appeals to court relating to development applications

This division outlines what matters in relation to development applications may be appealed to the court. Each clause also outlines the period within which appeals must be started.

Non-determinative decisions made in the course of assessing a development application are not appealable under this division. However, the coordination provisions in chapter 3, part 3, division 2, the referral assistance provisions in chapter 3, part 3, division 3, and the declaratory powers of the court under division 7 of this part, are available to applicants in respect of non-determinative decisions.

Appeals by applicants

Clause 4.1.27 lists the matters about which an applicant for a development approval may appeal to the court. These are appeals about determinative decisions made about development applications under the IDAS process.

Appeals by submitters

Clause 4.1.28 describes the appeal rights of the submitter concerning the impact assessment part of a development approval. The provision affords appeal rights to submitters who made submissions during the IDAS notification period, provided that those submissions were not withdrawn. Under the current Act submitters have rights to appeal decisions about

consents and rezonings, and under this Bill, the scope of these third party appeal rights has been maintained and improved by allowing the appeal on a potentially broader range of approval matters.

For example, under the current Act there are no submission rights or submitter appeals for subdivision application matters. However, under this Bill, if the subdivision is development which requires impact assessment and therefore notification, a submitter could gain submission and appeal rights.

Appeals by advice agency submitters

Clause 4.1.29 describes the right of an advice agency to appeal only if the application involves impact assessment and the advice agency previously informed the assessment manager to treat its response as a submission. [9]

Appeals for matters arising after approval given (co-respondents)

Clause 4.1.30 deals with appeals relating to development approvals for which there potentially may be co-respondents. Accordingly, appeals under this clause are likely to arise some considerable time after an application is determined.

Under IDAS, a person may request an extension of the currency period of a development approval and may also request a minor change to an approval. In both cases the decisions are appealable. Because the process set out in IDAS requires the applicant to notify both the assessment and any entity that was a concurrence agency for the application there potentially are co-respondents for any appeal under this clause.

Division 9—Appeals to court about other matters

Appeals for matters arising after approval given (no co-respondents)

Clause 4.1.31 is similar to the previous clause in that it deals with development approvals. Accordingly, appeals may occur some time after

9 Clause 3.3.16(6) requires an advice agency to tell an assessment manager if it wishes its response treated as a submission .

the development application has been decided. However, the distinguishing feature of appeals under this clause is that there is no potential for co-respondents. The IDAS process simply involves the person requesting the change or cancellation (or in the case of subclause (1)(b), the person affected by the change or cancellation) and the entity making the decision.

Appeals against enforcement notices

Clause 4.1.32 states that the recipient of an enforcement notice may appeal the giving of the notice to the court. This clause is new and references part 3, division 3.

Stay of operation of enforcement notice

Clause 4.1.33 states that making an appeal against the giving of an enforcement notice under clause 4.1.32 stays the operation of the notice until the appeal is withdrawn or dismissed, or unless the court decides otherwise in response to an application by the entity that issued the notice.

However, the operation of certain enforcement notices is not stayed by an appeal under clause 4.1.32. These circumstances are:

- a work the assessing authority considers dangerous;
- the demolition of a work.

Failure to stay the operation of an enforcement notice in these cases may render the outcome of the appeal meaningless.

Appeals against decisions on compensation claims

Clause 4.1.34 provides appeal rights for claimants dissatisfied with the outcome of a compensation claim under:

- chapter 5, part 4 concerning compensation for the effect of changes to planning schemes or planning scheme policies, or false or misleading planning and development certificates; and
- chapter 5, part 5 concerning compensation for loss or damage arising from an assessment manager’s power to enter premises.

Appeals against decisions on requests to acquire designated land under hardship

Clause 4.1.35 provides appeal rights for owners dissatisfied by the decision of a designator about a request for early acquisition on hardship grounds of designated land under clause 2.6.9.

See also clause 4.1.23 which requires the court to award costs in favour of the appellant in certain situations.

Appeals against disqualification as a private certifier

Clause 4.1.36 provides appeal rights for persons who have been disqualified as a private certifier under clause 5.3.14.

Appeals from tribunals

Clause 4.1.37 provides the grounds for an appeal from a building and development tribunal. This right of appeal is limited to those issues based on points of law as opposed to issues involving the merits of a matter considered by the tribunal. An appeal may also be brought contesting the jurisdiction of the tribunal to hear the matter or make a decision.

Court may remit matter to tribunal

Clause 4.1.38 allows the court to remit a matter within the jurisdiction of a building and development tribunal to a tribunal.

It is possible under IDAS for an application to involve different development (e.g. change of use and building work) and for the applicant to be dissatisfied with different aspects of the decision. Aspects of the application relating to the Standard Building Law are matters within the jurisdiction of the tribunal. Aspects relating to the change of use are within the jurisdiction of the court. This clause allows a person to make a single appeal to the court covering all matters in dispute. The clause requires the court to remit to a tribunal the matters the court is satisfied should be dealt with by a tribunal.

Division 10—Making an appeal to court

How appeals to the court are started

Clause 4.1.39 describes the procedure for initiating an appeal and lodging a written notice stating the grounds of the appeal and facts upon which it is based. The person lodging the appeal must also comply with the rules of court, however the court may hear an appeal even if the rules have not been complied with.

Certain appellants must obtain information about submitters

Clause 4.1.40 provides that if the applicant's appeal involves an issue concerning impact assessment, then the applicant must request the name and addresses of the submitters that previously made submissions and have not withdrawn the submissions. The clause also requires the assessment manager to provide the information as soon as practicable, so as to allow the applicant to comply with the requirements of the Bill about the notification of potential co-respondents to the appeal.

Notice of appeal to other parties (div 8)

Clause 4.1.41 requires that within 10 days of the lodging of an appeal, or in the case of an applicant appeal, within 10 days of receipt of the information referred to in clause 4.1.40, the appellant must provide written notice of the appeal to certain parties. The parties to be notified vary depending upon the nature of the application and whether the appeal is an applicant or submitter appeal. This clause specifies which parties must be notified by the appellant and what information must be included in the notice. Furthermore, the notice must state that the recipient of the notice has 10 days to elect to become a respondent in the appeal, if the recipient is not automatically a respondent or co-respondent to the appeal by virtue of clause 4.1.43.

Notice of appeal to other parties (div 9)

Clause 4.1.42 is similar to the previous clause. However, for appeals under division 9 there can be no co-respondents.

Respondent and co-respondents for appeals under div 8

Clause 4.1.43 states that the respondent to any appeal, made by either the applicant or submitter, is always the assessment manager. If the appeal involves the response of a concurrence agency, the concurrence agency is a co-respondent to the appeal automatically. By making the assessment manager the initial point of contact, it is intended to reduce procedural problems in identifying the proper party to nominate as respondent. This will also allow the assessment manager to always be aware that an appeal has been made.

The provision also allows for an assessment manager to apply to the court to withdraw as the respondent if the matter only involves issues relating to the concurrence agency. [10]

For example, an application involving concurrence agencies may have been approved subject to conditions of both the assessment manager and a concurrence agency dealing with similar issues. If the applicant were required to nominate the respondent, a challenge may be mounted on the basis that the correct respondent was not nominated. Under this clause, both the assessment manager and concurrence agency are automatically respondents, and the court can decide if one of them does not need to appear.

The effect of this clause is that the entity responsible for a particular decision or condition is also responsible for defending that decision or condition on appeal.

Respondent and co-respondents for appeals under div 9

Clause 4.1.44 has the same effect as the previous clause but with fewer procedural requirements because in most cases there will only be 2 parties to any appeal under the division.

How a person may elect to be co-respondent

Clause 4.1.45 allows persons such as submitters to become respondents by lodging a notice of appeal. Although under IDAS only the principal

10 Clause 4.1.23 states that if the court allows the assessment manager to withdraw from the appeal, the court may not award costs against the assessment manager.

submitter in any submission is required to be given a copy of the decision notice for a development application, any person who was a submitter may appeal, or elect to join an appeal as a co-respondent. Once a party has properly elected to join as a respondent, it has the right to be heard in the appeal.

Minister entitled to be represented in an appeal involving a State interest

Clause 4.1.46 states the Minister is entitled to be represented at any appeal involving a matter of State interest. The development assessment system under the Bill represents both local and State interests. There will be occasions when decisions are made affecting State interests and a State entity is not the assessment manager or a referral agency. Without this provision the only power available to the State would be the use of the call-in. The power under this clause provides a further and less intrusive way for the State to be involved in applications affecting a State interest.

Lodging appeal stops certain actions

Clause 4.1.47 in part is derived from the current Act, but has been modified. Once an appeal is lodged, development must not start until after the appeal is decided or withdrawn.

However, it is recognised that this could be unnecessarily restrictive in some cases, such as an appeal about a specific permit condition that does not involve submitters or other co-respondents. The court may allow the development (or part of the development) to proceed before the appeal is decided but only if the court considers the outcome of the appeal would not be affected.

The capacity to allow development or an aspect of development to proceed recognises that a development approval under IDAS may cover a range of development, some of which is not at issue in the appeal. It also recognises that IDAS encourages the inclusion in development approvals of management conditions that may previously have been established through other statutory mechanisms such as licences.

For example, if an appeal about a proposed shopping centre development concerned aspects of operational works associated with access or parking, the court may allow building work for the shopping centre to proceed if it

does not affect the outcome of the appeal about the operational works. Also, if an appeal concerned a condition about the ongoing management or use of a premises after development had been completed (such as hours of operation), the court may decide that the development could proceed because the building of the structure itself is unrelated to the substantive issues of the appeal before the court.

Division 11—Alternative dispute resolution

ADR process applies to proceedings started under this part

Clause 4.1.48 provides that the alternative dispute resolution (ADR) provisions of the *District Courts Act 1967* and the *District Courts Rules 1968* will apply to proceedings under this part. Subclause (2) provides interpretive guidance in applying the provisions to a proceeding under this part. The ADR provisions have not previously applied in the Planning and Environment Court jurisdiction, and will provide alternative, lower cost options for resolving disputes.

ADR allows for matters at dispute to be mediated or heard under case appraisal. Case appraisal involves the hearing of a matter by a case appraiser, who can reach a decision on matters at dispute.

Parties to the dispute may agree to mediation or case appraisal, or the court may order either mediation or case appraisal.

The court may give orders to give effect to mediated outcomes, or to the decisions of case appraisers.

Parties to an appeal where case appraisal has been undertaken may elect to take the matter to a hearing before the court, but there are cost penalties if the court's decision is consistent with that of the case appraiser.

Division 12—Court process for appeals

Hearing procedures

Clause 4.1.49 provides that hearing procedures are to conform with the rules of court and in the event that there is no provision, or an insufficient provision, governing a particular issue or matter, then the judge may make a direction.

Who must prove case

Clause 4.1.50 establishes who must prove the case in appeals under the Bill.

In most situations the appellant has the responsibility for establishing that the appeal should be upheld. However, there are some important exceptions to this that need to be noted.

If the appeal is brought by a submitter (including an advice agency that is taken to be a submitter), it is for the applicant to establish that the appeal should be dismissed (i.e. the onus remains with the applicant). This provision continues the situation that applies under the current Act. In most planning appeals, there is no particular disadvantage to an applicant in bearing the onus of proof, and by allowing the applicant to state their case first, a context is established for the court's consideration of the matters at dispute, allowing quicker proceedings.

If the appeal is about the giving of an enforcement notice, it is for the entity giving the notice to establish that the appeal should be dismissed.

If an appeal is about a designation (i.e. a request for early acquisition on the grounds of hardship) it is for the designator to establish that the appeal should be dismissed.

Similarly, if a person is disqualified as a private certifier it is for the entity disqualifying the person to establish that the appeal should be dismissed.

In each case, the alteration of the onus of proof is considered to be consistent with fundamental legislative principles. It ensures that persons affected by a decision are not further disadvantaged in an appeal.

Court may hear appeals together

Clause 4.1.51 allows the court to combine 2 or more appeals into 1 appeal. This ensures that an appeal by a submitter may be dealt with in the same hearing as an appeal by the applicant.

Appeal by way of hearing anew

Clause 4.1.52 establishes that an appeal is to be heard by the court "de novo", or as if the court "stands in the shoes" of the administering authority.

However, if the appellant is the applicant or a submitter for a development application, the court must decide the matter based on the laws and policies in effect at the time that the application was made, although the court may give consideration to laws and policies made subsequently if appropriate. This is not intended to prevent the court from applying the "Coty" principle (or non-derogation doctrine) whereby the court may also give weight to laws and policies not yet in effect when an appeal is heard.

The court also must not consider a development proposal which is different from the one originally considered by the assessment manager, unless the change is a minor change[11]. This reflects the practice adopted by the court under the current Act, since provisions about minor changes were included in that Act.

For an appeal about a development application, this clause also confirms that:

- while the court "stands in the shoes" of the assessment manager, this does not mean that, like the assessment manager, the court is bound to apply concurrence agency conditions, or refuse an application on the basis of a concurrence agency response;
- if an assessment manager decided to assess a transitional development application as if it were made under a superseded planning scheme[12],

11 "Minor change" for a development approval is a term defined in the dictionary in schedule 10.

12 "Transitional development application" and "superseded planning scheme" are terms defined in the dictionary. An applicant may ask an assessment manager to assess a development application as if a change to a planning scheme had not

the court must also consider the matter on this basis and disregard the planning scheme in place when the application was made.

Court must not decide appeal unless notification stage complied with

Clause 4.1.53 is derived from the current Act. It provides that if an application required notification, the court must first satisfy itself that the applicant has complied with the requirements of the notification stage.

However, the court is given the discretion to hear the appeal if there have only been minor discrepancies in the notification stage of IDAS or in other aspects of the IDAS process, and the court is satisfied that despite these discrepancies, the public's knowledge of the application, or ability to make submissions, has not been impaired.

This clause is included to avoid unnecessary and unproductive litigation about minor technical faults in the carrying out of the IDAS process.

Appeal decision

Clause 4.1.54 describes the ways in which the court may decide the appeal. The court may confirm the original decision of the administering authority, change the decision, or set aside the original decision and make a new decision to be substituted for the decision which was set aside.

In the event that the court acts to change the original decision or make a new decision to be substituted, then this decision is taken to be the decision of the entity making the decision.

If the appeal was about the decision of a building and development tribunal, the court may remit the matter to the tribunal with a direction it make its decision according to law.

Court may allow longer period to take an action

Clause 4.1.55 allows the court to grant extensions of time for actions, if the court determines there are sufficient grounds for the extension.

been made, provided the application is made within two years after the change.

Division 13—Appeals to Court of Appeal

Who may appeal to Court of Appeal

Clause 4.1.56 provides that the grounds for an appeal to the Court of Appeal must be based on:

- error or mistake in law; or
- that the court had no jurisdiction over the matter of appeal; or
- that the court exceeded its jurisdiction in making a decision.

The party appealing the matter to the Court of Appeal must first seek leave from the Court of Appeal or Judge of Appeal. This is intended to discourage actions taken merely for the purposes of obstruction or delay.

When leave to appeal must be sought and appeal made

Clause 4.1.57 requires that an appeal to the Court of Appeal must be initiated within 30 business days after the Planning and Environment Courts decision is given to the appellant.

Power of Court of Appeal

Clause 4.1.58 specifies the manner in which the Court of Appeal can decide a matter. As is appropriate, the Court of Appeal has broad powers available to it including the power to make any orders it considers appropriate.

Lodging appeal stops certain actions

Clause 4.1.59 mirrors clause 4.1.47 in its effect.

PART 2—BUILDING AND DEVELOPMENT TRIBUNALS

This part brings into the Bill the scope and effect of the appeal provisions currently in the *Building Act 1975*. This is done because the Building Act is

to be fully integrated into the framework of the Bill. It is appropriate that the appeal body be in the Bill as the head of power for assessing and deciding building work will come from the Bill once the Building Act is integrated into the IDAS framework. A point to note about the part is that the provisions will not commence until the Building Act is consequentially amended and integrated into the framework of the Bill.

While the Bill retains the previous scope of a tribunal's jurisdiction to hear appeals on building related matters, the Bill allows for the jurisdiction of a tribunal to be expanded to also deal with other matters prescribed in a regulation. This reflects the fact that, due to the breadth of the definition of development under this Bill, many disputes on development assessment matters, and particularly those relating to specific technical matters, would be unsuitable for hearing in the Planning and Environment Court. These include such matters as plumbing and drainage disputes, or disputes over requirements for excavation and filling.

Division 1—Establishing, constituting and jurisdiction of tribunals

Establishing building and development tribunals

Clause 4.2.1 provides for the establishment of a building and development tribunal by the chief executive (DLGP). Subclause (2) allows for the nomination of up to 5 referees as members of the tribunal, whereas, the current *Building Act 1975* allows for only up to 3 referees. This clause also requires the chief executive to make nominations from the pool of referees with consideration of what matters will be heard by the tribunal. Multi-member tribunals are necessary in order that a tribunal may comprise members with varying expertise. Appeals to tribunals will often deal with a range highly technical matters requiring the nomination multiple referees each with different technical expertise so that the matters in dispute may be adequately dealt with.

Consultation about multiple member tribunals

Clause 4.2.2 requires that the chief executive (DLGP) consult with the Local Government Association of Queensland about nominating a member if a tribunal is to be made up of more than one member. If the tribunal includes more than one member, the chief executive is to appoint one

member as chairperson. This is consistent with the operation of building tribunals under the *Building Act 1975*. It is also appropriate under the Bill in view of the fact that local government is usually the assessment manager for assessable development under IDAS.

Same members to continue for duration of tribunal

Clause 4.2.3 requires that a tribunal consist of the same members to hear a matter. However, if the members are unable to complete a decision on a matter, than the chief executive (DLGP) can constitute another tribunal to hear the matter from the beginning.

Referee with conflict of interest not to be member of tribunal (*Clause 4.2.4)* and

Referee not to act as member of tribunal in certain cases *(Clause 4.2.5)*

These two clauses establish conflict of interest criteria for referees appointed to tribunals. A referee must not act as a member of a tribunal if the member has a conflict of interest.

Building and development tribunals are formed each time an appeal is made. The members of each tribunal are drawn from a pool of referees. They operate as members in a part time capacity only. There is potential for conflicts of interest to arise and it is therefore important that the Bill contain suitable provisions to protect the standing of tribunals.

Remuneration of members of tribunal

Clause 4.2.6 provides for the payment of tribunal members in an amount to be determined by the Governor in Council. If a member is a public service officer, the member is not entitled to remuneration for serving on the tribunal during the ordinary times of the member's public service duty, but he may be entitled to be reimbursed for expenses incurred while serving as a member.

Jurisdiction of tribunals

Clause 4.2.7 provides for a tribunal to deal with matters related to the Standard Building Law and other matters prescribed under a regulation. The

main purpose of a tribunal will be to deal with building related matters as the tribunal will replace the existing building tribunal provisions under the current *Building Act 1975* when that Act is integrated with the Bill.

Subclause 2(b) allows the jurisdiction of the tribunal to be expanded to include other technical based assessments, particularly those that before integration into IDAS previous legislation have no avenue of appeal. An example of this may be decisions under the Standard Sewerage Law which currently have no appeal mechanism. Under this new provision, these types of decisions will be assessed under IDAS, and therefore be appealable.

Division 2—Other tribunal officials

Appointment of registrar and other officers

Clause 4.2.8 provides for the appointment of a registrar and other officers to help tribunals perform their functions. Appointments are made by the chief executive. Notice of any appointments must published in the gazette.

Division 3—Appeals to tribunals relating to development applications

Appeals by applicants

Clause 4.2.9 establishes the scope of appeal rights for applicants for development applications that are within the jurisdiction of a tribunal. The clause also states the time for appeals to be started (20 business days after the decision notice or negotiated decision notice is given unless the appeal is on the basis of a deemed refusal, then it is at any time after the last day a decision should have been made).

Appeal by advice agency

Clause 4.2.10 provides a right of appeal to the Queensland Fire and Rescue Authority about the giving of a development approval. This provision effectively maintains a power existing under the current Standard Building Law. The clause will be necessary when the *Building Act 1975* and Standard Building Law is integrated into the framework of the Bill.

Appeals for matters arising after approval given (co-respondents)

Clause 4.2.11 sets out appeal rights for two situations:

- the giving of a notice of decision on a request to extend the currency period of an application; and
- the giving of a notice of decision on a request to make a minor change to a development approval.

Division 4—Appeals to tribunal about other matters

Appeals for matters arising after approval given (no co-respondents) (*Clause 4.2.12*) and

Appeals against enforcement notices (*Clause 4.2.13)*

These two clauses set out appeal rights for 3 situations:

- the giving of a notice of decision on a request to change or cancel a condition of a development approval; and
- the giving of a notice of decision under clause 6.1.44 (which provides for an assessment manager or concurrence agency to unilaterally cancel or change conditions in certain situations; and
- the giving of an enforcement notice.

Stay of operation of enforcement notice

Clause 4.2.14 states that the lodging of an appeal against an enforcement notice stays the operation of the notice except where the notice is about work that is considered by the assessment manager to be a danger or the notice is about the demolition of a work. The reasons for these exceptions relate to safety and are necessary in the circumstances. Also, the clause is consistent with provisions under the current *Building Act 1975*.

Division 5—Making an appeal to tribunal

How appeals to tribunals are started

Clause 4.2.15 describes the manner in which the process of appeal is started. The notice of appeal must state the grounds of the appeal and be accompanied by the appropriate fee.

Fast track appeals

Clause 4.2.16 provides for an appellant to ask the chief executive to appoint a tribunal to start hearing the appeal within 2 business days of making the appeal. Appeals in this jurisdiction will generally deal with technical design and construction issues. It is important that these be able to be resolved as quickly as possible so that there is minimum disruption to the construction process.

Notice of appeal to other parties (div 3)

Clause 4.2.17 requires the registrar to give notice of the appeal to affected parties within 10 business days after the appeal is started. While for an appeal to the court it is the appellant's responsibility to notify affected parties, under the *Building Act 1975* the registrar performs that function. This practice is carried over to tribunals under the Bill.

Notice of appeal to other parties (div 4)

Clause 4.2.18 deals with appeals under division 4 and requires the registrar to carry out the notification function. It is similar in effect to the previous clause.

Respondent and co-respondents for appeals under div 3

Clause 4.2.19 states that the assessment manager is the respondent for all appeals started under division 3 (appeals relating to development applications) and if there was a concurrence agency for the application, and the appeal involves that agency, the concurrence agency is a co-respondent. Although less complicated, the clause is similar in operation to clause 4.1.43 applying to the court.

Respondent and co-respondents for appeals under div 4

Clause 4.2.20 states who is respondent for an appeal under division 4 (appeals about other matters).

How a person may elect to be co-respondent

Clause 4.2.21 describes how a person who receives notice of an appeal may elect to join as a co-respondent.

Registrar must ask assessment manager for material in certain proceedings

Clause 4.2.22 requires the registrar to request information relevant to the deemed refusal of an application from the assessment manager. The assessment manager must comply with this request within 10 business days.

Minister entitled to be represented in an appeal involving a State interest

Clause 4.2.23—see clause 4.1.46.

Division 6—Tribunal process for appeals

Establishing a tribunal

Clause 4.2.24 states that upon receipt of a notice of an appeal, the chief executive (DLGP) constitutes a tribunal and the registrar provides written notice of such to specified parties.

Procedures of tribunals

Clause 4.2.25 allows tribunals some discretion in conducting proceedings, if a regulation does not prescribe a certain manner or procedure. Tribunals are meant to be less formal in procedure than the court.

Costs

Clause 4.2.26 states that each party must bear their own costs. This is included to make it clear that a tribunal does not have a power to award costs.

Tribunal may allow longer period to take an action

Clause 4.2.27 allows the tribunal to grant an extension of time for an action if appropriate.

Appeal may be by hearing or written submission

Clause 4.2.28 allows the chairperson of the tribunal to hold a hearing with parties present, or to decide an appeal based on written submissions if the parties agree to such procedure. This is included to provide flexibility for tribunals and to allow appeals to be dealt with as cost effectively as possible.

Appeals by hearing

Clause 4.2.29 states that in the event that a hearing will be conducted, the chairperson is required to fix the time and place and give written notice of such to the listed parties.

Right to representation at tribunal appeal hearing

Clause 4.2.30 states that a party to an appeal may appear in person or be represented by an agent. However, consistent with the way building tribunals operate under the current *Building Act 1975*, a person may not be represented by an agent who is a lawyer. As stated this carries forward an existing restriction. it is designed to ensure the informality of tribunal hearings and recognises that matters before a tribunal are of a technical nature relating to building

Conduct of hearings

Clause 4.2.31 specifies how a tribunal hearing may be conducted. Subclause (2) states that the tribunal may hear the appeal without hearing a person if the person is not present or represented at the time and place

appointed for hearing the person. The person may make a written submission about the matter to the tribunal.

Appeals by written submission

Clause 4.2.32 states that if the appeal is to be made upon written submissions, the chairperson must first set the time for acceptance of written submissions and provide written notice to the listed parties that the decision will be made upon written submissions.

Matters the tribunal may consider in making a decision

Clause 4.2.33 lists the ways in which a tribunal may gather information for a decision.

For example, a person whose neighbouring property may be adversely affected by filling or drainage carried out in association with building work may wish to make representations to a tribunal about why the person believes the works do not conform with the Standard Building Law.

Subclause (b) requires the tribunal to make a decision based on those matters which would have been considered by the assessment manager or referral agency and the decision must be made in accordance with laws and policies that existed at the time the application was made. However, the tribunal may give weight to new laws and policies if appropriate. Unlike the court, the jurisdiction of the tribunal is not “de novo”, and is more in the nature of an arbitration of a pre-existing decision.

Appeal decision

Clause 4.1.34 describes the methods in which a tribunal can make a decision or issue an order or direction in reference to a decision. In particular, if the matter deals with a deemed refusal, subclause (2)(d) allows the tribunal to order the assessment manager to make a decision, and in the event of non compliance, the tribunal can decide the application. This provision is derived from the current *Building Act* 1975.

When decision may be made without representation or submission

Clause 4.2.35 states the circumstances where the tribunal may decide the

appeal without the representations or submissions of a person given a notice under clause 4.2.29 or clause 4.2.32.

Division 7—Referees

Appointment of referees

Clause 4.2.36 provides that the Minister may by gazette notice appoint the number of persons the Minister considers appropriate to be referees. This establishes a pool of people who are then available for nomination for tribunals. The nomination of a referee as a member of a tribunal will depend on the matters before the tribunal and the particular qualifications and expertise of the referee.

Qualification of referees

Clause 4.2.37 states that a referee must hold the specified qualifications and/or experience, or qualifications or experience prescribed under a regulation.

Term of referee's appointment

Clause 4.2.38 allows the Minister to set the term of appointment for a referee. The term of appointment cannot be greater than 3 years and must be set out in the notice of appointment. A referee may be reappointed and may resign by giving written notice. A referee can also be removed under this provision by the Minister.

Referee to make declaration

Clause 4.2.39 requires an appointed person to sign and send a declaration to the chief executive prior to sitting as a tribunal member.

PART 3—DEVELOPMENT OFFENCES, NOTICES AND ORDERS

Division 1—Development offences

Carrying out assessable development without permit

Clause 4.3.1 specifies the offence and penalty for assessable development started without a development permit. Subclause (3) provides the same penalty as in the *Queensland Heritage Act 1992* for the demolition of a structure or building nominated in a planning scheme as being of heritage significance.

Self-assessable development must comply with codes

Clause 4.3.2 specifies the offence and penalty for carrying out self-assessable development that does not comply with applicable codes. The smaller penalty in this provision contemplates that self-assessable development is unlikely to have impacts of the same magnitude as assessable development.

Compliance with development approval

Clause 4.3.3 specifies the offence and penalty for contravening a development approval, including any condition.

Compliance with identified codes about use of premises

Clause 4.3.4 specifies the offence and penalty for contravening a code applicable to the use of premises.

Carrying on unlawful use of premises

Clause 4.3.5 specifies the offence and penalty for an unlawful use of premises. This contrasts with clause 4.3.1 concerning the start of assessable development without a development permit, as only the material change of use of premises is development under this Bill, and not the continuing unlawful use of premises following such a material change.

Development or use carried out in emergency

Clause 4.3.6 states that clauses 4.3.1, 4.3.3, 4.3.4 and 4.3.5 do not apply to a person starting development because of an emergency which endangers life or health, or the structural safety of a building(that is, it is not an offence to carry out development without a development permit or in contravention of a development approval or code, or to use premises unlawfully in an emergency situation. In this instance written notice is required to be given to the local government as soon as practicable after starting the development.

Giving a false or misleading notice

Clause 4.3.7 states that it is an offence for a person to provide false or misleading information in a notice about compliance with the public notification requirements for a development application (clause 3.4.7), or advising the day when material about a development application was given to referral agencies or the chief executive (DLGP) (clauses 3.3.4 and 3.3.5).

With respect to public notification, this provision relates to third party enforcement provisions found in division 5 of this part, and differs from similar provisions under the current Act which require actions to be taken under the *Oaths Act 1867.*

Division 2—Show cause notices

Application of div 2 *(Clause 4.3.8)* and

Giving show cause notice *(Clause 4.3.9)*

These clauses require a “show cause notice” to be given to a person before an enforcement notice, inviting the person to show cause why the enforcement notice should not be given. This is a new, accountable mechanism to assist local governments and State agencies in stopping unlawful development without having to go to a court. Show cause notices are intended to prevent the indiscriminate use of enforcement notices. However, there are exceptions to the requirement for giving a show cause notice(development which is a danger or risk to public health, of a minor nature, or involving demolition of work, which is an action of immediate irreversible effect.

General requirements of show cause notice

Clause 4.3.10 specifies the requirements of a show cause notice. The show cause notice must state the manner in which a person can make and submit representations about the notice. The response period must be at least 20 business days from the giving of the notice.

Division 3—Enforcement notices

Giving enforcement notice

Clause 4.3.11 allows an assessing authority to give notice to a person reasonably believed to be committing a development offence. The notice requires the person to do either or both of the following: refrain from committing the offence, or remedy the situation in the way stated in the notice. If the offence is occurring in a local government area and the assessing authority is not the local government, a copy of the notice must also be given to the local government.

Restriction affecting giving of enforcement notice

Clause 4.3.12 requires the assessing authority, before issuing the enforcement notice, to consider all representations about the show cause notice submitted within the time stated.

Specific requirements of enforcement notice

Clause 4.3.13 provides a list of the types of requirements which may be included in an enforcement notice. This list is not exhaustive and the notice may require other reasonable types of action. Subclause (2) is a limitation on a notice requiring the demolition or removal of a work. The effect of this subclause is to require an assessing authority to consider reasonable alternatives before ordering demolition or removal of a building or work in which there may be significant investment.

General requirements of enforcement notices

Clause 4.3.14 specifies the general requirements of an enforcement notice and provides that in the event the notice requires action, the notice

must include details of the work to be performed. If the notice is to require a person to refrain from doing something, it must include a period of time for which the requirement applies, or state that the requirement applies until further notice. Subclauses (4) and (5) require that the notice state the time period or periods for the performance of an act or acts if specified.

Compliance with enforcement notice

Clause 4.3.15 specifies the offence and penalty for not complying with an enforcement notice.

Processing application required by enforcement notice

Clause 4.3.16 provides that in the event that the enforcement notice requires a person to apply for a development permit, the person must take all reasonable steps to enable the application to be decided, and failure to do so is an offence.

Assessing authority may take action

Clause 4.3.17 allows the assessing authority (other than a local government) that issued the notice to perform an action if a person contravenes the notice by not doing that action. Subclause (2) allows the recovery of costs and expenses for performing the ordered action.

Division 4—Offence proceedings in magistrates court

Proceedings for offences

Clause 4.3.18 in subclause (1) provides that any person may file a complaint to prosecute a development offence. Subclause (2) establishes the right of open standing. This provision refers to open standing for any person in the community to prosecute for a development offence. This carries forward the open standing provisions of the current Act. However, the range of offences is somewhat broader since IDAS broadens the scope of development. Open standing for third party enforcement is now available on a wider range of matters because of the integration effect of IDAS. Subclause (3) prevents the open standing from applying to offences brought

under provisions of the Standard Building Law as these offences deal with matters of detailed technical compliance with building standards.

Proceeding brought in a representative capacity

Clause 4.3.19 allows a complaint under clause 4.3.18 to be brought by either a representative of a person or entity if appropriate consent is first obtained.

Magistrates court may make orders

Clause 4.3.20 allows the court to issue an order on the respondent after a hearing. Subclause (2) also allows the court to impose a fine in addition to any appropriate order. Subclause (3) identifies the sorts of orders the court can make if appropriate. Subclause (4) requires the order to state a time or period for compliance. Subclause (5) makes it an offence for a person to contravene the court's order and this is punishable by a fine or imprisonment. Also, subclauses (6) and (7) state that provided the order specifies that the failure to comply is a public nuisance, then the administering authority is authorised to act and can recoup costs for work carried out pursuant to the order.

Costs involved in bringing proceeding

Clause 4.3.21 allows for the payment of costs and expenses of a representative.

Division 5—Enforcement orders of court

This division allows for specific injunctive type orders from the Planning and Environment Court.

Proceeding for orders

Clause 4.3.22 allows for open standing to bring a proceeding to have the court order an action to remedy or restrain the commission of a development offence. However, if the offence is in relation to a clause under the Standard Building Law, than the appropriate party to bring the complaint is the local government or relevant State referral agency.

Proceeding brought in a representative capacity

Clause 4.3.23 allows for a proceeding under clause 4.3.22 to be brought in representative capacity if the appropriate consent is obtained.

Making interim enforcement order

Clause 4.3.24 allows the court to make an interim enforcement order pending the determination of a proceeding for an enforcement order. The interim enforcement order may be made subject to appropriate conditions, including the condition that the applicant give an undertaking as to costs.

Making enforcement order

Clause 4.3.25 allows for a proceeding to be brought if it appears that a development offence may be committed and thus the court can issue an enforcement order to stop or remedy the offence. This differs from enforcement notices and actions in the Magistrate's Court which only apply when an offence has been committed. Under this provision the court is allowed remedial power and the power to restrain or enjoin an offence prior to its occurrence. Subclause (2) clarifies that it is not necessary for there to be a prosecution (in the Magistrate's Court) for an offence prior to the issuance of an enforcement order.

Effect of orders

Clause 4.3.26 specifies the directions an enforcement order may make. The court is also allowed to make an order requiring certain activity such as repairing or demolition of a structure. The enforcement order may be in any terms the court considers to be appropriate and must state a time for compliance.

Court's powers about orders

Clause 4.3.27 specifies the court's powers about enforcement orders or interim enforcement orders. Subclause (1) allows the court broad powers in issuing an enforcement order or interim order to cease work, or to prevent the start of work. The court is allowed to disregard a person's previous actions or activity. Subclause (2) allows the court to issue an enforcement order or interim enforcement order to do anything regardless of the

person's past or present actions or activities. Subclause (3) allows the court to cancel or change either an enforcement order or interim order if appropriate. Subclause (4) provides that the power of the court under this clause exists concurrently with other powers of the court.

Costs involved in bringing proceeding

Clause 4.3.28 allows for the payment of costs and expenses to the representative.

Division 6—Application of Acts

Application of other Acts

Clause 4.3.29 lists specific circumstances where provisions in another Act may be in conflict or inconsistent with the provisions of this part. In such a situation, the provisions of the other Act will prevail or have precedence. The intention of this provision is to allow other Acts to either add to or vary provisions of this part in recognition of the specific requirements for enforcement in relation to individual forms of development.

PART 4—LEGAL PROCEEDINGS

Division 1—Proceedings

Proceedings for offences

Clause 4.4.1 provides that a proceeding for an offence against this Bill may be instituted in a summary way under the *Justices Act 1886.* Summary offences are heard in the Magistrate's Court.[13]

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13 Division 4 of part 3 of this chapter already provides that offence proceedings for development offences must be taken in the magistrates court. However, this chapter also specifies offences other than development offences. These are in clause 4.3.15 (Compliance with enforcement notice), and clause 4.4.3 (Executive officers must ensure corporation complies with Act).

Limitation on time for starting proceedings

Clause 4.4.2 specifies that a prosecution for an offence against this Bill must be commenced within 1 year after the commission of the offence, or at any later time, but within 6 months after the offence comes to the complainant's knowledge.

Executive officers must ensure corporation complies with Act

Clause 4.4.3 provides that executive officers of a corporation must ensure that the corporation complies with this Bill. Subclause (2) provides that if the corporation commits an offence, then the corporation's executive officers commit a separate offence of failing to ensure compliance. The maximum penalty for contravention of subclause (2) is the penalty for the original offence. Subclause (3) provides that a conviction of the corporation is evidence of the offence of the corporation's executives stated in subclause (2). Subclause (4) provides a defence for the corporation's executive if it can be proved the executives exercised reasonable diligence to ensure corporation compliance, or that the executive was not in a position to influence the conduct of the corporation concerning the offence.

Division 2—Fines and costs

When fines payable to local government

Clause 4.4.4 provides for the payment of a fine to a local government unless another person prosecutes the offence.

Order for compensation or remedial action

Clause 4.4.5 allows the court to order a person convicted of a development offence to compensate other affected persons, and/or to take remedial action, if appropriate, for loss of income or reduction in the value of or damage to property, or for costs incurred. These orders can be in addition to the imposition of a penalty under this Bill. This clause does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Recovery of costs of investigation

Clause 4.4.6 allows the court to order a person convicted of an offence against this Bill to pay the assessing authority reasonable costs and expenses incurred by the authority if the assessing authority applied for such an order and the court considers it appropriate. This clause does not limit the courts powers under the *Penalties and Sentences Act 1992* or another law.

Division 3—Evidence

Generally, this division identifies those matters in a proceeding for which proof is not necessary. These are confined to matters of an administrative or procedural type for which a requirement to provide proof would add unnecessary delay and cost to a proceeding. However, this does not prevent any of these matters being challenged in a proceeding, in which case normal standards of proof would apply.

Application of div 3

Clause 4.4.7 provides for this division to apply to a proceeding under this Bill.

Appointments and authority

Clause 4.4.8 provides that it is not necessary to prove the appointment or the authority of a chief executive of an assessing authority.

Signatures

Clause 4.4.9 provides that a signature purporting to be the signature of the chief executive of an assessing authority is evidence of the signature it purports to be.

Matter coming to complainant's knowledge

Clause 4.4.10 provides that a statement about when a matter came to a complainant's knowledge is evidence of the matter.

Instruments, equipment and installations

Clause 4.4.11 provides that any instrument, equipment, or installation prescribed and used in accordance with any regulations is taken to be accurate and precise unless there is evidence to the contrary.

Analyst's certificate or report

Clause 4.4.12 provides that a certificate or report purported to be signed by an analyst is evidence of certain matters that it states, such as the analyst's qualifications and the results of the analysis.

Evidentiary aids generally

Clause 4.4.13 specifies that if a certificate contains any of the specified matters, such as whether or not a development permit was in force on a stated day, it is considered to be evidence of the matter.

Responsibility for acts or omissions of representatives

Clause 4.4.14 gives the meaning of "representative" and "state of mind" for this provision and describes that in proving state of mind in a proceeding under this Bill, it is enough to show that a representative was acting within the scope of the representative's authority and the representative had the relevant state of mind. Subclause (3) provides that in the instances of a representative acting within the scope of the representative's authority, any acts or omissions committed are considered to be those also of the person being represented unless the person can prove that the person could not have reasonably prevented the act or omission.

CHAPTER 5—MISCELLANEOUS[14]

PART 1—INFRASTRUCTURE CHARGES

A key way by which the Bill's purpose may be advanced is through the coordinated, efficient and orderly supply of infrastructure (see clause 1.2.3).

This part establishes a mechanism for funding "user pays" infrastructure (that is, infrastructure for which an end user can be readily identified), while at the same time encouraging an integrated approach to infrastructure programming, and land use and development decision making.

The scope of infrastructure for which funding can be obtained under this part has been determined on the basis of basic essential infrastructure that communities would reasonably expect to be available, and which is usually supplied by public sector entities as "monopoly suppliers". In this way, the charging mechanism is intended to promote the greatest possible choice by communities about the infrastructure they wish to have supplied. It also acts as a price accountability mechanism in circumstances where the nature of the infrastructure discourages open market competition between multiple suppliers.

This part does not deal with the funding of "social infrastructure" such as schools, State roads, and police and emergency services. Social infrastructure is funded from general taxation revenue.[15]

The current Act provides for contributions to be obtained by local governments towards the cost of providing certain water supply and sewerage infrastructure (in accordance with a local planning policy), and land for public recreational use. These contributions are obtained as conditions on development approvals. The arrangements under the current Act have created the following difficulties:

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14 A reference to the "current Act" is a reference to the *Local Government (Planning and Environment) Act 1990* which will be repealed when this Bill commences as an Act.

15 Clause 3.5.35 deals with conditions requiring monetary contributions to lessen the "cost impacts" of bringing forward both development infrastructure and social infrastructure.

- potential for overspecification of infrastructure standards which can result in greater costs to the community;
- inconsistent application of contribution requirements for different types of infrastructure;
- little incentive to consider alternative and more efficient infrastructure funding mechanisms;
- confusion in the role of contributions between "fee for service" and "lessening impact", creating difficulties in determining whether infrastructure is being supplied efficiently; and
- the cost of infrastructure has not necessarily been shared equitably between all users in a catchment because contributions can only be obtained in respect of assessable development (alternatively, this creates an incentive for making a wider range of development assessable than is necessary).

By contrast, the infrastructure charging mechanism provided for in this part has the following features:

- infrastructure charges are levied as a user charge, not a condition on development approval. This is reflected in the location of provisions about infrastructure charges in chapter 5 of the Bill, rather than in conjunction with chapter 3 (IDAS);
- charges may only be levied for "development infrastructure", or basic services for an identifiable user, such as water supply, sewerage, roads and parks, and not for social infrastructure, for which an end user cannot be identified in advance;
- charges may only be set for items in an "infrastructure charges plan" which forms part of a planning scheme, justifies the use of charging over alternative funding methods, and sets the method for calculating charges; and
- charges must be calculated to avoid overspecification, and be fairly apportioned among anticipated users.

The advantages of this approach over current arrangements are that it:

- encourages integration of infrastructure programs with land use planning and development decision making;
- ensures fairness and transparency in calculating contributions and charges;

- provides greater certainty for developers and the business sector about the infrastructure costs they would be liable for when undertaking a project;
- discourages costly litigation and delays to development approvals by clearly separating charging and impact mitigation considerations;
- is a more consistent and logical basis for identifying items which may, and may not be funded through charges;
- minimises the costs of access to services for home buyers, and affords them greater choice in the range and price of services they use.

Development infrastructure item

Clause 5.1.1 defines the range of infrastructure items which may be funded through infrastructure charges. These items are called "development infrastructure items" because they are necessarily supplied in support of development and are generally needed at or about the time development occurs.

Appropriate infrastructure must be carefully planned and designed. To facilitate good infrastructure outcomes, provision is made for the cost of a development infrastructure item to include recovery of planning and design costs (see dictionary in schedule 10).

Land for local community purposes includes public recreation land (such as parks and playing fields), and other local community land prescribed in a regulation (such as sites for neighbourhood centres, libraries and community primary schools).

An underlying principle of land for local community purposes is that it must be generally available to the community paying for it. Providing local community land at the time of development increases the likelihood that it will be suitably located and properly integrated with other land uses in the community. It will also facilitate timely provision of services.

The infrastructure charge for the provision of public recreation land may also cover costs to ensure that the land is basically useable for its intended purpose, and where necessary may include: earthworks, planting, fencing, access works, drainage, any necessary remedial works. The charge is not intended to include the costs of constructing facilities on public recreation land, such as playground and barbeque equipment. Funding for facilities is more appropriately derived from other sources.

Meaning of "desired standard of service"

Clause 5.1.2 defines the "desired standard of service" for a network of development infrastructure items. It is determined by the responsible infrastructure agency (in most cases the local government). In establishing standards the agency must seek an optimum balance of user benefits and environmental outcomes. For example, desired standard of service for land for local community purposes might be defined in terms of issues such as:

- accessibility (e.g. the maximum and average safe walking distance to a public recreation area from all properties liable for the charge; and linkage of all local community land sites by dedicated cycleways);
- suitability of terrain (e.g. 90 per cent of public recreation land to be flat and suitable for games);
- environmental quality considerations.

Meaning of "life cycle cost"

Clause 5.1.3 defines "life cycle cost" as the total cost (in present day terms) of a total network or system of development infrastructure items over a lengthy period. Total cost includes capital, maintenance and operating costs. This concept is introduced to ensure that the total infrastructure network achieves its service and environmental objectives in the least cost way. This does not mean that individual items within the network will necessarily be "least cost", but that the sum of items will be. Nor is the operational life of individual items within the network particularly relevant. Over a lengthy period some items may be replaced a number of times.

An infrastructure charge can be levied to pay the capital costs of items which are components of a least life cycle cost network.

The length of time over which the minimum life cycle cost is calculated is fairly arbitrary. It should, however, be long enough to ensure that all potential design solutions are considered. The design selection should not be biased towards a particular solution which is least cost over the short term, but not over the long term. For the purposes of this clause in the Bill, "life" is 30 years or a longer period if the agency supplying the network so determines. A longer period (e.g. 50 years) may be more appropriate in some cases.

Meaning of "infrastructure charges plan"

Clause 5.1.4 outlines what an infrastructure charges plan does and what must be included in the plan.

A plan must be prepared if infrastructure charges are to be levied. It forms part of the planning scheme[16], explains and justifies to the public and the development industry the charges to be levied, and provides certainty about costs to be borne and services received.

An infrastructure charges plan must explain why infrastructure charges are preferred to other funding mechanisms such as rates and user charges. (This is required to ensure that all viable charging options are considered in terms of their impact on housing affordability, that community involvement in determining the level and standard of infrastructure is maximised, and that scarce resources such as water are properly managed). It must also provide details about the timing, location, nature and method of calculating charges for the relevant development infrastructure.

It is not intended that the exact location of all development infrastructure be shown on the infrastructure charges plan. For example, some small parks will be difficult to identify until subdivision designs are known. Approximate locations will suffice in these circumstances.

This clause also allows for a charge to be paid by a person other than the applicant, such as the purchaser of a newly completed development (see clause 5.1.4(2)(h)). For example, a local government may wish to encourage certain development, and may decide to include provision in its infrastructure charges plan for charges to be deferred until, say, occupation of the completed development. If a charge is to be paid by other than an applicant for development, the infrastructure charges plan must state the time the charge is payable.

Minimum life cycle cost refers to the lowest present value cost of delivering the desired standard of service (see notes on 5.1.3). The lowest cost solution is determined on a community-wide basis, rather than from the perspective of any single party involved in the infrastructure provision process. Such costs may include:

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16 It is intended that parts of an infrastructure charges plan could be included in a planning scheme policy that is "called up" by a planning scheme. See clause 2.1.19. Under clause 5.7.2.(a), a local government is required to keep its planning scheme (including the infrastructure charges plan) open for inspection and purchase at its public office.

- the initial or capital costs of infrastructure provision (costs which may be substantially borne by the developer in the first instance);
- routine or day-to-day maintenance costs (which are usually borne in the first instance by the provider agency);
- cyclical maintenance (which is also borne by the provider agency);
- operating costs like billings and customer services (which, again, are initially borne by the provider agency; and
- energy costs (e.g. electricity for water pumping).

Because the initial capital costs can be largely met by others (namely developers), provider agencies may be inclined to adopt designs which minimise their costs only. What makes financial sense to the provider agency (i.e. minimising their long run costs) may be wasteful of resources overall because a cheaper combination of all costs has been overlooked.

Fixing infrastructure charges

Clause 5.1.5 states that the head of power for infrastructure charges resides in the *Local Government Act 1993*. Infrastructure charges are characterised as a general charge under the Local Government Act levied for a development infrastructure item.[17]

Subclause (2) confirms that infrastructure charges are not mandatory in respect of individual development proposals. However, if a local government foregoes a charge for an individual development, the requirement for other infrastructure charges to be fairly apportioned would prevent charges on other users being adjusted to meet any shortfall in expected revenue. If a shortfall did result from a decision to forego a charge,

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17 Under the *Local Government Act 1993*, chapter 10, part 2, a local government may set a number of types of rate or charge, including a general charge. All types of rate or charge except a general charge must be fixed annually at a local government's budget meeting, and so would be unsuitable for use as an infrastructure charge, which must be able to be set in response to an individual development proposal. A general charge may be set at any time, but is not normally viable as an infrastructure charging mechanism because it is not recoverable in the same way as a rate. Consequently, clause 5.1.14 provides recovery protection, the protection being that the infrastructure charge can be recovered as if it were a rate (i.e. the charge can be recovered as a debt from the current owner of the land).

the local government would instead be required to ensure that funding was provided from sources other than infrastructure charges.

Subclause (3) requires that infrastructure charges not be imposed on development occurring under the jurisdiction of the *Mineral Resources Act 1989*. Local governments already have specific powers to levy rates and charges for such developments under the *Local Government Act 1993.*

Infrastructure charge must be based on plan and other matters

Clause 5.1.6 states that an infrastructure charge must be fixed in accordance with an infrastructure charges plan and be apportioned between all beneficiaries of the service, taking into account anticipated future use of the infrastructure.

Infrastructure charges may be levied for existing infrastructure where spare capacity has been provided specifically to cater for future growth.

Fixing a charge for an item not included in plan

Clause 5.1.7 allows for a charge to be set in limited situations for a development infrastructure item not shown in an infrastructure charges plan, where the development giving rise to the need for the item is either:

- inconsistent with the planning scheme (for example, if a development is more intense than anticipated or if the development was not provided for in the infrastructure charges plan); or
- anticipated by the scheme but located in an area beyond the first 5 years of expected growth as shown in a benchmark development sequence.[18]

This provision allows some flexibility for local governments to use infrastructure charges for unanticipated items without first having to amend their infrastructure charges plans. It is expected this capacity would be used only in respect of minor departures from the anticipated pattern of development in the planning scheme, as more major departures could affect the scale and apportionment of charges payable by other users under the infrastructure charges plan. In such cases, it is expected that the local

[18] Refer to the dictionary in schedule 10 for a definition of a "benchmark development sequence".

government would either first amend its infrastructure charges plan, or reach a separate infrastructure agreement with an applicant under part 2 of this chapter.[19]

The infrastructure charge levied under this clause must be consistent with the standards adopted in the infrastructure charges plan relevant to the area, or if no plan existed, the requirements set out in this part.

A local government must also take steps to amend its infrastructure charges plan as soon as possible after the charge is levied.

Notice of charge

Clause 5.1.8 requires that the recipient of an infrastructure charge be informed in writing of the amount of the charge; the land to which the charge applies; the date on which the charge is payable; the item to which the charge relates; and the person to whom the charge must be paid.

Actions required if charge is payable by an applicant

Clause 5.1.9 requires, if a charge is to be levied on an applicant for development approval, that the applicant be provided with the notice of charge at the same time as the development approval. Subclauses (2) to (5) detail the time frame for provision of a notice of charge.

Subclauses (6) and (7) provide for a new notice of charge to be given if a local government determines a different infrastructure charge following the outcome of an approved negotiated decision.

Subclause (8) sets out how a local government may give a new notice if the original one was in error.

Subclause (9) requires a notice of charge to be given to the owner as well as the applicant if the applicant is not the owner.

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19 Clause 3.5.35 allows local governments to require as conditions of development approvals, monetary payments to lessen the cost impacts of supplying development infrastructure to unanticipated or out of sequence development, including the costs or anticipated costs of preparing amendments to the local government's infrastructure charges plan.

When charge is payable by applicant

Clause 5.1.10 sets out when a charge is payable and when a development infrastructure item for which a charge has been levied must be provided. It is necessary to pay infrastructure charges and provide the infrastructure expediently to ensure that development infrastructure is available at the time it is needed.

Subclause (1) requires earlier payment for works necessary to service development but not yet available, than for works which are available or not necessary to service development at the time it occurs. For example, a water main which must be extended to service a development would require payment of a charge at an earlier time than a water headworks augmentation not necessary to service the particular development.

Subclause (2) requires that if a charge applies for a material change of use, it must be paid before the change occurs.

Subclause (3) provides that certificates of classification for building work need not be issued by a local government before the infrastructure charge has been paid, and must not be issued by a private certifier before payment if the approval was granted by a private certifier.

When development infrastructure item must be supplied

Clause 5.1.11 states when infrastructure not yet available must be provided. The provision timetable for already available infrastructure is referenced in a schedule to the infrastructure charges plan. If provision is not possible within this time frame, a written agreement must be entered into between the applicant and the local government about when it will be provided.

Different times may be agreed on for paying the charge or supplying the development infrastructure item

Clause 5.1.12 states that an applicant and the person to whom the charge is paid can agree to different timing of payment or provision.

Charge may apply to items outside local government's area

Clause 5.1.13 determines that it is not necessary for local government boundaries to correspond with catchment boundaries for development infrastructure items. For example, a water supply network may service

several local government areas and some components such as reservoirs and pump stations may be quite remote from end users. The fact that they are outside a particular local government's boundaries is irrelevant if a clear (service usage) nexus exists.

Infrastructure charges taken to be a rate

Clause 5.1.14 states that, for the purposes of recovery, an infrastructure charge will assume the characteristics of a rate, i.e. the charge can be recovered as a debt from the current owner of the land. This means that if ownership changes and an infrastructure charge is outstanding, the charge is still payable by the new owner in the same way that outstanding rates would be.

Subclause (2) allows for the charge to be treated as a debt on the applicant if the local government and the applicant agree to do so. This provides flexibility for the applicant to offset the financial burden of the charge by passing it on to a subsequent purchaser.

Alternatives to paying infrastructure charges

Clause 5.1.15 provides for work to be undertaken or land to be provided instead of an infrastructure charge. It also gives local government the right to take land rather than money, or a combination of land and money e.g. for land for local community purposes if it wishes. Any land must be given on trust.

Subclause (2) permits the owner of land to undertake development infrastructure works on that land subject to the satisfaction of (and possible payment of security to) the entity to which the charge would have been paid.

Any combination of money, work or land must not exceed the total amount which would have been payable had only an infrastructure charge been applied.

Public notice of proposed sale of certain land held in trust by local governments

Clause 5.1.16 is intended to ensure proper accountability to the local community in subsequent dealings with land obtained under the previous clause.

Local government to consider all submissions

Clause 5.1.17 requires all submissions relating to notices issued under the previous clause to be fully considered.

Sale extinguishes the trust

Clause 5.1.18 provides for trust land to be sold free of the trust providing the sale has complied with clauses 5.1.16 and 5.1.17.

PART 2—INFRASTRUCTURE AGREEMENTS

It is important to provide the flexibility for as wide a range of infrastructure arrangements as possible within the objectives of the Bill. This part allows for infrastructure agreements as an alternative to other infrastructure funding mechanisms in the Bill, but also establishes accountability mechanisms for all agreements about infrastructure entered into under the Bill.

Definition for pt 2

Clause 5.2.1 establishes that all agreements about infrastructure entered into under chapters 3 and 5, as well as the alternative agreements established in this part, are collectively termed "infrastructure agreements".

Agreements may be entered into about infrastructure

Clause 5.2.2 enables infrastructure agreements that depart from other arrangements in the Bill to be entered into between not only local governments and applicants, but with other public sector entities as well. This is to maximise the potential for mutually beneficial infrastructure arrangements.

Matters certain infrastructure agreements must contain

Clause 5.2.3 requires that an agreement explain if relevant, how the obligations formed under the agreement would be fulfilled if ownership of the land, the subject of the agreement, changed. For example, a developer

might subdivide a large parcel of land and sell parts of it to other developers.

The clause also requires an agreement to state if relevant what action would be taken if a planning instrument outside the control of the person required to fulfil the obligations of the agreement, was changed. For example, if a local government changed the residential density controls for an area it may affect the fulfilment of obligations under an agreement.

Copy of infrastructure agreements to be given to local government

Clause 5.2.4 requires a copy of an infrastructure agreement to be given to a local government if the local government is not a party to the agreement. To ensure efficient local coordination and provision of infrastructure a local government needs to be aware of any infrastructure arrangements within the area of its jurisdiction.[20]

When infrastructure agreements bind successors in title

Clause 5.2.5 ensures that development obligations will be fulfilled despite subsequent changes to the ownership of the land.

Exercise of discretion unaffected by infrastructure agreements

Clause 5.2.6 determines that an agreement cannot fetter the discretion of a public sector entity about a development application. An agreement may purport to depend on the exercising of certain discretions about an application, but it will not affect or be invalidated by whatever decision the entity makes.

PART 3—PRIVATE CERTIFICATION

This part creates a head of power for properly qualified and accredited individuals to act as assessment managers in certain prescribed circumstances. This means that instead of having to apply to the nominated

[20] Clause 5.7.2.(o) requires a local government to keep any such agreement given to it open for public inspection and purchase.

assessment manager (e.g. the local government), an applicant will have the option of making the application to a private certifier who can receive, assess and decide development applications and issue development approvals. Within the limits of the private certifier's powers, private certification offers a complete alternative to approval by public authorities.

Private certification is a microeconomic reform designed to introduce competition in the regulatory compliance area. The time and costs associated with regulatory compliance functions can add to the costs of development. These extra costs are passed on to the consumer in the form of more expensive land and housing.

Under the Bill, private certification can apply only to assessable development requiring code assessment. It cannot apply to development requiring impact assessment.

The Bill contains generic provisions for private certification. As stated above it can apply potentially to any code assessment. However, in order for private certification to apply, there must be a private certifier. A private certifier is a person who has the necessary accreditation, experience or qualifications prescribed under a regulation for a stated code. Therefore, private certification only applies to code assessments stated in a regulation (the regulation may be regulation under this or another Act).

Initially private certification will apply only to code assessment involving the *Standard Building Law* (i.e. building private certification).

Regarding building private certification, in order for private certification to commence in this area consequential amendments will need to be made to the *Building Act 1975* and the *Standard Building Law*. Specific requirements for building private certification (such as accreditation requirements, liability insurance details, etc) will be inserted into the Standard Building Law. This is a priority task and will occur when the Building Act is integrated into the framework of the Bill. The powers of a building private certifier will be limited to matters within the scope of the Standard Building Law.

Application of pt 3

Clause 5.3.1 establishes that private certification can only apply to development requiring code assessment. Code assessment is a "bounded" assessment against a stated code. Impact assessment is a broader

assessment of the environmental effects of development. Impact assessment also involves public notification and submitters have rights of appeal to the court against the decision made. In this context it is only appropriate that private certification be limited to code assessments.

Definition for pt 3

Clause 5.3.2 defines an assessment manager for the purposes of this part. It means the person who would have been the assessment manager if the certifier had not been engaged.

What is a private certifier

Clause 5.3.3 establishes that a private certifier has limited and defined powers. A private certifier is a person who has prescribed qualifications, experience or accreditation for private certification, but only for one or more codes stated in regulation. A private certifier does not have a general power to assess and decide any application involving code assessment.

As stated previously, private certification will initially apply only to assessments against the *Standard Building Law* (which is intended to be recognised as a code for IDAS when the *Building Act 1975* and *Standard Building Law* are integrated into the framework of the Bill). Building private certifiers will have experience and qualifications relevant to the building code assessment. If private certification is extended to another code (e.g. a code related to certain environmental management matters), the requirements for being a private certifier under that code are likely to be different. Accordingly, the extent of a certifier's jurisdiction is determined by the regulations setting out the requirements for being a certifier for stated codes.

Application must not be inconsistent with earlier approval

Clause 5.3.4 requires a private certifier to ensure the application being assessed is consistent with any earlier approval relating to the development. A private certifier is able to exercise some, but not all, of the functions of the assessment manager. For applications involving assessable development outside the ambit of the certifier's powers, development permits will need to exist for that other development before the certifier can approve the application made to the certifier (see clause 5.3.5). Because of

this there will usually be plans and specifications setting out development parameters for the development included in the application to the certifier.

For example, a development proposal for a shopping centre normally will have required the assessment manager to give a development permit for a change of use of the land, and possibly a preliminary approval of building work dealing with the siting, general size and appearance of the proposed building. The approvals are likely to set parameters for the building work. Because the private certifier enters the assessment process after the normal assessment manager has finalised the assessment of other aspects of the proposal, it is important that the certifier ensure that the application is consistent with the earlier approvals given.

Private certifiers may decide certain development applications and inspect and certify certain works

Clause 5.3.5 sets out the scope of the private certifier's powers. In addition to assessing and deciding relevant development applications, a private certifier also may inspect and certify that the work complies with the development permit authorising the work, any conditions of the permit and the code stated in a regulation against which the work must be assessed. A private certifier also may instigate enforcement action, such as issuing show cause and enforcement notices, related to the development the certifier has been engaged to assess, inspect or certify.

Many development proposals will involve different types of assessable development (e.g. change of use, building work, reconfiguration, etc.). Because private certifiers in many cases will have jurisdiction to deal only with an aspect of the overall proposal, it is important that certifiers are not empowered to decide their component of the proposal ahead of the other assessable components (e.g. until the other assessments have been completed). This ensures that the certifier's approval is consistent with the assessment manager's decisions on the other aspects of the proposal. Subclauses (3) and (4) refer.

For development proposals involving self-assessable development (i.e. development for which no approval is required but which still must comply with applicable codes), provision is made in subclause (2) for the private certifier to notify the applicant of other codes the applicant may need to comply with. For example, a planning scheme may include a code covering the design of works for car parking areas but may make the carrying out of

the works (i.e. operational works) self-assessable development under the scheme. A person must comply with the code but is not required to obtain a development permit.

When a private certifier decides an application, the certifier must send a copy of the decision notice to the person who would otherwise have been the assessment manager (e.g. the local government). This is to ensure:

- the assessment manager has a complete record of decisions available for inspection by the public; and
- the assessment manager may monitor construction to ensure necessary inspections that are the responsibility of the assessment manager may be carried out.

Local government may undertake private certification outside its area

Clause 5.3.6 states that a local government may be a private certifier anywhere in the State outside its area. This means a local government may compete with the private sector and other local governments for certification work. However, because a local government has a statutory duty as assessment manager within its local government area, this clause prevents a local government from carrying out private certification services in its local government area.

For a local government to offer private certification services, the certification must be undertaken through an employee who has the required qualifications, experience or accreditation. This is to ensure there is a level playing field in the provision of private certification services.

Persons other than local governments may undertake private certification anywhere

Clause 5.3.7 states that a person (other than a local government) may undertake private certification in any local government area. Private certification (to the extent authorised by regulation) is a Statewide mechanism. This means an applicant who lives in Brisbane has the option of engaging a private certifier who also may live in Brisbane even though the development is to be carried out in Bundaberg. This has a number of advantages for applicants, not least being convenience.

Private certifiers must act in the public interest

Clause 5.3.8 states that a private certifier always must act in the public interest. A private certifier is able to perform regulatory compliance functions normally carried out by public authorities such as local governments. While there is an obvious public interest duty on State and local government, it is not necessarily so clear cut for a private certifier. It is therefore appropriate that a public interest requirement be imposed. The amount of the maximum penalty for not acting in the public interest (1 665 penalty units) reflects the importance of this duty.

The penalty also needs to be considered together with clause 5.3.14 which provides for the Minister, or the accrediting body, to disqualify a private certifier for acting in way contrary to this duty.

Engaging private certifiers

Clause 5.3.9 states requirements for engaging a private certifier. The certifier also must advise the normal assessment manager of any engagement (the assessment manager may wish to coordinate works inspections, etc.).

Subclause (1)(b) states that a private certifier must be paid the agreed fee even if the certifier does not approve the application or certify works because of non-compliance or other valid reason for refusing approval or certification. This is related to the public interest responsibilities of the certifier and is included to protect the certifier from unfair pressure that could be imposed by a client who is unhappy about a certifier's decision.

Private certifiers may not be engaged if there is a conflict of interest

Clause 5.3.10 prevents a private certifier from accepting an engagement if there is a conflict of interest as prescribed in a regulation under this or another Act. This clause follows naturally from the public interest duty in clause 5.3.8. However, it is recognised that private certification for different codes and in different circumstances under the same code may have different conflict of interest standards. Accordingly, provision is made for regulations under this or another Act to prescribe standards.

Discontinuing engagement of private certifiers

Clause 5.3.11 sets out requirements for the applicant relating to the discontinuance of a private certifier for any reason, including as a result of resignation, disqualification, bankruptcy or death.

Engaging replacement private certifier for application

Clause 5.3.12 provides for the applicant to engage a different private certifier or to make the application to the assessment manager. The clause also provides for the replacement certifier or the assessment manager to start the application process at any stage of IDAS that is appropriate to enable an appropriate decision to be made.

The purpose of the clause is to provide some process flexibility for the replacement certifier or the assessment manager to avoid forcing the application in all cases back to the beginning of the IDAS process.

Engaging replacement private certifier to inspect work

Clause 5.3.13 deals with the engagement of a replacement private certifier (or the local government) if the certification is about the inspection and certification of works rather than the assessment and decision of a development application. The clause states that the work must not continue past the next notifiable inspection unless the replacement certifier (or the local government) certifies the work. The reference to the local government, rather than the assessment manager, is made because inspections of works relate to a post-IDAS process—i.e. the construction phase.

Minister or an accrediting body may disqualify a private certifier

Clause 5.3.14 provides power for the Minister or an accrediting body to disqualify a private certifier for a range of reasons. A notice must be published in the gazette.

Provision is made under clause 4.1.36 for the certifier to appeal to the Planning and Environment Court against a decision to disqualify. In the interests of natural justice, the entity disqualifying the certifier has the responsibility for proving that the appeal should be dismissed. The onus is not on the certifier.

Effect of transfer of functions to local government or replacement private certifier

Clause 5.3.15 states that if a replacement private certifier is engaged, or if the matter is taken over by the assessment manager, neither is liable for the work already carried out. Any liability remains with the previous certifier who has relevant liability insurance covering this situation. This is to avoid any uncertainty that otherwise might exist about liability for works already carried out.

Liability insurance and performance bonds

Clause 5.3.16 sets out a general head of power stating that a regulation under this or another Act may state the type and minimum limits of liability insurance, performance bond or similar type of security a private certifier must have or give in relation to a development application or work authorised by a development permit. This is because the liability requirements can be expected to vary depending on the particular functions the certifier is authorised to perform. If certification is extended to other code assessments, the requirements would be commensurate with the level of public risk involved.

Subclause (2) states that a person must not act as a private certifier unless the person has the necessary insurance, etc. The number of penalty units (1665) for acting as a private certifier without the necessary insurance cover reflects the seriousness with which a breach of this nature is viewed.

Documents to be kept by private certifiers

Clause 5.3.17 provides for a regulation under this or another Act to prescribe the documents a private certifier must keep for audit purposes and the time the documents must be kept. It is appropriate that certifiers be accountable and their decisions subject to audit. The ability to prescribe by regulation is proposed because it is recognised that building private certification may have different requirements from other codes to which private certification may later apply.

PART 4—COMPENSATION

Definition for pt4

Clause 5.4.1 sets out the following definitions applicable to this part:

"change", for an interest in land, means a change to the planning scheme or any planning scheme policy affecting the land;

"owner", of an interest in land, means an owner of the interest at the time a change to a planning scheme is made.

The effect of the definition of owner is that the only person entitled to claim compensation under this part is the owner of land at the time a change is made to a planning scheme or planning scheme policy giving rise to a claim for compensation.

Compensation for reduced value of interest in land

Clause 5.4.2 establishes that reasonable compensation may be claimed for a reduction in the value of an interest in land if a change to a planning scheme or planning scheme policy reduces the value of an owner's interest in the land.

For example, the value of an interest in land may be reduced if a planning scheme which previously identified land for commercial purposes is amended to identify the land for low density residential purposes.

To be paid compensation the owner must have made a transitional development application which has been refused, or approved in part only, approved subject to conditions or approved in part and subject to conditions.

Compensation for interest in land being changed to public purpose

Clause 5.4.3 establishes that reasonable compensation may be claimed for a reduction in the value of an interest in land if a change to a planning scheme or planning scheme policy could only be used in future for a public purpose.

It is not necessary to have first made a transitional development application before claiming compensation under this clause.

For example, a planning scheme indicates premises in private ownership are appropriate for residential purposes. If the planning scheme is subsequently amended to include a designation over the premises for public parkland, compensation is not payable under this part (although limitations apply to the duration of the designation, and the owner is also entitled to early acquisition on hardship grounds). However, if instead of, or in addition to a designation described above, the "underlying" residential zoning of the premises in the planning scheme is changed to public parkland, compensation would be payable.

Limitations on compensation under ss 5.4.2 and 5.4.3

Clause 5.4.4 identifies exceptions to the circumstances in which compensation may be paid. These exceptions are:

- if the change to a planning scheme or planning scheme policy reflects the effect of another statutory instrument for which compensation is not payable.

  For example, if an Environmental Protection Policy made by the State under the *Environmental Protection Act 1994* established standards for the conduct of a particular use or development, and a planning scheme was amended to include those standards, compensation would not be payable, because there is no provision to compensate for the making of the Environmental Protection Policy;

- if the change to a planning scheme or planning scheme policy is about a type of development that, before the commencement of this Bill as an Act would normally have been dealt with under a local law. This reflects the fact that compensation is not currently payable in respect of these matters. It is not anticipated that this exemption extend to matters directly concerning the use of land, as these matters would, before the commencement of this Bill as an Act, normally have been dealt with through planning schemes, even though local governments also made local laws dealing with them. An example of this type of development which would normally have been dealt with by local laws is filling or drainage of land;

- if the change is about the relationships between, location of, or physical characteristics of buildings, works or lots but the "yield" achievable is substantially the same.

Under subclause (2), yield for residential buildings work is substantially the same if a proposed residential building with a gross floor area of not more than 2000m² is reduced by not more than 15%. This definition is not intended to be taken as a benchmark other than for residential building work. In other situations, the issue of "substantially the same" must be determined in each case.

- "Yield" is also defined in this clause:
    - for buildings and work, as the gross floor area (also defined), or density of buildings or persons, or plot ratio (being the ratio of gross floor area to the area of the site); and
    - for reconfiguration, as the number of lots in a given area of land.

  For example, a change to a planning scheme that introduced standards about the physical appearance of buildings, but did not affect their size, or location, would not have a significant effect on yield, and would therefore not attract compensation claims. Also, a change to a planning scheme reducing the maximum allowable height of buildings on a site from 20 storeys to 10 storeys would significantly affect yield, and would therefore attract possible compensation claims. However, if the scheme was also amended at the same time to allow buildings to cover a greater area of the site, so that yield was not significantly affected, compensation would not be payable;
- if the change is about a designation made under chapter 2, part 6. Compensation for designation of private land takes the form of acquisition under the *Acquisition of Land Act 1967*, or as a result of a claim for acquisition on hardship grounds under clause 2.6.19. However, if in addition to or instead of designating land, the planning scheme was changed to reflect the proposed exclusive use of a site for public purposes, then compensation would be payable under clause 5.4.3 of this part;
- if the change is about the timing of development shown in a benchmark development sequence. A benchmark development sequence does not affect the use rights applicable to land, but merely introduces a preferred sequence of development as a basis for assessing the impacts of "out of sequence" or unanticipated development;
- if the change is about the matters that must be dealt with by an infrastructure changes plan as specified under clause 5.1.4(2). For example, these matters include the methodology for calculating the

charge, and the areas, or types of lot, work or use to which the charge applies;

- if the change removes or changes an item of infrastructure shown in the planning scheme. Clause 2.1.24 indicates that an intention to provide infrastructure shown in a planning instrument does not create an obligation on the State or a local government to provide the infrastructure. Similarly, this clause provides that the removal of an item of infrastructure shown on a planning scheme does not incur compensation. However, this does not affect other statutory or contractual obligations a local government may have under clause 3.5.35 (relating to conditions lessening the cost impacts of bringing forward certain infrastructure), or parts 1 and 2 of this chapter (dealing with infrastructure charges and infrastructure agreements respectively);
- if the change is aimed at ensuring that the wider community is not required to pay the costs of allowing development in locations where there is risk to persons or property from natural processes (such as flooding, land slippage and erosion), or where development would cause serious environmental harm. Serious environmental harm is defined in the *Environmental Protection Act 1994*.

This clause also indicates compensation is not payable:

- if the matter has previously been compensated under another Act;
- for anything done in contravention of this Bill; or
- if infrastructure shown in a planning scheme is delayed, not supplied, or supplied to a different standard than that stated in the planning scheme.

This clause also provides that if compensation is payable for a matter under both this Bill and another Act, the compensation must be paid under the other Act.

Compensation for erroneous planning and development certificates

Clause 5.4.5 establishes that reasonable compensation may be claimed if a person suffers financial loss because of an error or omission in a planning and development certificate. This person need not be the owner of the subject land as is required for claims for compensation under clauses 5.4.2 and 5.4.3.

Time limits for claiming compensation

Clause 5.4.6 establishes time limits within which claims for compensation must be made in each of the circumstances identified in:

- clause 5.4.2 (reduced value of interest in land)—6 months after decision on transitional application;
- clause 5.4.3 (interest in land being changed to public purpose)—2 years from change taking effect;
- clause 5.4.5 (erroneous planning and development certificates)—any time after certificate is given.

Time limits for deciding and advising on claims

Clause 5.4.7 establishes a time limit of 60 business days for a local government to decide a compensation claim and advise the claimant.

Deciding claims for compensation

Clause 5.4.8 indicates ways in which a claim for compensation may be decided by a local government. A local government must grant all of the claim, grant part of the claim and reject the rest of the claim, or refuse all of the claim. For example, a local government may grant part of a claim by agreeing to pay an amount of compensation less than that claimed. Also, if the claim for compensation covers several premises, a local government may grant part of the claim by agreeing to pay compensation for some of the premises only.

If a claim for compensation arose because a planning scheme indicated privately owned premises as being proposed for public purposes (other than through a designation under chapter 2), a local government may also decide a claim for compensation by giving a notice of intention to resume the land under the *Acquisition of Land Act 1967*, or deciding to amend the scheme so that the land can be used for a purpose other than public purposes.

Calculating reasonable compensation involving changes

Clause 5.4.9 establishes criteria for determining the reasonable amount of compensation payable. Compensation is determined by taking as a "starting point" the difference between the market value of the interest in

land immediately before the change came into effect and the market value of the interest immediately after the change came into effect. This value is then adjusted having regard to the following criteria:

- reasonable limitations or conditions that may have applied if the land had been developed under the superseded planning scheme.

  For example, if development of the land in accordance with the superseded planning scheme would have resulted in a visually intrusive building, or a use that generated excessive noise, and a development approval would have been required for the "highest and best use" of the land under the superseded planning scheme, the "before" value of the land should be ascertained taking into account the effect of any reasonable or relevant conditions of development approval;

- the effect on the value of the land of any wider benefits (including improved amenity) resulting from the change to the planning scheme.

  For example, if a site identified in a planning scheme for industrial purposes is changed to conform with surrounding residential development, the value of all properties in the locality may be expected to be positively affected, and this effect should be taken into account when determining the difference in value on the land subject to the claim;

- the positive effect of the change to the planning scheme on any land the claimant owns adjacent to the land subject to the claim;

- the effect of any other changes made to the planning scheme since the change, but before the transitional development application on which the claim is based was made. Changes made to the planning scheme after the transitional development application is made are not intended to be a consideration, as it is not intended that the local government should be able to address a claim for compensation (other than one arising from the indication of land as being required for a public purpose) by restoring previous entitlements;

  For example, the height limit applicable to a premises is changed to a degree that significantly reduces the value of the premises. Twelve months later, other changes are made to "good neighbour" provisions of the planning scheme in the vicinity of the premises that afford greater protection to views obtained from the site, or reduce other adverse impacts on amenity. The effect of these later changes must be taken into account in deciding the difference in market value of the land, and may

reduce the difference. Conversely, if the adverse effect of the height limit on the value of the premises was later worsened by other changes to the planning scheme in the vicinity of the premises the difference may be increased;

- the effect of any part approval of the transitional development application on which the claim for compensation is based.

This clause also provides that if the premises for which a compensation claim is made has become separate from other land, or ceased to become separate from other land, the amount of reasonable compensation payable must not be increased.

When compensation is payable

Clause 5.4.10 requires that if a local government decides to pay compensation, the compensation must be paid within 30 business days after the last day an appeal could have been made, or if an appeal is made, within 30 business days after the day the appeal is decided.

Payment of compensation to be recorded on title

Clause 5.4.11 requires notice of payment of compensation to be recorded on title.

PART 5—POWER TO PURCHASE, TAKE OR ENTER LAND FOR PLANNING PURPOSES

This part deals with:

- the powers of a local government to purchase or take land to help achieve the desired environmental outcomes in accordance with its planning scheme;
- the powers of a local government to purchase or take land for the purposes of necessary infrastructure or drainage in accordance with a development approval, if the land does not belong to the applicant, and the applicant, after taking reasonable steps, has been unable to reach an agreement with the owner allowing the development approval to be implemented; and

- the powers of an assessment manager to enter land to carry out works in similar circumstances, and with compensation for loss or damage incurred as a result of such works being undertaken.

Local government may take or purchase land

Clause 5.5.1. states that a local government may take land in either of two circumstances. The first is if it would help achieve the desired environmental outcomes of the planning scheme. The second is if the local government is satisfied the action is necessary to allow construction of infrastructure or the carriage of drainage needed for a development to proceed. In this case, the applicant must have taken reasonable steps but not been able to obtain an agreement with the landowner allowing those works to happen.

The clause also includes two other clarifying statements:

- any benefits that may also be derived by the applicant are immaterial if the necessary matters are satisfied; and
- the local government's power under this clause to purchase or take land as a constructing authority under the *Acquisition of Land Act 1967* includes the ability to purchase or take an easement under section 6 of that Act.

These provisions carry forward the effect of provisions in the current Act. The major difference is that the provisions in the Bill allow for acquisition of land for the purposes of infrastructure provision or facilitating drainage to cover all forms of development approval. They are not restricted to subdivision only as in the current Act.

Assessment manager's power to enter land in certain circumstances

Clause 5.5.2 states the circumstances when an assessment manager or its agent may, at all reasonable times, enter land to undertake works. This is if the assessment manager is satisfied that:

- implementing a development approval requires the undertaking of works on land not the subject of the application; and
- the applicant, despite reasonable steps, has been unable to obtain an agreement with the landowner enabling those works to proceed; and

- the action is necessary to implement the development approval.

Compensation for loss or damage

Clause 5.5.3 covers loss or damage as a result of entering land to undertake works under clause 5.5.2. Any person who incurs loss or damage in those circumstances is entitled to be paid reasonable compensation by the assessment manager. The claim must be made within 2 years and decided by the assessment manager within 40 business days. If the claimant is dissatisfied with the decision, an appeal may be made to the court (see clause 4.1.34).

As the assessment manager undertook such works on behalf of an applicant to implement a development approval, the clause also states that the assessment manager may recover from the applicant the amount of any compensation not attributable to the assessment manager's negligence.

PART 6—PUBLIC HOUSING

Division 1—Preliminary

Application of pt 6

Clause 5.6.1 states that this part applies to development carried out by or on behalf of the commission. The "commission" is defined in the next clause.

Definitions for pt 6

Clause 5.6.2 defines the terms "commission" and "Minister" for this part. Both definitions have meanings given by the *State Housing Act 1945*.

How IDAS applies to development by the commission

Clause 5.6.3 states that development under this part is, to the extent the development is self-assessable development or assessable development under a planning scheme, exempt development.

This means the planning scheme does not apply to the land. This exemption is justified on the basis of the benefits to the community of providing public housing as efficiently and cost-effectively as possible. However, despite the fact that it is exempt under the planning scheme, if development is made assessable or self-assessable under schedule 8, the provisions of schedule 8 still apply. For example, building work is declared under schedule 8 to be self-assessable development, and this applies to all building work carried out in the State.

Public notification is required if the development normally requires public notification (see clause 5.6.4 below). The public notification is the same as for a development application requiring impact assessment. Under the current Act there is no requirement for the commission to seek planning approval under local government planning schemes. In the situation where a proposed development is contrary to a planning scheme, a Ministerial rezoning is undertaken which involves public notification. (Rezoning ensures that should development subsequently become privately owned it conforms with the planning scheme).

Commission must publicly notify proposed development

Clause 5.6.4 requires the commission to publicly notify a proposed development if the public notification stage would otherwise have applied if the application had been made by an individual. The commission must also give the local government information about the proposal. The public notification requirements are varied so that reference to the assessment manager is a reference to the commission, and the commission need not give the local government a written notice that the requirements of this section have been complied with (clause 3.4.7).

The clause also states that the Minister must have regard to any submissions received following the notification, before deciding whether to approve the proposed development under the relevant Act (*State Housing Act 1945*, section 2).

Commission must advise local government about all development

Clause 5.6.5 provides for the commission to give the local government information about proposed development to which clause 5.6.4 above does not apply. This information, including the plans or specifications, must be

given before starting the development. This ensures local governments have prior knowledge of all of the commissions activities.

PART 7—PUBLIC ACCESS TO PLANNING AND DEVELOPMENT INFORMATION

This part covers the following:

- what is meant by the term "available for inspection and purchase" used in the Bill regarding public notification and ongoing availability of documents;
- the documents which local governments, assessment managers and the department must keep available for inspection and purchase;
- the documents which local governments, assessment managers and the department must keep available for inspection only;
- planning and development certificates—the information to be contained within each of three types, the time within which each must be given to the applicant, and the effect of a certificate in a proceeding.

Division 1—Preliminary

Meaning of "available for inspection and purchase"

Clause 5.7.1 gives the meaning of the term "available for inspection and purchase". This term is used in this part with respect to the availability of completed documents relevant to planning, development approvals and enforcement. It is also used in prescribing the requirements for public notification in the schedules dealing with the processes for making, amending or repealing (as relevant) planning instruments (schedules 1, 3 and 4). It is also used in clause 3.2.8 which deals with public scrutiny of development applications, and in the clause 6.1.48 which deals with the availability of local government registers applicable to the current Act.

A document is available for inspection and purchase if:

- whoever holds the document—a local government, an assessment manager, a concurrence agency, the department or the Minister, holds it in their respective office and any other place each has determined; and

- the document is available for inspection free of charge during business hours; and
- the document is available for purchase in whole or in part. A fee may be charged to cover the costs of making it available and, if relevant, the costs of postage.

It is noted in the clause that the Commonwealth *Copyright Act 1968* over-rides this Bill and may limit the copying of material subject to copyright.

Division 2—Documents available for inspection and purchase or inspection only

Documents local government must keep available for inspection and purchase

Clause 5.7.2 lists the documents a local government must keep available for inspection and purchase in their original forms or as certified copies. Such documents then are deemed to be public documents available for public scrutiny at all times. A certified copy is defined in the dictionary in schedule 10 and, in general terms, means a copy of the document certified as a true copy of the document by the relevant chief executive or chief executive officer.

In summary, the documents a local government must keep available are:

- of State significance—each applicable State planning policy;
- of Ministerial significance—any written directions to the local government to take action about a local planning instrument (clause 2.3.2); each notice about a designation of land (chapter 2, part 6);
- of regional significance—any terms of reference for a regional planning advisory committee of which the local government is a member or has elected not to be represented; each report of such a committee given to the local government since the immediately preceding planning scheme was made;
- of local significance—
    - the current planning scheme (including a consolidated scheme), each amendment and any proposed amendment which is proceeding following consideration of public submissions (schedule 1, section 16);

- any current temporary local planning instrument;
- any current planning scheme policy;
- each superseded local planning instrument;
- each report prepared stating the reasons why the local government decided to take no further action about its planning scheme (clause 2.2.4);
- each study, report or explanatory statement prepared in connection with the preparation of a local planning instrument (schedule 1, clause 6 (proposal for planning scheme), and clause 17 (report on submissions); schedule 2, clause 2 (statement of reasons for a temporary local planning instrument); schedule 3, clause 1 (explanatory statement about action regarding a planning scheme policy);
- each report of an independent reviewer given to the local government (chapter 2, part 2, division 2);
- each infrastructure agreement to which the local government is a party, or that has been given to the local government (part 2 of this chapter);
- each show cause notice and enforcement notice given by the local government (chapter 4, part 3);
- each enforcement order made by the court on the application of the local government (chapter 4, part 3).

Documents local government must keep available for inspection only

Clause 5.7.3 states that a local government must keep available for inspection only an official copy of this Bill when it commences as an Act and current every current regulation.

Documents assessment manager must keep available for inspection and purchase

Clause 5.7.4 lists the documents an assessment manager must keep available for inspection and purchase in their original forms or as certified copies. They include documents concerned with how development applications have been dealt with, including the role of the Minister(each

decision notice and negotiated decision notice; each written notice of a Ministerial call-in (clause 3.6.6); each Ministerial direction to attach conditions to a development approval (clause 3.6.2); each agreement about a condition of approval to which the assessment manager or a concurrence agency is a party: and other documents concerned with enforcement by the assessment manager as an assessing authority (chapter 4, part 3).

Documents assessment manager must keep available for inspection only

Clause 5.7.5 states that an assessment manager must keep available for inspection only an official copy of this Bill when it commences as an Act and every current regulation.

This clause also requires that the assessment manager keep available, for inspection only, a register of all concluded development applications (by way of a decision notice, lapse or withdrawal). The information required to be recorded for each application is specified. This relates to where it applies (the property description of the premises), what it is about (the type of development applied for), what other parties were involved (referral agencies), how the application was concluded (withdrawn, lapsed or decided), details about the decision (when it was made, what it was, whether there were concurrence agency conditions), and any changes to the decision by way of representations (negotiated decision notice under clause 3.5.17), minor change, or appeal.

Documents department must keep available for inspection and purchase

Clause 5.7.6 lists the documents the department must keep available for inspection and purchase in their original forms or as certified copies. Generally, these documents are the equivalent of what each local government must keep (clause 5.7.2), but on a State-wide basis: State planning instruments, Ministerial directions and development application call-ins, regional planning documents, reports of independent reviewers, and local planning instruments (including amendments).

Documents department must keep available for inspection only

Clause 5.7.7 states that the department must keep available for inspection only an official copy of this Bill when it commences as an Act and every current regulation.

Division 3—Planning and development certificates

Application for planning and development certificate

Clause 5.7.8 states that a person may apply to a local government for one of three types of planning and development certificate(limited, standard or full. What each contains is prescribed by the clauses that follow. An application must be accompanied by the fee set by resolution of the local government. The purpose of the certificate is to provide information applicable to specific premises on planning scheme provisions, infrastructure charges or agreements, and development approvals.

Limited planning and development certificates

Clause 5.7.9 states the information that must be contained in the limited planning and development certificate. Its purpose is to identify what general planning information applies to a specific site. This is in terms of the planning scheme provisions, designations for community infrastructure, any outstanding infrastructure charges. In some circumstances, the description of relevant planning scheme provisions may be quite detailed depending on how localised planning policy is over the subject area.

Standard planning and development certificate

Clause 5.7.10 states what must be contained in or accompany a standard planning and development certificate in addition to that contained in the limited certificate. This additional information covers:

- current development approvals(every decision notice or negotiated decision notice, details of any minor changes to the approval, any judgement or order of the court about the approval, any agreement to which the local government or a concurrence agency is a party about a condition of the approval;

- infrastructure agreements to which the local government is a party (part 2 of this chapter);
- proposed planning scheme amendments which are proceeding following consideration of public submissions (schedule 1, clause 16).

Full planning and development certificate

Clause 5.7.11 states what must be contained in or accompany a full planning and development certificate in addition to that contained in a limited and standard certificate. This additional information covers, if applicable to the premises in question:

- the current status of matters concerning:
    - fulfilment or non-fulfilment of works conditions;
    - fulfilment of obligations under an infrastructure agreement;
    - giving of or required payment of security under an infrastructure agreement;
- advice of any prosecution for a development offence;
- advice of any proceedings for a development offence.

The clause also states that the applicant may request that the full certificate only contain this additional information.

Time within which planning and development certificate must be given

Clause 5.7.12 states the time within which each type of planning and development certificate must be given after the day it was applied for:

- limited—5 business days;
- standard—10 business days;
- full—30 business days.

Effect of planning and development certificate

Clause 5.7.13 states that in a proceeding, a planning and development certificate is evidence of the information contained in the certificate.

This statement clarifies the status of planning and development certificates and recognises a potential function as the basis of private planning and development decisions which may later be a matter in a proceeding.

PART 8—ADMINISTRATION

Approved forms

Clause 5.8.1 states that the chief executive (DLGP) may approve forms for use under this Bill.

Regulation making power

Clause 5.8.2 states that the Governor in Council may make regulations under this Bill.

Application of State Development and Public Works Organization Act 1971, s 29

Clause 5.8.3 is included to clarify the relationship between the Bill and the *State Development and Public Works Organization Act 1971*, section 29.

Application of Judicial Review Act 1991

Clause 5.8.4 provides that the *Judicial Review Act 1991* does not apply to decision making under the Bill, and in particular, that the Supreme Court does not have jurisdiction to hear and determine applications made to it under part 3, 4 or 5 of the *Judicial Review Act 1991* (dealing with statutory orders of review, reasons for decisions, and prerogative orders and injunctions respectively).

This Bill provides broad appeal rights for administrative decision making under IDAS, and comprehensive declaratory powers in respect of other administrative decisions under the Bill. Both appeals and declaratory proceedings are brought in the Planning and Environment Court.

In particular, the declaratory powers under the Bill differ from those under the current Act in the following respects:

- declarations can be sought in respect of a comprehensive range of matters;
- declarations can be sought in respect of both past and future actions; and
- the court has the power to make an order about a matter for which it has made a declaration.

These comprehensive appeal, declarations and orders powers are, for the matters they cover, intended to provide a complete alternative to judicial review under the *Judicial Review Act 1991*. The Planning and Environment Court is a specialist jurisdiction with expertise in planning and development assessment matters, and can consequently deal with declaratory proceedings concerning these matters more efficiently than the Supreme Court could deal with them under the *Judicial Review Act*, without sacrificing the quality of decision making.

Section 12 of the *Judicial Review Act 1991* provides that the Supreme Court may dismiss an application for judicial review if another law makes adequate provision for a review of the matter. This clause effectively confirms that this Bill does provide an appropriate alternative avenue of review, thereby removing confusion, and preventing applicants making costly, time consuming and unsuccessful applications under the *Judicial Review Act.*

This clause does not curtail the rights of persons to have administrative decisions reviewed judicially. In fact, by expanding the declaratory jurisdiction of the Planning and Environment Court, persons seeking a review of administrative decisions under the Bill have been given greater access to a cost effective, specialist jurisdiction.

References to Planning and Environment Court etc. in other Acts

Clause 5.8.5 states that references in another Act to the Planning and Environment Court, a judge of that court, a building and development tribunal, or a referee as a member of that tribunal, are references to such entities, as the case may be, if the context permits.

Proceedings—Evidence

Evidence of planning instruments

Clause 5.8.6 states what is evidence of a planning instrument or a notice of designation in a proceeding.

Planning instruments presumed to be within jurisdiction

Clause 5.8.7 states that in a proceeding the competence of the Minister to make planning instruments and a local government to make local planning instruments is presumed unless the issue is raised.

CHAPTER 6—SAVINGS AND TRANSITIONALS, REPEALS AND CONSEQUENTIAL AMENDMENTS[21]

PART 1—SAVINGS AND TRANSITIONALS

This part deals with savings and transitional provisions for the current Act which will be repealed. As consequential amendments are made to other Acts that are to be integrated into the Bill's framework, additional transitional provisions will be included and the existing provisions will be refined as necessary to accommodate the effects of the consequentials.

A key objective of the Bill has been to ensure existing planning schemes (and interim development control provisions) prepared under the current Act are able to operate under the Bill and in particular, IDAS. This is to avoid local governments having to prepare new planning schemes before the Bill commences as an Act. However, IDAS is significantly different, both in concept and operation, from the existing planning approval system in place under the current Act. In order to achieve the objective it has been necessary to create transitional rules to allow existing planning schemes to be interpreted and operated under the Bill. These transitional rules will apply in a planning scheme area until the planning scheme has been amended to become, or has been replaced by, an IPA planning scheme.

Existing planning schemes will become "transitional planning schemes" and a transitional form of IDAS will operate. This transitional IDAS will operate as follows:

- development applications will be made and processed under IDAS (instead of applications being made for consent permits or other approvals under the current Act);
- the assessment and decision making criteria applying under the current Act will generally continue to apply in relation to assessments under the planning scheme;

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21 A reference to the 'current Act' is a reference to the *Local Government (Planning and Environment) Act 1990* which will be repealed when this Bill commences as an Act.

- decisions will be made under IDAS and approvals will be either preliminary approvals or development permits under IDAS.

This modified form of IDAS is necessary as the criteria specified in clauses 3.5.4, 3.5.5, 3.5.13 and 3.5.14 contemplate only planning schemes and codes made under the Bill.

Transitional planning schemes will have a life of 5 years (unless extended by the Minister) and may be amended during that period. As well, provision is made for transitional planning schemes and policies to be amended in ways that make them more consistent with IDAS but do not change the policy intents of the schemes (e.g. strategic plan objectives, zonings and zoning intents). Consistency amendments are able to be made using a streamlined process. This is included to assist local government's transition to the new system. The ability to amend transitional planning schemes in this way will assist local governments in making the practical implementation and understanding of the Bill easier.

Provision also is made for local governments to amend their transitional planning schemes in ways that allow them to be converted to full IPA planning schemes.

Local planning policies continue as "transitional planning scheme policies". The Bill also provides for local governments to make planning scheme policies (the instrument created under the Bill) to support transitional planning schemes. All amendments of transitional planning schemes, transitional planning scheme policies and planning scheme policies started after the Bill commences as an Act must follow the processes specified under the Bill.

This part also provides for transitional regulations to be prepared by the State for the purpose of allowing or facilitating achievement of the Bill's purposes, if the Bill does not make provision or sufficient provision. In particular, it is envisaged that such regulations may be necessary to deal with specific problems which may arise for the operation of individual transitional planning schemes under the general transitional provisions. A regulation will avoid the need for individual local governments to go through the process of amending their schemes, or bringing forward the making of a new scheme, in order to overcome a specific operational problem. A five year life for a transitional regulation is proposed, rather than the usual 1 year period, to match the life of a transitional planning scheme which it is likely to be supporting.

Other features of the savings and transitionals provisions may be summarised as follows:

- if the preparation of a scheme has commenced before the Bill commences as an Act, the local government may choose to continue preparation under the repealed Act or the new Act. The same applies to a scheme amendment in progress;
- for an IPA scheme, the ability to delay preparation of an infrastructure charges plan and operate under the current Act's infrastructure and headworks provisions for up to 5 years;
- State planning policies continue to have effect;
- applications for development in progress when the Bill commences as an Act, scheme amendments, staged rezonings and compensation, continue as if the current Act had not been repealed;
- the following matters relevant to the Planning and Environment Court continue: appointment of judges, court orders, rules of court, proceedings in progress;
- infrastructure agreements continue to have effect;
- delegations continue;
- local government registers must remain available for inspection and purchase;
- town planning certificates may continue to be used as evidence in a proceeding.

Division 1—Preliminary

Definitions for pt 1

Clause 6.1.1 defines terms used in this part.

Division 2—Planning schemes

Continuing effect of former planning schemes

Clause 6.1.2 states that planning schemes which exist before this Bill commences as an Act continue to have effect. However, provisions in the

scheme that are inconsistent with chapter 3 (IDAS) give way to the provisions in chapter 3.

Subclause (3) states that a prohibited use is taken to be an expression of policy that the use is inconsistent with the intent of a zone and is included to clarify the status of prohibited uses listed in the former planning scheme. This is because the Bill, under clause 2.1.23, states that a planning scheme may not prohibit development on, or the use of, premises.

What are transitional planning schemes

Clause 6.1.3 states that those provisions (including maps etc.) of one or more existing planning schemes in a local government area that will not be repealed under clause 6.1.2, will together comprise the "transitional planning scheme" for the area.

Transitional planning schemes for local government areas

Clause 6.1.4 states that the transitional planning scheme for a local government area is taken to be the IPA planning scheme for the area until a new IPA scheme is made. The purpose of this clause is to ensure that references elsewhere in the Bill to a "planning scheme" also include a transitional planning scheme.

Applying transitional planning schemes to local government areas

Clause 6.1.5 states that if a transitional scheme is made up of more than one scheme, the applicability of certain provisions to certain parts of the planning scheme area, are as they were in the former planning schemes.

Amending transitional planning schemes

Clause 6.1.6 states that a transitional planning scheme may be amended using the normal process for amending schemes under schedule 1. However, it remains a transitional scheme unless the amendment converts it to an IPA scheme in accordance with clause 6.1.8.

Amending transitional planning schemes for consistency with ch 3

Clause 6.1.7 provides for a local government to amend its planning scheme to make the scheme more consistent with IDAS. A streamlined amendment process is provided.

Planning schemes prepared under the current Act will be inconsistent with many of the operational aspects of IDAS. Clause 6.1.2 recognises this and provides for those inconsistent provisions to give way to the IDAS provisions. Operationally this will mean parts of planning schemes will no longer apply and other parts of schemes will continue to use terminology derived from the current Act.

Because the preparation of an IPA planning scheme involves a full review of land use and development policies in the planning scheme area, the transition to IPA schemes by local governments will occur over a number of years (up to 5 years is provided). However, in the interim it is recognised that some local governments may wish to amend their planning schemes simply to make the schemes more consistent with IDAS (e.g. by removing or redrafting inconsistent sections, terminology and the like). If the Minister is satisfied the amendments simply make the scheme more consistent and do not change the policy intent of the planning scheme (e.g. do not change the intent of the objectives of the strategic plan or do not change the zoning of land or the intent of zones, etc.) the Minister may allow a local government to amend its planning scheme using the streamlined process under this clause.

The provisions are included to assist both local government and the users of planning schemes to more easily transition to the new system.

Converting transitional planning schemes to IPA planning schemes

Clause 6.1.8 allows a local government to convert a transitional scheme to an IPA scheme through the scheme amendment process under schedule 1. Two additional requirements to this process are the written agreement of the Minister, and the inclusion of a statement to this effect in the public notice about the proposed amendment of the planning scheme (schedule 1, clause 12).

Some planning schemes, particularly those prepared in anticipation of the Bill, may be able to be converted through amendment rather than having to be started afresh. This clause recognises that possibility.

Preparation of planning schemes under repealed Act may continue

Clause 6.1.9 states that if immediately before this Bill commences as an Act, a local government was preparing a planning scheme, it may either:

- continue to prepare the scheme as if the current Act had not been repealed. This will produce a transitional planning scheme; or
- continue preparation in accordance with schedule 1 and follow at least the process stated in clauses 10 to 21, regardless of the stage which may have been reached in preparation. This will produce an IPA planning scheme. Clauses 10 to 12 cover the consideration of State interests, notification of the proposed scheme, consideration of and reporting on submissions, a decision about proceeding, reconsideration of State interests, a resolution about adoption, public notice of adoption and pubic access

The purpose of the clause is to provide local governments with a choice. For a variety of reasons a local government may wish to continue preparing a planning scheme under the current Act rather than convert to an IPA scheme. This is recognised and provided for.

Preparation of amendments to planning schemes under repealed Act may continue

Clause 6.1.10 states that if immediately before this clause commences, a local government was preparing an amendment of a planning scheme, it may:

- continue to prepare the amendment as if the current Act had not been repealed. This will produce an amendment of a transitional scheme; or
- continue preparation in accordance with schedule 1 and follow at least the process stated in clauses 10 to 21, regardless of the stage which may have been reached in the amendment process before commencement. This amendment will convert the scheme to an IPA planning scheme. Clauses 10 to 12 cover the consideration of State interests, notification of the proposed scheme, consideration of and reporting on submissions, a decision about proceeding, reconsideration of State interests, a resolution about adoption, public notice of adoption and pubic access.

Transitional planning schemes lapse after 5 years

Clause 6.1.11 states that all transitional planning schemes lapse 5 years after this Bill commences as an Act. However, the Minister may nominate a later date for a scheme by notice in the gazette.

The 5 year period is included to provide local governments and the State (which will participate in scheme making) with adequate time to transition to the new system. Five years is considered to be an acceptable time given the cost and complexity of preparing planning schemes.

Division 3—Interim development control provisions

Continuing effect of interim development control provisions

Clause 6.1.12 states that each interim development control provision will continue to have effect in the relevant local government area after the current Act is repealed, except that to the extent that the provision is inconsistent with IDAS it will be repealed once this Bill commences as an Act.

Division 4—Planning scheme policies

Continuing effect of local planning policies

Clause 6.1.13 states that each local planning policy will continue to have effect in the relevant local government area after the current Act is repealed, except that to the extent that the provisions of a policy are inconsistent with IDAS, they will be repealed once this Bill commences as an Act.

This is included to ensure existing policies supporting decision making continue in effect.

What are transitional planning scheme policies

Clause 6.1.14 states that the provisions of local planning policies that are not repealed under clause 6.1.13 are the transitional planning scheme policies. Planning scheme policies are the equivalent instruments under this Bill which have the role of supporting the local dimension of a planning scheme.

Transitional planning scheme policies for local government areas

Clause 6.1.15 states that the transitional planning scheme policies are taken to be the planning scheme policies for the area until an IPA scheme is made. This is significant for reference to the policies in chapter 3 (IDAS) in particular.

Amending transitional planning scheme policies

Clause 6.1.16 states that a transitional planning scheme policy may be amended using the normal process for amending planning schemes policies under schedule 3. However, the amended policy remains a transitional planning scheme policy.

Amending transitional planning scheme policies for consistency with ch 3

Clause 6.1.17 provides for a local government to amend a transitional planning scheme policy using a streamlined process if the policy is simply amended to be more consistent with IDAS and there is no change in the intent of the policy. This clause is similar in purpose to clause 6.1.7.

Repealing transitional planning scheme policies

Clause 6.1.18 provides for a local government to repeal a transitional planning scheme policy by resolution. The repeal takes effect from the day the resolution is made. Notice about the repeal resolution must be published in a local newspaper. If a policy is no longer relevant it is appropriate that a local government has the ability to repeal the policy.

Planning scheme policies may support transitional planning schemes

Clause 6.1.19 states that a local government may make a planning scheme policy to support a transitional planning scheme.

This clarifies that if a local government wishes to make new policies to support its transitional planning scheme it may do so by making planning scheme policies as provided under the Bill. It is <u>not</u> the case that planning scheme policies can only be prepared to support IPA planning schemes.

Planning scheme policies for infrastructure

Clause 6.1.20 allows local governments that have prepared IPA planning schemes to continue to use the infrastructure and headworks approach in place under the current Act for a transitional period (up to 5 years after the commencement of the clause). This provision is included to provide local governments with the flexibility to introduce an IPA planning scheme but without having to prepare an infrastructure charges plan (ICP) as part of the process of preparing their first planning schemes under the Bill. Local government has commented that the extra rigour involved in the preparation of an ICP could delay the introduction of an IPA scheme if an ICP is to be included. Accordingly this would delay the benefits flowing from the IPA schemes.

IPA planning schemes cancel existing planning scheme policies

Clause 6.1.21 states that if an IPA scheme is adopted or a transitional planning scheme is converted to an IPA scheme, all existing transitional planning scheme policies and planning scheme policies are cancelled from the day adoption is notified in the gazette. This is equivalent to clause 2.1.22 which states that all existing planning scheme policies are cancelled when a new scheme is adopted. It ensures that a planning scheme policy is always directly relevant to and supportive of the scheme to which it is attached. It is also consistent with the current Act.

Division 5—State planning policies

Continuing effect of State planning policies

Clause 6.1.22 states that each State planning policy made under the current Act and in force immediately before this Bill commences as an Act, continues to have effect and is also taken to be a State planning policy made under this Bill when it commences as an Act. This is significant for reference to State planning policies in chapter 3 (IDAS).

Division 6—Existing approvals and conditions

Continuing effect of approvals issued before commencement

Clause 6.1.23 states that each continuing approval (as defined in the clause) and any attached conditions have effect as though they were a preliminary approval or development permit, as the case may be.

The purpose of the clause is to both recognise existing approvals, permits and the like given under the current Act and to transition those approvals into approvals under the Bill.

The distinguishing feature as to whether the continuing approval is regarded as a preliminary approval or a development permit is whether the continuing approval authorises development to commence. The two types of approval are different and the definitions in clauses 3.1.5 are used to determine whether an approval transitions as a preliminary approval or a development permit.

For example, under the current Act, a staged subdivision requires an application to subdivide land in stages (section 5.9(1)) and a concurrent or subsequent application for the first stage (section 5.1). The approval for a staged subdivision does not authorise development to commence but approves an outline plan for subdivision having regard to a number of specified factors determining overall suitability. This is equivalent to a preliminary approval for reconfiguring a lot. Approval of a detailed application for subdivision allows the subdivision of land into separate titles to proceed. It authorises development to commence and is equivalent to a development permit for the reconfiguring of a lot.

Continuing with the subdivision example, another approval that is required for a subdivision (if the subdivision involves works) is an approval under section 5.2 of engineering drawings and specifications for the required subdivision works. This approval again authorises development to commence (i.e. the carrying out of the approved works) and is equivalent to a development permit for operational work under IDAS.

The table below shows which approvals, called “continuing approvals”, this clause applies to.

Type of approval	Relevant section of current Act	Nature of application made under current Act
Conditions set by certificates of compliance or similarly endorsed certificates	Section 4.1(5)	Application for a permitted use
Permit	Section 4.13(12)	Application for a consent use
Approval	Section 5.1(1)	Application to subdivide land (including subdivision incorporating a lake—additional matters for assessment under s5.10(1), see clause 6.1.25)
	Section 5.2(1)	Application for subdivision works
	Section 5.9(1)	Application to subdivide land in stages
	Section 5.11(1)	Application to amalgamate land
	Section 5.12(1)	Application for access easement to a road
Approval, permit (or other term) under a planning scheme	None—authority comes from planning scheme	Application for matter specified under scheme (e.g. relaxation of development standard)

A decision by a local government to support an application for consideration in principle under section 4.2 is not a binding decision and is not carried forward when this Bill commences as an Act. There is no equivalent approval under IDAS.

Rezonings are dealt with in clause 6.1.24.

Certain conditions attach to land

Clause 6.1.24 states that conditions set in relation to a continuing approval attach to the land on and from the time this Bill commences as an Act, and are binding on successors in title.

If land is rezoned under the current Act, the rezoning is not transitioned as a type of development approval. Rather, when the rezoning is gazetted, the scheme is changed in accordance with the approved amendment. This amendment is part of the transitional planning scheme. Conditions attached to the rezoning approval given by the local government attach to the land and bind the owner and the owner's successors in title (as they do now under the current Act).

Division 7—Applications in progress

Effect of commencement on certain applications in progress

Clause 6.1.25 states that if an application were made for a matter mentioned in clause 6.1.23(1) before this Bill commences as an Act, processing must continue in accordance with the current Act. However, any approval issued is either a preliminary approval or development permit as the case may be. This is consistent with clause 6.1.23(2).

Effect of commencement on other applications in progress

Clause 6.1.26 states that applications under the current Act for scheme amendments (section 4.3(1)) and staged rezonings (section 4.6(1) and 4.9(1)) in progress when this clause commences must be processed under the former Act.

Applications for compensation continue

Clause 6.1.27 states that applications for compensation in progress when this clause commences continue under the former Act.

Division 8—Applications made or development carried out after the commencement of this division

IDAS must be used for processing applications

Clause 6.1.28 declares that all development applications made after the commencement of IDAS to which a transitional planning scheme or interim development control provision applies, must be made and

processed under this Bill, i.e. under IDAS. If an application under the current Act would have required public notification, then the application must be processed as if it were an application requiring impact assessment. If an application did not require public notification, then the application must be processed as if it were an application requiring code assessment. That is, the same process is followed but the matters for assessment derive from the current Act rather than from this Bill. See clause 6.1.29. Schemes under the current Act have not been prepared to advance the purpose of the Bill or to contemplate the types of assessment introduced by the Bill. Accordingly, it is not appropriate that applications be attempted to be transitioned as applications for code or impact assessment.

This clause also includes a definition of "assessable development" for the purposes of applying IDAS to a development application covered by this clause. It includes:

- development declared under schedule 8, part 1 to be assessable development; and
- to the extent that it is not inconsistent with that schedule, development that under the current Act would have required an application to be made for continuing approval (see clause 6.1.23), or for an amendment of a planning scheme or the conditions attached to an amendment (section 43(1)).

The clause is necessary because under IDAS, due to the integration of State approval processes (such as approvals under the *Queensland Heritage Act 1992, Environmental Protection Act 1994* etc), schedule 8 plays a role in determining the scope of assessable development under the Bill. A transitional planning scheme that conflicts with schedule 8 is of no effect to the extent of the conflict.

Assessing applications *(Clause 6.1.29)* and

Deciding applications *(Clause 6.1.30)*

These clauses apply respectively to the assessing and deciding aspects of development applications. They state that the clauses in chapter 3 relevant to assessing and deciding applications requiring code assessment or impact assessment (clauses 3.5.4, 3.5.5, 3.5.13 and 3.5.14) do not apply. Instead the clauses refer to the sections of the current Act which would have applied had the application been made under that Act. With respect to assessment,

clause 6.1.29 also includes a list of standard matters which apply to the extent that they are relevant to the application, including:

- the common material;
- the transitional planning scheme;
- transitional planning scheme policies;
- any planning scheme policy made after commencement;
- all State planning policies;
- section 8.2(1) of the current Act;
- for a local government area where an interim development control provision is in force(the interim development control provision.

These standard matters are included for comprehensiveness and consistency, and because the current Act does not always explicitly state such matters.

With respect to different types of applications, the table below indicates how an application is to be processed, the relevant sections under the current Act for making and deciding the applications, and the relevant matters for assessment.

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Development requiring amendment of the planning scheme under section 4.3(1) before the development may be carried out. *Example—* *Proposed residential estate on rural zoned land*	assessable development requiring impact assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 4.4(3) of the current Act • any other matter to which regard would have been given under the current Act.	sections 4.4(5) and (5A)
Town planning consent under section 4.12(1).	assessable development requiring impact assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • any other matter to which regard would have been given under the current Act.	section 4.13(5) and (5A)

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Subdivision under section 5.1(1).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.1(3) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.1(6) and (6A)
Subdivision engineering plans under section 5.2(1).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.2(2) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.2(4)

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Staged subdivision approval under section 5.9(1).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.9(3) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.9(6) and (6A)
Subdivision under section 5.1(1) where section 5.10(1) applies (i.e. subdivision incorporating a lake)	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.1(3) and 5.10(2) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.1(6) and (6A)

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Amalgamation of land under section 5.11(1).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.11(3) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.11(5)
Access easement under section 5.12(1).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • the matters stated in section 5.12(4) of the current Act • any other matter to which regard would have been given under the current Act.	section 5.12(4)

Application that would have been made under the current Act and the relevant section (clause 6.1.23)	**How application is to be processed under IDAS—as if it were an application for: (clause 6.1.28)**	**Matters assessment manager must have regard to when assessing application under IDAS (clause 6.1.29)**	**Relevant section under which application would have been decided under the current Act (clause 6.1.30)**
Setting of conditions (permitted use) or the issue of a certificate of compliance or similarly endorsed certificate under section 4.1(5).	assessable development requiring code assessment	• the common material • the transitional planning scheme • any planning scheme policy made after commencement • all State planning policies • section 8.2(1) of the current Act • any other matter to which regard would have been given under the current Act.	not applicable—decided under IDAS, except that despite clause 3.5.11(1)(c) an application may not be refused. Also, if not decided within the decision making period, the application is taken to have been approved without conditions, determined to comply or similarly endorsed, as the case may be.

Conditions about infrastructure for applications

Clause 6.1.31 establishes some rules about dealing with infrastructure related issues when operating under:

- a transitional planning scheme; or
- an IPA planning scheme that does not have an infrastructure charges plan; or
- an IPA planning scheme that does not have a benchmark development sequence.

For transitional planning schemes and IPA planning schemes that do not incorporate an infrastructure charges plan, the clause provides for local governments to impose conditions about land for parks, works and headworks in the same way as under the current Act. This provision applies for 5 years after the commencement of the section.

The provision is included to provide flexibility for local government in its transition to the new system. Without this clause local governments would be unable to charge for infrastructure unless they had infrastructure charges plans prepared under the Bill. It is recognised that the preparation of these

plans will take time and that appropriate transitional provisions need to be in place to ensure the move to infrastructure charges under infrastructure charges plans occurs as smoothly as possible. (See also the notes to clause 6.1.20).

For IPA planning schemes that do not have benchmark development sequences, the clause states that the explicit provisions dealing with benchmark sequences and the ability to impose conditions to lessen the cost impacts of supplying infrastructure do not apply. This is appropriate as the provisions under clause 3.5.35 relating to the ability to impose conditions to lessen the cost impacts of supplying certain infrastructure (such as State schools infrastructure and the like) is dependent on an appropriate benchmark development sequence being in place so that a proper assessment of cost impacts may be made.

Conditions about infrastructure for applications under interim development control provisions or subdivision of land by-laws

Clause 6.1.32 The notes to clause 6.1.31 relating to transitional planning schemes are equally applicable to this clause.

Conditions about infrastructure for applications about reconfiguring a lot

Clause 6.1.33 deals with the amount of the contribution for headworks payable for certain applications for reconfiguration. The clause carries forward a provision under the current Act applying to land zoned before a stated date in 1985 that has not yet been subdivided but which may be subdivided as a result of rezoning. The provision freezes the amount of the headworks payable at the time of subdivision to the amount applying when the land was rezoned.

The freezing of the headworks payments is protected for at least 2 years. However, beyond that time if a local government introduces an infrastructure charges plan the local government may impose the charge fixed under that plan. This is considered to be an acceptable compromise. It provides affected land owners with a reasonable amount of time to carry out development under the old headworks arrangements. Considerable time has now elapsed since the provision was introduced in 1985 and the cost shortfalls that the affected local governments (and their local communities) must meet in providing the infrastructure to service these subdivisions are increasing as time passes.

Consequential amendment of transitional planning schemes

Clause 6.1.34 states that a transitional planning scheme must be amended to reflect a development approval if such an approval would have first required an amendment of the scheme under the current Act. This must be done within 20 business days of the approval taking effect.

It is normal under the current Act for planning schemes to be structured to require rezoning as a precursor to subdivision. Under IDAS the rezoning mechanism is not continued. However, for these types of planning schemes it is reasonable for the zoning of land to be kept consistent with approved development.

Self-assessable development under transitional planning schemes

Clause 6.1.35 states that self-assessable development to which a transitional planning scheme or an interim development control provision applies must comply with applicable codes. "Applicable codes" is defined in division 1 of this part to mean the standards or requirements applying to development under such a scheme or provision. Consistent then with the general approach to transitional matters of bringing across current considerations, a self-assessable development must comply with the same matters as it would under the current Act.

The clause also includes a definition of "self-assessable development" for the purposes of this clause. The effect of the definition is to pick up many of the "column 3a" as-of-right uses in current planning schemes. This is because under many schemes now, column 3 uses are structured in such a way that while an application is not required the development still must comply with standards or requirements stated in the scheme, such as car parking standards, set backs and the like.

Division 9—Planning and Environment Court

Appointments of judges continue (*Clause 6.1.36)*

Court orders continue (*Clause 6.1.37)*

Rules of court continue (*Clause 6.1.38)* and

Proceedings started under repealed Act continue (*Clause 6.1.39)*

These clauses state that the following matters in relation to the Planning and Environment Court continue after commencement of this Bill as an

Act, as they were immediately before the commencement:

- the appointment of judges who constituted the Planning and Environment Court—until a further notice is gazetted;
- court orders. They may be discharged or amended by the court;
- rules of court—as if they were made under clause 4.1.10. They may be amended or repealed;
- unfinished proceedings before the Planning and Environment Court—as if the current Act had not been repealed.

This clause ensures the court continues in operation unaffected.

Division 10—Miscellaneous

Application of ch 1, pt 4, div 3

Clause 6.1.40 states that planning scheme provisions making development assessable or self-assessable do not apply to development carried out by the State for 2 years. Infrastructure charges also do not apply to the State during this period.

This clause introduces a transition period for the State to allow State entities to designate land under chapter 2 where necessary. Once land is designated planning scheme provisions and infrastructure charges also do not apply.

This approach is consistent with the approach adopted for other transitional situations. The Bill introduces a range of major reforms in a number of areas—development assessment, planning, private certification etc—and it is important that adequate time is given to the entities affected by the Bill to gear up for the changes so that the impacts on the delivery of services and on the general public are minimised.

Application of ch 2, pt 2, div 2

Clause 6.1.41 states that chapter 2, part 2, division 2 dealing with independent reviews of local planning instruments applies as if a transitional planning scheme were an IPA planning scheme. This means that from the commencement of chapter 2, part 2, division 2 (review by independent reviewer) a person will be able to request a review of part of a transitional

planning scheme in the same way the person could seek a review of part of an IPA planning scheme. This approach has been adopted in the interests of consistency and fairness.

Applications of ch 2, pt 3

Clause 6.1.42 states that chapter 2, part 3 (in so far as the Minister may direct a local government to amend a planning scheme or repeal a transitional planning scheme policy) applies to transitional planning schemes and transitional planning scheme policies.

Application of ch 2, pt 6 for Transport Infrastructure Act 1994

Clause 6.1.43 provides a power for the Minister administering the *Transport Infrastructure Act 1994* to designate land using the streamlined process under schedule 7 for the land listed in the clause. This will allow the rapid integration of transport infrastructure into the framework of the Bill.

Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances

Clause 6.1.44 provides a limited power for certain development approval conditions to be amended by the assessment manager or a concurrence agency.

IDAS is about the creation of a single development assessment system. Some of the existing assessment and approval systems to be integrated into IDAS currently have scope for conditions to be varied after they are issued and without the agreement of the holder of the approval (e.g. the *Environmental Protection Act 1994*, section 50 makes provision for license conditions to be varied in certain stated circumstances). When these systems are integrated, the separate systems cease to exist (in so far as they relate to development related activities). Requirements that once would have been imposed as conditions on an environmental license would instead be imposed as environmental management conditions on a development approval. So that IDAS provides assessment managers and concurrence agencies with the legislative tools necessary to effectively regulate and manage development and the effects of development, it is necessary that the Bill contain provisions to mirror those currently in place in other legislation.

However, the clause is drafted to limit the scope of the clause to powers in place at the time integration occurs. The clause does not extend the power to areas where such a power does not exist now. For example, there is no power under the current Act for a local government, of its own decision, to amend a planning approval. This clause does not change that situation. If there is no power now, there is no power under IDAS.

Infrastructure agreements under repealed Act

Clause 6.1.45 states that an infrastructure agreement made under part 6, division 2 of the current Act which is in force when this Bill commences as an Act continues to have effect, as if the current Act had not been repealed. By continuing agreements in effect unchanged, all contractual arrangements are protected. This means all allowable actions under the current Act in relation to agreements are protected, including the ability for an agreement between a local government and another party to limit the future discretion of the local government.

Local Government (Robina Central Planning Agreement) Act 1992

Clause 6.1.46 states that despite the repeal of the *Local Government (Planning and Environment) Act 1990*, that Act still applies to Robina. This is because Robina is covered by the *Local Government (Robina Central Planning Agreement) Act 1992* and an agreement that is given the force of law by the Act.

Under the Robina Act the current Act is called up but the agreement under the Act alters certain of the application and approval processes in the current Act. Because of these procedural changes it is not possible to rely on the normal transitional provisions in chapter 6 when the current Act is repealed. In order to bring the Robina land into the framework of the legislation it will be necessary to consequentially amend the Robina Act and agreement and prepare specific transitional provisions.

It is proposed to continue the current Act in existence for Robina until 31 December 2000. This is to avoid creating uncertainty and confusion in the area covered by the Robina Act with the commencement of the Bill. Any amendments to the Robina Act and agreement to bring it into the framework of the Bill, and to extend to the land the benefits of IDAS and private certification, will need to be carried out in consultation with the affected parties. A three year period is proposed to allow this to occur.

Delegations continue until withdrawn

Clause 6.1.47 states that a delegation made before this clause that is necessary to give effect to this part continues on and after commencement until specifically withdrawn.

Registers must be kept available for inspection and purchase

Clause 6.1.48 states that registers established and kept under the current Act must be kept for inspection and purchase under this Bill. See chapter 5, part 7, divisions 1 and 2 for requirements under this Bill. This is to ensure the public continues to have access to information relevant to the current Act.

Town planning certificates may be used as evidence

Clause 6.1.49 states that in a proceeding, a town planning certificate issued under the current Act is evidence of the matters contained in the certificate. See chapter 5, part 7, division 3 for requirements under this Bill for planning and development certificates.

Right to compensation continued

Clause 6.1.50 makes clear that if a right to compensation existed under the current Act, the person may exercise that right even though the Act has been repealed. This clause is included to clarify and amplify the protections given under the *Acts Interpretation Act 1954*, section 20.

Under the current Act if a right to compensation exists a person has three years after the date on which the claim arose to make the claim. If the current Act is repealed part way through that three year period, this clause makes it clear that the person may still make the claim and the balance of the three year period is still available within which to make the claim.

Orders in council about Crown land under repealed Act

Clause 6.1.51 deals with existing orders in council about Crown land made under the current Act and two repealed Acts. The clause declares that all orders covered by the clause (i.e. those still in force) continue in force as if the orders were regulations under the Act. The effect of this is to allow the

orders to be amended or repealed as appropriate with the approval of the Governor in Council. Legal advice is that without such a provision in the Bill, an order is not able to be amended or repealed if the land is no longer Crown land. This has caused problems in the past as it has effectively constrained the use and development potential of land covered by an order.

Transitional regulations

Clause 6.1.52 states that transitional regulations may be made for the purpose of allowing or facilitating achievement of the Bill's purposes if the Bill does not make provision or sufficient provision. The clause states that a transitional regulation may have retrospective operation to a date not earlier than the commencement day, while it expires 5 years after it is made (subject to this clause expiring 5 years after this Bill commences as an Act).

It is envisaged that transitional regulations may be required to deal with specific problems which may arise for the operation of individual transitional planning schemes under the general transitional provisions. A regulation will avoid the need for individual local governments to go through the process of amending their schemes, or bringing forward the making of a new scheme, in order to overcome a specific operational problem. A five year life for a transitional regulation is proposed, rather than the usual 1 year period, to match the life of a transitional planning scheme (under clause 6.1.11) which it is likely to be supporting.

PART 2—REPEALS

Act repealed

Clause 6.2.1 repeals the *Local Government (Planning and Environment) Act 1990.*

PART 3—CONSEQUENTIAL AMENDMENTS

Acts amended—sch 9

Clause 6.3.1 states that schedule 11 contains the names of the Acts that will be consequentially amended by this Bill.

SCHEDULES[22]

Schedules 1, 2 and 3 prescribe the processes for making or amending the three local planning instruments that this Bill creates—a planning scheme, a temporary local planning instrument and a planning scheme policy.

Schedule 4 prescribes the process for making or amending a State planning policy.

Schedule 5 lists types of infrastructure defined as community infrastructure for which land may be designated.

Schedule 6 prescribes the process for Ministerial designations.

Schedule 7 prescribes an alternative process for Ministerial designations if consultation has previously been carried out.

Schedule 8 specifies the types of development that are exempt, assessable and self-assessable development as determined by the State.

Schedule 9 lists consequential amendments to Acts necessary for the implementation of IDAS. Due to the scale of the amendment program this schedule will be completed progressively.

Schedule 10 contains the Bill's dictionary.

SCHEDULE 1

PROCESS FOR MAKING OR AMENDING PLANNING SCHEMES

One of the main elements which distinguishes the processes for making planning schemes and planning scheme amendments under the current Act and under this Bill, is the respective **roles of local and State governments** in their preparation and introduction. Under the Bill, planning schemes, although a means for integrating local and State planning policies, are local

22 A reference to the 'current Act' is a reference to the *Local Government (Planning and Environment) Act 1990* which will be repealed when this Bill commences as an Act.

government instruments, both prepared and introduced by resolution of local governments. The role of the State government is to ensure that a planning scheme does not adversely affect any State interest. In this respect the Minister may impose conditions that a local government must comply with in making a scheme. Under the current Act a local government applies to the Governor in Council for approval of the completed scheme. Approval of a scheme by the Governor in Council includes the power to modify the scheme from that advertised.

Another significant difference is with respect to **public consultation**. Under the Bill submissions from the public are sought on two occasions (each a minimum of 40 business days)—at an early stage when a statement on the proposal for preparing the scheme is available, and then following preparation of a proposed scheme. This second stage of consultation is concluded with a report sent to all submitters on how, in general terms, all submissions were dealt with. Under the current Act, when a local government resolves to prepare a scheme there is no requirement for preliminary notification, and public consultation (minimum 60 business days) occurs only before an application is made for approval by the Governor in Council.

A further distinction between the process under the current Act and what is proposed under the Bill, is the current requirement for a **planning study** to accompany a planning scheme. A planning study must assess certain specified matters, such as topography, regional land use patterns, infrastructure systems and features of the population. A study of this type is not required under this Bill. The need for and nature of any detailed supporting material will be at the discretion of each local government to determine. However, the Bill does emphasise the importance of identifying, from the outset, the proposal for preparing a planning scheme or a planning scheme amendment, i.e. which matters are expected to be addressed and how core matters are intended to be addressed. A statement on the proposal is required to be available as part of the preliminary consultation during the preparation of a planning scheme. In addition, for a planning scheme amendment, the public notice must include a statement of the purpose and general effect of the amendment. Because of the relative complexity of a complete planning scheme, such a statement is not appropriate in a notice of a planning scheme.

The process for making or amending planning schemes may be summarised as follows:

- preparation of a statement on the proposal for preparing the planning scheme or amendment;
- preliminary consultation with the public (may not apply in certain circumstances);
- (preparation of a proposed scheme);
- resolution proposing planning scheme or decision not to proceed;
- consideration of State interests by the Minister;
- if relevant—modification of the proposed scheme in response to Minister's consideration;
- second round of public consultation (may not apply in certain circumstances);
- consideration of submissions and preparation of a report for submitters;
- decision on proceeding with proposed planning scheme;
- (possible preparation of a modified scheme in response to submissions);
- second consideration of State interests by the Minister;
- if relevant—modification of the proposed scheme in response to Ministers second consideration;
- adoption of planning scheme or decision not to proceed;
- notification in newspaper and gazette;
- copies of planning scheme and notice to chief executive (DLGP).

The parts of the process shown in brackets are implicit and not prescribed by schedule 1, as there are no statutory requirements relevant to their performance.

Matters to note about the process are:

- it may be shortened for certain amendments. Requirements concerned with the preparation of a statement on the proposal and preliminary consultation on that statement can be omitted if there has already been adequate public consultation on the issue, or public consultation on the proposal would nor be in the public interest. Also, these and other requirements concerned with consideration of State interests and public consultation on the proposed amendment can be omitted if the amendment is a minor amendment (as defined);

- some amendments of planning schemes are not required to be considered a second time by the Minister;
- the requirements specified for consultation are minimum requirements and local governments are not limited as to how they may conduct the consultation or to the periods of time specified;
- there is a link between this process and the process for review of planning schemes under chapter 2, part 2. If a local government resolves not to proceed with a planning scheme following public consultation and consideration of submissions, or following the Minister's second consideration of State interests, it is taken to be a decision not to review its scheme. In that case, the scheme making process under this schedule requires that a report under clause 2.2.3 be prepared on its decision, and under clause 2.2.4 this report is publicly notified.

There is no process for the repeal of a planning scheme. Following review, a planning scheme may remain as it is, or be amended or replaced.

PART 1—PRELIMINARY CONSULTATION AND PREPARATION STAGE

Resolution to prepare planning scheme

Clause 1 states the first step required in the process(resolution by a local government to prepare a proposed planning scheme. A reference to a planning scheme in the schedule includes an amendment unless a provision states otherwise.

Local government may shorten process for certain amendments

Clause 2 requires or allows a local government to shorten the process for certain planning scheme amendments. If the amendment is being prepared because of a decision by the local government or the Minister about a recommendation of a reviewer carrying out an independent review, the local government must start the amending process at clause 9(2) (the local government resolves to amend its planning scheme). The local government may omit clauses 3 to 8 (concerned with the preparation of a statement on the proposals and preliminary consultation on that statement) and commence at clause 9(2) if:

- the local government considers there has already been adequate public consultation about the matter the subject of the amendment. For example, this may arise if the purpose of an amendment is to implement a State planning policy; or
- the local government considers that consultation would not serve the public interest because there is no alternative to the proposal.

Both clauses 3 to 8 and clauses 10 to 18 (concerned with consideration of State interests and public consultation on the proposed amendment) can be omitted if the amendment is a minor amendment.

Statement of proposals for preparing planning scheme

Clause 3 requires the local government to prepare a statement of its proposal for preparing the planning scheme. This statement must identify the matters it is anticipated the scheme will address, and how it is intended that core matters will be addressed in preparing the scheme. The local government must send a copy of the statement to the chief executive (DLGP) and to each adjoining local government. This provides the opportunity for different authorities to cooperate at this formative stage in dealing with matters of common interest.

Core matters for planning schemes

Clause 4 states the three core matters, referred to in clause 3(2), for preparation of a planning scheme:

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

"Land use and development" and "valuable features" are defined inclusively in subclauses (2) and (3) respectively. "Infrastructure" is defined in the dictionary in schedule 10. "Development constraints" in subclause (2)(a) may include such matters as identification of areas subject to flooding, areas containing acid sulphate soils, etc.

Public notice of proposal

Clause 5 requires that a notice be published at least once in a local newspaper about the statement produced for clause 3. This provides the opportunity for the general public to be aware of the local government's proposal to prepare a planning scheme. The notice must also be displayed in a conspicuous place in the local government's public office for all of the preliminary consultation period. This period is for at least 40 business days after the first newspaper publication of the notice.

The Bill establishes standard requirements for public notification for the purpose of consultation on a proposal. Generally, a notice must state:

- the name of the relevant local government;
- the matter, the subject of the notification;
- that relevant material is available for inspection and purchase;
- a contact telephone number for information;
- that written submissions about any aspect of the matter may be made to the local government by any person;
- the period during which submissions may be given;
- the requirements for making a properly made submission.

In this case, the subject of the notification is the statement of the proposal for preparing a planning scheme, and the material available for inspection and purchase is the statement.

The term "available for inspection and purchase" is defined in clause 5.7.1. A document is available for inspection and purchase if:

- whoever holds the document—a local government, an assessment manager, a concurrence agency, the department or the Minister, holds it in their respective office and any other place each has determined; and
- the document is available for inspection free of charge; and
- the document is available for purchase in whole or in part. A fee may be charged to cover the costs of making it available and, if relevant, the cost of postage.

Public access to statement of proposal

Clause 6 requires the local government to have a copy of the statement of the proposal available for inspection throughout the consultation period.

Consideration of all submissions

Clause 7 requires the local government to consider every properly made submission about an aspect of the proposal. A "properly made submission" is a term defined in the dictionary in schedule 10. Necessary elements relate to the submission:

- being in writing;
- being signed by each person who made the submission;
- being received on or before the last day of the preliminary consultation period;
- stating the name and address of each person who made the submission;
- stating the grounds of the submission and the facts and circumstances relied on in support of those grounds;
- being made to the local government or Minister, depending on who is proposing the planning scheme or amendment.

The terms "writing" and "word" are defined in section 36 of the *Acts Interpretations Act 1954*. Both terms provide for wide interpretation by submitters.

Following consideration of submissions on the proposal for preparing a planning scheme, a local government is then well informed to proceed with the preparation of a proposed planning scheme. This step is not stipulated in the process as there are no administrative requirements governing its performance.

Minimum requirements for consultation

Clause 8 states that clauses 5, 6 and 7 describe only minimum requirements for public consultation, not maximum. Examples of further consultation include sending copies of the statement directly to interested persons, and holding public meetings to allow for verbal comments on the proposal to be taken into consideration. Other possibilities for expanding on

public consultation include increasing the number of venues where the statement is publicised and copies are available (e.g. libraries, shopping centres), making statements available for purchase, extending the consultation period, and using other media used for presentation of the statement (e.g. videos, displays).

Resolution proposing planning scheme

Clause 9 states that if a local government has followed the specified process in preparing a planning scheme, it must, by resolution, either propose a planning scheme or decide not to proceed. This is the final step in the preparation stage of a planning scheme. It signifies that the proposed scheme is finished and ready for consideration, firstly by the Minister in terms of State interests, then by the public, and once again by the Minister.

If a local government resolves not to proceed with preparation of the planning scheme it is taken to be a decision to take no action under chapter 2, part 2 to review its scheme (clause 2.2.2). Under that part, if such a decision is made, the local government must prepare a report on the review of the planning scheme, including the reasons for the decision, and publish a notice about the report.

PART 2—CONSIDERATION OF STATE INTERESTS AND CONSULTATION STAGE

There are two distinct aspects to this stage. One concerns the consideration of the proposed scheme by the Minister in terms of State interests, and the second concerns consideration of the scheme by the public. Consideration of State interests occurs twice—before and after public consultation.

Minister may allow process to be shortened for certain amendments publicly consulted

Clause 10 allows the Minister to shorten the process for certain planning scheme amendments by advising a local government that it need not comply with clauses 12 to 18 (concerned with public consultation and reconsideration of State interests). To do this the Minister must be satisfied

that there has already been adequate public consultation about the matter, the subject of the amendment, and the proposed amendment reflects:

- a matter on which a regional planning advisory committee has made a recommendation; or
- a decision previously made by an assessment manager on a development application; or
- a standard or policy of the State; or
- a decision of the local government or the Minister to take action on a report made by an independent reviewer.

Ensuring proposed planning scheme does not adversely affect State interests

Clause 11 requires the Minister upon receiving notice of a proposed planning scheme to consider whether or not the proposed planning scheme would adversely affect State interests. If the Minister considers that State interests would be adversely affected by the scheme in its proposed form, the Minister may decide to impose conditions on the local government to avoid the adverse effects. The conditions may address the content of a scheme, perhaps the nature of a policy or the means of achieving a policy, or the public consultation process.

The Minister must then advise the local government that it may publicly notify the proposed planning scheme subject to the scheme complying with the Minister's conditions for the content of the scheme, or for providing greater public access during the notification process than is required by the schedule.

In the case of an amendment of a planning scheme the Minister may also advise the local government that it need not comply with that part of clause 18 which requires a second consideration of State interests. Alternatively, the Minister may advise the local government that as a consequence of the Minister's considerations, it may not proceed further with the amendment.

The local government cannot proceed to public notification of the proposed planning scheme or the amendment until it has complied with all conditions.

Public notice and access of proposed planning scheme

Clause 12 requires publication of a notice in a local newspaper, and display of the notice in a conspicuous place in the local government's public office during the consultation period. This is the first step in the second phase of public consultation for planning scheme preparation. The consultation period is for a minimum of 40 business days. The minimum consultation period may be reduced from 40 to 20 business days for a proposed planning scheme amendment.

The notice requirements are consistent with those established in the Bill for the purpose of public consultation on a proposal. See notes on clause 5. Some specific requirements relate to scheme amendments(the need to state the purpose and general effect of the proposed amendment, and the description of the applicable land if the amendment applies only to part of the planning scheme area.

The term "available for inspection and purchase" is defined in clause 5.7.1. See notes on clause 5.

Public access to proposed planning scheme

Clause 13 requires the local government to have a copy of the proposed planning scheme available for inspection for all of the consultation period.

Consideration of all submissions

Clause 14 requires the local government to consider every properly made submission. about the proposed planning scheme. This clause is equivalent to the consideration of submissions following preliminary consultation in clause 7.

Minimum requirements for consultation

Clause 15 states that clauses 12, 13 and 14 describe only minimum requirements for public consultation, not maximum. This clause is equivalent to clause 8 which is concerned with requirements for preliminary consultation.

Decision on proceeding with proposed planning scheme

Clause 16 states that after considering every properly made submission, the local government, by resolution, must decide whether to proceed with the proposed planning scheme as notified, or to proceed with a modified scheme, or not to proceed at all.

If it is decided to modify the earlier scheme, the local government will then proceed with redrafting, although this is not stipulated in the process and there are no administrative requirements for its performance. However, this clause does state that if the local government considers the proposed modifications make the scheme significantly different from the notified scheme, it must recommence the scheme preparation process from the public notification stage (clause 12).

If the local government decides not to proceed with making the scheme it is taken to be a decision to take no action under chapter 2, part 2 to review its scheme (clause 2.2.3). Under that part, if such a decision is made, the local government must prepare a report on the review of the planning scheme, including the reasons for the decision (clause 2.2.3.). A copy is to be given to the chief executive (DLGP) and a notice about the report is to be published in a local newspaper (clause 2.2.4). When the report is prepared the remaining clauses of the schedule do not apply. This provision is equivalent to subclauses 9(b) and 19(b) relating to a decision not to proceed with the proposed planning scheme at other stages in the process.

Reporting to persons who made submissions about proposed planning scheme

Clause 17 applies if the local government received any properly made submissions about the proposed planning scheme. It requires a local government to prepare a report explaining in general terms how it dealt with the submissions received and to give a copy of the report, or the relevant part of the report, to each principal submitter. This clause provides the submitters with direct feedback on the effect their contributions have had on the outcome of the scheme. It is a logical and informative conclusion to the public consultation phase of the process.

A “principal submitter” is defined in the dictionary in schedule 10. Where only one person made a submission, the principal submitter is that person, and if a submission was made by more than one person, it is either the person identified as such in the submission or the submitter whose name first appears on the submission.

Reconsidering proposed planning scheme for adverse effects on State interests

Clause 18 deals with the second consideration of State interests by the Minister. It requires the local government to advise the Minister either that it is proceeding with the proposed scheme without modifications, or that it is proceeding with a modified scheme. If the scheme is to be modified the local government must submit a copy of the modified scheme to the Minister. The local government must also give the Minister any other information that the Minister requests including submissions received.

Subclauses (3) and (4) correspond with subclauses (1) and (2) of clause 11 which deal with the first consideration of State interests following preparation of the proposed scheme and before public consultation. The Minister must consider whether or not State interests are adversely affected by the proposed scheme, and advise the local government that it may proceed to adopt the proposed planning scheme (clause 19), either without conditions, or subject to compliance with conditions the Minister imposes on the content of the proposed scheme. The Minister must also advise the local government which State planning policies the Minister considers are appropriately reflected in the proposed planning scheme.

If an amendment to a planning scheme is proposed, the Minister may advise the local government that as a consequence of the Minister's considerations, it may not proceed further with the amendment.

The local government cannot proceed to adopt the planning scheme until it has incorporated the modifications previously advised to the Minister, complied with the conditions imposed by the Minister, and stated in the proposed planning scheme the State planning policies identified by the Minister as appropriately reflected in the planning scheme.

Under clause 10, this second consideration of State interests may be omitted for some amendments.

PART 3—ADOPTION STAGE

Resolution about adopting proposed planning scheme

Clause 19 deals with the final resolution of the local government with respect to its proposed planning scheme. The clause states that if a local government has previously resolved to propose a planning scheme and has

complied with the requirements under part 2, it may by resolution adopt the proposed scheme. Alternatively it may decide not to proceed. If the local government takes the latter course this is taken to be a decision to take no action under chapter 2 part 2 to review its scheme (clause 2.2.2). Under that part, if such a decision is made, the local government must prepare a report on the review of the planning scheme, including the reasons for the decision (clause 2.2.3.), and publish a notice about the report (clause 2.2.4).

Public notice of adoption of, and access to, planning schemes

Clause 20 requires that, as soon as practicable after the scheme has been adopted, the local government publish notices in the gazette and in a local newspaper.

The Bill establishes standard requirements for public notification for the purpose of advising that a planning instrument has been adopted. Generally, a notice must state:

- the name of the relevant local government;
- when the planning instrument was adopted;
- the name of any existing planning instrument repealed or replaced by the new instrument;
- the purpose and general effect of the instrument (if other than a complete new scheme);
- that the planning instrument is available for inspection and purchase.

Notification in the gazette is an important step in the process as it signifies the day the planning scheme takes effect (clause 2.1.7).

The term “available for inspection and purchase” is defined in clause 5.7.1. See notes on clause 5.

Copy of notice and planning scheme to chief executive

Clause 21 requires the local government to give a copy of the notice and the required number of certified copies of the planning scheme to the chief executive (DLGP), on the day the notice is published in the gazette or as soon as practicable after the day.

Certified copies of the scheme are required for use by officers within the Department, and also for use by others who may not have convenient access to the local government's office, such as officers from other State government departments or local governments, and members of the public who are not locally based.

SCHEDULE 2

PROCESS FOR MAKING TEMPORARY LOCAL PLANNING INSTRUMENTS

A temporary local planning instrument stands alone, outside an existing planning scheme, and affects how that planning scheme operates (see notes on chapter 2, part 1, division 4). It is effective for one year unless repealed earlier. It is important to note that this instrument is not like interim development control provisions under the current Act, which operate in the absence of a planning scheme. It is also not a complete planning scheme but a short-term, partial scheme. It is an instrument which can be introduced quickly to deal with an urgent situation. It can do this by suspending or otherwise affecting the operation of a planning scheme for a limited time.

Due to the short-term and critical nature of a temporary local planning instrument, the process for introduction requires only the Minister's agreement before it is adopted by local government. Public notification of the instrument follows and there is no consultation.

Clause 2.1.16 deals with the repeal of a temporary local planning instrument by a resolution of the local government or by the adoption of a planning scheme (or a scheme amendment) that specifically repeals the instrument. The local government must have the Minister's approval to make the resolution if the instrument was made by, or under the direction of the Minister. The resolution or decision must be published in the gazette.

The process making temporary local planning instruments may be summarised as follows:

- resolution to prepare a temporary local planning instrument;
- Minister's approval to proceed;
- adoption of temporary local planning instrument or decision not to proceed;
- notification in newspaper and gazette;
- copies of temporary local planning instrument and notice to chief executive (DLGP).

PART 1—PROPOSAL STAGE

Resolution to prepare temporary local planning instrument

Clause 1 states that a local government, by resolution, may propose to prepare a temporary local planning instrument. The local government then proceeds to prepare the proposed instrument.

Minister's approval required to proceed

Clause 2 states that the local government must give the Minister a copy of the proposed temporary local planning instrument together with a statement of the reasons why the local government considers such an instrument is necessary. As temporary local planning instruments are special instruments introduced without the two-phase public consultation (and other requirements) specified for a scheme amendment in schedule 1, it is necessary to establish that the conditions for such an instrument exist.

If the Minister considers (under clause 2.1.10) that the temporary local planning instrument is necessary because there is a significant risk of serious environmental harm, within the meaning of the *Environmental Protection Act 1994*, or of adverse cultural, economic or social conditions occurring in the planning scheme area, and that the delay in using the process in schedule 1 would increase the risk, the Minister must advise the local government that it may adopt the proposed instrument. The Minister may also impose conditions on the local government that the Minister considers appropriate. These conditions, whether about the content of the proposed instrument or other matters, must be complied with before the local government adopts the proposed temporary local planning instrument.

Alternatively, if the Minister does not consider the proposed temporary local planning instrument is necessary, the Minister must advise the local government it may not adopt the instrument.

PART 2—ADOPTION STAGE

Resolution about adopting proposed temporary local planning instrument

Clause 3 requires the local government, by resolution, to adopt, adopt with conditions imposed by the Minister, or decide not to proceed with the proposed temporary local planning instrument.

If the local government decides not to adopt the temporary local planning instrument it must give a copy of the resolution to the Minister and the reasons for not proceeding.

Public notice of adoption of, and access to, temporary local planning instrument

Clause 4 requires the local government, as soon as practicable after the temporary local planning instrument has been adopted, to publish notices in the gazette and in a local newspaper.

Notification requirements are consistent with those for notification of proposed planning schemes (schedule 1, clause 5). Particular notification requirements for this type of instrument are a description of the applicable land if the instrument applies only to part of the planning scheme area, and the date when the instrument will cease to have effect.

Copy of notice and temporary local planning instrument to chief executive

Clause 5 requires the local government to give a copy of the notice and the required number of certified copies of the temporary local planning instrument to the chief executive (DLGP), on the day the notice is published in the gazette or as soon as practicable after the day.

Certified copies of the scheme are required for use by officers within the Department, and also for use by others who may not have convenient access to the local government's office, such as officers from other State government departments or local governments, and members of the public who are not locally based.

SCHEDULE 3

PROCESS FOR MAKING OR AMENDING PLANNING SCHEME POLICIES

The purpose of a planning scheme policy is to provide support for the local dimension of a matter dealt with by a planning scheme (see clause 2.1.16.). The Bill does not prescribe any limits on the substance or application of planning scheme policies. They are flexible instruments which local governments may use together with planning schemes to deal with local planning matters. The process for making them involves the preparation of an explanatory statement, a 20-day public consultation period, a report to submitters and lodgment of the policy with the chief executive (DLGP).

A planning scheme policy may be repealed by resolution of the local government under clause 2.1.22. A notice of the resolution must be published in a newspaper, and a copy given to the chief executive (DLGP). The repeal takes effect the day the notice is published. Notification in the gazette of the adoption of a new planning scheme also repeals all existing planning scheme policies for an area.

Planning scheme policies are similar to “local planning policies” under the current Act. However, they differ in that local planning policies apply throughout the planning scheme area and are made by resolution of a local government. This is followed by public notification in a newspaper of the title and nature of the policy. There is no public consultation.

The Bill will allow material presently dealt with in planning schemes to be covered by planning scheme policies. However, the making of these policies under the Bill is publicly accountable, and policies may be “called up” by planning schemes and be read as one with the scheme. It will also be necessary for sufficient substance to be contained within planning schemes to ensure they adequately perform their prescribed role in coordinating and integrating the local, regional and State dimensions of planning scheme matters (clause 2.1.4). This role is overseen by the Minister in considering whether a proposed planning scheme adversely affects any State interests (schedule 1, clauses 10 and 18). It is also likely that administrative protocols will evolve over time which suggest a suitable balance between the nature of material contained in planning schemes and in planning scheme policies.

The process for preparing, adopting, amending or repealing planning schemes may be summarised as follows:

- resolution to prepare or amend;
- a planning scheme policy;
- (if relevant(preparation of planning scheme policy);
- preparation of an explanatory statement;
- public consultation;
- consideration of submissions and preparation of report for submitters;
- (if relevant(possible preparation of a modified planning scheme policy in response to submissions);
- adoption of proposed planning scheme policy or amendment, or decision not to proceed;
- notification in newspaper
- copies of policy (if relevant) and notice to chief executive (DLGP).

PART 1—PROPOSAL STAGE

Resolution proposing action

Clause 1 relates to actions by a local government to either propose a new or amended planning scheme policy, or to repeal an existing policy that is not to be replaced by another. The local government must propose such an action by resolution and prepare an explanatory statement to support it. Under clause 3, this statement must be made available for inspection and purchase by the public.

PART 2—CONSULTATION STAGE

Public notice of proposed action

Clause 2 requires the local government to publish a notice about its action in relation to a planning scheme policy at least once in a local newspaper. The notice must also be displayed in a conspicuous place in the

local government's public office during the consultation period. The consultation period is for a minimum of 20 business days.

The notice requirements are consistent with those established in the Bill for the purpose of public consultation on a proposal. See notes on schedule 1, clause 5.

Public access to relevant documents

Clause 3 requires the local government to have a copy of the statement of the planning scheme policy (if relevant) and the explanatory statement available for inspection and purchase throughout the consultation period.

The term "available for inspection and purchase" is defined in clause 5.7.1. See notes on schedule 1 clause 5.

Consideration of all submissions

Clause 4 requires the local government to consider every properly made submission about an aspect of the proposed policy or amendment. A "properly made submission" is a term defined in the dictionary in schedule 10. See notes on schedule 1, clause 7.

PART 3—ADOPTION STAGE

Resolution about adopting proposed planning scheme policy or amendment

Clause 5 requires the local government, by resolution, to either adopt or decide not to proceed with the proposed planning scheme policy. The adopted instrument may be in either its original or a modified form.

If the local government has proposed the planning scheme policy or the amendment under clause 2.2.18 as a consequence of a recommendation in the report of a reviewer who has carried out an independent review the local government must resolve to adopt the proposed policy or amendment.

Reporting to persons who made submissions about proposed action

Clause 6 applies if the local government received any properly made submissions about its proposal to adopt or repeal a policy. It requires the local government to advise each principal submitter of the decision.

A "principal submitter" is defined in the dictionary in schedule 10. See notes on schedule 1, clause 17.

Public notice of adoption of, and access to, planning scheme policy or amendment

Clause 7 requires the local government to publish a notice in a local newspaper. The notice requirements are consistent with those established in the Bill for the purpose of advising that a planning instrument has been adopted. See notes on schedule 1, clause 20. Specific requirements are the name of the policy adopted, and if a new policy, the name of any existing policy it replaces.

Copy of notice and policy or amendment to chief executive

Clause 8 requires the local government to send a copy of the notice and the required number of copies of the planning scheme policy or amendment to the chief executive (DLGP), on the day the notice is published, or as soon as practicable after that day.

SCHEDULE 4

PROCESS FOR MAKING OR AMENDING STATE PLANNING POLICIES

The purpose of a State planning policy is to provide a means by which the State can make policies about matters of State interest. The Bill creates a particular instrument for this purpose and carries forward similar provisions under the current Act. A significant difference in the Bill is the inclusion of statutory requirements for public consultation. A minimum consultation period of 40 business days is specified and includes the availability of an explanatory statement prepared by the Minister.

It is not necessary for State agencies to make a State planning policy for State interests to be incorporated into planning schemes, but having such instruments ensures that the policy matters dealt with will be taken into consideration during a local government impact assessment if they have not been incorporated within a planning scheme (clause 3.5.5). Matters of State policy and criteria for assessment may also be incorporated directly within individual planning schemes, and State criteria for assessment may be incorporated within State or local codes.

A State planning policy may be introduced temporarily (up to one year) to deal with urgent situations. The normal consultation phase does not apply to its preparation or to a minor amendment of a State planning policy.

The requirements for repealing a State planning policy are specified in clause 2.4.6 and involve the publication of a notice in a State-wide newspaper and the gazette.

The process for preparing, adopting or amending State planning policies may be summarised as follows:

- preparation of a proposed State planning policy;
- preparation of an explanatory statement;
- public consultation (unless an interim State planning policy or minor amendment);
- consideration of submissions;
- (possible preparation of a modified policy in response to submissions);

- adoption of State planning policy, or decision not to proceed;
- advice to submitters of adoption or decision not to proceed;
- notification in newspaper;
- copies of State planning policy to local governments.

PART 1—PREPARATION STAGE

Minister may prepare proposed State planning policy or amendment

Clause 1 states that the Minister may prepare a proposed State planning policy or an amendment and an explanatory statement.

PART 2—CONSULTATION STAGE

Public notice of proposed action

Clause 2 requires publication of a notice in a newspaper circulating generally in the State, and if the Minister considers appropriate, in a regional newspaper. The consultation period is for a minimum of 40 business days.

The notice requirements are consistent with those established in the Bill for the purpose of public consultation on a proposal. See notes on schedule 1, clause 5. A specific requirement relates to a policy which applies only to a particular area of the State(the need to state the name of the area or other information necessary to adequately describe the area.

The term “available for inspection and purchase” is defined in clause 5.7.1. See notes on schedule 1, clause 5.

Public access to relevant documents

Clause 3 requires the Minister to maintain public access to the draft State planning policy and the explanatory statement during the consultation period, for the purposes of inspection and purchase as has been specified in the notice.

Consideration of all submissions

Clause 4 requires the Minister to consider every properly made submission.

Consultation stage does not apply in certain circumstances

Clause 5 states that the consultation stage need not be complied with for a State planning policy which is to have effect for less than 1 year or a minor amendment of a State planning policy.

PART 3—ADOPTION STAGE

Resolution about adopting proposed State planning policy or amendment

Clause 6 states that the policy may be adopted by the Minister in its original notified form or in a modified form. Alternatively, the Minister may decide not to proceed with a State planning policy or amendment. If there is no consultation stage, in accordance with clause 5, the Minister's action may take place when the State planning policy or amendment, and the explanatory statement have been prepared.

Reporting to persons who made submissions about proposed action

Clause 7 requires the Minister to advise each submitter of the decision under the previous clause to either adopt the proposed State planning policy or amendment, or not proceed with it, and the reasons for the decision.

Public notice of adoption of, and access to, State planning policy or amendment

Clause 8 requires the Minister, as soon as practicable after the State planning policy has been adopted, to publish a notice in a newspaper circulating generally in the State, and in the gazette. The notice may also be published in a regional newspaper the Minister considers appropriate. The notice requirements are consistent with those established in the Bill for the purpose of advising that a planning instrument has been adopted. See notes on schedule 1, clause 5. Specific requirements are:

- if the policy applies only to a particular area of the State, the name of the area or other information necessary to adequately describe the area;
- when the State planning policy was adopted;
- the name of any existing policy whose operation is affected or suspended by the new policy.

Copies of State planning policies to local governments

Clause 9 requires the Minister to give a copy of the State planning policy to each local government after the policy is adopted.

SCHEDULE 5

COMMUNITY INFRASTRUCTURE

This schedule lists the community infrastructure for which land may be designated under chapter 2, part 6. Two processes for designation are prescribed in schedules 6 and 7.

SCHEDULE 6

PROCESS FOR MINISTERIAL DESIGNATIONS

Land may be designated on planning schemes to denote both public and private intentions for the provision of community infrastructure.

There are two ways that the Minister may designate land for community infrastructure. These are covered by this schedule (refer to clause 2.6.7) and schedule 7 (refer to clause 2.6.8). The variables determining which process applies are whether the environmental effects or the impacts of the infrastructure have been assessed (under *the State Development & Public Works Organisation Act 1971*, section 29, or under IDAS, respectively) and whether adequate public consultation has been carried out (under either of those processes). If these requirements have been met, the process specified by schedule 7 applies. If not the Minister needs to conduct a separate consultation process(as specified in this schedule.

Land may also be designated by local government as part of the process for making or amending a planning scheme.

The process in schedule 6 for Ministerial designation of land may be summarised as follows:

- written notification to land owner (if private) and relevant local governments;
- public consultation;
- consideration of submissions;
- decision to make the designation (as notified or modified) or decision not to proceed;
- notice of decision to the land owner, relevant local governments and submitters;
- if the designation is made(reference in any current planning schemes and new scheme adopted before the designation ceases to have effect (clause 2.6.11).

PART 1—CONSULTATION STAGE

Notice of proposed designation

Clause 1 requires the Minister to give written notice of a proposed designation to the owner (other than a public sector entity) and to each local government the Minister considers is affected by the designation, including, if the land is not within any local government area, the local government nearest the land. In addition, the Minister must publish the notice at least once in a local paper.

The consultation period must extend for at least 20 business days, during which time each local government notified by the Minister must display a copy of the published notice in a conspicuous place in its public office.

The notice must state:

- a description of the land;
- the type of community infrastructure;
- the reasons for the designation;
- the contact telephone number for information;
- that written submissions about any aspect of the proposed designation; may be given to the Minister by any person;
- the consultation period for giving submissions;
- the requirements for a properly made submission.

Consideration of all submissions and other matters

Clause 2 requires the Minister to consider the following things before making a decision on the designation under clause 3:

- every properly made submission;
- each relevant planning scheme; and
- any relevant State planning policy.

PART 2—DESIGNATION STAGE

Deciding designation proposal

Clause 3 states that, after considering the matters under clause 2, the Minister must decide to make the proposed designation in its original notified form or in a modified form, or not to proceed with the designation.

Procedures after designation

Clause 4 requires that if the Minister proceeds with the designation in its original or in a modified form each relevant local government, owner or submitter, must be notified. The notice must state that a designation has been made, and advise the land to which the designation applies, the community infrastructure for which the land has been designated, and the reasons for the designation. The notice must also state any other requirements under section 2.6.4 (for example requirements about works, the use of the land, or location of works on the land) for the community infrastructure which are part of the designation. A modified notice must also be published in the gazette.

Procedures if designation does not proceed

Clause 5 requires that if the Minister decides not to proceed with the designation each relevant local government, owner, or submitter must be notified of the Minister's decision and the reasons for not proceeding with the designation.

SCHEDULE 7

PROCESS FOR MINISTERIAL DESIGNATION IF CONSULTATION HAS PREVIOUSLY BEEN CARRIED OUT

Land may be designated on planning schemes to denote both public and private intentions for the provision of community infrastructure.

There are two ways that the Minister may designate land for community infrastructure. These are covered by schedule 6 (refer to clause 2.6.7) and this schedule (refer to clause 2.6.8). The variables determining which process applies are whether the environmental effects or the impacts of the infrastructure have been assessed (under *the State Development & Public Works Organisation Act 1971*, section 29, or under IDAS, respectively) and whether adequate public consultation has been carried out (under either of those processes). If these requirements have been met, the process specified by this schedule applies. If not the Minister needs to conduct a separate consultation process(as specified in schedule 6.

Land may also be designated by local government as part of the process for making or amending a planning scheme.

The process in schedule 7 for Ministerial designation of land may be summarised as follows:

- (environmental effects or impacts of the infrastructure have already been assessed, and public consultation has been carried out);
- the Minister makes the designation;
- notification of landowner (if private) and relevant local governments by Minister;
- publication in the gazette of notice that the designation has been made;
- reference in any current planning schemes and new scheme adopted before the designation ceases to have effect (clause 2.6.11).

Making designation

Clause 1 requires the Minister to make the designation.

Procedures after designation by Minister

Clause 2 requires the Minister to give notice of the designation to each owner (other than a public sector entity) of land to which the designation applies, and to each local government the Minister considers is affected by the designation, including, if the land is not within any local government area, the local government nearest the designated land.

The notice must state that a designation has been made, and advise the land to which the designation applies, the community infrastructure for which the land has been designated, and the reasons for the designation. The notice must also state any other requirements under section 2.6.4 (for example requirements about works, the use of the land, or location of works on the land) for the community infrastructure which are part of the designation. A modified notice must also be published in the gazette.

SCHEDULE 8

ASSESSABLE, SELF-ASSESSABLE AND EXEMPT DEVELOPMENT

The basic presumption of the Bill as stated in clause 3.1.2 is that all development is exempt development (i.e. no development permit is necessary and the development does not have to comply with any codes).

For development to be made assessable (i.e development permit required) or self-assessable (i.e. no permit required but development must comply with applicable codes) it must be declared to be assessable or self-assessable development either under this schedule or under a planning scheme.

Schedule 8 is therefore integral and fundamental to the operation of the Bill, particularly IDAS.

Schedule 8 also performs several other functions. These are:

- for some development declared under the schedule to be assessable or self-assessable development, the State may want to ensure that a planning scheme does not change the categorisation of the development (e.g. by declaring assessable development to be self-assessable development in the planning scheme area). Part 1 lists assessable development that may not be made self-assessable or exempt development under a planning scheme. Part 2, division 2 lists self-assessable development that a planning scheme may not declare to be assessable or exempt development;
- while there is no need to list all development that is exempt development (because the presumption of the Bill is that development is exempt unless otherwise listed in this schedule or in a planning scheme), the State may want to ensure that certain exempt development is always exempt. Part 3 lists exempt development that may not be made assessable or self-assessable development under a planning scheme.

IDAS has been described in the notes to chapter 3. It is designed to provide a single legal and administrative framework for the assessment and approval of all development. To achieve this the head of power for declaring development to be assessable development will reside in the Bill.

Acts (including regulations and other statutory instruments under those Acts) that currently regulate development in their own way will be integrated into the IDAS framework. This will be achieved by progressively carrying out consequential amendments that remove those separate heads of power and making those Acts fully compatible with IDAS and the framework of the Bill. These amendments will occur after the Bill becomes an Act.

The lists of assessable and other development in schedule 8 cover development under key Acts that are to be integrated into IDAS as a priority. It also includes development specifically dealt with under the Local Government (Planning and Environment) Act 1990 (i.e. under this Act the determination of whether development is assessable or otherwise is mostly dealt with under planning schemes. However, an exception to this is subdivision).

The Acts dealt with in the schedule include:

- *Beach Protection Act 1968*
- *Building Act 1975*
- *Canals Act 1958*
- *Coastal Protection & Management Act 1995*
- *Environmental Protection Act 1994*
- *Harbours Act 1955*
- *Local Government (Planning and Environment) Act 1990*
- *Queensland Heritage Act 1992*
- *Transport Infrastructure Act 1994*
- *Sections 27 and 58 of the Water Resources Act 1989*
- *Wet Tropics World Heritage Protection & Management Act 1993.*

Some important points to note about schedule 8 are:

- commencement of the schedule will occur progressively as Acts are integrated. (e.g. part 1, clause 1—carrying out building work will only commence when the *Building Act 1975* is integrated into the IDAS framework. If clause 1 commenced before this occurred the effect would be to create dual approvals for building work, one under this Bill and another under the Building Act. This would be totally contrary to IDAS and will not occur);

- the list of development in the schedule is intended to reflect the status quo in terms of the assessability of development under the Acts to be integrated;
- operational works associated with the long-term cyclical activities of agriculture and forestry have been made exempt under schedule 8. A planning scheme may not make these activities assessable (see clause 3.1.2(2)(d)). This does not prevent a planning scheme:
    - making the material changes of use for these activities assessable development where this is appropriate; or
    - including relevant or reasonable conditions affecting the way the use is carried out (including the conduct of operational works) in any approval for the material change of use.

The intention of these provisions is to balance the need for regulation of these activities where appropriate, with the necessity to provide certainty to operators that, once lawfully established, the "ground rules" for the activity are not changed by the imposition of additional requirements to obtain approval. This degree of certainty is necessary to promote investment confidence for long-term cyclical activities involving a variety of operational works.

SCHEDULE 9

CONSEQUENTIAL AMENDMENTS

Schedule 9 lists consequential amendments to Acts necessary for the implementation of IDAS. Due to the scale of the amendment program this schedule will be completed progressively.

SCHEDULE 10

DICTIONARY

This schedule introduces a dictionary of "definitions" as referred to in chapter 1, part 3 of the Bill. For the most part the definitions are new for the purposes of this Bill. Definitions that have been retained from the *Local Government (Planning & Environment) Act 1990* are noted.

This schedule:

- inserts a definition of "accrediting body" for reference in chapter 5, part 3.
- inserts a definition of "acknowledgment notice" for reference in chapter 3. This is the assessment manager's initial response to a properly made development application.
- inserts a definition of "acknowledgment period" for reference in chapter 3. This is the time within which the assessment manager must give the applicant an acknowledgment notice.
- inserts a definition of "advice agency" for reference in chapter 3. This is one type of entity involved in assessment of applications for development. Compare definition of "concurrence agency". See also definitions of "assessment manager", and the generic term "referral agency".
- inserts a definition of "agency's referral day" for reference in chapter 3, in relation to when a referral agency receives material for assessment of an application.
- inserts a definition of "appellant", as it concerns an appeal to a court, for reference in chapter 4, in relation to an appeal by an applicant, a person in whom the benefit of a development approval vests, a submitter, or an advice agency; or an appellant against an enforcement notice, disqualification as a private certifier, or a proceeding decided by a tribunal.
- inserts a definition of "appellant", as it concerns an appeal to a tribunal, for reference in chapter 4, in relation to an appeal by an applicant or a person in whom the benefit of a development approval vests.

- inserts a definition of "applicant's appeal period", as it concerns an appeal to either a court or a tribunal by an applicant, for reference in chapter 4.
- inserts a definition of "approved form" for reference in:
    - clause 2.2.6 in relation to a request for an independent review of a local planning instrument;
    - clause 3.2.1 in relation to the form of an application for development approval;
    - clause 3.2.11 in relation to a notice to service providers for reconfiguring a lot;
    - clause 3.4.4 in relation to a notice for public notification of an application; and
    - clause 4.2.10 in relation to a declaration by a building and development tribunal referee.
- inserts a definition of "assessable development" for reference in chapters 2 (clause 2.1.3), 3 and 4. This is a category of development under IDAS. Compare definitions of "self-assessable development" and "exempt development". See definitions of "code assessment" and "impact assessment".
- inserts a definition of "assessing authority" for reference in chapter 4 and chapter 5 (re private certifiers in clause 5.3.4(5)). A term such as assessing authority is required in relation to appeals against a development decision as the role of assessment manager is finished once an application is decided. Also, it is necessary to pick up concurrence agencies as parties in an appeal or enforcement action.
- inserts a definition of "assessment manager" for reference in chapter 3. This is the entity which administers of applications for development. See also definitions of "concurrence agency", "advice agency", and the generic term "referral agency".
- inserts a definition of "available for inspection and purchase" for reference in:
    - chapter 5, part 7 (public access to planning and development information);
    - clause 2.2.4 in relation to report on review of a planning scheme;

    - clause 3.2.5 in relation to an acknowledgment notice and other material supporting a development application;
    - clause 6.1.40 in relation local government registers; and
    - schedules 1, 3 and 4 in relation to explanatory statements and draft proposals for the preparation of planning instruments.
- inserts a definition of “benchmark development sequence” for reference in chapters 2 and 3.
- inserts a definition of “building” as it is used in the term “building work” in the definition of “development”.
- inserts a definition of “building work” which is a component of the definition of “development”.
- inserts a definition of “certified copy” for the purposes of the Bill.
- inserts a definition of “code” for reference in chapters 1, 2, 3 and 4.
- inserts a definition of “code assessment” for reference in chapters 1 and 3. This is a form of IDAS assessment by the assessment manager. Compare definition of “impact assessment”. See definition of “self-assessable development”.
- inserts a definition of “common material” in relation to a development application for reference in chapter 3.
- inserts a definition of “community infrastructure” for reference in chapter 2 and schedules 6 and 7 in relation to the designation process.
- inserts a definition of “concurrence agency” for reference in chapters 3 and 4. This is one type of entity involved in IDAS assessment of development applications. Compare definition of “advice agency”. See also definitions of “assessment manager”, and the generic term “referral agency”.
- inserts a definition of “concurrence agency condition” for reference in chapters 3 and 4.
- inserts a definition of “consultation period” for reference in:
    - schedules 1, 3, and 4 in relation to public consultation required during the making of certain planning instruments;
    - schedule 6 in relation to public consultation required during the process for designation of certain community infrastructure; and

    - chapter 2 in relation to the review of a local planning instrument by an independent reviewer.
- inserts a definition of "convicted" for reference in chapter 4.
- inserts a definition of "core matter" for reference in schedule 1. It refers to those matters to be addressed in the preparation of planning schemes.
- inserts a definition of "currency period" for reference in chapters 3, 4 and 5 and relates to the period before a development approval lapses.
- inserts a definition of "court" for reference in chapter 4 in relation to the body to which certain appeals may be made under the Bill.
- inserts a definition of "decision making period" for reference in chapters 3 and 4, in relation to the time within which the assessment manager must decide a development application.
- inserts a definition of "decision notice" for reference in chapter 3 in relation to whether a development application is approved, approved subject to conditions, or refused.
- inserts a definition of "deemed refusal" for reference in chapter 4 in relation to matters that may be the subject of an appeal to the Planning and Environment Court or to a building and development tribunal.
- inserts a definition of "designated land" for reference in chapter 2 in relation to community infrastructure.
- inserts a definition of "designation" for reference in chapter 2, and schedules 5, 6 and 7 in relation to community infrastructure.
- inserts a definition of "desired standard of service" for reference in chapter 5 in relation to a standard of performance for a development infrastructure item.
- inserts a definition of "development". This is a key concept. The definition specifies the activities which are "development" for the purposes of the Bill.
- inserts a definition of "development application" for reference in chapter 3.
- inserts a definition of "development approval" for reference in chapter 3. This is a generic term which may refer to either or both of a "development permit" and a "preliminary approval". It is used to avoid repeating terms. See definitions of "development permit" and "preliminary approval".

- inserts a definition of "development infrastructure item" for reference in chapter 5 in relation to land and capital works for certain types of infrastructure.
- inserts a definition of "development offence" for reference in chapter 4 in relation to offences attracting penalties under the Bill.
- inserts a definition of "development permit" for reference in chapters 3, 4 and 5 in relation to a type of development approval. Compare definition of "preliminary approval". See also definition of the generic term "development approval".
- inserts a definition of "drainage work" which is a component of the definition of "development".
- inserts a definition of "ecological sustainability" for reference in chapter 1.
- inserts a definition of "enforcement notice" for reference in chapter 4 in relation to an alleged development offence.
- inserts a definition of "enforcement order" for reference in chapter 4 in relation to a proceeding for an alleged development offence.
- inserts a definition of "entity" for reference in chapters 2, 3, 4 and 5. This is to extend the definition in the *Acts Interpretation Act 1954* to include a department.
- inserts a definition of "environment" for reference in chapters 2, 3 and 5. This is a broad definition which is not limited to the natural environment. The definition is the same as that in the *Local Government (Planning & Environment) Act 1990.*
- inserts a definition of "executive officer" for the purposes of the Bill.
- inserts a definition of "exempt development" for reference in chapters 3 and 4. This is a category of development under IDAS. Compare definitions of "assessable development" and "self-assessable development".
- inserts a definition of "IDAS" for reference in chapter 3. This is the core assessment system in the Bill that will allow development-related assessment processes in other legislation to be repealed and integrated into this common system.

- inserts a definition of “impact assessment” for reference in chapters 3 and 4. This is a form of IDAS assessment by the assessment manager. Compare definition of “code assessment”. See definition of “assessable development”.
- inserts a definition of “information request” for reference in chapter 3 in relation to a request by the assessment manager, a concurrence agency, or the chief executive for further information from the applicant regarding the application.
- inserts a definition of “information request period” for reference in chapter 3 in relation to the period within which the assessment manager, a concurrence agency, or the chief executive may request further information from the applicant.
- inserts a definition of “infrastructure” for reference in chapters 1, 2, 3 and 5.
- inserts a definition of “infrastructure agreement” for reference in chapter 5. This is part or the infrastructure charging framework.
- inserts a definition of “infrastructure charge” for reference in chapter 5. This is part of the infrastructure charging framework..
- inserts a definition of “infrastructure charges plan” for reference in chapter 5. This is part of the infrastructure charging framework.
- inserts a definition of “interim enforcement order” for reference in chapter 4 in relation to a proceeding for an alleged development offence.
- inserts a definition of “interim State planning policy” for reference in chapter 2 and schedule 4.
- inserts a definition of “life cycle cost” for reference in chapter 5. This is part of the infrastructure charging framework.
- inserts a definition of “local community land” for reference in chapter 5. This is in relation to an alternative to paying infrastructure charges.
- inserts a definition of “local government area” for the purposes of the Bill consistent with the *Local Government Act 1993*.
- inserts a definition of “local planning instrument” for the purposes of the Bill. This generic term is used to avoid repeating terms.
- inserts a definition of “lot” as it is used in the term “reconfiguring a lot” in the definition of “development”.

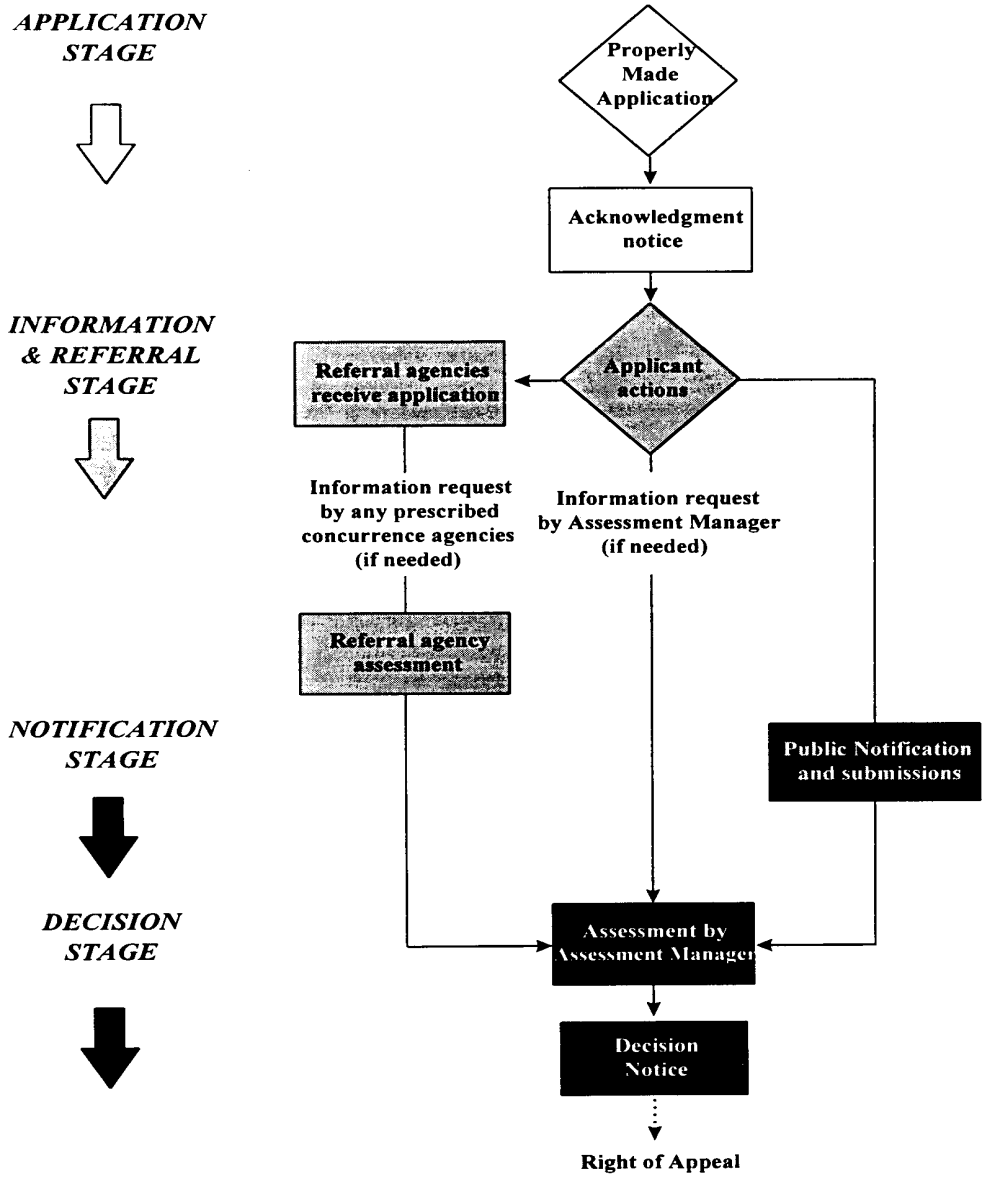
- inserts a definition of “material change of use” which is a component of the definition of “development”.
- inserts a definition of “minor change” for reference in chapter 3, in relation to a development approval.
- inserts a definition of “Minister” for reference in chapter 2, part 6 and schedules 6 and 7 in relation to the designation of land for community infrastructure.
- inserts a definition of “negotiated decision notice” for reference in chapter 3 in relation to changes made to the conditions of a development approval decided by the assessment manager.
- inserts a definition of “notification period” for reference in chapter 3, in relation to the time for public notification of a development application.
- inserts a definition of “operational work” which is a component of the definition of “development”.
- inserts a definition of “owner” for reference for the purposes of the Bill. There is a separate definition in clause 3.4.4. for the purposes of that clause.
- inserts a definition of “person” for the purposes of the Bill.
- inserts a definition of “planning instrument” for the purposes of the Bill. This generic term is used to avoid repeating terms.
- inserts a definition of “planning scheme” for the purposes of the Bill. See also definition of the generic term “planning instrument”.
- inserts a definition of “planning scheme area” for the purposes of the Bill.
- inserts a definition of “planning scheme policy” for the purposes of the Bill. See also definition of the generic term “planning instrument”.
- inserts a definition of “plumbing work” which is a component of the definition of “development”.
- inserts a definition of “preliminary approval” for reference in chapters 3 and 4 in relation to a type of development approval. Compare definition of “development permit”. See also definition of the generic term “development approval”.
- inserts a definition of “premises” for the purposes of the Bill.

- inserts a definition of "principal submitter" for the purposes of the Bill in relation to submissions on development applications and proposed planning instruments. See also definition of "submitter".
- inserts a definition of "private certifier" for reference in chapter 4 and chapter 5, part 3 in relation to development requiring code assessment.
- inserts a definition of "properly made application" for reference in chapter 3, in relation to a development application.
- inserts a definition of "properly made submission" for reference in chapters 2, 3 and 4 and schedules 1, 3, 4, 6 and 7. The definition standardises the concept to avoid the need for it to be redefined in the various contexts in which it appears.
- inserts a definition of "public office" for reference in chapter 2 and schedules 1, 2 and 6 in relation to the display of public notices at the premises of a local government.
- inserts a definition of "public sector entity" for reference in chapter 2 in relation to designation of infrastructure, and chapter 5 in relation to infrastructure agreements.
- inserts a definition of "reconfiguring a lot" which is a component of the definition of "development".
- inserts a definition of "referral agency" for reference in chapter 3. This is a generic term which may refer to either or both of a "concurrence agency" and an "advice agency". It is used to avoid repeating terms. See definitions of "concurrence agency" and "advice agency".
- inserts a definition of "referral agency's assessment period" for reference in chapter 3 in relation to the time a referral agency may take to assess a development application and communicate its response to the assessment manager.
- inserts a definition of "referral agency's response" for reference in chapter 3, in relation to the agency's assessment of a development application.
- inserts a definition of "referral assistance" for reference in chapter 3 in relation to an applicant's request to the chief executive.
- inserts a definition of "referral coordination" for reference in chapter 3 coordinated by the chief executive.

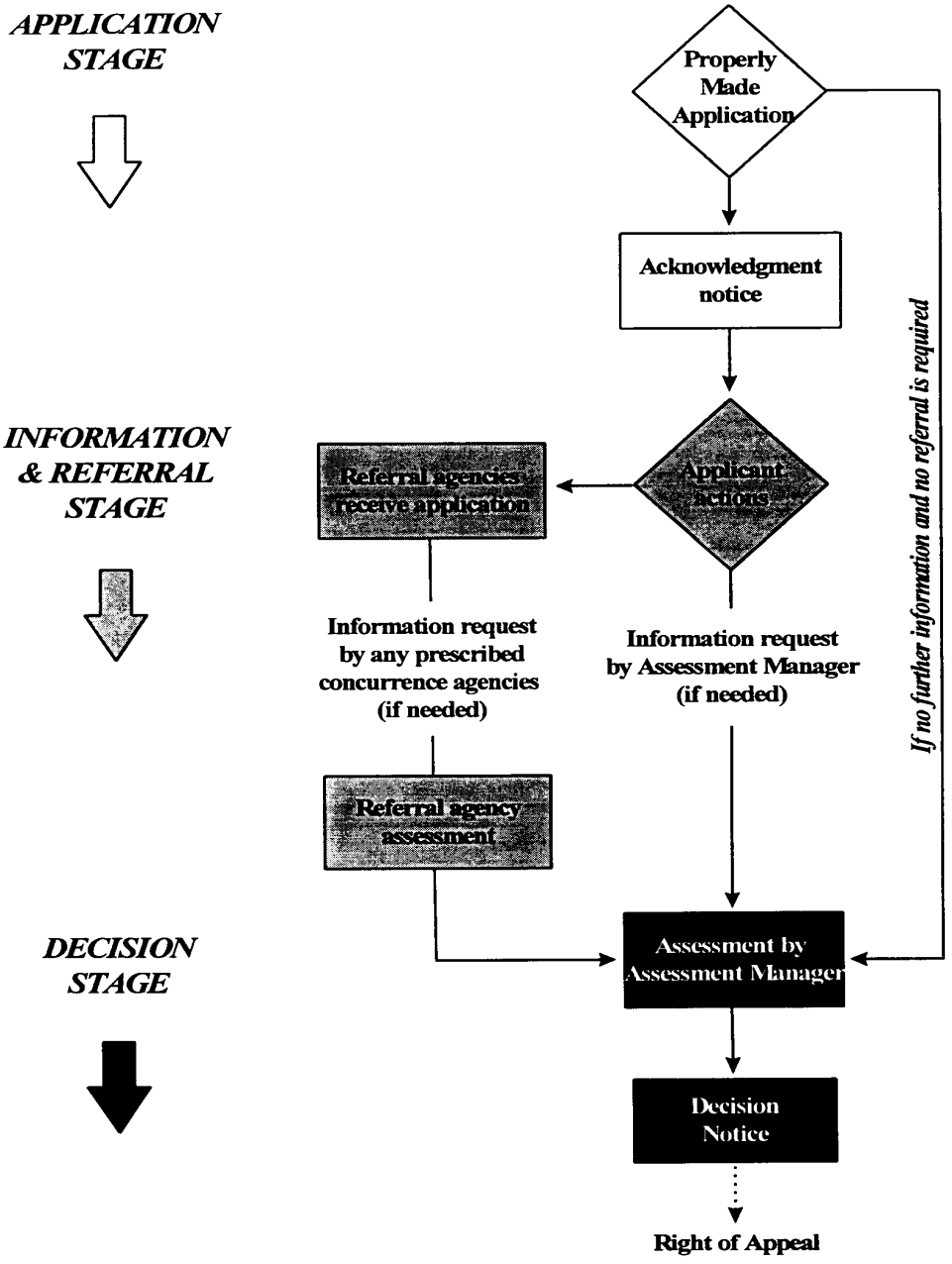
- inserts a definition of "repealed Act" in relation to the *Local Government (Planning & Environment) Act 1990.*
- inserts a definition of "replacement private certifier" for reference in chapter 5 in relation to when the engagement of a private certifier has been discontinued.
- inserts a definition of "requesting authority" for reference in chapter 3 in relation to an assessment manager or concurrence agency seeking further information from an applicant.
- inserts a definition of "road" for the purposes of the Bill consistent with the *Transport Infrastructure Act 1994.*
- inserts a definition of "self-assessable development" for reference in chapters 2 (clause 2.1.3), 3 and 4. This is a category of development under IDAS. Compare definitions of "assessable development" and "exempt development". See definition of "code assessment".
- inserts a definition of "show cause notice" for reference in chapter 4 in relation to an alleged development offence.
- inserts a definition of "stage" for reference in chapter 3 in relation to the IDAS process.
- inserts a definition of "State-controlled road" for the purposes of the Bill consistent with the *Transport Infrastructure Act 1994.*
- inserts a definition of "State interest" for reference in chapters 2, 3 and 4.
- inserts a definition of "State planning policy" for the purposes of the Bill. See also definitions of "interim State planning policy" and the generic term "planning instrument".
- inserts a definition of "submitter" for reference in chapters 3 and 4 in relation to a development application. See also definition of "principal submitter".
- inserts a definition of "submitter's appeal period" for reference in chapter 4 in relation to the appeal rights of people who have made submissions during the public notification stage of IDAS.
- inserts a definition of "temporary local planning instrument" for the purposes of the Bill. See also definitions of "planning scheme" and the generic term "planning instrument".

- inserts a definition of “tribunal” for reference in chapters 4 and 5 in relation to the body to which certain appeals may be made under the Bill.
- inserts a definition of the noun “use” for the purposes of the Bill to make it clear that the term includes incidental use of premises.

ATTACHMENT 1
Applications requiring Impact Assessment



ATTACHMENT 2
Applications requiring Code Assessment



ATTACHMENT 3

Scheme preparation process