INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT BILL (No. 2) 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The objectives of this Bill are:

- to implement the integrated development assessment system (IDAS) created under the *Integrated Planning Act 1997* (IPA) for the development related approval mechanism in section 40 of the *Transport Infrastructure Act 1994* (TIA);
- to remove a redundant development assessment process from the *Stock Act 1915* (Stock Act); and
- to clarify aspects of the intended operation of the IPA and correct minor errors in the text.

Reasons for the Bill

The IPA was assented to on 1 December 1997 and for the most part commenced on 30 March 1998. Building and environmental management systems were integrated into IDAS in April and July, 1998 respectively. The amendments in the Bill are a further step in the implementation of IDAS.

Ways in which the objectives are to be achieved

The objectives of the Bill are to be achieved by:

- amending section 40 of the TIA, and related provisions of the IPA, to remove the development assessment mechanism in section 40 for develoments which will be included in IDAS, to

make the necessary changes to the primary legislation to enable the Department of Main Roads (DMR) to become a concurrence agency under IDAS for that development, and to clarify the conditioning power of DMR under IDAS;

- omitting a number of provisions from the Stock Act, made redundant by the environmental licensing regime under the *Environmental Protection Act 1994* (EPA), and repealing a related regulation under the Stock Act;
- making modifications to a number of sections of the IPA to clarify the operation of those sections, and to improve the efficiency of IDAS.

Alternatives to the Bill

There are no alternatives to consequential amendment of affected legislation if IDAS is to be fully implemented.

Administrative cost to government

The implementation of IDAS will reduce administrative costs by reducing red tape and duplication of procedures at State and local government levels.

Consistency with fundamental legislative principles

The proposed Bill provides for the retrospective commencement of two provisions.

The amendment of section 6.1.1 is included to put beyond doubt that if a transitional planning scheme has been introduced or amended since 30 March 1998 and the scheme or amendment has created new assessable or self-assessable development, then the development is recognised under the Act as assessable or self-assessable development. There has been some doubt raised about the adequacy of the existing provisions in achieving this outcome. If no change is made and the provisions are subsequently found to be inadequate it would be inconsistent with the Act as the transitional provisions provide elsewhere for new transitional planning schemes to be adopted after the Act commenced (s 6.1.9). The Act also provides for transitional schemes to be amended (s 6.1.6). The purpose of the transitional provisions is to provide local governments, in particular, with time (up to 5

years) to prepare a new IPA planning scheme. In the meantime it is essential to ensure there is flexibility to keep the existing transitional planning schemes up to date and responsive to community needs.

The commencement of the amendment has been made retrospective to ensure that all changes of this kind made to transitional planning schemes since the IPA commenced are included in the definitions of "assessable" or "self-assessable development" for the purposes of the operation of the IPA. The overwhelming majority of Queenslanders are benefited by making the amendment retrospective. It removes uncertainty about the validity of schemes made or amended since commencement. It protects approvals issued in accordance with scheme provisions relating to assessable and self-assessable development introduced since 30 March 1998. The alternative is unacceptable in that all changes of this kind to planning schemes since commencement may need to be re-made and all approvals for this development may be invalid if the current wording is found to be unsound sometime in the future.

The amendment of section 3.5.30 puts beyond doubt that operating conditions about the use of premises resulting from a development approval are valid (provided the conditions pass the reasonableness and relevance tests in the section). As with the amendment of s 6.1.1 the amendment merely clarifies what was the intent of the provision.

It was the case under the previous planning legislation that use related conditions could be (and were) lawfully imposed on planning approvals. Similarly, under the EPA operational conditions about use were integral and fundamental to environmental authorities issued under that Act. In integrating the systems under IDAS it was the clear intent of the legislation that use related conditions be able to be imposed where they are reasonable and relevant.

As with s 6.1.1 it is proposed the change be made retrospective to 30 March 1998, to ensure there is no doubt about the lawfulness of approvals issued since commencement. Most people are benefited by the change. In particular, members of the public can anticipate with certainty, and in good faith, how approved development will operate. Developers will have the security of knowing the operational parameters set out in their permits in good faith are lawful. For example, a use related condition of a development approval that affects an Environmentally Relevant Activity under the EPA provides the operator with protection against possible noise nuisance actions under that Act.

Consultation

Key external stakeholders comprising representatives of the Urban Development Institute of Australia, the Northern Development Industry Association, and the Local Government Association of Queensland were consulted on the proposed amendments. Feedback received from those organisations is reflected in the proposed amendments**.**

The proposed repeal of the feedlot licensing provisions in the Stock Act has the support of the Feedlot Advisory Committee which consists of industry and government representatives.

Internal stakeholders consulted have indicated their agreement with the proposed amendments.

PART 1—PRELIMINARY

Short title

Clause 1 describes the short title of the Act as being the *Integrated Planning and Other Legislation Amendment Act (No. 2) 1998*.

Commencement

Clause 2(1) declares that sections 3, 4, 8, 11, 12, 13(2), 13(3) (amending the IPA) and parts 3 and 5 (amending the Stock Act) commence on assent.

Clause 2(2) declares that sections 7 and 13(1) (amending the IPA) commence on 19 November 1998. These sections are commenced as soon as possible after the Bill comes before the Parliament.

Clause 2(3) declares that sections 5 and 9 are taken to have commenced on 30 March 1998. The retrospective commencement of these sections ensures that the intention of the IPA is made clear. For section 5, operating conditions imposed on the use of premises which is the consequence of development may be reasonable and relevant. For section 9, all changes to categories of development or new asessable or self-assessable development introduced by amendments to planning schemes since 30 March 1998 are included in the definition of “assessable” or “self-assessable” development for the purposes of the operation of the IPA.

Clause 2(4) declares that the remaining provisions will commence on a date to be proclaimed.

PART 2—INTEGRATED PLANNING ACT 1997

Act amended in pt 2

Clause 3 declares that part 2 amends the *Integrated Planning Act 1997* (IPA).

Amendment of s 1.4.6 (Lawful uses of premises protected)

Clause 4(1) amends section 1.4.6 by inserting a number for subsection (1).

Clause 4(1) amends section 1.4.6 by omitting the words "under the repealed Act". This amendment puts beyond doubt that all uses of land lawfully established at the commencement of the IPA, whether or not recognised and protected under the repealed *Local Government (Planning and Environment) Act 1990*, are recognised and protected under the IPA.

Amendment of s 3.5.30 (Conditions must be relevant or reasonable)

Clause 5 amends 3.5.30(1) by inserting a phrase to put beyond doubt that operating conditions relevant to the use resulting from approved development may be relevant or reasonable as required by the section. Such conditions may be about, for example, operating hours, how access is to be used, etc.

Amendment of s 3.5.35 (Limitations on conditions lessening cost impacts for infrastructure)

Clause 6(1) changes "and" to "or" in paragraph (ii) to make the provisions alternative rather than cumulative.

Clause 6(2) inserts a new paragraph (iii) which also allows for a regulation to prescribe additional development for which cost impact conditions may be imposed. This additional facility is included to deal with specific circumstances that, among other things, may apply to enable cost impact conditions to be imposed by the Department of Main Roads in relation to State-controlled roads infrastructure.

Insertion of new s 4.3.1A

Clause 7 inserts a new section 4.3.1A in chapter 4, part 3, division 1 to clarify the intention of the IPA that all assessable or self-assessable development, whether under an IPA scheme, ("assessable" and "self-assessable development" defined in Schedule 10 of the IPA) or a transitional planning scheme, ("assessable" or "self-assessable development" defined in section 6.1.1) is subject to the provisions of the IPA about development offences.

Amendment of s 4.3.20 (Magistrates Court may make orders)

Clause 8 renumbers section 4.3.20(3)(h) as 4.3.20(3)(f).

Amendment of s 6.1.1 (Definitions for pt 1)

Clause 9(1) omits and replaces part (b) of the definition of "assessable development" in section 6.1.1. The new definition clarifies the intent of the provision which is to define assessable development for transitional planning schemes. The amendment puts beyond doubt that amendments to transitional schemes may change a category of development to make it assessable or introduce new assessable development. This is consistent with the intent of the Act which envisages transitional schemes continuing for up to 5 years.

Clause 9(2) omits and replaces part (b) of the definition of "self-assessable development" in section 6.1.1. The new definition clarifies the intent of the provision which is to define self-assessable development for transitional planning schemes. The amendment puts beyond doubt that amendments to transitional schemes may change a category of development to make it self-assessable or introduce new self-assessable development. This is consistent with the intent of the Act which envisages transitional schemes continuing for up to 5 years.

Insertion of new s 6.1.54

Clause 10 inserts a new section in division 10 part 1 chapter 6 for purposes of section 3.5.35(1)(a). This transitional provision is relevant only to Department of Main Roads and applies only if a benchmark development sequence is not included in a planning scheme or until 30 March 2003, whichever occurs first. Because benchmark development sequences will be prepared progressively over the next five years, in the interim the most current Roads Implementation Program, together with the existing

State-controlled road network, will operate as a form of substitute benchmark sequence. The provision allows the Department of Main Roads to apply cost impact conditions as a transitional measure if development is inconsistent with the details of the Roads Implementation Program and the existing State-controlled road network.

Amendment of sch 2 (Process for making temporary local planning instruments)

Clause 11 omits the redundant word "and" from section 4(d) of schedule 2, part 2.

Amendment of sch 8 (Assessable, self-assessable, and exempt development)

Clauses 12(1) to (4) add spaces for consistency of format, and make minor corrections to the names of legislation in section 10(a), of schedule 8, part 3.

Amendment of sch 10 (Dictionary)

Clause 13(1) amends the definition of "assessing authority" to clarify the intention of the IPA that, where a private certifier approves work and the relevant local government believes that an enforcement notice should be issued under section 4.3.1 of the IPA with respect to that work, the local government is able to give an enforcement notice.

Clause 13(2) omits and inserts a new definition of "benchmark development sequence" which—

- refers to "stages" rather than "periods" for consistency with operational terminology;
- provides for guidelines on the method of preparing a benchmark development sequence to ensure consistency between State and local planning; and
- provides for guidelines rather than a regulation to identify the contents of a BDS.

Clause 13(3) amends the definition of "premises" to include a structure other than a building as defined in the IPA.

PART 3—AMENDMENT OF STOCK ACT 1915

Act amended in pt 3

Clause 14 declares that part 3 amends the *Stock Act 1915* (Stock Act).

Amendment of s 4 (Interpretation)

Clause 15 amends the definition of "cattle feedlot" in section 4(1) for consistency with the Environmental Protection Regulation 1998.

Amendment of s 4A (meaning of "cattle feedlot")

Clause 16 omits a redundant definition.

Omission of ss 28A to 28I

Clause 17 omits sections about licensing of cattle feedlots. These provisions were made redundant by the environmental licensing regime in the EPA. That Act has required the relicensing of cattle feedlot operators since July 1996.

Amendment of s 28J (Cattle Feedlot Advisory Committee)

Clause 18 amends section 28J to delete the reference to "licensing" in relation to the functions of the Cattle Feedlot Advisory Committee.

Amendment of sch (Subject matter for regulation)

Clause 19 omits sections 6B and 6C, which provide for regulations to be made about cattle feedlots, from the Schedule.

PART 4—TRANSPORT INFRASTRUCTURE ACT 1994

Act amended in pt 4

Clause 20 declares that part 4 amends the *Transport Infrastructure Act 1994* (TIA).

Amendment of s 40 (Impact of certain local government decisions on State-controlled roads)

Clause 21(1) omits section 40(1)(a) and replaces it with a provision from which reference to a local government approving a subdivision, rezoning or development of land, ie assessable development, has been removed. The carrying out of road works by a local government on, or the management of, a local government road is not assessable development under the IPA and the requirement for a local government to obtain the chief executive's written approval for these activities is maintained in the TIA.

Clause 21(2) omits from section 40(1)(b) the requirement for a local government to obtain the chief executive's approval if the local government intends to approve development proposed to be assessable under IDAS. This will be replaced with a concurrence role for the chief executive under IDAS.

Clause 21(3) inserts a new section 40(1A) which provides that where a development application is referred to the Department of Main Roads as a concurrence agency, and the roadworks on a local government road or changes to management of a local government road were considered as part of the application, the separate approval of the Department of Main Roads is not required for the local government for the works or changes on the local government road.

Clause 21(4) omits references to development proposed to be assessable under IDAS from sections 40(3) to (5). These sections provide for the chief executive to require conditions to be imposed on local government approvals. Under IDAS the chief executive as a concurrence agency will be able to direct the conditioning of development approvals.

Clause 21(5) omits sections 40(7) and (9A). Section 40(7) provides that failure of a local government to impose conditions does not invalidate the approval. Under IDAS an assessment manager is obliged to impose conditions as required by a concurrence agency. Section 40(9A) was inserted as an interim measure to allow for the processes under section 40 and IDAS to operate concurrently.

Amendment of s 42 (Effect of decisions of Planning and Environment Court)

Clause 22(1) omits a reference in section 42(1)(b) to a decision of the Court to amend conditions of a local government's approval of development imposed under section 40. This development is proposed to be assessed under IDAS and will be appealable to the Court under the IPA.

Clause 22(2) omits a reference in section 42(2)(a) to a decision of the Court to amend conditions of a local government's approval of development imposed under section 40. This development is proposed to be assessed under IDAS and will be appealable to the Court under the IPA.

Replacement of s 188 (Amounts payable to chief executive are debts owing to the State)

Clause 23 replaces section 188 to include the ability to recover amounts payable to the chief executive under the IPA as a debt. If a monetary contribution, for example, for mitigation of the impact of development on infrastructure was required under a development condition imposed under IDAS, rather than pursuing the non-payment of these monies as a development offence, this amendment enables the recovery of the monies more simply as a debt.

Amendment of s 189 (Power to require information from local governments)

Clause 24 amends section 189(1) to extend the power of the chief executive to require information of a local government relevant to the discharge of the chief executive's functions and exercise of powers under the IPA. This provision allows the chief executive, among other things, to obtain information relevant to the exercise of concurrence powers for assessable development under IDAS.

Insertion of new ch 10, pt 4, div 4

Clause 25 inserts a new division 4 in part 4 of chapter 10, which provides the following transitional arrangements with respect to the IPA:

- new section 260 provides that if an application by the local government to the chief executive under section 40 would have been required before the proposed amendments, and the activity or use for which the application was required was not assessable development under the IPA then the amended provisions continue to apply as if they had not been amended;
- new section 261 provides for any application in process under section 40 at the date of commencement of the proposed amendments to continue to be processed as if the proposed amendments had not been made. The process includes any appeal or review about the application.

Amendment of sch 2 (Appeals)

Clause 26 omits a decision under section 40 about subdivision, rezoning, or development from the schedule of appeals. Decisions about development applications assessed under IDAS are appealable to the Planning and Environment Court under the IPA.

PART 5—MISCELLANEOUS

Regulation repealed

Clause 27 repeals the *Cattle Feedlot Regulation 1989* for consistency with the amendments to the Stock Act.