LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The Bill provides for the amendment of the *Local Government Act 1993* and other legislation in order to:

- Clarify the legal requirements for those councils with significant water and sewerage business activities which are affected by the requirements of chapter 10 (Reform of certain water and sewerage services) of the *Local Government Act 1993*;
- Validate the levying of rates in 1999/00 where local governments have not fixed a period for payment of rates;
- Facilitate the distribution of transfer proceeds to shareholding local governments following the transfer of the South East Queensland Water Board to the new South East Queensland Water Corporation Ltd;
- Carry forward the consequential amendment program to give effect to the integrated planning reform program in respect of ports, public housing and private certification, and to remove anomalies, improve workability and correct minor textual errors in the *Integrated Planning Act 1997*; and
- Address a number of matters in local government legislation of a minor technical nature.

Reasons for and Achievement of the Policy Objectives

The Queensland Government is committed to ongoing reform in the areas of national competition policy objectives and integrated State planning, and to the autonomy and accountability of local governments. The policy objectives of this Bill permit the timely ongoing implementation of the current reform programs as they affect local governments and other statutory and industry bodies.

Alternatives to the Bill

There are no alternatives considered appropriate for achieving these policy objectives.

Estimated Cost of Implementation

The costs to Government of implementing the Bill will be administrative in nature and will not be significant. Costs will be met within existing budgetary allocations.

Consistency with Fundamental Legislative Principles

The Bill contains a number of provisions intended for retrospective commencement. Retrospectivity which diminishes rights and liberties of individuals is inconsistent with fundamental legislative principles. The retrospective provisions in the Bill are intended to maintain existing rights or to merely clarify existing arrangements and expectations among stakeholders. No rights or liberties are diminished by these provisions.

Consultation

Consultation has been made on all provisions in the Bill with lead State Government agencies and bodies representing local government-wide interests which are concerned with the State's national competition policy objectives (including water reforms) and the integrated planning agenda. A three-month consultation program was undertaken to verify the adequate

operation of the State's new integrated planning regime with peak industry and government stakeholders.

As a result, the Bill represents a broad consensus on the correct interpretation of policies and the practical application of objectives by leading stakeholders in the Government's reform programs.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 provides for the short title of the Bill.

Commencement

Clause 2 provides for commencement of provisions.

Clause 2(1) provides for the following clauses to commence retrospectively at the commencement date of the IPA, ie 30 March 1998:

- clause 19 (amendment in pt 6);
- clause 24 (amendment of s 3.1.6);
- clause 25 (amendment of s 3.1.7);
- clause 45 (new sections 4.1.33A, 4.1.33B);
- clause 71 (new section 6.1.30A);
- clause 76 (amendment of s 6.1.35A);
- clause 77 (replacement of s 6.1.35B);
- clause 79 (amendment of s 6.1.45A); and
- clause 81 (new section 6.1.51A).

Clause 2(2) provides for clauses 63 to 66 (public housing provisions in IPA), clause 74 (omission of s6.1.33) and clause 84(3) (item 10A of Schedule 8) to commence on 31 March 2000.

Clause 2(3) provides for clauses 28 (amendment of s3.2.8 of IPA), 32(amendment of s3.5.17), 36(amendment of 3.6.5), 40(amendment of 4.1.21), 53(amendment of 4.3.11) and 67(amendment of 5.7.6) to commence on 1 July 2000.

Clause 2(4) provides for clauses 22(insertion of new ch1, pt 4 div 3 into IPA), 61 (amendment of 5.3.5), 84(2)(insertion of new section 4A into Schedule 8, pt 1) and part 10 (amendment of the *Transport Infrastructure Act)* on a date to be fixed by proclamation.

Clause 2(5) provides that all remaining provisions commence on assent.

PART 2—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Clause 3 (Act amended in pt 2) provides that this part amends the *Local Government Act 1993*.

Clause 4 omits a definition which is relocated under clause 5 to s.772.

Clause 5 (Act amended at s772 -- Definitions for ch 10) relocates the definition omitted by clause 4, and inserts the new definitions:

- **"access component" -** the access component of a two-part tariff as the basis of utility charges for water is defined as a fixed amount charged for access to the water service. The definition clarifies that this amount need not be calculated on the basis of the volume of water supplied, as reflected in the subordinate legislation. It is intended to make clear that the access component of a two-part tariff need not be based on consumption, even though two-part tariffs are a valid form of "consumption charging" for the purposes of s783(b) (see *clause 6* – insertion of s772A);

- **"consumption component"** – the consumption component of a two-part tariff as the basis of utility charges for water is defined as an amount based on the quantity of water supplied. For example, the consumption component is expressed as a charge per kilolitre of water supplied; and
- **"cost-effective"** – the term "cost-effective" is defined in order to clarify the intent of the Act in relation to the carrying out by councils of an assessment of whether it is cost-effective to apply a two-part tariff as the basis of utility charges for water services. The definition provides that a two-part tariff is cost-effective if the application of the tariff is likely to result in savings in costs to the business activity for supplying water. Costs include the capital cost of providing water service infrastructure. This means that councils in carrying out a cost-effectiveness assessment are not required to consider the impact of a two-part tariff on consumers, although councils may choose to do this as part of the assessment. The intent is to set a general definition, with the detail of what is required in a cost-effectiveness assessment set out in subordinate legislation

Clause 6 inserts a new section 772A to clarify that a two-part tariff satisfies the requirement of s783(b) of the Act that consumption is the basis of utility charges for water services. The intent is to provide that the access component of a two-part tariff is not inconsistent with the requirement of s783(b) for consumption to be the basis of water charges, even though the access component may be based on some other factor, eg, the flow capacity of a water meter.

The provision further clarifies that a two-part tariff is not the only basis for utility charges for water that meets the requirement for consumption-based charging under s783(b). Other bases for water charges that meet the consumption requirement are set out in the subordinate legislation.

Clause 7 inserts a new section 783A to clarify that where a local government has resolved under s.780 to apply a two-part tariff for water services, this resolution is implemented by the making of utility charges under chapter 14 or in the case of the Brisbane City Council, under the *City*

of Brisbane Act 1924, part 3. The intent is to clarify that while a council may decide under chapter 10 to apply a two-part tariff, this decision only sets the basis of the utility charge. The utility charge must be made at a budget meeting of the council, as required under chapter 14 or in the case of Brisbane City Council, under part 3 of the *City of Brisbane Act 1924*.

Clause 8 inserts a new section 973A to clarify that a utility charge for water or sewerage services validly made under chapter 14 after the amendment commences is not invalid to because a council affected by chapter 10 has failed to comply with requirements of chapter 10.

Clause 9 inserts a new part 4 (sections 1242-1244) and heading in chapter 19 of the Act.

PART 4—VALIDATION PROVISIONS FOR LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT 1999

Section 1242 provides for the validation of rate notices issued by some local governments in 1999/2000 which do not comply with the requirements of s.1008 and s.1014 as amended by the *Local Government and Other Legislation Amendment Act 1999* (Act No.30 of 1999). The intent is that council rate notices for the financial year ending 30 June 2000 are valid despite a council's failure to decide the period for payment of rates. The intent is that the rate notices are valid if they had been issued as if the amendments to s.1008 and s.1014 had not been made.

PART 5—VALIDATION PROVISIONS FOR LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT 2000

Section 1243 applies the part to the Brisbane City Council.

Section 1244 is of retrospective application and provides that if a local government prior to the commencement of the section made and levied a utility charge for water services in order to implement a resolution under s.780 of the Act, the utility charge is not invalid because of a failure to comply fully or to perform any action required under chapter 10, Parts 3 and 4 and s.783 of the Act.

The intent is that the utility charges for water services made by any of the local governments which prior to commencement have resolved under s.780 to apply a two-part tariff are not invalid merely because a two-part tariff assessment report was not prepared in accordance with part 3 of chapter 10, or because the council in making its decision on the report did not comply with part 4. In addition, any such utility charges for water services are not invalid merely because the charge includes an access component that is not based on consumption.

However, the section is not intended to prevent a utility charge for water services being invalidated on other grounds.

In addition, subsection (3) provides that the section does not affect a court decision made before the commencement of the section to invalidate a utility charge for water services levied on a person, where the charge was based on a resolution under s.780 to apply a two-part tariff. The intent is that the section does not affect the decision of the Supreme Court (*Hume Doors and Timber (Qld) P/L v LCC [1999] QSC*) to invalidate Logan City Council's utility charges for water levied on Hume Doors and Timber (Qld) P/L for 1998/99.

PART 3—AMENDMENT OF BUILDING ACT 1975

Act amended in pt 3

Clause 10 declares that part 3 amends the *Building Act 1975*.

Amendment of s 3 (Definitions)

***Clause 11* inserts a new definition of "professional misconduct" -**

- in paragraph (a), to mean conduct when a building certifier seeks, accepts or agrees to accept a benefit (whether for the building certifier's benefit or another person) as a reward or inducement to act other than in accordance with the Building Act or another Act regulating building certifiers, including private certifiers for building work;
- in paragraph (b), to mean conduct when a building certifier acts in a way contrary to a duty stated in the Building Act or another Act for building certifiers, including private certifiers for building work;
- in paragraph (c), to mean conduct when a building certifier makes false claims about their qualifications, experience or accreditation as a building certifier;
- in paragraph (d), to mean conduct when a building certifier exceeds their powers as a building certifier;
- in paragraph (e), to mean conduct when a building certifier undertakes professional work which they are not competent to perform. This will increase the deterrent for a certifier to act beyond his or her competencies;
- in paragraph (f), to mean conduct when a building certifier contravenes a code of conduct that applies to the building certifier;
- in paragraph (g), to mean conduct by a building certifier that is negligent or incompetent.

Amendment of s 21 (Show cause notices)

Clause 12 amends section 21 to enable an enforcement notice to be given to not only an owner but any person who does not comply with a particular matter in the Act. This complements the amendments to section 22.

Amendment of s 22 (Enforcement notices)

Clause 13(1) amends subsection (1) to provide for local government, and private certifiers as permitted by subsection (3), to give an enforcement notice regarding the carrying out of building work. This will allow building works associated with the construction of buildings and structures, such as siteworks, to be subject to an enforcement notice.

Clause 13(2) amends subsection (2) to enable a local government to give an enforcement notice to not just an owner but any person who does not comply with a particular matter in the Act. For example a local government could give an enforcement notice to a builder regarding the carrying out of building work that does not comply with the provisions of section 4.

Clause 13(3) amends subsection (4) to require, similar to the issue of show cause notices to an owner, a show cause notice to be issued to another person before an enforcement notice is issued to the person.

Clause 13(4) amends subsection (5) to clarify that the requirement to serve a show cause notice applies to a local government and private certifier.

Amendment of s 24 (Appeals against enforcement notices)

Clause 14 amends section 24 to allow not only an owner but also a person who is given an enforcement notice to be able to appeal to the Building and Development Tribunal against the giving of the notice.

PART 4—AMENDMENT OF BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) ACT 1991

Act amended in pt 4

Clause 15 declares that part 4 amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Amendment of s 77 (Duty of assessment manager to sight approved form)

Clause 16 amends subsection (3) to clarify that it is an offence for a private certifier, acting as an assessment manager, to issue a development permit for building works under the *Integrated Planning Act 1997* if the private certifier has not seen an approved form issued by the Authority signifying payment of the levy as required.

PART 5—AMENDMENT OF THE CITY OF BRISBANE ACT 1924

Clause 17 (Act amended in pt 5) provides that this part amends the *City of Brisbane Act 1924.*

Clause 18 inserts a new section, s58A that applies the same intent as clause 8 (inserting s973A in the *Local Government Act*) in relation to Brisbane City Council.

PART 6—AMENDMENT OF INTEGRATED PLANNING ACT 1997

All references to the repealed Act in the notes to Part 6 are references to the *Local Government (Planning and Environment) Act 1990* (P&E Act) (repealed).

Act amended in pt 6

Clause 19 declares that part 6 amends the IPA.

Replacement of s 1.4.3 (Implied and uncommenced right to use premises protected)

Clause 20 replaces and clarifies the operation of section 1.4.3. The section applies where a person applies for a permit to carry out assessable development, and that development also involves a material change of use of the land the subject of the application.

If when the application is made, the material change of use is not assessable development, ie it is either self assessable or exempt development, the replacement section 1.4.3 makes it clear that provided a permit for the development ultimately takes effect,[1] any change to the planning scheme or to any applicable code for the change of use after the date of the application, cannot further regulate the use of the premises implied by the approved assessable development.

For example, a proposal to build a shop in a retail area involves assessable building work, and the change of use is self-assessable. The code applicable to the change of use requires 3 car parking spaces to be provided. After the date of the application for the building work the planning scheme is amended to increase the required car parking spaces to 5. These new requirements do not apply to the development for the shop if the assessable building work applied for and approved, is completed within the time provided by either the permit or the IPA, and the use of the building for a shop commences within five years of the date of the building work being completed.

Amendment of s 1.4.6 (Lawful uses of premises protected)

Clause 21 amends section 1.4.6 by inserting a new subsection (4) to make it clear that although lawful uses are protected under the provision from further regulation by a planning scheme, further regulation of development in relation to the use may be imposed by the State under schedule 8. For example, a planning scheme could not require a separate approval for operational works necessarily associated with an existing use.

1 Section 3.5.19 provides that an approval takes effect, if there is no submitter and the applicant does not appeal, when the notice is given; otherwise when the submitter's appeal period ends, or an appeal by the applicant or a submitter is decided.

However, operational works made assessable in part 1 of schedule 8 would require an approval whether or not they were necessarily associated with an existing use.

Insertion of new ch 1, pt 4, div 3

Clause 22 inserts a new division to deal with uses and rights acquired after the commencement of the IPA, but before the commencement of legislation which amends other State legislation to integrate development assessment processes in that legislation into IDAS. In this amendment Bill certain development on strategic port land is made assessable under IDAS[2]. The new division provides, in particular, that lawful rights to use premises acquired for, and buildings and works lawfully constructed on, strategic port land are protected if they were acquired or constructed after the commencement of the IPA, but not under the IPA.

New section 2.1.17A

Clause 23 inserts a new section 2.1.17A to provide that where a planning scheme policy and any other planning instrument deal with the same matter in an inconsistent way, any planning instrument (not just the planning scheme as stated in the existing provision), will prevail over the planning scheme policy to the extent of the inconsistency. A planning instrument includes a temporary local planning instrument and a State planning policy. The amendment is consistent with the sections of the Act dealing with State planning policies (SPP) which provide that if an SPP is made about the same matter as a local planning scheme policy, that matter effectively becomes a State interest, and unless the SPP itself states otherwise, has effect throughout the State[3]. The local planning scheme policy may only support the local dimension of the planning scheme.

The amendment is related to a minor amendment in the schedule[4] omitting section 2.1.16 (2).

2 See *clause 84(2)*.

3 See sections 2.4.1 and 2.4.2 IPA.

4 See schedule to part 11 – Integrated Planning Act, item 1.

Amendment of s 3.1.6 (Preliminary approval may override local planning instrument)

Clause 24 inserts a new section 3.1.6(1) that provides that section 3.1.6 applies to development applications under either:

- IPA schemes, for a material change of use requiring impact assessment, or
- transitional planning schemes or interim development control provisions, which under the repealed Act, would have required public notification.

The existing provision uses terminology applicable to IPA schemes. The amendment, which is proposed to commence retrospectively, makes it clear that the section has always applied to the equivalent type of application made under an instrument prepared under the repealed Act.

Amendment of s 3.1.7 (Assessment manager)

Clause 25 amends section 3.1.7 by inserting a new sub-section (2A) to ensure the intent of the IPA is achieved. The Minister may decide, or a regulation prescribe, a local government as assessment manager for a development application for land not wholly within the local government's area[5]. The *Local Government Act 1993*, however, restricts a local government's jurisdiction to its area and other areas put under its control for a specific purpose. The amendment, which is proposed to be retrospective, ensures the jurisdiction of the local government includes acting as the assessment manager for development on the land the subject of a development application which is outside the local government's area, where the local government is appointed as assessment manager by the Minister or by regulation.

5 "Local government area" under the *Local Government Act 1993* is an area declared by regulation to be a local government area, and is the local government's "basic territorial unit".

Amendment of s 3.2.2 (Approved material change of use required for certain developments)

Clause 26(1) amends section 3.2.2(1) to clarify that the section applies when a development application is made to build any structure or carry out other works for which a permit for a material change of use of the land is needed to enable the structure or works to be used for their intended purpose. If that is the case, the section provides that if the change of use has not been applied for or approved, then the application is taken also to be for the change of use.

Clauses 26(2) amends section 3.2.2(2)(1)(a) to twice replace the term "development". Under the IPA, "development" is characterised as an action rather than the result of an action. Accordingly it is inappropriate in the context of this subsection to use the term "development". Rather the provision relates to the use of the result of the development, ie the structure that is the result of building work, or works that are the result of operational work being carried out.

Amendment of s 3.2.3 (Acknowledgement notices generally)

Clause 27 amends section 3.2.3 to clarify that even though the assessment manager may not intend to make an information request, and advises the applicant accordingly in the acknowledgement notice, this does not refer to, or in any way interfere with the right of the chief executive to make an information request, should referral coordination be necessary for the application. The amendment confines the operation of the paragraph to an information request under section 3.3.6, which does not apply if referral coordination is required.

Amendment of s 3.2.8 (Public scrutiny of applications)

Clause 28(1) amends section 3.2.8(3) to include in the definition of "supporting material" for the section any written requests for further information made by the assessment manager during the information and referral stage for an application. As supporting material, these requests would need to be kept available for public scrutiny by the assessment

manager during the processing. This is consistent with the requirement that any information request made by a concurrence agency must be kept available for public scrutiny.[6]

Clause 28(2) renumbers the provision.

Amendment of s 3.4.2 (When does notification stage apply)

Clause 29 amends section 3.4.2 to clarify the intention of the provision particularly in response to a recent court decision, which confirmed its intended meaning. The amendment clarifies that if any aspect of the development the subject of an application requires impact assessment, including when another aspect requires code assessment, the whole of the application is required to be publicly notified. This is so even if part of the application is subject to a concurrence agency requirement that all or part of the application be refused.

Section 4.1.28(4) provides that appeal rights for the application are available for submitters only for that part involving impact assessment.

The combined effect of the provisions is that a person wishing to make a submission about a development application is fully informed by the public notification about all aspects of the proposed development, and can make a submission about all or any aspect of the proposed development, whether code or impact assessable. The entire submission, including those views expressed on aspects of the proposed development that are subject to code assessment, form part of the common material[7] and as such must be taken into account by the assessment manager in assessing both the code and impact assessable aspects of the application. However, there is no appeal available to the submitter against the decision of the assessment manager with respect to the code assessable aspects of the application.

The heading of the provision is also amended.

6 See definition of “common material” in schedule 10, and s 3.3.6(5) of the IPA.

7 See definition of "common material" in schedule 10 of the IPA.

Amendment of s 3.5.3 (References in div 2 to codes, planning instruments, laws or policies)

Clause 30 amends section 3.5.3 to remove an inconsistency between this section and section 3.5.6. The division deals with how the assessment manager must assess development. Section 3.5.3 states that any reference to a code, planning instrument, etc. in the division refers to the code, planning, instrument, etc. in effect at the time an application is made. However, section 3.5.6, which is also within the division, refers to codes, planning instruments, etc. coming into effect after the application is made.

Amendment of s 3.5.15 (Decision notice)

Clause 31(1) amends section 3.5.15(3)(b) to remove an anomaly about the operation of this section and section 4.1.41.[8] Section 3.5.15(3)(b) requires the assessment manager to give a copy of its decision notice to principal submitters within five business days of the day the applicant lodges an appeal (if this is the earliest of the events listed). However, under section 4.1.41, an applicant has ten days to notify the assessment manager that they have lodged an appeal. If the assessment manager is relying for knowledge of the appeal on the advice of the appellant, it would not be possible for the assessment manager to comply with the requirement of section 3.5.13(3)(b), if the applicant's advice is received in the later part of the time given under section 4.1.41. Amended subsection (3)(b) links the assessment manager's advice to submitters to when the assessment manager receives advice of an appeal from the appellant.

Clause 31(2) amends subsection (5) to require the assessment manager to give referral agencies, in addition to a copy of the decision notice, a copy of approved plans and specifications.

8 Section 4.1.41 of the IPA requires a person who has lodged an appeal about a matter relating to a development application to give notice of the appeal to particular parties with an interest in the application.

Amendment of s 3.5.17 (Changing conditions and other matters during the applicant's appeal period)

Clauses 32(1) and *(2)* amend sections 3.5.17(2) and (5) for consistency with subsection (1) which provides for representations to be made by the applicant to the assessment manager about any matter stated in a decision notice (other than those specifically excluded in the section). The matters include, but are not restricted to, conditions of the development approval the subject of the decision notice. If the assessment manager does not agree with the representations made under subsection (1), existing subsection (5) only allows the assessment manager to respond to the applicant by written notice that the conditions have not been changed. The amendment provides for the assessment manager to give written notice that its decision has not been changed with respect to any matter about which the applicant has made representations.

Amendment of s 3.5.18

Clause 33 amends section 3.5.18 for consistency with sections 4.1.27 and 4.2.9. The amendment provides that when an applicant makes written representations under section 3.5.18 to the assessment manager, seeking suspension of the applicant's appeal period, if a negotiated decision notice is given to the applicant, the applicant's appeal period[9] starts again from the day after the negotiated decision notice is received. The effect of this amendment is that the applicant has 20 business days after the negotiated decision notice is given to the applicant to lodge an appeal.

Clause 33 also amends existing section 3.5.18(4)(c) for consistency with the amendment to s 3.5.17(5)[10] to provide for the assessment manager to notify an applicant that matters, including but not limited to conditions, in a decision notice have not been changed.

9 See section 4.1.27(2) and 4.2.9(2) of the IPA.

10 See *Clause 32(2).*

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

Clause 34(1) amends paragraph 3.5.35(1)(a) to replace the reference to "development" with a reference to "lots, works, and uses". "Development" is characterised under the IPA as an action, and not a result. It is intended that this provision refer to the result of development, ie that the use of premises, lots (the result of subdivision) or works, should not be inconsistent with the timing for infrastructure under the planning scheme. The provision has been amended accordingly.

Clause 34(2) adds a new subsection (1A) which makes it clear that only the entity responsible for the particular infrastructure may impose a condition under subsection (1). For example, a local government may not under subsection (1) require a payment from an applicant to lessen cost impacts related to the provision of State schools infrastructure.

Amendment of s 3.6.3 (Effect of direction)

Clause 35 amends section 3.6.3(1) to simplify the provision. The section repeats in part the provisions of section 3.6.2(1) which lists the actions that a Minister may direct the assessment manager to take about an application if the Minister takes action under the division.[11] The amended subsection refers generically to a direction, and removes reference to specific directions, obliging the assessment manager to comply with any direction the Minister may make under section 3.6.2(1).

Amendment of s 3.6.5 (When development application may be called in)

Clause 36 amends section 3.6.5 by linking the period during which the Minister may call in an application involving a State interest to the date the chief executive receives advice that an appeal has been lodged, whereas the existing provision links the period to the end of the applicant's and submitter's appeal periods. A corresponding amendment is proposed to

11 Chapter 3, part 6, division 1, gives the Minister reserve powers with respect to development applications in particular circumstances.

section 4.1.41[12], to require an appellant to give notice of an appeal to the chief executive.

Amendment of s 3.7.4 (Plan for reconfiguring that is not assessable development)

Clause 37 amends section 3.7.4(2) by removing the reference to "applicable code" to clarify the intended operation of the subsection. The term "applicable code" has a particular meaning for the assessment of development under the IPA and is not appropriately used in the context of section 3.7.4. The provision deals specifically with the reconfiguration of a building,[13] which is exempt development under schedule 8. The IPA does not regulate exempt development, and an "applicable code" cannot apply to exempt development.

The intention of the provision is that a building format plan of subdivision submitted to the local government for approval must be consistent with the terms of any development permit or requirement already applying to the building when the approval of the plan is sought. In effect the provision facilitates the continuing lawfulness of the building under section 1.4.4.[14] It is not intended that the provisions of any planning scheme or code introduced after any approval relevant to the building should further regulate the building. For example, a condition cannot be imposed on the approval of a plan of subdivision, requiring the subdivided building to comply with parking codes introduced into the planning scheme after any development approval relevant to the building.

12 See *clause 46.*

13 Schedule 8, part 1, item 4(a) and part 3, item 15 provide that the reconfiguration of a building only, is not assessable development. Two other types of development are also excepted from being assessable development, however, neither of these require local government approval of the plan of subdivision under section 3.7.4 - see s 3.7.8 of the IPA and 50(g) of the *Land Title Act.*

14 Section 1.4.4 protects lawfully constructed buildings and works from further regulation by a planning scheme.

Amendment of s 3.7.8 (Application of pt 7 to acquisitions for public purposes)

Clause 38(1) amends the section heading for consistency with the amendment of the provision.

Clause 38(2) replaces section 3.7.8(1) to clarify that part 7 does not apply to plans for the reconfiguration of any land acquired for a public purpose, whether under the *Acquisition of Land Act 1967* or otherwise,[15] or held for a public purpose, irrespective of how it was acquired.

New section 3.7.8(1) also exempts from the application of part 7 of chapter 3 any plan for the reconfiguration of strategic port land. It is not intended that reconfiguration of strategic port land be assessable development under IDAS. Local government approval of plans for the reconfiguration of strategic port land is not required at present. It is not intended to make any change to this arrangement and the amendment reflects this.

Amendment of s 4.1.10 (Rules of court)

Clauses 39(1) and *(2)* amend section 4.1.10(1) to allow for changes to the Planning and Environment (P&E) Court Rules to be approved by District Court judges. (Under the existing provision the Chief Justice of the Supreme Court and another Supreme Court judge are required to give final approval to the rules before they are forwarded to the Governor in Council for approval.) In practice the rules for the P&E Court are made and administered by the judges of the Planning and Environment Court who are drawn from the District Court.[16] It is appropriate that the Chief Judge and other judges of the District Court should have responsibility for making and amending the particular rules for the P&E Court.

15 See also *Clauses 84(1)* and *84(4)* which amend schedule 8 of the IPA.

16 See section 4.1.8 of the IPA.

Amendment of s 4.1.21 (Court may make declarations)

Clause 40 amends section 4.1.21 by inserting new subclauses (6) and (7) to require a person seeking a declaration under the section to give the chief executive notice in writing that they are taking this course of action. The Minister may then elect to become a party to the proceeding by filing a notice of election.

Amendment of s 4.1.23 (Costs)

Clause 41(1) amends section 4.1.23(2)(e) to clarify the intention of the provision. As it currently exists, the provision could be interpreted as providing for costs to be awarded against a party for default in a procedural requirement under the IPA. This is not the intention of the Act and the amendment makes it clear that the provision refers to a default in the procedural requirements of the Court.

Clause 41(2) amends section 4.1.23(g) to replace an incorrect reference to "the appellant" with "the applicant".

Amendment of s 4.1.28 (Appeals by submitters)

Clause 42 amends section 4.1.28 by inserting new subsections (5) and (6) to reinforce that submitters do not have rights of appeal against aspects of development that are subject to code assessment.

New subsection (5) makes it clear that where an application is made to carry out development under a transitional planning scheme, appeal rights are available to submitters only for the aspect or aspects of the proposed development that would have required public notification under the repealed Act.

New subsection (6) makes it clear that where an application is referred to a concurrence agency and that agency is required to assess the application against a concurrence agency code[17] and the decision of the concurrence agency forms part of the decision of an assessment manager, that part of the decision is not subject to appeal by a submitter.

17 See definition of "concurrence agency code" in Schedule 10 of the IPA (inserted by *Vegetation Management Act 1999)*.

These amendments are consistent with amended section 3.4.2[18] which clarifies that for an application involving impact assessment, or both impact and code assessable aspects, the whole application must be publicly notified. A person may make a submission about any or all aspects, which must be considered by the assessment manager as part of the common material in the decision making process. However, the part of the decision which deals with code assessable aspects is not subject to a submitter's appeal.

Amendment of s 4.1.30 (Appeals for matters arising after approval given (co-respondents))

Clause 43 amends section 4.1.30 by adding two new subsections to provide for appealable matters omitted by oversight. New subsection (4) provides for a deemed refusal of a request for an extension of the currency period of an approval, or for a minor change to a development approval,[19] to be appealable matters. Subsection (5) provides that either of these requests is deemed to be refused on the day after the expiry of the period during which the decision should have been made.

Amendment of s 4.1.31 (Appeals for matters arising after approval given (no co-respondents))

Clause 44 amends section 4.1.31 by adding two new subsections to provide for an appealable matter omitted by oversight. New subsection (3) provides for a deemed refusal of a request to change or cancel a condition of a development approval[20] to be an appealable matter. Subsection (4) provides that the request is deemed to be refused on the day after the expiry of the period during which the decision should have been made.

18 See *clause 29.*

19 See definition of "deemed refusal" in Schedule 10 of the IPA, amended by *clause 85.*

20 See definition of "deemed refusal" in Schedule 10 of the IPA, amended by *clause 85.*

Insertion of new ss 4.1.33A and 4.1.33B

Clause 45 inserts a new section 4.1.33A to reinstate rights of appeal and review available under the repealed Act[21] about conditions imposed for planning scheme amendments under that legislation. These amendments may continue to be appealable or reviewable until the schemes are replaced by IPA planning schemes.

Clause 45 also inserts a new section 4.1.33B that substantially reproduces a provision of the repealed Act[22] enabling an appeal against a decision about development under a local law. Since the commencement of the IPA a local government may not propose further local laws about development and has limited powers to deal with existing local laws.[23] The amendment enables an appeal against decisions under a development decision under existing local laws, and for consistency with the appeal framework of the IPA, against a deemed refusal.

The new sections establish the same 20-day appeal periods as are available for appellants against development decisions under the IPA.

The provision is made retrospective to the commencement of the IPA.

Amendment of s 4.1.41 (Notice of appeal to other parties (div 8))

Clause 46(1) amends section 4.1.41(d) by requiring an appellant under division 8, in addition to the existing requirements of the section, to give a copy of a notice of appeal to the chief executive.

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21 Section 2.19(3)(c)(a) of the repealed Act provided for a decision to be made about a planning scheme amendment proposed by a local government, including whether or not conditions should be attached. Section 4.15 of the repealed Act allowed for an application for be made to the local government for review of the conditions, and a decision about the application. The Court could review the decision on the application under section 7.2 of the repealed Act.
Section 4.4 of the repealed Act provided for a local government to make a decision about a planning scheme amendment proposed by an applicant. Section 4.3 allowed an application for review of conditions attached to an approval. Section 4.4 allowed for a decision on the application for review, and appeal to the Court.

22 See section 7.1(6) of the repealed Act.

23 See section 854 of the *Local Government Act 1993*.

Clause 46(2) amends section 4.1.41(2)(b) by clarifying the action the Minister[24], a submitter to a development application, or an advice agency must take to elect to become a co-respondent to an appeal.

Replacement of s 4.1.46 (Minister entitled to be represented in an appeal involving a State interest)

Clause 47 replaces section 4.1.46 to clarify its intent, that the Minister may elect to become a party to an appeal involving a State interest. The heading of the section is amended accordingly.

Replacement of s 4.1.53 (Court must not decide appeal unless notification stage complied with)

Clause 48 replaces section 4.1.53 to clarify that the Planning and Environment Court may decide an appeal even if some procedural requirements of IDAS have not been complied with. It is intended that this discretion apply, in particular, to the requirements of IDAS for public notification of development applications. However, the discretion may apply to any procedural requirement of IDAS for any appealable matter.

Amendment of s 4.2.7 (Jurisdiction of tribunals)

Clause 49 amends section 4.2.7(2) to make it clear that whilst a tribunal may decide any matter that may be appealed to it under another Act, an appeal to a tribunal under this Act can only be made about a decision or the like under this Act that relates to the Building Act.

Insertion of new s 4.2.16A

Clause 50 inserts a new section 4.2.16A requiring the registrar to give notice of an appeal that may be appealed to the tribunal under another Act, to parties the registrar considers are affected by the appeal within 10 business days after the appeal is started.

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24 See *clause 47* which amends section 4.1.46.

Amendment of s 4.2.17 (Notice of appeal to other parties (div 3))

Clause 51 amends subsections (1)(a) and (b) to require the registrar to also give notice of the appeal to previously unlisted affected parties including the private certifier (if any) and any building referral agency for an aspect of the application the subject of the appeal.

Also, subsection (1)(a) consolidates the notification requirements if the appellant is an applicant or a person who is given a notice mentioned in section 4.2.11. Subsection (1)(b) prescribes who the registrar is to give notice of appeal to, if the appellant is a building referral agency mentioned in 4.2.10.

Amendment of s 4.3.2A (Certain assessable development must comply with codes)

Clause 52 amends section 4.3.2A to correct an oversight. The provision requires compliance with certain codes that are not applicable codes. The amendment extends the scope of the provision to include codes (also not applicable codes) that are identified in a preliminary approval for development.

Amendment of s 4.3.11 (Giving enforcement notice)

Clause 53(1) inserts a new subsection (2A) requiring an assessing authority to give local government written notice of the withdrawal of an enforcement notice. This will enable local governments to accurately maintain the register of enforcement notices required under section 5.7.2.

Clause 53(2) inserts a new subsection (3A) requiring a private certifier acting as an assessing authority to consult with the assessment manager about the giving of an enforcement notice prior to giving the notice. This complements subsection (3) which states that an assessing authority, such as a local government, must consult with the private certifier engaged for a development, before the assessing authority considers giving an enforcement notice on the development.

Clause 53(3) amends subsection (4) to cover the situation where an assessing authority does not need to undertake consultation with a private certifier or local government, prior to issuing an enforcement notice, if it believes the work is dangerous.

Clause 53(4) amends subsection (5) to clarify that only if an assessing authority is a private certifier or a local government, is the assessing authority prohibited from delegating its power to give an enforcement notice about the demolition of a building. This carries forward the provisions of previous section 64A of the *Building Act 1975* in force prior to the commencement of the *Building and Integrated Planning Amendment Act 1998.*

Clause 53(5) amends subsection (7) to remove the unintended restriction for no assessing authority other than local government to be able to give an enforcement notice in the instance mentioned in subsection (7).

Amendment of s 4.3.18 (Proceedings for offences)

Clause 54(1) amends section 4.3.18(1) to extend the application of the provision to enable a person to prosecute another person in a Magistrates Court for any offence in chapter 4 part 3, not just a development offence.

Clause 54(2) replaces section 4.3.18(3) to limit the ability to prosecute certain offences to the assessing authority[25] for the application. For consistency with the amendment to subsection (1), the list of offences in subsection (3) is extended to include those offences in chapter 4 part 3 which are not defined as development offences[26].

Amendment of s 4.3.26 (Effect of orders)

Clause 55 inserts an additional paragraph in the section to clarify the extent of the Court's power to make enforcement orders. The amendment makes it clear that the Court may order a respondent to proceedings for an

25 See definition of "assessing authority" in Schedule 10 of the IPA, as amended by *Clause 85.*

26 See definition of "development offence" in schedule 10 of the IPA.

enforcement order to, among other things, make good as far as is practicable any change or damage done to anything in the course of committing a development offence.

Amendment of s 5.1.16 (Public notice of proposed sale of certain land held in trust by local governments)

Clause 56 amends section 5.1.16(1) to correct an oversight. Section 5.1.16 is intended to apply to any land acquired by the local government under section 5.1.15 as an alternative to the payment of infrastructure charges, whether by written agreement under section 5.1.15(1)(b) or a requirement of the local government under section 5.1.15(3).

Amendment of s 5.2.2 (Agreements may be entered into about infrastructure)

Clause 57 amends section 5.2.2(1)(d) to clarify the intent of the provision. Section 5.2.2 deals with matters about the funding or supply of infrastructure which may be the subject of an infrastructure agreement under the IPA. Paragraphs (a) to (c) refer to agreement about the funding or supply of infrastructure for development the subject of a development application. Paragraph (d) is intended to allow an infrastructure agreement to be entered into where there is no associated development application. The reference to a development proposal in paragraph (d) has caused confusion. This amendment deletes those words.

Amendment of s 5.2.5 (When infrastructure agreements bind successors in title)

Clauses 58(1) and *(2)* amend section 5.2.5 by inserting a new subsection (3) and renumbering. The section allows for infrastructure agreements made under the IPA to bind the owner and successors in title if the owner of the land consents. New subsection (3) allows for the agreement to release the owner and successors in title from the obligations of the infrastructure agreement when the land is subdivided. This will enable the individual subdivided parcels to be disposed of free of the obligations of the

agreement. If a development proponent were to take advantage of this provision, and release the owner and successors in title, the public sector entity requiring or providing the infrastructure, as a party to the agreement, could ensure the agreement protected their interests.

Amendment of s 5.2.6 (Exercise of discretion unaffected by infrastructure agreements)

Clause 59 amends section 5.2.6 to address concerns that an infrastructure agreement that relies for its fulfillment on a development approval can only be entered into after a development application has been made and before it is decided. This interpretation was not intended and the amendment makes it clear that the development application may have already been made, or it may be made in the future.

New s 5.2.7

Clause 60 inserts a new section 5.2.7 to provide that where, if instead of imposing conditions on a development permit an assessment manager or concurrence agency enters into an infrastructure agreement with an applicant[27], any conditions subsequently imposed on a development permit should be consistent with the terms of the agreement. To the extent they are not, the terms of the agreement prevail. This provision is consistent with the provisions of the IPA which require that conditions imposed on a subsequent development approval must not be inconsistent with conditions imposed on a previous approval[28]. As an infrastructure agreement is entered into as an alternative to conditions being imposed it is appropriate that its terms should have the same status as development conditions.

Amendment of s. 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

Clause 61(1) amends the section heading for consistency with the amendment of the provision.

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27 See section 3.5.35(4) of the IPA.

28 See section 3.5.32(1)(a) of the IPA.

Clause 61(2) omits subsections (2) to (7) and inserts new subsections (2) to (4).

Subsection (2) will transfer to the *Standard Building Regulation 1993* (SBR) requirements imposed on a private certifier to not decide an application until all necessary development approvals are effective for listed aspects of assessable development. This will enable the SBR to prescribe in detail various other assessments that must have preliminary approval or a development permit, as appropriate, prior to building work being approved. This will include a requirement for prior approval of any necessary material change of use or impact assessment of aspects of development and include certain code assessable aspects of plumbing and drainage work and operational works.

Subsection (3) delays the commencement of the decision stage for applications being assessed by private certifiers to when the private certifier is entitled under subsection (2) to make a decision. Subsection (4) clarifies that in addition to deciding a development application, a private certifier may also decide subsequent changes to an approval.

The requirements of existing subsections (5) to (7) are to be transferred to the *Standard Building Regulation* to improve the readability of the legislation.

This clause will not be commenced until the regulation is also commenced. The date will be set by proclamation.

Amendment of s 5.3.8 (Private certifiers must act in the public interest)

Clause 62 amends subsection (2)(b) to prescribe as an offence for a private certifier to act contrary to a duty for private certifiers stated in the Act under which the certifier is accredited. This is in addition to acting contrary to a duty stated in the IPA.

Replacement of s 5.6.1 and 5.6.2

Clause 63 replaces section 5.6.1 to clarify that Part 6 of Chapter 5 of the IPA applies to development carried out for public housing, which is defined by an amendment to section 5.6.2. The existing provisions are unintentionally confined to the activities of the Queensland Housing Commission.

Clause 63 also replaces the definitions for the part, in section 5.6.2. The "chief executive" is defined, by reference to the *State Housing Act 1945*, and the chief executive's role as the Queensland Housing Commission (QHC).

"Public housing" is defined by reference to an element of subsidy by the State to the accommodation being provided, and includes subsidised services for residents of the housing. So for example, development under this part would include building work for administration, kitchen or nursing facilities within residential projects.

Amendment of s 5.6.3 (How IDAS applies to development by commission)

Clause 64 amends section 5.6.3 to remove an inappropriate reference to the Queensland Housing Commission.

Amendment of s 5.6.4 (Commission must publicly notify certain proposed development)

Clause 65(1) amends the heading of section 5.6.4 to remove an inappropriate reference to the Queensland Housing Commission.

Clause 65(2) replaces subsection (1) and links the operation of the provision to the chief executive's decision about whether the proposed development is substantially inconsistent with the planning scheme.

Under the existing provisions public notification is required if a public housing proposal would, if it were assessable development under the planning scheme, be subject to impact assessment. The effect of the amendment is to avoid an unnecessary public notification process where the

proposed development is inconsistent with the planning scheme but only in a way that the chief executive is satisfied is not substantial given the particular development.

For example, a proposal for housing for the aged in a residential area may only be inconsistent with the planning scheme to the extent that fewer parking facilities are proposed because residents will not be car owners and therefore will not need parking facilities to the extent allowed for by the planning scheme. A proposal for housing with wheelchair accessibility and similar disability design adaptations may only be inconsistent to the extent of minor variations from building setbacks required by the planning scheme provisions. Notification would be required where the form of housing proposed was not envisaged for the site and surrounding properties by the statement of intent for the particular area in the planning scheme.

Clause 65(3) amends subsection (2) to remove an inappropriate reference to the Queensland Housing Commission.

Clause 65(4) amends subsection (3) for consistency with amended subsection (1) by referring directly to the sections of the IPA that detail the public notification process required to be followed. (This also removes the need for existing subsection (4)(b)).

Clause 65(5) replaces existing subsections (4) and (5) by removing inappropriate references to the Queensland Housing Commission, and the *State Housing Act 1945.* As the notice required by the public notification sections of the IPA is inappropriate, the chief executive has the responsibility to approve a revised form for the public notification of public housing development. The chief executive must take any submissions into account before deciding whether to proceed with the public housing.

Amendment of s 5.6.5 (Commission must advise local government about all development)

Clauses 66(1), (2), and *(3)* amend section 5.6.5 to remove inappropriate references to the Queensland Housing Commission.

Amendment of s 5.7.6 (Documents the chief executive must keep available for inspection and purchase)

Clause 67(1) amends section 5.7.6 to require the chief executive to keep available for the public to inspect and purchase, all notices given to the chief executive of proceedings taken[29] or appeals lodged.[30]

Clause 67(2) renumbers paragraphs in the section.

Amendment of s 6.1.1 (Definitions for pt 1)

Clause 68(1) removes the definitions of "**applicable codes", "assessable development",** and **"self-assessable development".**

Clause 68(2) inserts new definitions of "**applicable codes", "assessable development",** and **"self-assessable development",** and other definitions for the section, for conciseness and to remove circularity between the definitions of "self-assessable development" and "applicable codes".

The definition of **"applicable codes"** is amended to draw on the definition of "standards" added for the section.

The definition of "**assessable development**" for transitional purposes is amended to include development made assessable under a transitional planning scheme which commenced after the commencement of the IPA[31].

A new paragraph (c) is added to the definition to include development on State land under a transitional planning scheme. Under the repealed Act Crown land was not subject to regulation under a planning scheme.[32]

29 See *clause 40.*

30 See *clause 46.*

31 Section 6.1.9 of the IPA provides for the preparation of transitional planning schemes commenced under the repealed Act to continue under the IPA.

32 See section 2.21 of the repealed Act.

The definition of "**self-assessable development**" for transitional purposes is amended to remove circularity between the definitions of "self-assessable development" and "applicable codes", and includes development made assessable under a transitional planning scheme that commenced after the commencement of the IPA.

A definition of "**standards**" is inserted to clarify the definitions of "applicable codes", and "self assessable development", for conciseness and to remove circularity between the definitions of "self-assessable development" and "applicable codes".

A definition of "**State land**" is inserted to clarify the definitions of "assessable" and "self-assessable development".

Insertion of new 6.1.10B

Clause 69 inserts a new section 6.1.10B to address a difficulty being experienced by local governments needing to resume land. Under the repealed Act a local government could resume land for any purpose of its planning scheme[33]. The IPA provides for local governments to resume land to achieve the desired environmental outcomes stated in the planning scheme. For the time being most planning schemes are transitional schemes made under the previous legislation and do not state desired environmental outcomes. As a consequence, local governments with transitional schemes have lost the ability to resume land for planning scheme purposes. This was not intended. The proposed bill inserts a transitional provision in the IPA which provides a similar power to that under the repealed P&E Act for transitional schemes. The power to take land to achieve the strategic intent of a planning scheme is intended to approach the power under the IPA (to achieve desired environmental outcomes), rather than the broader power under the repealed Act which allowed taking for any purpose of the planning scheme.

33 See section 8.1 of the repealed Act.

Amendment of s 6.1.30 (Deciding applications (other than under the Standard Building Regulation))

Clause 70 amends section 6.1.30(3)(d) to remove any doubt that while the criteria in the provision under the repealed Act[34] apply to the assessment of an application, IDAS is the process which must be followed.

Insertion of new s 6.1.30A

Clause 71 inserts a new retrospective section 6.1.30A validating aspects of development applications and approvals made and given under transitional planning schemes where the full extent of development the applicant seeks approval for has not been nominated on the application form.

The provision is needed because some applicants unfamiliar with IDAS have failed to nominate the full range of development they are applying for on the form, even though the information submitted with the application clearly indicates the application is intended to cover such development.

Under the repealed Act, approvals were given as a "package" encompassing a range of development defined under the planning scheme, including changes of use, building works, and other works. Applicants had no choice but to obtain the complete package. Further approvals would have been required under other legislation such as the *Building Act* before some of the development could actually start. Under IDAS, applicants have flexibility to apply for development under separate applications if they wish, and the application form consequently makes provision for the applicant to nominate the aspect or aspects of development they are applying for. Many applicants and assessment managers also have confused the term "material change of use" under the IPA with the totality of approvals obtained under a planning scheme under the repealed Act.

The combined result of these factors is that some applicants have nominated only a material change of use on the application form, when their intention is to seek a "package" style approval equivalent to what they would have received under the repealed Act. Under IDAS, the equivalent of

34 Section 5.2(4) of repealed Act.

this “package” most commonly consists of a development permit for a material change of use, and preliminary approval for building and other works, so that further assessment under the planning scheme is unnecessary.

Without a validating provision of this nature, the failure to nominate on the application form all aspects of development for which the applicant is seeking approval could be strictly interpreted to mean that a further application or applications are required for assessment of the other development under the transitional planning scheme. Because the scheme treats all aspects of development as a “package”, it could further be argued that, if the original application required public notification, so too would the further application.

Consequently, the provision has effect where an applicant applies for a material change of use of premises and it is apparent from the common material for the application, (such as detailed plans and specifications), that the applicant intended at the time the application was made to seek approval for building work or other aspects of development assessable under the transitional planning scheme. In that case, the application is deemed to be for that other development as well as the material change of use.

The amendment provides that if the assessment manager approves the application, the approval for the building work or other aspects of development not stated in the application is a preliminary approval only, unless the approval specifically states otherwise. If the approval is a preliminary approval for building work, no further approval is required under the planning scheme. If the approval is for other works requiring a further application or applications under the transitional planning scheme, the application or applications must be processed using the code assessment process. This ensures that, in common with assessment under the repealed Act, only one public notification process needs to be undertaken for the proposal.

The local government may expressly refuse the other development deemed to be included in an application.

Also, an applicant may limit the operation of the provision by written notice to the assessment manager specifically nominating the aspects of development the applicant intended to seek approval for. This will address any disagreements between the applicant and assessment manager as to the scope of the application. For example, such disagreements may be reflected in the scope of information requests for the application, or the conditions of any approval.

This section does not provide an opportunity for applicants to amend an application in progress by adding further development. Subsection 1(c) indicates it must be clear from the common material that the application was for the other development. The use of the term "was" in this context is intended to convey that at the time the application was made, it could be inferred from the common material that the applicant intended to seek approval for development in addition to the material change of use. Further common material may be subsequently submitted supporting the application for the other development (for example, in response to an information request), however if it could not be inferred from the information submitted when the application was made that approval for the other development was being sought, this section would not apply.

Amendment of s 6.1.31 (Conditions about infrastructure for applications)

Clause 72(1) amends section 6.1.31(2)(a) to clarify the intention of the IPA that agreements may be entered into about infrastructure under the Act, regardless of the other arrangements that can be made about infrastructure provision under the planning scheme.

Clause 71(2) inserts a new subsection (3) which provides that the terms of an infrastructure agreement prevail to the extent of any inconsistency over any conditions imposed under this section on a development approval, regardless of the order in which they were made or decided. This is consistent with the relationship between development approvals and infrastructure agreements provided for generally under the IPA.

Amendment of s 6.1.32 (Conditions about infrastructure for applications under interim development control provisions or subdivision of land by-laws)

Clause 73 amends section 6.1.32 by providing that the terms of an infrastructure agreement prevail to the extent of any inconsistency over any conditions imposed under this section on a development approval, regardless of the order in which they were made or decided. This is consistent with the relationship between development approvals and infrastructure agreements provided for generally under the IPA.

Omission of s 6.1.33 (Conditions about infrastructure for applications about reconfiguring a lot)

Clause 74 omits section 6.1.33 after 31 March. The omission coincides with the expiry of the time given in the section for the making of an application for the development affected by the section, ie two years from its commencement.

Amendment of s 6.1.34 (Consequential amendment of transitional planning schemes)

Clause 75 amends section 6.1.34(2) to remove an obligation, and allow local government to exercise its discretion, to amend its planning scheme for consistency with a development approval that under the repealed Act would first have required the planning scheme to be amended. Experience with administering the provision has shown that there are circumstances where such amendments are unnecessary or undesirable, and it is appropriate that local governments should have the option to amend the planning scheme.

The operation of the existing provision limits to 20 days the time within which the local government may choose to amend its planning scheme to reflect an approval.

Amendment of s 6.1.35A (Applications to change conditions of rezoning approvals under repealed Act)

Clause 76(1) amends section 6.1.35A(1) to extend the operation of the provision to include conditions imposed under section 2.19(3)(a) of the repealed Act[35].

Clauses 76(2) and *(3)* amend sections 6.1.35A(2) and (3) by providing that an applicant wishing to change a condition of a rezoning may elect to use either the process under the repealed Act or IDAS.

Previously the provision allowed an appeal under the repealed Act only if the IDAS process could not be used to achieve the change. The effect was that where the change involved assessable development it was necessary to apply under IDAS. However, if the change was not assessable development, for example a change to a management condition such as length of operating hours, the process under the repealed Act could be used.

The optional means of seeking a change provides more flexibility and does not disadvantage either the applicant or potential submitters as the process under the repealed Act involves public notification and third party appeal rights.

The provision is retrospective.

Replacement of s 6.1.35B (Development approvals prevail over conditions of rezoning approvals under repealed Act)

Clause 77 replaces section 6.1.35B to clarify that a development approval prevails to the extent of any inconsistency over any rezoning approval or decision under the repealed Act, whether the rezoning proposal was initiated by the Minister, a local government or an applicant.

The provision is retrospective.

35 Section 2.19 of the repealed Act provided for the assessment of an amendment of a planning scheme proposed by the Minister or a local government. Subsection 3(a) provides for conditions to be imposed on the proposal.

Amendment of s 6.1.45 (Infrastructure agreements under repealed Act)

Clause 78(1) amends the heading of section 6.1.45 to omit reference to the repealed Act, as the operation of the amended provision will be wider.

Clause 78(2) inserts a subsection (2) which clarifies the status of permission criteria under section 40 of the *Transport Infrastructure Act*, or section 145(4) of the *Transport Operations (Passenger Transport) Act* (TOPTA), contained in infrastructure agreements under the repealed Act or under the IPA.

Permission criteria made under section 40 (repealed 1 December 1999) and the TOPTA determined what aspects of a proposal needed to be referred to the Department of Main Roads (DMR). The approval of development under section 40 has been integrated into IDAS, and the Integrated Planning Regulation determines when development must be referred to DMR. However, transitionally the provisions of section 40 and the TOPTA may apply to some infrastructure agreements made under the IPA.

The amendment ensures that where there is an infrastructure agreement under the repealed Act or under the IPA that contains permission criteria, the referral arrangements in the permission criteria will prevail.

Clause 78(2) also inserts a definition of "**permission criteria**" for the purposes of the section.

Amendment of s 6.1.45A (Development control plans under repealed Act)

Clauses 79(1) and *(2)* replace subsection (1) and extends the operation of the section to make valid any appeal process under a development control plan (DCP).

Clause 79(3) inserts a new subsection (3) which preserves the right to claim compensation under the repealed Act for a change to a DCP.

Some of the DCPs to which this provision applies contain approval procedures that are inconsistent with the requirements under the IPA for claiming compensation, in particular, the 2 year limitation for lodging a development application (superseded planning scheme). The proposed amendment allows a claim for compensation to be made as if the repealed Act had not been repealed.

The provision is retrospective.

Amendment of s 6.1.46 (Local Government (Robina Central Planning Agreement) Act 1992

Clause 80 amends section 6.1.46 to preserve the transitional arrangements that have continued the operation of the Robina Act, until 30 March 2003, to coincide with the date by which IPA schemes are required to be prepared.

Insertion of new s 6.1.51A

Clause 81 inserts a new section 6.1.51A to ensure that continuing uses established on State land before the commencement of the IPA, when State land was not bound by planning schemes[36], are lawful existing uses even though the land may have ceased to be State land. Similarly, premises that were a lawful building or works before commencement of the IPA are validated.

Section 6.1.51 makes lawful development on State land that was the subject of an order in council under the repealed Act. The new section removes any doubt that uses of State land that were established before the commencement of the IPA and which continue, and buildings and works established on State land before that time, have the protection given by sections 1.4.6[37] and 1.4.7[38] of the IPA. This is so even though the premises were not the subject of an order in council under the repealed Act.

36 See section 2.21 of the repealed Act.

37 Lawful uses of premises protected.

38 Lawfully constructed buildings and works protected.

Amendment of sch 1 (Process for making or amending planning schemes)

Clause 82 amends schedule 1 by inserting a new section 11(3A) to enable the Minister to delegate to the chief executive the responsibility for advising a local government it may proceed to publicly notify a minor or routine scheme amendments, where there are no State or regional interests involved. The delegation will enable the administrative process for these amendments to be streamlined.

Amendment of sch 5 (Community infrastructure)

Clause 83 amends item 1(p) of the schedule, which lists community infrastructure for the purposes of the IPA. Designation of land under part 6 of the IPA is restricted to land for community infrastructure under schedule 5. Non-urban water cycle management infrastructure, such as irrigation dams, is not included in the existing list of community infrastructure and as a consequence land for this infrastructure cannot be designated. This does not reflect the intention of the IPA and item 1(p) is amended to refer to water cycle management infrastructure generally.

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

Clause 84(1) amends item 4, by substituting paragraphs (c) and (d) for existing paragraph (c), and adding paragraph (e) to clarify that reconfiguration of any land acquired for a public purpose, whether under the *Acquisition of Land Act 1967* or otherwise, or held for a public purpose under that Act is exempt development under the IPA[39].

Clause 84(1) also adds new paragraph (f) which provides that reconfiguration of strategic port land is a further exception to the general rule that reconfiguration is assessable development. The provision reflects the existing situation where no approval is needed for this development.

39 See also *Clauses 38* and *84(4).*

Clause 84(2) amends part 1, by adding item 4A which makes assessable a material change of use of premises on strategic port land that is inconsistent with the relevant port's land use plan. This provision corresponds with amendments to the *Transport Infrastructure Act 1994* (TIA).[40] The provision, together with amendments to the *Integrated Planning Regulation 1998* will reflect the existing approval regime for development on strategic port land which requires that the approval of the Minister for Transport be sought where development is proposed on strategic port land that is inconsistent with the land use plan for the port developed under the TIA. Under IDAS the Minister will be a concurrence agency for the development.

Clause 84(3) inserts new item 10A which relates to section 6.1.40 of the IPA. Section 6.1.40 is a transitional provision that exempts development started by or on behalf of the State from regulation by planning schemes. The provision will expire on 30 March 2000.

New item 10A provides that any use implied by building work, plumbing or drainage work, or operational work, substantially commenced before 31 March 2000, is exempt from regulation by the planning scheme. This provision will ensure that the use of a relevant structure or works will not require an approval from the local government and will be a lawful use under the IPA.

There must, however, be a clear link between the work and a particular use for the provision to exempt the material change of use (MCU). It is not intended to protect any other MCU on the site, including any substantial alterations or extensions with respect to the implied use if the substantial increase in scale or intensity is not implied by the works.

For example the provision would not exempt:

- the use of a building constructed for a hospital, from assessment of the MCU under the planning scheme, if the building were subsequently or alternatively used for a school. This would be so even though no further external work was necessary to make the change;

40 See part 8.

- any substantial increase in scale or intensity of a use of land after 30 March 2000, (where the use was implied by works commenced before 31 March 2000). This would be so whether or not the increase in scale or intensity was accompanied by building or other works also commencing after 30 March 2000.

Clause 84(4) inserts new paragraphs (c), (d) and (e), and (f) in item 15. Paragraphs (c) and (d) replace previous item (c) to clarify that reconfiguration of any land acquired for a public purpose, whether under the *Acquisition of Land Act 1967* or otherwise, or land held for a public purpose, cannot be made assessable or self assessable under a planning scheme [41]. Paragraph (f) makes similar provision for the reconfiguration of strategic port land. This maintains the existing position for both these types of land.

Amendment of sch 10 (Dictionary)

Clause 85(1) omits two definitions replaced by this clause.

Clause 85(2) replaces the definition of "assessing authority" to provide that the following entities are assessing authorities and may, within their jurisdiction, issue enforcement notices with respect to the stated development. Where the respective jurisdictions overlap administrative arrangements should avoid duplication of enforcement notices:

- for assessable development - either the assessment manager giving a development permit, or a concurrence agency whose conditions have been imposed on the permit;
- for assessable development carried out without a development permit - either the assessment manager or the State entity who would have been a concurrence agency for the application;
- for assessable development assessed by a private certifier - either the private certifier or the relevant local government;
- for self assessable development (other than building or plumbing work) - the local government or the entity administering the code for the development;

41 See also C*lauses 38* and *84(1).*

- for self assessable building or plumbing work carried out on behalf of a public sector entity - the chief executive of that entity;
- for any other matter, including self assessable building or plumbing work generally - the local government.

Clause 85(2) also inserts a definition of **"concurrence agency code"** for the purposes of the definition of "applicable code" in schedule 10, and replaces the definition of **"superseded planning scheme"** to remove circularity.

Clause 85(3) amends the definition of **"applicable code"** to remove any doubt that the term includes a concurrence agency code[42].

Clause 85(4), (5), and *(6)*amends the definition of **"deemed refusal"** by making two minor corrections, and by including the deemed refusal of a request to extend the currency period for a development approval. This is consistent with the amendment of section 4.1.30.[43]

*Clause 85(7)*identifies a further offence in the definition of "**development offence**" for consistency with a previous amendment[44].

PART 7—AMENDMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 1998

Act amended in pt 7

Clause 86 declares that part 7 amends the *Integrated Planning and Other Legislation Amendment Act 1998*.

42 See definition of "concurrence agency code" inserted by *clause 85(2).*

43 See *clause 43.*

44 *Building and Integrated Planning Amendment Act 1998*, s 131.

Omission of s 42 (Amendment of s. 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works))

Clause 87 deletes section 42 of the *Integrated Planning and Other Legislation Amendment Act 1998*. These provisions are replaced by *clause 61*.

PART 8—AMENDMENT OF SOUTH EAST QUEENSLAND WATER BOARD (REFORM FACILITATION) ACT 1999

Act amended in pt 8

Clause 88 provides that Part 8 amends the *South East Queensland Water Board (Reform Facilitation) Act 1999*.

Replacement of s 9 (Board to ensure transfer proceeds are paid to State)

Clause 89 inserts a replacement provision in relation to payment of the transfer proceeds. Whereas previously the proceeds were to have been paid to the State, they will now be paid to the prescribed entities listed in the clause. This is to ensure the legislation accurately reflects the State's commitment to distribute a proportion of the transfer proceeds amongst certain local governments.

PART 9—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

Act amended in pt 9

Clause 90 declares that part 9 amends the *Transport Infrastructure Act 1994.*

Replacement of s 172 (Strategic port land not subject to zoning requirements)

Clause 91 replaces section 172 to provide that despite section 2.1.1 of the IPA[45] strategic port land is not subject to regulation under planning schemes. However, by implication it is subject to the IPA and in particular to schedule 8 which lists development assessable under IDAS.

Omission of s 173 (Use of strategic port land to be consistent with approved land use plan)

Clause 92 omits section 173. The section currently provides[46] that where a port authority proposes to use its strategic port land in a way inconsistent with its port land use plan the Minister for Transport may approve the inconsistent use if the Minister is satisfied that the port authority has adequately consulted with the public and the relevant local government. It is proposed that the responsibilities of the Minister for this development be integrated into IDAS. A material change of use of strategic port land which is inconsistent with the port land use plan is to be listed as assessable development in schedule 8 of the IPA[47], and amendments to the *Integrated Planning Regulation 1998* will make the Minister for Transport a concurrence agency for the development. The Minister's jurisdiction will

45 Section 2.1.2 provides that planning schemes apply to the whole of a local government's area. This includes strategic port land in its area.

46 See sections 169 to 171 of the *Transport Infrastructure Act 1994.*

47 See *Clause 84(2).*

include the power to require from the port authority, if necessary, evidence of prior consultation with the public and the local government.

PART 10—MINOR AMENDMENTS

Clause 93 provides that the Schedule amends those Acts mentioned in it.

SCHEDULE

MINOR AMENDMENTS

This schedule includes minor and consequential amendments.

BUILDING ACT 1975

Clause 1 corrects a cross reference in the definition of "owner".

Clause 2 corrects a cross reference in section 16(7).

Clause 3 inserts in section 26 after "(2)" the words "to an owner".

Clause 4 corrects a cross reference in section 26.

CITY OF BRISBANE ACT 1924

Clause 1 corrects a cross-reference in section 3A(2).

Clause 2 removes a misspelling from the heading to section 14A.

Clause 3 simplified redundant words in section 14A(1).

Clause 4 omits from section 134(2) the words 'and, where the council' to the end of that section. These words are redundant because they refer to s.8(3) of the *Acquisition of Land Act 1967* which has been repealed.

INTEGRATED PLANNING ACT 1997

Clause 1 omits section 2.1.16(2) which is replaced in new section 2.1.17A.

Clause 2 amends 4.1.48(1) to replace a reference to the District Court Rules part 39 with a reference to the *Uniform Civil Procedures Rules 1999*, ch 9 pt 4.

Clause 3 similarly amends section 4.1.48(3)(e).

Clause 4 amends the spelling of "policies" in s6.1.20.

Clause 5 amends the spelling of "policies" in s6.1.29(3)(c).

LOCAL GOVERNMENT ACT 1993

Clause 1 corrects a cross-reference in section 9(2).

Clause 2 simplifies the heading to chapter 10, part 2.

Clause 3 makes uniform the use of terms in the heading to section 774.

Clause 4 makes the wording in the heading to section 776 consistent with other provisions in the chapter.

LOCAL GOVERNMENT (CHINATOWN AND THE VALLEY MALLS) ACT 1984

Clause 1 provides for the town clerk of the Brisbane City Council to approve the form of infringement notices (currently required to be prescribed by Regulation). This will avoid the problem of invalid infringement notices when the Regulation made pursuant to the *Local Government (Chinatown and The Valley Malls) Act 1984* expires on 1 September 2001.

LOCAL GOVERNMENT (QUEEN STREET MALL) ACT 1981

Clause 1 provides for the town clerk of the Brisbane City Council to approve the form of infringement notices (currently required to be prescribed by Regulation). This will avoid the problem of invalid infringement notices when the Regulation made pursuant to the *Local Government (Queen Street Mall) Act 1981* expires on 1 September 2000.