INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of this Bill are to :

- improve the operation of aspects of the *Integrated Planning Act 1997* (IPA), in particular the Integrated Development Assessment System (IDAS) by:
  - — changing the way some key aspects of the Act operate;
  - — removing some requirements and procedures that are not adding value to the planning and development assessment system;
  - — clarifying and simplifying the operation of other aspects of the IPA; and
  - — removing anomalies and improving the text.
- implement IDAS for a development related approval in the *Electricity Act 1994* (the Electricity Act).
- amend the *Building Act 1975* (the Building Act) for consistency with an amendment to the IPA.
- Amend the *Local Government and Other Legislation Amendment Act 2000* to omit a redundant uncommenced section.
- Amend the *Sewerage and Water Supply Act 1949* for consistency with changes made in this Bill; and
- Amend the *Water Act 2000* for consistency with the provisions of this Bill.

Reasons for the Bill

In August 1998, the Minister for Communication and Information, Local Government and Planning announced an operational review of the *Integrated Planning Act 1997* (IPA), to commence during the first half of 1999. Public submissions were invited for the review in May 1999, and 120 submissions were received. These were assessed and a preliminary report was produced recommending various legislative and administrative changes. The report was the basis for extensive discussions with key stakeholder groups about the actions that should be taken.

The main reason for the legislation is to make the legislative changes agreed with stakeholders to reflect the findings of the review, and to refine the way in which parts of the IPA operate. The Bill also seeks to clarify local governments' power to charge private certifiers a fee for carrying out certain statutory building functions.

Way in which the objectives are to be achieved

The objectives of the Bill are to be achieved by amending the IPA and related legislation to implement the findings of the operational review of the legislation.

Why this way of achieving the objectives is reasonable and appropriate

There is no alternative to amending legislation to achieve the objectives of the Bill. The operational improvements proposed for the IPA rely on changes being made to the Act to give effect to the improvements. Similarly, the amendments to the other legislation are necessary to achieve the objectives identified.

Alternatives to the Bill

There are no alternatives to the amending legislation if the findings of the operational review of the IPA are to be implemented, and the integration of development assessment processes into IDAS is to proceed.

Administrative cost to government

The changes proposed as a consequence of the operational review, and the implementation of IDAS, are expected to further streamline processes, and reduce administrative costs and duplication of procedures at State and local government levels.

Consistency with fundamental legislative principles

The fundamental legislative principles relevant to the Bill, together with a commentary on aspects of the Bill's consistency with these principles, is set out below

Appropriate delegation

The Bill continues principles reflected in the IPA allowing for delegation of administrative processes in appropriate circumstances, while retaining critical policy and administrative decisions with appropriately accountable entities.

The only delegation related provision in the Bill is section 2.6.25 which has been expanded to allow Ministers proposing designation of land for community infrastructure to delegate certain procedural aspects for the proposed designation to the chief executive of a public sector entity. Currently this section only allows for delegation to the chief executive or a senior executive of the Minister's department. (The definition of "public sector entity" also has been changed to clarify the definition includes Government Owned Corporations).

For example, this would now allow the Minister administering the *Electricity Act 1994* to delegate procedural requirements about the designation, such as the giving of public notices, to a Government Owned Corporation such as Powerlink or Energex.

However section 2.6.25 does not authorize the Minister to delegate key decisions about the designation, such as whether to proceed with the designation, whether there has been appropriate public consultation, and key decisions about applications for early acquisition on hardship grounds arising from a designation.

Adverse effect on rights and liberties (including retrospective application)

Many provisions in the Bill are designed to clarify and enhance the rights and liberties of individuals. Examples include:

- Changes to division 4 of chapter 1 of the IPA designed to simplify and clarify existing use rights. The changes have combined and rationalized the existing provisions to make them easier to interpret, without changing their intent or scope.
- Changes to the bases on which owners may seek early acquisition of designated premises on hardship grounds (section 2.6.19) have been expanded to allow owners with the benefit of

existing development approvals to seek acquisition if the designation has made the proposed development unviable. Previously, the provisions only applied to development applications that had, or were likely to be refused.

- The powers of the Planning and Environment Court to make findings of substantial compliance with procedures have been expanded to apply to all proceedings, instead of only appeal proceedings (section 4.1.5A). This will ensure person's rights to hearings are not compromised on the basis of technicalities concerning processes.

Some provisions in the Bill may adversely affect the rights and liberties of some individuals. However careful consideration has been given in developing these provisions to ensure that any effects on individuals have been limited, and are justified having regard to the public benefits of the provisions. These provisions are:

- Changes to designation arrangements (sections 2.6.15 and 2.6.19) for when an interest only (such as an easement) is taken over the designated land. The changes prevent designations ceasing to have effect after six years because technically the land would still be in private ownership. They also prevent owners seeking acquisition of the owners' remaining interests on hardship grounds. Both of these changes address anomalies in the existing arrangements, which do not account for the taking of easements, and while ostensibly reducing owners rights, are of little practical disbenefit.

- Changes to the bases on which owners may seek early acquisition of designated premises on hardship grounds which effectively combine two currently separate grounds related personal circumstances (as opposed to development related circumstances discussed above). The two grounds concern the need to sell land for personal reasons, and the inability to obtain a fair market value. Whereas these grounds may currently apply independently, their combination in the Bill means that early acquisition on hardship grounds may be claimed for personal reasons only, and where the owner has been unable to sell the land at a fair market value. This potentially reduces the range of available circumstances in which hardship may be claimed for personal reasons. However the changes are considered justified having regard to:

— Practical difficulty in determining whether the inability to achieve a fair market value is related to the designation, or a range of other factors which influence the market for the land; and

— The crucial need for clarity in applying the criteria for hardship, given the substantial financial risk that may arise for designators, particularly for corridor designations which may affect hundreds, or even thousands of owners. Faced with these risks, such designators may decide against designation, which ultimately may expose the public to higher costs in providing the infrastructure.

- The declarations and orders powers of the Planning and Environment Court (sections 6.1.21 and 6.1.22) have been modified to broaden the circumstances in which the Court can cancel a development approval. Currently the court can only cancel an approval on the basis of fraud by the applicant. The Bill removes this limitation, but replaces it with a requirement for the court to consider compensation for any person who has suffered loss as a result of the cancellation. Experience in other jurisdictions suggests such a power, when available, is only, if ever, invoked by the courts in the most extreme of circumstances. However, without this power, development approvals that may have been given in error, and with serious adverse consequences, would stand.

- The Bill enables "assessing authorities" to give enforcement notices for offences about extracting material from Queensland waters without first giving a show cause notice (section 4.3.8). The provision is related to the pending integration of development approvals for these activities into IDAS, and reflects enforcement arrangements under existing legislation.

Some provisions in the Bill are proposed to have retrospective effect. In all cases, this is intended to reinforce or clarify, and not compromise, the rights of persons under the IPA. The retrospective aspects of the Bill are:

- Sections 5.3.5(6) and (7) have been amended to clarify local governments have always had the power to charge a fee set by resolution for accepting materials from private certifiers. The validating provisions do not affect the outcome of legal action commenced before the legislative amendments come into force. Similarly, the validating provisions will not affect any written

agreements to settle claims parties have entered into. The validating legislation is intended to merely clarify existing arrangements and expectations among stakeholders.

- New section 6.1.35C has been inserted to confirm and protect rights obtained under preliminary approvals before the commencement of the section.

Immunity from proceeding or prosecution

The Bill contains no provisions conferring immunity from proceeding or prosecution. However the powers for the Minister to call in a development application in chapter 3 part 6 have been expanded to allow the Minister to also call in an application to change or cancel a development approval. These provisions already exclude appeals against the Minister's decision, so the expanded call in powers will also exclude appeals. The Minister's decision is however subject to judicial review by the Planning and Environment Court under section 4.1.21.

Compulsory acquisition and compensation

Changes to acquisition under hardship are discussed above.

Regard for aboriginal and islander custom

The Bill includes a new section (section 3.1.14) recognising and accommodating disparities between the IDAS process and processes for according procedural rights to native title interests under the Commonwealth *Native Title Act 1993*. The section provides that if notification is required under the Commonwealth Act, the decision stage of IDAS does not start until the notification requirements of that Act are complete.

Authority to amend Act only through another Act

The Bill contains no provisions authorising amendment by other than an Act.

Consultation

The majority of the changes proposed in the Bill will implement the findings of the operational review of the IPA. 120 public submissions were received for the review. A comprehensive report addressing matters raised in the submissions was the basis of intensive consultation with State agencies and other key stakeholder groups affected by the report recommendations. The Bill is based on the outcome of that consultation, and has itself been the subject of further consultation with the same groups.

The following State agencies were consulted:

- Environmental Protection Agency (EPA)
- Department of Natural Resources and Mines (DNRM)
- Department of Primary Industries (DPI)
- Department of Main Roads (MRD)
- Department of Transport (DOT)
- Department of State Development (DSD)
- Department of Housing (DOH)
- Premier's Department
- Department of Families
- Department of Education
- Department of Public Works
- Crown Law
- Treasury
- Office of Rural Communities, DPI
- Department of Emergency Services

Other key stakeholder groups consulted included the following:

- Local Government Association of Queensland;
- Brisbane City Council;
- Environmental Defenders Office;
- Queensland Conservation Council;
- Housing Industry Association;
- Urban Development Institute of Australia;
- Property Council of Australia;
- Institution of Engineers Australia;
- Royal Australian Planning Institute;
- Master Builders Association;
- Private Certification Group;
- Queensland Environmental Law Association

PART 1—PRELIMINARY

Short title

Clause 1 describes the short title of the Act as being the *Integrated Planning and Other Legislation Amendment Act 2001*.

Commencement

Clause 2(1) provides that certain provisions are to commence on assent.

Clause 2(2) provides that the remaining provisions of the Act will commence on a date to be fixed by proclamation.

Clause 2(3) provides that uncommenced provisions of this Act will not commence automatically 12 months after the passage of the Act, as provided for by s 25DA or the *Acts Interpretation Act 1954*. This provision will allow increased flexibility in the commencement of the various parts of the Act.

PART 2—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Act amended in pt 2

Clause 3 declares that part 2 of the Act, and the schedule of minor amendments, amend the IPA.

Amendment of s 1.1.2 (Commencement)

Clause 4 amends the original commencement provisions of the IPA. Section 1.1.2(2) provided for the commencement of chapter 2, part 2, division 2 (Review by independent reviewer). It is proposed these provisions be removed from the Act altogether[1] and accordingly the commencement provision is unnecessary.

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1 See note on *Clause 19*.

Amendment of s 1.2.3 (What advancing the Act's purpose includes)

Clause 5 amends s 1.2.3(2) to replace the existing definition of "the precautionary principle" for the purposes of the IPA, with the definition provided in the Intergovernmental Agreement on the Environment and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The amendment allows for a consistent interpretation of the term for both Commonwealth and Queensland legislation.

Replacement of s 1.3.2 (Meaning of "development)

Clause 6 amends s 1.3.2 by removing the separate categories of work in paragraphs (a) to (c), ie building work, plumbing and drainage work, and operational work, and replacing them with the one category of "work" which encompasses all three.[2] Paragraphs (d), and (e) are renumbered.

Amendment of s 1.3.4 (Meaning of "lawful use")

Clause 7(1) amends the heading of s 1.3.4 to refer to the inclusion of the definition of "use" in the section.

Clause 7(2) amends s 1.3.4 to add the definition of "use" as it applies to premises, for the purposes of the IPA. The definition in Schedule 10 (Dictionary) is amended to refer to s 1.3.4.

The definition of "use", now included in s 1.3.4, has been amended to make it clear that the use of land includes any use of the land that is ancillary to the primary use.

It is possible for there to be more than one "primary" use of land, for example, a factory and a retail outlet of similar scale. If this were so, the term use would include all primary uses, and the ancillary uses to each those primary uses.

The term "ancillary" is a common planning term in many jurisdictions, and is supported by considerable judicial authority. The term replaces the term "incidental to and necessarily associated with" currently used in the definition of use. There is little judicial authority about the current term, although it is possible it may be interpreted too narrowly, and exclude activities that desirably should be considered ancillary. In particular, the term "necessarily associated with" may imply "absolute" dependency

2 See note on *Clause 8.*

between the activity and the primary use, rather than "functional" dependency.

Section 5.8.8 authorises the chief executive to prepare guidelines about determining whether an activity is a material change of use. Draft guidelines have been prepared and were circulated for public consultation with the draft Bill. The draft guidelines give considerable guidance about determining primary and ancillary uses.

Replacement of s 1.3.5 (Definitions for terms used in "development")

Clause 8 replaces the definitions that apply for interpreting the meaning of the aspects of development, for consistency with amended s 1.3.2[3].

"Development" under the IPA is conceived as an action, ie something that is done or carried out, rather than a result. The IPA is amended to provide for three types of development – carrying out work, reconfiguring a lot, or making a material change of use of premises – rather than the current 5 types of development. For the purposes of the IPA, the result of making a material change of use of premises is a use of the land for a different purpose. The use is ongoing. The end result of carrying out work is a work, eg carrying out building work may result in a building. The building is a work and continues in existence.

- **Lot**

The definition is unchanged.

- **Material change of use**

New paragraph (c) makes it clear that a material change of use that is a change in intensity must involve an increase in intensity or scale. A reduction in intensity cannot be a material change of use.

- **Reconfiguring a lot**

The definition is unchanged.

- **Work**

The concept of different kinds of work is removed from the IPA and replaced with the one concept of "work" which is defined inclusively. The definitions of "building work", "plumbing and drainage work" and "operational work" is replaced by a single definition of "work", which

3 See *Clause 6.*

includes, but is not limited to, building, drainage, plumbing, and other specified types of work. The full extent of "work" is governed by the common understanding as defined in a dictionary. The "catch-all" provision (item (e) of the current definition) is removed, together with the concept of materiality. It should be noted that transitional arrangements are made for interpreting the meaning of "operational work" where it appears in another Act or in a planning instrument.[4]

New section 1 lists types of work included in the term "work". For building, plumbing or drainage work (paragraphs (a) to (c)), the definition removes repetition by relying on the definitions in the *Building Act 1975,* and the *Sewerage and Water Supply Act 1949*[5].

New paragraph (1) (e) of the definition of "work" extends the existing aspect of work which is extraction, to include "clay" and "other material" in the list of material in the definition, and to include extraction of material from places other than where it occurs naturally, for example, material that has been deposited in a place during earlier extractive activities. This change relates to proposed amendments of the coastal legislation.

New paragraph (1)(f) of the definition includes in the definition work made assessable under IDAS by the *Water Act 2000.*

New section 2 of the definition of "work" makes it clear that certain activities are not included in the definition, ie clearing vegetation on non-freehold land (dealt with under the *Land Act 1994*), or placing temporary advertising devices on premises, for example:

- "For Sale" signs for real estate;
- election signs;
- signs for mobile or itinerant vendors; and
- "Garage Sale" signs
- "sandwich board" signs

Replacement of ch 1, pt 4 (Uses and Rights)

Clause 9 replaces existing ch 1, pt 4, and combines existing Divisions 1, 2 and 3 to improve the structure of the part and the clarity of the provisions. There is no intention to change the substance of the part.

4 See new section 6.1.53A.
5 See Schedule 10 as amended in this Bill.

The part now deals with all existing uses and rights, whether acquired before or after the commencement of the Act, in a single division.

Part 4 – Heading

The heading is amended to indicate the purpose of part 4.

Section 1.4.1 (Lawful uses of premises on 30 March 1998)

Subsection 1 provides for the continuing lawfulness under the IPA of existing uses that were lawful under the repealed Act (previously dealt with in s 1.4.6).

The equivalent provision in the repealed *Local Government (Planning and Environment) Act 1990* suggested an existing lawful use of premises would completely lose the protection afforded by that Act if the use changed in any way. As a consequence s 1.4.6(2) and (3) were included in the IPA. However, similar provisions to these are unnecessary under the IPA and have not been retained.

New section 1.4.1 makes it clear that if the use changes after the commencement of the IPA, the protection afforded by subsection 1 continues for the "underlying" existing use to the extent that use continues (ie is not abandoned).

Section 1.4.2 (Lawful uses of premises protected)

Protects lawful uses under the Act that might otherwise become unlawful or be subject to further regulation than previously, because of the commencement of new or amended planning scheme provisions.

Section 1.4.3 (Lawfully constructed buildings and works protected)

This replaces, consolidates and amends existing s 1.4.4 and s 1.4.7 to clarify that existing buildings and other works are protected from a requirement to be altered or removed, to the extent they are lawful. If the buildings and works are lawful by the operation of other factors, for example, the Standard Building Regulation, their lawfulness under the Act is implied.

Sections 1.4.4 (New planning instruments can not affect existing development approvals)

This is similar to existing s 1.4.2 and protects existing development approvals. The heading and the body of the section is amended to refer more correctly to development approvals rather than permits. The term "development approval" is inclusive of both preliminary approvals and development permits. Previous s 1.4.5 is therefore unnecessary. The section is also restructured for clarity.

Section 1.4.5 (Implied and uncommenced right to use premises protected)

This is similar to existing s 1.4.3, and protects implied and uncommenced rights to use premises. The section has been amended to extend its protection to rights acquired by endorsement for compliance under s 3.5B.7.

Section 1.4.6 (Strategic port land)

This has the same effect as existing s 1.4.8 (inserted by the Local Government and Other Legislation Amendment Act 2000 and commenced on 1 December 2000).

Section 1.4.7 (State forests)

This states that certain activities[6] are existing lawful uses of a State forest. To the extent State forests are used for those activities, no approval is required under a planning scheme. This amendment reflects difficulties the State may experience compared to private forestry interests in establishing the lawfulness of existing uses in the State forestry estate. Firstly, the State is obliged under the *Forestry Act 1959* to manage State Forests in a manner consistent with their primary purpose of forestry. Secondly, the vast extent of the State forestry estate means it is sometimes difficult to establish the existence of lawful uses for given "premises" within that estate. The amendment confirms that the basic use of State forests for forestry, grazing and recreation consistent with the duties imposed by the *Forestry Act 1959* are taken to be existing lawful uses under the IPA.

6 See definition of "forest practice" in schedule 10.

Section 1.4.8 (Sch 8 may still apply to certain development)

This states the effect of regulation by the State under schedule 8 on uncommenced development protected from regulation by planning schemes as an existing lawful use, either in its own right or as part of an existing lawful use[7]. The development is subject to regulation under Schedule 8 from the date of commencement of any applicable provision of the schedule. For example, clearing of endangered native vegetation may be work necessarily associated with an existing agricultural use. Nevertheless, if the work is assessable development under schedule 8 it will require a development permit.

Amendment of s 2.1.3 (Key elements of planning schemes)

Clause 10 amends s 2.1.3 by removing subsection (1)(d). Experience with the development of planning schemes indicates the inclusion of performance indicators in schemes to assess the achievement of desired environmental outcomes is not necessarily achieving any purpose as the tendency is to use general indicators across schemes. The removal of the provision does not preclude local governments from using performance indicators in their planning schemes if it is considered worthwhile in the particular circumstances, but this will no longer be mandatory.

The section is also amended by removing subsection (1)(e) which requires certain prescribed local governments to include a benchmark development sequence within their planning schemes. New subsection (1)(d) replaces this provision with a requirement for all local governments to include a priority infrastructure plan within their planning schemes.

Subsection (2) is amended for consistency and clarity.

Insertion of new s 2.1.3A (Core matters for planning schemes)

Clause 11 inserts a new s 2.1.3A which re-positions previous section 4, part 1 of schedule 1 in the body of the Act. Subsection (4) has been amended to extend the definition of "valuable features" to both terrestrial and aquatic resources and areas listed in paragraphs (a) to (d).

7 See amended section 1.3.4 (Meaning of "lawful use").

Insertion of new s 2.1.7A (When superseded planning scheme may apply)

Clause 12 inserts a new s 2.1.7A which enables a person to ask a local government to apply a particular superseded planning scheme for assessing proposed development. This process replaces a similar process currently administered through the acknowledgement notice provisions of IDAS.

While the immediate need for a different process for assessing the application of superceded planning schemes arises because of changes in IDAS removing acknowledgement notices, this matter is in any case more appropriately dealt with under chapter 2 of the IPA, because the issue is a question of which policy regime will apply for assessing proposed development, rather than an administrative decision about the development itself.

New subsection (1) enables a person to ask the local government to apply a superseded planning scheme to the proposed development.

New subsection (2) provides for the form of the request and the payment of a fee, and requires that the request be made within two years of the creation of the superseded planning scheme. This is consistent with the provisions for compensation[8].

New subsection (3) requires the local government to make the request publicly available from the time it receives the request until either a decision is made or the request is deemed to be approved under subsection (9).

New subsections (4) to (6) limit the time within which the local government must decide the request.

New subsection (7) requires the local government to either agree to or refuse the request.

New subsection (8) requires the local government to notify the person of its decision in writing within a specified time.

New subsection (9) provides that if the local government fails to make a decision within the time, or the extended time, provided, the application is deemed approved.

New subsection (10) provides that if the local government agrees, or is deemed to have agreed, to a particular superseded planning scheme applying for development that was exempt development under that

8 See s 5.4.2 and definition of "superseded planning scheme" in schedule 10.

superceded scheme, the person must substantially start that development within the specified time.

However, if –

- the local government agrees to the request, and the proposed development is assessable development under the relevant superseded planning scheme, or
- the local government refuses the request,

the person may make a development application (superseded planning scheme)[9]. For a refused request, the development application may provide a basis for a later claim for compensation under chapter 4 part 5.

Replacement of s 2.1.16 (Meaning of "planning scheme policy")

Clause 13 replaces existing s 2.1.16 to clarify the role and scope of a planning scheme policy and its relationship with the planning scheme. The provision makes it clear that the role of a planning scheme policy is limited to providing guidance about how a discretion is to be exercised under a local dimension of a planning scheme.

Amendment of s 2.1.18 (Adopting planning scheme policies in planning schemes)

Clause 14 amends s 2.1.18 to further clarify[10] the relationship between the planning scheme and a planning scheme policy. While a planning scheme may apply, adopt or incorporate a planning scheme policy, it is intended that a planning scheme policy itself should include the substance of any locally prepared documents (such as engineering standards), rather than itself "calling up" those documents. This is intended to ensure locally produced standards intended to applied in development assessment are clearly available in a planning scheme policy, which follows a publicly accountable process. The amendment supports this original intention

9 See definition of "development application (superseded planning scheme)" in schedule 10

10 See amended sections 2.1.16 and 2.1.23.

Amendment of s 2.1.23 (Local planning instruments have force of law)

Clause 15 amends s 2.1.23 to further clarify[11] the relationship between the planning scheme and a planning scheme policy. New subsection (4) clarifies that a planning scheme policy cannot regulate development by requiring any process to be followed or rules to be complied with, such as requiring development to be assessable or self assessable or subject to code or impact assessment. A planning scheme policy may only provide support for a planning scheme, for example, by including performance measures or "deemed to comply" provisions indicating aspects of development or use of premises that would or would not comply with the local dimension of a planning scheme.

Amendment of s 2.1.25 (Covenants not to be inconsistent with planning schemes)

Clause 16 amends the heading and subsection (1) of s 2.1.25 to make it clear there must be an actual conflict between the planning scheme and a covenant for the covenant to be of no effect. If the planning scheme is silent on the matter the subject of a covenant, while they could be viewed as inconsistent, they are not in conflict.

The provision removes the possibility of conflict between this section and s 3.5.33. The effect of the amendment will be that if, as a condition of a development approval, an applicant is required to enter into a statutory covenant, the covenant may conflict with the planning scheme. The IPA therefore envisages that in certain circumstances, justifiable on planning grounds, a condition may be in conflict with a planning scheme.

Amendment of s 2.2.1 (Local governments must review planning scheme every 6 years)

Clause 17 amends the heading and subsections (1)(a) and (b) to change the time within which a local government must review its planning schemes to 8, rather than 6, years of the commencement, or previous review, of the scheme. This time is consistent with the 4 year corporate cycle that exists for local government.

11 See amended sections 2.1.16 and 2.1.18.

Amendment of s 2.2.5 (Local government must review its priority infrastructure plan every 4 years)

Clause 18 replaces section 2.2.5, which required local governments to review their benchmark development sequence. The benchmark development sequence is no longer a concept for the Act. New subsection (1) requires prescribed local governments to review their priority infrastructure plans a minimum of every 4 years. This review is required to be undertaken in consultation with the State agencies that participated in the preparation of the priority infrastructure plan.

The 4-year review period has been selected as this effectively represents the mid-point in the 8-year life of a planning scheme. Such reviews will also ensure there is always sufficient land identified within the priority infrastructure area to accommodate expected growth without the priority infrastructure area acting to artificially affect the land market by inflating land prices if the supply of available land was allowed to fall too low. While all planning schemes must include priority infrastructure plans, not all local government areas in Queensland are subject to growth pressures that warrant review of the plan. Accordingly, this section only applies to local governments prescribed in a regulation. However, there is nothing to prevent a local government that is not prescribed from reviewing its priority infrastructure plan or for a prescribed local government to review the plan on a more regular basis, particularly if the rate of growth in the local government area warrants it.

Subsections (2) and (3) requires a local government to assess its priority infrastructure plan in consultation with relevant State agencies and advise them proposed changes.

Omission of ch 2, pt 2, div 2 (Independent review of planning schemes)

Clause 19 omits the provisions of the Act providing a process for a person to seek an independent review of a planning scheme. The provisions were included in the IPA as originally enacted but their commencement has previously been deferred. The provisions have been removed because of concerns about their equity and effectiveness.

Replacement of s 2.6.1 (Who may designate land)

Clause 20 replaces s 2.6.1, which is compressed for clarity. The new provision states that either a Minister or a local government may designate

land for community infrastructure. The new provision does not preclude the designation of land for community infrastructure already existing on the land. However, there is often nothing to be achieved by doing this, except where extension or expansion of the community infrastructure is proposed on the land.

Replacement of s 2.6.5 (How IDAS applies to designated land)

Clause 21 replaces s 2.6.5 with an amended section that clarifies how IDAS applies to development carried out under a designation. The new provision replicates the existing exemption under IDAS for development that is self-assessable or assessable under a planning scheme, and in addition exempts reconfiguration of a lot, which without the exemption would be assessable because of the operation of schedule 8.

Replacement of ss 2.6.7 - 2.6.9

Clause 22 replaces sections 2.6.7 to 2.6.9. The new provisions include processes which may be followed with respect to Ministerial designation of land for community infrastructure. Previous schedules 6 and 7, have been omitted from the Act.

Section 2.6.7 (Matters the Minister must consider before designating community infrastructure land)

New section 2.6.7(1)(a) provides for the matters a Minister must be satisfied about before designating land for community infrastructure. The section draws attention to the duty imposed in chapter 1 on all decision makers under the Act to consider environmental effects. The link is further strengthened in a footnote drawing attention to sections 1.2.2 and 1.2.3.

Subsection (2) lists six processes that, if undertaken, will satisfy the designating Minister under s 2.6.7(1)(a). These processes are **not intended to be exclusive** and the Minister may choose to be satisfied in some way other than in this.

The statutory guidelines referred to in subsection (2)(a) will clarify how the designating Minister's duty to advance the Act's purpose with respect to consideration of environmental effects may be done.

Subsection (1)(a)(ii) requires the designating Minister, in the course of environmental assessment, to be satisfied adequate consultation has been

carried out about the proposed development for which the land is being designated. This consultation may have been carried out by the entity proposing to provide the community infrastructure. Subsection (1)(a)(ii) requires the designating Minister to taken account of all the issues raised in the course of that consultation.

Subsection (1)(b) requires the designating Minister to consider all properly made submissions made as a consequence of any public consultation carried out by the Minister under subsection (3). If consultation with respect to the proposed development, the subject of the designation, and the proposed designation, has been given under one of the processes mentioned in subsection (2), and submissions concerning both the development and the designation have been considered as part of that process, subsection (1)(b) will not apply.

Subsection (2) specifies processes which will satisfy the requirement under subsection (1)(a) for adequate public consultation. As mentioned above, this list is not exclusive. Subsection (2)(a) provides that public consultation in accordance with guidelines made by the chief executive[12]will be sufficient to satisfy a designating Minister.

Specific reference to the Coordinator-General carrying out a coordination in relation to community infrastructure under section 29A of the *State Development and Public Works Organisation Act 1971,* has been removed, as subsection (2)(a) will apply for the Minister for State Development in this circumstance.

A Minister wishing to designate land may wish to do so in conjunction with local government processes. New subsection (2)(d) provides for a designating Minister to be satisfied under subsection (1)(a) where a local government designates land for community infrastructure by way of a new planning scheme or scheme amendment under ch 2 part 6 division 3.

Subsection (3) is a "safety net" provision placing the onus on the designating Minister to ensure that all owners of affected land, or local governments affected by the designation, as distinct from the development the subject of the designation, are advised in writing of the proposed designation, and given the opportunity to make submissions. The "owner" for the purposes of this section, and any public consultation under (2) is the owner at the time notice of a proposed designation is given. For any subsequent owners, possible designation of land should be the subject of a search. Local governments are required to keep available for information

12 See s 5.8.8..

and purchase copies of notices about Ministerial designations[13] and to include designations in planning schemes.[14]

Subsection (4) requires that the notice given by the designating Minister to owners or local governments under subsection (3) give those entities a minimum of 15 days in which to make a submission for consideration under subsection (1)(b).

Section 2.6.8 (Procedures after designation)

This is substantially the same as section 4 of previous schedule 6.

Section 2.6.9 (Procedures if designation does not proceed)

This is substantially the same as section 5 of previous schedule 6.

Amendment of s 2.6.12 (Designation of land by local governments)

Clause 23 amends s 2.6.12 to clarify that there is only one process by which a local government may designate land for community infrastructure and that is in the process of making a new planning scheme, or amending an existing planning scheme, under schedule 1 of the Act.

Amendment of s 2.6.15 (When designations do not cease)

Clause 24(1) amends s 2.6.15(1)(a) to clarify that land over which a registered public utility easement is held by a private entity is treated in the same way as land that is owned by a private entity, for the purposes of designation.

Clause 24(2) amends s 2.6.15(1)(b) to clarify that land over which the State or a local government holds a public utility easement is treated in the same way as land that is owned by the State or local government, for the purposes of designation.

13 See section 5.7.2(1)(n).
14 See section 2.6.11.

Replacement of s 2.6.19 (Request to acquire designated land under hardship)

Clause 25 inserts a new s 2.6.19. The previous wording of the section suggested an owner could ask only for acquisition of their whole property even if only part of the property was subject to hardship because of the designation. The previous wording also did not provide an explicit enough linkage between the hardship experienced by the applicant and request to acquire the affected land.

The new provision clarifies that the interest that is the subject of the owner's request under the section is that part of the owner's property in request of which the owner is suffering hardship even if this is less or greater than the designated area. The new provision is sufficiently flexible to allow the owner to ask for part only of the land subject to hardship to be acquired. However, it does not allow the designator to grant part of a request if all of the land is suffering hardship.

Subsection (1) provides for when an application may be made to a designator to acquire land because of hardship.

Subsection (2) prevents an application under the hardship provisions if the designated land is already subject to a public utility easement for the purpose of the designation, or a process to acquire an easement for the purpose has commenced. For example, if an electricity easement exists or is being acquired over property, an owner cannot request acquisition of the remaining interest in the designated land.

Subsection (3) provides that the owner may ask the designator to buy either the interest in the designated land alone, or if the owner owns adjoining land the value of which, if held on its own, would also suffer as a consequence of the designation, the owner's total interest in the designated and adjoining land.

Subsection (4) provides decision options for the designator.

Subsection (5) provides for the things a designator must take into account in making a decision. Under subsection (5)(a) the owner must need to sell the land for personal reasons and have also attempted to sell it for a fair market value (calculated without taking the designation into account). Subsections 5(b) provides for where an owner genuinely wishes to develop the land but has been refused or is unlikely to be granted the necessary development approval. Subsection 5(c) is a new criterion, and provides for where an owner has already obtained development approval

for a proposal but the effect of the designation is such as to make the proposal uneconomical or unviable in some other way.

Subsection (6) provides a definition for the section.

Replacement of s 2.6.25 (Ministers may delegate certain administrative powers about designations)

Clause 26 replaces s 2.6.25 to expand a designating Minister's power to delegate, to include steps the Minister must take after a designation has taken place, and with respect to acquisition of land under hardship The chief executive officer of a public sector entity[15] is included in those who may exercise the delegated power of the Minister. The powers capable of delegation are limited to matters of process, and not substantive decisions which must be taken in the course of the designation process.

Replacement of ch 3 (integrated development assessment system (IDAS))

Clause 27 replaces chapter 3. Major changes to chapter 3 include:

- An application must be properly made and all time frames in the IDAS process start from the time an application is properly made.
- Acknowledgement notices are no longer a concept under the Act. Instead an assessment manager must in some cases endorse a copy of a properly made application and return it to the applicant.
- Non-acceptance notices must be sent if the assessment manager receives an application that is not properly made.
- Improved provisions providing further guidance about the variation of a planning scheme as part of a preliminary approval.
- Transitional referral co-ordination is moved to chapter 3 of the Act.
- The requirements for changing applications have been refined and are dealt with in separate sections according to their effect on the IDAS process.

15 See amended definition of "public sector entity" in schedule 10.

- The notification stage has been changed to a "floating" stage to be more flexible and responsive to individual circumstances, in particular changes made to development applications in the course of the IDAS process.
- Provisions for changing or canceling development approvals are consolidated in a new part 5A of chapter 3 of the Act.
- An additional stage is added to IDAS. The compliance stage will simplify aspects of the IDAS process by allowing for development that simply requires assessment for compliance with certain standards proceed straight through a simple compliance check. The stage will also apply for checking documents related to development (as opposed to checking the development itself) for compliance.

Individual sections are changed in the following way:

Section 3.1.1 (What is IDAS)

The section is amended to remove a redundant reference to "State and local government". This is partly to simplify the text, but also reflects the potential, subject to any constitutional limitations, for Commonwealth entities to participate in aspects of the IDAS process.

Section 3.1.2 (Development under this Act)

Subsection (1) states a basic premise of the IPA that all development is exempt unless it is made assessable or self-assessable. Development is made assessable or self-assessable either by a planning scheme (or temporary planning scheme), or by schedule 8.[16] Schedule 8 reflects the development the State wishes to be assessable or self-assessable.

Subsection (2) introduces the concept of compliance development and compliance assessment. Compliance assessment may be required for assessable, self-assessable, or exempt development.

Subsection (3) provides for schedule 9 (which replaces previous schedule 8, part 3) to identify development that is exempt for a planning scheme (or temporary planning scheme) ie development the State wishes to not be regulated by the local government. Development listed in schedule

16 See definitions of assessable and self-assessable development in schedule 10.

9 is exempt only for the purposes of the planning scheme, and may still be regulated under schedule 8.

Subsection (4) provides for the effect of an inconsistency between a planning scheme (or temporary planning scheme) and schedule 8.

Previous subsection (4) was inserted particularly for the circumstance where building work was assessable under schedule 8 but self-assessable under the planning scheme. Building work will now be dealt with by way of compliance assessment, and the provision is no longer necessary.

Section 3.1.3 (Code and impact assessment for assessable development)

Existing subsections (1) to (3) are unchanged. Subsection (2)(a) and (b) are clarified. New section 3.1.10 deals with matters about codes previously dealt with in subsections (4) and (5).

Section 3.1.4 (When is a development permit necessary)

Previous subsection (1) is substantially reproduced and states that a development permit is only necessary for assessable development. Previous provisions regarding self assessable and exempt development are dealt with separately in new sections 3.1.11 and 3.1.12.

Section 3.1.5 (Approvals under this Act)

Subsection (1) is amended to provide that a preliminary approval approves "development", rather than "assessable development". This reflects the fact that one of the uses of the preliminary approval process is to allow applicants to seek approval, not of development specifically defined under a planning scheme, but of a concept, such as a "shopping centre" or an "industrial estate". The assessment type for such a concept may not actually be clear under the planning scheme, and the current wording implies that the preliminary approval process may only be used for development that is clearly assessable under the scheme. (Further reforms have been made elsewhere in chapter 3 to provide support for the assessment of conceptual development applications).

Subsection (2) makes it clear that a preliminary approval is not sufficient authority to allow the actual commencement of development, and that it is not mandatory to seek preliminary approval for any development.

Subsection (3) is included for clarity and to provide that in addition to the other matters listed, a development permit is subject to any requirements for compliance assessment.

Subsection (4) provides for a compliance permit to authorise compliant development to occur. The conditions that may be attached to a compliance permit are limited to requirements that must be fulfilled to make the development (or related documents or plans) compliant with a relevant prescribed standard.

Subsection (5) provides for a compliance certificate to approve existing documents, plans or works. Again, any conditions may only specify how compliance with a relevant prescribed standard can be achieved.

Section 3.1.6 (Preliminary approval may override local planning instrument)

Generally,

- the provisions for preliminary approvals which vary the effect of a planning scheme, previously limited to material changes of use requiring impact assessment, can now accommodate a broader range of development;
- an applicant for a preliminary approval that varies a planning scheme must apply at the same time for the change to the scheme to be made;
- all applications for preliminary approvals involving variations to the planning scheme will require public notification. The only exception will be where a preliminary approval is "staged" and the development being applied for is subject to code assessment because of the operation of a preliminary approval for an earlier stage;[17]
- a preliminary approval for a material change of use may vary the effect of the planning scheme for aspects of development related to the material change of use. For example, a preliminary approval for a material change of use for a "master planned community" may vary assessment requirements or include codes for building work associated with the material change of use (eg for building height, bulk or density), or associated

17 See amended s 3.4.2.

reconfiguration (eg through lot size or other lot characteristics) A preliminary approval for other development may vary the operation of the scheme only for that aspect of development.

- a variation to the operation of a scheme as a consequence of a development approval may only be in response to an application dealt with under this section. A local government may not vary the scheme in this way without an application seeking the variation. Any change to the scheme that is not the consequence of a preliminary approval dealt with under this section, would need to be made using the Schedule 1 process in the Act.

It should be noted that while a preliminary approval can over-ride a planning scheme, it cannot over-ride a State code to the extent it "covers the field" for a stated effect.[18]

Subsection (1) provides for the section to apply if an application for a preliminary approval includes an application to vary the planning scheme.

Subsections (2) and (3) provide that to the extent the application is for both a preliminary approval for a material change of use and an application to vary the planning scheme, then the preliminary approval can provide for how a subsequent proposal should be assessed or dealt with by -

- requiring that development be impact or code assessable, exempt development or compliant development;
- specifying codes for the code assessable development.

Similarly, subsections (4) and (5) provide that to the extent the application is for development other than a material change of use, and an application to vary the planning scheme, then the preliminary approval can provide for how subsequent development should be assessed or dealt with.

Subsection (6) provides for either type of approval to prevail over the planning scheme.

Subsection (7) provides for that part of the approval that is contrary to the planning scheme to fall away once the proposed development is approved and completed or and time stipulated in the approval for its completion expires. The variations approved as part of such a development approval do not actually amend the relevant planning scheme, but merely take precedence over any provisions of the scheme inconsistent with the approval until the development is completed, or the approval lapses. In

18 See new section 3.1.10

particular, these variations do not constitute a "change" to the planning scheme for the purposes of chapter 5 part 4.

Subsection (8) reproduces previous subsection (5), with an additional reference to schedule 9, for consistency with other changes.

Previous subsection (6) is removed for the same reasons section 3.1.2(4) has been removed.

Section 3.1.7 (Assessment manager for development applications)

Subsections (1) is amended for clarity. Subsections (2) and (2A) are unchanged apart from renumbering.

New subsections (4) and (5) provide that where there is only one concurrence agency for an application they automatically becomes the assessment manager when the planning scheme has no interest in the application and no alternative assessment manager is prescribed. Because of the changed role of the concurrence agency, there is deemed to be no concurrence agency for the application. The provision will still apply where there is more than one aspect of development dealt with in the application but the same concurrence agency for all aspects. For example, the application may be for multiple environmentally relevant activities (ERAs). If the Environmental Protection Agency (EPA) is the only concurrence agency for each of the ERAs, then the EPA will, by the operation of the section, be the assessment manager for the application. The purpose of the provision is to simplify schedule 1A of the Integrated Planning Regulation (alternative assessment managers).

Subsections (6) and (7) apply where a concurrence agency directs an assessment manager to give a preliminary approval only, for certain development. When the applicant later applies for a development permit for the development covered by the preliminary approval, then by operation of the subsections the concurrence agency who has directed the preliminary approval automatically becomes the assessment manager. However, the assessment manager for the original application may indicate that they wish to continue as assessment manager for any subsequent application, in which case, the subsections do not apply for the subsequent application.

If a concurrence agency becomes the assessment manager for a subsequent development application, the Integrated Planning Regulation, schedule 1 will require the development to be code assessable. By the operation of section 3.5.5 (Development requiring code assessment)

subsections (2) and (3), the concurrence agency will be limited to a consideration of matters within their concurrence agency jurisdiction.

Subsection (8) reproduces previous subsection (3).

Footnote 14 to the section is removed for consistency with other amendments which have the effect that a private certifier does not undertake the functions of an assessment manager.

Section 3.1.8 (Referral agencies for development applications)

This is amended to correct an incorrect reference to a referral agency "deciding" an application.[19]

New section 3.1.9 (Compliance assessor for requests for compliance assessment)

This defines "compliance assessor" and specifies the compliance assessor's role.[20]

New section 3.1.10 (Codes under legislation)

Subsection (1) deals with codes for IDAS made and identified by the State in the IPA, another Act or a State Planning Policy. Provision is made for these codes to have one of three relationships with a local planning instrument. The local planning instrument may:

- not change the effect of the code for IDAS in any respect – the State code is a complete code;
- increase the effect of the code only, but not change it in any other respect, eg a local planning instrument may regulate the clearing of non-native vegetation not addressed by the State code for vegetation clearing;
- change the effect of the code in any respect, eg by replacing the code with an alternative code in the local planning instrument.

The relationship for a particular code must be identified in the regulation or Act creating the code. However, subsection (2) provides for a default relationship in the event that the relationship is not identified. In that case

19 See sections 3.3.16 and 3.3.17.
20 See definition of "compliance assessor" in schedule 10.

the local planning instrument may change the effect of the code in any respect.

Subsections (3) and (4) provide that to the extent a code purports to "cover the field" for a stated effect, the planning scheme is of no effect.

Subsection (5) provides for a regulation to identify codes that a local government has the option to include in their planning scheme. These codes have no effect until a local government choose to adopt the codes by including them in its planning scheme and amends its scheme accordingly.

New section 3.1.11 (Self assessable development and codes)

The section identifies the relationship between self assessable development and codes.

New section 3.1.12 (Exempt development and codes or planning instruments)

The section identifies the relationship between exempt development and codes or planning schemes or policies. The section provides that exempt development is not regulated by either applicable codes[21], or local planning instruments. Exempt development may, however, be subject to compliance assessment[22], and the assessment criteria may be contained in a code, other than an applicable code.

New section 3.1.13 (Stages of IDAS)

The section replaces previous section 3.1.9. A new stage, the compliance stage, is added to subsection (1).

Subsection (2) makes it clear that for an application for assessable development which does not lapse, there may only be an application stage and a decision stage. This would be the case for relatively simple development applications. For any particular application, any, all or none of the other three stages may apply.

Subsection (3) removes any doubt that the compliance stage always applies for compliant development, even though compliant development may also be development to which the other stages of IDAS apply.

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21 See definition of "applicable code" in schedule 10.
22 See chapter 3 part 7.

New section 3.1.14 (Native Title Act (Cwth))

The new section recognizes and accommodates disparities between the IDAS process and processes for notifying native title parties under the Commonwealth Native title Act 1993 ("NTA). The section enables procedural rights to be provided to native title parties (under section 24HA and section 24KA of the NTA) within the IDAS process by, in effect, stopping the clock of the particular IDAS stage until the procedural rights have been provided.

Section 3.2.1 (Applying for development approval)

Subsections (1) and (2) are unchanged.

Subsection (3)(a) is amended to require a "mandatory requirements part" in an development application form. The legislation requires only that the part contain a description of the land. There could , however, be other mandatory requirements.

Subsection (3)(b) requires that for a material change of use, a reconfiguration, or certain works below high water mark, the written consent of the owner of the land to the making of the application must be supplied, however, the way it is supplied is not mandatory. It may either be included in the application itself or in a document supporting the application.

Applications for works no longer require the consent of the owner of the land, however, they are still subject to subsection (5).

Subsection (3)(c) allows for a non-mandatory supporting information part to be included in the form.

Subsection (4) provides for the fee to accompany applications.

Subsection (5) is replaced. The original subsection is redundant [23].

New subsection (5) provides for where development is for the taking of or interfering with a State resource. If the resource is specified in the Integrated Planning Regulation or another regulation, the regulation may also require that the applicant provide certain evidence to support the development application.

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23 See definition of "development application (superseded planning scheme) in schedule 10.

The requirement that this evidence be produced in certain circumstances provides, where indicated, an opportunity for the State as owner of land and other resources to be aware of and agree to the making of a development application without the need for the State to reconsider the application as owner of the land which is or contains the resource.

Subsection (6) provides that the consent of the State as owner is not required where subsection (5) applies or where another Act (rather than a regulation) requires the application to be supported by the specified information.

Subsections (7) to (9) have been omitted. There is no provision for an assessment manager to accept as properly made any application other than one that is properly made.

New subsection (7) lists the attributes of a development application for it to be properly made. Subsection (7)(c) requires the mandatory requirements part of the form to be correctly completed. For the present form, referral agencies for the application are a mandatory requirement. If these are not stated correctly, the situation may be rectified by the operation of s 3.2.9. If the situation is not rectified, the application effectively cannot progress past the application stage.

New subsection (8) is particularly relevant with respect to applications for preliminary approval.[24] The provision makes it clear that an applicant may apply for approval for development in the most general of terms. An application does not necessarily have to align with how aspects of assessable development are specified in the planning scheme, but may be quite conceptual. For example, an application for the conceptual approval for a shopping centre would not be required to include details of the types of shops ultimately to be included in the centre. However, the more general the application, the more general any approval would need to be.

New subsection (9) makes it clear that land held by the State as State land is a resource of the State and is subject to the same consent regime (under subsections (5) and (6)) as other State resources.

Section 3.2.2 (Applications for works involving material change of use)

The heading is changed to reflect changes in the body of the section.

24 See sections 3.1.5 and 3.1.6.

Subsections (1)(a) of the section is amended to remove confusion about the meaning of "work" in this context. "A work" (which replaces "a structure or works"), in this context, is intended to mean the result of development, for example, carrying out building work (development) results in a building (a work).

Under the provision if an application is made to carry out work, and at the time of the application, the result of that work (ie the building in the example above) cannot lawfully be used without an approval for the material change of use of the land on which it is situated, then the application for the carrying out of work is taken also to be an application to change the use of the land.

Section 3.2.3 (Non-acceptance notices)

New section 3.2.3 provides for when an applicant lodges a development application that is not properly made. The section provides for the assessment manager to give the applicant a notice with details about why the application is not properly made, within the prescribed period.

If the applicant does not change the application as required in the notice within 20 business days or any longer period allowed by the assessment manager, the application lapses, and together with any application fee, less reasonable costs for the processing of the application thus far, must be returned to the applicant.

The change to the application in response to the non-acceptance notice is dealt with under s 3.2.7. It should be noted that nothing in the section prevents the applicant changing the application in some way other than that suggested in the non-acceptance notice, or changing the application in some other way under s 3.2.7.

Subsection (4) makes special provision for an application for development involving a resource of the State. A non-acceptance notice is not required to be given to the applicant only because the application is not supported by either the consent of the owner, or evidence about the allocation of the resource required under section 3.2.1(5).

Where the entity administering the resource is also the assessment manager, this will enable an applicant to apply for both the resource allocation and the development approval at the same time. In that circumstance, the development application will remain in the application stage, without the need for a non-acceptance notice to be issued, until the resource allocation issues have been dealt with and the necessary evidence

to support the development application is available. At that stage the application will become "properly made".

Section 3.2.4 (When applications must be endorsed as accepted)

New section 3.2.4 provides for when an applicant lodges a development application that is properly made. Within the prescribed time the assessment manager must endorse the application in some way to indicate acceptance and give the applicant a copy. This action is necessary only if there are one or more referral agencies for the application, the application requires referral coordination, or the applicant asks for the action to be taken. Consequently, if there are no referral agencies and referral coordination does not apply for an application, and the applicant does not request it, there is no need for the assessment manager to acknowledge acceptance of an application.

Original sections 3.2.5 and 3.2.6 are removed.

Section 3.2.5 (Additional third party advice or comment)

This is original section 3.2.7 renumbered and clarified.

New section 3.2.6 (Public scrutiny of applications and related material)

New section 3.2.6 clarifies the material for an application that the public may inspect or purchase. The application, any information request, any properly made submission and any referral agency response, received by the assessment manager, may be inspected or purchased. An application includes any supporting material specified in the new definition included in schedule 10, subject to the exception in subsection (3). Existing paragraph (2)(b) has been omitted because the mew definition makes the exception redundant.

The supporting material no longer includes the information request, which is listed as a separate document. Reference to "the acknowledgement notice" is removed.

Subsection (1) provides for the documents related to an application that must be kept by the assessment manager for inspection and purchase.

Subsection (2) provides for the period during which the documents must be kept available.

Subsections (3) and (4) provide for the treatment of sensitive information.

Section 3.2.7 (Changing an application (generally))

Section 3.2.9 makes general provision for when an applicant may change an application. It applies only until a decision is made by the assessment application on the application.

The changes covered by the section include:

- a change in response to a non-acceptance notice
- a change in response to an information request

The change may not however, be one which, if it had been included as part of the original application, would have meant the application was not properly made. For example, if the application required the consent of the owner under section 3.2.1, a change which involved adding a piece of land for which the consent of the owner was not obtained, would not be covered by the section.

The application must give the assessment manager notice in writing of any proposed change, accompanied by the appropriate fee. For a change in response to a non-acceptance notice, if the development application fee has already been paid, and the notice is given within the prescribed time, no further fee is payable. If the development application fee has not been paid, this is the only fee payable if the notice is given within the prescribed time.

New section 3.2.8 (Changing an application (that does not stop IDAS)

Subsection (1) lists a number of circumstances that in themselves will not stop the IDAS process. These are where:

In paragraph (a), the application is changed in response to a non-acceptance notice;

In paragraph (b), the applicant gives more or better particulars about the application. It should be noted that if the application is subject to impact assessment, and the notification stage has commenced before the applicant

applies for a change to be made, the applicant may be required to start the notification stage again whether or not the stage has been completed.[25]

In paragraphs (c) and (d), the change reduces the scale or intensity, or removes altogether an aspect of development;

In paragraph (e), the assessment manager and any concurrence agency exercise a discretion with respect to the significance of the change. The discretion is a "catch-all" discretion intended to be exercised only in regard to similar types of matters to those dealt with in the preceding paragraphs.

In paragraph (f), the change corrects details about the name or address of the applicant or owner.

In paragraph (g), the property details, including the address of the land, are changed and the applicant receives written notice from the assessment manager they are satisfied the change will not interfere with the ability of a person, ie either the assessment manager or a referral agency, to make an informed assessment of the application.

If the changes in the details of the property effectively changed its location, it is probable such a change would adversely affect a referral agency's ability to assess the application. A range of different environmental factors may be relevant in the changed location. For example, if the new location was affected by contamination the changed application would require referral to the Administering Authority for assessment.

Subsection (2) makes it clear that the section does not apply for a change that is sufficiently significant as to involve further referral agencies or to change the assessment status of the application from code to impact assessable.

Subsection (3) puts the onus on the applicant to advise concurrence and advice agencies in writing about any change made, other than a change in response to a non-acceptance notice.

New section 3.2.9 (Changing an application (that restarts IDAS for part of the application))

This section provides for the circumstances where a development application form should have specified a referral agency for the application, but did not, and the omission is not discovered until after the end of the

25 See amended section 3.3.5.

application stage. If, in all other respects, the application has been properly made, the matter can be corrected by the necessary referral being made. For the aspect of the application affected by the referral, the application returns to the beginning of the information and referral stage. The omission does not affect the other aspects of the application, for which it is taken to be properly made.

Previous section 3.2.10 (Notification stage does not apply to some changed applications)

The substance of this section has been more appropriately placed in section 3.3.5 of part 4 of chapter 3, which deals with the notification stage.

New section 3.2.10 (Changing an application (that restarts IDAS completely)

Subsection (1) provides that this section applies to any change other than those dealt with specifically in 3.2.8 and 3.2.9.

Subsection (2) puts the onus on the applicant to give the assessment manger details of the change, and to advise any referral agencies, or the chief executive if referral coordination applies. Advice to the referral agencies is all that is required as the application will return to the referral stage and new details will be given. The purpose of the advice is to cause the assessment process to stop. The Acts Interpretation Act requires that the advice to the referral agencies be given as soon as practicable after details of the change are given to the assessment manager.

Subsection (3) provides that for these changes the IDAS process recommences at the start of the information and referral stage when the assessment manager receives notice of the change from the applicant.

Section 3.2.11 (Withdrawing an application)

This section applies only to withdrawing a development application. The process to cancel a development approval is in part 5A of chapter 3.

Subsection (1) provides for the applicant to withdraw an application by advising in writing the assessment manager, any referral agency, and the chief executive if referral coordination applies. Previously the onus was on the assessment manager to advise referral agencies.

Subsection (2) is amended to remove unnecessary words and is renumbered.

Previous section 3.2.12 (Applications lapse in certain circumstances)

This section has been omitted and lapsing provisions for individual actions are included in the specific sections dealing with the actions to increase readability.

Section 3.2.12 (Refunding fees)

Existing section 3.2.13 is renumbered and amended for consistency with s 3.2.3 which requires application fees to be refunded to an applicant if the application is not properly made, and is not amended by the applicant.

Section 3.2.13 (When does application stage end)

Existing section 3.2.15 is renumbered as 3.2.13. Subsection (1) is amended for consistency with other amendments to provide that the application stage ends when the application is properly made. An application may be properly made, either initially, in response to a non-acceptance notice under s 3.2.3, or as provided for if a referral agency is omitted.[26]

Subsection (2) reinforces the effect of the provision. An application that is not properly made remains in the application stage. If the assessment manager gives the applicant a non-acceptance notice, and the applicant does not respond by changing the application within 20 business days (section 3.2.3), the application lapses. However, if the assessment manager does not give the applicant a non-acceptance notice, the application remains "live", but still within the application stage. This applies regardless of whether an approval is subsequently purportedly given for the application. While there is at common law an assumption of validity for such an approval, a declaratory action could be taken under section 4.1.21 to establish the application was not properly made. If such an action were successful, the application would still be in the application stage.

26 See section 3.2.9.

Section 3.3.1 (Purpose of information and referral stage)

This is amended for clarity and to include reference to applications requiring referral coordination.

New section 3.3.2 (When information and referral stage applies)

Section 3.3.2 clarifies that the information and referral stage only applies for an application for which there are one or more referral agencies, or referral coordination applies for the application, and the assessment manager makes an information request.

New section 3.3.3 (When can information and referral stage start)

Section 3.3.3 clarifies that when the information and referral stage applies, it starts immediately the application stage ends, ie when an application is properly made.

Section 3.3.4 (Referral agency responses before application is made)

This is renumbered and a section reference amended, but otherwise unchanged .

Section 3.3.5 (Applicant gives material to referral agency)

Subsection (1) is amended for consistency with other provisions to provide for each referral agency to receive a copy of the application endorsed as accepted. Referral agencies nominated by the chief executive if referral coordination applies are omitted from the definition of "referral agency" by subsection 6. At this stage no referral agencies have been nominated. Previous subsection (1)(c) is redrafted as 1(b)(ii) and (iii) for readability.

Subsection (2) and (3) are redrafted to include provision for lapse of the application.

Subsection (4) is renumbered but substantially unchanged.

Subsection (5) is renumbered and amended for consistency with NCP requirements.

Subsection (6) is renumbered but substantially unchanged.

Subsection (7) includes a definition of "referral agency" for the section.

Section 3.3.6 (Applicant advises assessment manager)

This is amended for consistency with other changes, and for clarity.

Section 3.3.7 (Referral coordination)

Subsection (1) extends the circumstances in which the chief executive is required to coordinate an information request. Previously a form of the "EIS process" for "designated developments" under the repealed Act was dealt with as a transitional matter in s 6.1.35C. The substance of that provision is relocated to this section to indicate the State's continuing involvement in ensuring quality and consistency of information supplied by applicants through information requests. The new provision will continue to reference the lists of development in the IP regulation.[27]

Subsection (2) provides that in certain circumstances, the assessment manager may decide that referral coordination does not apply and advise the proponent accordingly.

If referral coordination is required, subsection (3) requires the applicant to give the chief executive the things listed, within 3 months of receiving a copy of the application, endorsed as accepted, from the assessment manager. (Section 3.3.5 will also apply if referral agencies for the application are specified by regulation. The same time limit applies.)

Subsection (4) provides that if this is not done within the specified time, the application lapses.

Subsection (5) provides for where an assessment manager also fulfils the role of concurrence agency because the responsibilities of the concurrence agency are delegated or devolved. For example, responsibilities for certain environmentally relevant activities (ERAs) are devolved to local government. Where the local government, in addition to its role as assessment manager for an application for a material change of use for an environmentally relevant activity, also has devolved concurrence responsibilities for the ERA, it will not be counted as a concurrence agency for the purposes of referral coordination.

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27 Schedules 6 and 7.

Section 3.3.8 (Information requests to applicants (generally))

The section is amended to extend information requests to advice agencies.

Subsection (4)(a) and (b) has been amended to remove references to acknowledgement notices for consistency with other amendments. The amendment also extends the information request period for an application requiring impact assessment from 10 to 20 days.

Subsection (7) is amended to make it clear that the assessment manager and each referral agency may individually extend their information request period without the applicant's agreement.

Subsection (8) is amended to provide that for an information request period to be further extended, the applicant must agree in writing before the original period or as extended under subsection (7) ends.

It should be noted that for any application there may be multiple information requests, each with its own information request period.

Reference should be made to the definition of "information request period" in schedule 10, which makes it clear that for any application there may be multiple information requests, each with its own information request period.

Section 3.3.9 (Information requests to applicants (referral coordination))

New subsections (2), (3) and (4) replace existing subsection (2) for consistency with changes to s 3.3.7. Under the new subsections the chief executive (who under s 3.3.7 has been advised an application requires referral coordination) must consider who should be advice agencies for the application and consult with those agencies and any prescribed referral agencies for the application..

Within 20 business days of receiving advice from the applicant (also required under s 3.3.7) that all the prescribed referral agencies have been notified of the application, the chief executive must either ask the applicant to supply further specified information, or advise the applicant that no further information is required.

The chief executive must notify all referral agencies for the application about the request.

Reference should be made to the definition of "information request period" in schedule 10.

Subsections (5) and (6) provide for one extension by the chief executive of the information request period without the consent of the applicant. Notice must be given to the applicant before the initial information request period ends.

Subsection (7) provides for an extension of the information request period with the consent of the applicant, before the existing information request period ends.

These provisions are consistent with other similar provisions of the Act.

Subsection (6) is amended to require all referral agencies to be advised of any extended information request period.

Section 3.3.10 (Applicant responds to any information request)

Subsection (1)(a) requires the applicant to respond to an information request in one of two ways. The applicant may advise the entity making an information request whether or not they believe the information they are supplying satisfies the information request, and ask that assessment of the application proceed. Alternatively, the applicant may advise that they do not intend to supply any of the information requested, and ask that assessment proceed.

This will allow an applicant to state whether they believe they have fully satisfied the information request, or have deliberately not met part or all of the request. It will also provide certainty for the entity where all the information requested is not supplied, or information is supplied progressively, that the applicant does not intend to supply any further information.

Subsection (2) is amended to provide for reference to referral agencies generally.

Subsection (3) is unchanged.

New subsection (4) provides for an application to lapse if an information request is not answered as required within 6 months or a longer period stated in the request.

The intent of the provision is that if there is more than one requesting authority, the application will lapse if the applicant fails to comply with <u>any</u> requesting authority's information request within the respective time

frame, even though the applicant may have complied with another requesting authority's request within the required time for that request.

New subsection (5) provides for the respective response periods to be extended in writing before the end of the original period.

Section 3.3.11 (Referral agency advises assessment manager of response)

This is renumbered but otherwise unchanged.

Section 3.3.12 (When referral assistance may be requested)

This is renumbered but otherwise unchanged.

Section 3.3.13 (Chief executive acknowledges receipt of referral assistance request)

Section 3.3.13(c) is amended to refer to referral agencies.

Section 3.3.14 (Chief executive may change information request)

Section 3.3.14(3) is amended to require the chief executive to give a copy of a changed information request to the assessment manager in addition to other entities.

Section 3.3.15 (Applicant may withdraw request for referral assistance)

This is renumbered but otherwise unchanged.

Section 3.3.16 (Referral agency assessment period)

Previous section 3.3.14 is redrafted for clarity and for consistency with other changes.

Subsection (1) specifies a 20 business day assessment period for a referral agency both where the assessment is part of the EIS process under chapter 5 part 7A, and in all other circumstances. For all other circumstances, the assessment period commences at the end of the referral

agency's information period[28], as defined in schedule 10. Reference to prescribed periods is redundant and has been removed.

Subsection (2) provides for the assessment period to be extended without the agreement of the applicant. Subsection (3) provides for the assessment period to be extended with the agreement of the applicant. Subsection (4) requires an agency whose assessment period is being extended to advise the assessment manager in writing.

Section 3.3.17 (Referral agency assesses application)

Subsection (1) is changed to make it clear that a referral agency is only required to assess that part of an application that relates to its jurisdiction. It has no jurisdiction and is not required to consider or assess any other part of an application.

Subsection (2)(b) is removed as these matters will be subject to compliance assessment.

Section 3.3.18 (Referral agency's response)

Previous section 3.3.16 is redrafted for clarity and for consistency with other changes.

Subsection (1) and (2) requires referral agencies to give any response they wish to make to the assessment manager within their respective referral agency's assessment period under s 3.3.16. They must also provide the applicant with a copy.

Subsection (3) provides that if a concurrence agency does not respond within the specified period, the assessment manager is not required to include the concurrence agency's requirements in its decision about the application[29].

Section 3.3.19 (How a concurrence agency may change its response)

This is renumbered but otherwise unchanged.

28 See definition in schedule 10.
29 See section 3.5.13

Section 3.3.20 (Concurrence agency's response powers)

Subsection (1) provides for how a concurrence agency may, within the limits of its jurisdiction, direct the assessment manager to deal with an application, including stating a currency period for an approval. Subsection (2) provides for how a concurrence agency must, within the limits of its jurisdiction respond to the assessment manager.

Subsection (1)(b) has been changed to the negative to provide that the concurrence agency may direct the assessment manager not to approve a stated part of the application. This approach implies that the assessment manager must refuse the stated part of the application but allows the assessment manager to exercise its discretion about the remainder of the application.

Both this implied partial refusal and an outright refusal under subsection (2) are required to satisfy subsection (4).

Subsection (1)(c) provides that a concurrence agency may apply a shorter currency period for a development approval.

New subsection (5) applies instead of subsection (4) when schedule 8 development is proposed on designated land and there is a concurrence agency for the development. The subsection provides special criteria to be satisfied for a concurrence agency's implied partial refusal or outright refusal. In that case a concurrence agency must be satisfied about the effect of their decision on the intent of the designation.\

New subsection (6) provides that where a concurrence agency is required to assess the cost of supplying infrastructure for development, the concurrence agency cannot impliedly direct refusal of part, or direct outright refusal, of an application. Rather the concurrence agency may either direct that conditions be imposed on an approval or make no requirement. The term 'cost impact' has been replaced with 'additional costs' to accord with the terminology used in chapter 5, part 1.

New subsection (7) provides that a concurrence agency must provide reasons for its actions if it directs the imposition of conditions on an approval, or the refusal of all, or the implied refusal of part, of an application.

New subsection (8) makes it clear that the application of the precautionary principle to a decision under this section means that if the applicant has failed to supply the concurrence agency with sufficient information to inform the concurrence agency's decision, the concurrence agency must take a precautionary approach in making a decision. The

reference to the precautionary principle is included for the purpose of removing doubt about its application in the particular circumstances. The reference is not intended to limit in any way its application for the rest of the Act.

Section 3.3.21 (Advice agency's response powers)

New section 3.3.21 extends the range of recommendations an advice agency may make. These are consistent with the response alternatives for a concurrence agency.

New subsection (3) enables an advice agency to give the assessment manager advice about the application from outside their jurisdiction.

The subsection also provides for an advice agency to advise the assessment manager that it wishes its response to be treated as a properly made submission for the application. This limits the time in which the advice agency may give this advice to the agency's assessment period under section 3.3.16.

By advising the assessment manager in this way the advice agency gains a right of appeal as a submitter for the application.[30]

New section 3.3.22 (When does information and referral stage end)

Subsection (1) provides that where there are no prescribed referral agencies for an application, but either the chief executive nominates referral agencies and makes an information request, or the assessment manager makes an information request. In those circumstances, the information and referral stage ends when the assessment manager's information period[31] ends.

Subsection (2) provides for where there are referral agencies for an application. In that case, the stage does not end until the assessment manager knows that all referral agencies have been advised of their right of response, and they have either responded or the prescribed period for their responses has ended. The assessment manager's information period[32] must also have ended.

30 See also sections 3.5.23 and 4.1.29.
31 See definition in schedule 10.
32 See definition in schedule 10.

The footnote makes it clear that the stage does not apply, and therefore does not end, where there are no referral agencies, no referral coordination, and the assessment manager does not make an information request.

Section 3.4.1 (Purpose of notification stage)

This is unchanged.

Section 3.4.2 (When the notification stage applies)

Subsection (1) provides that all applications for impact assessable development, or for preliminary approval where a variation of the planning scheme is required, or for both, must be publicly notified.

Subsection (2) provides that these applications must be publicly notified irrespective of whether code assessable development is also included in the application or a referral agency has directed that the application be refused.

New subsection (3) makes an exception to the requirement for public notification if a preliminary approval has already been issued for development and the application proposes certain changes to the way subsequent development applications would be dealt with under the approval. There is no need to publicly notify the application provided –

- the only change in the type of assessment is from code assessment to either self assessment or compliance assessment, and
- any new code sought to be included in the preliminary approval to apply for subsequent approvals is substantially consistent with codes contained in the existing preliminary approval.

Section 3.4.3 (When can notification stage start)

The amended section provides for the public notification stage to commence at the earliest two days after the application is made. This time lapse accommodates the assessment manager's administrative processes. The new provision does not refer to the acknowledgement stage, which no longer applies, and does not require the applicant to wait until the information request period is finished to commence public notification. The two stages may therefore run concurrently.

New section 3.4.4 (When the application lapses if notification stage not started)

This section provides for the lapse of the application if the applicant does not proceed with the notification stage in the required time.

New section 3.4.5 (When the notification stage must be restarted)

The effect of subsections (1) and (2) is that if an application requires public notification and the applicant changes the application by giving more and better particulars, or in any way other than –

- in a minor way, such as reducing scale or intensity, or removing an aspect of the development, or
- to correct details of the owner or the property, or
- to include an omitted referral agency;

the application must be publicly notified in its changed form even if notification in its original form is in progress or has been completed.

This would include the circumstance where an applicant has commenced notification immediately on lodging an application and has subsequently been advised that the application is not properly made.

Subsection (3) substantially reproduces previous section 3.2.10. It provides an exception to the need to restart or repeat the notification. If the assessment manager is of the view, and notifies that applicant in writing, that the change would not attract a substantial submission, the assessment manager has the discretion to dispense with further public notification.. The subsection encourages an applicant to change an application in response to submissions received provided the changes do not create fresh grounds for submissions.

Subsection (4) makes it clear that restarting the notification stage does not affect any other stages except the decision stage. The decision stage starts (if not already started), or starts again, the day after the fresh notification stage ends.[33]

Section 3.4.6 (Public notice of applications to be given)

Subsections (1) to (3) are unchanged.

33 See section 3.5.1

Subsection (4) is amended for consistency with the amended definition of "adjoining owner".

Subsection (5)(f) is amended for more correct expression.

Subsection (5)(g) is amended to provide that if land owned by the State is held on trust, both the trustee and the State are to be advised as adjoining owners under the section.

New subsection (5)(h) requires that the State, as generally the owner of watercourses, to be advised as an adjoining owner under the section where the bed or bank of a watercourse adjoins the land.

New subsection (5)(i) is inserted to require that the State, or a State Government department that holds land in freehold, be notified as an adjoining owner.

New subsection (5)(j) is inserted to require that where land is held by the State under the Land Act, the State must be advised as an adjoining owner.

Section 3.4.7 (Notification period for applications)

Subsection (1) renumbers and amends previous subsection (a) for consistency with amendments to section 3.1.6, to provide a public notification period for an application for preliminary approval which seeks to vary the planning scheme.

For applications not requiring referral coordination and not involving application for preliminary approval the public notification period is 15 business days from the giving of public notice. For other applications the public notification period is 30 business days.

New subsection (2) clarifies the position with respect to public notifying development applications over the Christmas/New Year period.

Section 3.4.8 (Requirements for certain notices)

This is renumbered but otherwise unchanged.

New section 3.4.9 (Notice of compliance to be given to assessment manager)

This section provides for the lapse of the application if the applicant does not give the assessment manager notice within the required time that the notification has been completed.

Section 3.4.10 (Circumstances when applications may be assessed and decided without certain requirements)

This is renumbered but otherwise unchanged.

Section 3.4.11 (Making submissions)

Subsection (1) and (2) are amended to allow a concurrence agency to make a submission about an application during the notification period, but not about a matter within its concurrence jurisdiction. As a submitter the agency would have a right of appeal. Matters within a concurrence agency's jurisdiction are presumably dealt with to the extent of the agency's interest in its referral response. The concurrence agency is a co-respondent for any appeal about its response.

The remaining provisions are renumbered but otherwise unchanged.

Section 3.4.12 (Submissions made during notification period effective for later notification period)

This is renumbered but otherwise unchanged.

Section 3.4.13 (When does notification stage end)

The section is amended to provide for where the applicant may have to undertake public notification more than once where any changes made to an application are substantial.

Where the applicant carries out the notification, the end of the notification stage (or if there be more than one, each notification stage) is linked to the notice required to be given to the assessment manager, rather than the completion of a notification period, which may have been repeated.

Section 3.5.1 (When does decision stage start)

Subsection (1) and (2) are amended in response to other changes removing the concepts of "acknowledgement notice" and "building referral agency" from the Act.

Subsection (1) provides that it is not necessary for the compliance stage related to an aspect of an application to be completed before the decision stage starts. The compliance stage is sufficiently flexible to occur at any time.

Subsection (2) provides for where an application may be substantially changed after the decision stage has started and public notification must be repeated. The decision stage re-starts when the final public notification stage ends. The section does not prevent the assessment manager from proceeding with the assessment of the application before the public notification stage has ended and the decision stage has started.

Subsection (3) is unchanged.

Section 3.5.2 (Assessment necessary even if concurrence agency refuses application)

This is unchanged.

Section 3.5.3 (References in div 2 to codes, planning instruments, laws or policies)

This is unchanged.

New section 3.5.4 (When assessment manager must not assess part of an application)

This new section applies when an application for more than one aspect of development is made to a local government and an aspect of the development applied for is an aspect in which the local government has no interest under its planning scheme. If it were applied for separately either another agency would be prescribed by regulation as the alternative assessment manager, or the Minister would be required to decide an alternative assessment manager.

In that case the local government must not assess that part of the application. Rather than "integrating" the development, the local

government's role is to coordinate the separate responses for the aspects of development. For example, if an application for a subdivision involves assessable vegetation clearing under schedule 8, and the planning scheme does not regulate vegetation clearing, the application will be referred to the Department of Natural Resources as a concurrence agency. The local government will consider the subdivision, DNR will consider the vegetation clearing, and the local government will coordinate the two separate responses in its approval/refusal of the application without further consideration of the vegetation clearing.

Section 3.5.5 (Development requiring code assessment)

The heading of the section and subsection (1) are amended to refer to "development" requiring code assessment. The change is in response to the change to section 3.1.6 which allows an application for a preliminary approval to seek approval for both the proposed development and a change to the planning scheme. The change to the planning scheme is not "development" and is assessed under new section 3.5.7. As an application may now be for both development and non-development, the terminology assessment of "an application" in terms of code and impact assessment may no longer be correct.

Subsection (2) is amended similarly to (1), and also, in (2)(b), to limit the consideration of the common material for an application to only those parts of the material that are relevant to the codes against which the assessment manager must assess the development. A decision based on a broader consideration of the common material would exceed the function of code assessment under the Act.

Subsection (2)(c) includes in the assessment of the development any State planning policies whether or not reflected in the planning scheme. This is consistent with the requirements for impact assessment in the same circumstances.

Subsection (2)(d) has been added to ensure the infrastructure provisions of chapter 5, part 1 continue to apply. This allows the proposal to be assessed against the priority infrastructure plan and related matters, and for the assessment manager to impose conditions requiring:

- the supply of non-trunk infrastructure, or
- infrastructure payments, or
- additional cost payments.

Subsection (3) is unchanged.

Subsections (4) and (5) provide for the assessment of a development application where a person has asked the local government to assess the application under a superseded planning scheme, and the local government has agreed and has given a notice to that effect, which accompanies the application.

Subsection (5)(c) has been introduced to clarify that where an assessment manager is assessing and deciding a development application (superseded planning scheme) under subsection (4), the infrastructure provisions of the existing scheme continue to apply. The ability to lodge a development application (superseded planning scheme) is a mechanism about protecting development entitlements under a previous scheme. There was concern this mechanism may also be used to avoid current infrastructure charges and payments, particularly as local governments transition from current headworks policies to infrastructure charges and payments schedules. Subsection (5)(c) allows the entitlements under a superseded scheme to be pursued, but ensures current charges and payments apply. This ensures there is equity between those developments able to proceed under the superseded scheme and those under the existing scheme, and all new development contributes its share of funding for infrastructure at current rates.

Section 3.5.6 (Development requiring impact assessment or not requiring code assessment)

The heading of the section and subsection (1) have been amended to indicate the function of this provision as a default provision for the assessment of development. References to impact assessment have been deleted from subsections (1) and (2). The section applies for development requiring impact assessment and any other development not requiring code assessment under section 3.5.5. For example, the section would apply to a conceptual application for preliminary approval where limited detail is available, such as a shopping centre where a number of individual uses are envisaged but not yet determined, and which may be subject individually to self, code or impact assessment.

Section 3.5.6 is also amended in the same way as section 3.5.5 with regard to the application of the infrastructure provisions of the existing planning scheme for a development application (superseded planning scheme).

New section 3.5.7 (Assessment for s 3.1.6 preliminary approvals that override a local planning instrument)

Subsection (1) provides for the assessment of the part of an application under s 3.1.6 which seeks to vary the planning scheme, in relation to a preliminary approval. The local government will always be the assessment manager for these proposals.

Subsection (2) provides the process for the assessment of this aspect of the application and lists a number of factors for which the assessment manager must have regard.

Paragraph (c) is particularly relevant where the preliminary approval might make a change in the type of assessment for an aspect of development from impact to code assessment. The consequence would be that no further notification would be required for a later application, and there would be no further opportunity for submissions to be made. Under the provision the assessment manager needs to have regard to whether potential submitters were provided with sufficient detail for the current application for preliminary approval for them to be able to reasonably address issues, so that their inability to make submissions about subsequent applications would not compromise their rights in this regard.

Paragraph (d) requires the assessment manager to have regard to the effect of the proposed variations on the structure and integrity of the planning scheme as a whole.

Paragraph (e) provides for prescribed matters to be considered to the extent they apply for the application.

Section 3.5.8 (Assessment manager may give weight to later codes, planning instruments, laws and policies)

This is renumbered but otherwise unchanged.

Section 3.5.9 (Decision making period (generally)

This is renumbered but otherwise unchanged.

Section 3.5.10 (Decision making period (changed circumstances)

This is renumbered but otherwise unchanged.

Sections 3.5.11 (Applicant may stop decision making period to make representations)

This is renumbered but otherwise unchanged.

Previous Section 3.5.12

This is replaced by section 3.5.13(4).

Section 3.5.12 (Applicant may stop decision making period to request chief executive's assistance)

This is renumbered but otherwise unchanged.

Section 3.5.13 (Decision generally)

Subsections (1) and (2) are unchanged. However, associated amendments to s 3.3.20 make it clear that the assessment manager's discretion to approve all or part of the application is fettered only by a concurrence agency's direction to either refuse the whole application or not approve a part of the application. The direction to not approve part does not imply that the assessment manager must take any particular action with respect to the rest of the application. The approval or refusal of the remainder of the application is at the discretion of the assessment manager.

Subsection (3) and (4) require the assessment manager to take the action directed by a concurrence agency, ie to condition, to refuse, or not to approve part of, an application.

Subsection (5) provides that where different, shorter currency periods for an application are specified by more than one concurrence agency, the shortest is the currency period for the integrated development approval.

Subsection (6) provides that subsections (1) to (4), about the decision generally, do not apply to that part of an application for a preliminary approval that seeks to vary the planning scheme. A decision about that part of the application is not a decision about development and those provisions are not relevant. The decision about that part of the application is dealt with separately under section 3.5.16.

Subsection (7) removes doubt about aspects of a decision. Paragraphs (a) and (b) repeat previous provisions. New paragraph (c) makes it clear that in approving only part of an application the assessment manager is

taken to have refused the remainder. While the assessment manager is not required to advise an applicant of the decision to refuse by implication, the assessment manager must nevertheless give reasons for the decision under section 3.5.17(2)(e).

Sections 3.5.14 (Decision if development requires code assessment)

Section 3.5.14 is amended for consistency with changes to s 3.5.5.

Sections 3.5.15 (Decision for development not requiring code assessment)

Section 3.5.13 is amended for consistency with changes to s 3.5.6.

Subsection (5) makes it clear that the application of the precautionary principle to a decision under this section means that if the applicant has failed to supply the assessment manager with sufficient information to inform the assessment manager's decision, the assessment manager must take a precautionary approach in making a decision. The reference to the precautionary principle is included for the purpose of removing doubt about its application in the particular circumstances. It is not intended to limit in any way its application for the rest of the Act.

New section 3.5.16 (Decision if application under s 3.1.6 requires assessment)

Section 3.5.16 provides a decision making process for that part of an application for a preliminary approval that seeks to vary the planning scheme. Subsection (1) allows the assessment manager to approve the variations applied for, approve them in part, approve different variations subject to their consistency with the terms of the preliminary approval for the proposed development, or refuse the variations applied for.

Subsection (2) provides that a variation can only be approved to the extent that the development for which the variation is required is also approved.

Subsection (3) and (4) provide that, as with the decision for the development, the decision with respect to the variation must not compromise the desired environmental outcomes for the planning scheme area and must be consistent with State planning policies whether or not reflected in the planning scheme.

Section 3.5.17 (Decision notice)

Subsection (1) is amended to remove the need for the decision notice to be in an approved form. References to the approval or refusal of an application are amended to refer to "all or part" of the application, throughout the section.

New subsection (2)(g) provides for variations to the planning scheme in relation to a preliminary approval under s 3.1.6 to be included in the decision notice.

Subsection (2)(j) provides for any compliance assessment necessary to be stated in the decision notice.

Subsection (2)(k) provides for the names and address of principal submitters to be included in the decision notice.

New subsection (3) requires a copy of each concurrence agency condition to be attached to the decision notice.

New subsection (4)(a) provides a further instance to trigger the assessment manager giving principal submitters a copy of the decision notice, ie the applicant advises they do not intend to apply for a negotiated decision notice.

New Division 4 – Negotiated decision notices.

This division has been drafted to deal with confusion about the relationship between suspension of the applicant's appeal period and making representations for a negotiated decision notice. The applicant may suspend their appeal period in writing (under section 3.5.19) before making an application for a negotiated decision notice (under section 3.5.18). The applicant may decide to take this course of action to give them more time to prepare their application. Alternatively, and even if the applicant takes no action to suspend their appeal period, the appeal period will automatically be suspended as soon as the application for a negotiated decision notice is received.

Section 3.5.18 (Changing approvals during the applicant's appeal period)

Subsection (1) enables an applicant, during their appeal period, to apply to the assessment manager to change their decision about a development application. This does not apply for that part of the decision which is a

concurrence agency's response, or if the assessment manager decided to refuse the application.

Subsection (2) and (3) provide for the form of the application and the matters relevant to the reconsideration of the application.

Subsection (4) provides for the assessment manager to advise the applicant that their application to change the decision was unsuccessful.

Subsection (5) provides for the assessment manager to give a negotiated decision notice to the applicant and other specified parties.

Subsections (6) and (7) provide for the form and timing for the giving of the negotiated decision notice.

Subsections (8) and (9) transfer and maintain the effect of existing sections 5.1.9 (6) and (7), regarding the ability of a local government to issue a new notice of charge if the development approved by a negotiated decision notice is different in a way that affects the amount of the infrastructure charge for the development. As payments for infrastructure under an infrastructure payments schedule can now also be required through a condition of approval, sections 3.5.18 (8) and (9) now also allow a condition requiring an infrastructure payment to be amended for the same reasons. These provisions have been relocated to section 3.5.18, as they are a direct consequence of the issuing of a negotiated decision notice.

Section 3.5.19 (Applicant may suspend applicant's appeal period)

Subsection (1) and (2) allows an applicant to apply once only in writing to the assessment manager to suspend their appeal period. Subsection (3) provides that the applicant can choose to withdrawn the application to suspend their appeal period in which case the withdrawal takes effect the day after the withdrawal. If they do not withdraw, the suspension lasts for 20 days, unless during that time the applicant makes an application for a change under s 3.5.18 and section 3.5.20 takes effect.

Section 3.5.20 (When appeal period is automatically suspended)

Section 3.5.20 provides for when an applicant applies under s 3.5.18 for a change of the assessment manager's decision. If the applicant has not sought a suspension of their appeal period under s 3.5.19, their appeal period is nevertheless automatically suspended. If the applicant has sought a suspension under s 3.5.19, their appeal period remains suspended, even

beyond the 20 day suspension period allowed for in that section, until the balance of the appeal period restarts as provided for in s 3.5.21.

Section 3.5.21 (When balance of appeal period restarts)

Section 3.5.21 provides for the balance of an applicant's appeal period to restart, either when they withdraw their application for a change of the assessment manager's decision, or the assessment manager decides the matter and notifies the applicant as required under s 3.5.18 that their application has not been successful.

It should be noted that the applicant's appeal period is only suspended by either an application under s 3.5.18, or an application under s 3.5.19. It does not return to the beginning, but continues from the point where it was suspended. The period recommences only when section 3.5.22 applies.

Existing sections 3.5.22 to 3.5.26

These are omitted. All changes to development approvals are provided for under new part 5A.

Section 3.5.22 (When applicant's appeal period starts again)

Section 3.5.22 provides that if the assessment manager as a consequence of reconsidering their decision, changes it in some way and gives the applicant a negotiated decision notice, their appeal period starts again, from the beginning.

Section 3.5.23 (When approval takes effect)

The section is amended to insert a new subsection (1)(b)(ii) the effect of which is to allow a submitter to advise the assessment manager in writing that they wish to waive their appeal rights.[34]

New subsection (2) requires the assessment manager to give the applicant a copy of the submitter's notice that they wish to waive their appeal rights.

New subsection (3) inserts a definition of "submitter" that makes it clear that, although they do not come within the general definition of "submitter"

34 See s 4.1.28.

in schedule 10, for the purposes of this section only the term includes an advice agency that has asked the assessment manager to treat their response to an information request as a submission.[35] As a consequence, an advice agency may also waive their appeal rights under subsection 1(b)(ii)

Section 3.5.24 (When development may start)

Subsection (1) is amended to refer to "assessable development" starting when a development permit takes effect. The purpose of this amendment is to allow exempt or self-assessable development to proceed before the approval takes effect where assessable and other development is dealt with in an application for a preliminary approval.

Subsection (2) provides conditions to when assessable development may start once the permit has taken effect under s 3.5.23. A condition of the permit may require that other development for the premises be approved, or substantially started or completed, before the permit takes effect. Also compliance assessment may be required for some aspect of or related to the development before development may start.

Section 3.5.25 (When approval lapses)

Subsections (1) and (7) (renumbered as (2)) are unchanged.

Subsections (2) to (6) which deal with currency periods for development applications. have been omitted and to the extent necessary appear in the definition of "currency period".[36]

Section 3.5.26 (Certain approvals to be recorded on planning scheme)

Subsection (1)(b) is inserted to require the chief executive to be advised in writing when a local government notes an inconsistent approval on its planning scheme, as required under subsection (1)(a). This will enable the chief executive to ensure the planning scheme available for inspection under s 5.7.7 is current. No time for giving the advice is specified, however, the generic provisions of the *Acts Interpretation Act 1954* require the action be taken as soon as possible.

35 See section 3.3.21
36 See schedule 10.

Section 3.5.27 (Approval attaches to land)

This is renumbered but otherwise unchanged.

Section 3.5.28 (Application of div 6)

This is renumbered but otherwise unchanged.

Section 3.5.29 (Conditions must be relevant or reasonable)

This is renumbered but otherwise unchanged.

Section 3.5.30 (Conditions generally)

This is renumbered but otherwise unchanged.

Section 3.5.31 (Conditions that cannot be imposed)

Section 3.5.31 currently prevents a local government from imposing a condition requiring the construction of infrastructure or a monetary payment for infrastructure. With the introduction of conditioning powers for non-trunk infrastructure and for infrastructure payments under an infrastructure payments schedule, it has been necessary to amend this section. The amendment to subsection (1)(b) prevents a condition requiring the construction of, or a payment for, infrastructure, other than in the way provided for in chapter 5, part 1. However, subsection (2) makes clear that subsection (1)(b) in particular does not act to prevent conditions being imposed to protect or maintain the efficiency of State owned or State controlled transport infrastructure.

Section 3.5.32 (Agreements)

This section has been amended to include reference to 'the person in whom the benefit of the approval vests'. This is because there ceases to be an 'applicant' for a proposal once a development approval is issued. The amended wording allows parties to enter into an agreement to secure the performance of a condition, including a condition about infrastructure under chapter 5, part 1, after an approval has been issued.

Existing section 3.5.33 (Request to change or cancel conditions)

This is omitted. All changes to development approvals are provided for under new part 5A.

Section 3.5.33 (Covenants not to be inconsistent with development approvals)

This is renumbered but otherwise unchanged.

Section 3.5.35 (Limitations on lessening cost impacts for infrastructure) and Section 3.5.36 (Matters a condition lessening cost impacts for infrastructure must deal with)

These sections have been deleted and replaced by the additional cost provisions of chapter 5, part 1, divisions 5 (for local government) and 6 (for State).

New part 6 is inserted – (Changing or Cancelling Development Approvals)

Part 6 replaces sections 3.5.22 to 3.5.26, section 3.5.33, and transitional section 6.1.44 with a separate part dealing with all changes to development approvals. Division 1 deals with all changes (including changes to currency periods and conditions) sought by application. Division 2 deals with changing or canceling certain conditions by the assessment manager or concurrence agency without the consent of the owner or occupier of land.

The scope for changing a development approval under division 1 of part 6 is limited in two ways.

Firstly, section 3.6.2(5) states a deciding entity must refuse an application for a change if it is satisfied that if a fresh application for the development, including the change, was made at the time the original application was made, it would need to be treated in a different way to that provided for under the division.

Secondly, the use of this part is limited generally by the definition of "development approval" for the Act[37]. The definition states the relationship

37 See schedule 10

between a development application and any approval of that application. The scope of an approval cannot exceed (but may vary or be less than) the scope of the application. Therefore an application to change a development approval is also limited to dealing with the development originally applied for That is, no new aspects of development can be dealt with and added by a change, but aspects may be varied or removed.

It is not intended that an application for change under the division be used where a new development application is necessary. Because of these constraints, it is envisaged that only relatively minor changes, limited to the jurisdiction and interest of the deciding entity, will be dealt with through this Part. For that reason, provision is made (see section 3.6.2(1)) for an application for change to be treated in a similar way to a simple development application, for which there are no referral agencies, and therefore no integration or co-ordination of referrals or responses. The deciding entity for the matter will act as the assessment manager, wholly responsible for the application.

New section 3.6.1 (Application to change or cancel a development approval)

Subsection (1) provides that any person may make an application[38] under the section. Thus a prospective owner, a leaseholder, or an occupier, would not be precluded from making an application, with the owner's consent. The subsection also makes it clear that the division applies only if the approval has taken effect.[39]

Subsection (2) prevents an application to change a preliminary approval into a development permit under the division. A preliminary approval does not authorise assessable development to occur[40] and changes to conditions of a preliminary approval are more appropriately dealt with in the consideration of a subsequent application for a further preliminary approval or a development permit.

Subsection (3) provides for how an application is made to the deciding entity. This is the entity that made the decision about the particular aspect sought to be changed. For example, if the Court or a Tribunal in deciding an appeal imposes a condition on a development approval, an application to change the condition must be made to the Court or Tribunal.

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38 See definition of "change application" in schedule 10.
39 See s 3.5.23
40 See s 3.1.5

For any approval, a person may make separate applications to different entities to change a particular aspect for which that entity had the jurisdiction to determine.

Subsections (4) and (5) provide for the consent of the owner or a purchaser of the land.

New section 3.6.2 (Deciding entity must assess and decide application to change or cancel a development approval)

Subsection (1) provides for an application to be assessed and decided in a similar way to a development application for which there are no referral requirements, using the IDAS decision-making process. However the application stage for IDAS does not apply .

Because the IDAS process is used, the deciding entity could, for example, make an information request about the change sought and failure to respond would result in the application for the change lapsing[41].

Subsections (2) and (3) require the deciding entity's considerations to be the same as its original considerations for the development application, but allows other relevant matters to also be considered.

Subsection (4) provides that the deciding entity must make a decision, to either approve the application in full or part, or refuse the application.

Subsection (5) requires the deciding entity to refuse the application if the proposal, including the change, if re-applied for, would require a different application to that originally made and because of the change, it would need:

- to be referred to additional concurrence agencies,
- to be publicly notified, or if it had already been publicly notified
- it would attract additional submissions (unless the change resulted in the removal, or decrease in scale or intensity, of an aspect of the development).

The subsection uses the term "if it could, and had, included the change". This reflects the fact that the limitations in this subsection only apply if it is possible to conceptualise the original application as including the change. It would not apply if the change sought was, for example, to alter the hours of operation for a facility, the subject of a development application. This

41 See section 3.3.10.

type of change is not a change to an aspect of development, so it could not have been a substantive part of the original application, and would not result in a different application for the purposes of this subsection.

Subsection (6) provides that for a change that removes, or reduces the scale or intensity of an aspect of development, the application does not require refusal on the basis of the likelihood of a substantial submission about the change. This is consistent with section 3.2.8 about changing a development application.

Subsections (7) to (9) apply where an application is made to cancel a development approval. A deciding entity must approve the application unless a condition of the approval requires action to be taken to mitigate adverse environmental effects and cancellation would result in the required action not being taken, eg if an approval required site remediation.

Cancellation of an approval requires the release of any monetary security given in relation to the approval.

Subsection (10) makes it clear that the removal of an aspect of development from an approval can occur under the division.

Subsection (11) makes it clear that the currency period for an approval, even though it may otherwise have lapsed after the date an application to change it was made, does not lapse before the application is decided.

New section 3.6.3 (Deciding entity must give notice of decision)

The section provides for notice of a deciding entity's decision to be given to the applicant and, if the deciding entity is the assessment manager, for notice also to be given to any concurrence agencies. Similarly if the deciding entity is a concurrence agency, notice must be given to the assessment manager for the application.

New section 3.6.4 (Effect of notice)

The section provides for notice of a decision under the division to take effect the date the applicant is given the notice, and for the effect of the decision in the notice to override the effect of the development approval to the extent they are inconsistent.

New section 3.6.5 (When operational conditions may be changed or cancelled by assessment manager or concurrence agency)

This section replaces the previous transitional arrangement under s 6.1.44. Section 6.1.44 operated when other legislation was consequentially amended to integrate development previously approved under the legislation into the IPA. If under the other legislation an agency, including a local government, had the power to unilaterally change or cancel conditions imposed on an approval under the other legislation, s 6.1.44 saved that power with respect to conditions imposed by the agency on a development approval under the IPA.

New section 3.6.5 no longer relies on a pre-existing power but allows agencies generally to change or cancel conditions of an operational nature imposed by them on development approvals.

Subsection (1) limits the application of the section to "development conditions" imposed under other Acts, or operational conditions. The term "operational condition" is defined in subsection (12). A condition may be a development condition under another Act, and also fall within the definition of an operational condition for section (12). However the requirements of this section apply separately, not cumulatively to such conditions. Consequently, an operational condition under another Act may be changed exclusively on the grounds under the other Act, and is **not** subject to the constraints placed upon changing an operational condition under this section.

Subsection (2) provides that this section does not apply if another Act authorises conditions of a development approval to be changed in another way. For example, Part 7 of this Bill includes arrangements for the chief executive administering the *Water Act 2000* to change conditions about dam safety by simply giving a notice. The provisions of that Part would over-ride the operation of this section.

Subsection (3) provides that an entity can only change or cancel a condition imposed by that entity on a development approval, or if the entity did not impose the condition, the entity with jurisdiction for the condition.

Subsection (4) establishes the grounds upon which development conditions and operational conditions respectively may be changed:

- "Development conditions" defined under the *Environmental Protection Act 1994* (EPA) may be changed or cancelled on the grounds mentioned in section 130(2) of that Act. These are the same grounds upon which an environmental authority under that

Act may be changed. The language of section 130(2) is specific to environmental authorities, and it is intended that, when applied to development conditions, the grounds be read, as far as practicable, as applying in the context of a development condition.

- "Development conditions" defined under another Act may be changed or cancelled on a ground mentioned in the other Act.
- "Operational conditions" may be changed or cancelled if the entity is satisfied the change or cancellation reflects a standard of environmental performance under a statutory instrument with which the condition does not comply. This is intended to support consistency and accountability in the way such conditions may be changed, and is consistent with principles of continuous environmental improvement.

Subsection (5) provides that the consent of the owner and/or any occupier of the land is not required to the change or cancellation.

Subsection (6) requires that the changed condition must, like all other conditions, satisfy the tests of reasonableness and relevance under the Act.

Subsections (7), (8) and (9) provide for how notice of the intended change or cancellation should be given to the owner and any occupier of the land. Submissions may be made by the owner/occupier about the intended change or cancellation and if made must be taken into consideration by the entity in deciding whether to proceed with the change or cancellation. Further notice of the entity's final decision must be given to the owner/occupier.

Subsection (10) provides for the assessment manager for the development application to be notified and subsection (11) provides for when the changed condition or cancellation takes effect.

Subsection (12) defines "operational condition" for this section. The term means a condition stating a standard of environmental performance for an activity that is the natural and ordinary consequence of the development, the subject of the application on which the approval is based.

"Standard of environmental performance" is intended to be applied broadly. It may for example apply to emission standards, traffic management standards, site circulation standards or standards of visual or aural amenity.

An operational condition must also apply to the activity or use that is the consequence of development, and not to the development itself. This is intended to reflect the "performance" approach adopted by the Act generally.

A condition aimed at achieving a standard of environmental performance may be expressed in different ways. For example, a condition designed to ensure adequate on-site parking might be expressed as a requirement to construct a specified number of car parking spaces as part of carrying out the development. Such a condition would not be able to be changed under this section, as it is a condition about carrying out the development.

If however the condition required the use resulting from the development to be conducted in such a way that there was at all times provision for adequate on site parking, such a condition could subsequently be changed under this section. This approach is also consistent with the use of compliance assessment for conditioning under Part 7 of this Chapter. A condition about environmental performance could be accompanied by another condition requiring submission for compliance assessment of a plan showing how the standard of environmental performance is to be achieved and maintained. It is then up to the applicant to propose the best strategy for meeting the desired standard of performance. If the performance standard is subsequently changed in a planning scheme for example, the condition could be changed under this section to require the submission of a new plan demonstrating performance against the new standard.

This provides an incentive for assessment managers and concurrence agencies to express conditions as performance standards, as it allows the entity to subsequently upgrade the standards consistent with those in a new planning scheme for example.

New part 7 is inserted – (Compliance Stage)

The purpose of this stage is to enable certain development to be dealt with under IDAS more simply and effectively without compromising the benefits of integrated development assessment. The application of the compliance stage will mean that certain development ("compliant development"), documents or works will need to be approved for compliance with certain criteria. Codes which apply in these circumstances, for example, the Standard Building Regulation, will not be applicable codes for assessable development. The entity carrying out the

compliance check or action, for example, a building certifier, will not be an assessment manager.

Currently, the only assessment processes available under IDAS are impact and code assessment for assessable development, and self assessment. Even though these processes are streamlined, with clear timeframes and outcomes, there are nevertheless types of development for which a far simpler process would be more suitable. These are types of development for which:

- clear technical standards are available,
- the exercise of broad discretion in determining compliance is unnecessary and
- integrated referral arrangements are unnecessary, or, in the case of building work, referral arrangements can be coordinated by a private certifier qualified to determine referral requirements.

Furthermore, the current arrangements suggest that, for assessable development, the assessment process ends when a development permit is given. Under these arrangements, if there are some detailed technical matters outstanding at the end of the assessment process, the lack of clear direction in the Act has meant assessment managers and concurrence agencies have required these technical issues to undergo a further IDAS process by, for example:

- giving only a preliminary approval for the development; or
- making such detailed works (such as landscaping or engineering works) assessable in their own right under a planning scheme

For building work assessed under the Standard Building Regulation by private certifiers, existing IDAS assessment processes:

- subject certifiers to time frames and other requirements designed to ensure accountability for public sector assessment managers, when in fact certifiers are providing a private service under contact;
- treat certifiers as assessment managers for development that often also requires assessment by other assessment managers, necessitating complex arrangements to establish when a certifier may start carrying out assessment; and

- require certifiers to engage in formal referral and concurrence arrangements which may be disproportionate to the responses required from other entities for the building work

The compliance arrangements under this part are distinguished from other forms of assessment under IDAS by the following:

- Compliance assessment may apply for any type of development under IDAS (assessable, self assessable or exempt)
- Assessment may be carried out for development identified in a regulation, development identified in a condition of a development approval, development identified in a preliminary approval, or for a plan of subdivision presented to a local government for its approval. The Bill does not provide for development requiring compliance assessment to be identified in a planning scheme.
- Assessment may be of compliant development, documents or completed works against codes, standards, conditions or other matters specified under a regulation. This differs from assessment for assessable development which is limited to assessing proposed development against policies or codes. In this sense, compliance assessment can be seen as assessment for particular development, rather than simply of particular development
- Assessment is carried out by an entity prescribed under a regulation, not by an assessment manager
- Assessments are not "integrated" in that there are no formal referral arrangements, but may be carried out in parallel.
- A regulation identifies the key parameters for assessment, including the development triggering assessment, the development, documents or works requiring assessment, the entity to which a request is made, any fees, time limits for assessment, the consequences of not responding in time, and any additional actions that may, or must be taken by the person seeking endorsement or the entity.

For much of the development to which the stage will apply, the compliance stage will be the only stage. For example, for a proposal involving only building work requiring assessment under the Building Act, the development will be specified as exempt under schedule 8 and all that will be required under IDAS will be the checking of building plans for

compliance with the Standard Building Regulation, (and possibly, completed work for compliance with plans).

There will be circumstances when the stage will apply for assessable development, for example when, as a condition of a development approval, a landscaping plan or an environmental management plan is required to be prepared and checked for compliance with the condition, or subdivision plans need to be "stamped" by the local government prior to registration under the *Land Title Act 1994*. In that case, the stage will be undertaken as a final step after the development approval has been given.

The compliance arrangements will help clarify uncertainties over the finality of such conditions. Such uncertainties have in the past led to assessment managers and concurrence agencies directing preliminary approvals due to the perception that a condition requiring submission of detailed plans for further assessment would lack finality. By making it clear the Act contemplates that such conditions may be imposed without offending the principle of finality, the compliance stage will encourage a more streamlined approach to assessment.

Under these arrangements requiring submission of documents demonstrating compliance with a condition of the development approval would not lack finality, provided the condition established the desired outcome or end state being sought. In other words, provided the condition established "what" was required, a further condition requiring the applicant to demonstrate "how" would not lack finality.

Examples

1. A condition of a development approval for a contaminated site might reasonably require the partial or complete decontamination of the site to a stated standard to mitigate any increased risks to health and safety resulting from the proposed development. A further condition requiring the submission for compliance assessment of a decontamination or management plan to demonstrate how this end state is to be achieved would not lack finality.

2. A development approval for a material change of use for a small shopping centre may require the landscaping of the premises to maintain a standard of amenity for the locality described in the planning scheme, or for identified access/egress points to be designed to maintain safety standards for the relevant street. Further conditions requiring submission for compliance assessment of a landscaping plan or engineering drawings demonstrating how these outcomes are to be achieved would not lack finality.

3. A condition of a development approval for a material change of use for an environmentally relevant activity under the Environmental Protection Act 1993 may establish an allowable limit on emissions to air or water. A further condition requiring submission for compliance assessment of plans for pollution mitigation machinery or works demonstrating how these limits are to be achieved would not lack finality.

4. A development approval for a large industrial complex may include numerous conditions relating to the safety and environmental performance of the operation, both in terms of how the development for the operation is carried out, and how the subsequent use is to be managed to mitigate adverse environmental impacts. A further condition requiring submission for compliance assessment of an environmental management plan demonstrating how all these conditions can be met in a coordinated way through implementing management systems and practices during and after construction would not lack finality.

New section 3.7.1 (Purpose of compliance stage)

This section explains the purpose of the new IDAS stage. It allows for compliant development, or documents (such as plans prepared), or works that have been carried out, to be assessed for compliance with a matter or thing prescribed under a regulation, or the condition of a development approval, for example

- codes prescribed under a regulation, for example the Standard Building Law;
- a condition of a development approval requiring compliance with a landscaping code

New section 3.7.2 (When compliance stage applies)

This section provides for compliance assessment:

- for compliant development[42] where the State specifies by regulation that certain development must be assessed for compliance, for example, that building work must be assessed for compliance with the Standard Building Law;

42 See definition in schedule 10.

- a preliminary approval requires that certain development must be assessed for compliance with a code in the approval;
- a condition of a development approval requires that certain documents or works be assessed for compliance with a condition of the approval;
- where an Act other than the IPA requires a plan to be approved by the local government before it can be registered under that other Act. For example, the *Land Title Act 1994* requires local government to endorse a plan of subdivision before it can be registered.[43]

New section 3.7.3 (What may be assessed for compliance)

Section 3.7.3 provides for a regulation to prescribe compliant development, documents or works that must be assessed for compliance with matters or things, being prescribed codes, standards, or conditions of a development approval.

New section 3.7.4 (When compliance stage starts)

The start of the compliance stage for compliant development, a document, or a work will either be prescribed by regulation, or, if it is not prescribed, will be the day compliance assessment is requested.

New section 3.7.5 (Process for compliance assessment)

Subsections (1) and (2) provide for a request to be made to a compliance assessor[44]for assessment of compliant development, documents, or works carried out, and the fee payable for assessment. It is an offence to not seek compliance assessment for prescribed compliant development [45]

Subsections (3) and (4) provide for a compliance assessor to assess compliant development, documents, or works carried out against certain prescribed matters or things. The compliance assessor must either approve the development, document or work for compliance, or approve with or

43 Section 50g of the *Land Title Act 1994*.
44 See definition in schedule 10.
45 See section 4.3.4A.

without conditions or instructions for achieving compliance with the prescribed matters or things. A compliance request cannot be refused.

Subsection (5) provides for the compliance assessor to give a compliance permit for compliant development, or a compliance certificate for a document or work, within a prescribed time.

Subsection (6) provides for when a compliance assessor approves development with conditions, or a document or work with instructions, for achieving compliance. Written notice of the conditions or instructions must be given within the prescribed time.

Subsection (7) provides for the action that may be taken by a person making a request if the compliance assessor fails to make a decision within the required time.

New section 3.7.6 (Regulation may prescribe additional requirements and actions)

This section provides for a regulation under the IPA or another Act (eg Building Act) to prescribe things that are mandatory or discretionary in carrying out the compliance assessment. This might include the form for documents, scale of plans, paper size, etc.

Also a regulation may, for example, prescribe additional actions to be taken by the compliance assessor, such as a need to give approved documents to another entity, or the need to give the approval in a particular form.

Section 3.7.7 (Endorsement under this part has effect for 2 years)

This section provides for an approval of a document to have effect for the period of time stated in a regulation or, if not stated, for two years. Any development which is the subject of the document, eg building work specified in a plan, must commence within the relevant period or the approval of the plan lapses. However, provided the development has commenced, the approval of the document has continuing effect.

Section 3.7.8 (Endorsement of plan taken to be approval for other Acts

Subsection (1) refers to any requirement under another Act, and in particular to the requirement under the *Land Title Act 1994*, s 50g, for local government approval of a plan of subdivision before the plan can be

registered, and makes it clear that approval as a consequence of compliance assessment constitutes local government approval for the purposes of those Acts.

Subsection (2) provides that if compliance assessment is not required under part 7 for a plan of subdivision then, local government approval is not required for the plan under s 50g of the Land Title Act.

Section 3.7.9 (Codes for compliance assessment are not applicable codes)

This section makes it clear that codes against which compliant development, documents or plans are required to be assessed are not applicable codes.[46]This means that, if the development requiring compliance assessment is also assessable development, the assessment manager is not required to assess the development application against codes identified in the regulation as codes for compliance assessment.

Previous part 6 is renumbered as part 8.

Heading to Part 8 – Ministerial Powers and Development Applications and Approvals

The heading is amended to more appropriate reflect the function of the part.

Sections 3.8.1 (When Ministerial direction may be given)

This is renumbered but otherwise unchanged.

Section 3.8.2 (Notice of direction)

This is renumbered but otherwise unchanged.

Section 3.8.3 (Effect of direction)

This is renumbered but otherwise unchanged.

46 See definition of "applicable code" in schedule 10.

Section 3.8.4 (When a development application may be called in)

This section was amended in the *Local Government and Other Legislation Amendment Act 2001*. It is not further amended in this Bill.

Section 3.8.5 (Notice of call in)

Section 3.8.5 is simplified to deal only with the notice of call in.

Subsection (1) provides for how the Minister[47] may call in an application.

Subsection (2) requires the Minister to give reasons for calling in the application.

Subsection (3) requires the Minister to advise certain interested parties of the call in.

Section 3.8.6 (Effect of call in)

Section 3.8.6 clarifies the action the Minister must take, and other effects if an application is called in.

Subsection (1) applies the section.

Subsection (2) provides that if an application is called in before it is decided by the assessment manager, the Minister takes the assessment manager's place and continues the IDAS process from the point in the process the application has reached.

Subsection (3) provides that if an application is called in after it has been decided by the assessment manager, the Minister takes the assessment manager's place and repeats the decision stage of the IDAS process. However, subsection 3(b) enables the Minister to decide to also repeat any of the other stages of IDAS.

Subsection (4) provides for the Minister to be the assessment manager for the application until a decision is made but the IDAS timeframes do not apply to actions taken by the Minister as the assessment manager.

Subsection (5) requires the original assessment manager to give the Minister reasonable assistance to assess and decide the application.

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47 See definition of "Minister" in schedule 10.

Subsection (6) allows the Minister to consider, in addition to the matters the original assessment manager would be required to consider, matters relevant to the State interest which gave rise to the call in.

Subsection (7) prevents the applicant from changing the application without the Minister's written agreement.

Section (8) provides for a concurrence agency for the application to be an advice agency.

Subsection (9) provides for interested parties to be notified of the Minister's decision.

Subsection (10) provides for the Minister's decision to be attributed to the original assessment manager. However, subsection (11) removes the right to appeal the decision.

Subsection (12) provides for any appeal commenced before the call in to be of no effect.

Section 3.8.7 (Process if call in decision does not deal with all aspects of the application)

This is renumbered but otherwise unchanged.

Insertion of New Division 3 Ministerial call in powers (changed or cancelled conditions)

The new division will allow the Minister[48] to call in an application to change or cancel a condition of a development approval. The provisions are similar to those for calling in a development application.

Section 3.8.8 (Definition for div 3)

The term "change application" is defined for the division.

Section 3.8.9 (When a change application may be called in)

This section provides that a change application may be called in only if it involves a State interest, and it is called in within the specified time.

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48 See definition of "Minister" in schedule 10.

Section 3.8.10 (Notice of call in)

This section allows the Minister to call in a change application by giving written notice to the entity deciding the application, stating the reasons for the call-in. The applicant for the change must be given a copy of the notice.

Section 3.8.11 (Effect of call in)

Subsection (1) states the section applies to the calling in of change applications.

Subsection (2) provides for when the Minister calls in an application before the deciding entity has made a decision. The Minister must continue with the process for the application.

Subsection (3) provides for when the Minister call in an application after the deciding entity has made a decision. The Minister is required to reassess the application and make a decision.

Subsection (4) provides for the Minister to be the deciding entity for the application and for time limits for processing a change application to not apply to the Minister, as deciding entity.

Subsection (5) provides for the original deciding entity to assist the Minister in assessing and deciding the application. The entity must give the Minister all the material about the application in the deciding entity's possession before the application was called in.

Subsection (6) provides for additional matters the Minister may consider in assessing and deciding the application.

Subsection (7) provides for the Minister to notify the original deciding entity of the Minister's decision

Subsection (8) provides for the effect of the Minister's decision.

Subsections (9) and (10) provide that there is no appeal against the Minister's decision, and any appeal in progress before the application was called in is of no effect.

Insertion of New Division 4 – Report to Parliament

This division is substantially similar to the former section 3.6.9. It has been included as a separate division to reflect the insertion of division 3 in this Part.

Section 3.8.12 (Report about decision)

Subsection (1) requires the Minister to prepare a report about the Minister's decision under division 2 or 3.

Subsection (2) states the things the report must contain.

Subsection (3) requires the report to be tabled in the Legislative Assembly within 14 sitting days after the Minister's decision is made.

Part 7 - Plans of Subdivision

This part is omitted from chapter 3 and replaced as necessary in part 6 – compliance stage. Amendments to the *Integrated Planning Regulation 1998* will be made to complete the transition allowing plans of subdivision to be dealt with in the compliance stage.

New section 4.1.5A (How court may deal with matters involving substantial compliance)

Clause 28 inserts new section 4.1.5A to provide the Court with the power to deal with any proceeding before it, if the Court is satisfied there has been substantial compliance with procedural requirements.[49]

In particular, the Court may have before it an appeal about a development decision and may become aware that some procedural requirement for the application has not been complied with, for example, the proponent may have failed to comply in some respect with the public notification requirements of IDAS. Provided the Court is satisfied that despite any failure in compliance, the public has been made sufficiently aware of the existence and nature of the proposed development and has had the opportunity to make submissions, the Court may proceed to decide the appeal.

49 See also *Clause 41* which omits previous section 4.1.53.

Amendment of s 4.1.21 (Court may make declarations)

Clause 29 amends s 4.1.21. The intent of the section is to confer open standing on potential applicants. Therefore, any person may apply to the Court for a declaration about any matter mentioned in section 4.1.21(1), including anything that should have been done by any person under the Act. This includes the endorsement as "properly made", under section 3.2.4, as of an application form.

Clause 29(1) substitutes the word "for" for "under" in subsection (1)(a). The purpose of this change is to clarify that in accordance with s 36 of the Acts Interpretation Act matters done under another Act for the purposes of the IPA may be the subject of a declaration under this section.

Clause 29(2) omits section 4.1.21(1)(e) for consistency with other amendments to the Act to remove the concept of "acknowledgement notices

Clause 29(3) amends subsection (7) to require the Minister to be satisfied a State interest is involved before electing to be a party to declaration proceedings. No time has been nominated in either this section or section 4.1.46 (Minister entitled to be a party to an appeal involving a State interest). It is intended with respect to both sections that the time within which the Minister may make the election be limited only by the rules of the Court and that the Minister have the maximum time to make the election to lessen the need to "call in" applications under section 3.6.5.

Amendment of s 4.1.22 (Court may make orders about declarations)

Clause 30 inserts a new subsection (2), to replace subsections (2) and (3). The original subsections provide for where fraud has occurred and confine the Court's ability to amend or cancel a development approval to such cases. The intent of the original subsections was to protect innocent parties by preserving the existence of approvals not affected by fraud. However in most cases a development approval may be declared void under section 4.1.21 without the need for an order under this section.

The new subsection allows the Court to make an order to cancel a development approval. However, the Court, in making such an order must also order appropriate compensation for any loss suffered as a consequence of the order. For example, if a development approval was given in error, the Court could order the cancellation of the approval and compensation for any loss suffered from the cancellation by an innocent party.

It is not anticipated the expanded powers of the court under this section would be exercised often. However occasionally, the continuance of rights under a development approval may have extreme adverse environmental or public safety consequences, and it is appropriate the court have the power to act in these circumstances.

Amendment of s 4.1.23 (Costs)

Clause 31 amends section 4.1.23 for clarity, and for consistency with other amendments to the Act.

Subsection (1) clarifies section 4.1.23(1) is subject to qualifications in subsections (2) to (6).

Subsection (2) clarifies section 4.1.23(2) is subject to qualification in subsection (7).

Subsection (3) updates a section reference for consistency with changes made to Chapter 3.

Subsection (4) replaces the concept of an acknowledgement notice with that of an endorsed application for consistency with changes made in Chapter 3, Part 2.

Amendment of s 4.1.27 (Appeals by applicants)

Clause 32 replaces subsection (2A) for consistency with other changes to the Act, which provide that the applicant's appeal period may be suspended by notice under s 3.5.19, or automatically by the operation of s 3.5.20 when a negotiated decision notice is sought under s 3.5.18.

Amendment of s 4.1.28 (Appeals by submitters)

Clause 33 replaces section 4.1.28

Subsection (1) provides that a submitter may only appeal about that part of a development approval decided by the assessment manager. A submitter may not appeal about the conditions a concurrence agency required to be attached to an approval. Also a submitter may only appeal about that part of a development approval under a transitional planning scheme that, if it had been processed under the repealed Act, would have required public notification. This broadly equates to impact assessable development under the IPA.

Subsection (2) provides that a submitter may appeal about the giving of the development approval generally, or any provision of the approval, subject to subsection (1).

Subsection (3) provides that a submitter may not appeal if the submitter withdraws their submission before a decision is made about the application or if the submitter advises the assessment manager in writing that they will not be appealing the decision.

Subsection (4) provides that a submitter must lodge their appeal within 20 business days of being given a decision notice or negotiated decision notice for the application.

Amendment of s 4.1.29 (Appeals by advice agency submitters)

Clause 34(1) replaces subsection (1) with new subsections (1) or (1A) to achieve consistency with the grounds upon which other submitters may appeal under section 4.1.28.

Clause 34(2) inserts a new subsection (3) for consistency with s 4.1.28(3)(b). The subsection provides that an advice agency who has elected to have its response treated as a submission for an application[50] and has subsequently waived its appeal rights[51] may not appeal.

Replacement of ss 4.1.30 and s 4.1.31

Clause 35 inserts new section 4.1.30.

Section 4.1.30 (Appeals for matters arising after approval given (co-respondents))

Section 4.1.30 has been replaced for consistency with new arrangements for changing or cancelling development approvals under Chapter 3, Part 6.

Subsection (1) identifies the application of the section. The section applies for a notice giving a decision about a change application if there were concurrence agencies for the original development application. This is linked to requirements for notifying potential respondents under section 4.1.41.

50 See section 3.3.21(3)(b)
51 See section 3.5.23.

Subsection (2) prevents a person to whom a notice about a change application is given under subsection (1) from appealing if the notice is about extending the currency period for a development approval resulting from a development application (superseded planning scheme).

Subsection (3) provides for the person mentioned in subsection (1) to appeal the decision in the notice.

Subsection (4) provides the appeal must be started within 20 days after the day the notice is given.

Subsection (5) provides for an appeal about a deemed refusal of a change application.

Subsection (6) provides for when an appeal under subsection (5) may be started.

Section 4.1.31 (Appeals for matters arising after approval given (no co-respondents)

Section 4.1.30 has been replaced for consistency with new arrangements for changing or cancelling development approvals under Chapter 3, Part 6.

Subsection (1) identifies the application of the section. The section applies for a notice giving a decision about a change application if there were no concurrence agencies for the original development application. This is linked to requirements for notifying potential respondents under section 4.1.42

Subsection (2) provides for the person mentioned in subsection (1) to appeal the decision in the notice.

Subsection (3) provides the appeal must be started within 20 days after the day the notice is given.

Subsection (4) provides for an appeal about a deemed refusal of a change application.

Subsection (5) provides for when an appeal under subsection (5) may be started.

Amendment of s 4.1.33 (Stay of operation of enforcement notice)

Clause 36 modifies provisions about the effect of appeals about the giving of enforcement notices.

Subsection (1) modifies section 4.1.33(2)(b) by replacing the words "carrying out development that" with the word "stopping".

Subsection (2) modifies provisions about removing material from Queensland waters. Existing section 4.1.33(2)(d) (uncommenced) provides for the removal of quarry material from a watercourse or lake (quarrying in non-tidal waters). New section 4.1.33(2)(e) provides for removal of material from tidal waters, and is relevant to proposed amendments to the Coastal legislation which will make dredging in tidal waters assessable development.

Amendment of s 4.1.40 (Certain appellants must obtain information about submitters

Clause 37 modifies requirements for applicants or submitters to obtain information from the assessment manager. The changes are for consistency with changes to the scope of sections 3.5.15 and 3.5.16, and with new provisions allowing submitters to waive their appeal rights under section 3.5.23(1)(b)(ii).

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

Clause 38 replaces s 4.1.41 to clarify the list of entities to whom notice of an appeal under division 8 must be given.

Subsection (1) provides that written notice must be given to the chief executive in all circumstances and to other parties as required.

Subsection (2) states the times in which notice to particular parties must be given.

Subsection (3) states matters to be included in the notice of appeal.

Replacement of s 4.1.43 (Respondent and co-respondents for appeals under div 8)

Clause 39 replaces section 4.1.43 for consistency with changes made to related sections in Chapter 4 Part 1. The replaced section also includes provisions about co-respondents that were previously implied by section 4.1.45, but not explicitly stated in that section.

Subsection (1) provides subsections (2) to (9) apply for appeals by applicants, submitters, and advice agency submitters respectively.

Subsection (2) provides the assessment manager is the respondent for all appeals mentioned in subsection (1)

Subsection (3) provides the applicant is a co-respondent for a submitter appeal.

Subsection (4) provides a principal submitter is entitled to elect to become a co-respondent.

Subsection (5) provides for submitters other than a principal submitter to become co-respondents if the principal submitter has elected to be a respondent.

Subsection (6) provides for a concurrence agency to be a co-respondent if the appeal is about a concurrence agency response.

Subsection (7) allows for the assessment manager to apply to the court to withdraw from the appeal if the appeal is only about a concurrence agency response.

Subsection (8) provides for respondents and co-respondents to be heard as parties to the appeal.

Subsection (9) provides a person who has received a notice under section 4.1.41 and who is not the respondent or co-respondent may elect to be a co-respondent.

Subsection (10) identifies respondents and co-respondents for appeals about decisions for change applications

Replacement of s 4.1.45 (How an entity may elect to be co-respondent)

Clause 40 replaces s 4.1.45 with a provision that clarifies how an entity who is entitled to be a co-respondent may join an appeal, by linking the election to join to the rules of Court.

Amendment of s 4.1.52 (Appeal by way of hearing anew)

Clause 41 replaces s 4.1.52(2)(b) for consistency with new grounds for changing an application under Chapter 3, Part 2. The effect of the change is to provide the Court in its "de-novo" jurisdiction with essentially the same powers to accept and consider a change to the proposal being appealed as those available to an assessment manager under ss 3.2.8 and 3.2.9. Changes under those sections generally do not require the entire IDAS process to be recommenced, whereas those under s 3.2.10 do.

Omission of s 4.1.53 (Court may decide appeal even if particular requirements not complied with)

Clause 42 omits s 4.1.53. The effect of this section has been effectively replaced and superseded by the more general power under section 4.1.5A which allows the Court to deal with any matter of non-compliance, including in an appeal, if the Court is satisfied no persons rights have been compromised.

Amendment of s 4.2.7 (Jurisdiction of tribunals)

Clause 43 amends s 4.2.7 to replace the reference to a tribunal hearing an appeal with a broader reference to the tribunal "deciding a matter". This reflects the possibility that the tribunal's jurisdiction may be expanded under a regulation to require it to hear matters other than simply appeals.

Insertion of new s 4.2.9A (Appeals by persons requesting compliance assessment)

Clause 44 inserts a new section 4.2.9A to provide for appeals to the tribunal by persons requesting compliance assessment under Chapter 3 Part 7.

Subsection (1) provides for a person to appeal a compliance assessor's decision, or, if provided for under a regulation, to appeal to the tribunal if a compliance assessor has not responded to a request for compliance assessment within the time provided for under section 3.7.5(7). (The regulation may in some circumstances provide that a non-response by a compliance assessor is taken to mean the request has been approved, however in other circumstances, the regulation will provide for an appeal to the tribunal)

Subsection (2) establishes the applicant's appeal period for an appeal under subsection (1)(a).

Subsection (3) establishes when an appeal under subsection 1(b) may be started.

Subsection (4) provides for the tribunal to decide the matter being appealed as if it were the compliance assessor. This makes the tribunal's role for an appeal under this section similar to the "de novo" jurisdiction of the court for an appeal, rather than the tribunal's traditional role in appeals of a "referee" of particular points of dispute.

Replacement of ss 4.2.10 and 4.2.11

Clause 45 replaces ss 4.2.10 and 4.2.11 for consistency with provisions about compliance assessment under Chapter 3 Part 7, and assessment of change applications under chapter 3 Part 6 respectively.

Section 4.2.10 (Appeals by Compliance Assessors)

Subsection (1) provides a compliance assessor may appeal to the tribunal about the giving of a compliance permit in circumstances prescribed under a regulation. This replaces a similar provision which allowed an advice agency rights of appeal under certain circumstances. These provision were originally included in the IPA to facilitate appeals by certain advice agencies for building related matters against the decision of a private certifier. As private certifiers will, under this Bill, assess building work under the compliance assessment arrangements in Chapter 3, Part 7, and the agencies that were formally advice agencies will also be compliance assessors, a change is required to section 4.2.10 is necessary if appeal rights are to continue to be available to these entities.

Subsection (2) provides for the time within which an appeal under subsection (1) must be started.

Section 4.2.11 (Appeals for matters arising after approval given (Co-respondents))

Subsection (1) identifies the application of the section. The section applies for a notice giving a decision about a change application if there were concurrence agencies for the original development application. This is linked to requirements for notifying potential respondents under section 4.2.17.

Subsection (2) provides for the person mentioned in subsection (1) to appeal the decision in the notice.

Subsection (3) provides the appeal must be started within 20 days after the day the notice is given.

Subsection (4) provides for an appeal about a deemed refusal of a change application.

Subsection (5) provides for when an appeal under subsection (5) may be started.

Replacement of s 4.2.12 (Appeals for matters arising after approval given (no co-respondents))

Clause 46 replaces s 4.2.12 for consistency with new arrangements for changing or cancelling development approvals under Chapter 3, Part 6.

Subsection (1) identifies the application of the section. The section applies for a notice giving a decision about a change application if there were no concurrence agencies for the original development application. This is linked to requirements for notifying potential respondents under section 4.2.18.

Subsection (2) provides for the person mentioned in subsection (1) to appeal the decision in the notice.

Subsection (3) provides the appeal must be started within 20 days after the day the notice is given.

Subsection (4) provides for an appeal about a deemed refusal of a change application.

Subsection (5) provides for when an appeal under subsection (5) may be started.

Amendment of s 4.2.14 (Stay of operation of enforcement notice)

Clause 47 amends s 4.2.14 for consistency with amendments to s 4.1.33.

Replacement of ss 4.2.17 and 4.2.18

Clause 48 replaces ss 4.2.17 and 4.2.18 for consistency with ss 4.2.11 and 4.2.12, and with changes in chapter 3 for change applications and compliance assessment.

Section 4.2.17 (Notice of appeal to other parties (div 3)

Subsection (1) indicates to whom the registrar must give written notice of an appeal.

Subsection (2) requires the notice to specify the grounds of appeal and the appeal rights for the person to whom the notice is given.

Section 4.2.18 (Notice of appeal to other parties (div 4)

Subsection (1) indicates to whom the registrar must give written notice of an appeal.

Subsection (2) requires the notice to specify the grounds of appeal.

Replacement of s 4.2.33 (Matters the tribunal may consider in making a decision)

Clause 49 replaces s 4.2.33 for consistency with changes to Chapter 3 introducing compliance assessment.

Subsection (1) states the application of subsection (2).

Subsection (2) establishes the basis upon which the tribunal must decide the appeal.

Amendment of s 4.2.34 (Appeal decision)

Clause 50 amends s 4.2.34 for consistency with changes to Chapter 3 introducing compliance assessment.

Subsection (1) includes a reference in s 4.3.2(2)(d) to how a tribunal may deal with a failure to decide a request for compliance assessment.

Subsection (2) adds a reference to compliance assessment to s 4.2.34(2)(e).

Replacement of s 4.2.35A (Notice of compliance)

Clause 51 replaces s 4.2.35A for consistency with changes in Chapter 3 introducing compliance assessment.

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

Clause 52 omits section 4.3.2A. This section established an offence for contravening certain codes in planning schemes mentioned in ss 3.1.2 and 3.1.6. These codes were codes for self-assessable development, and ss 3.1.2 and 3.1.6 provided they were not to be considered "applicable codes" if the development to which these codes applied was made assessable under schedule 8. This had the effect of maintaining the codes' "self

assessable" status from the point of view of the planning scheme. For building work, this meant a private certifier could still receive and decide applications for building work even if there were relevant codes under a planning scheme.

However with the introduction of compliance assessment in Chapter 3 Part 7, building work will no longer be assessable under schedule 8, and the relevant provisions under ss 3.1.2 and 3.1.6 have been removed. Consequently, the offence relating to these provisions became redundant.

Insertion of s 4.3.4A (Offences relating to compliance assessment)

Clause 53 inserts a new section 4.3.4A establishing offences about compliance assessment.

Subsection (1) provides a penalty for carrying out development that requires compliance assessment without a compliance permit or other than in accordance with the permit.

Subsection (2) provides a penalty for not requesting compliance assessment for a completed work within the prescribed time.

Sanctions for not requesting a compliance certificate for documents are dealt with under other legislation. For example, plans of subdivision cannot be registered under the *Land Title Act* without the approval of the local government.

Replacement of s 4.3.5 (Carrying on unlawful use of premises)

Clause 54 replaces section 4.3.5 to reinforce the effectiveness of designations for community infrastructure by expanding the range of sanctions available for not complying with an aspect of a designation..

Subsection (1) is unchanged and provides a penalty for the unlawful use of premises. The subsection applies to a use that is not the natural and ordinary consequence of a material change of use of the premises made in accordance with the Act. (The use includes an ancillary use and carrying out works necessarily associated with the use.)[52]

Subsection (2) provides a penalty for failing to comply with any requirements for the carrying out a particular use (whether the primary use, an incidental or associated use, or associated works) that is otherwise

52 See s 1.3.4.

lawful, imposed by a local planning instrument or as a consequence of designation of the land. Subsection (2) also introduces a new penalty for not complying with any requirements about the use of designated land that are part of the designation. These requirements may be included in a designation under section 2.6.4, and may include requirements about how the use of the designated land for the purposes of the designation is to be conducted (for example hours of operation)

Amendment of s 4.3.8 (Application of div 2)

Clause 55(1) amends section 4.3.8(c) to remove unnecessary words.

Clause 55(2) inserts new paragraph (f) to provide a further exception to the general rule that an assessing authority must give a show cause notice to a person before they can give the person an enforcement notice. The amendment provides that no show cause notice is required when an assessing authority proposes to give an enforcement notice about the removal of specified quarry material from Queensland waters. A show cause notice would delay the effect of an enforcement notice and may result in continued or increased environmental harm occurring.

Existing section 4.1.33(e) provides for the removal of quarry material from a watercourse or lake (quarrying in non-tidal waters). New section 4.1.33(f) provides for removal of material from tidal waters, and is relevant to proposed amendments to the Coastal legislation which will make dredging in tidal waters assessable development.

Amendment of s 4.3.11 (Giving enforcement notice)

Clause 56 amends section 4.3.11(5) to remove an ambiguity giving rise to potential limitations in the use of the provision. The intent of the provision is that, because of the irreversibility of the action, a local government or private certifier may not delegate their power to order the demolition of a building. However the current wording of the provision also prevents delegation of a power to order re-instatement of a demolished building, or other orders about demolition which could appropriately be delegated.

Amendment of s 4.3.13 (Specific requirements of enforcement notice)

Clause 57 amends s 4.3.13 for consistency with changes to Chapter 3 introducing compliance assessment.

Subsection (1) adds a reference to compliance assessment to the list of matters an enforcement notice may deal with.

Subsection (2) renumbers the remaining paragraphs.

Replacement of s 4.3.16 (Processing application required by enforcement notice)

Clause 58 replaces s 4.3.16 for consistency with changes to chapter 3 introducing compliance assessment.

Replacement of chapter 5, part 1 – Infrastructure charges

Clause 59 replaces the part.

Major changes include:

- Replacement of Benchmark Development Sequencing by Priority Infrastructure Area.
- Introduction of Priority Infrastructure Plans.
- Introduction of conditioning powers for non-trunk infrastructure.
- Renaming of Infrastructure Charges Plans to Infrastructure Charges Schedules and detailed changes to requirements for preparing Infrastructure Charges Schedules for trunk infrastructure.
- Introduction of Infrastructure Payments Schedules and power to impose conditions requiring payments for trunk infrastructure as conditions of approval.
- Simplification and streamlining of requirements for infrastructure providers to obtain additional costs for providing infrastructure to certain developments.

Division 1—Non-trunk infrastructure

This new division provides outlines the parameters within which assessment managers may exercise their powers to impose conditions on development approvals (as set out in chapter 3, part 5, division 6) for lower order (or non-trunk) infrastructure. This is infrastructure that is primarily

directed towards servicing the land the subject of the application and may be the infrastructure that:

- internally reticulates the site; or
- is necessary to mitigate a direct impact of the proposal, such as an upgrade of an intersection to maintain the safety or efficiency of the intersection after the proposal commences; or
- is necessary to connect the site to external trunk infrastructure networks.

It is recognised these types of conditions are routinely imposed and in large part are separate from the broader and more strategic planning and associated funding arrangements put in place under divisions 3, 4 and 5 that deal with trunk infrastructure.

Section 5.1.1 (Conditions local governments may impose for non-trunk infrastructure)

A point to note about this section is that subsection (2) requires a condition for non-trunk infrastructure to specify the infrastructure to be provided and when. In other words, the section generally envisages developers constructing the specified infrastructure. However, if an applicant wished to pay the local government to supply the infrastructure, an infrastructure agreement between the parties could be entered into. Sections 3.5.32 and 5.2.1 refer.

Division 2—Trunk infrastructure

This new division sets out general planning and funding requirements for trunk infrastructure.

Section 5.1.2 (Priority infrastructure plans for trunk infrastructure)

Section 2.1.3 requires each planning scheme to include a priority infrastructure plan (PIP). This section merely states that these plans must be prepared in accordance with prescribed guidelines. It is important that there is clarity and certainty about how these plans are prepared. The costs and impacts of supplying infrastructure to service development proposals are very significant. The overall content of a PIP is set out in the definition

of the term in schedule 10 (Dictionary). In general terms a PIP means the part of the planning scheme that:

(a) identifies the priority infrastructure area; and

(b) identifies existing trunk infrastructure; and

(c) includes details of any future trunk infrastructure; and

(d) states the assumptions on which the plan is based; and

(e) states the desired standard of service of each infrastructure network; and

(f) includes and charges or payments schedules.

Section 5.1.3 (Funding trunk infrastructure for certain local governments)

This section requires that certain local governments only fund certain trunk infrastructure using infrastructure charges schedules.

Subsection (1) clarifies that the local governments affected by the section are those local governments with a significant business activity (as defined under the *Local Government Act 1993*), involving the supply of trunk infrastructure. The clause currently affects those local governments operating the 18 largest retail water businesses.

Subsection (2) requires these local governments only use infrastructure charges schedules for up front funding of trunk infrastructure related to these activities (essentially water supply and sewerage infrastructure). This section is not intended to prevent local governments using alternative funding methods available under other legislation (e.g. special rates under the *Local Government Act 1993*) to fund this trunk infrastructure.

The operations of these significant business activities are generally subject to prices oversight by the Queensland Competition Authority and it is considered more appropriate to require the routine infrastructure contributions for trunk infrastructure provided for under this part to be dealt with through infrastructure charges schedules. The greater level of financial rigour involved in their preparation is consistent with the rigour of overall level of pricing oversight provided for these activities. These local governments also have the option of using infrastructure charges schedules for other infrastructure networks. as other local governments have the option of using infrastructure charges schedules to fund trunk infrastructure.

Subsection (3) allows the Minister to approve the use of an infrastructure payment schedule to fund infrastructure in a low growth area of a local government that would otherwise be required to prepare an infrastructure charges schedule. It is anticipated this power would be exercised by the Minister in limited circumstances.

An example may include a low growth area of a local government area that has been included in the priority infrastructure area of the local government because the area is already serviced, and the infrastructure is currently funded under an agreement, or there are joint infrastructure funding arrangements between the local government and an adjoining local government that funds the same type of infrastructure through an infrastructure payment schedule.

Division 3—Trunk infrastructure funding under an infrastructure charges schedule)

This division replaces existing division 2 in the part dealing with infrastructure charges plans. The majority of the changes reflect the transition from infrastructure charges plans to infrastructure charges schedules, including the planning elements of infrastructure charges plans now being a separate part of the priority infrastructure plan, and charges now being intended only for trunk infrastructure.

Section 5.1.4 (Making or amending infrastructure charges schedules)

This section specifies the process and other matters for preparing or amending an Infrastructure charges schedule.

Subsection (1)(a) requires an infrastructure charges schedule to be prepared in accordance with guidelines prescribed in regulations.

An infrastructure charges schedule forms part of the planning scheme and would ordinarily have to be made or amended according to the process specified in Schedule 1 of the Act by virtue of section 2.1.5. However, subsection (1)(b) allows an infrastructure charges schedule to be made or amended as if it were a planning scheme policy according to the process specified in Schedule 3 of the Act. In comparison to Schedule 1, Schedule 3 does not require any preliminary consultation or consideration of State interests in respect of the infrastructure charges schedule. This abbreviated process is considered appropriate as an infrastructure charges schedule is

now simply the technical schedule of charges for the trunk infrastructure identified in the priority infrastructure plan. It is considered no additional value can be added to the schedule by subjecting it to the full schedule 1 process. it is important to point out that the abbreviated process still involves public consultation. All that is removed is the State review of the schedule.

The planning elements of the former infrastructure charges plan, including planning assumptions, desired standards of service and plans for trunk infrastructure, now form part of the priority infrastructure plan, which remains subject to the full Schedule 1 process and is subject to State review.

Subsection (2) is introduced to clarify when the schedule becomes part of the planning scheme and takes effect.

Section 5.1.5 (Key elements of an infrastructure charges schedule)

Section 5.1.5 identifies the key elements of an infrastructure charges schedule and defines "infrastructure charge". In this regard, deleting reference to an infrastructure charge being a general charge under the *Local Government Act 1993* establishes the IPA as the head of power for levying infrastructure charges in place of the *Local Government Act*.

Subsection (2) clarifies matters about the levying of charges for certain infrastructure. Subsection (2)(b) allows a charge to be levied for trunk infrastructure not owned by the local government if the owner of the infrastructure agrees. This would allow a local government to levy charges on behalf of a private infrastructure provider. Arrangements between the parties as to how the charges are to be imposed, collected and transferred would need to be settled as part of the agreement. Subsection (2)(c) is also a new provision and allows a local government to levy infrastructure charges for trunk infrastructure the local government has provided on a State controlled-road.

For example, a local government may have constructed trunk drainage infrastructure that runs under a State-controlled road. Subsection (2)(c) is intended to remove any doubt as to the local government's ability to charge for the infrastructure. Similarly, a local government may have constructed or upgraded a road that subsequently became a State-controlled road. Subsection (2)(c) would allow the local government to recover the cost of the road works through infrastructure charges or payments, provided the local government had not been paid for the cost of the road works in some

other way (such as the State compensating the local government for the cost of the road when it became a State-controlled road).

Section 5.1.6 (Infrastructure charges)

Subsection (1)(a) clarifies that charges can only be levied for trunk infrastructure. Subsection (1)(b) requires charges to be calculated on the basis of the establishment cost of the infrastructure that can be reasonably apportioned to the premises. Subsection (1)(c) is intended to ensure that an infrastructure charge levied for an existing lawful use can only be for the current share of usage of the infrastructure by the existing use and not future uses having regard to the planning scheme provisions for the site or the infrastructure provided.

Subsection (2) allows a landowner and local government to enter into an agreement to pay charges not based on the existing use and not associated with a development application. Such a situation may arise if the local government provided discounts for the early payment of charges or the landowner wanted to pay the charges in advance to increase the value or sale/development potential of the land.

Subsection (3) carries forward existing section 5.1.5(3).

Section 5.1.7 (Infrastructure charges notices)

Subsection (1) defines an infrastructure charges notice and lists the maters the notice must contain. Item (e) requires the local government to identify any infrastructure necessary to service the premises, but which is not yet available (e.g. this might include a length of water main required to provide water to the internal reticulation systems of a subdivision). Specific requirements apply to necessary infrastructure under section 5.1.9.

Subsections (2), (3) and (4) specify when, and to whom, the notice must be given depending on whether the notice is issued as the result of a development approval issued by the local government, or as the result of a compliance assessment by either the local government or a private certifier.

Subsection (5) clarifies that if a notice of change is issued other than as the result of a development approval or compliance assessment, the notice must be given to the owner of the land.

Subsection (6) requires that a copy of a notice issued under sections (2), (3) and (4) must also be given to the owner of the land if the owner is not

the person who received the notice under sections (2), (3) and (4). Since charges are, for the purposes of recovery, taken to be a rate, unpaid charges could lead to a local government taking recovery action, possibly including selling the land. For this reason, it is important to ensure owners of land are aware of any charges levied in respect of their land.

Subsection (7) has been introduced to clarify that if a charge is issued in association with a development approval or compliance assessment, the charge cannot be recovered unless the entitlements in the approval or the document endorsed through the compliance assessment are exercised. This section also states the notice of charge lapses if the approval or endorsed document to which it relates stops having effect. This may include the approval lapsing or being cancelled, or the endorsement expiring.

Section 5.1.8 (When infrastructure charges are payable)

This section specifies when charges have to be paid, if the charges are associated with applications for certain types of development and replaces the existing section 5.1.10. The aspects of development listed operate in a hierarchical manner, on the basis infrastructure to service the development is most likely to be required, and should be paid for, while the works for reconfiguration or building work are being carried out. If items (a) to (c) do not apply, item (d) requires the charge to be paid at the time stated in the infrastructure charges notice.

Section 5.1.9 (Agreements about, and alternatives to, paying infrastructure charges)

Alternatives to paying the charge must be stated in an infrastructure agreement. These items replace and simplify existing sections 5.1.11, 5.1.12 and 5.1.15.

Subsection (2) relates to item (1)(b). If the trunk infrastructure is necessary but not yet available to service the premises, and the local government does not plan to provide the infrastructure in a timeframe appropriate for the development, the applicant may exercise the option of supplying the necessary infrastructure even though in overall terms the infrastructure items needed may be more than reasonably can be apportioned to the needs of the applicant's proposal. Subsection (2) goes on to provide for the applicant to be refunded any charges collected by the local government from other users of the infrastructure.

For example, if extension of a water main was necessary for a subdivision but the local government did not intend to provide the main at the time needed by the development proposal, the applicant could enter into an agreement with the local government to construct the water main instead of paying a charge for the main (the applicant may still have to pay charges for other items in the network , such as the treatment works or other upstream trunk infrastructure). If the extended water main also serviced other premises, subsection (2) ensures any charges collected by the local government from other users for their share of the main are refunded to the applicant who provided the main. In this way the applicant is, over time, only responsible for paying for their share of the necessary infrastructure, but carries the risk and financing costs of providing the item.

Subsections (3) to (6) carry forward existing sections 5.1.15 (3) to (6) regarding when and how land for public parks infrastructure or local community facilities is to be given.

Section 5.1.10 (Local Government may supply different trunk infrastructure to that identified in an infrastructure charges schedule)

This section is included to allow a local government to supply a different item of infrastructure to that specified in the infrastructure charges schedule, provided the infrastructure provides the same standard of service. The provision has been included to provide a degree of flexibility for local governments in providing infrastructure to take account of changes in technology, standards and similar matters, but safeguards the community and persons who have paid charges by requiring the same standard of service to be delivered.

Section 5.1.11 (Infrastructure charges taken to be a rate)

This carries forward existing section 5.1.14. For the purposes of recovery, an infrastructure charge is taken to be a rate. This means local governments can use the powers under the *Local Government Act 1993* for recovering unpaid rates to recover unpaid infrastructure charges.

Division 4—Trunk infrastructure funding under an infrastructure payments schedule)

This division, by introducing the infrastructure payments schedule mechanism introduces new flexibility into the infrastructure funding regime under the Act. It is included in response to stakeholder comments and suggestions.

An infrastructure payments schedule has certain things in common with headworks contribution policies under the repealed *Local Government (Planning and Environment) Act 1990*.

In particular payments imposed under an infrastructure payment schedule can only be imposed as a condition of a development approval. The power to impose payments is therefore governed by the powers set out in chapter 3, part 5, division 6 (Conditions) and as such may be appealed to the Court. This is one of the key distinguishing differences between a charge and a payment under the Act.

Thus, payment schedules are more limited in their application than infrastructure charges schedules, which do not rely on a development application or approval to be able to be levied.

Imposing a condition under this division for trunk infrastructure does not prevent a local government imposing a condition for non-trunk infrastructure under Division 1.

Section 5.1.12 (Making or amending infrastructure payments schedules)

Specifies the process and other matters for preparing or amending an infrastructure charges schedule. Subsection (1)(a) requires an infrastructure charges schedule to be prepared in accordance with guidelines prescribed in regulations. As for infrastructure charges schedules, subsection (1)(b) allows an infrastructure payments schedule to be prepared under Schedule 3 of the Act as if it were a planning scheme policy.

Section 5.1.13 (Key elements of an infrastructure payments schedule)

Defines an "infrastructure payment" and identifies the key elements of an infrastructure payment schedule and closely follows section 5.1.5. The

list of items is essentially the same, although there is no requirement to identify estimated timing for the provision of the trunk infrastructure. Infrastructure payments schedules are therefore more likely to be based on thresholds for infrastructure provision rather than estimated timing as for an infrastructure charges schedule. Although the list of key elements is similar, it is not envisaged the same level of detail would be required in an infrastructure payment schedule as for an infrastructure charges schedule. The regulatory guidelines will address the level of detail required for an infrastructure payments schedule.

Section 5.1.14 (Infrastructure payments)

This is the equivalent of section 5.1.6 for payments. It defines how a payment should be calculated in an infrastructure payments schedule. As for infrastructure charges schedules, infrastructure payments schedules can only deal with trunk infrastructure that is designed to meet the desired standard of service stated in the priority infrastructure plan and must be based on the proportion of the establishment cost of the infrastructure that can be reasonably apportioned to the premises.

Section 5.1.15 (Imposing conditions for infrastructure payments)

This section deals with the parameters for imposing conditions for infrastructure payments. Subsection (1) details the matters a condition for an infrastructure payment must contain. Item (e) requires the local government to identify any infrastructure necessary to service the premises, but which is not yet available (e.g. this might include a length of water main required to provide water to the internal reticulation systems of a subdivision). Specific requirements apply to necessary infrastructure under section 5.1.17.

Section 5.1.16 (When payment must be made)

This is the equivalent of section 5.1.8 for infrastructure payments and specifies when payments must be made.

Section 5.1.17 (Agreements about, and alternatives to, making infrastructure payments)

Once again, this section is the payments equivalent of section 5.1.9 with regard to the ability to enter into an agreement to do other things as an alternative to making an infrastructure payment. The specific arrangements relating to infrastructure which is necessary, but not yet available, to service the premises, including the entitlement to a refund arrangement in certain circumstances, also apply for infrastructure payments.

Section 5.1.18 (Local government may supply different trunk infrastructure to that identified in an infrastructure payments schedule)

This is the equivalent of section 5.1.10 for infrastructure payments.

Division 5—Conditions local governments may impose for additional infrastructure costs

This is a new division replacing the local government cost impact powers previously contained in sections 3.5.35 and 3.5.36. With the replacement of benchmark development sequences by priority infrastructure plans, the triggers for additional cost assessment are now tied to elements of the priority infrastructure plan. An effort has been made to simplify and rationalise the additional costs that can be recovered.

An important point to note is that the division deals with costs of infrastructure. it does not seek to deal with the merits of a proposal. While costs are affected by development being proposed inside or outside the priority infrastructure area, the fact that costs are higher or lower is not of itself to be taken to mean that a particular proposal should be approved or refused. The decision about whether to approve or refuse a proposal is a development assessment decision that must be made according the provisions set out in chapter 3. Similarly, the willingness of an applicant to pay the additional costs for trunk infrastructure for development outside the priority infrastructure area also is not, of itself, reason to approve an application if there are other planning considerations that have not been satisfactorily resolved.

Section 5.1.19 (Conditions local governments may impose for additional infrastructure costs)

This section establishes the parameters for local governments imposing conditions for additional infrastructure costs.

Subsection (1)(a) refers to development being inconsistent with the assumptions in the priority infrastructure plan. Examples may include:

- development for a different type of use being proposed (e.g. light industrial use instead of commercial as assumed in the priority infrastructure plan), or
- development for a different scale or intensity of use be proposed (e.g. medium density residential at 18 dwellings per hectare instead of low density residential at 10 dwellings per hectare as assumed in the plan), or
- development that imposes different infrastructure timing requirements (e.g. an anticipated expansion of a commercial centre occurring before the assumed time in the plan and as a consequence brings forward the construction of planned trunk infrastructure).

Also, development proposed on land that is wholly or partly outside the priority infrastructure area also triggers assessment under this division as detailed infrastructure planning may not have been undertaken for the land because it is at least partly outside the priority infrastructure area (and therefore outside the area within which trunk infrastructure planning must be carried out as part of the plan making process).

The ability of a local government to impose a condition requiring an applicant to pay the additional costs of supplying trunk infrastructure is dependent on the provider's ability to demonstrate there will be additional costs in supplying the infrastructure, taking into account any anticipated income received from any infrastructure charges or payments levied on the development. As additional costs are recovered through conditions of a development approval, they are challengeable in the Court on appeal.

Subsection (2) details the matters an additional cost impact condition must state. Item (a) requires the infrastructure provider to identify the nature of the additional costs the development would impose for the infrastructure provider. Item (f) gives the applicant the option of supplying all or part of the infrastructure instead of making a payment. Item (g) requires that any further approval or compliance requirements for the works to establish the infrastructure be identified.

Subsection (3) requires the payment to be made on the day works associated with the development or works associated with the development commences. Paying for the infrastructure at the time construction commences is intended to ensure the infrastructure is available by the time construction for the development is completed. An agreement can be entered into for the payment to be made at a different time.

Subsection (4) clarifies when an additional cost payment must be repaid. For an additional cost payment to be repaid, the development approval in respect of which the payment was required must no longer have effect (i.e. it has lapsed, been cancelled etc), the additional cost payment must have been made, and the infrastructure for which the payment was made had not been supplied. If these requirements are met, subsection (5) requires the local government to repay the payment. If however the local government had already supplied the infrastructure for which the payment was required, it does not have to repay the additional cost payment.

Subsection (6) carries forward existing sections 3.5.35(2) and (3). The intent of the section is to allow an infrastructure provider to impose conditions related to future infrastructure provision and funding taking into account the intended future development of the catchment as a whole and the trunk infrastructure required to service the future development, even though these requirements may be in excess of those required to service the particular development itself.

Subsection (7) prevents a local government imposing an additional cost condition for State infrastructure (such as a local government imposing a condition for additional costs for State schools).

Subsection (8) clarifies that an additional cost condition applies as well as any routine infrastructure charges or conditions requiring payments, or the supply of non-trunk infrastructure.

Section 5.1.20 (Local Government additional trunk infrastructure costs in priority infrastructure area)

The previous section establishes the general parameters for conditions about additional infrastructure costs. This section deals with those costs as they apply in priority infrastructure areas.

If the additional costs are the result of the local government having to supply trunk infrastructure to service the development earlier than anticipated in the priority infrastructure plan, subsection (1)(a) allows the local government to require the applicant to pay the difference between the

establishment cost of the infrastructure and any charges or payments made by the applicant for that item. Establishment cost is intended to cover the cost of planning, designing and constructing the infrastructure.

For example, the priority infrastructure plan indicates water and sewer mains would be extended to a new emerging area in year 10 of the plan period. If development occurs in this area in year 2 instead of year 10 as assumed, the trunk water and sewerage infrastructure must be provided earlier than anticipated in the plan. Assume the establishment cost of this trunk infrastructure is $100 000. Also assume the infrastructure charges levied on the applicant for trunk water and sewerage amount to $62 000 overall, and that $10 000 of this amount represents the applicant's share of the mains mentioned above. Because the mains are needed to service the development proposal, they must be provided earlier than anticipated. Subsection (1)(a) provides for the local government to impose a condition requiring the applicant to pay, in addition to their infrastructure charges (ie the $62 000), the difference between the establishment cost of the infrastructure that is being supplied earlier than anticipated and the amount of any charge paid for this infrastructure (ie $100 000 - $10 000). This would result in an additional cost of $90 000 in this instance. It also means the applicant effectively pays the full cost of the infrastructure that needs to be supplied earlier than anticipated. Of course, subsection (2) also provides for an applicant to enter into agreement with the local government to be refunded the additional costs from other users who will benefit from the infrastructure.

If the additional costs are the result of development for a different type of use (e.g. light industrial instead of commercial use as assumed in the plan), or development for a greater scale or intensity of use is proposed, subsection (1)(b)(i) establishes parameters for the additional costs to be determined.

For example, if a residential proposal proposed higher residential densities than assumed in the plan and this proposal triggered the need for larger diameter trunk water and sewer mains and increased capacity at the sewerage pump station in order to maintain the stated desired standard of service, the local government could impose a condition requiring the applicant to pay the extra costs of providing this upgraded infrastructure. These costs would be additional to the amounts levied or imposed under the local government's infrastructure charges or payments schedules.

If the additional costs are the result of development for a lesser scale or intensity of use (e.g. lower than planned for residential densities), subsection (1)(b)(ii) establishes parameters for the local government to

require the applicant to pay the difference between the cost of the infrastructure identified in the plan and the cost of the infrastructure necessary to service the development.

For example, if trunk infrastructure for a residential area was planned at a density of 15 dwellings per hectare and development for a proposal at 8 dwellings per hectare was lodged, the local government impose a condition requiring the applicant to pay the difference between the planned for infrastructure and the infrastructure actually required by the development. If the change in density resulted in different (i.e. 'smaller') trunk infrastructure being provided, this provision allows the local government to impose a condition requiring the applicant to pay the difference between the smaller trunk infrastructure actually provided, and the trunk infrastructure the local government planned to provide. This would be in addition to paying the amounts set out in the infrastructure charges or payments schedules for the development.

If the infrastructure required to service the proposal was not actually different from the planned infrastructure, this provision would have the effect of allowing the local government to charge the applicant as if it the proposal were for development for the planned density of 15 dwellings per hectare.

Demonstrating additional costs in these types of situations will depend on how the charges or payments are calculated under the relevant infrastructure charges or payments schedules. Section 5.1.21 (2)(b) requires an infrastructure provider to take into account charges or payments when determining if a proposal will result in additional costs.

For subsection (2) agreements it is expected the local government would continue to levy charges or payments for the area and refund these to the applicant according to the terms of the agreement. In this way the applicant is responsible for bearing the cost of supplying the infrastructure ahead of schedule and effectively becomes the banker for the infrastructure, but is also able to use the agreement mechanism to ensure that over time they only end up paying for their share of the infrastructure (assuming the area is fully developed). The applicant bears an element of risk in this regard in that the area may not be fully developed or developed within a reasonable timeframe.

Section 5.1.21 (Local government additional trunk infrastructure costs outside priority infrastructure areas)

This section deals with additional costs as they apply for development wholly or partly outside the priority infrastructure area.

It is anticipated the establishment costs referred to in this section would cover the cost of planning, designing and constructing the trunk infrastructure made necessary by the development. It also is anticipated that maintenance costs for the infrastructure may include things like the periodic cleaning of a sewer or the routine repair of a road that has been made necessary by the development. Operating costs may include the cost of electricity to operate a sewage pump station made necessary by the development. Temporary infrastructure made necessary may include items such as an oxygen injection system for an under-utilised sewer or a re-chlorination system for an under utilised water main.

Subsections (2) and (3) refer to development of land in areas that while outside the priority area are still earmarked for longer term development for urban purposes. In these areas the section states that the trunk infrastructure made necessary by the development, includes the infrastructure necessary to service the balance of the area earmarked for urban purposes. Of course, it may not be practical or desirable for that infrastructure to be supplied as part of the proposal. In these cases temporary infrastructure may be more appropriate together with a contribution for the applicant's share of the cost of the trunk infrastructure ultimately required to service the area.

Examples include:

- provision of a temporary 100mm diameter water main to the premises until the larger 300mm diameter water main required to service the catchment is provided, together with a contribution for the share of the cost the 300 mm diameter main reasonably attributable to the premises;
- the cost of a temporary signalised intersection plus a contribution towards a grade separated intersection;
- provision of a temporary detention basin on site plus a contribution to the cost of drainage works for the catchment.

Outside the priority infrastructure area provision also is made for maintenance and operating costs of the necessary infrastructure and the establishment, operating and maintenance costs of temporary infrastructure are included. This is to minimise the costs on local governments for

development occurring in areas that have not necessarily been planned for in terms of the supply of infrastructure. The 5 year maintenance and operating period is considered to be sufficient time for a local government to update its infrastructure planning and introduce amended and updated priority plans and areas that take account of development approved by the local government outside the priority infrastructure area.

These provisions effectively mean applicants for development outside the priority infrastructure area are responsible for paying the full cost of infrastructure made necessary by the development premises. This includes paying for infrastructure necessary to service the wider catchment area if the planning scheme identifies the land as being part of an area earmarked for longer term urban growth. These provisions among other things create pricing signals that are designed to favour development in areas where the infrastructure is available or planned to meet anticipated growth demands. Ad hoc urban growth that that occurs without regard for the planning and supply of essential supporting trunk infrastructure imposes significant costs on the community and over time constrains governments' ability to provide residents and businesses with necessary services at the desired standards for those services. The provisions in this section do not prevent development occurring outside priority areas or in ways not anticipated in the plans. Rather the section is about ensuring the infrastructure costs of unplanned development are met by the applicant, not the community as a whole.

Division 6—Miscellaneous

Section 5.1.22 Agreements for infrastructure partnerships

Section 5.1.22 moves and replaces section 5.2.2. The provisions of section 5.2.2 are amended to give statutory recognition of infrastructure partnerships. An infrastructure partnership is an agreement whereby a developer agrees to fund or supply infrastructure (which serves a catchment larger than the development site) and be reimbursed as further development occurs.

In most cases the local government would collect charges or payments from the other users of the infrastructure for their share of the infrastructure under an infrastructure charges or payments schedule and pass this money onto the original developer.

Section 5.1.22 provides a broad head of power for such agreements to be entered into and is not limited to trunk infrastructure.

Sections 5.1.23 to 5.1.25

These sections carry forward in an updated way existing sections 5.1.16 to 5.1.18 regarding the disposal of land for public parks infrastructure or local community facilities as sections 5.1.23 to 5.1.25 respectively.

Amendment of section 5.2.1 (Meaning of "infrastructure agreement")

Clause 60 amends s 5.2.1 to update the references to the other sections of the Act that allow agreements to be entered into about infrastructure.

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

Clause 61 omits s 5.2.2. The section is no longer necessary as the content of the section has been recast and included in part 1 of the chapter. See sections 5.1.9, 5.1.17 and 5.1.22.

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

Clause 62 amends s 5.3.5 to clarify the ability of local governments to charge private certifiers a fee for receiving building approval documents for archiving.

New subsection (6) restates the existing requirements prescribing documents that a private certifier must give an assessment manager if the private certifier decides a development application. New subsection (6)(b) requires private certifiers to pay the fee set by the assessment manager for receiving the documents.

New subsection (7) restates the existing requirements prescribing documents that a private certifier must give an assessment manager if the private certifier issues any certificate required by the or another Act. New subsection (7)(b) requires private certifiers to pay the fee set by the assessment manager for receiving the documents.

New subsection (8) clarifies that if the assessment manager is a local government, it may fix, by local law or resolution, a reasonable fee for accepting any document mentioned in subsection (6) or (7).

New subsection (9) validates the fees already received by local government for accepting any document mentioned in subsection (6) or (7).

New subsection (10) saves the effect of any findings made before the commencement of subsection (9) by the court about the validity of particular fees.

Amendment of s 5.4.2 (Compensation for reduced value of interest in land)

Clause 63 replaces section 5.4.2(b) for consistency with other amendments that have removed the concept of acknowledgement notices from the Act, and deal differently with development applications under superseded planning schemes.[53]

Amendment of s 5.4.4 (Limitations on compensation under ss 5.4.2 and 5.4.3)

Clause 64(1) amends s 5.4.4 for consistency with changes made elsewhere in the Bill.

Subsection amends s 5.4.4(1)(b) by inserting vegetation clearing as a further example for the subsection. Vegetation clearing on freehold land became development under the Act at the commencement of the *Vegetation Management Act 2000.* Previously local governments dealt with vegetation clearing by local law only.

Subsection (2) amends s 5.4.4(1)(e) and (f) by replacing references to a benchmark development sequence and an item of infrastructure with references to a priority infrastructure plan and trunk infrastructure respectively. These changes relate to terminology only and the intent and effect of the provisions is unchanged.

Subsection (3) renumbers the balance of s 5.4.4(1).

53 See sections 3.2.1, 3.2.3 and definition of "development application (superseded planning schemes).

Amendment of s 5.7.2 (Documents local government must keep available for inspection and purchase)

Clause 65 amends s 5.7.2(1) by:

- reflecting new terminology related to changes in the way local governments deal with requests to consider development applications under superseded planning schemes (see section 2.1.7A);
- introducing the requirement for local governments to maintain an infrastructure charges register of all charges levied by the local government; and
- adding a requirement for local governments to keep available copies of all compliance permits and compliance certificates given by or to them under Chapter 3 Part 7.

Subsection (1) removes the paragraphs of s 5.7.2 to be replaced.

Subsection (2) inserts references to the new requirements.

Subsection (3) inserts a new s 5.7.2(1A) listing the details the register must record for each infrastructure charge levied. The purpose of the register is to provide a publicly accessible mechanism for interested persons to be able to find out if infrastructure charges have been levied on land, whether the charge has been paid, and the amount of any unpaid charge. The register will highlight any outstanding debts in respect of the land, and also any charges that have been paid and the units of demand that may be used as 'credits' against any future infrastructure charges. Units of demand refers to the units on which the charges are based. These might include area (e.g. hectares of developable land, square metres of industrial or commercial floorspace), type of use (e.g. dwelling house, multiple dwelling), or some other unit of demand (e.g. equivalent persons).

As a consequence of this information being available in the register, the requirement for a limited planning and development certificate to include a statement about the amount of any unpaid infrastructure charges for the premises has been deleted.

It is not necessary to have a register for infrastructure payments as they are imposed as conditions of approval and would be searchable by reference to any development approval for the premises.

Subsections (4) and (5) renumber the remaining paragraphs and subsections of s 5.7.2.

Amendment of s 5.7.4 (Documents assessment manager must keep available for inspection and purchase)

Clause 66 amends s 5.7.4.

Subsection 1 amends s 5.7.4(1)(a) by requiring the assessment manager to keep available for inspection and purchase plans and other documents to which reference is made in a decision notice or negotiated decision notice.

Subsection (2) amends s 5.7.4(1)(c) by including a reference to "change application" for consistency with changes to the arrangements for changing development approvals in Chapter 3 Part 6.

Amendment of s 5.7.5 (Documents assessment manager must keep available for inspection and purchase)

Clause 67 amends s 5.7.5(3)(e)(v) by replacing a reference to a minor change to an approval with a reference to a change to an approval under Chapter 3 Part 6. The term "minor change" for a development approval has been removed by the Bill, and replaced with new criteria for determining the basis upon which an approval may be changed or cancelled. These criteria are discussed in the explanatory note for Chapter 3 Part 6 above.

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

Clause 68 amends s 5.7.6 to take account of new terms and documents provided for elsewhere under the Bill

Subsection (1) omits paragraph (f) for consistency with the omission of the independent review provisions from the Act, and replaces it with a reference to a written notice about a notation on a planning scheme given to the chief executive by a local government under s 3.5.26.

Subsection (2) inserts a reference to "change application" in section 3.7.6(j) for consistency with changes to the arrangements for changing or canceling development approvals under Chapter 3 Part 6.

Subsection (30 changes a section reference.

Subsection (4) inserts three further paragraphs requiring the chief executive to keep available for inspection and purchase:

- notices of a development approval that is inconsistent with the planning scheme;

- final terms of reference and EIS prepared under the Act;
- statutory guidelines issued by the chief executive about how the Act's purpose is advanced.

Subsection (5) makes it clear documents required to be made available by the chief executive may be kept in hard copy or electronically. Documents are made available for inspection on the Department's internet site.

Amendment of s 5.7.7 (Documents chief executive must keep available for inspection only)

Clause 69 adds a subsection to s 5.7.7 to make it clear that the documents required to be made available by the chief executive under the section may be kept in either hard copy or electronically. Documents are made available for inspection on the Department's internet site at **www.dcilgp.qld.gov.au**

Replacement of s 5.7.9 (Limited planning and development certificates)

Clause 70 replaces s 5.7.9 by omitting the requirement for a limited planning and development certificate to include a statement about the amount of any unpaid infrastructure charges for the premises, as a consequence of this information about infrastructure charges being available in the infrastructure charges register.

Amendment of section 5.7.10 (Standard planning and development certificates)

Clause 71 amends s 5.7.10 to correct an unintentional omission and to require that a standard planning and development certificate must now include the details from the infrastructure charges register for the premises.

New chapter 5, part 7A - Environmental Impact Statements.

Clause 72 inserts a new chapter 5, part 7A. Individual sections provide as follows:

Section 5.7A.1 (When EIS process applies)

This section provides for part 7A to apply to assessable development or to community infrastructure on land to be designated, that is prescribed by regulation.

The part also applies for any proposal that is a "controlled action" under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999,* subject to the written agreement of the chief executive.

Section 5.7A.2 (Purpose of EIS process)

This section states the various aspects of the purpose of undertaking the EIS process for a proposal.

Section 5.7A.3 (Applying for terms of reference)

Subsection (1) provides for the action that must be taken by a person proposing development or proposing designation of land for community infrastructure if part 7A applies.

Subsection (2) provides for the form of an application for terms of reference for an EIS under part 7A, and for a fee to accompany the application.

Subsections (3) and (4) provide for when an EIS that is necessary under part 7A must be prepared if an applicant proposes to make an application for preliminary approval.

Section 5.7A.4 (Draft terms of reference for EIS)

Subsection (1) and (2) require the chief executive to prepare draft terms of reference for an EIS for a proposal where:

- an application has been made for terms of reference,
- the chief executive has decided that draft terms of reference should be publicly notified, and
- the chief executive has consulted with any assessment manager or referral agency for a development application made or required to be made for the proposal, or with the designator for proposed community infrastructure.

Subsections (3) provides the detail required to be included in a notice advertising the draft terms of reference.

Subsection (4) provides for how and when the notice must be published.

Subsection (5) provides for a minimum 15 business days period in which comments may be made about the draft terms of reference.

Subsection (6) limits the amount that may be charged for a copy of the draft terms of reference.

Subsection (7) provides for a copy of the draft terms of reference and details to be kept available for public inspection.

Subsection (8) provides for a person to make comments in writing to the chief executive during the 15 business days period provided for.

Subsection (9) requires the chief executive to give copies of the advertised notice and the draft terms of reference to certain local governments, and to any referral agencies for a proposal that will require development approval.

Subsection (10) requires any local government that receives copies of the advertised notice and the draft terms of reference to keep them available for public inspection during the 15 business days period when comments may be made about the draft terms of reference.

Section 5.7A.5 (Terms of reference for EIS)

Subsection (1) requires the chief executive to either prepare terms of reference or finalise the draft terms of reference, within a specified time.

Subsection (2) requires the chief executive to consider comments received during the comment period about any draft terms of reference, if applicable.

Subsections (3) and (4) allow for the period for preparing or finalising the terms of reference to be extended by the chief executive for a specified time.

Subsection (5) requires the chief executive to give the terms of reference to the assessment manager and any referral agencies for a proposal for which development approval has been sought or will be required, or to the designator for a proposal for which designation is proposed.

Section 5.7A.6 (Preparation of draft EIS)

This section provides for a draft EIS to address the terms of reference to the satisfaction of the chief executive, and for the chief executive to give the proponent a notice to that effect.

Section 5.7A.7 (Public notification of draft EIS)

Subsection (1) provides the detail required for a notice advertising the draft EIS.

Subsection (2) provides for the way the notice must be published.

Subsection (3) provides for a minimum 30 business days period in which comments may be made about the draft EIS.

Subsection (4) limits the amount that may be charged for a copy of the draft EIS.

Subsection (5) provides for a copy of the draft EIS to be kept available for public inspection. The chief executive may decide the associated documents also required to be kept available.

Subsection (6) requires the chief executive to give copies of the advertised notice and the draft EIS to specified local governments.

Subsection (7) requires any local government that receives a copy of the draft EIS to keep the document available for public inspection during the period for making submissions.

Section 5.7A.8 (Making submissions on draft EIS)

Subsections (1) and (2) provide for when submissions about the draft EIS may be made and when the chief executive must, or may, accept a submission.

Subsection (3) provides for when a submission that has been accepted by the chief executive may be amended or withdrawn.

Section 5.7A.9 (Chief executive evaluates draft EIS, submissions and other relevant material)

Subsection (1) provides for the chief executive to consult, where relevant, with the assessment manager and any referral agency for a

development application for the proposal, and to consider the draft EIS, submissions accepted, and other relevant material.

Subsection (2) provides only two options for the chief executive. The chief executive must either ask the proponent to change the draft EIS, or advise that the draft EIS has been accepted as the EIS for the proposed development.

Subsection (3) is intended to remove any doubt that the action the chief executive takes under subsection (2) will be the result of the chief executive's considerations under subsection (1).

Subsection (4) allows the chief executive to consider changes the proponent makes to the draft EIS as requested under subsection (2), and requires the chief executive, if satisfied with the changes, to accept the changed draft EIS as the EIS for the proposed development.

Section 5.7A.10 (EIS assessment report)

This section requires the chief executive to prepare an EIS assessment report within 30 business days of giving the proponent notice that the EIS is accepted for the development.

Subsection 5.7A.11 (Criteria for preparing report)

This section provides for the matters that must be considered by the chief executive in preparing the EIS assessment report.

Subsection 5.7A.12 (Required content of report)

This section provides for the matters that must be addressed by the chief executive in the EIS assessment report.

Section 5.7A.13 (Who the chief executive must give EIS and other material to)

This section links to the completion of the EIS assessment report, the time within which the chief executive must give the report, the EIS and other documents to the assessment manager and all referral agencies for the development application related to the development the subject of the EIS. If a development application has not yet been made the chief executive

must give the documentation to the entities that would be assessment manager and referral agencies.

For development on land designated or proposed to be designated for community infrastructure, the chief executive must give the documentation to the designator or proposed designator.

Section 5.7A.14 (How IDAS applies for development the subject of an EIS)

For development that is the subject of a development application, subsections (1) and (2) modify the IDAS process only to replace the information period and notification stage with the processes used to prepare the EIS. The assessment manager and all referral agencies retain their jurisdictions over the application, and the application is decided in the normal way.

The effect of subsection (3) is that where an EIS has been prepared for development but no development application has yet been made, the IDAS process is modified only for a limited time, and only if the development applied for, to the extent it has been the subject of an EIS, is substantially the same as the development the subject of the EIS.

Section 5.7A.15 (Matters a designator must consider)

For development that is community infrastructure, the subject of a designation or proposed designation, the designator must have regard to the EIS and the EIS assessment report in order to fulfill their duty of advancing the Act's purpose imposed on decision makers under the section 1.2.2 and 1.2.3 of Act.

Amendment of s 5.8.2 (Regulation-making power)

Clause 73 amends section 5.8.2 by adding subsection 2(c). The subsection provides for minor changes of use to be prescribed by regulation and so to be confirmed as not constituting a material change of use. The term "minor" is not intended to refer to the intensity (including the scale) of a use. Rather it is intended that the regulation give guidance as to activities that are inherently <u>not</u> material changes of use, irrespective of degree.

Amendment of s 5.8.4 (Application of Judicial Review Act 1991)

Clause 74(1) amends s 5.8.4(1) by making it subject to subsection (2).

Clause 74(2) inserts a new subsection (1A) which allows reasons for decisions to be sought under the provisions of part 4 of the JRA if judicial review would have been available to a person, but for the limitation in the IPA.

Clauses 74(3) and *(4)* amend subsection (2) for consistency with new subsection (1A) and to retain the existing operation of the Act which provides that decisions under the Act are not subject to judicial review under the *Judicial Review Act 1991* (JRA). Declarations about decisions and other matters under the Act may be sought in the Planning and Environment Court.[54] However, the amendments make it possible for reasons for decisions made under the IPA to be sought under the JRA.

Clause 74(5) renumbers the subsections.

Insertion of new s 5.8.8 (Chief Executive may issue guidelines)

Clause 75 inserts a new s 5.8.8 that allows the chief executive to issue guidelines giving guidance about the specified matters.

Subsection (1) allows the chief executive to issue the guidelines.

Subsection (2) requires the chief executive to consult with entities the chief executive considers appropriate about the guideline.

Subsection (3) requires the chief executive to gazette the making of the guidelines and to keep them available for inspection and purchase.

Amendment of s 6.1.28 (IDAS must be used for processing application)

Clause 76 amends sections 6.1.28(2) and (3) for consistency with other amending provisions which remove the concept of acknowledgement notices from the Act.

54 See section 4.1.21.

Amendment of s 6.1.29 (Assessing applications (other than against the Standard Building Regulation))

Clause 77 amends section 6.1.29(3) by including temporary local planning instruments in the list of matters which may be relevant for the assessing of development applications under transitional planning schemes.

Amendment of s 6.1.31 (Conditions about infrastructure for applications)

Clause 78 amends the transitional provisions of the Act regarding the continued operation of existing policies about infrastructure to give the Minister the ability to extend the date on which the policies expire on a local government by local government basis. The amended provision is consistent with section 6.1.11(2), which allows the Minister to extend the life or a transitional planning scheme beyond 31 March 2003.

Subsection (4) is amended to delete reference to benchmark development sequencing, and subsection (5) is amended to change the reference to the additional cost provisions from section 3.5.35 to chapter 5, part 1, Division 5.

Replacement of s 6.1.35C (Future effect of approvals for applications mentioned in s 3.1.6)

Clause 79 omits the existing transitional provisions for applications requiring referral coordination. The substance of these provisions is reproduced in section 3.3.7(1)(b).

Clause 79 inserts a new provision to preserve the validity of preliminary approvals given under previous s 3.1.6. As a consequence of amended sections 3.1.6 and 3.4.2 a development proponent seeking to vary the planning scheme must state the proposed variation in the development application, and publicly notify the proposed change with the application. Previously a scheme could be varied without these requirements. New transitional section 6.1.35C makes provision for the lawfulness of development approvals given, and development applications made and subsequently approved, to the extent stated, before the commencement of the new arrangements under s 3.1.6.

Omission of s 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)

Clause 80 omits s 6.1.44. Changes to and cancellation of development approvals by assessing entities is now dealt with in division 3 of new part 6, chapter 3.

Replacement of ch 6 pt 2 – Part 2 – Transitional Provisions for Integrated Planning and Other Legislation Amendment Act 2001

Clause 81 replaces provisions as under:

Section 6.2.1 (Transitional provisions for infrastructure charges plans)

Section 6.2.1 transitions any infrastructure charges plans in effect or being prepared prior to the commencement of the amended provisions of chapter 5, part 1. The intention is to allow these infrastructure plans to continue to operate within the amended infrastructure planning and funding framework without requiring local governments to amend the plans.

Subsection (1) preserves any existing infrastructure charges plans as if they were infrastructure charges schedules, and also clarifies that any infrastructure identified in an infrastructure charges plan is taken to be trunk infrastructure. This allows the conditioning powers for non-trunk infrastructure to operate for any development infrastructure not identified in the infrastructure charges plan.

Subsection (2) allows a local government to continue to prepare an infrastructure charges plan as if the amended Act had not commenced.

Subsection (3) provides for such a plan, once it is adopted by the local government, to operate in the way described under subsection (1).

Subsection (4) defines "infrastructure charges plan" for this section. The definition had previously been in schedule 10, but this Bill removes the term from all sections of the Act other than section 6.2.1. The definition refers to the definition, as it existed in the repealed Act immediately before the commencement of section 6.1.2. The full definition has not been replicated for the purpose of this section as it relies on several other defined terms which are also being removed by this Bill, and its inclusion in full would have involved a substantial list of additional definitions.

Section 6.2.2 (References to operational work)

New s 6.1.56 makes provision about references to "operational work". The concept of "operational work" has been removed from the Act[55]. However, this section preserves the previous meaning of the term where it appears in another Act, in a State planning policy, or in a planning scheme or planning scheme policy.

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

Clause 82(1) amends section 2(2) (part 1) for consistency with the omission from the Act of provisions dealing with the independent review of planning schemes, and to simplify the procedures for making and amendment to a planning scheme. Under these changes, no scheme amendments will be required to be subject to a statement of proposals under schedule 1.

The requirement for a statement of proposals for scheme amendments was originally intended to apply to major amendments such as the inclusion of a new strategic plan, however the application of the requirement has caused considerable confusion, raising the prospect of scheme amendments being subject to statements of proposals for little added benefit.

Clause 82(2) omits section 4 (part 1) (Core matters for planning schemes). These provisions have been relocated in new section 2.1.3A.

Clause 82(3) replaces the heading of section 11 (part 2) to more adequately reflect the action taken by the Minister under the section.

Clause 82(4) omits section 11(3A) (part 2) as the Act has been amended to provide generally for the Minister to delegate powers and functions under the Act.[56]

Clause 82(5) replaces section 11(4) to clarify that the Minister cannot impose a condition about public access to a planning scheme unless the condition is for requiring greater public access.

55 section 1.3.5 (Definitions of development)
56 See section 5.8.5.

Omission of schedules 6 and 7

Clause 83 omits these schedules. They are replaced by s 2.6.7 which provides for the matters that must be considered before a Ministerial designation proceeds, and for what may satisfy a designating Minister as adequate consultation. Sections 2.6.8 and 2.6.9 now provide the process to be followed after designation, or if designation is proposed but does not proceed.

Replacement of sch 8 (Assessable and self-assessable development)

Clause 84 replaces existing schedule 8 with a schedule comprising only existing parts 1 (assessable development) and 2 (self-assessable development). Existing part 3 (exempt development that cannot be made assessable or self-assessable development) is amended and replaced in a separate schedule 9. The order of the items in the schedule has been changed to group together material changes of use, reconfiguration, and work. Apart from moving the groupings, existing parts 1 and 2 are also specifically amended as follows:

Item 1 (carrying out building work etc.) is omitted. This development will no longer be assessable development requiring a development application, but will be exempt development requiring only compliance assessment under new chapter 3, part 7.

Item 3 (carrying out operational work for the reconfiguration of a lot etc.) is omitted This development will no longer be assessable development requiring a development application, but will be exempt development requiring only compliance assessment under new chapter 3, part 7.

Item 3A (now item 4) is amended to refer only to "work" for consistency with amendments to s 1.3.2 The item is also amended to include in paragraphs (f) to (h) new circumstances where clearing of native vegetation is not assessable – for a mining activity as defined under the *Environmental Protection Act 1994*, for the use of fire under the *Fire and Rescue Authority Act 1990,* for conservation and restoration of natural areas, and for certain ancillary works and encroachments under the *Transport Infrastructure Act 1994.*

Item 4(e) (now item 3) is amended to make it clear reconfiguration of land by the State is exempt for land already held, (rather than acquired) by the State, only when the subdivision is for a public purpose listed in paragraph (a) of the schedule to the *Acquisition of Land Act 1967*. Any subdivision of land held by the State, irrespective of the purpose for which

it was acquired, and subdivided for any purpose other than a public purpose (eg for commercial purposes) is assessable development.

The provision is amended to correctly refer to "schedule" in the *Acquisition of Land Act 1967* and to confine the exception to where the public purpose is listed in paragraph (a) of the schedule.

Item 6 (now item 1) is reworded for clarity and for consistency with s 75 of the *Environmental Protection Act 1994*.

New items 5 and 6 are related to uncommenced provisions of the *Water Act 2000*.

Item 9 (now item 2 of part 2 (self-assessable development)) is amended to clarify that exempt building work for the section is building work declared to be exempt under the Standard Building Regulation. Government owned corporations are specifically excepted from the meaning of "public sector entity" for the item.[57]

New item 3 of part 2 is related to uncommenced provisions of the *Water Act 2000.*

Part 3 of schedule 8 (exempt development) becomes new schedule 9.

Part 4 of schedule 8 (definitions) is not reinserted. The definitions have been replaced in schedule 10.

Insertion of new schedule 9 (Development that is exempt for a planning scheme)

The heading is changed to clarify that the schedule refers only to development that is exempt from regulation under a planning scheme. Development listed under this schedule is not exempt from regulation under schedule 8[58] (ie parts 1 and 2.). inclusion of these items under an entirely separate schedule also reinforces this.

Items 1 to 5 replace previous items 10 to 12 of part 3 and are amended for consistency with amendments to s 1.3.2..

Item 6 (previous item 13) is amended to refer only to "work" for consistency with amendments to s 1.3.2.

Paragraphs (a) and (b) are amended to allow local government to regulate the clearing of native vegetation involved in management practices

57 See definition of "public sector entity" in schedule 10.
58 See amended section 3.1.2.

for agriculture, or weed or pest control, under their planning schemes. Paragraph (a)(ii) is related to uncommenced provisions of the *Water Act 2000.*

The word "and" at the end of each paragraph is replaced with "or".

Item 8(e) (previous item 15) is amended to make it clear that the State's exemption from the need to have plans of subdivision approved by local government applies with respect to the subdivision of land already held (rather than acquired) by the State, only when the subdivision is for a public purpose listed in paragraph (a) of the schedule to the *Acquisition of Land Act 1967*. Any subdivision of land held by the State, irrespective of the purpose for which it was acquired, and subdivided for any purpose other than a public purpose (eg for commercial purposes) is subject to Part 7 of Chapter 3 of the Act.

The provision is amended to correctly refer to "schedule" in the *Acquisition of Land Act 1967* and to confine the exception to where the public purpose is listed in paragraph (a) of the schedule.

Item 10 is inserted because quarrying activity in a State forest or on other State land is a change of use of premises and as such may be assessable development under schedule 8 part 1, item 6. It is not intended that the works be made assessable or self-assessable under a planning scheme.

Items 11 to 17 (previous items 17 to 21B) are amended for consistency with amendments to s 1.3.2.

Although apparently broader, the definition of "work" is not intended to change the substance of the exemption for public sector entities, by including assessable or self-assessable building work. As pointed out elsewhere,[59]the provisions of new schedule 9 (development that is exempt for a planning scheme) are subject to the provisions of schedule 8.

Amendment of sch 10 (Dictionary)

Clause 85 *replaces schedule 10. The substantial changes to the IPA in the Bill have meant that many new definitions are included, others are amended, and others omitted. Numerous definitions previously included in schedule 8 have also now been included in schedule 10 due to the splitting of schedule 8 up into schedules 8 and 9. Because of the extensive changes*

59 See note on s 3.1.2.

to the definitions resulting from the provisions of the Bill, and to facilitate ease of use of the Bill, schedule 10 has been replaced entirely. Specific definitions which have been added, amended or omitted are:

"adoptable code" - for new section 3.1.9.

"acknowledgement notice" – omitted because of the removal of acknowledgement notices from Chapter 3 Part 2.

"acknowledgement period" – omitted because of the removal of acknowledgement notices from Chapter 3 Part 2.

"advice agency" - to add to its original meaning under the Act those agencies nominated by the Chief Executive to be advice agencies for an application subject to referral coordination.

"agency's referral day" – for sections 3.3.8 and 3.3.17.

"agricultural activity" – omitted.

"ancillary works and encroachments" – relocated from schedule 8.

"Appellant" – included for clarity.

"applicable code" - the definition is amended to make it clear that applicable codes apply only for assessable or self-assessable development. Codes for compliance assessment are not applicable codes.

"applicant" – The term is currently included in the definitions twice due to different meanings for chapters 3 and 4 respectively. These two definitions have been combined. The provisions in the Act in which the term also includes the person with the benefit of the approval have also been expanded to include sections 3.5.32 and Chapter 5 Part1, consistent with amendments to these provisions in the Bill.

"approved form" – is modified for clarity.

"area of high nature conservation value" – Relocated from schedule 8.

"area vulnerable to land degradation" – Relocated from schedule 8.

"assessable development" – is amended to make it clear the same development may be assessable under both schedule 8, part 1 and the planning scheme. The current wording may suggest that assessable development may only be identified under one or the other, however the scheme of the Act contemplates development may be assessable under both.

"assessing authority" has been amended by including a new item reflecting the inclusion of compliance assessment under Chapter 3 Part 7.

"building" – is amended to draw directly on the definition in the *Building Act 1975.*

"building work" – is amended to draw directly on the definition in the *Building Act 1975.*

"building referral agency" is omitted as a result of changes in the Bill associated with the introduction of compliance assessment in Chapter 3 Part 7.

"change application" is defined for s 3.6.1.

"code assessment" – is amended in response to other changes to the Act that have made the current definition incorrect and incomplete. The new definition refers to s 3.5.4 which comprehensively addresses code assessment.

"complete code" – is inserted for new section 3.1.9.

"compliance assessment" – refers to s 3.7.1.

"compliance assessor" - refers to s 3.1.9.

"compliance certificate" – refers to s 3.1.5.

"compliance permit" – refers to s 3.1.5

"compliant development" – refers to s 3.1.2.

"consultation period" - is amended to state the consultation period for Ministerial designations. This information was previously contained in schedule 6.

"core matter" - for new section 2.1.3A, but previously schedule 1, is amended to change a section reference, for consistency with other amendments.

"currency period" - previously the definition referred to s 3.5.21 and the terms of that section, for a material change of use approval, are reproduced here. For all other development, the currency period will be governed by the period stated in the approval. Many of the currency periods that previously applied for various works will be superseded because the works will be subject to compliance assessment under Chapter 3 Part 6. this has allowed the definition to be simplified and included in schedule 10.

"deciding entity" - for chapter 3 part 6.

"decision making period" – a section reference is changed.

"decision notice" – A section reference is changed

"deemed refusal" – is amended to take account of new arrangements for changing development approvals under Chapter 3 Part 6.

"designated interest"- is inserted in response to changes to s 2.6.19.

"designation" – for chapter 2 part 6

"designator" – for chapter 2 part 6.

"desired standard of service" – the current definition is retained, but moved from section 5.1.2 to schedule 10, with reference to priority infrastructure plan instead of planning scheme.

"development application (superseded planning scheme)" – is amended and simplified to reflect changes in the arrangements for seeking assessment under a superseded planning scheme, in particular the inclusion of section 2.1.7A.

"development infrastructure" - is amended to remove reference to items and incorporates existing 'sub-definitions' into relevant clauses of primary definition.

Item (a)(ii) excludes State-controlled roads.

Item (a)(iii) public parks infrastructure includes a range of embellishments for which charges can be levied. The local government can include additional items, but the community will have the opportunity to decide what embellishments it is prepared to pay for through the public notification stage of preparing a priority infrastructure plan. It is considered certain items should not be funded under an infrastructure charges schedule or infrastructure payments schedule including facilities operated on a commercial basis, enclosed sports facilities, kiosks etc. The statutory guidelines will provide further examples.

Item (b) includes a list of 'local community facilities' for which land can be acquired. As was the case previously, no embellishments, other than works to ensure the land is suitable for development, are permitted for local community facilities.

"development infrastructure item"- is omitted because the term has been superseded by "development infrastructure"

"development offence" – is amended to account for new offences under section 4.3.4A relating to compliance assessment.

"drainage work" - is amended to draw directly on the definition of sanitary drainage work in the *Sewerage and Water Supply Act 1949.*

"EIS" – is inserted for the purposes of chapter 5 pt 7A.

"EIS assessment report" – is inserted for the purposes of chapter 5 pt 7A.

"environmentally relevant activity" – is defined for the purposes of the Act.

"essential management" – relocated from schedule 8,

"impact assessment" – has been modified to omit the term "(other than code assessment)". Changes made to Chapter 3 to better support the assessment of "conceptual" development application through the preliminary approval process have resulted in changes which recognise the possibility of assessment under section 3.5.6 other than code assessment and impact assessment.

"information period" – is inserted for the purposes of the Act, particularly section 3.3.1 and 3.3.22.

"information request" – section references are changed

"information request period" – section references are changed

"infrastructure charges plan" – is omitted due to changes to infrastructure funding arrangements in Chapter 5 Part 1. However a definition of "infrastructure charges **plan" has been included for savings purposes in section 6.2.1**

"infrastructure charge" - is defined by reference to s 5.1.7.

"infrastructure charges notice" – is defined by reference to s 5.1.7.

"infrastructure charges register" – is defined by reference to s 5.7.2.

"infrastructure charges schedule" - replaces 'infrastructure charges plan' definition in 5.1.4. The 'planning' elements of an infrastructure charges plan (planning assumptions, desired standards of service and plans for trunk infrastructure) are now proposed to become separate elements of the priority infrastructure plan. A charges schedule would then consist of the infrastructure to be funded under the schedule, estimates of the cost of the infrastructure and the charges to be applied. The key aspects of

calculating the charge, including transparency and fair apportionment, remain in place and will be covered in detail in the statutory guidelines.

"infrastructure payments" – is defined by reference to s5.1.14.

"infrastructure payments schedule" – is defined for provisions allowing local governments to fund trunk infrastructure via conditions on development under an infrastructure payments schedule rather than charges levied under an infrastructure charges schedule. The structure and content of an infrastructure payment schedule is broadly consistent with that for an infrastructure charges schedule.

"infrastructure provider" - is defined to identify the entities that can undertake a cost impact assessment. This includes providers of trunk infrastructure other than a local government, if the entity has an agreement for the provision of trunk infrastructure in the local government's area. This would allow a local government to impose an additional cost condition for trunk infrastructure provided by another entity such as a local government owned corporation or private infrastructure provider. Any agreement between the local government and the entity for the provision of trunk infrastructure would need to detail how additional cost issues will be dealt with.

"last day for making submissions" – is included for section 5.7A.7.

"licensed brothel" – relocated from schedule 8.

"life cycle cost" – is omitted due to changes to infrastructure funding arrangements under Chapter 5 Part 1.

"local community purpose" – is omitted due to changes to infrastructure funding arrangements under Chapter 5 Part 1.

"major hazard facility" – relocated from of schedule 8.

"mining activity" – the definition draws on the definition in the *Environmental Protection Act 1994.*

"Minister" – is amended to remove reference to schedules 6 and 7, and to reflect changes to the call in provisions in Chapter 3 Part 8.

"network' – is amended to remove the word "items", reflecting changes to infrastructure charging arrangements under Chapter 5 Part 1.

"nominated interest" – is inserted in response to changes to s 2.6.19.

"non-acceptance notice" – is inserted for the purposes of amended s 3.2.3.

"non-urban area" – is inserted for the purposes of the Act.

"non-trunk infrastructure" is inserted for general conditioning powers under Division 1. Non-trunk infrastructure is development infrastructure that is not trunk development infrastructure.

"notification period" – a section reference is changed.

"operational work" – has been omitted to reflect changes to the definition of "development" in section 1.3.2.

"owner of land"- is defined specifically for chapter 2, part 6 (designation of land for community infrastructure). However, the general definition of "owner" applies for the purposes of a request to acquire designated land under hardship.

"partial code" - is inserted for new section 3.1.9.

"plan" – for Chapter 3 Part 7 has been omitted as the arrangements for approving such plans will be included in a regulation for compliance assessment.

"plans for trunk infrastructure" – is defined in relation to an element of the priority infrastructure plan. Clarifies that the infrastructure planning undertaken for a scheme is intended to be for higher order trunk infrastructure only. Plans for infrastructure will generally show that infrastructure required to service existing areas and the assumed growth identified in the planning assumptions, at the desired standards of service stated by the local government in the PSP.

"plumbing work" - is amended to draw directly on the definition of water plumbing work or sanitary plumbing work in the *Sewerage and Water Supply Act 1949.*

"priority infrastructure area" – is inserted to describe the area for which detailed infrastructure planning is expected to be carried out. The priority infrastructure area concept replaces the benchmark development sequence concept. The priority infrastructure area will consist of the existing developed areas (generally defined by those areas serviced with a mains pressure water supply network) and those areas required to accommodate between 10 and 15 years growth for residential, retail or commercial and industrial purposes. The 10 to 15 year planning horizon for the priority infrastructure area has been selected on the basis of ensuring sufficient land is available to accommodate future development without the identification of the area artificially influencing the land market in the local government area. Part 2 of the definition allows a local

government to include additional areas in the priority infrastructure area if the local government is satisfied the area is serviced with infrastructure.

"priority infrastructure plan" is inserted and lists the elements of a priority infrastructure plan, which is intended to be the primary mechanism for integrating land use and infrastructure planning. Most of the elements of the priority infrastructure plan are separately defined. Item (d) requires that a priority infrastructure plan state the assumptions about future growth on which the plans for infrastructure are based. These assumptions may include the type, location, amount, timing and intensity of future growth in each of the categories covered by the priority infrastructure area. Whilst it is desirable to build State infrastructure intentions into the priority infrastructure plans they are primarily about local government supplied development infrastructure. Priority infrastructure plans will be required to be reviewed a minimum of every 4 years.

"properly made application" – a section reference has been changed.

"properly made submission"- is amended to provide for submissions made with respect to environmental impact statements under new part 7A, chapter 5. Paragraph (e)(vi) is amended to provide for submissions to be addressed to a delegate of the designating Minister.

"proponent" – is **i**nserted for new part 7A, chapter 5.

"public sector entity" - is amended to clarify that the term includes a government owned corporation. This clarity is particularly relevant for the purposes of designation, in particular the powers of a designating minister to delegate certain administrative functions.

"public utility easement" – is defined for the purposes of the Act.

"referral agency's assessment period" – a section reference is changed.

"referral agency's response" – a section reference is changed.

"referral assistance" – a section reference is changed.

"referral coordination" – a section reference is changed.

"regional ecosystem" – relocated from schedule 8.

"regional ecosystem map" - relocated from schedule 8.

"remnant endangered regional ecosystem" - relocated from schedule 8.

"remnant map" relocated from schedule 8.

"remnant vegetation" - relocated from schedule 8.

"requesting authority" – a section reference is changed.

"reviewer's report" – is omitted for consistency with the omission of independent reviews.

"routine management" - relocated from schedule 8.

"self assessable development" – is amended for consistency with amendments to the definition of "assessable development"

"stage" – of IDAS. A section reference is changed.

"State infrastructure" – is inserted to describe the infrastructure for which State agencies may be able to obtain cost impacts. The range of State infrastructure is consistent with the previous cost impact provisions.

"submitter's appeal period" – a subsection reference is changed.

"supporting material" – is inserted. The term was previously used in s 3.2.8 and has been modified in response to amendments to that section.

"trunk infrastructure" – is inserted for higher order development infrastructure. Definition requires that planning schemes, through the priority infrastructure plan, define the infrastructure that is considered to be trunk infrastructure. Trunk infrastructure is generally that which has, as its key function, network distribution or collection rather than providing direct user connections. In defining trunk infrastructure local governments will need to consider what level of infrastructure they can plan for with adequate certainty.

"urban area" – is defined for the purposes of the Act.

"use" – is amended to refer to the definition of "use" now included in s 1.3.4.

"variable code" - is defined by reference to new section 3.1.10.

"work" – is defined by reference to s 1.3.5.

PART 3—AMENDMENT OF BUILDING ACT 1975

Act amended in pt 3.

Clause 86 declares that pt 3 amends the *Building Act 1975.*

Amendment of s 3 (Definitions)

Clause 87 amends the definition of "building work". This is for consistency with changes to the IPA in the Bill which combine all works related definitions into a single "works" definition. The detailed definition of particular works will now be found in legislation specific to that work.

Insertion of new s 46A (Fees for statutory functions)

Clause 88 inserts a new s 46A to clarify local government may charge fees for carrying out functions required under the Act.

Subsection (1) enables a local government, by local law or resolution, to fix a reasonable fee in relation to functions required to be performed under the Act.

Subsection (2) requires the local law or resolution to prescribe the person liable to pay the fee.

Subsection (3) validates the fees already received by a local government for performing functions required by the Act.

Subsection (4) ensures the validating of the fees already received by local government under subsection (3) does not affect a decision of a court concerning the reasonableness of the fees made before the commencement of these provisions.

PART 4—AMENDMENT OF ELECTRICITY ACT 1994

Act amended in pt 4

Clause 89 declares that part 4 amends the Electricity Act 1994.

Omission of ch 4, pt 4, div 4A

Clause 90 omits a division inserted in the Electricity Act in 1996. Powerlink Queensland was corporatised in 1995 and as a consequence lost the Crown exemption from regulation under the Local Government (Planning and Environment) Act 1990 and planning schemes under that Act. The division was inserted to temporarily restore the exempt status of electricity operating works, pending the introduction of the then proposed new planning and development legislation.

The division is linked to section 29 of the State Development and Public Works Organisation Act 1971, and consideration of the environmental effects of electricity operating works under that Act. Section 29 ceased to operate from 30 March 2000.

The provisions are no longer necessary as the designation process under the IPA is available for electricity operating works as community infrastructure and requires the consideration of environmental impacts. Development on land designated for community infrastructure is exempt from the operation of planning schemes.

The requirement in s 111G for local governments to consult with the Minister for Mines and Energy with respect to development proposals for land affected by existing or proposed electricity operating works will be replaced by an advice referral under the Integrated Planning Regulation.

Insertion of new s 112A

Clause 91 inserts a new s 112A providing exemption for certain vegetation clearing works.

Subsection (1) provides subsection (2) has effect despite the *Integrated Planning Act 1997* schedule 8, part 1. Schedule 8, Part 1 identifies assessable development.

Subsection (2) provides that work for clearing of native vegetation on freehold land for operating works is exempt development if the land is designated for the operating works under Chapter 2, Part 6 of the *Integrated Planning Act 1997.*

Subsection (3) provides definitions for section 112A.

Insertion of new ch 14, pt 4

Clause 92 removes doubt about the application of section 20 of the Acts Interpretation Act 1954 to the repeal of chapter 4, part 4, division 4A.

Section 20 provides among other things for the preservation of all rights acquired under, and any rights saved by the operation of, the repealed provisions.

Therefore, the effect of section 111C with respect to projects commenced and used before the commencement of the Electricity Amendment Act 1996 (EAA), and section 111D with respect to the Chalumbin to Woree transmission line, continues by the operation of the AIA irrespective of the repeal of the division. Further, the effect of section 111B with respect to proposed operating works of which the Minister gave notice in accordance with that section, also continues by the operation of the AIA irrespective of the repeal of the division.

Existing lawful uses and rights are also protected under the IPA.

PART 5—AMENDMENT OF LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT 2000

Act amended in pt 5

Clause 93 declares that part 5 amends the Local Government and Other Legislation Amendment Act 2000.

Omission of s 62 (Amendment of s 5.3.5 *of Act No 69 of 1997*)

Clause 94 omits an uncommenced S 62 of the Local Government and Other Legislation Amendment Act. This section was to amend s 5.3.5 of the IPA to allow a regulation to prescribe what development approvals must be given before a private certifier may issue a development permit for building work. This amendment is no longer necessary due to the introduction of the new Part 5B compliance stage under IDAS.

PART 6—AMENDMENT OF SEWERAGE AND WATER SUPPLY ACT 1949

Act amended in pt 6

Clause 95 declares that part 6 amends the Sewerage and Water Supply Act 1949.

Amendment of s 2 (Definitions)

Clause 96 inserts definitions of "drainage", "drainage work", "plumbing", and "plumbing work". This is for consistency with changes to the IPA in the Bill which combine all works related definitions into a single "works" definition. The detailed definition of particular works will now be found in legislation specific to that work.

PART 7—AMENDMENT OF WATER ACT 2000

Act amended in pt 7

Clause 97 states that part 7 amends the *Water Act 2000.*

Amendment of s492 (Changing safety conditions)

Clause 98 amends s 492 to broaden its application. This section currently provides for the chief executive administering the *Water Act 2000* to change "safety conditions" for a referable dam. The amended section allows the chief executive to also change development conditions about dam safety in the same way. (Development conditions are defined as conditions of a development approval under the *Integrated Planning Act 1997*).

Insertion of this provision means that section 492 of the *Water Act 2000* will apply to changing such conditions instead of the new section 3.6.5 of the *Integrated Planning Act 1997* contained in this Bill. Subsection (2) of that section provides that the section does not apply if another Act authorises an entity to change conditions in another way.

Amendment of schedule 2 (Amendments about planning matters)

Clause 99 includes a number of minor changes to section references for the Integrated Planning Act 1997.

SCHEDULE

MINOR AMENDMENTS OF INTEGRATED PLANNING ACT 1997

Clause 1 amends section 1.3.8 by omitting paragraph (g) for consistency with other amendments to the Act to remove the concept of acknowledgement notices from the Act.

Clause 2 amends sections 2.6.20, 2.6.21(a), 2.6.24(1)(a) and (b) and 2.6.23(2) by replacing the term "interest" with "nominated interest", for clarity and consistency with amendments to s 2.6.19[60]

Clause 3 amends section 2.6.21 by replacing the term "interest" with "nominated interest", for clarity and consistency with amendments to s 2.6.19[61]

Clause 4 amends sections 2.6.21(b) and (c), 2.6.23(1)(c) by replacing the term "interest" with "designated interest", for clarity and consistency with amendments to s 2.6.19[62]

Clause 5 amends sections 3.7.8(a) and (b) to correct an incorrect reference to a provision of the *Acquisition of Land Act 1967*.

Clause 6 amends section 4.3.7(1) to correct an incorrect reference.

Clause 7 amends section 4.3.7(2) to correct an incorrect reference.

Clause 8 amends section 4.3.13 to correct the terminology.

Clause 9 amends s 4.3.18 to correct an incorrect reference.

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60 See *Clause X* of this amendment Bill.
61 See *Clause X* of this amendment Bill.
62 See *Clause X* of this amendment Bill.

Clause 10 amends section 4.3.20 for consistency with new provisions for compliance assessment.

Clause 11 amends section 5.6.4 to change a section reference.

amends section 5.7.5(3), to correct the terminology.

Clause 12 amends section 5.7.5(3) to correct the terminology.

Clause 13 amends section 5.7.5(3) to remove a redundant word.

Clause 14 amends section 5.7.6(e)(iii) to remove a redundant word.

Clause 15 amends section 5.8.5 (Delegation by Minister) by renumbering and relocating the provision.

Clause 16 inserts a section to advise of proposed numbering and renumbering of parts of chapter 5.

Clause 17 amends the definition of "assessable development" in section 6.1.1 to account for the insertion of new schedule 9.

Clause 18 amends the definition of "assessable development" in section 6.1.1 to account for the insertion of new schedule 9.

Clause 19 amends s 6.1.30(2) to correct incorrect references.

Clause 20 amends s 6.1.30(2) to correct an incorrect reference.

Clause 21 amends s 6.1.32 to correct an incorrect reference.

Clause 22 amends s 6.1.34 to correct an incorrect reference

Clause 23 omits s 6.1.41 for consistency with other omissions.

Clause 24 amends s 6.1.51A to correct an incorrect reference

Clause 25 amends schedules 1, 2, and 3 by removing the words "by resolution" with respect to local government decisions.

Clause 26 amends the definition of "code" in schedule 10, by replacing "in" with "under".