INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of this Bill are to amend the operation of aspects of the *Integrated Planning Act 1997* (IPA), in particular—

- existing use provisions—to simplify and clarify;
- several provisions for planning schemes and planning scheme policies—to improve legibility and assist with implementing IPA planning schemes;
- procedures for designation of land for community infrastructure;
- infrastructure planning and funding mechanisms;
- several provisions of the Integrated Development Assessment System (IDAS), to address deficiencies and improve legibility; and
- transitional arrangements in chapter 6 of the IPA—to improve their clarity and operation.

The Bill also—

- amends the *Building Act 1975* (BA), the IPA and the *Local Government Act 1993* (LGA) to provide more accountability and consistency in relation to the head of power local governments rely on to fix fees for archiving approval documents;
- amends the *Local Government Act 1993* and the *Transport Infrastructure Act 1994* to provide both local governments and the State with a head of power to make certain decisions or directions to minimise or prevent damage to roads from certain activities, in particular where it is not possible to achieve these outcomes through the IPA framework; and

- provides for minor and consequential amendments to the *Plumbing and Drainage Act 2002* and other Acts to facilitate integration of approval processes into IDAS, or improve their legibility within the IPA framework.

Reason for the Bill

The Bill is necessary to introduce a number of critical reforms to the IPA, in particular infrastructure arrangements necessary to compliment the operation of IPA planning schemes.

Way in which the objectives are to be achieved

The objectives of the Bill are to be achieved by amending the *Integrated Planning Act 1997* and related 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 to implement the necessary reforms.

Administrative cost to government

The proposed changes as a consequence of the operational review 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.

Archiving of building approval documents

The proposed amendments to the IPA that will make it an offence for a private certifier to give a building approval to an applicant before a private certifier has received an acknowledgment from the local government for the payment of the prescribed archiving fee, may breach fundamental legislative principles.

The main issue is that although a decision has been made by the private certifier, the proposed amendments would require the decision notice not to be given to the applicant until the certifier complies with requirements that are independent of the applicant (even if the requirements are related to work the private certifier has done on behalf of the applicant). In effect, the applicant may be disadvantaged until any issue between the private certifier and the assessment manager about the payment of the fees is resolved.

However, there are similar requirements under *Queensland Building Services Act 1991* (QBSA) and the *Building and Construction Industry (Portable Long Service Leave) Act 1991* which require a building certifier to withhold the giving of development permits until fees have been paid. In those instances the applicant could also be disadvantaged by delays caused by disputes regarding the payment of fees. As with the QBSA and the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, the proposed legislation for archiving of approval documents is an important statutory duty and local governments fulfil an important public service by receiving documents and making them accessible to future building owners.

Appropriate delegation

The Bill contains no additional powers of delegation.

Adverse effects on rights and liberties (including retrospective application)

Some provisions of 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 Bill contains no provisions that will adversely affect the rights and liberties of individuals.

Several of the amendments to the transitional arrangements in chapter 6 of the IPA will be deemed to have commenced at an earlier date, and will consequently be retrospective in their effect. In all cases, these provisions are aimed at enhancing or clarifying rights by addressing deficiencies in the existing provisions. For example—

- clause 99 amends section 6.1.26 to allow rezoning applications to be finalised, even if a local government has adopted a new IPA planning scheme. The current arrangements leave the status of such applications in doubt;
- re-instatement of expired section 6.1.35A, allowing applicants to utilise processes under the former Local Government (Planning and Environment) Act 1990 to achieve changes to rezoning approvals under that Act, rather than requiring applicants to go through more extensive IDAS processes;
- clause 102, which seeks to validate existing preliminary approvals given before the commencement of that section, to the extent they are consistent with new arrangements for such approvals contained in this Bill. The Bill contains several provisions designed to provide additional support and guidance about the giving of preliminary approvals that affect a planning scheme. These provisions correct deficiencies identified in the preliminary approval process during the IPA operational review, which call into question the lawfulness of some approvals already given. The transitional provision effectively provides that these approvals are valid to the extent they conform to the new arrangements contained in this Bill; and
- clause 103, which recognises and validates so-called "rezoning deeds" or "deeds of novation" entered into under legislation preceding the *Local Government (Planning and Environment) Act 1990.*

Immunity from proceeding or prosecution

The Bill contains no provisions conferring immunity from proceeding or prosecution.

Compulsory acquisition and compensation

The Bill contains a number of minor changes to compensation, although these are purely of a clarifying nature, and do not affect the scope of compensation powers. The Bill contains no provisions about compulsory acquisition.

Regard for aboriginal and islander custom

The Bill includes provisions (section 3.1.11) clarifying IDAS arrangements when the Commonwealth *Native Title Act 1993* applies.

Amendment of an Act only by another Act

The Bill contains no provisions authorising amendment of an Act by subordinate legislation.

Consultation

The majority of the changes proposed implement some of the findings of the 1999 operational review of the *Integrated Planning Act 1997*. Consultation has continued with all of the State agencies and stakeholder groups consulted during the operational review.

The following State agencies have been consulted on relevant provisions of the Bill—

- Department of Premier and Cabinet
- Treasury Department
- Department of Education
- Arts Queensland
- Department of Health
- Department of State Development
- Department of Justice and Attorney-General
- Department of Public Works
- Department of Housing
- Department of Primary Industries
- Department of Natural Resources and Mines
- Department of Emergency Services

- Building Services Authority
- Environmental Protection Agency
- Queensland Transport
- Department of Main Roads
- Queensland Competition Authority.

The following bodies have been consulted on relevant provisions of the Bill—

- Housing Industry Association
- Local Government Association of Queensland
- Australian Institute of Building Surveyors
- Association of Hydraulic Consultants
- Independent Private Certifiers Association of Queensland
- Institute of Plumbing Inspectors
- Gold Coast City Council
- Property Council of Australia (Queensland)
- Queensland Master Builders Association
- Queensland Master Plumbers Association
- Queensland Law Society
- Queensland Environmental Law Association
- Brisbane City Council
- Urban Development Institute of Australia

PART 1—PRELIMINARY

Short title

Clause 1 describes the short title of the Act as being the *Integrated Planning and Other Legislation Amendment Act 2003*.

Commencement

Clause 2(1) provides that section 98 is taken to have commenced on 31 March 2003.

Clause 2(2) provides for the sections of the Bill that will commence on assent.

Clause 2(3) provides that the remaining provisions of the Act will commence on a date to be fixed by proclamation.

PART 2—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Division 1—Preliminary

Act amended in pt 2

Clause 3 declares that part 2 of this Act amends the IPA.

Division 2—Amendments for designations

Division 2 contains several sections designed to complete a series of reforms to the designation process. Some reforms contained in the *Integrated Planning and Other Legislation Amendment Act 2001* (IPOLAA) have already commenced, in particular several amendments designed to clarify the status of designated community infrastructure located on public utility easements, clarification and reform of the hardship arrangements in section 2.6.19, and delegation arrangements for designating ministers.

The further reforms contained in this Bill are concerned with substantially redesigning the designation process itself for greater emphasis on achieving environmentally sustainable outcomes, as opposed to the current arrangements which concentrate on processes without emphasizing the quality of environmental assessment and public consultation.

Replacement of previous ss 2.6.7—2.6.9

Clause 4 replaces previous sections 2.6.7 to 2.6.9.

The new provisions include processes that 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 land)

New section 2.6.7(1) provides for the matters a Minister must be satisfied about before designating land for community infrastructure. The environmental assessment and consultation requirements under this subsection draw strongly upon the duties imposed in section 1.2.3 on all decision makers under the Act to consider environmental effects and undertake community consultation. This section differs substantially from current arrangements under IPA, which emphasise the processes for designation under schedules 6 and 7, but do not sufficiently deal with the qualitative aspects of designation, and its relationship with achieving the environmental outcomes of the IPA.

The reforms under this section emphasise the need to carry out adequate environmental assessment and public consultation as part of the designation process, and are related to the omission of schedules 6 and 7.

Subsection (2) identifies additional matters the designating Minister must consider before designating. These include all properly made submissions made as a consequence of any public consultation carried out by the Minister under subsection (4).

Subsection (2) has also been expanded to require the designating Minister to have regard to the relevant planning scheme and any relevant State Planning Policies (SPPs). Consideration of these matters is required by the current IPA provisions, but was inadvertently omitted under IPOLAA.

Subsection (3) identifies six processes under this and other Acts which constitute adequate environmental assessment and public consultation for subsection (1). These processes are not intended to be exclusive and the Minister may choose to be satisfied in some other way. The processes are—

- the process contained in guidelines made by the chief executive under section 5.8.8 (Section 5.8.8 was contained in IPOLAA, and commenced in 2002. It provides for the chief executive to

make guidelines about environmental assessment for designation. The guidelines for designation will clarify how the designating Minister's duty to advance the Act's purpose with respect to consideration of environmental effects and public consultation may be done;

- IDAS—While it is most unlikely that designation would be preceded by the making of an application under IDAS, the assessment processes under IDAS nevertheless contain environmental assessment and public consultation arrangements that would constitute adequate assessment and consultation for designation. A reference to these processes has consequently been included in this section;

- the EIS process under chapter 5 part 7A—It is initially proposed that this process would be triggered only for "controlled actions" under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*. Consequently, the use of this process under chapter 2 part 6 would be triggered if development proposed to be the subject of a designation had been decided by the Commonwealth Minister to be a controlled action;

- the planning scheme making or amendment process under schedule 1—If at the time a State Minister proposes to designate land for community infrastructure, the relevant local government is preparing or amending its planning scheme, it would be possible for the Minister for Local Government and Planning to direct the local government under schedule 1 section 11 to include the designation proposal in the proposed planning scheme when it is publicly notified under section 12 of schedule 1. The designating minister could then evaluate the submissions received to the proposal during the scheme making process as a basis for deciding whether or not to designate the land;

- the EIS process under section 35 of the *State Development and Public Works Organisation Act 1971;* and

- the EIS process under chapter 3 part 1 of the *Environmental Protection Act 1994* (EPA)—Although the EIS process under the EPA is primarily for mining activities which are not regulated under the IPA, the EPA does allow for EIS's prepared for mining projects under that Act to include activities related to the project,

but for which approval under the EPA is not possible, either because the activity cannot be authorized under a mining lease, or because it is proposed to occur "off lease". These activities may include community infrastructure that is subsequently proposed to be designated under chapter 2, part 6 of IDAS.

Subsection (4) is a "safety net" provision requiring 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. Local governments are required to keep available for information and purchase copies of notices about Ministerial designations and to include designations in planning schemes.

Subsection (5) requires that the notice given by the designating Minister to owners or local governments under subsection (4) 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, which is proposed to be omitted.

New subsection (1) (c) (not included in IPOLAA) requires the designating Minister to also notify the Chief Executive of DLGP.

Section 2.6.9 (Procedures if designation does not proceed)

This is substantially the same as section 5 of previous schedule 6, which is proposed to be omitted.

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

Clause 5 amended s 5.7.6 by inserting (o) which is the requirement for the chief executive to also keep available copies of notices about designation given to the chief executive under the new section 2.6.8(1)(c)

PART 2—TRANSITIONAL PROVISIONS FOR INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003

Division 2—Transitional provisions for designation

Insertion of new ch 6, pt 2, div 2

Clause 6 amends chapter 6 by inserting a new division in part 2, consisting of a new section 6.2.4. This section allows for the continuation of designation processes started but not yet complete when the new designation arrangements in this part commence.

Omission of schedules 6 and 7

Clause 7 omits these schedules. They are replaced by s 2.6.7 that 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.

These changes are consistent with the changed emphasis under the reforms to designation away from compliance with regulated processes, and towards a more outcome based approach designed to better achieve the environmental outcomes sought under the IPA.

Amendment of sch 10 (Dictionary)

Clause 8 amends the definition of **"consultation period"** in schedule 10 for consistency with the omission of schedule 6.

Division 3—Amendments for infrastructure

This division introduces a comprehensive set of amendments for infrastructure planning and funding. Key elements include—

- reforms to infrastructure planning arrangements to better integrate them with general planning processes, and introduce comprehensive "priority infrastructure plans";
- reforms to the infrastructure charging arrangements to clarify charging mechanisms, and introduce a regulated infrastructure charge to provide a simple regulated charging solution for smaller local governments; and
- reforms to the processes for assessing and conditioning applications to address additional infrastructure costs for out of sequence development.

CHAPTER 2—PLANNING

PART 1—LOCAL PLANNING INSTRUMENTS

Division 2—Key concepts for planning schemes

Amendment of s 2.1.3 (Key elements of planning schemes)

Clause 9 amends section 2.1.3 by replacing current references to performance indicators and benchmark development sequences with a reference to a priority infrastructure plan, meaning all planning schemes must now include a priority infrastructure plan.

Division 6—Local planning instruments generally

Replacement of s 2.1.24 (Infrastructure intentions in local planning instruments not binding)

Clause 10 replaces section 2.1.24 to clarify that infrastructure intentions in planning schemes, including desired standards of service, are not binding on infrastructure providers.

PART 2—REVIEWING LOCAL PLANNING INSTRUMENTS

Division 1—Review of planning schemes by local government

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

Clause 11 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. Under subsections (2) and (3) 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.

PART 6—DESIGNATION OF LAND FOR COMMUNITY INFRASTRUCTURE

Division 1—Preliminary

Amendment of section 2.6.6 (How infrastructure charges apply to designated land)

Clause 12 amends section 2.6.6 by including the correct reference to the title of Chapter 5, Part 1.

Division 3—Local government designation process

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

Clause 13 amends section 2.6.12 by including subsection (3) to clarify that identification of land in a priority infrastructure plan for an infrastructure related purpose does not constitute a community infrastructure designation unless the land is specifically identified as designated land.

CHAPTER 3—INTEGRATED DEVELOPMENT ASSESSMENT SYSTEM

PART 2—APPLICATION STAGE

Division 1—Application process

Insertion of new s 3.2.4 (Acknowledgement notices for development inconsistent with priority infrastructure plans))

Clause 14 inserts a new section regarding acknowledgement notices for applications for development inconsistent with priority infrastructure plans. Subsection (1) clarifies when an acknowledgement for such an application must be given. That is, where the development is located completely or partly outside the priority infrastructure area identified in the priority infrastructure plan, or where the development has been assessed as being inconsistent with the assumptions about future development stated in the priority infrastructure plan. The types of inconsistency referred to include development of a different type (e.g. retail instead of residential), scale (e.g. residential development at significantly higher or lower density), location (e.g. development which is still within the priority infrastructure area but 'jumps' significantly ahead of existing development fronts), or timing (e.g. development occurring in a given area significantly earlier than anticipated).

Where subsection (1) applies, the acknowledgement notice for the application must also state, in addition to the matters required under section 3.2.3(2), the nature of the inconsistency and that conditions about additional trunk infrastructure costs or additional infrastructure costs may be imposed by the local government or State infrastructure provider under sections 5.1.25 and 5.1.28 respectively.

For large and complex proposals where it may not be possible for the local government to determine whether the proposal is consistent or inconsistent with the priority infrastructure plan within the 10 day acknowledgement period, it is suggested the local government include in the acknowledgement notice a statement to the effect that this issue is still

being examined and the proposal may be assessed for additional infrastructure costs if it is found to be inconsistent.

The reason for giving such notice is to inform the applicant of the inconsistency and potential for additional infrastructure costs to be imposed, and also to inform any referral agencies for the application that are also State infrastructure providers of the inconsistency. Where development is inconsistent, the local government and State infrastructure providers may request additional information on the proposed servicing of the proposal, or its impact on existing and proposed infrastructure networks, as part any information request. For State infrastructure providers, the inconsistency may also affect the scope of the provider's conditioning powers in respect of the application under chapter 5, part 1, division 8.

PART 5—DECISION STAGE

Division 2—Assessment process

Amendment of s 3.5.4 (Code assessment)

Clause 15(1) adds subsection (2)(d) 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 relating to—

- non-trunk infrastructure,
- necessary trunk infrastructure, or
- additional cost payments.

Clause 15(2) includes new subsection (4)(c) to clarify that where an assessment manager is assessing and deciding a development application (superseded planning scheme), 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, particularly as local governments transition from current headworks

policies to infrastructure charges schedules. Subsection (4)(c) allows the entitlements under a superseded scheme to be pursued, but ensures current charges 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.

Amendment of s 3.5.5 (Impact assessment)

Clause 16 amends section 3.5.5 in the same way as described above for section 3.5.4 with regard to the application of the infrastructure provisions of the current planning scheme for a development application (superseded planning scheme) that is impact assessable.

Division 4—Representations about conditions and other matters

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

Clause 17 inserts new subsection (7) allowing a local government to issue a new infrastructure changes notice if the development approved by a negotiated decision notice is different in a way that affects the amount of the infrastructure charge or regulated infrastructure charge for the development.

Division 6—Conditions

Amendment of s 3.5.32 (Conditions that can not be imposed)

Clause 18(1) amends subsection (1)(b) to prevent a local government imposing a condition requiring (i) a payment for, or (ii) the construction of, trunk or non-trunk infrastructure, other than in the way provided for in chapter 5, part 1.

Clause 18(2) inserts a new subsection (1)(e) which prevents a condition placing a time limit on a component of a network of community infrastructure. It is inappropriate for a time limit to be imposed on a single element of a network of infrastructure if that element is necessary for the functioning of the entire network.

Clause 18(3) clarifies 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.

Omission of ss 3.5.35 and 3.5.36

Clause 19 omits sections 3.5.35 (Limitations on conditions lessening cost impacts for infrastructure) and 3.5.36 (Matters a condition lessening cost impacts for infrastructure must deal with) as these provisions have been replaced by the additional infrastructure cost provisions of Chapter 5, part 1, Divisions 7 and 8.

CHAPTER 4—APPEALS, OFFENCES AND ENFORCEMENT

PART 1—PLANNING AND ENVIRONMENT COURT

Division 7—Other court matters

Amendment of section 4.1.21 (Court may make declarations)

Clause 20 omits subsection 4.1.21(1)(d) that specifically allowed declaratory action to be initiated in respect of an infrastructure charge. Declaratory action could still be initiated in respect of an infrastructure charges schedule under subsection (1)(b) by virtue of the schedule being part of the planning scheme. However, a new limited appeals mechanism has been created to deal with concerns about infrastructure charges.

Division 9—Appeals to court about other matters

Insertion of new section 4.1.36 (Appeals about infrastructure charges)

Clause 21 inserts a new section allowing appeals to the Planning and Environment Court about infrastructure charges schedules and infrastructure charges. This section replaces the previous declaratory application process for infrastructure charges under section 4.1.21(1)(d). Section 4.1.21(1)(d) was intended to allow affected persons to seek the Court's views about matters such as the validity of a charging method, its compliance with the charging principles and requirements, such as fair apportionment, equity and transparency, set out in the IPA or calculation of a charge for particular premises. It was not intended to allow affected persons to challenge a local government's right to impose a charge.

However, a number of stakeholders were concerned that declaratory actions would be limited to procedural matters and subjected to a higher 'legal' test by the Court, rather than a merits assessment of the issue in question. Section 4.1.36 is intended to clarify the scope of the legal action in respect of infrastructure charges.

Subsections 4.1.36(1) and (2) establish that only a person who has been given an infrastructure charges notice may appeal to the Court against the notice. This effectively means there are no 'third party' appeals about the charges paid by another person. Subsection (3) requires that an appeal under this section be initiated within 20 business days of the day the notice was given to the person. Subsection (4) defines the matters about the charge that can be appealed.

Subsection (4)(a) allows appeals about the methodology used to calculate the charges stated in the infrastructure charges schedule. This might include matters such as the following (with examples given in brackets)—

- the methodology's compliance with the charging regulations and guidelines issued by the Department (is the methodology used consistent with the charging principles set out in the IPA and has the local government complied with any procedural or technical requirements identified in the regulations and guidelines);
- the apportionment of the cost of the infrastructure between existing and future users (has the cost of the infrastructure been correctly apportioned between existing and future users or those within and outside the charging area, taking into account the

respective anticipated usage of the infrastructure or capacity of the infrastructure allocated to each group); and

- the cost of the infrastructure (do the items planned to be provided meet the Council's desired standard of service, do they provide the minimum life-cycle cost or do they provide an unnecessary higher standard, has the existing network been fairly valued etc).

Subsection (4)(b) allows appeals about errors in the calculation of the charge for the premises. This might include matters such as (with examples given in brackets)—

- assessing the demand from the premises (what is the existing demand from the premises, what will the future demand be);
- levying a charge where a charge is not appropriate (imposing a charge where the development does not result in additional demand on the infrastructure networks);
- application of any system of 'credits' for previous infrastructure contributions (What was the previous contribution, is a full or only a partial credit available);
- converting demand into the charging 'units' used in the infrastructure charges schedule (if charges are based on developable area, calculate the chargeable area by subtracting the area of any areas which can not be developed from the total site area, or for a trips based transport charge, calculate the number of trips generated by an industrial or commercial use); and
- basic errors in the mathematical calculation of the charge for the premises.

Replacement of ch 5 pt 1 (Infrastructure charges)

Clause 22 replaces chapter 5 part 1. Major changes to this part include—

- replacement of current Infrastructure Charges Plans and collapsing Infrastructure Charges Schedules and Infrastructure Payments Schedules into a single charging mechanism to be known as Infrastructure Charges Schedules, and further refinement to the requirements for preparing an Infrastructure Charges Schedule;
- introduction of a system of Regulated Infrastructure Charges which can be adopted by Local Governments as a basic charging

mechanism without the need to prepare an Infrastructure Charges Schedule;

- introducing local government conditioning powers for necessary trunk infrastructure; and
- integration of State Infrastructure providers into the revised infrastructure planning and charging framework.

CHAPTER 5—MISCELLANEOUS

PART 1—INFRASTRUCTURE PLANNING AND FUNDING

Division 1—Preliminary

Section 5.1.1 (Purpose of pt 1)

Section 5.1.1 outlines the purpose of this part.

Division 2—Non-trunk infrastructure

This division 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.

Non-trunk infrastructure is that which is intended primarily to provide direct user connections to the infrastructure network. Examples of non-trunk infrastructure include internal reticulation networks, internal local streets, stormwater quality improvement devices servicing the site and external works to connect to services.

By comparison, trunk infrastructure is higher order infrastructure that is intended primarily to provide network distribution and collection functions

or provide services to a catchment larger than the proposed development such as a local park.

Local Governments are required to define what they consider to be trunk infrastructure in their priority infrastructure plans (PIP) and to plan for the provision of this infrastructure. Therefore, non-trunk infrastructure comprises those elements of an infrastructure network not defined as trunk infrastructure.

Section 5.1.2 (Conditions local governments may impose for non-trunk infrastructure)

Section 5.1.2(1) allows local governments to impose conditions for non-trunk infrastructure, provided the infrastructure is for—

- networks within the site; or
- is necessary to connect the site to external trunk infrastructure networks; 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.

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, to 8 that deal with trunk infrastructure.

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. Section 5.2.1 refers.

Division 3—Trunk infrastructure

This division sets out general planning and funding requirements for trunk infrastructure. As noted above, trunk infrastructure is higher order infrastructure that is intended primarily to provide network distribution and collection functions. Local governments are expected to plan for the

supply of trunk infrastructure as part of their priority infrastructure plans (PIP).

While the water cycle management and transport infrastructure networks will contain both trunk and non-trunk infrastructure, all public park and community land is considered to be trunk infrastructure as even the smallest park must be of a minimum size and services a significant number of users.

Section 5.1.3 (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;

(b) identifies plans for the trunk infrastructure networks for which the local government intends to levy a charge;

(c) includes a reference to a Statement of intent or roads implementation program for State-controlled roads if required by the State infrastructure provider;

(d) states the assumptions about future development on which the plan is based;

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

(f) includes any infrastructure charges schedule/s.

Section 5.1.4 (Funding trunk infrastructure for certain local governments)

Subsection (1) requires states that, under the IPA, a local government only levy a charge for trunk infrastructure under either an infrastructure charges schedule or a regulated infrastructure charges schedule. It should be noted local governments have other mechanisms available to them under

other legislation, such as the *Local Government Act 1993* and the *Water Act 2000*, under which they can charge for infrastructure or connections to infrastructure networks.

Subsection (2) requires that a local government that uses an infrastructure charges schedule to levy charges for one of its infrastructure networks, must use an infrastructure charges schedule for levying charges for all of the infrastructure networks it wishes to collect charges for. This means a local government could not levy charges under an infrastructure charges schedule for its water supply and sewerage networks, and also levy charges for its transport, public parks or drainage networks under a regulated infrastructure charges schedule.

Regulated infrastructure charges schedules are intended to provide a simple, low cost charging mechanism primarily for small, rural and low growth local governments. As such a local government that is capable of and needs for cost recovery reasons to prepare an infrastructure charges schedule for one network, will in most cases be in a similar position for other networks.

Subsection (3) allows a local government to have more than one infrastructure charges schedule for each infrastructure network, and to introduce schedules for different networks or different parts of a network at different times. This provides a degree of flexibility in the transition from the current transitional charging arrangements to the new infrastructure planning and charging framework.

Subsection (3) also recognises a local government may choose not to levy charges for a network under an infrastructure charges schedule.

Division 4—Trunk infrastructure funding under an infrastructure charges schedule

This division has been amended in a number of sections but is still primarily about creating an efficient, transparent and equitable charging mechanism in the form of the infrastructure charges schedule.

Feedback from local governments indicated a desire for greater flexibility in preparing infrastructure charges schedules. Local governments recognised this flexibility meant they would have to individually manage their level of risk in relation to matters such as accuracy of new infrastructure costs, degree of detail in planning and rigor

applied to cost apportionment etc verses potential shortfalls in revenue received and potential for charges to be challenged. Detailed guidelines on the methodologies and process for preparing infrastructure charges schedules are being prepared.

Section 5.1.5 (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) has been introduced to clarify that where an infrastructure charges schedule being prepared as part of and at the same time as a priority infrastructure plan, the schedule 1 process for preparing the priority infrastructure plan must also be used for preparing the infrastructure charges plan. This is to ensure the community has the local government's complete infrastructure planning and funding 'package' available to them during the public notification process. If however an infrastructure charges schedule was being prepared or amended

independently of the priority infrastructure plan, it can follow the shorter schedule 3 process.

Subsection (3) clarifies when a schedule, prepared under the schedule 3 process, becomes part of the planning scheme and takes effect.

Section 5.1.6 (Key elements of an infrastructure charges schedule)

Section 5.1.6 identifies the key elements of an infrastructure charges schedule. 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 (1)(a) defines "infrastructure charge" and clarifies that charges are levied on users for the provision of the trunk infrastructure network (and its associated desired standards of service), rather than specific infrastructure items as may previously have been implied.

Subsection (1)(b) requires the local government to take account of total use of the network (by existing, future and external users), and which users the charge will be levied on (existing and future or just future) when deciding what proportion of the cost of the network will be recovered through the charge.

Subsection (1)(c) is intended to allow a local government to specify an estimated timing or threshold (e.g. specified infrastructure capacity limits or the population within a catchment area), for when the infrastructure will be provided.

Subsection (1)(d) requires an infrastructure charges schedule to state the cost of the infrastructure for which the charge is levied.

Subsections (1)(e), (f) and (g) require the infrastructure charges schedule to identify the area in which the charge applies, the activities to which it applies and how the charges should be calculated for premises.

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 such as a corporatised water business. 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 5.1.7 (Infrastructure charges)

Subsection (1)(a) clarifies that charges can only be levied for a trunk infrastructure network that is identified in the priority infrastructure plan (PIP) and does, or will, service the premises. Subsection (1)(b) requires charges to be calculated on the basis of the establishment cost of the network that can be reasonably apportioned to the premises either on the basis of anticipated usage or allocated capacity. Charges could therefore be based on a premises share of the capacity of the individual items that make up the network that delivers the service to the premises.

Subsection (2) 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 network by the existing use at that time and not future uses having regard to the planning scheme provisions for the site or the infrastructure provided.

Subsection (3) 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. It would often be appropriate, when dealing with a prepaid charge, for the number of charge units (for example ET's or m^2 of GFA) paid for to be recorded as part of the agreement as well as the dollar amount paid. In this way, when the future benefit of this payment is exploited, the size of the contribution is easily reconciled.

Subsection (4) clarifies that charges do not apply to activities authorized under the *Mineral Resources Act 1989*.

Section 5.1.8 (Infrastructure charges notices)

Subsection (1) defines an infrastructure charges notice and lists the maters the notice must contain.

Subsections (2) and (3) 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 another entity.

Subsection (4) has been introduced to clarify that if a charge is issued in association with a development approval, the charge cannot be recovered unless the entitlements in the approval are exercised.

Subsection (5) states the notice of charge lapses if the approval stops having effect. This may include the approval lapsing or being cancelled.

Section 5.1.9 (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. 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. Items (a) to (c) in effect determine when the local government should state the charge is payable in the infrastructure charges notice. 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 5.1.10 (Application of infrastructure charges)

This section has been introduced to clarify that charges levied and collected for a particular infrastructure network must be used for supplying infrastructure for that network, or that there is no cross subsidization between networks. Similarly, this section also requires that charges levied and collected by a local government for works required to address the local function of a State-controlled road, must be used to provide works on the State-controlled road infrastructure. While different items or works could be provided, the intention is that charges levied specifically for the local function of State-controlled roads must be spent on works to improve the local function of the State-controlled road.

Section 5.1.11 (Accounting for infrastructure charges)

This section clarifies a number of issues associated with accounting for infrastructure charges. Subsection (1) is intended to ensure that charges, or the proportion of charges, levied and collected for local works on State infrastructure are separately accounted for so the amount available for this purpose can be easily determined. This is important for cases where a development might be subject to a condition, imposed by the provider of the State infrastructure, to construct the planned infrastructure item/s for which the charge was being collected. In these cases it is expected an infrastructure agreement would be entered into between the applicant the local government and the provider of the State infrastructure, under which any funds already collected by the local government for the item/s would be made available to the applicant to construct the infrastructure. The agreement should also detail the arrangements for refunding to the applicant charges to be collected by the local government from other users of the infrastructure in the future for their share of use of the item/s and any contribution from the State infrastructure provider towards the cost of the item/s.

Subsection (2) clarifies that infrastructure charges collected by the local government do not need to be held in trust. This means the local government could use these funds for other purposes, provided it is able to supply the infrastructure when required.

Section 5.1.12 (Agreements about, and alternatives to, paying infrastructure charges)

Alternatives to paying the charge must be stated in an infrastructure agreement and subsection (1) lists the types of agreement that may be entered into.

Subsections (2) to (5) deal with when and how land for public parks infrastructure or local community facilities is to be given to the local government in lieu of paying all or part of the charge. If the site is identified as being required for public park purposes and the amount of the land required is more than that which can be attributed to the development on the site or exceeds the value of the development's charge for public parks infrastructure, it is expected the local government will acquire the land it requires for public parks infrastructure. Costs associated with the acquisition can be recovered through infrastructure charges.

Section 5.1.13 (Local Government may supply different trunk infrastructure from that identified in a priority infrastructure plan)

This section is included to allow a local government to supply a different item of infrastructure to that specified in the priority infrastructure plan (PIP), 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 5.1.14 (Infrastructure charges taken to be a rate)

For the purposes of recovery, an infrastructure charge is, under subsection (1) 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.

Subsection (2) is introduced to recognise that an applicant and the local government may enter into an agreement stating the charge is a debt owing to the local government by the applicant in which case the option of recovering the unpaid charge as a rate is not available.

Division 5—Trunk infrastructure funding under a regulated infrastructure charges schedule

The *Integrated Planning and Other Legislation Amendment Act 2001* (IPOLAA) introduced infrastructure payments schedules as a simpler, less rigorous charging mechanism to address the needs of smaller and low growth local governments. However, further consultation with stakeholders highlighted that there was little real difference between infrastructure charges and infrastructure payments schedules. Local governments also requested greater flexibility in preparing infrastructure charges schedules. As a result, it has been possible to collapse infrastructure charges and infrastructure payments schedules into a single charging mechanism, being infrastructure charges schedules.

However, although these changes make infrastructure charges schedules more accessible and usable for a greater range of local governments, there is still a need for a simple and basic charging mechanism for small and low

growth local governments. The proposed mechanism is a system of regulated infrastructure charges that will be set by the State. The regulated charges will be a maximum amount the local government can charge for each network. Local governments can adopt charges up to the regulated maximum without the need to prepare an infrastructure charges schedule.

It is anticipated regulated infrastructure charges will be most suitable for those local governments where—

- the infrastructure network/s being charged for already exist;
- limited growth or future development is anticipated;
- significant expansion of the network/s is unlikely to be required;
- there is little or no need for the rigor, cost or complexity of even a basic infrastructure charges schedule and limited capacity to recover the cost of preparing an infrastructure charges schedule from future development; and
- there is limited capacity within the local government to prepare an infrastructure charges schedule.

Regulated infrastructure charges are available to all local governments but are not mandatory for any local governments. The amount of the regulated charges is still to be set but will intended to provide a reasonable funding source for smaller local governments whilst ensuring those local governments where the current population or future growth is sufficient to warrant an infrastructure charges schedule, do actually prepare one. Limiting regulated charges to a reasonable amount will also minimize the risk of development being overcharged given a rigorous cost apportionment exercise will not be undertaken.

Section 5.1.15 (Regulated infrastructure charge)

This section establishes that the State may, by regulation, prescribe a charge for the supply of trunk infrastructure in a local governments area, and to also specify the aspects of development (e.g. making a material change of use or reconfiguring a lot) for which the charge can be levied. It is intended the regulation will prescribe a charge for each development infrastructure network for a variety of common land use types. The regulation may also include standard conversion formulae to calculate the regulated charge for other forms of development.

In setting the amount of the regulated infrastructure charge the Department will undertake an analysis of what local governments are currently charging for infrastructure, including any significant regional

variations (e.g. a higher charge for drainage infrastructure may be appropriate in tropical areas).

Section 5.1.16 (Adopting and notifying regulated infrastructure charges schedule)

This section details the process to be followed by a local government for adopting a schedule of regulated infrastructure charges.

Subsection (1) establishes that a regulated infrastructure charges schedule must be adopted by Council resolution and can only be for the establishment cost of trunk infrastructure. This means charges cannot be used for operating or maintaining the infrastructure.

Subsection (2) requires that the amount of the charge stated in the schedule cannot exceed the amount prescribed in the regulation. Subsection (3) requires that the schedule state the amount of the charge for each network for which a charge applies and the area, lot or use to which the charge applies.

Subsections (4) and (5) deal with the requirements for giving notice about the adoption of the schedule and providing copies of the schedule to the chief executive. Subsection (6) establishes when the schedule takes effect.

Subsection (7) requires that the local government attach a copy of the schedule to each copy of its planning scheme. This is to ensure users of the planning scheme are aware of the existence and content of the schedule and how it might relate to their premises. Subsection (8) clarifies that despite being attached to the planning scheme, the schedule does not form part of the local government's planning scheme.

Section 5.1.17 (Regulated infrastructure charges)

This section defines a regulated infrastructure charge and provides further information on setting a regulated infrastructure charge. Subsection (1)(a) requires that the charge be for trunk infrastructure that services, or will service, the premises and is identified in the priority infrastructure plan. Subsection (2) clarifies that charges do not apply to activities authorized under the *Mineral Resources Act 1989*.

Section 5.1.18 (Regulated infrastructure charges notice)

This section defines, deals with the content of and specifies when a regulated infrastructure charges notice must be given.

Under subsection (1) a regulated infrastructure charges notice must state the amount of the charge, the land to which it applies, when it is payable and the trunk infrastructure network for which the charge has been imposed. The things that must be stated in the regulated infrastructure charges notice is considerably reduced compared to an infrastructure charges notice under section 5.1.8 due to the previously mentioned limitations on the application of regulated infrastructure charges compared to infrastructure charges under an infrastructure charges schedule.

Subsections (2) to (4) mirror the requirements of section 5.1.8 regarding infrastructure charges notices, with the exception of section 5.1.8(4) which relates primarily to charges on existing lawful uses which is not possible under a regulated infrastructure charges schedule.

Section 5.1.19 (When regulated infrastructure charges are payable)

This is the equivalent of section 5.1.8 and specifies when regulated infrastructure charges must be made. The requirements regarding timing of the payment are the same.

Section 5.1.20 (Application of regulated infrastructure charges)

This section is the equivalent of section 5.1.10 and clarifies that charges levied and collected for a particular infrastructure network must be used for supplying infrastructure for that network, or that there is no cross subsidization between networks. There is no equivalent of section 5.1.10(b) because it is not anticipated regulated infrastructure charges will include a component for State infrastructure.

Section 5.1.21 (Accounting for regulated infrastructure charges)

This section is equivalent to section 5.1.11 and is introduced to clarify that infrastructure charges collected by the local government do not need to be held in trust. This means the local government could use these funds for other purposes, provided it is able to supply the infrastructure when required. There is no equivalent of section 5.1.11(1), as it is not anticipated

regulated infrastructure charges will include a component for State infrastructure.

Section 5.1.22 (Agreements about, and alternatives to, paying regulated infrastructure charges)

This section is the equivalent of section 5.1.12 with regard to the ability to enter into an agreement to do other things as an alternative to paying a regulated infrastructure charge. The range of alternatives is limited compared to section 5.1.12 due to the more limited scope of regulated infrastructure charges previously noted.

There are no arrangements relating to infrastructure, which are necessary, but not yet available, to service the premises, as a regulated infrastructure charge is primarily intended to be levied in relation to an existing network. Similarly, there is no equivalent of section 5.1.10 for regulated infrastructure charges as such charges are effectively a network access charge, rather than being for specific infrastructure or a stated standard of service as is the case for infrastructure charges under an infrastructure charges schedule.

Section 5.1.23 (Regulated infrastructure charges taken to be a rate)

This is the equivalent of section 5.1.14 and the same provisions apply.

Division 6—Conditions local governments may impose for necessary trunk infrastructure

This Division allows local governments to impose conditions requiring the construction of trunk infrastructure in limited circumstances. The objective of the division is to ensure the most efficient 'roll-out' of trunk infrastructure required to service new development.

Circumstances where the provisions may be relevant include situations where development is generally consistent with the assumptions in the priority infrastructure plan, but essential infrastructure necessary to service the development is either unavailable or inadequate.

Other situations where this section may be relevant are where planned infrastructure crosses the premises and the proposed development may prejudice the future provision of the infrastructure.

It is anticipated these provisions would only apply in limited situations. This is because development that is too far removed from existing development 'fronts' or occurs considerably earlier than anticipated is likely to be either outside the priority infrastructure area or inconsistent with the assumptions about the location and timing of future development stated in the priority infrastructure plan. In these cases the additional trunk infrastructure cost provisions in division 5 would apply.

The ability to require such works be provided is imposed as a condition to give applicants the opportunity to challenge unreasonable conditions in the Planning and Environment Court.

Section 5.1.24 (Conditions local governments may impose for necessary trunk infrastructure)

Subsection (1) details when conditions for necessary trunk infrastructure can be imposed as follows—

- existing trunk infrastructure necessary to service the development (subsection (1)(a));
- trunk infrastructure is necessary to service the development but is not yet available (subsection (1)(b)); or
- trunk infrastructure identified in the priority infrastructure plan (PIP) crosses or traverses the premises (subsection (1)(c)).

In all cases, the planned trunk infrastructure that either services or crosses the premises must be identified in the PIP.

Subsection (2) clarifies that a condition under subsection (3) requiring the applicant to construct trunk infrastructure can be imposed even if the item of infrastructure required is different from the item identified in the PIP, provided the item delivers at least the same standard of service. For example, the PIP may indicate an area was expected to be serviced by a 375 mm diameter sewer. However detailed design has revealed site conditions that mean the sewer must be constructed at a flatter grade and consequently a 450 mm diameter sewer is required. Subsection (2) allows the local government to require construction of the 450 mm sewer.

Subsection (3) also allows a condition requiring the applicant to construct trunk infrastructure even if the infrastructure will service other premises.

For example, a development site may be a few lots removed from the existing development 'front', and water supply and sewerage services do not extend to the development site. Under the current arrangements, the local government could in this situation impose a condition to provide a non-trunk infrastructure connection to the existing infrastructure networks, in addition to the applicant paying charges for planned trunk infrastructure that will service the area, including the development site.

For example, the non-trunk connections might be a 100 mm diameter water main and 150 mm diameter sewer, while the trunk infrastructure planned to service the premises, and for which charges will be imposed, might be 300 mm diameter water and sewer mains.

However, it may be more cost effective and efficient, for both the applicant and the local government, for the local government to be able to condition the applicant to supply the planned trunk infrastructure and offset its cost against the charges for those networks. This would be instead of constructing a non-trunk infrastructure connection, which will most likely have to be duplicated or replaced, in addition to paying charges that are, in part, for the planned 'ultimate' infrastructure required. The only significant difference in the cost of providing a non-trunk connection as opposed to the planned trunk infrastructure is likely to be the cost of the larger pipe.

Subsection (4) requires the condition to state what infrastructure must be constructed and when.

Subsections (5) and (6) establish that if the infrastructure constructed under a condition under subsection (3) services other premises and its value is more than the value of the charge, the applicant not required to pay a charge for that network and is entitled to obtain, on agreed terms, a refund from the infrastructure provider for the proportion of the cost of the infrastructure that can be attributed to other users and is collected under an infrastructure charges schedule.

For example, if an applicant was required, under a condition under this section, to construct 100m of 300 mm diameter trunk water main with a value of $170 000, the water charge for the development was $95 000, the applicant could enter into an agreement to obtain a refund for $75 000 (the difference between the value of the infrastructure and the value of the charge), to be collected by the local government under the water infrastructure charges schedule from other development, as and when it occurs, for its proportion or share of use of the water main.

Subsection (7) applies where the value of the infrastructure is less than the value of the charge and requires that the local government offset the value of the infrastructure required to be constructed under the condition against any charge levied for the network the infrastructure will be part of. Using the previous example, if the value of the trunk water main was $170 000 and the water charge for the development was $195 000, the applicant would only be required to pay a water charge $25 000, or the difference between value of the infrastructure and the total water network charge, in addition to constructing the main.

Subsection (8) modifies the normal reasonable and relevant test for conditions under section 3.5.30. A condition for subsections (1)(a) or (b) is reasonable and relevant if the infrastructure is necessary to service the development and providing the planned trunk infrastructure is the most efficient and cost effective means of servicing the development. Therefore, before imposing a condition under these sections, the local government must be satisfied requiring construction of the infrastructure specified in the condition and identified in the PIP is the most efficient and cost effective means of servicing the development, taking into account the likely cost of the non-trunk infrastructure connection which would otherwise have to be supplied to service the premises and any charges which would also be applicable in these circumstances.

A condition for subsection (1)(c) is reasonable and relevant to the extent the infrastructure required to be constructed is not an unreasonable imposition on the development or the subsequent use of the premises. A condition for subsection (1)(c) might be unreasonable if it imposed severe restrictions on the type or scale of development possible on the premises, or effectively precluded any development from occurring.

Division 7—Conditions local governments may impose for additional trunk infrastructure costs

The triggers for additional cost assessment are now tied to elements of the priority infrastructure plan (PIP). An effort has been made to simplify and rationalize the additional costs that can be recovered.

An important point to note is that the division deals with costs of providing infrastructure. It does not seek to deal with the merits of a proposal. While the cost of providing infrastructure is 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 to the planning merits of the proposal in accordance with the decision making rules of IDAS. Similarly, the willingness of an applicant to pay the additional costs for trunk infrastructure for development outside the priority infrastructure area is not, of itself, reason to approve an application if there are other planning considerations that have not been satisfactorily resolved.

Section 5.1.25 (Conditions local governments may impose for additional infrastructure costs)

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

Subsection (1) clarifies that a condition about additional trunk infrastructure costs can only be imposed if the local government has previously given the applicant an acknowledgement notice under section 3.2.4. This limitation is imposed to ensure local governments inform applicants that additional trunk infrastructure costs may be imposed early in the development process.

Subsection (2) establishes a local government's right to impose a charge for the payment of additional trunk infrastructure costs in the specified circumstances. Subsection (2)(a) refers to development being inconsistent with the assumptions in the priority infrastructure plan (PIP). Examples may include—

- development for a different type of use being proposed (e.g. light industrial use instead of commercial as assumed in the PIP);
- development for a different scale or location (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 or causing an infrastructure capacity threshold to be reached earlier than anticipated and as a consequence bringing forward the construction of planned trunk infrastructure).

Also, development 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 for 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, in accordance with subsection (2)(b), that there will be additional costs in supplying the infrastructure, taking into account income from infrastructure charges levied on the development and any infrastructure supplied or to be supplied by the applicant. As additional costs are recovered through conditions of a development approval, they are challengeable in the Court on appeal.

Subsection (3) 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 requirements for the works to establish the infrastructure be identified. This is to ensure the condition is not taken to be an approval or authorization to construct the infrastructure without any other necessary approvals being obtained.

If the infrastructure the subject of the condition is necessary to service the premises, subsection (4) requires the payment to be made on the day works associated with the development commences. Paying for necessary infrastructure at the time construction commences is intended to ensure the infrastructure is available by the time construction for the development is completed. Otherwise, the payment must be made prior to plans of subdivision being approved or the use commencing.

Subsection (5) 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 (6) requires the local government to repay the payment. If however the local government had already supplied or commenced supplying the infrastructure for which the payment was required, it is only required to repay the proportion of the

payment not spent on or committed to (through detailed design costs or construction contractual arrangements) supplying the infrastructure.

Subsection (7) carries forward the intent of sections 3.5.35(2) and (3), which have been repealed. 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 area or catchment 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 premises.

Subsection (8) prevents a local government imposing an additional cost condition for a supplier of State infrastructure (such as a local government imposing a condition for additional costs for State schools). This is because those State infrastructure providers intended to have an additional infrastructure cost jurisdiction will be given specific powers under division 8 of this part.

Subsection (9) clarifies that an additional cost condition applies as well as any routine infrastructure charges or conditions regarding the supply of non-trunk infrastructure or essential trunk infrastructure.

Section 5.1.26 (Local Government additional trunk infrastructure costs in priority infrastructure area)

The previous section establishes the general parameters for conditions about additional trunk infrastructure costs. This section deals with those costs as they apply within 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 made by the applicant for that item.

For example, the priority infrastructure plan (PIP) 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. If the establishment cost of this trunk infrastructure is $100 000, the infrastructure charges levied on the applicant for trunk water and sewerage amount to $62 000 overall, and $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 (i.e. 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 (i.e. $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. However, under subsection (2), the applicant is entitled to obtain, on agreed terms, a refund from the infrastructure provider for the proportion of the cost of the infrastructure that can be attributed to other users and is collected under an infrastructure charges schedule.

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 than anticipated, subsection (1)(b)(i) establishes parameters for the additional costs to be determined. In these circumstances, the applicant must pay for any additional infrastructure required to service the premises.

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 under the local government's infrastructure charges schedule.

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 at 8 dwellings per hectare was proposed, the local government could 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 schedule 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.

However, if the local government had not actually expended funds on the proposed infrastructure or was not committed to providing infrastructure at the planned standard, it would be more difficult to justify imposing such a condition as the local government would not have been financially disadvantaged by the lesser scale of development. Additional costs are recovered by way of conditions and as such are open to challenge in the Court if there is not a reasonable basis for imposing the condition.

Demonstrating additional costs in these types of situations will depend on how the charges are calculated under the relevant infrastructure charges schedule. Section 5.1.25(2)(b) requires an infrastructure provider to take into account charges 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 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 time or to a different standard 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 and financial exposure in this regard in that the area may not be fully developed or developed within a reasonable timeframe.

Section 5.1.27 (Local government additional trunk infrastructure costs outside priority infrastructure areas)

This section deals with additional costs a local government can recover, for each infrastructure network servicing the premises, as they apply for development wholly or partly outside the priority infrastructure area.

Subsection (1) effectively allows a local government to impose a condition requiring an applicant to construct all infrastructure necessary to service the development. Subsection (1)(a) allows the local government to recover the costs of providing any trunk infrastructure made necessary by the development. Subsection (1)(b) relates to temporary infrastructure made necessary by the development and includes under subsection (i) any infrastructure necessary to ensure the safe and efficient operation of infrastructure provided under subsection (1)(a), while subsection (ii) deals with any temporary infrastructure made necessary by the development and provided instead of the 'ultimate' infrastructure provided under subsection (1)(a). Temporary infrastructure for subsection (1)(b)(i) may include items such as an oxygen injection system for an under-utilized sewer, a re-chlorination system for an under-utilized water main, or temporary intersection treatments on a road. Temporary infrastructure under subsection (1)(b)(ii) might include 150 mm diameter water and sewer mains instead of the 450 mm diameter mains ultimately required, an on site detention basin instead of catchment drainage works, or a two land road instead of the four land road ultimately required.

Subsection (1)(c) allows the local government to also recover the decommissioning, removal and rehabilitation costs for any temporary infrastructure provided under subsection (1)(b).

The maintenance and operating costs, for a period of up to five years, for any infrastructure supplied under subsections (1)(a) or (b) can also be recovered under subsection (1)(d). For example, maintenance costs might include 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.

Subsections (2) and (3) refer to development of land in areas that, while outside the priority area, are still earmarked for development for urban purposes in the longer term. In these areas subsection (3) states that the trunk infrastructure made necessary by the development under subsection (1)(a) includes the infrastructure necessary to service the balance of the area earmarked for urban purposes. In some cases it may not be practical or

desirable for the 'ultimate' infrastructure to be supplied for a single development. In these cases temporary infrastructure may be more appropriate together with a contribution for the development's share of the cost of the 'ultimate' trunk infrastructure required to service the area. In such cases the contribution towards the cost of the ultimate trunk infrastructure is only a proportion of the costs the local government could recover under subsection (1)(a), while the temporary infrastructure required would fall under subsection (1)(b)(ii).

Examples include—

- provision of a temporary 100 mm diameter water main to the development until the larger 300 mm 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 development;
- the cost of a temporary signalized intersection plus a contribution towards a grade separated intersection; and
- 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 is also 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 infrastructure plans (PIP) and areas that take account of development approved by the local government outside the priority infrastructure area. Where temporary infrastructure is required, the local government is also able to recover the cost of decommissioning and removing the infrastructure and rehabilitating the site.

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. 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 promote development in areas where

infrastructure is available or planned to meet anticipated future development 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, as these must still be assessed on their planning merits. Rather the section is about ensuring the applicant, not the community as a whole, meets the infrastructure costs of unplanned development.

An applicant is not entitled to a refund from the local government in these circumstances but such a refund arrangement could still be entered into if both parties agree.

Division 8—Conditions State infrastructure providers may impose for infrastructure

This Division outlines the conditioning powers for State infrastructure providers and general requirements for imposing conditions. These powers include 'routine' conditions and additional infrastructure cost conditions for referred applications. The ability to impose such conditions relies on the agency being a State infrastructure provider, which is a concurrence agency that supplies State infrastructure. The current provisions only apply to the Department of Main Roads, although other State infrastructure providers will be integrated into this framework in the future. Main Roads' existing application referral triggers will remain the same.

Section 5.1.28 (Conditions State infrastructure providers may impose)

This section outlines the types of conditions a State infrastructure provider can impose in respect of a referred application. Under subsection (1) the condition must relate either to the infrastructure or works to protect the operation of the infrastructure. Under subsection (2), a condition can only be for protecting or maintaining the safety or efficiency of the providers network, or additional infrastructure costs.

The examples of possible conditions under this division have been included to clarify and define some of the areas where State infrastructure

provider's conditioning powers are expected to be used and are explained as follows—

Examples of a condition for safety and efficiency include—

- a deceleration lane and entry access to a shopping centre development(Any development has to undertake works to provide safe access where directly accessing a State-controlled road. Maintaining the safe and efficient operation of the State-controlled road may require the construction of a deceleration lane approaching the access;
- traffic signals at an intersection 1 block from a shopping centre development—The road impact assessment for a proposed development can highlight the need for works to address the impacts of the development on State-controlled roads remote from the proposed development site. In this instance, a set of traffic signals may be required 1 block from the proposed shopping centre to facilitate the safe movement of the increased number of vehicles making a right turn from the State-controlled road to visit the proposed shopping centre;
- upgrading transverse drainage under a State-controlled road because of increased hard stand from development—Many developments result in large sealed concrete or bitumen surface areas that were previously able to soak up rainfall. This can result in larger stormwater flows under the State-controlled road, often reducing the flood immunity of the road, affecting both the safety and efficiency of its operation. The flood immunity of the road can be restored by the developer increasing the size of transverse drainage under the road; and
- road shoulder widening added to reconstruction of a road because of increased traffic loading to stop edge fretting (wear)—Often, the existing pavement structure on a State-controlled road is not capable of providing ongoing safe service where a development generates significant truck traffic. A development can not only be conditioned to upgrade the pavement structure to accommodate these increased loads, but also to widen the shoulders or the bitumen surface to maintain safety for the increased number of trucks involved in passing and overtaking movements.

An example of a condition for additional State infrastructure costs is—

- contribution for the construction of road works on a State-controlled road when rural land not in the priority infrastructure area is developed as a large townhouse estate, such as for the provision of footpaths, kerb and channel with ancillary drainage and a landscaped noise buffer—Development located outside the priority infrastructure area should pay the cost of infrastructure improvements needed to service the development so it is consistent with planning requirements. The example illustrates some of the costs that may arise and could be applied when a large unanticipated development occurs. A large townhouse development would require works on the adjacent State-controlled road such as footpaths, kerb and channel, drainage and landscaped noise buffering. These works would not normally exist or be provided in a rural area, yet would be planned and supplied by infrastructure providers to service development of this type.

Subsection (3) allows a State infrastructure provider to impose a condition requiring infrastructure to be supplied to a different standard to that stated in the priority infrastructure plan (PIP), or require different infrastructure to be provided. Under the revised definition of development infrastructure, local governments are able to plan and charge for the local function of State-controlled roads. Where a local government chooses to exercise this ability, the PIP will identify proposed 'local works' (most likely intersection treatments to address local traffic needs) on State-controlled roads. Subsection (3) is specifically intended to allow the Department of Main Roads to require different infrastructure, or infrastructure of a different standard, where this is necessary to ensure the continued safe and efficient operation of the State-controlled road for it State or regional transport functions.

Subsection (4) defines when a local government may have to give the money it has collected for an item to a supplier of State infrastructure to be used for the provision of a different item. This is limited to situations where the infrastructure required to be supplied under a condition in accordance with subsection (2) replaces infrastructure the local government planned to provide (subsection (4)(a)), and provides at least the same standard of service as the replaced item (subsection (4)(b)).

If this is the case, subsection (5)(a) requires that the local government provide any charges (or the component of any charges) collected for the infrastructure it planned to supply to the State infrastructure provider to be used either to—

(i) provide the 'new' infrastructure, or reimburse the person who constructed the 'new' infrastructure; or alternatively

(ii) enter into an agreement between the local government, the person required to construct the infrastructure and the State infrastructure provider about the construction of the item and the reimbursement to the person of charges collected from other users for their share of use of the item.

It is important to note these provisions are intended to apply to charges already collected and to be collected in future for the infrastructure the local government had intended to supply.

For example, a local government may have planned to install traffic signals at the intersection of a State-controlled road with a major local road. However, the infrastructure provider (Main Roads) may have instead required a developer to construct, under a condition imposed under this division, a grade separated interchange to meet State or regional transport needs. The local government should make available to either the developer or the State infrastructure provider the funds it has already collected from other users for the proposed signalised intersection. The developer or the State infrastructure provider must use these funds to provide the grade-separated interchange. The local government would continue to collect charges from other users for the signalized intersection, since this is the standard of infrastructure required to meet local transport needs, and refund these charges to the developer or State infrastructure provider who constructed the infrastructure. The local government is not required to amend its charges schedule to recover the balance of the cost of the grade separated interchange, because this was provided to meet State or regional transport needs, and State or regional transport functions of State controlled roads cannot be charged for.

Under the current arrangements, there is no mechanism for either the local government or the State infrastructure provider to obtain contributions towards the cost of the required infrastructure from all users. In most cases, a single developer will be required to provide the infrastructure by the State infrastructure provider when the development causes a capacity threshold to be exceeded. While the State infrastructure will in most cases contribute towards the cost of the infrastructure in some way, other development that uses the infrastructure does not. Under the proposed arrangements, the cost of the infrastructure can be spread more equitably across all users.

Where the item the State infrastructure provider requires to be constructed does not provide at least the same standard of service as the item the local government plans to provide to meet local traffic needs, these provisions do not apply. This is because transferring funds for an item providing a lower standard of service will either reduce the standard of service for the funds collected, or leave the local government to fund the planned item when required from other sources.

Section 5.1.29 (Requirements for conditions about safety or efficiency)

This section details the matters a condition about safety and efficiency must state. The State infrastructure provider can require the applicant to either construct the infrastructure or works, or make a contribution towards the cost of the infrastructure or works. A condition under this section must state the infrastructure to be constructed or contribution to be made, and when the infrastructure must be constructed or the payment made.

Safety and efficiency is defined in section 5.1.28(6). The State infrastructure provider is able to impose a condition about safety and efficiency in respect of any referred application for which it is a concurrence agency. Safety and efficiency in effect constitutes the State infrastructure providers 'common' conditioning power. By comparison, additional infrastructure cost conditions are only applicable in circumstances where the referred application is also inconsistent with the assumptions about future development stated in the priority infrastructure plan, or located wholly or partly outside the priority infrastructure area identified in the priority infrastructure plan (PIP).

Section 5.1.30 (Requirements for conditions about additional infrastructure costs)

This section outlines requirements for conditions imposed by a State infrastructure provider for additional infrastructure costs. Additional infrastructure costs are not defined, but are essentially the extra costs to the State infrastructure provider for servicing unanticipated or unplanned development. As is the case for local government, the trigger, under subsection (1), for assessing whether a proposal imposes additional infrastructure costs on the State infrastructure provider is the proposal being inconsistent with the assumptions about future development stated in the priority infrastructure plan or being located wholly or partly outside the priority infrastructure area. However, for a State infrastructure provider the

additional infrastructure cost conditioning power only operates in respect of applications for which the State infrastructure provider is a concurrence agency. The notice required under section 3.2.4 will inform State infrastructure providers when a local government has determined development is 'inconsistent', and thus when the State infrastructure provider's conditioning powers include additional infrastructure costs as well as the more routine safety and efficiency.

The balance of this section is similar to the provisions for additional trunk infrastructure cost conditions for local government under section 5.1.25 and similar comments apply.

Section 5.1.31 (State infrastructure provider additional infrastructure costs in priority infrastructure areas)

These provisions closely follow the provisions for additional trunk infrastructure cost conditions for local government under section 5.1.26 and similar comments again apply. The main difference is that there is no ability for State infrastructure providers to impose conditions for additional infrastructure costs for development of a lesser scale or intensity than anticipated, as this is less likely to have adverse implications for State infrastructure providers.

Subsection 5.1.31(1)(a) defines the additional infrastructure cost for infrastructure to be supplied earlier than anticipated as the difference between the present value of the establishment cost of the infrastructure made necessary by the development and the present value of the establishment cost of the infrastructure if the approval had not been given. The intent is that the applicant be responsible for paying the infrastructure provider's costs in 'bringing forward' the construction of planned infrastructure. If no infrastructure was planned, these costs would be the establishment cost of the infrastructure. The infrastructure provider has the discretion to decide whether or not to bring forward construction of the infrastructure and recover the cost of doing so.

For example, if an infrastructure item is to be supplied by a State agency in the future, the present value of that item will be less than the establishment cost of the item if built today. If an application makes that item of infrastructure necessary now to support the proposed development, the State infrastructure provider can condition that the applicant pay the difference between these two values (the current establishment cost and the present value of the item if constructed in the future). In this way the applicant has paid the financing costs associated with the early construction

of the item and as far as the State infrastructure provider is concerned, there should be no financial difference between borrowing to construct the item now or in the future. If however, no item is planned or to be supplied by the State agency there would be, at this time, no plans for how the item is to be funded in the future. In this case the financial difference for the State agency is the whole establishment cost of the item and so that value can be conditioned to be paid.

For development of a different type, scale or intensity, the State infrastructure provider is, under subsection (1)(b), able to require payment for the establishment cost of the additional infrastructure made necessary by the development.

Subsection (2) provides an entitlement for the applicant to enter into an agreement with the State infrastructure provider and the local government to obtain a refund from other users of the infrastructure for their share of use of the infrastructure. This will only be applicable if the infrastructure was infrastructure the local government planned to provide on the State-controlled road to meet local traffic needs and for which charges were being collected under an infrastructure charges schedule. If this is not the case, the applicant cannot obtain a refund of charges collected from other users because on State-controlled roads the local government can only charge for planned items necessary to meet local traffic needs.

Section 5.1.32 (State infrastructure provider additional infrastructure costs outside priority infrastructure areas)

These provisions again closely follow the provisions for additional trunk infrastructure cost conditions for local government under section 5.1.27 and similar comments again apply.

Division 9—Miscellaneous

Section 5.1.33 Agreements for infrastructure partnerships

Section 5.1.33 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 an area larger than the premises) and be reimbursed as further development that utilizes the infrastructure occurs.

In most cases the local government would collect charges from the other users of the infrastructure for their share of the infrastructure under an infrastructure charges schedule and pass this money onto the original developer.

Section 5.1.33 provides a broad head of power for such agreements to be entered into and is not limited to trunk development infrastructure.

Section 5.1.34 (Sale of certain land held in trust by local governments)

This section replaces sections 5.1.16 to 5.1.18. The only substantive change to the provisions is subsection (1)(d), which is intended to ensure that land is not disposed of if the disposal would be contrary to a current infrastructure agreement under which the local government acquired the land. If however the development the subject of the agreement and any related infrastructure were completed, the agreement should be of no further effect and disposal of land acquired under the agreement would not be inconsistent with the agreement unless the land was specifically dedicated for parkland in perpetuity. If the agreement was still in force, the local government could seek to amend the agreement, with the consent of the other parties to the agreement, to allow disposal of the land.

PART 2—INFRASTRUCTURE AGREEMENTS

Amendment of section 5.2.1 (Meaning of "infrastructure agreement")

Clause 23 amends s 5.2.1 to update the references to the other sections of the Act that allow agreements about infrastructure to be entered into.

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

Clause 24 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 ch 5.

Amendment of section 5.2.7 (Infrastructure agreements prevail if inconsistent with development approval)

Clause 25 amends section 5.2.7. Infrastructure agreements are a mechanism that allow an applicant and local government to vary payments required under a notice of charge or provide infrastructure instead of paying the charge etc. *Clause 22* amends section 5.2.7 by including subsection (2) to ensure the rights and obligations established under an infrastructure agreement prevail over the requirement to pay a charge as stated in a notice of charge. For example, an applicant would not be required to pay the charge stated in an infrastructure charges notice if the applicant had entered into an agreement with the local government to construct the infrastructure instead of paying the charge.

PART 4—COMPENSATION

Amendment of s 5.4.4 (Limitations on compensation under ss 5.4.2 and 5.4.3)

Clause 26(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.

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 (PIP) and trunk infrastructure respectively. These changes relate to terminology only and the intent and effect of the provisions is unchanged.

PART 7—PUBLIC ACCESS TO PLANNING AND DEVELOPMENT INFORMATION

Division 2—Documents available for inspection and purchase or inspection only

Amendment of s 5.7.2 (Documents local government must keep available for inspection and purchase)

Clause 27 amends section 5.7.2 to include provisions about an infrastructure charges register and regulated infrastructure charges register.

Subsection (1A) details the matters an infrastructure charges register or regulated infrastructure charges register must state. This includes details of charges paid, charges outstanding and, if infrastructure was supplied instead of paying all or part of a charge, any infrastructure still to be supplied. This is to ensure details of any outstanding charges for premises are publicly available.

Division 3—Planning and development certificates

Replacement of s 5.7.9 (Limited planning and development certificates)

Clause 28 amends section 5.7.9 to require that a limited planning and development certificate identify any infrastructure charges schedule or regulated infrastructure schedule applying to the premises.

Section 5.7.9 is also amended to require a standard planning and development certificate to include a copy of any information recorded for the premises in the infrastructure charges register or regulated infrastructure charges register.

Amendment of s 5.7.10 (standard planning and development certificates)

Clause 29 amends section 5.7.10 to include provisions relevant to infrastructure charging.

CHAPTER 6—SAVINGS AND TRANSITIONALS, REPEALS AND CONSEQUENTIAL AMENDMENTS

PART 1—SAVINGS AND TRANSITIONALS

Division 8—Applications made or development carried out after the commencement of this division

Amendment of s 6.1.31 (Conditions about infrastructure for applications)

Clause 30 amends subsection (2)(c) to clarify that the ability to impose such conditions on development is not limited to the types of development, types of development application, or infrastructure networks for which conditions could be imposed under the repealed Act. This means a properly prepared local planning policy under a transitional planning scheme, or a planning scheme policy under an IPA planning scheme, could allow a local government to impose conditions on types of development (e.g. building or works), development applications (code assessable material change of uses) and infrastructure that was not chargeable (transport and drainage) under the repealed Act.

Subsection (3)(b) is amended to reflect the two year extension of these transitional infrastructure funding arrangements under the *Plumbing and Drainage Act 2002*, and also introduces the ability for the Minister to further extend the operation of these provisions for individual planning schemes.

Subsection (4) is amended to remove a reference to benchmark development sequencing and subsection (5) is amended to insert a reference to the additional infrastructure cost provisions of Chapter 5, part 1.

Division 10—Miscellaneous

Replacement of s 6.1.45 (Infrastructure agreements)

Clause 31 amends section 6.1.45 to recognise agreements of the type described in the section whether made under the IPA or the repealed Act. The inclusion of subsection (3)(a)(ii) will allow public sector entities to continue to bind themselves under such agreements, and so provide certainty for industry.

Insertion of new ch 6, pt 2, div 3

Clause 32 introduces a range of transitional provisions for infrastructure.

PART 2—TRANSITIONAL PROVISIONS FOR INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003

Division 3—Transitional provisions for infrastructure

New s 6.2.5 (Transitional provisions for infrastructure charges plans)

Section 6.2.5 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 prepared under subsection (2), once adopted by the local government, to operate in the way described under subsection (1).

Subsection (4) is added to validate infrastructure charges plans that include park embellishments and any charges levied under such plans prior to the ability to charge for embellishments coming into effect.

Section 6.2.6 (When planning schemes do not require priority infrastructure plans)

This section effectively exempts local governments from the requirement to include a priority infrastructure plan in their first IPA planning scheme until it has been adopted. This is to allow local governments to focus their attention on the preparation of IPA compliant planning schemes by the June 2004 deadline, and then incorporate infrastructure planning and charging provisions by way of subsequent amendments.

Section 6.2.7 (Priority infrastructure plans)

Section 6.2.7 is introduced to validate work undertaken by local governments in the preparation of priority infrastructure plans prior to the commencement of the *Integrated Planning and Other Legislation Amendment Act 2001*. The section requires that the plan prepared comply with any criteria for priority infrastructure plans prescribed under the Act and that the Minister has given approval for the local government to adopt the plan under section 18 of schedule 1. If this is the case, the priority infrastructure plan is taken to be a priority infrastructure plan prepared under the Act, notwithstanding that the process prescribed for preparing a priority infrastructure plan made not have been followed in its entirety. Compliance with the criteria for priority infrastructure plans would include agreement being reached between State infrastructure providers and the local government about the assumptions and size and location of the Priority Infrastructure Area. If a priority infrastructure plan does not comply with the relevant criteria, it is intended the Minister condition their approval to publicly notify the plan under section 11 of Schedule 1 to ensure compliance rather than requiring the local government to restart the process from the beginning.

Section 6.2.8 (Infrastructure charges schedules)

Section 6.2.8 operates for infrastructure charges schedules prepared by local governments prior to the commencement of the Act in the same way as the transitional provisions for priority infrastructure plans described above.

Section 6.2.9 (Reduction of charge for infrastructure supplied under conditions)

Section 6.2.9 requires a local government to discount a charge to the extent the charge relates to infrastructure an applicant was required to supply or pay for in accordance with a condition imposed under section 6.1.31 of the IPA. For example, a development proposal was subject to a condition under 6.1.31 to construct or contribute towards the cost of road works adjacent to its site. The local government has prepared an ICP or ICS that includes the works constructed or paid for by the development, and intends to levy a charge on the development.

Under section 6.2.9, the charge on the development must be discounted to take account of the works carried out or paid for by the development. This does not mean the entire cost of the works or contribution will be credited against the charge (unless the local government chooses to do so as part of a previous contributions credit arrangement), but that the charge will be discounted by an amount equivalent to the proportion of the charge that is for the works constructed or paid for by the development.

Section 6.2.10 (Appeals about infrastructure contribution conditions imposed under planning scheme policies)

This section is included to validate planning scheme polices about infrastructure that were prepared by local governments as infrastructure charges plans but have, as an interim measure, been adopted as planning scheme policies due to difficulties in implementing infrastructure charges plans under the current legislation. The main issue is to validate the inclusion of transport and drainage infrastructure. Any appeal about a condition imposing a requirement to pay a contribution for these networks must proceed as if the appeal were an appeal under section 4.1.36. This is the mechanism for appeals about infrastructure charges and would allow applicants to appeal about the amount of the contribution and how the local government set the amount in the policy, but not the local government's right to impose charges for these networks under the policy.

SCHEDULE 1—PROCESS FOR MAKING OR AMENDING PLANNING SCHEMES

PART 1—PRELIMINARY CONSULTATION AND PREPARATION STAGE

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

Clause 33 amends Schedule 1 by the inclusion of section 8A, which specifies consultation requirements in relation to priority infrastructure plans, which apply in addition to any other consultation requirements under Schedule 1. Under subsection (1), these requirements apply where a local government is preparing a new planning scheme that includes a priority infrastructure plan, or is amending a planning scheme to include a new or amend and existing a priority infrastructure plan.

In accordance with subsection (2), this consultation must be undertaken with the suppliers of State infrastructure (State schools, public transport, State-controlled roads and emergency services) prior to the local government making a resolution proposing the planning scheme or amendment under section 9 of Schedule 1. The purpose of this consultation is to allow suppliers of State infrastructure to have input into and reach agreement on the local governments assumptions about future growth (population projections, development densities, type, location, timing etc) and the location and size of the priority infrastructure area.

Where agreement cannot be reached, a process is provided under subsection (3), whereby the Minister can form a committee to provide advice about the matters, or receive representations from the parties, prior to deciding the matter. This ensures that there is agreement between the suppliers of state and local government infrastructure about future growth and its location, early in the priority infrastructure plan preparation process. It is expected all infrastructure suppliers will use the agreed information as the basis for their respective infrastructure planning activities.

SCHEDULE 5

COMMUNITY INFRASTRUCTURE

Amendment of schedule 5 (Community infrastructure)

Clause 34(1) includes a new item (ia) defining miscellaneous transport infrastructure under the *Transport Infrastructure Act 1994* as community infrastructure.

Clause 34(2) amends item (o) of Schedule 5 to include the correct reference to the definition of 'transport infrastructure'.

SCHEDULE 10

DICTIONARY

Amendment of sch 10 (Dictionary) [Infrastructure]

Clause 35 adds, amends or omits a number of definitions for infrastructure. The definitions for "benchmark development sequence", "development infrastructure item", and "infrastructure charges plan" have been deleted. New or amended definitions are as follows—

"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 infrastructure"—replaces definition of "development infrastructure item" in section 5.1.1 and is amended to remove reference to items and incorporates existing 'sub-definitions' into relevant clauses of primary definition.

Item (a)(ii) includes the local function of 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.

"establishment cost"—this definition is included to clarify what costs associated with the planning and provision of trunk infrastructure can be recovered through infrastructure charges. The definition includes costs associated with the ongoing administration of the infrastructure charges schedules for the infrastructure constructed.

"infrastructure charge"—is defined by reference to section 5.1.6.

"infrastructure charges notice"—is defined by reference to section 5.1.8.

"infrastructure charges plan"—is defined as an infrastructure charges plan prepared prior to the commencement of the *Integrated Planning and Other Legislation Amendment Act 2003* to give effect to various transitional provisions.

"infrastructure charges schedule"—is defined by reference to section 5.1.5.

"infrastructure charges register"—is defined by reference to s 5.7.2.

"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.

"non-trunk infrastructure"—is inserted for general conditioning powers under chapter 5, part 1, division 2. Non-trunk infrastructure is development infrastructure that is not trunk development infrastructure.

"plans for trunk infrastructure"—are the plans for each infrastructure network (including existing and planned infrastructure) necessary to service existing development and anticipated growth at the local government's desired standards of service.

"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 urban areas and those additional future urban areas required to accommodate between 10 and 15 years growth for residential, retail or commercial and industrial purposes, not including the 'infill' growth that will occur in the existing urban area. The existing urban area can be defined by the local government based on whatever criteria are appropriate for the areas. For large urban local governments the sewerage network is suggested as a starting point). 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, scale, location or timing 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. For prescribed local governments, priority infrastructure plans will be required to be reviewed a minimum of every 4 years.

"regulated infrastructure charge"—is defined by reference to section 5.1.17.

"regulated infrastructure charges notice"—is defined by reference to section 5.1.18.

"regulated infrastructure charges register"—is defined by reference to section 5.7.2.

"regulated infrastructure charge schedule"—is defined by reference to section 5.1.16.

"State infrastructure"—is inserted to describe the infrastructure for which State agencies may have input into the preparation of the priority infrastructure plan. The range of State infrastructure is consistent with the previous cost impact provisions.

"State infrastructure provider"—is a new definition that defines those suppliers of State infrastructure who also have a concurrence jurisdiction for certain applications, and hence the ability to impose conditions about State infrastructure. At present the only State infrastructure provider is the Department of Main Roads, whose conditioning powers include safety and efficiency, and additional infrastructure costs in more limited circumstances.

"statement of intent"—a new definition that links the statement of intent a State infrastructure provider may require to be referenced in the priority infrastructure plan to the *Transport Infrastructure Act 1994.*

"trunk infrastructure"—is inserted for higher order development infrastructure. The 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.

Division 4—Other amendments

This division contains a range of individual amendments to the IPA capable of immediate or early commencement.

Key features of this division include—

- reformed and simplified arrangements for protection of existing use rights in chapter 1 part 4;
- a range of reforms for planning schemes and planning scheme policies to clarify and simplify their role;
- clarified arrangements for the relationship between statutory covenants, planning schemes and development approvals;
- a series of reforms for preliminary approvals, to clarify and support their role in approvals of a conceptual nature;
- reformed and clarified rules for decisions under code assessment;
- highly simplified compliance assessment arrangements to facilitate early commencement of compliance assessment for conditioning; and
- transitional arrangements.

CHAPTER 1—PRELIMINARY

PART 3—INTERPRETATION

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

Clause 36 (1) amends the definition of building work by including a new subsection (4).

Amendments contained in the *Queensland Heritage and Other Legislation Amendment Act 2003* (QHOLA Act) amend the definition of building work to include a new subsection (2) and (3) specific to building work on a heritage building. It is anticipated that the amendments under the QHOLA Act will commence before the amendments contained in this Bill.

New subsection (4) clarifies that building work does not include certain work under the *Water Act 2000* or tidal works. Together with the amendments to subsection (2)(a) of the definition of operational work

Subsection (4) clarifies that for the purpose of applying IPA, all tidal works and all works for the taking or interfering with water under the *Water Act 2000* are operational works.

The works under the *Water Act 2000* excluded from the definition of building works are described as "operations of any kind and all works constructed or installed that allow taking, or interfering with, water…". For the purposes of excluding these works from building work, this description is not intended to include any associated buildings or structures that are not actually directly involved with the taking or interfering with water. For example, a water out-take and treatment plant may involve weirs, pumps and other equipment that are directly involved with the taking of water, which are not building work. However any buildings housing or sheltering such equipment, or ancillary buildings for administration or other purposes would still involve building work.

Clause 36 (2) amends the definition of operational work to include a new subsection (h) clarifying that tidal works or work in a coastal management district is operational work. This new subsection accommodates the roll-in of the *Coast Protection and Management Act 1995*.

Clause 36 (2) also amends the definition of operational work by clarifying what the term does not include. The provision now uses the term "any element of work…". This is intended to convey more clearly that some of the descriptive terms in subsection (1) may encompass development other than operational work. In particular, subsection (2) clarifies there may be building work, or plumbing and drainage work involved with the activity listed in subsection (1), although such an activity may also involve a material change of use. For example, placing an advertising device may involve building work, if the device involves erection of a freestanding billboard. It may also involve a material change of use, if the billboard is a freestanding structure erected on vacant land, and not ancillary to another use. However painting or plastering an advertising sign on such a freestanding structure or on an existing building, or placing a mobile device that is not a building or structure, would constitute operational work.

Replacement of ch 1, pt 4

Clause 37 replaces the existing chapter 1 part 4. That part currently consists of three divisions. Division 1 deals with rights acquired before the commencement of IPA in March 1998. Division 2 deals with rights

acquired after the commencement of the IPA, and division 3 with the affect of the commencement of other Acts on rights under IPA.

The current structure of the part reflects an expectation during its original drafting that the requirements for protecting pre-existing uses and work would differ from those for uses and work established under the IPA. In fact, these differences are minor and there is consequently significant duplication between divisions 1 and 2.

In addition, several provisions in divisions 1 and 2 were originally included to emphasise the distinction between the existing rights provisions of IPA and those of the repealed *Local Government (Planning and Environment) Act 1990*, which were considered deficient in several respects. These provisions have now been reviewed and are considered unnecessary given that it is now five years since the implementation of the IPA arrangements.

Consequently this Bill includes a consolidated and simplified existing rights regime. However the scope, and effect of the provisions are intended to be the same as that as under the replaced part.

There are no longer separate divisions dealing with pre-existing rights and rights acquired under IPA. Instead, section 1.4.1 "brings forward" existing lawful use rights acquired before the commencement of IPA, and subsequent sections deal with the treatment under IPA of those rights and rights acquired subsequently. Section 1.4.3 (dealing with buildings or works as opposed to uses) has been designed to apply to buildings or works constructed or effected before or after the commencement of IPA.

PART 4—EXISTING USES AND RIGHTS PROTECTED

1.4.1 (Lawful use of premises on 30 March 1998)

This section 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. 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 (i.e. is not abandoned).

1.4.2 (Lawful use of premises protected)

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

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 any requirement to be altered or removed, to the extent they are lawful. If the buildings and works were lawfully constructed under another Act, their lawfulness under the IPA is implied.

The section refers to buildings or works "constructed or effected". The term "effected" is intended to apply to works such as excavation or tree clearing in which a work is not "constructed" in the common sense of the word.

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.

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.

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).

1.4.7 (State forests)

This states that certain activities are taken to be existing lawful uses of a State forest for IPA. The effect of the amendment is that, to the extent State forests are used for those activities, no approval is required under a planning scheme. This amendment responds to difficulties the State experiences compared to private forestry interests in establishing the lawfulness of existing uses in the State's forestry estate. These include—

- the State is obliged under the Forestry Act 1959 to manage State Forests in a manner consistent with their primary purpose of forestry[1]. This obligation includes a requirement for the chief executive administering that Act to consider certain listed ancillary uses for State forests, consistent with the Act's objects. This creates potential for a conflict to arise between the administration of the Forestry Act 1959 and the IPA. Private forestry concerns are not constrained in this way;
- the vast extent of the State's forestry estate means it is sometimes difficult to establish the existence of lawful uses for given "premises" within that estate.

Several options were available for addressing these difficulties, including the exemption of development for these purposes from planning scheme control under schedule 9. It was considered however that addressing the issue under this part best reflected the specific nature of the difficulties identified above.

Consequently, this amendment confirms that the basic use of State forests for forestry, conservation, grazing and recreation consistent with the duties imposed by the *Forestry Act 1959* are taken to be existing lawful uses under the IPA.

1 See the *Forestry Act 1959* section 33 (Cardinal principal in management of State forests)

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. The development is subject to regulation under Schedule 8 from the date of commencement of any applicable provision of the schedule.

CHAPTER 2—PLANNING

PART 1—LOCAL PLANNING INSTRUMENTS

Division 5—Planning Scheme Policies

Amendment of s 2.1.2 (Area to which planning schemes apply)

Clause 38 amends s 2.1.2 by inserting a new subsection (2) to clarify the area to which a planning scheme applies. This amendment was necessary to facilitate the integration of approvals for prescribed tidal works under the *Coastal Protection and Management Act 1995* into IDAS, and the requirement for local government to be assessment manager for prescribed tidal works.

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

Clause 39 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 to provide guidance about how discretion is to be exercised under a local dimension of a planning scheme.

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

Clause 40 amends s 2.1.18 to further clarify 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 be applied in development assessment are clearly available in a planning scheme policy, the making of which follows a publicly accountable process. The amendment supports this original intention.

Division 6—Local planning instruments generally

Amendment of s 2.1.23

Clause 41 amends s 2.1.23 to further clarify[2] the relationship between the planning scheme and a planning scheme policy. New subsection (4) clarifies what a planning scheme policy may do.

Replacement of s 2.1.25 (Covenants not to conflict with planning schemes)

Clause 42 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 amendment also seeks to resolve conflict between this section and s 3.5.37. By inserting the term "Subject to section 3.5.37…" at the beginning of the section, the effect of the amendment will be that if, as a condition of a development approval, or under an infrastructure agreement, an applicant enters into a statutory covenant, the covenant may conflict with the planning scheme. This is because the IPA envisages that in certain circumstances, justifiable on planning grounds, a development approval

2 See also amendments for section 2.1.16 and 2.1.18

(including a condition for entering into a covenant) may be in conflict with a planning scheme.

PART 4—STATE PLANNING POLICIES

Amendment of section 2.4.6 (Repealing State planning policies)

Clause 43 amends subsection (3) to enable the Minister to specify a day from which the repeal of the SPP is effective.

CHAPTER 3—INTEGRATED DEVELOPMENT ASSESSMENT SYSTEM

PART 1—PRELIMINARY

Amendment of s 3.1.2 (Development under this Act)

Clause 44 amends section 3.1.2 to reflect the movement of schedule 8, part 3 into a new schedule (schedule 9), and to clarify the application of that schedule.

Section 3.1.2(2) currently states schedule 8 may identify exempt development that a planning scheme may not make self-assessable or assessable. This development is identified in schedule 8, part 3. The existing wording of this subsection together with the structure of schedule 8 has created misunderstanding about their intended scope and application.

The reference to exempt development in this subsection is incorrect. The subsection was intended to identify any development not intended for regulation under a planning scheme. This may include exempt development, but may also include development that is assessable or self-assessable under schedule 8 parts 1 or 2.

The effect of this mistake has been compounded by the location of the development referred to in this subsection in part 3 of schedule 8. This has given rise to the belief that schedule 8 parts 1 and 2 should be read subject to schedule 8 part 3, and the effect of part 3 is to identify development that is generally exempt from regulation, not merely exempt for a planning scheme.

The role of schedule 8, part 3 is in fact intended to be quite different from that of parts 1 and 2. While parts 1 and 2 have general application for development, part 3 is intended only to identify constraints upon regulation under a planning scheme.

This Bill reflects the intended character of schedule 8, part 3 by—

- amending section 3.1.2(2) to omit the term "exempt"; and
- creating a new schedule (schedule 9) entitled "Development that is exempt from assessment against a planning scheme"

Amendment of s 3.1.5 (Approvals under this Act)

Clause 45 amends section 3.1.5. 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).

Replacement Section 3.1.6 (Preliminary approval may override a local planning instrument)

Clause 46 replaces and substantially changes section 3.1.6 to facilitate a range of key reforms to the preliminary approval process, particularly as it relates to larger "conceptual" approvals, and staged or "layered" approvals. In summary, the reforms in the Bill for preliminary approvals are (

- 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 "layered, and development being applied for is subject to code assessment because of the operation of a preliminary approval for an earlier stage;
- a preliminary approval for a material change of use may vary the effect of the planning scheme for any 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 (e.g. for building height, bulk or density), or associated 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. For example, a preliminary approval for building work may substitute a new code for the work based on an innovative approach that nevertheless still achieves the objectives of the planning scheme; and
- 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.

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 for material change of use, or other development related to the material change of use should be assessed or dealt with by—

- requiring that development be impact or code assessable, self-assessable or exempt development; and
- specifying codes for the code assessable or self 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 that development only 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 particular, these variations do not constitute a "change" to the planning scheme for the purposes of chapter 5 part 4. When the substitute provisions "fall away" the use or work resulting from the development is still afforded the protections provided by chapter 1 part 4, having been lawfully established.

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

Replacement of ss 3.1.7 and 3.1.8

Clause 47 substantially changes the structure of these sections, but the rules for determining the assessment manager for an application are essentially the same as at present.

Amended s 3.1.7 (Assessment manager)

The changes to the structure of section 3.1.7 have been made because—

- including rules for determining the assessment manager for tidal works as a result of the integration into IDAS of approvals for these works under the *Coastal Protection and Management Act 1995* would make the section unwieldy if retained in its current form; and
- including the substance of the section in tabular form allows for a more user friendly and comprehensive description of its effect.

Consequently, the substance of this section has been included in a new schedule (schedule 8A). The schedule is located between schedule 8 (also now in a tabular form), which identifies assessable and self-assessable development, and the new schedule 9, which identifies exempt development for a planning scheme. This creates a logical "flow" for users seeking to determine the status of development and the relevant assessment manager.

Including the assessment manager information in a tabular form also allows for information about alternative assessment managers (currently located in the regulation) to be included with the basic rules for determining the assessment manager. This consolidates this information and will also help simplify the regulation.

Subsection (1) establishes the framework for determining the assessment manager for an application, and the assessment manager's basic function. This section has been expanded compared to the current provisions to confirm that, while an assessment manager administers and decides the whole application (subject to any concurrence agency requirements under chapter 3 part 2), the scope of the assessment manager's assessment is limited to those matters under its jurisdiction. This provision links to an additional section (section 3.4.3A) that further clarifies that the assessment manager's assessment role is limited to matters under its jurisdiction.

For example, an application to a local government for a material change of use for a rural industry (assessable under its planning scheme) may include a component seeking approval for a work under the *Water Act 2000* associated with a water allocation under that Act. If the planning scheme does not also make the work assessable, the local government's jurisdiction is limited to the assessment of the material change of use, while the work component will be referred to the chief executive administering the *Water Act 2000* for a concurrence response. While the assessment manager must

include the response in its decision, it has no actual jurisdiction to assess the work if it is not assessable under its planning scheme.

Subsection (2) preserves the effect of the current subsection (2), allowing the Minister to direct an application be split into two or more components. This is only possible for an application the Minister is required to decide an assessment manager for under Schedule 8A, and does not apply for applications generally.

Subsection (3) confirms that, if the Minister decides a local government is an assessment manager for an application for premises not located wholly in its area, the local government still has the jurisdiction to assess and decide the application, despite section 25 of the *Local Government Act 1993* (which establishes the jurisdiction of local governments generally). In these cases, as described above, the local government may administer and decide the application, but has no jurisdiction for assessing the part of the application outside its area.

Subsection (4) clarifies that if, due to the nature of the application an agency such as the EPA or NR&M is prescribed as the assessment manager and also has 1 or more referral jurisdictions, the agency is the assessment manager for the application with multiple jurisdictions (i.e. the agency and the applicant do not need to undertake referral procedures for those parts of the application for which they would normally only have referral jurisdiction).

New s 3.1.7A (Concurrence agencies if Minister decides assessment manger)

Section 3.1.7A relates to section 3.1.7, and applies if the Minister decides an assessment manager for an application.

This new section allows the Minister to determine that an entity that was a "candidate" for assessment manager is a concurrence agency for the application.

The most likely example of the Minister exercising this option would be for a development application for premises extending over two or more local government areas. The Minister may decide one of the local governments is the assessment manager on the basis of the area of the premises in that local government's area, its capacity to administer the application, or on other grounds. This section would allow the Minister to nominate the other local government or local governments as concurrence

agencies for the application, reflecting the assessment jurisdiction those local governments would have had as an assessment manager.

Subsection (1) establishes the circumstances on which the Minister may exercise the option of nominating a concurrence agency under this section. Subparagraph (b) requires the Minister to form an opinion about the likelihood that another entity than the one chosen as assessment manager could also have been chosen. This reflects—

- the intention that the section should be limited in its application to entities that were potential assessment managers, and not be a basis for the Minister to identify any entity as a concurrence agency for such an application; and
- the difficulty in establishing an objective rule for identifying "candidate" assessment managers in all possible situations.

Factors the Minister might consider in identifying whether an entity is a "candidate" assessment manager under this section include—

- the total number of candidates;
- the extent of the premises located within the candidate's jurisdiction;
- the nature and extent of the candidate's jurisdiction for the application compared to that of the entity chosen as assessment manager; and
- the capacity of each candidate to administer the application as assessment manager.

Subsection (2) provides for the minister to identify the candidate as a concurrence agency.

Subsection (3) confirms a concurrence agency chosen under this section has the jurisdiction it would have had as assessment manager. (The jurisdiction of a concurrence agency chosen in this way would not be stated in the regulation).

Replacement s 3.1.8 (Referral agencies for development applications)

This section has been amended and expanded to more clearly express its intent, and to refine the process for determining the number of referral agencies. Key changes from the current provision are—

- the current reference to a concurrence agency "assessing and deciding" an application has been replaced with a reference to a concurrence agency "assessing and responding" to an application, for greater consistency with the referral agencies' powers stated under sections 3.3.18 and 3.3.19;
- a reference has been included to the referral agency assessing and responding to "the part of the application giving rise to the referral" to confirm that a referral agency's jurisdiction is for that part of the application triggering the referral, and not necessarily for the application as a whole (if the application is also for aspects of development other than those triggering the referral); and
- an additional provision is included (in subsection (2)) providing that, for establishing the number of referral agencies for an application, an entity that might go by different names for the purposes of exercising given referral jurisdictions, but who is in fact the same natural person, is taken to be a single referral agency. For example, the chief executive administering the *Environmental Protection Act 1993* is the "administering authority" for a referral about environmentally relevant activities under that Act, but the "chief executive" for referrals about coastal matters under the *Coastal Protection and Management Act 1995*.

Insertion of new ss 3.1.10 and 3.1.11

Clause 48 inserts two new sections.

New s 3.1.10 (Self-assessable development and codes)

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

New s 3.1.11 (Native Title Act (Cwlth))

This new section recognises 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.

Most native title notifications under the NTA are likely to occur during the process of granting tenure or other access to a State resource, prior to any development application affecting the resource. As these processes may result in indigenous land use agreements which map out arrangements about the form and impacts of subsequent development, notification of the "future act" of development assessment is likely to be unnecessary, and is hence unlikely to affect IDAS.

However, because sections 24HA and 24KA of the NTA deal with notification for "future acts" which may affect native title interests other than on the premises proposed for development, they may not be preceded by a resource allocation process, and may hence affect the IDAS process.

PART 2—APPLICATION STAGE

Division 1—Application Process

Replacement of s 3.2.1 (Applying for development approval)

Clause 49 replaces section 3.2.1.

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 identified on the form.

Subsection (3)(b) requires that for a material change of use, a reconfiguration, or certain works, 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 specified. It may either be included in the application itself or in a document supporting the application.

Applications for most 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[3].

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.

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 constituting or containing the resource.

Subsection (6) provides that the consent of the State as owner is not required to the extent subsection (5) applies or where another Act (rather than a regulation) requires the application to be supported by the specified information. Consent under both subsection (5) and subsection (3) would still be required if the application involved both a prescribed State resource, and either another State resource not prescribed under a regulation, or development on freehold land.

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.

Subsection (8) is the same as the current subsection (7).

Subsection (9) is the same as the current subsection (8)

Subsection (10) is the same as the current subsection (9)

Subsection (11) clarifies that, for subsection (5), taking or interfering with a State resource includes carrying out development on State land.

Subsection (12) provides an owner's consent is not required in respect of land subject to an easement, where the owner is the owner of the servient tenement, and the development is not inconsistent with the terms of the easement. For example, the owner of land subject to an access easement

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

need not give owner's consent in respect of a development application including the easement if the land subject to the easement is proposed to give access consistent with the terms of the easement.

Division 2—General Matters About Applications

Replacement of s 3.2.8 (Public scrutiny of applications)

Clause 50 replaces the current section 3.2.8, and simplifies and clarifies requirements for public scrutiny of information accompanying development applications. The replaced section is supported by a new definition of "supporting material" contained in the dictionary (Schedule 10).

Replacement of s 3.2.11(Withdrawing an application)

Clause 51 replaces section 3.2.11 to provide greater clarity over arrangements for withdrawing applications.

Subsection (1) establishes procedural requirements for withdrawing an application. The entities to be given notice of a withdrawal have been expanded to include the chief executive where the application requires referral coordination. The process has also been changed so that it is the applicant who is responsible for notifying all parties, rather than the current arrangements where the assessment manager notifies referral agencies.

Subsection (2) is the same as the current subsection (3).

Amendment of s 3.2.12 (Applications lapse in certain circumstances)

Clause 52 amends section 3.2.12 by replacing subsection (b) with a new subsection creating a distinction in lapsing times for responding to information requests between development applications made in response to a show cause notice or enforcement notice, and those not made under such circumstances. The normal 12-month period for responding to information requests may allow for an undesirable delay in the assessment of development applications arising from unlawful activities. Such applications will now lapse within 3 months if information requests are not responded to. However the assessment manager may extend this period under subsection (3).

PART 3—INFORMATION AND REFERRAL STAGE

Division 2—Information Requests

Amendment of s 3.3.4 (Applicant advises assessment manager)

Clause 53 amends section 3.3.4 by inserting a new section reference for consistency with changes to section 3.3.5 (Referral coordination).

Replacement of s 3.3.5 (Referral coordination)

Clause 54 provides for the following changes for the process of triggering referral coordination—

- the transitional referral coordination triggers currently located in section 6.1.35C have been relocated into this section; and
- referral coordination is required for applications for preliminary approval under section 3.1.6.

The basis for the assessment manager to determine referral coordination is not needed has also been changed to refer to the likely significance of environmental effects, not merely the significance of the proposal itself, as at present.

Subsection (1) establishes the triggers for referral coordination. Subparagraph (a) refers to three or more concurrence agencies as at present. Subparagraph (b)(i) refers to development being assessable under the scheme, subject to an application under section 3.1.6, or both. It would be possible for an application under section 3.1.6 to be for development that is not assessable under a planning scheme if, for example, the proposal was of a conceptual nature for which no specific level of assessment was nominated under the scheme.

Subsection (2) has been modified to remove the reference to "minor". This term has caused confusion, and its removal acts to confirm that it is the environmental effects of the proposal, rather than simply its scale, which are the key factor in determining whether referral coordination is appropriate.

Subsection (3) is effectively the same as the current subsection (2).

Subsection (4) has been included to ensure a referral agency is not counted towards triggering referral coordination if it is the same entity as the assessment manager. This may occur if the functions of referral agency have been devolved to local government, such as under the *Environmental Protection Act 1993*.

Subsection (5) is the same as the current subsection 6.1.35C(3). This subsection ensures that, if referral coordination is required under this section, and acknowledgement notice must be given by the assessment manager, even if the application would otherwise not require one.

Amendment of s 3.3.7 (Information requests to applicant (referral coordination)

Clause 55 amends section 3.3.7 by inserting a new section reference for consistency with changes to section 3.3.5 (Referral coordination).

Amendment of s 3.3.14 (Referral agency assessment period)

Clause 56 inserts a new subsection (2A). This new subsection confirms that a referral agency's assessment period is not reduced when the information request period does not apply due an EIS having been prepared for the proposal under Chapter 5, Part 7A.

Amendment of s 3.3.15 (Referral agency assesses application)

Clause 57 amends subsection 2(b) by omitting references to the Standard Sewerage Law, and Standard Water Supply Law, consistent with the introduction of the new *Plumbing and Drainage Act 2002.*

Amendment of s 3.3.18 (Concurrence agency's response powers)

Clause 58 omits subsection (4) and amends subsection (5) for consistency with amendments made to code assessment arrangements.

Replacement of s 3.3.19 (Advice agency's response powers)

Clause 59 amends s 3.3.19 for consistency with s 3.3.18 and concurrency agencies response powers.

PART 4—NOTIFICATION STAGE

Division 1—Preliminary

Replacement of s 3.4.2 (When notification stage applies)

Clause 60 replaces the current section 3.4.2 and includes a number of changes designed to give guidance about the public notification of development applications to which section 3.1.6 applies.

Subsection (1) states the notification stage applies to any part of an application requiring impact assessment (as at present), and an application for preliminary approval to which section 3.1.6 applies. Including applications under section 3.1.6 is consistent with changes to that section broadening the range of development for which that section applies. Currently that section can only apply to material changes of use requiring impact assessment, which would be publicly notified as a matter of course. However under this Bill section 3.1.6 is broadened to include a range of development that may not necessarily require impact assessment. In particular section 3.1.6 has been modified to better accommodate development proposals of a conceptual nature, for which the category of assessment under the planning scheme may not be clear. Because applications under section 3.1.6 also involve proposals to modify the operation of the relevant planning scheme, public notification is appropriate in any case, regardless of the assessment category of the development under the planning scheme.

Subsection (2) has the same effect as the current subsections (2) and (3).

Subsection (3) identifies exceptions to the operation of subsection (1) for certain applications under section 3.1.6. Currently, the Act does not adequately accommodate "layered" preliminary approvals seeking approval for progressively more detailed aspects of a development proposal. Other reforms in the Bill seek to facilitate this approach to the use of section 3.1.6, and this subsection identifies principles for public notification of such applications.

Subsection (3) excludes applications under section 3.1.6 from public notification if they merely seek to refine assessment arrangements established in a previous application for the premises under that section.

Example: a preliminary approval for a "master planned community" may have identified various precincts and varied the operation of the

planning scheme for a precinct by establishing a range of development subject to code assessment, and identifying codes for broader scale issues such as site density, lot yield, plot ratio and amenity. A subsequent application for code assessment for a range of proposed uses consistent with the original approval may be accompanied by a further proposal to establish a code for the development of a particular precinct or a site within a precinct, with more detailed requirements for site coverage, design features and landscaping. Provided these "second level" codes were consistent with the parameters established in the earlier codes (such as site coverage arrangements consistent with broader density controls established in the earlier codes). There would be no requirement to publicly notify the development application.

Other reforms contained in this Bill[4] provide assessment criteria for the part of a development application that seeks to affect the operation of a planning scheme. These criteria include the effect of an approval on future rights of potential submitters. These criteria provide a framework of principles for determining the acceptability of proposals to affect the operation of a planning scheme, and consequently the extent to which subsection (3) of this section will apply for future applications.

Amendment of s 3.4.5 (Notification period for applications)

Clause 61 amends s 3.4.5(b) to clarify that when the 20 December or 5 January are business days, these days can not be included in the calculation of the notification period for an application.

4 See for example Section 3.5.5A (Assessment for s3.1.6 preliminary approvals that override a local planning instrument)

PART 5—DECISION STAGE

Division 2—Assessment Process

Insertion of new s 3.5.3A (When assessment manager must not assess part of the application)

Clause 62 inserts a new section clarifying the extent of an assessment manager's jurisdiction for assessing a development application. The effect of this new section is implied under the current Act, but is not explicitly stated.

Subsection (1) states the section applies to any part of a development application for which, were it the subject of a separate application, there would be a different assessment manager. This part of an application is called the "coordinated part" because it will be the subject of a concurrence agency response for a matter that is not within the assessment manager's assessment jurisdiction. The response will therefore be included in the assessment manager's decision, but the assessment manager will not be required to tailor its consideration to achieve an integrated outcome.

Subsection (2) confirms the assessment manager has no jurisdiction to assess the coordinated part. This is consistent with the replaced section 3.1.7(1)(a) which states the assessment manager "administers and decides an application, but may not always assess all aspects of development for the application".

> *Example: A local government receives a development application for a material change of use of premises for two related industrial uses, both of which are environmentally relevant activities under the Environmental Protection Act 1993, but only one of which is assessable under the local government's planning scheme. The part of the application that is exempt for the planning scheme is the "coordinated part", because the local government will simply receive and include the administering authority's concurrence response in its decision. The other part of the application could be referred to as the "integrated part", because it is subject to the jurisdiction of both the administering authority and the assessment manager, and the assessment manager will need to consider the concurrence response in framing its own decision in order to achieve an integrated outcome.*

Amendment of s 3.5.4 (Code assessment)

Clause 63 amends section 3.5.4 to require consideration of state planning policies as part of code assessment. The current arrangements for assessment are anomalous as they require consideration of State Planning Policies in impact assessment, but not in code assessment. This amendment creates consistency in the way SPPs are assessed in connection with a planning scheme under IDAS.

Insertion of new s 3.5.5A (Assessment for 3.1.6 preliminary approvals that override a local planning instrument)

Clause 64 inserts a new section 3.5.5A establishing criteria for assessment for the part of an application under section 3.1.6 that seeks to vary the operation of a local planning instrument.

Although sections 3.5.4 and 3.5.5 establish criteria for the assessment of all development (including development the subject of an application under section 3.1.6) the Act currently contains no guidance about assessing the part of such an application that seeks to vary the local planning instrument.

Subsection (1) states the part of the application to which the section applies.

Subsection (2) states the criteria for consideration for the part. These are—

- the common material;
- the result of the assessment manager's assessment of the development under sections 3.5.4 or 3.5.4. Any variation to the scheme approved will depend initially upon the approval of the development for which the variation is sought;
- the effect of the variation on potential future submission rights, particularly with regard to the supporting material available to submitters for the current application. An assessment manager may decide not to approve a variation if the information available to submitters for the current application was insufficient for submitters to form a reasoned opinion of the proposal as a whole;
- the consistency of the proposed variations with aspects of the planning scheme other than those sought to be varied. The proposed variations must be legible and consistent with the existing framework of the planning scheme; and

- the matters prescribed under a regulation. As these provisions are new, experience with their administration may suggest further criteria which should be considered by the assessment manager.

Division 3—Decision

Replacement of s 3.5.11 (Decision generally)

Clause 65 replaces s 3.5.11 to clarify that conditions imposed by a concurrence agency must be attached to the assessment manger's decision notice in the form provided by the agency and that the assessment manger must not retype, reformat or amend the conditions in any way.

Subsection (3) clarifies that if a concurrence agency directs that only part of the application be approved, or that the approval must be a preliminary approval, the assessment manger must comply with the direction.

Subsection (4) clarifies that if a concurrence agency directs the refusal of an application that the assessment manager must refuse the application.

Subsection (5) clarifies that a concurrence agency cannot direct the outcome of any part of an application dealing with a preliminary approval under s 3.1.6 of IPA.

Subsection (6) clarifies certain aspects of an assessment manager's decision

Replacement of s 3.5.13 (Decision if application requires code assessment)

Clause 66 replaces section 3.5.13 to reform the guidance provided for decision-making under code assessment. Recent judicial authority on the current provisions suggests they are capable of being interpreted more narrowly than intended.

In particular, the current provisions may prevent development of codes giving comprehensive guidance, not only about development complying with the code, but about development that would not comply with the code. This is inconsistent with the overall intention to promote clear and simple guidance through the codification of as much development as possible, and may encourage over-reliance on impact assessment, particularly for development that is clearly not preferred. Impact assessment should be

used when there is no clear guidance about the development the subject of an application, not where the acceptability or otherwise of the development is clear. There should be sufficient scope under code assessment to indicate both preferred, and non-preferred development.

Subsection (1) states the application of the section.

Subsection (2) states the assessment manager must approve the application if it complies with the relevant code, whether or not conditions are required for compliance. This removes the current "double negative" in the wording of this section, which states an application can **only** be refused if it does not comply, and cannot be conditioned to comply. By casting the provision in the positive, and removing the word "only", the new provision is intended to alleviate the apparent obligation on assessment managers under the current arrangements to find solutions to allow approval, even in response to applications that may deliberately have been left ambiguous for this reason. It gives the assessment manager greater discretion in dealing with development that, in the assessment manager's opinion, does not comply with the code.

Subsection (3) allows for an assessment manager's decision to conflict with an applicable code if there are sufficient grounds having regard to the purpose of the code and any relevant State Planning Policy. The operation of this subsection is subject to subsection (2), so an assessment manager cannot refuse an application on the grounds stated in subsection (3) if the application otherwise complies with the code. This would however enable an assessment manager to—

- approve a development application that does not prima facie comply with an applicable code, if, for example the code was based on outdated or incorrect assumptions, so long as the approval furthered the purpose of the code; or
- condition an approval for a development that complies with the code in order to further the purpose of a relevant State Planning Policy.

Subsection (4) contains qualifications on the operation of subsections (2) and (3).

Amendment of s3.5.14 (Decision if application requires impact assessment)

Clause 67 amends subsection (4) of section 3.5.14 to recast that subjection in the positive in order to clarify how a state planning policy may affect a decision about a development application subject to impact assessment.

Insertion of new s 3.5.14A (Decision if application under 3.1.6 requires assessment)

Clause 68 inserts a new section 3.5.14A that establishes decision rules for the part of an application under section 3.1.6 that seeks to vary the effect of a local planning instrument for the premises. These rules compliment the assessment criteria under the new section 3.5.5A.

Subsection (1) states the assessment manager may—

- approve all or some of the variations sought;
- subject to the limitations on the way the effect of the local planning instrument can be changed under section 3.1.6(3) and (5), approve different variations from those sought; or
- refuse the variations sought.

Subsection (2) states that if the development to which a variation relates is refused, the variation must also be refused.

Subsection (3) states the assessment manager's decision must not compromise the desired environmental outcomes for the planning scheme area.

Subsection (4) states subsection (1) is subject to any applicable State Planning Policies.

Subsections (3) and (4) are consistent with other decision rules in this division.

Amendment of s 3.5.15 (Decision notice)

Clause 69 amends section 3.5.15 to include additional requirements for decision notices related to changes elsewhere in the Bill.

Subsection (1) provides for applicants to be notified of any variations to the effect of a local planning instrument approved for an application under section 3.1.6.

Subsection (2) provides for applicants to be notified of the names and addresses of any submitters for the application. This change re-instates an arrangement under the Repealed *Local Government (Planning and Environment) Act 1990*, and is also related to the repeal of section 4.1.40 (See Clause 79 below).

Subsection (3) consequentially amends this section by inserting an additional subsection (6) to provide that a decision notice, given by a private certifier, is given subject to section 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works).

Division 4—Representations about conditions and other matters

Replacement of s 3.5.19 (When approval takes effect)

Clause 70 replaces the current section 3.5.19 with new provisions seeking to clarify when an approval takes effect, and to allow a submitter to advise the assessment manager that the submitter will not be appealing the decision. The ability for a submitter to advise that the submitter will not be appealing is linked to other reforms to decision notice and appeal arrangements designed to streamline post-approval processes in cases where submitters do not wish to appeal.

Subsection (1) identifies when the approval takes affect in specified circumstances

Subsection (2) requires the assessment manager to notify the applicant if a submitter advises the submitter will not be appealing.

Subsection (3) defines “submitter” for this section.

Division 5—Approvals

Replacement of s 3.5.27 (Certain approvals to be recorded on planning scheme)

Clause 71 replaces section 3.5.27 to expand the circumstances under which approvals or decisions must be noted on a planning scheme, consistent with reforms elsewhere in the Bill, and to require the chief executive be given notice of the notation.

Subsection (1) states the circumstances under which a local government must notate its planning scheme to reflect approvals or decisions. Presently, notation is only required for approvals inconsistent with the planning scheme. This section will now also require notation of—

- preliminary approvals that vary the effect of a planning scheme under section 3.1.6; and
- decisions to allow the application of a superseded planning scheme for development on premises.

Subsection (2) requires the local government to note the approval or decision on its planning scheme, and give the chief executive written notice of the notation. There is currently no requirement to notify the chief executive. The amendment will help ensure the chief executive can keep up to date copies of scheme information available for public scrutiny.

Subsection (3) confirms a notation is not an amendment of the planning scheme.

Subsection (4) confirms the approval or decision is still valid if the requirements of subsection (2) are not met.

Division 6—Conditions

Insertion of new s 3.5.31A (Conditions requiring compliance)

Clause 72 inserts a new section providing for the operation of a compliance checking mechanism for conditions of development approvals. The matters for which a compliance check can be required, together with the processes for checking compliance are to be prescribed under a regulation.

Amendment of s 3.5.37 (Covenants not to be inconsistent with development approvals)

Clause 73 amends section 3.5.37 to provide that a covenant entered into in connection with a development approval is also valid if it is entered into under an infrastructure agreement. Currently this section only provides for a covenant to be valid in such circumstances if it is required under a condition.

PART 6—MINISTERIAL IDAS POWERS

Division 1—Ministerial Direction

Replacement of s 3.6.2 (Notice of direction)

Clause 74 amends section 3.6.2 to include a power for the Minister to give an assessment manager a direction about the part of a development application that seeks to vary the effect of a local planning instrument under section 3.1.6.

This reform compliments the reforms to the preliminary approval process elsewhere in the Bill, and is also consistent with the changes to section 3.3.5, which require referral coordination for such applications.

PART 7—PLANS OF SUBDIVISION

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

Clause 75 amends section 3.7.4 to insert a requirement for payment of outstanding rates and charges before approval of a plan of subdivision for reconfiguration that is exempt development. This achieves consistency with other similar sections in this part.

CHAPTER 4—APPEALS, OFFENCES AND ENFORCEMENT

PART 1—PLANNING AND ENVIRONMENT COURT

Division 7—Other court matters

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

Clause 76 amends section 4.1.22 by removing subsection (2) of that section. Subsection 2 required the court to consider the compensation implications of any order the court made canceling a development approval. The subsection effectively acted simply as a "signpost" for the court, which identified the importance of the consideration of compensation in these instances. Its removal does not affect the court's declarations and orders powers, and it is likely the court would, as a matter of course, consider the compensation implications of any such order.

Division 8—Appeals to court relating to development applications

Replacement of s 4.1.28 (Appeals by submitters)

Clause 77 replaces the current section 4.1.28

Subsection (1) is amended to clarify that the scope of a submitters appeal rights is limited to the issues listed in this subsection.

Subsection (2) identifies the matters about an approval that a submitter may appeal.

Subsection (3) has been amend to include subparagraph (b) which clarifies that a submitter may not appeal when the submitter has notified the assessment manager under 3.5.19(1)(b)(ii) that they will not be appeal the decision.

Current subsections (4), (5) and (6) have been deleted. These subsections are no longer necessary given the clarification provided under subsection (1).

Amendment of s 4.1.29 (Appeals by advice agency submitters)

Clause 78 amends section 4.1.29 by inserting subsections consistent with the new wording of section 4.1.28.

Division 10—Making an Appeal to the Court

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

Clause 79 omits section 4.1.40. The provisions of this section have now been effectively superseded by the new requirements under section 3.5.15 for the decision notice to include the names and addresses of submitters.

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

Clause 80 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 81 replaces section 4.1.43 for greater clarity and consistency. 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 submitter is entitled to elect to become a co-respondent.

Subsection (5) provides for a concurrence agency to be a co-respondent if the appeal is about a concurrence agency response.

Subsection (6) 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 (7) provides for respondents and co-respondents to be heard as parties to the appeal.

Subsection (8) 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 (9) 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 82 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. This clause also removes the current subsection (2) which is now dealt with under section 4.1.43.

PART 3—DEVELOPMENT OFFENCES, NOTICES AND ORDERS

Division 1—Development Offences

Amendment of s 4.3.1 (Carrying out assessable development without a permit)

Clause 83 amends section 4.3.1(1) to clarify that, in order for development to be lawfully carried out under a development permit, it is necessary for the permit to have taken effect. A development permit may

be given, but depending on the circumstances may not take effect until a later time[5].

Amendment of s 4.3.6 (Development or use carried out in emergency)

Clause 84 corrects an anomaly in section 4.3.6, concerning development carried out in an emergency. The current arrangements require the giving of a notice to the relevant local government. However the Act defines an "assessing authority" for the purpose of taking enforcement action, and this authority may not always be a local government. The amendment substitutes the term "assessing authority" for the current "local government".

Division 3—Enforcement Notices

Amendment of s 4.3.11 (Giving enforcement notice)

Clause 85 amends section 4.3.11 for consistency with section 4.3.8, which identifies development for which a show cause notice is unnecessary before giving an enforcement notice.

Section 4.3.11 currently provides for the giving of an enforcement notice to stop carrying out building work by fixing it to a premises. This partly reflects the fact it is not necessary to first give a show cause notice under section 4.3.9 for this type of development, consequently it is unnecessary to serve the related enforcement notice on the particular person to whom the show cause notice was given.

However since the enactment of the IPA, further forms of development have been identified under section 4.3.8 as not requiring a show cause notice, in particular vegetation clearing. It is consequently appropriate to extend the scope of section 4.3.11(6) to reflect this expanded range of development.

5 See section 3.5.19 (When approval takes effect)

Replacement of s 4.3.15 (Compliance with enforcement notice)

Clause 86 is a complimentary amendment to that in clause 63, and creates an offence for damaging, defacing or removing an enforcement notice attached to premises.

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

Clause 87 amends s 4.3.16 to clarify that this section applies to both an enforcement and show cause notice and to both preliminary approvals and development permits.

New subsection (c) compliments the existing provisions, and requires a person appealing against a decision on a development application arising from an enforcement notice to take all reasonable steps to allow the appeal to be determined quickly.

Insert of new ch 4, pt 4, div 4

Clause 88 inserts a new s 4.4.15

PART 4—LEGAL PROCEDINGS

Division 4—Appeals about other matters

New s 4.4.15 (Appeals for compliance assessment)

New s 4.4.15 provides an appeal mechanism for decisions under the new section 3.5.31A, relating to assessment for compliance with conditions of a development approval. The section allows for a regulation to prescribe the circumstances giving rise to an appeal, the entity to whom the appeal may be made, and the way in which an appeal is made. Subsection (2) requires however that the appeal must be to either the court or the tribunal.

The matters dealt with under this form of compliance assessment will be limited to technical issues the subject of development conditions (such as landscaping or site works) for which an appeal is for practical purposes not

currently available. A regulation will confer the necessary flexibility to nominate appropriate appeal processes and bodies for such matters.

CHAPTER 5—MISCELLANEOUS

PART 3 —PRIVATE CERTIFICATION

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

Clause 89(1) replaces section 5.3.5(4)(c) with the effect of requiring a building certifier to ensure that all approvals under the *Standard Sewerage Law* have been obtained for an on-site sewerage treatment facility, when assessing work that is not within a declared service area for sewerage service under the *Water Act 2000*. Therefore if building work is proposed that is outside a declared sewerage service area, and there is ancillary work involving installing or altering an on-site sewerage treatment facility, the certifier may not decide the application for that work, until all necessary approvals under the *Standard Sewerage Law* have been obtained for the treatment facility.

Clause 89(2) replaces the example illustrating section 5.3.5(4)(c).

Clause 89(3) amends s 5.3.5 by substituting subsection 5.3.5(6)(b) and inserting new subsections 5.3.5(6)(c). New subsection 5.3.5(6)(b) provides for a private certifier, who approves an application, to attach an approved form, in the format of a checklist, identifying all the necessary documents required to be lodged with the local government for archiving. The checklist will improve the quality of documents lodged assisting both private certifiers and local governments.

New subsection 5.3.5(6)(c) requires a local government to rely on the new head of power under the LGA section 1071A for the setting of fees for archiving approval documents. Section 1071A clarifies that in charging for archiving documents, local governments should recover no more than the costs incurred in archiving the approval documents.

Clause 89(4) inserts new subsections 5.3.5(6A) to 5.3.5(6C). Subsection 5.3.5(6A) requires a local government, if the local government is the assessment manager, to issue an acknowledgment of payment to the private certifier immediately upon the payment of the prescribed fee for archiving approval documents.

To enhance administrative efficiency, the acknowledgment may be in a written or electronic format. The approved form will include a tear-off section for councils to give to the certifier as the acknowledgment for the payment of the fee for archiving approval documents. The acknowledgment will allow local governments who issue receipts on a monthly basis, to issue an immediate 'acknowledgment' for the payment of the fee.

Subsection 5.3.5(6B) provides for an offence for a private certifier, upon approving an application, to give the applicant the decision notice, or negotiated decision notice, and any other documents prescribed under a regulation, until the private certifier receives 'the acknowledgment' from the local government for the payment of the fee for archiving approval documents. There is a maximum penalty of 40 penalty units for this offence.

Subsection 5.3.5(6C) provides that if a private certifier approves an application, the private certifier must give to the applicant the decision notice, or negotiated decision notice, and any other documents prescribed under a regulation, within 5 business days after the day the private certifier receives the acknowledgement from the local government.

Clause 89(5) amends section 5.3.5 by substituting subparagraph 5.3.5(6)(b) to require a local government to rely on the new head of power under the LGA, section 1071A for the setting of fees for archiving certificates. Section 1071A clarifies that in charging for archiving documents, local governments should recover no more than the costs incurred in archiving the certificates.

New subparagraph 5.3.5(b)(ii) provides for when a private certifier gives a certificate to the assessment manager the private certifier must attach an approved form, in the format of a checklist, identifying the certificates required to be lodged with the local government for archiving. The checklist will improve the quality of documents lodged, assisting both private certifiers and local governments.

Clause 89(6) amends section 5.3.5, by repealing subsections 5.3.5(8) to 5.3.5(10) to omit the head of power under the IPA for the fixing of a

reasonable fee for accepting documents for archiving. certifiers. Local governments will now rely on the regulatory fees head of power under the LGA section 1071A for fixing fees for archiving approval documents.

PART 4—COMPENSATION

Amendment of s 5.4.2 (Compensation for reduced value of interest in land)

Clause 90 amends paragraph (b) to clarify that compensation can only be claimed after an application for a development permit has been made, (i.e. a claim for compensation can not be made on the basis of a refusal of an application for preliminary approval).

Amendment of s 5.4.4 (Limitations on compensation under ss 5.4.2 and 5.4.3)

Clause 91 amends section 5.4.4 to clarify certain circumstances under which compensation is not payable. The current wording of these subparagraphs suggests that if a condition of a development permit could mitigate environmental harm or risk to even an insignificant degree, compensation is payable for a planning scheme change designed to mitigate the risk.

The amendment clarifies that there must be a meaningful or significant capacity to reduce the harm or risk through a condition of a development approval in order for compensation to be payable for such a scheme change.

PART 7—PUBLIC ACCESS TO PLANNING AND DEVELOPMENT INFORMATION

Division 2—Documents available for inspection and purchase or inspection only

Amendment of s 5.7.2 (Documents local government must keep available for inspection and purchase)

Clause 92 omits redundant requirements in section 5.7.2.

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

Clause 93 amends section 5.7.6 to include new items (l), (m) and (n). Items (l) and (m) refer to documents associated with EIS's under part 7A. Item (n) refers to guidelines made under section 5.8.8.

Clause 93 has also been amended to include a new subsection (2) which confirm documents kept by the chief executive under that section may be kept in either electronic or hard copy form.

Insertion of new ch 5, pt 7A

Clause 94 inserts a new chapter 5, part 7A. Individual sections provide as follows:

PART 7A—ENVIRONMENTAL IMPACT STATEMENTS

Division 1—Preliminary

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, where the development is prescribed under a regulation 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.

Division 2—EIS process

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 finalizing 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.

Division 3—How EIS process affects IDAS

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.

Division 4—How EIS process affects designation

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.

PART 8—GENERAL

Amendment of s 5.8.8 (Chief executive may issue guidelines)

Clause 95 amends section 5.8.8(2) to clarify the process the chief executive must follow when undertaking consultation about proposed guidelines. The process to be followed by the chief executive is that specified for a local government giving public notice of a proposed planning scheme policy under part 2 of Schedule 3.

Amendment of ch 6

Clause 96 amends the heading of this chapter of the Act.

CHAPTER 6—SAVINGS AND TRANSITIONALS, REPEALS AND CONSEQUENTIAL AMENDMENTS

PART 1—TRANSITIONAL PROVISIONS FOR *INTEGRATED PLANNING ACT 1997*

Division 6—Existing approvals and conditions

Amendment of s 6.1.20 (Planning scheme policies for infrastructure)

Clause 97 amends section 6.1.20 for consistency with amendments made in this division to section 2.1.23, and provides for the continuing effect of planning scheme policies for infrastructure, despite the limitations placed on the scope of planning scheme policies under the amended section 2.1.23.

Amendment of s 6.1.24 (Certain conditions attach to land)

Clause 98 amends section 6.1.24 by inserting a definition of "former planning scheme" that extends the meaning of that term for this section only.

The current definition contained in section 6.1.1 refers only to a planning scheme in effect immediately before the commencement of the IPA. However experience indicates it is necessary to extend the effect of section 6.1.24(2) to cover conditions under approvals given in respect of earlier planning schemes.

Subsections (2) and (3) of this section have also been reworded to more clearly convey the intended application of the section, and provide clearer linkages with other transitional provisions, particularly section 6.1.26.

These changes respond to experience with the development of IPA planning schemes, as well as to emerging judicial authority, both of which have highlighted difficulties in determining whether rights and obligations acquired under former planning schemes carry through to new planning schemes, in particular IPA planning schemes.

This section confirms that obligations attaching to former rezoning approvals in the form of conditions running with the land are not extinguished, either by the IPA or planning schemes made under it. There is however no corresponding provision in the IPA specifically protecting unexercised rights acquired under such approvals for the operation of new planning schemes. This is not intended to imply that such rights do not survive. Instead, it recognizes that establishing a set of rules in the principal legislation for determining when and how such rights survive is difficult, and may compromise the flexibility available to local governments in implementing new planning schemes. It is intended that the survival of any rights from earlier rezoning approvals is a matter for individual planning schemes to establish. Determining whether such rights have survived, and to what extent (and consequently the extent to which this section also applies) should involve a comparison of "like with like" under the old and new schemes.

The intended effect of this section is consequently to establish that **when** rights acquired through a rezoning approval survive the implementation of a new planning scheme, those rights are also subject to any obligations under conditions of the original approval.

Amendment of s 6.1.26 (Effect of commencement on other applications in progress)

Clause 99 amends section 6.1.26 to clarify the status of rezoning approvals given for transitional planning schemes or former planning schemes that have not been finally determined by the Governor in Council before an IPA planning scheme comes into effect for the relevant local government.

The current provisions of this section are directed at finalizing rezoning applications made under the repealed Act, but are unclear on how such applications should be finalized under an IPA planning scheme if the application results in the necessity to amend the scheme. The new provisions allow for the Governor in Council to amend the IPA planning scheme in order to finalise the rezoning using the processes under the repealed Act as if the IPA planning scheme was a planning scheme under that Act.

The repealed Act allowed the Governor in Council to make any necessary changes to the zone originally applied for to reflect the commencement of a new planning scheme after the application was approved by the local government, and it is anticipated these provisions will be used under this section to make similar changes to an IPA planning scheme that best reflect the effect of the rezoning approval.

Division 8—Applications made or development carried out after the commencement of this division

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

Clause 100 amends section 6.1.30 to address an inconsistency in two subsections of that section, and to clarify its application.

Subsection (4) currently states how an assessment manager must deal with an application of a type that, under the repealed Act, was established under a planning scheme for a "certificate of compliance", "notification of conditions" or similar approval. These approvals were for development that was otherwise "as of right", and so included no capacity for refusal.

In translating these approval types to an IDAS framework, this subsection provides that IDAS applies for the assessment of these applications, but the application may not be refused, only approved or

approved conditionally. The subsection recognizes however that if there are concurrence agencies for the application, their jurisdiction is unaffected by the limitation on refusal by the assessment manager.

Subsection (5) currently provides for the "deemed approval" of such an application if the assessment manager does not decide it within the decision-making period. However unlike subsection (4), subsection (5) does not currently provide for situations where there is a concurrence response for such an application.

This amendment inserts a further subsection (6) clarifying the effect of a concurrence response directing refusal upon both subsection (4) and subsection (5).

Subsections (4) and (5) have also been reworded for consistency and greater clarity.

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

Clause 101 reinstates this section of the Act, which expired on 30 March 2003. There is evidence that this section is still needed to support changes to conditions of rezoning approvals still being acted upon.

Replacement of s 6.1.35C (Application requiring referral coordination)

Clause 103 deletes the current s 6.1.35(C) as referral coordination triggers are now included in s 3.3.5.

The replacement s 6.1.35(C) effectively validates existing preliminary approvals of a type mentioned in section 3.1.6 to the extent they approve the development applied for, or vary the effect of the planning scheme in a way provided for under that section.

The operational review of the IPA identified a number of deficiencies in the preliminary approval process for proposals of a conceptual nature that sought to vary the effect of a planning scheme. These deficiencies are addressed in this Bill, however it is also necessary to validate approvals of this type already sought and/or given in good faith under the current arrangements.

Insertion of new s 6.1.45AA (Rezoning agreements under previous Acts)

Clause 103 inserts a new section 6.1.45AA confirming that so called "deeds of novation" entered into under legislation preceding the repealed Act to secure the performance of conditions of development approvals under that legislation, are unaffected by the repealed Act or IPA, and must be taken into account when imposing conditions or fixing infrastructure charges.

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

Clause 104 amends section 6.1.45A, which deals with certain types of development control plan under the repealed Act, to ensure the continuation of these plans under IPA planning schemes.

Section 6.1.45 currently saves and validates the operation of aspects of these plans under transitional planning schemes, but does not provide for their continuation under IPA planning schemes. At the time the transitional provisions for the IPA were developed, it was anticipated relevant provisions of an IPA planning scheme would supersede the operation of these plans. However further experience with implementing them in an IPA environment suggests that, until development under the plans is complete, it would be preferable to retain the existing arrangements.

Subsection (1) of the amendment inserts new subsections (1A) to (1E) providing for the continued operation of development control plans to which this section applies under IPA planning schemes.

Subsection (1A) states an IPA planning scheme may include such a DCP either in the form it was in immediately before the IPA planning scheme came into effect, or in an amended form.

Subsection (1B) contains provisions explaining how to establish that a DCP of this type is in effect for part of the IPA planning scheme area.

Subsection (1C) states that the repealed Act and the transitional planning scheme still apply to the extent necessary to administer the DCP.

Subsection (1D) provides for the continuation of sections 6.1.28 to 6.1.30 to apply for assessing development in the DCP area.

Subsection (1E) confirms that a DCP of this type need not be entirely "self contained", and can draw upon other provisions in the IPA planning

scheme (such as codes or other standards). For example, while the DCP may itself include broad standards for assessing material changes of use, it may rely upon codes and standards applying generally in the planning scheme area for matters such as parking or site coverage.

Subsection (2) of this clause inserts a clarifying provision in subsection (2) of this section confirming appeal processes provided for under DCPs of this type are valid.

Subsection (3) inserts new subsections (5), (5A) and 5B clarifying the process for amending DCPs of this type.

Subsection (4) changes a section reference in subsection (6) for consistency.

Amendment of s 6.1.54 (Provisions applying for State controlled roads)

Clause 105 amends section 6.1.54(1)(b) to provide additional flexibility for when the Minister may notify a local government that this section applies for the local governments planning scheme. The current provisions allow only for the Minister to notify a local government about the application of this section when the planning scheme is being made. The new provisions will allow the notification to be given at any time.

Replacement of ch 6, pt 2 (Repeals)

Clause 106 replaces the existing repeals arrangements in IPA (which have already had effect), with a new part 2—Transitional provisions for the *Integrated Planning and other Legislation Amendment Act 2003.*

PART 2—TRANSITIONAL PROVISIONS FOR INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003

Division 1—Transitional provisions generally

Section 6.2.1 (Transitional regulations for Integrated Planning and Other Legislation Amendment Act 2003)

This section provides for transitional regulations to be made for a limited time to facilitate the effective implementation of this Act.

Section 6.2.2 (Particular planning scheme policies still valid)

This section protects planning scheme policies made before the commencement of amendments to section 2.1.16 and 2.1.23. These amendments seek to clarify the intent and scope of planning scheme policies, and their relationship to planning schemes. This section will ensure that planning scheme policies made before the commencement of these amendments are still valid, even though they may deal with matters not contemplated by the new provisions.

Insertion of new 6.2.3 (When s 3.5.31A Applies)

Clause 107 inserts a new section 6.2.1B that states the new section 3.5.31A (establishing a compliance assessment process for compliance with conditions of development approvals) applies for development applications decided after the commencement of this section.

SCHEDULE 4

PROCESS FOR MAKING OR AMENDING STATE PLANNING POLICIES

Amendment of sch 4, section 10

Clause 108 amends s 10 of schedule 4 to require that unless a local government is affected by a new State planning policy or amended State planning policy, the chief executive is not required to give the local government a copy of the new or amended policy.

Replacement of schedule 8 (Assessable and self-assessable development)

Clause 109 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. Part 4 of existing schedule 8 (definitions) is not reinstated. The definitions have been included in schedule 10.

The contents of the schedule have been tabulated and the order of the items grouped together into aspects of development.

SCHEDULE 8

ASSESSABLE AND SELF-ASSESSABLE DEVELOPMENT

PART 1—ASSESSABLE DEVELOPMENT

Table 1 provides a list of building work that the State has made assessable and includes—

- item 1—original item 1 reworded for clarity.

Table 2 provides a list of the material changes of use that the State has made assessable and includes—

- item 1—original item 6 reworded for clarity and consistency with s75 of the Environmental Protection Act 1994.
- item 2—original item 5 reworded for clarity;
- item 3—original item 4A;
- item 4—original item 5A;

Table 3 provides a list of the reconfigurations that the State has made assessable and includes (

- item 1—original item 4. Items 1(c) and (d) are new and commenced into IPA through amendments included in the *Body Corporate and Community Management and Other Legislation Amendment Act 2003*.

  Item 1(e) amalgamates original items 1(c) and (d);

  Item 1(f) is amended to make it clear reconfiguration is 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 is acquired, and subdivided for any

purpose other than a public purpose (e.g. commercial purposes) is assessable development.

This amendment 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.

Table 4 provides a list of operational work that the State has made assessable and includes (

- item 1—original item 3A. This item was amended to include paragraphs (f) to (i) new circumstances where clearing of native vegetation is not assessable—for a mining or petroleum 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 or natural areas and for certain ancillary works and encroachments under the *Transport Infrastructure Act 1994*;
- item 2—original item 3;
- item 3—original item 3B;
- item 4—original item 3C;
- item 5—is a new item and anticipates the integration of the *Coastal Protection and Management Act 1995* and tidal works into IPA. While the trigger has been included in the amending Bill, it will not appear in the reprint of the IPA until commencement of the integration of the *Coastal Protection and Management Act 1995* into IPA.

Table 5 provides a list of those activities for which the State has made all aspect of development assessable and includes (

- Item 1—rolled-over from schedule 2, item 18 of the *Integrated Planning Regulation 1998*;
- item 2—is a new item and anticipates the integration of the *Queensland Heritage Act 1992* into IPA. While the trigger has been included in the amending Bill, it will not appear in the reprint of the IPA until commencement of the integration of the *Queensland Heritage Act 1992* into IPA.

PART 2—SELF-ASSESSABLE DEVELOPMENT

Table 1 provides a list of building work that the State has made self-assessable and includes (

- item 1—original item 9;
- item 2—original item 7.

Table 2 is currently unused as there is currently no material changes of use which have been made self-assessable by the State.

Table 3 is currently unused as there is currently no reconfiguration which has been made self-assessable by the State.

Table 4 provides a list of operational work that the State has made self-assessable and includes (

- item 1—original item 9A.

The revised format of schedule 8 also enables each table to be expanded as a new approval is integrated into IPA.

SCHEDULE 8A

ASSESSMENT MANAGER FOR DEVELOPMENT APPLICATIONS

Insertion of new schedule 8A (Assessment manager for development applications)

Schedule 8A contains the information which was previously contained in s 3.1.7 (Assessment manager) of the Act and schedule 1A (Alternative assessment managers) of the *Integrated Planning Regulation 1998*.

By bring this information together into a schedule within the Act, a comprehensive checklist can be created which enables applicants to more easily determine who the assessment manager for an application is.

The tables act as a sieve to determine who the assessment manger is for a particular application.

To determine who the assessment manager is for an application always start at Table 1 and work sequential through the tables until the circumstances described in the table fit the nature of the application.

If, for the application, the circumstances described in Table 1 apply to the application—the local government is the assessment manger. If these circumstances do not fit the nature of the application move on to Table 2.

If the circumstances described in Table 2 apply to the application—the port authority is the assessment manger. If these circumstances do not fit the nature of the application move on to Table 3.

If the circumstances described in Table 3, item 1 apply to the application—the administering authority is the assessment manger. If these circumstances do not fit the nature of the application move on to Table 3, item 2.

This process continues through the remainder of Table 3 and Table 4.

If an application fails to satisfy the criteria of any item in Tables 1 to 4, Table 5 will apply and the Minister of the Department of Local Government and Planning will determine the assessment manager for the application.

Table 6 applies in cases where a concurrence agency directs a preliminary approval, but the assessment manager disposes of all of its requirements under the approval, and does not require a further application. The subsequent application for a development permit will be made to the concurrence agency as assessment manager

SCHEDULE 9

HOW CERTAIN DEVELOPMENT MUST BE DEALT WITH IN A PLANNING SCHEME

Insertion of new schedule 9 (Development that is exempt from assessment under 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 exempt from regulation under a planning scheme but is not exempt from regulation under schedule 8[6] (i.e. original parts 1 and 2). Inclusion of these items under an entirely separate schedule also acts to reinforces this point.

The items in the schedule have also been reorganized based on the aspects of development.

Original item 11 has been deleted.

Table 1 is currently unused as there is currently no building work prescribed by the State that cannot be made assessable under a planning scheme.

Table 2 provides a list of material changes of use that cannot be regulated by a planning scheme and includes—

- Item 1—original item 10A;
- Item 2—original item 12.

Table 3 provides a list of reconfigurations that cannot be regulated by a planning scheme and includes (

- Item 1—original item 14;
- Item 2 (original item 15. Item 2 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

6 See amended section 3.1.2

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 (e.g. 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.

Table 4 provides a list of operational work that cannot be regulated by a planning scheme and includes (

- Item 1—original item 17. Item 1 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;
- Item 2—original item 19;
- Item 3—original item 20;
- Item 4—original item 21;
- Item 5—original item 21A;
- Item 6—original item 18;
- Item 7—is a new item in anticipation of the integration of the *Coastal Protection and Management and Other Legislation Amendment Act 2001* into IPA. While the trigger has been included in the amending Bill, it will not appear in the reprint of the IPA until commencement of the integration of the *Coastal Protection and Management and Other Legislation Amendment Act 2001* into IPA.
- Item 8—original item 21B;
- Item 9—original item 13. Paragraphs (a) and (b) are amended to allow local government to regulate the clearing of native vegetation involved in management practices 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 10—is a new item in anticipation of the integration of the *Forestry Act 1959* into IPA. While the trigger has been included in the amending Bill, it will not appear in the reprint of the IPA until commencement of the integration of the *Forestry Act 1959* into IPA.

Table 5 provides a list of the activities for which no aspects of development can be regulated by a planning scheme and includes—

- Item 1—original item 10;
- Item 2—original item 10B reworded for clarity;
- Item 3—original item 10C reworded for clarity;
- Item 4—original item 16;
- Item 5—is a new item to clarify that a planning scheme cannot regulate any aspect of development associated with community infrastructure prescribed under a regulation;
- Item 6—is a new item to clarify that a planning scheme cannot regulate any aspect of development on land covered by the *South Bank Corporation Act 1989*.

SCHEDULE 10

DICTIONARY

Amendment of sch 10 (Dictionary)

Clause 110 amends 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

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.

The definition "accrediting body" has been omitted.

The definitions which have been added, amended or carried through from schedule 8 are—

"administering authority"—draws directly on the definition in the *Environmental Protection Act 1994.*

"ancillary works and encroachments"—relocated from schedule 8 and modified to draw directly on the definition under the *Transport Infrastructure Act 1994*, schedule 3.

"area of high nature conservation value"—relocated from schedule 8 but otherwise unchanged.

"area of unlawfully cleared vegetation"—defined in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"area vulnerable to land degradation"—relocated from schedule 8 but otherwise unchanged.

"artificial waterway"— defined in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"business day"—is amended to clarify that business days, for the purpose of implementing the Act, do not include those days between (and not including) 26 December and 1 January of the following. There is no need to exclude 26 December and 1 January from the definition as these days are always public holidays and would therefore never count as business days.

"coastal dune"—defined in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"coastal management district"—defined in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"EIS"—is inserted for the purposes of chapter 5, pt 7A.

"EIS assessment report"—is inserted for the purposes of chapter 5, pt 7A.

"erosion prone area"—draws directly on the definition in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"essential management"—relocated from schedule 8 but otherwise unchanged.

"high water mark"—draws directly on the definition in the *Coastal Protection and Management Act 1995.*

"minor amendment"—is amended to include (e) which will enable planning instruments such as planning schemes and SPPs to be amended to reflect changes that do not affect the policy direction of the instrument. For example, terms resulting from new or amended legislation .

"non-urban area"—relocated from schedule 8.

"ponded pasture"—defined in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"port authority"—draws directly on the definition of port authority contained in schedule 3 of the *Transport Infrastructure Act 1993*.

"preliminary consultation period"—refers to the use of the term in schedule 1 of IPA.

"prescribed tidal work"—refers to the *Integrated Planning Regulation 1998* which will prescribed what the State considered to be tidal works for the purposes on implementing the *Coastal Protection and Management Act 1994*.

"properly made application"—a section reference has been changed.

"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.

"quarry material"—defined in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"regional ecosystem map"—relocated from schedule 8.

"remnant endangered regional ecosystem"—relocated from schedule 8.

"remnant vegetation"—relocated from schedule 8 and draws directly on the definition in the *Vegetation Management Act 1999.*

"routine management"—relocated from schedule 8.

"State coastal land"—as defined in the *Coastal Protection and Management Act 1995.*

"strategic port land"—draws directly on the definition of port authority contained in section 171(5) of the *Transport Infrastructure Act 1993*.

"subscriber connection"—relocated from schedule 8.

"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.

"tidal area", for a local government—defines the extent of the land under tidal water that will come under the jurisdiction of the local authority for the purposes of assessing tidal works. Most works will be located within 50 m of the high-water mark. Therefore the local government has a legitimate interest in any works within this area. Works more than 50 m seaward of the high-water mark are generally not a local government issue.

"tidal area", for strategic port land—defines the extent of the land under tidal water that will come under the jurisdiction of a port authority for the purposes of assessing tidal works. Most works will be located within 50 m of the high-water mark. Therefore the port authority has a legitimate interest in any works within this area. Works more than 50 m seaward of the high-water mark are generally not a port authority issue.

"tidal water"—draws directly on the definition in the *Coastal Protection and Management Act 1995.*

"tidal works"—draws directly on the definition proposed in Part 5 of this Bill to amend the definition in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"watercourse"—defined in the *Coastal Protection and Management and Other Legislation Amendment Act 2001.*

"urban area"—is defined for the purposes of the Act.

Act Repealed

Clause 111 repeals the *Integrated Planning and Other Legislation Amendment Act 2001.*

PART 3—AMENDMENT OF BUILDING ACT 1975

Act amended in pt 3

Clause 112 declares that pt 3 of this Act amends the *Building Act 1975.*

Omission of s 46A (Fees and statutory functions)

Clause 113 omits section 46A, which provided the specific head of power for the fixing of fees in relation to the performance of a function imposed on the local government under the BA. Local governments will now rely on the regulatory fees head of power under the LGA section 1071A for the fixing of these fees, see also *clause 129.*

PART 4—AMENDMENT OF COASTAL PROTECTION AND MANAGEMENT ACT 1995

Act amended in pt 4

Clause 114 declares that pt 4 of this Act amends the *Coastal Protection and Management Act 1995.*

Amendment of s 43B (Relationship of coastal plans with *Integrated Planning Act 1997*)

Clause 115 amends section 43B(2)(c) to account for the deletion of schedule 6 and the replacement of its content within section 2.

PART 5—AMENDMENT OF COASTAL PROTECTION AND MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2001

Act amended in pt 5

Clause 116 declares that pt 5 of this Act amends the *Coastal Protection and Management and Other Legislation Amendment Act 2001*.

Amendment of s 15 (Insertion of new ch 2, pt 3, div 4, and pats 4(7)

Clause 117 amends s 61ZJ(1).

Subsection (1) removes the requirement for the chief executive to consider amenity and aesthetic significance or value when the chief executive is a concurrence agency. Local government will consider amenity and aesthetic significance or value in their assessment manager role.

Subsection (2) is ensures that the chief executive (in an assessment manager role) considers amenity and aesthetic significance or value.

Subsection (2A) ensures that the chief executive (in a concurrence role) does not consider amenity and aesthetic significance or value when local government is the assessment manager. Local government will consider amenity and aesthetic significance or value under its planning scheme, or for prescribed tidal work the consideration will be in relation to a code established in the Integrated Planning Regulation.

Subsection (4) amends s 61ZZC(1) by inserting new items (c) and (d) which recognize that inundated land and reserves under the *Land Act 1994* include a right to use and occupy the land; therefore a development permit does not change this existing right. The term ‘inundated land’ is defined in the Act.

Amendment of s 19 (Insertion of new ch 6, pt 2)

Clause 118 provides that each coastal management plan approved under the *Beach Protection Act 1968* that is still in effect immediately prior to commencement and not replaced by a regional coastal management plan, is still considered to have effect..

Amendment of s 21 (Amendment of sch 8 (Assessable, self-assessable and exempt development)

Clause 119 amends the definition of tidal works.

Amendment of sch (Minor amendments)

Clause 120 amends the definition of tidal works to clarify the extent of tidal works, to exclude maintenance dredging and extractive industry within tidal water, and to correct the reference to schedule 8 of the *Integrated Planning Act 1997* to an updated section reference.

PART 6—AMENDMENT OF LAND SALES ACT 1984

Act amended in pt 6

Clause 121 declares that pt 6 of this Act amends the *Land Sales Act 1984.*

Amendment of s 6 (Definitions)

Clause 122 amends the definitions in the *Land Sales Act 1984* for consistency with the *Integrated Planning Act 1997.*

Amendment of s 8 (Restriction on selling)

Clause 123 amends section 8 for consistency with the *Integrated Planning Act 1997.*

Amendment of s 9 (Identification of land)

Clause 124 amends section 9 for consistency with the *Integrated Planning Act 1997.*

Amendment of s 10A (Purchaser must be given registrable instrument of transfer and other documents)

Clause 125 amends section 10A for consistency with the *Integrated Planning Act 1997.*

PART 7—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended in pt 6

Clause 126 declares that part 6 of this Act amends the *Local Government Act 1993*.

Amendment of s 854 (Local laws and subordinate local laws about development)

Clause 127 amends section 854 to insert an exemption from the provisions of that section for local laws about specified matters, and omit a redundant provision.

Insertion of new s 919A (assessment of impacts on roads from certain activities)

Clause 128 inserts a new section dealing with activities that are having, or would have, a significant adverse impact on a local government road. Adverse impacts include compromising road safety and causing road damage. Whether an activity's road impact is significant will depend on factors including the nature and scale of the activity, the type and condition of the roads affected and the nature of the traffic using those roads.

Because there are processes to deal with the road impacts of significant projects under the *State Development and Public Works Organisation Act 1971* and developments declared to be assessable development under a planning scheme under the *Integrated Planning Act 1997*, the section does not apply to activities that are part of such projects or developments. Activities to which the section will apply must be prescribed by regulation.

The clause provides that the local government may require the entity carrying out the activity to provide information about the road impacts likely to arise as a result of the activity. That information might include provision of a road impact assessment report. The local government may also require that the activity be subject to conditions to mitigate its road impact. Those conditions may include a direction about how the road is to be used or a requirement that a contribution (monetary or in kind) be made for roadworks required to deal with the impact. The contribution may be required before the impact commences or intensifies.

A regulation that prescribes an activity under this section must also contain a process under which a decision of the local government may be reviewed. The regulation may contain a process for enforcing a decision.

Amendment of 1071A (Power to fix regulatory fees)

Clause 129(1) amends section 1071A by inserting subsection (1)(e) to enable local governments to use this head of power to fix a fee by local law or resolution for the performance of a function imposed on the local government under the BA or the IPA in relation to private certification in chapter 5 part 3.

The BA and the IPA provided specific heads of power for local governments to fix a reasonable fee for archiving approval documents. To ensure consistency and accountability in the setting of fees, the BA and the IPA have been amended to omit the specific heads of power for establishing fees for archiving approval documents. Use of section 1071A will ensure more accountability by clarifying that in fixing regulatory fees and charges for archiving of approval documents, the local government should recover no more than the costs incurred in administering the regulatory regime.

Private certifiers may challenge the validity of the value of the fees in the courts on the basis that the fee is more than the cost incurred by the local government in administering the regulatory regime.

To satisfy competitive neutrality principles, local government certifiers are required to include the same fee for archiving in their charges as those charged to private certifiers.

Clause 129(2) amends section 1071A by inserting subsection 1071A(5) to provide that a local law or resolution for the fixing of a regulatory fee under section 1071A(1)(e) in relation to the BA and the IPA, must state the person liable to pay the regulatory fee and the period within which the fee must be paid.

Clause 129 is a consequence of a previous amendment in the *Plumbing and Drainage Act 2002* section 207(5)(not proclaimed into force), to the IPA section 5.3.5(8). Section 5.3.5(8) IPA is omitted, see *clause 88(6)* and section 207(5) *Plumbing and Drainage Act* is omitted, see *clause 142*.

Amendment of s 1071E (Register of regulatory fees)

Clause 130 amends section 1071E(3)(b) to insert sub-subparagraph (iv) to provide for a local government to keep a register of its regulatory fees. The register must identify, for a fee fixed under section 1071A(1)(e), the provision of the BA or the IPA under which the function is imposed. The register is open for inspection to ensure transparency and accountability for the fixing of regulatory fees.

This provision is based on the same principles as the register of general charges under repealed section 975 of the LGA.

Insertion of new ch 19, pt 9 (Transitional Provisions for *Integrated Planning and Other Legislation Amendment Act 2003*)

Clause 131 inserts a new part 9 into chapter 19 to preserve the regulatory fees made under sections 5.3.5(8) of the IPA and section 46A of the BA and to ensure the register of regulatory fees clearly identifies these fees.

New section 1272 provides for fees fixed under existing section 46A of the BA and existing section 5.3.5(8) of the IPA, relating to a function mentioned in section 1071A(1)(e), are taken to be regulatory fees fixed under section 1071A.

PART 8—AMENDMENT OF PLUMBING AND DRAINAGE ACT 2002

Act amendment in pt 8

Clause 132 declares that part 8 of this Act amends the *Plumbing and Drainage Act 2002.*

Insertion of new s 86A (Process for assessing certain regulated work in remote areas)

Clause 133 inserts a new s 86A providing for an alternative process for assessing regulated plumbing or drainage work, that certain rural remote local governments can chose to use to assess regulated plumbing works in remote parts of the local government area. Only local governments specified as remote in a regulation will have this option.

In these areas, under certain circumstances, a local government can resolve to dispense with plumbing inspectors inspecting plumbing and drainage work for compliance with the relevant technical standards, but instead rely on a person with appropriate qualifications providing a notice that the work complies and if requested, a plan of the completed work. The local government must provide a copy of any such resolution to the chief executive of the Department of Local Government and Planning, and ensure that a copy is also available for public inspection at the local government's public office.

The circumstances in which this alternative compliance assessment process can apply are (

- the area is one of the rural and remote local government areas listed in the regulation as having the option available;
- the local government is satisfied that the absence of inspection for a particular category of work in a particular area will not adversely affect public health or safety; and
- other requirements to be specified in a regulation including that the work is not connected to the water supply or sewerage infrastructure, is not within an urban settlement, and is sufficiently distant from or otherwise difficult to access from the local government's public office.

Other aspects of the compliance assessment process are the same as under section 85 of the *Plumbing and Drainage Act 2002*. A request for compliance assessment of the work is to be made to the local government in the approved form, and accompanied by the relevant fee set by local government resolution. After the work is completed, the local government must be given a notice certifying that the work complies with the Standard Plumbing and Drainage Regulation and, if requested, a copy of a plan of the completed work. The local government must decide to issue a compliance certificate, or refuse to issue a compliance certificate within 3 days of receiving the notice. However if a plan was requested, the local

government must then decide to issue or refuse to issue a compliance certificate within 3 days of receiving the plan.

If the local government fails to decide the request within the specified times, the request is deemed to be refused. When the local government issues a compliance certificate to the applicant, it must also give a copy of the certificate to the owner of the premises where the work is to be carried out.

A decision to refuse to issue a permit, a deemed refusal, or the imposition of conditions, may be appealed to a Building and Development Tribunal under the provisions of the IPA.

Amendment of s 87 (Minor works)

Clause 134 amends section 87 in respect of the requirements for a person carrying out minor plumbing and drainage works to notify the relevant local government within 20 business days of completing the work. Minor works are defined in the Standard Plumbing and Drainage Regulation. This allows the local government the opportunity to inspect the minor works for compliance with the Standard Plumbing and Drainage Regulation after completion, if it is seen as necessary.

This amendment clarifies that minor works are deemed to be notifiable, but that a plumber undertaking a very minor work, such as replacing a tap fitting, is not required to advise the local government. This replicates the provisions under the *Sewerage and Water Supply Act 1949* and subordinate legislation that have been in place for many years, and ensures that section 87 operates as in accordance with the intent of Parliament when it passed the *Plumbing and Drainage Act 2002.*

Amendment of s 90 (Standard Plumbing and Drainage Regulation may prescribe additional requirements and actions)

Clause 135 amends section 90 to clarify that the Standard Plumbing and Drainage Regulation may prescribe requirement for a plan of work mentioned in the new section 86A as well as the existing sections 85 or 86.

Amendment of s 161 (Amendment of s3 (Definitions))

Clause 136 amends section 161 by omitting the definition of "self-assessable development".

Amendment of s 187 (Replacement of ss 40 and 41)

Clause 137 amends section 187 to provide for section 40 of the *Building Act 1975* (Decision after investigation or audit completed) a definition of "self-assessable development". Under section 40(10) all development declared under a local planning instrument is self-assessable development.

Omission of s 189 (Amendment of s 46A (Fees for statutory functions))

Clause 138 omits section 189 of the *Plumbing and Drainage Act 2002* as a consequence of clause 113 omitting section 46A of the BA. Section 189 amended section 46A to require a local law or local government resolution setting fees for other statutory functions, must prescribe the person liable to pay the fee and the time limit within which it must be paid. This requirement has been integrated into the LGA section 1071A as subsection (5), see also clause 129. Section 189 was never proclaimed into force and is omitted.

Amendment of s 196 (Insertion of new s 4.2.12A))

Clause 139 amends section 196 to ensure that a person dissatisfied with a decision on an application for compliance assessment in relation to a remote area under the new section 86A has the same appeals rights as apply to decisions in relation to compliance assessment under the existing sections 85 and 86.

Replacement of s 198 (Amendment of s 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

Clause 140 omits section 198 as a consequence of the repeal of the *Integrated Planning and Other Legislation Amendment Act 2001*.

Omission of s 199 (Amendment of sch 8 (Assessable, self-assessable and exempt development))

Clause 141 omits section 199 as a consequence of the repeal of the *Integrated Planning and Other Legislation Amendment Act 2001*.

Amendment of s 207 (Amendment of s 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

Clause 142 omits section 207(5) of the *Plumbing and Drainage Act 2002* as a consequence of clause 88(6) omitting section 5.3.5(8) of the IPA. Section 207(5) amended section 5.3.5(8) to require that a resolution made by a local government for archiving fees must also prescribe the period within which the fee must be paid. This requirement has been integrated into the LGA section 1071A(5), see also clause 129(2). Section 207(5) was never proclaimed into force and is omitted.

Omission of pt 13 (Amendment of Integrated Planning and Other Legislation Amendment Act 2001)

Clause 143 omits part 13, which amended the *Integrated Planning and Other Legislation Amendment Act 2001*. This Bill repeals that Act.

PART 9—AMENDMENT OF QUEENSLAND INTERNATIONAL TOURIST CENTRE AGREEMENT ACT REPEAL ACT 1989

Act amendment in pt 9

Clause 144 declares that part 9 of this Act amends the *Queensland International Tourist Centre Agreement Act Repeal Act 1989*.

Omission of pt 2 (Repeal of act and validation of uses)

Clause 145 deletes part 2. this part purports to zone certain land subject to the Act in a stated way. Its continued application under IPA, and particularly under the Livingstone Shire Council's IPA planning scheme is unclear and undesirable. The amendment will allow the council's IPA planning scheme to deal with the land in the normal way.

PART 10—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

Act amended in pt 10

Clause 146 states that part 10 of this Act amends the *Transport Infrastructure Act 1994*.

Insertion of new s 46A (Assessment of impacts on State-controlled roads from certain activities

Clause 147 inserts a new section dealing with activities that are having, or would have, a significant adverse impact on a State-controlled road. Adverse impacts include compromising road safety and causing road damage. Whether an activity's road impact is significant will depend on factors including the nature and scale of the activity, the type and condition of the roads affected and the nature of the traffic using those roads.

Because there are processes to deal with the road impacts of significant projects under the *State Development and Public Works Organisation Act 1971* and developments declared to be assessable development under a planning scheme under the *Integrated Planning Act 1997*, the section does not apply to activities that are part of such projects or developments. Activities to which the section will apply must be prescribed by regulation.

The clause provides that the chief executive (i.e. the Director-General of the Department of Main Roads) may require the entity carrying out the activity to provide information about the road impacts likely to arise as a result of the activity. That information might include provision of a road impact assessment report. The chief executive may also require that the activity be subject to conditions to mitigate its road impact. Those conditions may include a direction about how the road is to be used or a requirement that a contribution (monetary or in kind) be made for roadworks required to deal with the impact. The contribution may be required before the impact commences or intensifies.

A regulation that prescribes an activity under this section must also contain a process under which a decision of the chief executive may be reviewed. The regulation may contain a process for enforcing a decision.

PART 11—AMENDMENT OF VEGETATION MANAGEMENT ACT 1999

Act amended in pt 11

Clause 148 states that part 11 of this Act amends the *Vegetation Management Act 1999.*

Amendment of s 21 (Modifying effect on development applications)

Clause 149 amends section 21 for consistency with amendments made in this Bill to assessment manager and concurrence agency assessment requirements under code assessment.

PART 12—AMENDMENT OF WATER ACT 2000

Act amended in pt 12

Clause 150 states that part 12 of this Act amends the *Water Act 2000.*

Amendment of s 967 (IPA approval for development is subject to approval under this Act)

Clause 151 amends section 967 for consistency with amendments made in this Bill to schedule 9.

SCHEDULE

MINOR AMENDMENTS OF INTEGRATED PLANNING ACT 1997

Clause 1 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 2.6.1960

Clause 2 amends section 2.6.21 by replacing the term "interest" with "nominated interest", for clarity and consistency with amendments to s 2.6.1961

Clause 3 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 2.6.1962.

Clause 4 amends section 3.5.33(7A) to correct an anomaly

Clause 5 amends section 4.3.2A, to remove an incorrect reference

Clause 6 amends section 4.3.13 to correct the terminology.

Clause 7 amends section 5.7.5(3) to correct the terminology.

Clause 8 amends section 5.7.5(3) to remove a redundant word.

Clause 9 amends section 5.7.6(e)(iii) to remove a redundant word.

Clause 10 amends section 5.8.5 (Delegation by Minister) by renumbering and relocating the provision.

Clause 11 inserts a section to advise of proposed numbering and renumbering of parts of chapter 5.

Clause 12 amends the definition of "assessable development" in section 6.1.1 to account for the insertion of new schedule 9.

Clause 13 amends the definition of "assessable development" in section 6.1.1 to account for the insertion of new schedule 9.

Clause 14 omits s 6.1.41 for consistency with other omissions.

Clause 15 amends section 6.1.44 to correct an anomaly.

Clause 16 amends s 6.1.51A to correct an incorrect reference

Clause 17 amends schedules 1, 2, and 3 by removing the words "by resolution" with respect to local government decisions.

Clause 18 amends schedule 3 to address a punctuation error.