Integrated Planning and Other Legislation Amendment Bill 2004

Explanatory Notes

Introduction

This Bill includes provisions to facilitate effective regional planning in South-East Queensland. The Bill also includes amendments to other provisions of the *Integrated Planning Act 1997* (IPA) designed to clarify or improved its operation.

Before many of the amendments in this Bill commence, it is expected the bulk of the remaining uncommenced provisions of the *Integrated Planning and Other Legislation Amendment Act 2003* (IPOLAA 2003) will commence. Some IPA provisions proposed to be amended by this Bill are also amended by IPOLAA 2003.

Consequently, it is necessary to read the Bill together with the current reprint version of the *Integrated Planning Act 1997* and the *Integrated Planning and Other Legislation Amendment Act 2003*. The sections in this Bill also affected by amendments in the IPOLA Act are—

- s 3.2.1 Applying for development approval)
- s 3.4.2 (When notification stage applies)
- s 3.5.15 (When is a development permit necessary);
- s 3.5.4 (Code assessment);
- s 3.5.5 (Impact assessment);
- s 3.5.5A (Assessment for s 3.1.6 preliminary approvals that override a local planning instrument);
- s 3.5.11 (Decision generally)
- s 3.5.13 (Decision if application requires code assessment);
- s 3.5.14 (Decision if application requires impact assessment); and
- s 3.5.14A (Decision if application under s 3.1.6 requires assessment).

General Outline

The Bill consists of:

- Amendments to the *Integrated Planning Act 1997* to facilitate regional planning in South-East Queensland;
- Other amendments to the *Integrated Planning Act 1997* to improve and clarify its operation;
- An amendment to the *Integrated Planning and Other Legislation amendment Act 2003* to clarify its relationship with Coastal Management Plans under the *Coastal Management and Protection Act 1995;*
- Amendments to the *local Government Act 1993* to further clarify the relationship between the *Integrated Planning Act 1997* and local laws under that Act;
- Amendments to the *Queensland Heritage Act 1992* to further clarify the operation of approvals under the *Integrated Planning Act 1997* for that Act; and

Policy Objectives of the Legislation

The objectives of the legislation are to:

- Facilitate effective regional planning in South-East Queensland by establishing processes for making a regional plan for the region;
- Ensuring effective implementation of the regional plan through changes to the planning and development assessment processes in the IPA; and
- Clarify and improve the operation of other aspects of the IPA and related legislation.

Reasons for the Bill

The Bill is necessary to give effect to government commitments concerning effective regional planning in South-East Queensland.

Achieving the Objectives

The objectives of the Bill are achieved primarily by:

- Establishing a Regional Coordination Committee (RCC) to advise the Government through the Regional Planning Minister on implementing the regional plan;
- Requiring the Regional Planning Minister to prepare a regional plan, including requirements for consultation with the RCC and the community generally;
- Requiring State agencies and local governments to account for the regional plan in their planning and development assessment activities; and
- Establishing functions and powers for the Regional Planning Minister to ensure effective implementation of the regional plan, including extending powers of direction about making planning schemes, and Ministerial call-in powers.

Administrative Costs

The Government has established an Office of Urban Management within the Department of local Government, Planning, Sport and Recreation. Approximately $3.4 million has been allocated for the OUM in the 2004/ 2005 State Budget.

All other administrative costs associated with implementing the legislation can be met from within existing allocations.

Fundamental Legislative Principles

The legislation is consistent with fundamental legislative principles. However it should be noted the legislation makes provision for the regional plan to have a component with regulatory affect. This component could for example have the effect of prohibiting specified development. For development that has already been carried out, the regulatory provisions of the regional plan can have no further effect, because the regional plan is characterised under the Bill as a planning instrument, and Chapter 1 Part 4 of the IPA protects existing uses and works from further regulation under planning instruments. However the regulatory provisions could have an effect for development that is the subject of a development application at the time the provisions come into effect. Clause (8) (Section 2.5A.12(2)(e)) of the Bill provides for the regulatory provisions to include transitional arrangements for such development applications. It should also be noted that the regulatory provisions will themselves be subject to

Parliamentary scrutiny through the ratification requirements under Clause (8) (Section 2.5A.18).

Consultation

Consultation about the Bill has been carried out with the Local Government Association of Queensland (LGAQ), Urban Development Institute of Australia (UDIA), Property Council of Australia (PCA), and the 18 local governments in the South East Queensland Region. Consultation has also been carried out with State agencies whose activities are likely to be affected by the Bill.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 states the short title of the Bill.

Commencement

Clause 2 States the Bill commences on a date fixed by proclamation. Numerous provisions in the Bill, in particular those affecting the IDAS process in Chapter 3 of the IPA, and Schedules 8, 8A and 9, are drafted on the basis that the remaining provisions of the *Integrated Planning and other Legislation Amendment Act 2003* (IPOLAA 2003) will have commenced before the relevant provisions in this Bill.

However the core provisions in this Bill, to be contained in chapter 2, Part 5A of IPA, are unaffected by IPOLAA 2003, and could be commenced earlier than the balance of the Bill. Commencement of Chapter 2 Part 5A will also be accompanied by a change to the current administrative arrangements for the administration of the IPA, to provide that part is to be administered by the honourable the Deputy Premier, Treasurer and Minister for Sport

Part 2 Amendment of Integrated Planning Act 1997

Act amended in pt 2 and sch

Clause 3 states this part amends the IPA.

Amendment of section 1.3.5 (Definitions)

Clause 4 amends the definition of 'operational works' in two respects to address an unintended consequence of recent amendments made to that definition by the *Vegetation Management and other Legislation Amendment Act 2004* (VMOLA). Before the commencement of that Act, all vegetation clearing on freehold land was defined as operational work under section 1.3.5. Vegetation clearing on State land was regulated under the *Land Act 1994*.

VMOLA changed the vegetation clearing arrangements in Queensland by including all native vegetation clearing throughout Queensland. Consequently, section 1.3.5 of IPA was amended to refer to all vegetation clearing to which the VMA applies, and excluding vegetation clearing to which the VMA does not apply. Section 8 of the VMA defines "vegetation" as only specified native vegetation. This, together with the changes to section 1.3.5 had the unintended effect of excluding the clearing of non-native vegetation from the definition of development under IPA. It has always been intended to allow for local governments to control vegetation clearing (including non-native clearing) through their planning schemes. The amendments in this clause are designed to reflect this intent.

Insertion of new 2.1.8A

Clause 5 inserts a new section 2.1.8A in the IPA. This new section allows the Minister to give a written notice to a local government that the Minister is satisfied a specified State planning policy is reflected in the local government's planning scheme.

Presently, the only opportunity for the Minister to give such a notice (with the effect that the State planning policy is no longer an independent consideration under IDAS for the relevant local government area) is during the process for making a planning scheme (Schedule 1, Section 18(5)). However some planning schemes have recently been prepared to reflect draft state planning policies before they finally come into effect. The

amendment will allow for these planning schemes to be recognised as reflecting the State planning policy without the need to wait for a future amendment of the planning scheme.

Subsection 1 provides for the arrangements under this section to be triggered if the Minister gives a local government a notice stating the Minister is satisfied the local governments planning scheme reflects a specified State planning policy.

Subsection (2) allows for the local government to amend its planning scheme to include a statement that the planning scheme reflects the State planning policy.

Subsection (3) provides that the process for making or amending a planning scheme under schedule 1 of IPA does not apply for an amendment made under this section (on the basis that both the State planning policy and the planning scheme reflecting it have already been subject to public consultation).

Subsection (4) establishes the commencement date for a scheme amendment under this section. The effect of the commencement is that from the commencement date, the State planning policy "falls away" as a consideration under IDAS in the relevant local government area.

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

Clause 6 inserts a new paragraph in section 2.1.23 providing further guidance about the role of planning scheme policies. The paragraph states a planning scheme policy may include guidance or advice about satisfying assessment criteria in the planning scheme. "Assessment criteria" refers to planning scheme provisions such as performance requirements or "deemed to comply" provisions under codes, or scheme provisions with wider effect, such as statements of intent for precincts or zones, against which development applications may be assessed.

Amendment of s 2.5.1 (What are regions)

Clause 7 amends section 2.5.1 in response to the inclusion in IPA of regional planning arrangements for South-East Queensland. Section 2.5.1 currently states there are no fixed regions in Queensland (on the basis that when constituting a Regional Planning Advisory Committee the Minister would identify a region relevant to that committee's purpose).

However, the new Chapter 2, Part 5A (Regional Planning in the SEQ region) does spatially define the SEQ region. The amendment to section 2.5.1 provides for consistency between the provisions of Chapter 2 Part 5 and Chapter 2 Part 5A.

Insertion of ch 2, pt 5A

Clause 8 inserts a new chapter 2 part 5A, "Regional planning in SEQ region". This is a new part to establish a regional planning framework for SEQ. The region is defined to comprise the 18 local government areas listed in clause 2.5A.2 and adjacent Queensland waters.

Division 1 Preliminary

2.5A.1 Application of part

This section provides that this part applies only to the SEQ region.

2.5A.2 What is the SEQ region

Subsection (1) lists the 18 local government areas comprising the SEQ region.

Subsection (2) provides the SEQ region also includes Queensland waters adjacent to any of the local governments listed in subsection (1).

Division 2 Regional coordination committee

2.5A.3 Establishment of regional coordination committee

This section requires the regional planning Minister to establish a regional coordination committee.

2.5A.4 Functions of regional coordination committee

This section provides the function of the regional coordination committee is to advise the State government, through the regional planning Minister about the development and implementation of the regional plan.

2.5A.5 Membership of regional planning committee

Subsection (1) provides the regional coordination committee will have the membership decided by the Minister.

Subsection (2) states limitations to the membership of the regional coordination committee. The committee may include only a State Minister, a mayor or councillor of a local government of the region, or an appropriately qualified person decided by the Minister. An inclusive definition of "appropriately qualified" has been included in schedule 10 (Dictionary) by this Bill.

2.5A.6 Dissolution of regional coordination committee

This section provides for the regional planning Minister to dissolve the regional coordination committee. The procedures for dissolving the committee would be the same as those for establishing it.

2.5A.7 Quorum

This section provides a quorum for a meeting of the regional coordination committee is one more than half its membership.

2.5A.8 Presiding at meetings

Subsection (1) states the regional planning Minister presides at all meetings of the regional coordination committee.

Subsection (2) provides in the absence of the regional planning Minister, a member of the Minister's choosing must preside.

2.5A.9 Conduct of meetings

Subsection (1) provides for meetings of the regional coordination committee to be held at the time and place decided by the regional planning Minister.

Subsection (2) provides for the regional coordination committee to conduct its business in such a manner as it decides.

Division 3 The regional plan

2.5A.10 What is the regional plan

This section introduces the concept of a regional plan for the SEQ region.

The regional plan will be a statutory instrument. Planning schemes, planning scheme policies, temporary local planning instruments and State planning policies are all statutory instruments. The *Statutory Instruments Act 1992* sets out general provisions applicable to statutory instruments and their interpretation. The regional plan will not be subordinate legislation for the *Statutory Instruments Act 1992*.

The regional plan will also be a "planning instrument" for the IPA. This means the regional plan, and in particular the regulatory provisions of the regional plan, will be subject to the same use right and development approval protections under Chapter 1 Part 4 of IPA as other planning instruments.

2.5A.11 Key elements of the regional plan

This section identifies the key elements of the regional plan. The Bill establishes a subjective criterion for the sufficiency of the regional plan's content (ie the regional planning Minister must be satisfied the regional plan contains the elements listed in this section.

The key elements centre around three structural elements consistent with an over-arching set of desired regional outcomes. The three structural elements are a land use plan, infrastructure to service anticipated land use, and the identification of key regional resources, and the proposed means of preserving, maintaining or developing them.

The structural elements of the regional plan reflect at a regional level the "core matters" for planning schemes identified in section 2.1.3A.

2.5A.12 The regional plan may include regulatory provisions

This section provides for the regional plan to contain regulatory provisions. These provisions include the capacity to directly regulate development, by, for example, prohibiting aspects of development in specified locations. In this sense, the regulatory provisions are an independent and direct aspect of regulation in the region, separate from other planning instruments in

Chapter 2 of the IPA. The regulatory provisions are given effect through an offences provision (section 4.3.5A) included in the Bill.

Consequently, the regulatory provisions are different in character from the other provisions of the regional plan, which are intended to have effect through scheme amendment and development assessment processes already contained in the IPA. However it is anticipated the regulatory provisions will support, rather than supplant the other provisions of the regional plan, by, for example, providing certainty about development outcomes in proposed regional landscape areas under the regional plan.

Apart from the ability to directly regulate development, this section also provides for the regulatory provisions to have the same effect as a temporary local planning instrument (TLPI) by, for example, making development assessable or self assessable, or including codes. Unlike a TLPI however, these provisions have effect not for twelve months, but until a planning scheme is amended to reflect the regional plan.

Finally, subsection 2(e) provides that the regulatory provisions may contain transitional arrangements for development applications made but undecided at the time the regulatory provisions come into effect. Including such arrangements in the regulatory provisions rather than the Bill itself is one of a number of legislative and non-legislative actions designed to discourage speculative development applications prior to the completion of the regional plan. These transitional arrangements potentially have important implications for the rights of applicants, however it should be noted that, even though they will not be contained in the Bill itself, they will nevertheless be subject to Parliamentary scrutiny, as the regulatory provisions must be ratified by Parliament. (See section 2.5A.18).

Division 4 Making the Regional Plan

2.5A.13 Regional planning Minister to prepare draft regional plan

This is a directory provision requiring the regional planning Minister to prepare a draft regional plan. The regional planning Minister is required to consult the regional coordination committee about preparing the draft plan, before the draft plan is notified for public submissions.

2.5A.14 Notice of and public consultation on draft regional plan

This section establishes the public consultation requirements for the draft regional plan. These are intended to be minimum requirements only, and do not prevent more extensive consultation, including for example, the re-notification of the draft regional plan if it is substantially changed as a result of public consultation.

The consultation period for the draft regional plan is at least 90 business days (or approximately four months). For this period, the regional planning Minister must keep a copy of the regional plan available for inspection and purchase.

2.5A.15 Making regional plan

This section requires the regional planning Minister to consider every properly made submission and consult the regional coordination committee before taking action about making the regional plan.

Subsection (2) of this section provides that after public notification and consulting the regional coordination committee, the regional planning Minister may make the regional plan as notified, or make an amended regional plan. The regional planning Minister does not have an option of not making the regional plan under this section.

2.5A.16 Notice of making of regional plan

This section requires notice to be given of the making of the regional plan, and also establishes when the regional plan has effect.

2.5A.17 Regulatory provisions to be ratified by Parliament

This section requires the regional planning Minister to table a copy of the regulatory provisions in the Legislative assembly within 14 days of the day the regional plan is made. The requirement applies only to the regulatory provisions (due to the potentially important effect of these on the rights of individuals, and planning outcomes in the region generally), but does not prevent the tabling of the balance of the regional plan.

Subsection (2) provides the regulatory provisions lapse if not ratified by Parliament within 14 sitting days of their tabling. This would effectively cancel any regulatory effect of the regulatory provisions.

Division 5 Amending or replacing regional plan

2.5A.18 Regional planning Minister may amend or replace regional plan

This section provides for the regional planning Minister to amend or replace the regional plan.

2.5A.19 How regional plan is amended or replaced

This section states that the regional plan may be amended or replaced using the same process by which it was originally made, and establishes when the amendments, or replacement have effect. For a proposed amendment or replacement regional plan, subsection (4) allows the regional planning Minister to decide not to proceed with the amendment or replacement, after having considered public submissions.

2.5A.20 Minor amendments to regional plan

This section allows the regional planning Minister to make minor amendments to the regional plan without the need for following the processes under Division 4 of this Part. ("Minor amendment" is a term already defined in the IPA).

Division 6 Effect of regional plan

The regional plan establishes the future land use pattern for the region and identifies key environmental, economic and cultural resources. How the plan is implemented is of fundamental importance, as are the relationships between the regional plan, planning schemes and other plans and policies applying in the SEQ region. This division deals with those relationships and obligations.

2.5A.21 State interest

This section provides the regional plan is a State interest for the IPA.

2.5A.22 Local governments to amend planning schemes to reflect regional plan

This section requires local governments to amend their planning schemes to agree with the regional plan (including subsequent amendments). As the

primary land use management instrument, planning schemes will play a fundamentally important role in implementing the regional plan. Accordingly, it is important that planning schemes be brought into line with the regional plan as soon as possible after the regional plan is made (or amended).

The Bill assumes local governments will commence the amendment process quickly. A specific time frame is not identified in the Bill as this will depend on the nature and complexity of the amendments. However, a reserve power is provided to the regional planning Minister to intervene to amend a planning scheme if necessary amendments have not been submitted to the Minister under section (9) of schedule 1 within 90 business days of the regional plan coming into effect.

Subsection (1) allows for the regional planning Minister to waive the requirement for a planning scheme to be amended to agree with the regional plan. As it is expected the regional plan will be completed before all IPA planning schemes currently under preparation in SEQ are completed, it would be appropriate to allow affected local governments to complete their IPA schemes consistent with the regional plan, rather than require them to amend their transitional schemes.

2.5A.23 Effect of regional plan on other plans, policies or codes

This section establishes the relationships between the regional plan and other plans or policies applying in the region that affect one or more of the key elements of the regional plan identified in section 2.5A.11. The scope of plans or policies affected by this subsection is potentially broad. Any statutory plan, policy or code affecting at a regional scale land use, infrastructure or regional resources is potentially affected. There are many State or local statutory plans and policies affecting these factors in the SEQ region.

At present, there is little statutory guidance about how potentially conflicting or competing priorities and proposals under this broad range of instruments are to be reconciled. The regional plan represents a potentially important medium for identifying and reconciling these issues. However while this section seeks to integrate regional planning by requiring entities to consider and reflect the regional plan in their own plans, the regional plan only has a direct prevailing effect on the implementation of any policies or plans when they are implemented under IPA (for example through IDAS).

Subsection (1) requires an entity preparing such an instrument to take account of the regional plan, and to report in the instrument how the instrument reflects the regional plan.

Subsection (2) provides that for this Act the regional plan prevails to the extent of any inconsistency with such an instrument.

2.5A.24 Effect of draft regulatory provisions

This section establishes the effect of the draft regulatory provisions of the proposed regional plan. "Draft regulatory provisions" is a defined term encompassing not only any proposed regulatory provisions of the original regional plan, but also any proposed amendments to the regulatory provisions of the regional plan, and any proposed regulatory provisions of a proposed replacement regional plan.

For all three of the above cases, subsections (1) to (3) respectively provide the draft regulatory provisions have effect from the day they are publicly notified, until they are replaced by the final regulatory provisions of the plan, amendment or replacement. In the case of an amendment or replacement, the original regulatory provisions again apply if the regional planning Minister decides not to proceed with the amendment or replacement.

The key reason for the regulatory provisions to have effect is to ensure that the provisions can implement a "holding pattern" with respect to key regional development outcomes pending the finalisation of the regional plan, amendment or replacement.

Subsection (4) allows the Minister to amend the draft regional provisions at any time during the consultation period for the regional plan. This provision is designed to address any errors or unintended consequences of the draft regulatory provisions. Without such a provision, it would be either be necessary for the regional planning Minister to withdraw and recommence consultation about the proposed regional plan, or wait until the regional plan is finally made.

Subsection 5(a) provides, as indicated above, that in the case of an amendment or replacement, the original regulatory provisions again apply if the regional planning Minister decides not to proceed with the amendment or replacement under section 2.5A.20(4).

Subsection 5(b) confirms the draft regulatory provisions may include transitional arrangements for development applications that are "live" when the draft regulatory provisions take effect. Although it can be

implied from this section that the draft regulatory provisions can do anything the regulatory provisions of the final regional plan can do under section 2.5A.12, the wording of subsection 2(e) of that section is difficult to apply in the context of this section, as it refers specifically to the regulatory provisions (not the draft regulatory provisions).

Amendment of s 3.1.4 (When development permit is necessary)

Clause 9 includes two amendments to section 3.1.4 of the IPA.

The first amendment excludes the regulatory provisions of the regional plan from the effect of subsection (3)(b). That subsection provides that a planning instrument cannot regulate exempt development. It is intended that the regulatory provisions have independent regulatory effect, notwithstanding whether development is exempt, self-assessable or assessable.

The second amendment confirms that, even though exempt development cannot be regulated directly under a planning instrument, nothing stops such development being affected by a development approval or planning instrument if the effect is directed at addressing the impacts of another related aspect of development which is itself assessable or self assessable.

The Bill includes an example of works (e.g. building or operational works) that are the natural and ordinary consequence of a material change of use. The change of use may be expected to have impacts such as traffic generation, noise, light, or drainage impacts from buildings constructed to accommodate the proposed use.

Such works have often been made assessable in their own right under IPA planning schemes, leading to additional processes and costs in their assessment under IDAS. This amendment is designed to confirm that such development can be managed through approvals processes or codes for the related assessable development without the need to make it assessable in its own right. These amendments are linked to the compliance assessment arrangements contained in IPOLAA 2003 (section 3.5.31A), which establish clearer assessment paths for such development when included as a condition of approval for related assessable development.

This amendment is designed to encourage streamlined assessment procedures, particularly for works associated with assessable material changes of use, by confirming arrangements that have always been available to assessment managers and concurrence agencies, and do not

constitute a substantive change to the status of exempt development under IPA.

Amendment of s 3.2.1 (Applying for development approval)

Clause 10 amends section 3.2.1 of the IPA to establish that a development application is not properly made under that section if the development the subject of the application would be contrary to the regulatory provisions or the draft regulatory provisions. Subsection 10 of that section has also been amended to establish that, even if an assessment manager accepts such an application, it is not taken to have been properly made

Amendment of s 3.3.15 (Referral agency assesses application)

Clause 11 amends section 3.3.15 to introduce the SEQ regional plan as a consideration for concurrence agencies assessing development applications in the SEQ region. As with State planning policies, development applications must be assessed against the regional plan unless the regional plan has been appropriately reflected in the relevant planning scheme. The procedures for establishing that the regional plan has been appropriately reflected in a planning scheme is included in schedule 1, section 18. Proposed section 2.5A.24 (see clause 8 above) provides that, for the IPA, in the event of an inconsistency between the regional plan and any other law or policy, the regional plan prevails.

Amendment of s 3.4.2 (When the notification stage applies)

Clause 12 includes a minor amendment to section 3.4.2 to add to the circumstances in which a development application made in relation to a preliminary approval under section 3.1.6 of the IPA need not be publicly notified.

Section 3.1.6 allows a preliminary approval to establish a unique scheme for the development of a site, by including in the approval provisions which vary the effect of the planning scheme for that site for the life of the approval. All initial applications under section 3.1.6 must be publicly notified under Chapter 3 Part 4 of the IPA, because they effectively propose to amend the planning scheme. However section 3.4.2 states subsequent applications for more detailed development of the site need not be publicly notified if they meet several criteria stated in that section, including that the level assessment is not changed (or changed only from code assessment to self assessment), and that any new codes are consistent with earlier codes.

This amendment adds a further circumstance for which further public notification is unnecessary, namely that the subsequent development application actually increases the level of assessment. Applicants may seek to increase the level of assessment for development under a preliminary approval in order to encourage a desired development outcome for the site (such as a particular mix of retail and commercial development for a proposed shopping complex).

Amendment of s 3.5.4 (Code assessment)

Clause 13 amends section 3.5.4 to introduce the SEQ regional plan as a consideration for assessment managers undertaking code assessment. As with State planning policies, development applications must be assessed against the regional plan unless the regional plan has been appropriately reflected in the relevant planning scheme. The procedures for establishing that the regional plan has been appropriately reflected in a planning scheme are included in schedule 1, section 18. (See clause 30 below). Proposed section 2.5A.24 (see clause 8 above) provides that, for the IPA, in the event of an inconsistency between the regional plan and any other law or policy (including another planning instrument), the regional plan prevails.

Amendment of s 3.5.5 (Impact assessment)

Clause 14 is similar to clause 13, and introduces the SEQ regional plan as a consideration for impact assessment.

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

Clause 15 is similar to clause 14, and introduces the SEQ regional plan as a consideration for development applications made under section 3.1.6.

Amendment of s 3.5.11 (Decision generally)

Clause 16 amends section 3.5.11 to require that in deciding a development application, in addition to the other requirements of that section, the assessment manager's decision must not be contrary to the regulatory provisions or draft regulatory provisions.

Amendments to section 3.2.1 of IPA (see clause 10 above) are intended to ensure development applications for development contrary to the regulatory provisions may not be made. However it would still be possible

for an assessment manager's decision about a properly made development application to result in development contrary.

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

Clause 17 amends section 3.5.13 to require an assessment manager to consider the regional plan in the event the assessment manger's decision will conflict with the applicable code or codes.

Amendment of s 3.5.14 (Decision if application requires code assessment)

Clause 18 amends section 3.5.4 to introduce the regional plan as a consideration under that section. Section 3.5.14 allows for an assessment manager's decision about a development application requiring impact assessment to conflict with the relevant planning scheme so long as the decision does not compromise the desired environmental outcomes (DEO's) for the planning scheme area. However subsection (4) makes an exception in the event that the decision would further the outcomes of any relevant State planning policy. This clause expands that subsection to include a reference to the regional plan.

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

Clause 19 amends section 3.5.14A in a similar way to section 3.5.14 (see clause 18 above).

Amendment of s 3.6.7 (Effect of call in)

Clause 20 amends section 3.6.7 to provide the regional planning Minister with additional Ministerial call-in powers in relation to the regional plan. The main purpose of the additional powers is to address speculative development applications made before the draft regulatory provisions or the final regional plan take effect.

In addition to direct administrative responsibility for Chapter 2 Part 5A (Regional planning in the SEQ region), the regional planning Minister is afforded through the Bill (in particular through changes to the definition of "Minister" under schedule 10 – see clause 32 below) additional powers and functions to facilitate effective regional planning in the SEQ region. These

include ministerial call-in powers in relation to matters under Chapter 2 part 5A.

The call-in powers require the Minister to continue the IDAS process for a "live" application that has been called in from the point at which the call-in took effect. For an application called-in after a decision has been made, the Minister must recommence the IDAS process.

Although decisions about Ministerial call-ins are subject to neither appeal nor review under Chapter 4 of the IPA (including on the basis that a "deemed refusal" has occurred if IDAS timeframes are not met), the current provisions of Chapter 3 Part 6 imply a general obligation to meet IDAS timeframes.

Consequently in the case an application called in by the regional planning Minister due to concerns about the effect of the development the subject of the application on the regional plan or draft regulatory provisions before those documents are finalised, the current arrangements imply a general obligation to decide such an application in the absence of the final regional plan or draft regulatory provisions.

The amendments in this clause address these matters by allowing the regional planning Minister to call in and "hold" an application until a stated time nominated by the regional planning Minister at the time the application is called in. Furthermore, the provision allows the regional planning Minister, after the nominated time has expired, to either decide the application in the normal way under Chapter 3 Part 6, or alternatively return the application to the assessment manager for a decision.

In both cases, subsection (8) of this section suspends the effect of section 3.5.3 to require the draft regulatory provisions or regional plan to be a substantive consideration in assessing the application, despite the fact these instruments were not in effect when the application was made.

Insertion of new 4.3.5A

Clause 21 introduces a new section establishing an offence for carrying out development contrary to the regulatory provisions or draft regulatory provisions. The term "subject to chapter 1 part 4" at the beginning of the section is intended to confirm that a person does not commit an offence by continuing an existing use, acting upon a valid development approval, or carrying out a material change of use implied by a development approval under sections 1.4.2 to 1.4.5, even if that activity would, but for those

sections, be contrary to the regulatory provisions or draft regulatory provisions.

Insertion of new s 5.6.3A

Clause 22 introduces a new section designed to create consistency between development under Chapter 5 Part 6 for public housing and community infrastructure under Chapter 2 Part 6 (section 2.6.6), with respect to payment of infrastructure charges.

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

Clause 23 amends section 5.7.2 to require local governments in the SEQ region to keep a copy of the regional plan publicly available.

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

Clause 24 amends section 5.7.6 to require the chief executive to keep a copy of the regional plan publicly available.

Amendment of s 5.7.9 (limited planning and development certificates)

Clause 25 amends section 5.7.9 to require local governments in the SEQ region to keep a copy of the regional plan publicly available.

Amendment of s 5.8.1A (Delegation by Minister)

Clause 26 amends section 5.8.1A by inserting a delegation power for the regional planning Minister.

Amendment of s 5.8.3 (Application of State Development and Public Works Organisation Act 1971)

Clause 27 inserts a new subsection (2) in section 5.8.3 clarifying the relationship between the new chapter 2 part 5A and the State Development and Public Works Organisation Act 1971.

Amendment of s 6.1.25 (Effect of commencement on certain applications in progress)

Clause 28 inserts additional transitional arrangements for applications in progress at the commencement of the IPA, to afford any subsequent approvals the same implied rights arrangements as exist for development under section 1.4.5.

Amendment of s 6.1.35C (Future effect of approvals for applications mentioned in s 3.1.6)

Clause 29 amends section 6.1.35C to remove redundant wording.

Insertion of new ch 6 pt 4

Clause 30 inserts a new section 6.4.1 into the transitional arrangements for the IPA, to include the SEQ regional plan as a consideration for development applications being assessed under transitional planning schemes.

Unlike the equivalent arrangements for IPA planning schemes included in chapter 3, there is no provision for the regional plan to "fall away" as a consideration under IDAS if the transitional planning scheme is amended to reflect the regional plan. This reflects the fact that, under section 6.1.29, the relevant transitional planning scheme is only one of a number of considerations under IDAS. Consequently the regional plan has been introduced into this section as an independent, prevailing consideration.

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

Clause 31 amends Schedule 1 in several respects to reflect the SEQ regional plan as a consideration in the process for making planning schemes.

Section 3(2) of Schedule 1 has been amended to require local governments to consider and report upon the effect of the regional plan in statements of proposals for making new planning schemes.

Section 10(b) of schedule 1 has been amended to add consistency with the regional plan as an additional criterion upon which the Minister may allow a local government to forego further public consultation on a planning scheme amendment. The regional plan will itself be subject of extensive consultation, and if any resulting planning scheme amendments reflect the

regional plan, further public consultation may be unnecessary. However, this will depend upon the nature of the amendment, and how clearly potentially affected persons could determine what effect the draft regional plan had on their interests.

Amendment of sch 10 (Dictionary)

Clause 32 amends schedule 10 to introduce, or modify definitions consistent with the provisions of the Bill.

Part 3 Amendment of integrated Planning and Other Legislation Amendment Act 2003

Act amended in pt 4

Clause 33 States this part amends the *Integrated Planning and Other Legislation Amendment Act 2003.*

Amendment of s 94 (Insertion of new ch 5, pt 7A)

Clause 34 omits subsection (2) of section 5.7A.1(2). This subsection (which has not commenced) provides for the chief executive to determine an EIS is unnecessary for a controlled action under the Commonwealth *Environment Protection and Biodiversity Conservation Act.* The effect of such a determination was intended to be that an EIS would be carried out under the Commonwealth legislation, instead of under this Part.

Since IPOLAA 2003 was enacted, the bilateral agreement between the Commonwealth and the State of Queensland concerning the accreditation of assessment processes for controlled actions has been further developed and refined. The procedures under the agreement for determining whether the EIS process under this Part is triggered for a controlled action mean that it would be more appropriate for the chief executive's discretion to be exercised in conjunction with providing advice to the Honourable the Minister for the Environment about whether the EIS process is triggered under the agreement, rather than potentially as a separate decision as implied under subsection (2).

Consequently it is proposed to remove subsection (2), but deal with the chef executive's discretion about triggering the EIS process in the relevant regulation establishing the triggers for an EIS under this Part.

Amendment of s 115 (Amendment of s 43B (Relationship of coastal plans with Integrated Planning Act 1997))

Clause 35 corrects a section reference in IPOLAA 2003.

Part 4 Amendment of Local Government Act 1993

Act amended in pt 5

Clause 36 states this part amends the *Local Government Act 1993.*

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

Clause 37. This section amends section 854 of the *Local Government Act 1993* in two respects.

Subsection (1) amends the introductory wording to section 854(3) for greater consistency with section 854(1). Section 854(1) applies for any new local law that contains a process similar to, or which duplicates the IDAS process under the IPA. Section 854(3) is intended to apply for existing local laws containing such processes, but the current introductory wording suggests it is intended to apply more broadly. The amended wording brings the two subsections more closely into line.

Subsection (2) compliments an amendment made to section 854 under IPOLAA 2003. That amendment provided for local laws about a limited number of specified matters to continue to be made until a local government commenced making its second IPA planning scheme (despite section 854(1)). However that amendment did not make similar arrangements for the amendment or repeal of existing local laws dealing with the specified matters under section 854(3). This amendment is intended to address that oversight.

Part 5 Amendment of Queensland Heritage Act 1992

Act amended in pt 6

Clause 38 states this Part amends the *Queensland Heritage Act 1992*.

Amendment of s 35 (application for exemption certificate)

Clause 39(1) clarifies that exemption certificates are available to the State.

Clause 39(2) consolidates in one section of the *Queensland Heritage Act 1992* (QHA) work that may be considered as exempt development. Such work, if given an exemption certificate under the QHA, does not require a development application to be made under the Integrated Development Assessment System. This amendment removes the term "excluded work" and clarifies the definitions of the categories of work that may be considered as exempt development. The term "excluded work" reflects the logic of the previous Heritage Act and Heritage Regulation in dealing with development. With the roll-in of the QHA into the Integrated Development Assessment System (IDAS) under the *Integrated Planning Act 1997* (IPA), development is now defined under the IPA. Use of the term "excluded work" is redundant and confusing, as excluded work is both a category and within the categories of work for which an exemption certificate may be issued. Stating these categories of work separately rather than grouping them under a further category known as excluded work clarifies categories of work that may be considered for an exemption certificate.

Amendment of pt 7 (Discovery and protection of objects and areas)

Clause 40 amends the title of Part 7 of the QHA to clarify that Part 7 provides for the protection of historical archaeological objects and historical archaeological areas of cultural heritage significance from the period since European settlement.

Amendment of s 44 (Study must be reported)

Clause 41 provides that studies of historical archaeology must be reported. This amendment clarifies that this provision does not extend to cover

studies of places of cultural heritage significance that are not places of historical archaeology.

Amendment of s 51 (Applying for permit to enter protected area)

Clause 42 amends Section 51(2)(c) to provide that an application for entry to a protected area contains the written permission of the owner for the applicant to enter the area. Activities proposed to be undertaken in a protected area and/or an area of historical archaeology require negotiation with the owner so that appropriate arrangements are made for access and study. Proof of owner permission to enter and undertake activities is required on the application form for a permit to enter a protected area to ensure that the rights of owners are protected.

Amendment of s 55 (Functions of authorised persons)

Clause 43 amends section 55. As various pieces of legislation are incorporated into the IDAS it is necessary to provide for authorised persons under those Acts to be empowered to conduct investigations and inspections to monitor and enforce compliance with the IPA. Section 55(1)(b) empowers an authorised person under s.55 of the QHA to undertake these activities and achieves consistency and fairness in enforcement across the various pieces of legislation incorporated into the IDAS.

Amendment of s 57H (Issue of warrant)

Clause 44 amends Section 57H(1)(a) to link monitoring and compliance activities conducted under the QHA for registered places with development offences under the IPA. This provides for the issuing of warrants under the QHA for development offences in registered places and achieves consistency and fairness in enforcement across the various pieces of legislation incorporated into the IDAS.

Insertion of new s 67B

Clause 45 inserts a new section 67B dealing with Ministerial delegation. Under the proper operation of the Heritage Act, it is intended that the Minister may delegate powers to specified persons and local governments. This power was part of the Heritage Act prior to the commencement of amendments occasioned by the *Queensland Heritage and Other*

Legislation Amendment Act 2003 (QHOLAA) and Section 67B continues to reflect this.

Insertion of new pt 10

Clause 46 inserts a new Part 10 to clarify the status of development applications made to and approvals and conditions issued by the Heritage Council before the commencement of the QHOLAA on 28 November 2003. Part 10 provides that development applications, development approvals, reviews and appeals relating to applications lodged, approved or under review at the 28 November 2003 continue under the arrangements existing in the previous Heritage Act.

Amendment of sch (Dictionary)

Clause 47 amends the dictionary. With the removal of the redundant term "excluded work" the term "emergency work" is transferred into the IPA as the term is only used in that Act. The definitions for the terms minor repair work, minor work and maintenance work have been amended to maintain consistency across the definitions.

Part 6 Amendment of Primary Industries and other Legislation Amendment Act 2003

Act amended in part 7

Clause 48 States this part amends the .*Primary Industries and other Legislation Amendment Act 2003.*

Amendment of section 80 (Amendment of schedule 8)

Clause 49 renumbers an item in schedule 8 of the IPA for consistency with other amendments made to that schedule.

Amendment of section 81 (Amendment of schedule 8A (Assessment manager for development applications))

Clause 50 renumbers items in schedule 8A of the IPA for consistency with other amendments made to that schedule.

Schedule Minor Amendments

Integrated Planning Act

Section 2.6.8(1)(b)

Clause 1removes a redundant section reference resulting from the commencement of IPOLAA 2003.

Section 2.6.18

Clause 2is a minor amendment of section 2.6.18 requiring notice of the repeal of a designation to be given to the chief executive. This is necessary to ensure the chief executive can accurately discharge the chief executive's functions under Chapter 7 Part 7 to keep available for inspection and purchase copies of planning schemes (including up to date notations for designations). In the case of an amendment or replacement, the original regulatory provisions again apply if the regional planning Minister decides not to proceed with the amendment or replacement.

Section 3.2.1(6),'(3)(b)'

Clause 3corrects an incorrect section reference.

Section 3.5.3A(1), 'a development'

Clause 4 removes redundant wording.

Section 3.5.28(1), 'owners'

Clause 5 corrects punctuation.

Sections 4.1.5(2) and (4), 4.1.48(1) and (3)(c), "*District Courts Act 1967*" -

Clause 6 corrects a reference to other legislation.

Section 5.2.1, definition infrastructure agreement

Clause 7 adds an additional type of agreement to the list of infrastructure agreements inserted under IPOLAA 2003.

Section 6.1.20(4), '2005'

Clause 8 extends the application of section 6.1.20 for a further year, consistent with the commencement of IPOLAA 2003.

Section 6.1.26(4), after 'repealed Act'

Clause 9 corrects a section reference.

Section 6.1.31(3)(b)(i), '2005'

Clause 10 extends for one year the period within which local governments may assess and decide development applications using the infrastructure arrangements under the repealed Act, consistent with the commencement of IPOLAA 2003.

Chapter 6, part 1, division 11

Clause 11 removes a transitional provision which has had its effect, and is consequently redundant.

Schedule 1, section 9, heading 'resolution proposing'

Clause 12 removes redundant wording from the title of this section.

Schedule 1, section 9(3), 'makes a resolution'

Clause 13 removes wording made redundant by amendments under IPOLAA 2003.

Schedule 1, section 19, heading 'resolution about adopting'

Clause 14 removes redundant wording from the title of this section.

Schedule 1, section 19, 'makes a resolution'

Clause 15 removes wording made redundant by amendments under IPOLAA 2003.

Schedule 2, section 1, heading, 'Resolution'

Clause 16 removes redundant wording from the title of this section.

Schedule 2, section 3, heading, 'Resolution about adopting'

Clause 17 removes redundant wording from the title of this section.

Schedule 2, section 3(1), 'makes a resolution under section 1 and'

Clause 18 removes wording made redundant by amendments under IPOLAA 2003.

Schedule 2, section 3(2), 'a copy of the resolution and'

Clause 19 removes wording made redundant by amendments under IPOLAA 2003.

Schedule 4, section 7, heading, 'Resolution about adopting'

Clause 20 removes redundant wording from the title of this section.

Schedule 8, heading

Clause 21 amends the heading of Schedule 8 for greater clarity.

Schedule 8, part 1, table 3,item 1

Clause 22 includes a reference to the reconfiguration of land for railway purposes under the Transport Infrastructure Act to confirm that this form of reconfiguration is exempt development.

Schedule 8, part 1, table 5, item 2(b), 'or excluded under that Act'

Clause 23 corrects an incorrect reference.

Schedule 8A, table 3, items 1 to 7, 'table 1 or 2 does'

Clause 24 corrects grammar.

Schedule 8A, table 4, item 1, 'table 1, 2 or 3 does'

Clause 25 corrects grammar.

Schedule 9, table 3, item 2

Clause 26 includes a reference to the reconfiguration of land for railway purposes under the Transport Infrastructure Act to confirm that this form of reconfiguration is exempt development.

Schedule 9, table 4, item 6 '70'

Clause 27 corrects an incorrect section reference.

Schedule 9, table 4, item 9(c), '*authority*'

Clause 28 corrects an incorrect reference.

Schedule 10, definition "artificial waterway", '5B'

Clause 29 corrects an incorrect section reference.

Schedule 10, definition "coastal management district", '47(2)

Clause 30 corrects an incorrect section reference.

Schedule 10, definition "core matter"

Clause 31 inserts a new definition, consistent with amendments made under IPOLAA 2003

Schedule 10, definition "development application (superseded planning scheme)", paragraph (a)(iii), 'adopted'

Clause 32 corrects a grammatical error.

Schedule 10, definition "State coastal land", '12A'

Clause 33 corrects an incorrect section reference.